Journal of the Senate.

Minnesota.

St. Paul.

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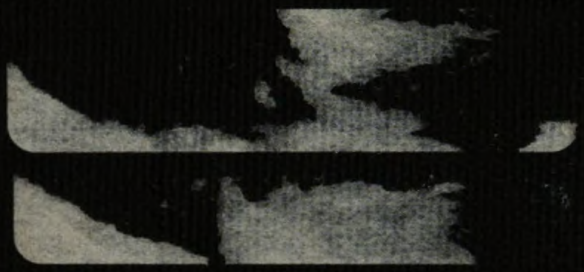

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TWENTIETH SESSION,—1878.

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 2.

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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.

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VOL. 2.

JOURNAL OF THE SENATE.

IN COURT OF IMPEACHMENT.

STATE OF MINNESOTA *vs.* SHERMAN PAGE

TWENTY-FIRST DAY.

ST. PAUL, SATURDAY, June 8, 1878.

The Senate was called to order by the President.

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

Messrs. Armstrong, Bailey, Bonniwell, Clement, Clough, Deuel, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Hersey, Houlton, Langdon, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Morrison, Nelson, Pillsbury, Remore, 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. 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 Tuesday, June 4, and Wednesday, June 5th, were read and adopted.

SHERMAM PAGE resumed the stand.

Mr. LOVELY.

Q. I wanted to call your attention to some testimony that was given yesterday by Mr Hall, with reference to a conversation between Mr.

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Hall and yourself about the Riley article; I will call your attention to that matter now. You may state whether you had a conversation with Mr. Hall soon after his election to the office of sheriff, with reference to the appointment of deputies, and promises made by him about the appointment of deputies; and state the whole conversation that took place between you,—where it was, what was said and who was present?

A. I had a conversation with Mr. R. O. Hall, I think a few days after his election to the office of sheriff the first time; I do not now recollect the year he was elected, but I think, if I mistake not, that it will be four years next fall. The conversation took place in a store owned or occupied by Ingle & Co., as a feed store, and was in the presence of Mr. Wm. Ingle, one of the firm. It occurred in this way: the order or history of it is this:

At the election that fall, on election day, I arrived home from holding a term of court in one of the eastern counties of my district, and arrived just in time to go to vote at the election. I had been absent during the term of court. On my way from the polls, I was informed that Mr. Hall, then a candidate for sheriff, had secured votes for his election by promises of appointments to office; on my way from the polls, I met Mr. Hall, and I asked him the question, I think, if that was so; he made me no reply of a definite character; admitting really, as I understood it, that it was a fact. I assured him in this way, that if such was the fact, I was sorry that I had voted for him, for I considered such matters as illegal. That was the substance of the conversation.

Q. Did you refer to anybody's name in that connection?

A. Not at all. Very soon after that I was in Ingle's store accidentally, and a conversation occurred between Mr. Ingle and myself, relative to the same subject matter, and during that conversation Mr. Hall came into the store, and the conversation continued, with reference to the propriety of persons who were candidates for office making such arrangements, such promises. Mr. Hall remarked that he considered it perfectly proper for a man that was running for office to take any means to get elected; Mr. Ingle and myself differed with him, and we had some conversation in reference to that matter, the fitness and character of persons whom he had promised such appointments was not under discussion at all; that was not the topic that was discussed; I don't think that any person's name was mentioned; I have no recollection that it was at all; I know Mr. Riley's fitness as a deputy was not under discussion at all, but the topic was simply the propriety of persons making such arrangements; that was the subject of the discussion; no such remark was made by myself as Mr. Hall has testified to here, that I, in a threatening way, asked him if he dare appoint these persons or that person.

There was no discussion as to the popular sentiment as to these persons or any persons. The only topic was the one that I have named. Mr. William Ingel was present, within probably six feet of us all the time while the conversation occurred, and took part in a portion of the conversation. I think he was listening to the whole of it, and participated in a portion of it that I knew of.

Q. Did you state to him that Mr. Riley was a low-lived man, and that he was not fit for such a position at all?

A. I made no such comments upon Mr. Riley at all during that conversation; it was not the topic that was under discussion; I really did not know Mr. Riley; didn't know anything about him. I was not ac-

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quainted with him at that time; I don't think I had ever spoken to him. I knew him by sight; merely knew there was such a person in the town, but I had never spoken to him at all.

Q. There was one other matter I omitted to ask you about upon the first article, and that is in reference to the conversation that Mr. Hall said took place between you and him before the commissioners, his asking you whether or not——

[The witness interposing.]

A. Mr. Hall and myself at the time the bill for serving subpœnas was under consideration?

Q. Yes.

A. Mr. Hall was present at that time, and I think about the time I went out of the room, Mr. Hall asked me some questions with reference to his rights or power as a sheriff. I do not now recollect what it was. I know it occurred to me at the time that it was not a question that I considered proper for me to answer, and I declined to answer it. Mr. Hall has frequently asked me questions—legal questions; questions that would be involved in cases where he was an officer, perhaps, serving process. I was always very careful in answering such questions that would involve such points.

Q. Was there anything peculiar in your manner in answering Mr. Hall?

A. I don't think there was; certainly I had no more feeling then than I have now.

Q. He states that you replied to him, "I will answer you that, sir, in court."

A. I don't recollect that those were the words that I used. I gave him some reply which I intended to mean that. I didn't consider his question a proper one to ask me at that time.

Q. We come now to article three: State whether you are acquainted with W. T. Mandeville?

A. I am; I have been acquainted with him some twelve years, I think.

Q. State whether or not you have had any personal difficulty with him, or difficulty of any kind?

A. I never did; I was his attorney for some years, and the last legal business that I did before I was elected—the last case I tried, was for him as his attorney.

Q. What arrangements if any, did you make with sheriff Hall regarding the appointment of deputies at the special term of court held in January, 1876?

A. The term in January, 1876, was for the trial of the Jaynes case as it was then called, and has since been known—a case of rape, and that was the only case that was tried at that time, that is the only jury case that was tried. There were some little matters, a very few, I think were disposed of at that time. At the opening of court or about the opening of court, on the morning of the first day, I had a conversation with Mr. Hall in reference to the appointment of deputies for that term. This is my custom and practice in that county as well as others; the sheriff came and talked with me in reference to the number of deputies that it is thought will be needed, and they are appointed with reference to the business that probably will come before the court at the term; sometimes a greater number, sometimes a less number are appointed, depending upon the condition of the calendar somewhat, and the

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amount of business to be transacted; I fixed the number in the conversations usually with the sheriffs, and sometimes talk with them in reference to persons whom they are to appoint, or enquired of them what persons they desired to appoint, and in a mutual conversation in that way, arrange with reference to deputies.

The conversation with Mr. Hall at this time was in reference to the number that would be required at that term, and the persons to be appointed. I have always been in the habit of talking with Mr. Hall, not only with reference to the number of deputies, but with reference to the fitness and competency of persons to be appointed. I have always said to him, and this was about the extent of my conversation with him, that I desired him to select experienced and reliable men for deputies to attend at that term of court, as far as he could consistently, and he always agreed with me in reference to that, never had any difference of opinion with him in regard to it at all, and at this time it was known by him and myself that the Jaynes case was a very important one, it had already been tried twice, and the juries had disagreed, and we were very anxious that the case should be disposed of at that time; Mr. Allen—F. W. Allen—was a person who had had good experience as a deputy, and Mr. Hall had appointed him at previous terms, he was considered a reliable man to discharge such duties; and both of us agreed at that time, that it was desirable to appoint him, and it was understood that he was to be appointed as the deputy for that term of court.

Q. Was there anything said about the appointment of Mandeville in connection, by Hall.

A. Mr. Mandeville was not mentioned at that time.

Mr. Mandeville's name was not mentioned by Mr. Hall to me in connection with the appointing of deputies, or at all, in fact, during that term, until the close of the term, and I did not know that it was claimed that Mr. Mandeville was there acting as a special deputy.

Q. Was there any other case tried at that term?

A. There was no jury case tried except the Jaynes case. There was no business that required the attendance or duties of more than one special deputy; the word "special" is used simply to distinguish between the deputies that are appointed at terms for the discharge of the duties of the court as such, and the general deputies. I have always made a distinction, and I think it is authorized by law. Mr. Mandeville might have been in the court room, as I never know what persons are present as deputies, I never give that my attention; my attention is always given to the business of court, and when the court is adjourned I always address the sheriff whether he is present or not, and I never stop to look whether he is in the court room; if there is a person there, whether he is a general or special deputy, and he responds to any call the court desires to make, that would be sufficient; if any matter comes up during the term of court, such as ventillating of the court room or raising windows, or anything of that kind, I simply speak about it, and call upon the sheriff to attend to that duty. Mandeville might have been in the court room at that term of court, but if he was there he simply discharged the duties in response to my call to the sheriff, and I suppose that it was an arrangement between him and the sheriff; the sheriff was there as officer during that term, and his services and the services of Mr. Allen were all that were required to discharge the duties, all duties that were necessary, unless it might be the service of pro-

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cess, which is done by general deputies always. I can explain what my practice is with regard to deputies.

Q. I wish you would explain it now.

A. I found that in the counties in my district—in some counties in my district—there was a disposition among some of the officers to appoint as these special deputies the general deputies whom they had as general deputy sheriffs, and that they were drawing pay from the public as a *per diem* as special deputies, and at the same time were engaged a large portion of time in the service of process for which they got the regular fee; and I examined the law and came to the conclusion that the construction of that statute was that these persons who were paid a *per diem* should be such persons as were required to discharge the particular duties of the court, such as the attendance upon the grand juries and upon the petit juries when they were out, and it was not contemplated that they should draw other fees than this *per diem* that was fixed by the court; that their services were required in constant attendance upon court for the discharge of those duties, and that they should be limited to that; and in order to prevent this, I took such action.

There was another difficulty that arose out of it; frequently, if general deputies were appointed, they would be required to discharge the duties at the time, and would be gone out in the country in the service of processes, and that interfered very materially with the discharge of their duties in court; and for that reason I instructed the sheriffs to select, as their special deputies, persons who were not deputy sheriffs.

My recollection now is that I made that arrangement in all the counties in my district. I know I did wherever the question was raised at all, and that practice was adopted wherever the suggestion was made. It was simply for the purpose of securing a proper discharge of the duties required; in Mower county I made no distinction whatever. I never at any time dictated to Mr. Hall, the appointment of special deputies—that is, who he should appoint. I talked to him about the appointment of persons; always recommending that he select competent, reliable men for that service as I did other sheriffs in other counties; and he made the appointments as he saw fit. He frequently appointed men without doing anything more than naming them; and when these men were appointed their names were ordinarily inserted in the order of appointing them. My practice was, after having this understanding with the sheriff, to make an order—a formal order; sometime during the term of court I would make it—I frequently would make it as I thought of it, whenever the matter came to my mind during the term, and I would write up the order, and sometimes, say frequently, I think, perhaps, more frequently I didn't write the order until I came to made up my final records at the close of term; and then I would make up the order and date them as of the beginning of the term, which, I believe, is always the rule and custom. And I would either deliver the orders to the deputies themselves, just as it happened, or to the clerk for filing; most of these were filed—this was my practice. I had never adopted a specific practice to make these orders on a spcified day of the term.

I considered that the arrangement made with the sheriff at the opening of the term was all that was required.

Q. State if that is not the usual custom in making orders regarding the business of the court?

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A. It is my custom, and I believe it quite general to date orders as of the commencement of the terms for which they are made.

Q. State whether you have any knowledge now of recognizing Mr. Mandeville personally as a special deputy, or of his acting as special deputy at that term of court?

A. I have no recollection now of seeing Mr. Mandeville during the term of court, except at the end of the term. I may have seen him, but if he responded to my call upon the sheriff to have any duty performed, which he might have done, it was possible that I did; for I will not say that I did not; it was not noticed by me any more than I would notice a response of any other general deputy. I had no knowledge that it was claimed that he was a deputy until the end of the term. There was no statement made to me that Mr. Hall had appointed him, either by Mr. Hall or by Mr. Mandeville at all. The term of court, the business of the term of court, was transacted something in this way; we were delayed somewhat in getting a jury, and there was considerable difficulty in getting jurors. Several venires were issued before we succeeded. My recollection now is, that the trial terminated on Saturday. Mr. Allen had charge of the jury, but previous to that time he was present in court and discharged the duties as far as I know.

A statement has been made, I believe, that he was busy fixing windows; I have a recollection that one of the windows, or curtains to one of the windows, got out of repair during the term, and that he occupied a brief time in fixing it; probably it might have been an hour or such a matter, I could not state positively, but it was a mere incidental matter that came up. The court room at Austin is a very small room, and is a room that is very difficult to ventilate; there are windows on the south side and windows on the east end, merely, and considerable attention is required to look after them; frequently persons are called upon to lower the windows and put them up, during the term of court, and sometimes citizens, who happen to be there, will do that, just as it happens; it is not a matter that I give any attention to, particularly, only to see that it is done. Mr. Allen took charge of the jury on Saturday, and the jury, I think, remained over the Sabbath; when the jury went out, my recollection is that the court adjourned until Monday morning, and very soon after the jury came in the term was closed. There was some little business transacted, some little court business transacted, but not very much; nothing that would require the duties of any deputy to perform the duties of sheriff, while Mr. Allen was out. All that was required of the officer was to attend to the court room after the court adjourned that term. I was sitting at the desk writing.

Q. Wait a moment, a question occurs here; Mr. Mandeville testified on his direct examination as follows:

"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 to me with his finger and said, 'come this way;' said he, 'lower those windows around here four or five inches, and change the air in the room here.'" What are the facts in regard to that statement?

A. Mr. Hall never said anything about the appointment of Mr. Mandeville to me at the time of opening that term of court; there was never anything said until the close of the term. Mr. Mandeville might have lowered windows, I can not say as to that; a great many persons

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did, who were in the court room, deputies as well as others. At the close of the term, after court had adjourned, I was sitting at my desk, making up the record of the term as is my practice, writing up the general record. (I generally keep my minutes on a small calendar, and write up the record at the close of the term; finish them up.) At that time Mr. Mandeville and Mr. Allen both came up to the desk and made some remarks in reference to their pay as deputies.

Q. One moment. Mr. Mandeville stated in his examination that "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.'" Do you know anything about that?

A. If he made any such remark it was not in my hearing. I only know that Mr. Hall did not come forward with those men; they came forward themselves.

Q. And further, Mr. Hall stated in that connection, "I have brought my deputies to get an order for their pay."

A. There was nothing of that kind said by Mr. Hall; Mr. Allen and Mandeville came forward together. Neither did Mr. Hall make a remark to them, and I do not recollect if Mr. Mandeville's saying at some time during the term of court, or at this time which I am now speaking, that I called them from the further part of the court room and said "Boys, come up this way and get your pay;" that is a remark that I should not have made, especially to those who are older than I am, as Mandeville is; at this time when Mandeville and Allen came forward they spoke with reference to their pay. I asked Mandeville what services he had performed, and what he claimed pay for; it was my first intimation that he claimed any pay as deputy; and he replied that he had been there during the term. I said to him in substance, that I didn't authorize his appointment as deputy, and if Mr. Hall had employed him to be there and do his business at any time, that I thought it was a matter that Mr. Hall should adjust; I said to them that I was busy just then and I would consider the matter afterwards.

I did, after I had finished the business that I was then engaged in, I considered the matter again, and my opinion was, I had no authority whatever to make an order for the pay of Mr. Mandeville. I had not authorized his appointment at all, and I could not make an order; I had no authority to do it in any way, shape or manner, and I so stated to Mr. Mandeville finally. He spoke to me two or three times about it, and I think two or three times on the street, and I, on each of those times, stated to him what I have now stated: that it was a matter I had nothing to do with; I had not authorized the appointment, and did not consider that his services were necessary, and if Mr. Hall had employed him that he must look to him for his pay. The order that was made for the pay of Mr. Allen, was made the same as other orders. I think that was made either at the close of the term or very soon after, and might have been delivered to Mr. Allen; I will not say as to that; there was nothing unusual about it, but simply the same as other orders, and at other terms. I think sometimes, when I have forgotten to make the order during the term, (and I believe I have a few times), why it may have been made after the term, but it is always dated as relating to that term. I don't recollect as to this specifically.

Q. Did Mr. Allen hear that conversation that took place?

A. Mr. Allen was present, and they were both standing right in front of me; as near me, probably, as Mr. Johnson there is now. [Pointing to the Secretary of the Senate.]

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Q. Is Mr. Allen under subpœna?
A. I believe he is.
Q. Was this after the business of the court had been finished?
A. The term had adjourned; it had been adjourned, and I was simply finishing up the business.
Q. Mr. Mandeville stated that when he asked you for his pay, or when he came up to the desk, you said: "Mandeville, how did Hall come to appoint you court deputy? What dirty work did you do to help elect him, that he appointed you court deputy?" Did you make such a remark as that?
A. No sir, I made no such remark as that.
Q. Any time afterwards did you make such a remark?
A. No sir; I never had such a conversation with Mr. Mandeville at all. When Mr. Mandeville came up, when that occurrence took place, it was the first that I knew of his claim, and the thought occurred to me, as to the question that I propounded to him; it was for the purpose of ascertaining what he based his claim on.
Q. State whether you are aware that there was anything peculiar in your manner of addressing Mandeville?
A. Nothing more peculiar than there is now. The tone of my voice is not exactly like other people's, and sometimes, perhaps, my voice is stronger than that of some people, and I addressed them as I would any person sitting near me, no difference at all, in any manner.
Q. Was there anything else that occurs to you under article three with reference to the claim of Mandeville?
A. I think of nothing now in regard to it.
Q. We come now to article four, which charges that you compelled Mr. D. H. Stimson to pay over money that he had collected upon a judgment in the case of the State of Minnesota against Dwight Weller. You may begin and state what you know of that matter?
A. The grand jury at that term of court made a presentment to me of the facts in connection with the transaction in the case of the State against Dwight Weller. I will not undertake to state all the contents of that report, or language of the report, that the substance of it was as follows: That in a criminal case—naming a case—the State against Weller, that the deputy sheriff, Mr. Stimson, had received of Mr. Weller an amount paid on a fine, and had retained the amount of five dollars and fifty one-hundredths as his fees, and I think the statement was made in the report or the presentment, the fact that no levy had been made, or anything of that kind. When this presentment was brought into court by the grand jury, I examined it and then inquired of the sheriff if he had such a deputy. I inquired for the purpose of ascertaining whether Mr. Stimson was deputy. I had no knowledge of the fact whether he had a deputy by that name or not.
Q. What expression did you use, Judge, asking the sheriff that question?
A. I think I asked him if he had a deputy by the name of Stimson. I have no doubt of it at all. I wished to ascertain whether he had or not; that would be a very natural question to ask.
Q. Did you know whether he had such a deputy?
A I did not know; I never knew the names of deputies, I may know some of the deputy sheriffs, but I could not state whether any particular individual at a given time was a deputy sheriff.
Q. Did you in fact know then that Mr. Stimson was deputy sheriff?
A. I stated that I did not; I had no knowledge of it. Mr Hall

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replied that he had such a deputy, and I inquired if he was present I think, and he stated that he was, and I asked Mr. Stimson to come forward; I then took the presentment that was made to the grand jury, and stated to Mr. Stimson the facts substantially as presented by the grand jury, and then I asked him questions in reference to it; further, I asked him if he had the execution, he said that he had; I asked him what he had done with the execution, and he told me he had been up to Lansing. I asked him if he had made any levy or anything of that kind, and he stated that he had not made a levy, and I think there were several questions asked about it for the purpose of satisfying myself with reference to the facts in the case, and he said to me that all those matters—he admitted all that was stated of the questions. I asked with reference to it; I then said to him substantially that this was a criminal case, that Mr. Weller had been fined in court, and my understanding of the law was that when a criminal who had been fined, had paid his fine, he was entitled to his discharge, and that as he had been fined a definite and fixed amount, I thought that he ought to have credit for the amount that he had paid; I then stated to him further the irregularity of the proceedings.

Mr. CLOUGH. State what was said.

The witness. That is what I am stating, that the proceeding was irregular, and that I did not consider that he was entitled to the fees according to his statement, but if he was entitled to any fees it was a matter, probably, would have to be—his fees would have to be—secured in some other way, either by presenting it to the county commissioners and not deducted as in the first instance, by the officer himself. I then stated to Mr. Stimson that the simplest way to dispose of that matter was to pay over the money to the clerk; I didn't consider that he was entitled to it, and I directed him to pay the money to the clerk, and I think I stated to him that I desired him to do it then, so that the grand jury might know that the matter which they had investigated had been disposed of. Mr. Stimson stated that he had not the money, and I suggested to him that perhaps he could get it, or something of that kind, and he procured the money and paid it over to the clerk; I told him then that such irregularities in officers ought not to be done or suffered, but I presumed he was not familiar with his duties and that I had disposed of that matter as the simplest method of disposing it. I made no threats to Mr. Stimson at all. I used no language that would indicate a threat; I stated my reason for doing it in that way was that I considered it was the simplest method of disposing of the matter; it didn't matter to me whether it was malicious or intentional. Mr. Stimson made no request of me to be heard any further, but admitted all the facts that I stated there at that time.

Q. Did you use this language to Mr. Stimson: "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."

A. I used no such expression as that. I directed him to pay the money over after the statement I had made—the conversation that I had with him, and there was no such language as that, or anything like that, said at all.

Q. Did he ask you to make an explanation?

A. He did not at any time ask me to make an explanation, and I asked him if these facts which had been presented by the grand jury were true, and he said they were.

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Q. Do you remember whether anything was said in your examination to Mr. Stimson about receiving the money there from Mr. French?

A. I don't recollect now whether the manner in which he had received the money was then talked about. It is my impression that it was not.

Q. You may state whether there was anything peculiar in your manner of addressing Mr. Stimson.

A. Not anything at all. I had no more feeling or excitement about that than I had about my ordinary business in court, at all. I was not acquainted with Mr. Stimson, and I do not know as I ever had spoken to him at all—had no acquaintance with him whatever.

Q. State how Mr. Stimson appeared to receive your request—your direction to pay over the money at that time?

Q. I did not discover that there was anything unusual in his appearance, nor did he seem to be dissatisfied with anything in regard to it; it was a matter that was done as an ordinary business transaction in court and disposed of, and I heard nothing said about it afterwards for some time.

Q. Is there anything further upon that article that you desire to state?

A. I don't think of anything now.

Q. We come now to article 6. State whether or not you are acquainted with Mr. Ingmundson, the county treasurer of Mower county.

A. I am acquainted with him.

Q. How long have you been acquainted?

A. I have been acquainted with him, have known him some, perhaps ten years; longer or shorter, I will not state definitely.

Q. How intimately have you been acquainted, and what have been your relations?

A. Previous to his being elected county treasurer, he resided at the town of Le Roy, about 25 miles from Austin, in a remote part of the county; I simply knew him by sight, and had a mere passing acquaintance with him; I knew that there was such a man there, and knew him by sight; I never had any acquaintance with him to know anything about him, until he came to Austin to discharge the duties of his office.

Q. When was it that he came to Austin?

A. That his term commenced?

Q. Yes; do you remember?

A. Why, I think it was some four years ago; perhaps four years ago last January; it occurs to me that was the time.

Q. State what your relations have been with Mr. Ingmundson since he has been a resident of Austin?

A. Do you wish to know the history of our relation?

Q, Yes; so far as they relate to your intimacy.

A. I knew Ingmundson after he came to reside in Austin, and entered upon the discharge of the duties of his office; I knew him as an officer, and frequently had had business in his office to transact, but more frequently in the same office with the clerk of the court. The clerk of the court and the county treasurer held their office in the same room. It is a small room, and my duties frequently called me into the office for the purpose of examining papers, in filing orders, &c., and in this way I became somewhat acquainted with Mr. Ingmundson—meeting him more frequently on that account. Our relations, so far as I knew, were pleasant, until the fall term or about the fall term of 1876.

Q. Mr. Ingmundson states that your relations were very friendly?

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A. Well, there were no relations that were unfriendly, nor were they unusually friendly; we spoke when we met, and on several occasions I was in parties with him hunting. I never supposed, myself, that those were indications of any special intimacy, because there were other parties along; and I know on those occasions when Mr. Ingmundson and I were out alone once or twice we went a little ways alone, during some of those times. On three or four occasions I went in parties of five or six—from four to six, generally six. We would go out with other parties to a certain point on hunting excursions for chickens and ducks.

Q. How many times were you out together?

A. I think three or four times. You mean all the times?

Q, All the times?

A. Well, there might have been five or six times on the whole, ranging from a period of two or three years.

Q. State whether or not you went to Mr. Ingmundson and requested him to get up parties—to arrange parties to go hunting.

A. I might have talked so to Mr. Ingmundson incidently with reference to going out; I presume I did as I did with other parties. I have no recollection now as to who arranged the parties; my object was a little out-door exercise, and I paid very little attention as to who was going, and cared very little about it; that was all the interest I had in that matter.

Q. Citizens usually in that vicinity, go out hunting?

A. There is a good deal of hunting in that vicinity, and especially in the fall, in hunting ducks and geese. I will say further in regard to Mr. Ingmundson relating to me, I never had any social relations with him at all, nor with his family, any more than a mere passing acquaintance, except as these matters came up.

Q. Mr. Ingmundson has testified that he made a speech at a convention in the month of September, 1875, in which he spoke of the one-man power?

A. I don't know anything about it; if he did, it was a matter entirely unknown to me. I have never attended a county convention since my term of office commenced, and I was not there and can not say anything about what speech he made.

Q. Was it reported?

A. I never heard of any speech, and I never read any speech that he made in any paper.

Q. He stated also that after that speech, that when he met you you refused to recognize him on the street; I wish you to state how that was?

A. I don't think I ever refused to recognize Mr. Ingmundson at all. Mr. Ingmundson is a man of peculiar characteristics; he sometimes speaks to people and sometimes does not. He will pass a man for months, as I have observed, without noticing him at all. Whether it is from his personal peculiarities or on account of some personal feeling, I don't know; but I noticed that very soon after the fall term of court of 1876, he passed me without noticing me, and I concluded that he was offended at something, I didn't know what it was. I never asked him for any explanation, and paid no attention to it at all. My habit is this—if I discover that a man does not desire to notice me in the street, or to speak to me, or to give me any opportunity to speak, I accept it as the situation and pass it along without saying anything in regard to it.

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I met Mr. Ingmundson very frequently about that time, and about that time Mr. Ingmundson lived in the same part of town—and does now—where I reside, and in going to and from his residence he passed mine; there is a side-walk all the way, and I frequently met him; but after the fall term of 1876 he was not accustomed to notice me at all when we met.

Q. Was that the first time?

A. That was the first time that I observed it, or had any intimation that he had any ill feeling toward me. These hunting excursions, my recollections are that they were continued, or rather that I was out in excursions where he was along, that we were out a number of times after the convention was held. I do not fix the time of that convention in my mind; I have no knowledge of it, but my recollection is that in the autumn of 1875, I was out in parties of which he was a member. The discontinuance of our hunting excursions, (so far as I was concerned) was merely acccidental or incidental. I have been out with some persons during these times—persons that I have never seen since, but it was not on account of the feeling I have had since. Hunting parties are made up promiscuously and without any attention to special individuals. Most of the hunting out there was for chickens; I never went for chickens with Mr. Ingmundson but once, but he was one of a party of six, but I didn't go or return with him on that day.

Q. Do you remember of a circumstance testified to by Mr. Ingmundson, that the day after the convention he went to you and asked you if you were going out on a hunting excursion, and you told him you were not?

A. I recollect no such circumstance, but such a circumstance might have occurred, because frequently my duties were such that I could not go on a hunting excursion, they were incidental matters that I threw into my time when I could find a day that I could get away, and it is very likely that something of that kind might have occurred.

Q. We come down now to the September term of the district court of the county of Mower, for 1876?

A. As to what occurred?

Q. As to what occurred in delivering your charge to the grand jury, with reference to the examination of officials?

A. It is my practice, and has been constantly since my term of office commenced, to call the attention of the grand juries, in the several counties of my district, to all misconduct in office, of public officers of every kind. I not only read the general statute which is required to be read, and comment upon it, but if any special matters are brought to my attention with referenve to the misconduct of officers, or any irregularities, I have always felt it my duty to call the attention of grand juries to such matters, and explain the law relating to them.

Q. You have done so on several occasions?

A. I have done so in all the counties of my district.

Q. State instances?

A. I have done it habitually; I do not now recollect any time where I have failed to do this.

Q. Had you previous to this time called attention to special matters of that kind, in other counties than your own?

A. I have; I have also in Mower county. I think the first term that I held in Mower county I called the attention of the grand jury specially to the auditor's office, and, I think, the treasurer's office, and

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requested them to investigate matters, not meaning any special matters, but called their attention to them atthis term of court, the fall of 1876. I gave the same general chargethat I did customarily, and I recollect now, that I called the attention of the grand jury specially to some matters that had occurred in thetown of Clayton, and my recollection is that that is the term of courtwhen the treasurer of that town, Sever O. Quam, was indicted; that is my recollection in that matter. He was indicted for embezzlement o town funds, and my attention had been called to the matter; but the matter indicated—the connection with the town treasurer in those matters had not been called to my attention, and I did not know of it specifically during this term of court. I think something had been said to me—not of a definite or specific character, with reference to the fact that some other officers—county officers—were in some way connected with these matter, but without giving me any definite information. I stated to the grand jury in a general way, that I had received information that officers of a higher grade, without meaning any officers, were in some way connected with these matters, and without giving them any specific facts, as I was not then in possession of them, I did not name any officer, and did not call attention to the county treasurer specially at that term.

Between the March term, between the September term of 1876 and the March term 1877, information was brought to me by one of the citizens of the town of Clayton with reference to this matter, connected with the refusal of the county treasurer to pay over funds belonging to that town, and requiring the town treasurer to receive as money an order that had been paid.

Q. Will you state who brought that information?

A. That information was given to me by a citizen, Mr. D. B. Coleman.

Q. What office did he hold in that town?

A. I don't know as he held any; I have no knowledge in regard to that.

Q. He is here under subpœna?

A. I don't know whether he is here or not; he has been subpœnaed, I believe. I think he is not here; at the March term of court, 1877, at the opening of the term, I gave the grand jury the usual charge with reference to such matters, reading to them the general statute, and I also called their attention to this matter of the town of Clayton, and gave to them such information as I possessed with regard to it, stating in a general way the facts connected with that information substantially, I think, in this way, that the county treasurer had refused to pay over money belonging to the town on a warrant or order of the auditor unless the treasurer would receive as money an order that had been paid. Substantially, I think that was the charge. I then explained to the grand jury the law as I understood it relating to such matters; I read to them some portions of the statutes relating to such matters, and explained what I considered the interpretation of those laws, and the application of them.

I also at that time called the attention of the grand jury to other matters; I don't now recollect all of them, such special matters as had been brought to my attention. One of them, I recollect, was the fact that the county auditor was in the habit of allowing public gatherings in his office at night. I stated to the grand jury that that office con-

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tained very valuable and important records and papers, and some of the papers were important as being connected with the suit then pending between the county and a former treasurer of that county to recover funds which it was claimed had been embezzled, or not paid over, and I spoke of the importance of the preservation of those records, and the dangers that they were subjected to. I will state here that I had observed those meetings myself, and had observed, on going to my home quite late at night on several occasions, quite a number of occasions, a large number of persons assembled in the office. And I had at one time previous to the term of court, spoken to the chairman of the board of county commissioners and stated to him the danger that the records were subjected to; that if there was any interest taken in extracting them it would be a very easy matter to do so. The chairman agreed with me perfectly in regard to it, and said he would call the attention of the board to it and try to correct it. But nothing had been done, and I felt it my duty to call the attention of the grand jury to that matter in connection with others. I didn't name nor speak of the nature of the assemblage there; I didn't speak of the band; I didn't say to the grand jury that it was an indictable offense, nor did I think it was; I simply requested them to investigate that matter and make such report upon it as they saw fit.

Afterwards, during the term of court the grand jury made a presentment of facts connected with the matter, and I suggested to them as the simplest way of disposing of it would be, that they call the auditor and chairman of county commissioners before them, and inquire whether it was their purpose to continue the practice. The report, I think, stated that the grand jury were unanimous in their opinion that it was a dangerous practice; they then again reported that they had inquired of the auditor and of the chairman of the board with reference to the matter, and they had both stated that it was their purpose to discontinue the practice, and I then stated to the grand jury that I thought that was sufficient; that all that was desired in the matter was simply the discontinuance of that practice, that was the sum and substance of what occurred in connection with that matter in court—and the whole of it so far as I recollect now.

In connection with the other matter I instructed during the first charge that I gave the grand jury that they should investigate these matters connected with the town of Clayton, there was also other matters connected with the town of Clayton besides this, one to which the treasurer was connected, the town officers other than the treasurer, who had been indicted, and some private individuals who had been connected with the town, had got hold of town moneys as it was represented, and had embezzeled it.

I explained the law relating to such matters, and quite a number of persons, connected with the town offices there—I think one private individual by the name of Dayton; and I don't know but what there was another one by the name of Powers, were indicted in this March term of 1877; that was my recollection in regard to it. In connection with this matter of the county treasurer's office, I instructed the grand jury to investigate it, and make such report upon it as they saw fit. I think I stated to them that would constitute an indictable offense under the statute, that I explained to them at that time.

Q. State whether or not you explained to them the difference between an indictment and presentment at that time?

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A. I always do that; it is defined by statute, and I explained to them —I usually do this and did at that time, explained the difference between an indictment and presentment.

Q. State whether or not you directed the grand jury at that time that if they found certain facts they were to bring in an indictment, and if not, they should bring in a presentment, and if they could not bring in a presentment, that they should bring in a report of the facts.

A. I don't think that was stated in that charge, the first time the charge was made.

Q. State how it was, and what was said?

A. I think it was stated generally, the definition between a presentment and an indictment, and the power of a grand jury with reference to such matters, I intended to define clearly. It has been my practice, perhaps in all the counties in my district, to be very particular on these points, and perhaps I dwelt upon them more at length than other judges have done in explaining these matters. It has always been my views that those matters were very important, and I have endeavored to read the law whenever it was applicable.

Q. In that connection, state whether or not in explaining what constituted a presentment you made a distinction between a presentment and a report of the facts?

A. I don't think that I did make any special distinction with regard to that matter at that time. I don't recollect that I did. I stated in substance what is stated in the statute, with such explanation as I considered material.

The proceedings subsequent to that time, during that term of court, relative to the same matter, were these substantially: The grand jury remained it session an unusual length of time. Ordinarily the grand juries got through with their duties of that kind during the first week, and it was very seldom that they remained in session into the second week; but this time they remained in session about two weeks. There was no report made with reference to this matter that I have spoken of, during the first week; nothing said in regard to it.

During the second week of the term, I think perhaps the 8th or 9th day that the court had been in session—the grand jury were impanneled on the first day of the term—the grand jury came into court, and asked some instruction in reference to some section of the statute, and I gave them instructions, I do not now recollect what the statute was; I gave them such instructions as I thought proper in regard to it, and they retired. The grand jury at one other time, I recollect, asked me the question as to whether the principal was responsible for the acts of his agent, without defining anything about it in their question, what it related to. I explained the law in reference to that matter as I understood it. I recollect that particular matter was asked about.

Mr. DAVIS. Allow me just a moment to go back to your first charge. What did you say to the grand jury, if anything, about the legality of calling before them as witnesses persons accused of crime?

A. I instructed them distinctly that they had no right to call persons who were accused of offenses and whose offenses they were engaged in investigating before them to give testimony, and if they did so, as I understood the law, it would be fatal to an indictment. I explained that matter to them as I always do in my charge. During the second week of the court it appeared to me that there was an unusual delay in the business before the grand jury, and I enquired of the fore-

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man of the grand jury what was the cause of the delay, that is, why they were in session so long, or words to that effect, and he replied to me that there was a disposition to put off matters, and that he could not compel the men to act; that he would call up matters and they would put them off—that was the substance of the conversation with him. I might have remarked to him that they were longer in session than usual and that I didn't know what the occasion of it was. The grand jury toward the close of the session came into court and presented a report with reference to the auditor's office; I will not be certain as to that, however, as to the time; but they made a report with reference to the treasurer's office, and handed me a paper that was informal, because it was not signed by the foreman; and I stated to the jury at that time that the paper was informal; that it did not appear upon its face any such a presentment as the grand jury were authorized to make; that their presentment must be signed, or reports must be signed by the foreman. And I instructed them to correct that, and to put their report of such facts as they had found and wished to present, in some definite form—some legal form. The grand jury retired, and afterwards came in with a presentment of facts in connection with this matter; it was signed by the foreman.

I then took this report and stated to the grand jury that if the evidence before them was sufficient to warrant such a finding of facts; that if the facts were as they found them, that that constituted an indictable offence, and if they were satisfied that such were the facts from the evidence produced, that their duty was to find an indictment, that it was an indictable offense, and I so considered it under the law; the grand jury retired the second time; that is the only report that they made with reference to this matter, and they finally returned and stated through their foreman, that they had no further business to transact.

During the time they were frequently in court, and made reports, and reported indictments all along through the session; the court was transacting some new business, I believe, all during the session; I became satisfied from the reports and the conduct of the grand jury, and the appearance of things as I observed them, that there was something wrong in connection with their investigations, and before the grand jury was discharged, I said to them that there was something in that transaction—in that business during that term, that I didn't fully understand; that their session had been protracted for a great length of time, and they seemingly had put off matters, and I didn't understand their actions: I told them that if they had held communications with persons, or had been influenced by persons, who were interested in their investigations, or had been influenced in their motives in any improper manner, either for favor or any such matters as were denominated in their oath, that such conduct would be a violation of their oath; but whether that had been the case or not was not a matter that I would then undertake to state; but that the case that was on, was of so much importance that I considered that it was proper that it be further investigated, and that the court had the authority, as I understood it, under the statute, to require further investigation to be had on such presentment as they made.

I then stated to the county attorney—I am not sure whether it was before or after I discharged the grand jury, but I discharged the grand jury immediately, I stated to the county attorney that for the purpose of securing a full investigation, and arriving at the truth of it, that I

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desired him to take hold of that matter and investigate it, and to enter complaint on the facts, so that it might be investigated fully; I did not, during the conversations, nor any of my charges to the grand jury, use the name of Mr. Ingmundson in adverting to the matter, I simply used the name of the county treasurer; nor did I state to the county attorney to have Mr. Ingmundson arrested, or anything of that kind; I simply gave such directions as I consider it was requisite and proper to the occasion. My view of the law was that that was a presentment under the definition that is given in our statute; that a presentment is an informal statement in writing, of the facts constituting an offense, or that an offense had been committed, and under the statute as I understood the law, I might have ordered a bench warrant for the arrest of the accused, but I didn't pursue that method, and didn't make any order to his arrest. The court attorney at that time applied to me with reference to the proceeding; asked me in reference to the facts; I referred him to the report that had been made by the grand jury, and told him that if he could get the report and examine it; I also told him he could ascertain the names of the witnesses from the foreman of the grand jury, and he inquired of me what information I had, what witnesses I knew about myself; I put him into possession merely of such information as I had in reference to that matter, for the purpose of procuring an investigation of it.

I did not myself interfere in the investigation any further than to hear the evidence in the case; I did not take upon myself to conduct the prosecution, in any way, shape or manner, but simply to put the county attorney into the possession of such facts as I had in reference to it, and he said to me at the time that he would attend to it, and prosecute it thoroughly.

Q. It was brought before you, was it?

A. The matter was brought before me; the first appearance was by Mr. Cameron, in behalf of Mr. Ingmundson, as his attorney, and, I think, perhaps, Mr. Ingmundson was present also. Mr. Cameron stated to me that they desired to waive an examination; I told Mr. Cameron that any proceeding of that kind before me, that I did not feel warranted in holding the accused to bail without being satisfied myself that an offense had been committed, or that there was probable cause for that purpose, and he knew very well that these were my views upon such matters—he acquiesed in it, and the county attorney was also present, I believe, and time was taken to enable the county attorney to procure his testimony; the town of Clayton was some distance away, and the witnesses had gone home; there was no objection raised to taking that time, and I think the county attorney spoke to me two or three times in regard to it during the pendency of the matter, and the hearing came on, and the witnesses were examined.

Mr. Coleman, the person who had knowledge of the fact, also the treasurer of the town, and the books, I think, were examined to some extent, and after the testimony was through I inquired of Mr. Cameron if he desired to offer any testimony, and in fact I said I thought that it might be better for Mr. Ingmundson to make an explanation, that I would prefer him to do it, but they declined to do so, and I examined the matter and considered it my duty to hold the defendant to bail, and I did so. I stated at the conclusion my reasons for doing so—my view of the law as I frequently, and as I always consider proper for me to do. Mr. Ingmundson and Mr. Cameron were present when I made the statement,

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and after the conclusion of the matter, there was some conversation between Mr. Ingmundson and Mr. Cameron and myself, with respect to the bail—the fixing of the bail. During this conversation Mr. Ingmundson asked me some questions relating to his official conduct, and which led to a conversation between Mr. Ingmundson and myself, in which I think, Mr. Cameron participated, though not largely; Mr. Ingmundson asked me if he had the right to do certain things in connection with his office; I told him I didn't consider it proper for me to answer those questions; that it was not a part of my duty to give him instructions with regard to such matters; that I presumed he fully and well understood this. In this conversation some remark was made with reference to the position that Mr. Ingmundson had assumed, in connection with this investigation.

I took occasion to say to Mr. Ingmundson that I hoped he would not consider this as a matter that was not proper to investigate, nor assume any unfriendly attitude either to me or the investigation; I told him that the county attorney had informed me that he was exceedingly hostile toward me and Mr. French, as well as much excited over the fact that an investigation had been had, and he asked me some question with regard to it, and made some reply, and I stated to him just what information had been given to me relative to the matter. Mr. French had told me that Mr. Ingmundson had abused and insulted him for going on with this investigation; and that is the only way it was brought out, in connection with the matter. I did not make these expressions nor consider them at all in fixing the amount of the bail; they had no reference to it in any way, shape or manner, nor did I use any other expression with reference to the amount of the bail. The question as to the necessity for bail in these cases was talked of to some extent between Mr. Cameron and myself, and in a kindly and friendly way, and I stated to him that I considered that it would probably be the best way to take bail; I don't think that I said to him anything with reference to the remark that has been stated here touching the subject of Sever O. Quam and Mr. Huntington; that is, that they were honest looking men and they had gone off and defaulted; I do not recollect of any such remarks, and am very positive that that had not been stated; it was a fact that Sever O. Quam and Mr. Huntington had been indicted for embezzlement, and had escaped and gone away; had not appeared for trial; but the personal appearance of these parties was not under consideration.

Q. Did you ever know Sever O. Quam?

A. Never knew him even by sight. I should not know him if I met him. I may have seen him, but do not know him as Sever O. Quam. He may have been arraigned in court, but I do not recollect his countenance. I do not think that I should know him if I saw him.

Mr. LOVELY. I will show you that testimony that was taken at that time; see if is in your handwriting?

A. The record of the testimony is in my handwriting.

Q. Is that all of it?

A. I have not examined to see whether the whole of it is here or not.

Mr. LOVELY. That is the testimony that you made to hold Mr. Ingmundson to bail?

A. It is, if it is all of the testimony—this appears to be the testimony.

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Mr. LOVELY. I propose to read it.

Mr. Lovely here proceeded to read the document in question, but shortly after commencing handed it to the respondent, stating to him that, as it was in his handwriting, that he had better read it himself. It was read, as follows:

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; I 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. Ingmundson, 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 apportionment; he 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. S. Haralson. This was written after I got home after receiving the money.

SOREN HARALSON.

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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, it is 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,
Judge District Court.

Q. State whether or not you directed Mr. French to insert anything in the complaint that he made against Haralson.

A. Mr. French drew up the complaint as he saw fit, without any dictation of mine whatever; he simply asked me with reference to such facts as I might be in possession of. I put him in possession of all the facts that I had.

Q. Did you issue the subpœnas and attend to the business of getting the witnesses there to attend that examination.

A. Not at all. I put the matter entirely in the hands of Mr. French, putting him in possession of all the facts that I had, and he conducted the examination. I don't think Mr. French was informed when the·

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matter was first brought up. I think he stated to me that he was not informed as to the questions of fact, and I talked the matter over with him, naming, I think, some witnesses that had been before the grand jury.

Q. I believe you stated in your first charge to the jury, at that term of court, something about the band; what was there about that? Did you refer to them as a band?

A. I did not. I did not refer to anybody's name, nor did I use anybody's name. I simply stated to the grand jury that public gatherings were in the habit of occurring in the auditor's office—occurring at night after office hours.

Q. Did you state to them that such a proceedure—allowing the band there was a misbehavior in office.

A. For the auditor to allow it?

Q. Yes.

A. I did not. I simply called their attention to the fact.

Q. In that first charge in reference to the action of the county treasurer touching the affairs of the town of Clayton, state whether or not you merely called their attention to the fact that it was the duty of the county treasurer, if the facts were as stated, to pay over the money, and that he had no right to offset this order against the funds which he held in his hands.

A. I may have so stated; I don't recollect using that language. I don't think I used that expression. I stated to them generally, that the county treasurer had no right to set up individual offsets, against money that was in his hands belonging to a town or district.

Q. With reference to this matter of the investigation of the county treasurer's office, did you send for the grand jury to come in, for the purpose of giving instructions to them?

A. Not at any time during the term of court.

Q. Did you state how long after the first charge it was, that they asked for instructions upon that subject?

A. I stated that it was some time during the second week. My recollection is that it was along the 8th or 9th day of the term or session.

Q. How did you come to give them instructions at that time, on that matter?

A. I never gave them instructions, except when they requested them.

Q. Did you tell them that you wanted them to investigate the matter fully and efficiently, without their first calling your attention to it?

A. Which time?

Q. The first time they came in.

A. I might have told them; I told them that, I presume, in connection with that very matter that was before them. There is no doubt of it.

Q. Mr. French stated that when they brought in this resolution, this unsigned paper, that you stated: "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 they are not sufficient to warrant you in finding an indictment." Was that the language used by you?

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A. No sir; I did not make any such statement, in that form or substance.

Q. State what you did say; I believe you have covered that fully?

A. Yes sir, I have stated it generally.

Q. Mr. French has stated that the third time they came in, that you stated that you would recommend that they, the grand jury, proceed either by indictment or presentment; that if they could not find an indictment, that you desired them to find a presentment.

A. I made no recommendations to the grand jury with reference to the county treasurer's office; I left them to be guided by their own judgment; the only recommendation which I made to them that could properly be so called, was with reference to the auditor's office; that was a matter that I did not consider of the importance of the treasurer's office, and all that I desired was, that the evil, if such it was, should be corrected.

Q. State whether or not you told them to bring in a report of facts with reference to the treasurer matter, until they had first presented this resolution.

A. I did not; they had made a presentment, but it was not signed by any body.

Q. You have no distinct recollection of how many times the grand jury were instructed with reference to the law relating to the duties of the county treasurer?

A. During the term?

Q. Yes sir?

A. I cannot state the number of times, it was every time that they asked for instructions when they came into court, or requested any instructions relating to any matter; I gave them such instructions as I thought proper at the time?

Q. At any time during the term did they ask to be discharged previous to the last?

A. Not until the final discharge; they were discharged the first time that they reported no further business.

Q. When you discharged the grand jury from their attendance at that term of court, did you state to them that it was a good thing that there was a higher power than grand juries, that a grand jury could not put itself between criminals and the execution of the law?

A. Not in such language as that; I stated to the grand jury that I considered that the court had authority to inquire further into this investigation, and as their action and conduct in regard to that matter was indefinite and uncertain, I should require that to be further investigated.

Q. Do you remember whether the grand jury were discharged before or after you directed the clerk to make the entry?

A. I wont state just the order of occurrence; it was all about the same time; I don't recollect with regard to that; but a very brief period was occupied in the transaction.

Q. I will call your attention, judge, to the statement that Mr. French made regarding a conversation between him and yourself, after the term of court, with reference to the issuance of a warrant. He states as follows. "Monday morning when I came into court, Judge Page asked me if I had made a complaint against Ingmundson, I asked the judge what he intended by his order, whether he intended I should draw

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a complaint, or whether he intended I should draw one and swear to it; make such a complaint as I could issue a warrant on it?"

A. I think Mr. French and myself had some conversation in the court room, with reference to the matter; he made some inquiry with regard to the facts in the case; just what that conversation was I do now distinctly recollect; I think there was something stated as to the form of the complaint to be made; I think I stated to him that what I desired was, that he pursue the legal course to secure an investigation of that man.

Q. Mr. French states, that when you held Mr. Ingmundson to bail, that you argued the evidence some eight or ten minutes?

A. Well, I don't know what his idea of an argument is; I frequently state the grounds of my conclusions in legal matters; I didn't have any argument with anybody with regard to the matter; I stated my reasons why I thought the facts in that case made it my duty to hold Mr. Ingmundson to bail; my construction of the law was this: that in an examination of that kind, it was only necessary that there should appear to be probable cause, that an offense had been committed, and that some person had committed it, under our statute. I think I very likely stated that at that time, for Ingmundson had gone upon the stand himself, or had offered testimony on that case: I think I stated to him that the results might perhaps have been different, but I considered that, as a legal question, I would be entirely warranted in holding him to bail without any testimony at all, but I preferred, and had made a practice of, hearing testimony in such cases; I did not consider, however, that the testimony was essential to the right—the legal right—to hold the defendant to bail, where he waives an examination.

Q. I will ask you if you have, at any other dates and on other occasions, in that county and other counties in your district, acted as a magistrate making preliminary examinations?

A. I have heard examinations in some cases in that county; I don't recollect as to other counties.

Q. Have you not in Freeborn county?

A. I think perhaps I have, in Freeborn county; when application has been made to me for some special reason, I have done so; I never questioned my right to do so in any case that was brought.

Q. Never heard the propriety questioned?

A. Not at all; I do not suppose there is any question about it at all, under our law.

Q. Mr. French states that during your remarks, previous to holding Mr. Ingmundson to bail, you got very much excited, and that you stated to him that you had been informed by a citizen of Leroy, that Ingmundson was down there; something about that.

A. I made no such remark as that in that connection; the only conversation was, as I have stated—that came up incidentally, based upon a statement that had been made to me by the county attorney, that Mr. Ingmudson was very much excited over this investigation; my remarks were rather to allay than to excite; that was the purpose of them. I stated to Mr. Ingmundson that there was no disposition to oppress him, or no ill-feeling that I knew of; simply that I was a public officer, and that it was desirable to find out the truth with regard to these matters.

Q. You may state generally whether you entertained any hostility toward Mr. Ingmundson?

A. Not at all; I have not the least hostility towards him, and previ-

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ous to this time never had a difficulty with him in my life; I, in fact, never have, to this time, to my knowledge; I have been accustomed to call the attention of grand juries in other counties, to matters of that kind, and it was the first instance that had come under my observation, in my official experience or otherwise, where an officer complained of an investigation of his office.

Q. Considerable testimony has been given with reference to your manner of giving these different charges to the grand jury; you may state whether there was anything peculiar in your manner, and if so, what caused it?

A. There was nothing any more peculiar in my manner in giving the charges to the grand jury than there was in any county, or on any occasion. I have been told that I delivered my charges to grand juries, as well as petit juries, in a more positive and emphatic tone of voice than most judges do. I presume that is true; it may be a habit; it may be a misfortune, it may be the result of cultivation; I don't know as to that, but I presume it is a fact that I ordinarily speak with more emphasis and force than most people do; I know that I do in fact, for it always occurs to me, when I am addressing a grand jury, that it is very important for them to understand me; but as to any excitement, there was no more than there was when I delivered charges to grand juries at other times; no more feeling, and I may presume that I spoke in no louder tone of voice than I did ordinarily. When the charges were delivered at the succeeding times through the term, in explaining the law to juries, so far as any impulse or emotion was concerned, I had no more of it than I had during the first charge at all. When the grand jury were finally charged, I felt satisfied that there was something wrong in their conduct, but I had no feelings of anger or animosity. I perhaps spoke with more emphasis and a greater degree of force than I did on some other occasions, but not with any feeling towards any person of hostility, or otherwise. If there was any greater degree of force in my expression, it was simply the result of my feeling that there was something wrong in connection with the grand jury.

Q. How is it about the testimony of these various witnesses that you stated to the grand jury at the time that they were discharged that had violated their oaths or perjured themselves?

A. I would not have made any such expression as that because I didn't know absolutely at that time; I wasn't in possession of all of the facts; I had received an intimation that the grand jury had called Mr. Ingmundson before them, or that he had been in there, but I had no opportunity; I hadn't inquired definitely with regard to it, and the expression, "violated their oaths," has arisen out of the connection in which those words or some of them were used.

Mr. DAVIS. Now just state what you did say in that connection.

A. The expression was this in substance: "That if certain things had been done—

Mr. DAVIS (interrupting). Well state what you said.

A. I have stated that all over—

Q. State that again.

A. I will. That is, if there had been any improper influences operating upon the minds of the jury, if they had been approached by parties interested in matters before them, or if they had been influenced by fear or favor, or any of those matters, that was contained and speci-

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fied in their oaths, that that conduct would be a violation of their oaths. In connection with my statement to the grand jury when they were charged, I stated to them distinctly that they were to be the judges wholly of their own personal obligations, that the court had no control over their individual acts, that they must be guided by the obligations of their oaths in the discharge of their duties. I explained that to them distinctly.

Q. Previous to this term of court there had been in the vicinity of Austin and Mower county a good deal of interest felt in the management of the county and town offices, had there not, in reference to their proper management?

A. The history of Mower county, for the last twelve years, has been the history of a great deal of official corruption; there have been a great many irregularities, defalcations and misconduct in office of officers, have been disclosed there; there has been a great deal of litigation growing out of such matters, and very important law suits have resulted from it. I have always felt it my duty, since I have been in office, to call the attention of grand juries to all those matters, and I stated there, as in other counties of my district, the reasons. I have stated to them, generally, that I believed if the grand juries of the county should discharge their duties more faithfully and thoroughly, that it would operate as a preventive to such misconduct as seemed to prevail; that has been substantially the charge that I have given in other counties in my district, as well as there. In Fillmore county, at the term of court not long ago—I don't recollect the exact term now—the date of it—my attention was called to a matter of irregularity in the conduct of the sheriff's office in connection with the appointment of jailor, and the collection of fees of jailor, and I gave the grand jury special instructions there with reference to the matter; explained the law regarding it, and requested them to investigate it fully.

The grand jury investigated it, made a full and explicit and specific report in reference to it. And on that report, I called the attention of the sheriff to it in open court, and pointed out the violation of law, which had been stated by the grand jury, and in that county, I never heard a single comment of criticism upon that course, and it was identical with the course I had pursued in Mower county, with reference to such matters.

Q. I don't remember that I have neglected to ask you anything that I knew has reference to this article. If there is anything I have omitted within your knowledge, please state it.

A. I don't recollect; my mind isn't directed now to anything.

Q. Did you ever have to request the band in the auditor's office to quit playing because it disturbed the court?

A. I think, that once or twice, while court has been in session that I have had to request the officers to go down below, and request the band, or some instrument—I don't know whether it was the band or not—I think that onee or twice such has been the fact—that the business of court was disturbed on account of playing on brass instruments in the building. The court room in Austin, the only county building there, is in connection with the business block, and it is constructed in the same form as a business house, and the court room is in the second story over the county offices; the county officers are immediately below. It is a small room, and the offices are small. [Witness handed paper.]

Q. That is the warrant that was issued?

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A. This is the warrant that was issued in that case.

Q. You may now state how you came to issue that warrant—the causes that led to its issuance?

A. Very soon after the March term of court, 1877, and in fact I think, perhaps, before the term adjourned, there was ——

Q. That was this same term?

A. Yes; March term, 1877. It was stated that a petition was being circulated requesting me to resign the office which I held. There was a great deal said about it in the place, and a great deal was said which came to my hearing; and it passed along some little time and I understood that the matters which were referred to, were in connection with what had occurred at the term of the court. This was simply talk—general in its character. I finally succeeded in getting a copy of that petition.

Mr. DAVIS. Allow me to ask you right there, was it represented that this petition was being circulated during the term?

A. Yes sir. It was stated to me that it was.

Mr. DAVIS. Was Stimson at that time a deputy in attendance upon the court, or was he a deputy sheriff?

A. He was a deputy sheriff; I had seen him in the court room and about the building; He was not one of the special deputies in attendance upon the court, but he was, as I was informed, a deputy sheriff at that time. I received a copy of the petition in print, and when I received it I was surprised at the nature of it. The copy that I received was the same as set forth in the answer to the articles on page 27 and 28.

Q. Right there I would ask you if any such petition as that was ever presented to you?

A. There never has been any petition presented to me to resign. I was of the opinion then and I am still, that it was never intended to be presented; that it was for the purpose of creating an excitement and disturbance, and for the purpose of publishing it to the world that such a petition was in circulation. The copy which I received had no names attached to it, it was a blank copy of the petition that is set forth. I observed at once that it contained charges of a very grave, serious character. I made inquiries for the purpose of ascertaining who was engaged in the circulation of that petition, if any one, and I received information that Mr. Stimson was engaged and had been engaged, in getting up and in circulating it. I considered that it was a gross violation of law, and something that should not be tolerated in any officer of court.

I examined the law carefully, as I had time, and issued a warrant for the arrest of Mr. Stimson, the warrant which is placed here on file. I considered that I had the authority to do it, and that it was in conformity with the statutes; that is the construction that I then placed on them, and that I still place upon them relating to such matters. Mr. Stimson came up in company with his attorney, Mr. Cameron, and the sheriff. I don't recollect whether he came at the same time, but at any rate Mr. Hall, the sheriff, who had the complaint made, a return of the warrant.

Q. Why did you not request the county attorney to conduct the examination and take charge of the proceedings against Mr. Stimson?

A. Well, there were, perhaps, two reasons, why I did not request the county attorney to take part in the proceedings: In the first place, I

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did not know there was any authority by which I could require him to do so, not being a part of his official duties; and, furthermore, I had been informed that he was actively engaged in getting up this petition, so-called. I considered that it would be very dangerous, to say the least, to place a prosecution of that kind in his hands. I knew of no authority, and knew of no way of employing attorneys, and do not now, for conducting cases of that kind.

Q. You may go on and state what transpired after Stimson came up there with Mr. Cameron.

A. Mr. Cameron asked if there had been any information filed; any written complaint or information filed. I stated to Mr. Cameron that there had not, and that under the construction I gave to the statute, I did not consider it necessary in a case of that kind; and the examination, I think—I wont be certain whether it was continued at that time—at any rate, whenever the examination was continued, it was with the understanding with Mr. Stimson or by the consent of Mr. Cameron, as the attorney for Mr. Stimson.

We commenced the examination of witnesses, and I very soon found that the witnesses in this case were parties who had been connected with the getting up of this petition, and that they were extremely averse to disclosing any matters connected with it. And I discovered, for the first time, and as the witnesses testified, that it seemed to be the product of a number of persons, growing out of consultation which had been held in the office of Crandall & French. It was stated by the witness—one witness upon the stand—who was extremely averse to making any direct answers to any questions which I propounded to him—and, in fact, all the witnesses were so—I had to propound a great variety of questions, and a great many, in order to get any direct answers in the matter, and frequently to pursue the matter to a greater length than otherwise would have been the case. When endeavoring to ascertain whether Mr. Stimson was connected with the matter, it was necessary to inquire into the meetings that had been held in the office of Crandall & French, for the purpose of getting it up. It was stated by the witnesses that the meetings were held there; that persons named were present at these meetings, and in naming those individuals nearly every one of the witnesses would embrace the class of witnesses who had been subpœnaed to come there, to give their testimony there. Mr. Harwood was on the stand and interrogated as to the matter. He admitted being present at the meeting, and to having consultations with parties in connection with the matter, was asked whether Mr. Stimson was present; and nearly all, he, as with others, could not remember, when it came down to the matter of inquiring whether Stimson was there, their recollection would suddenly become very poor in regard to it.

And I recollect of inquiring of Mr. Harwood with reference to the writing of the libel, and his response was that it was the "joint production" of a number of persons. Well, I inquired further of a number of persons who wrote it, and they declined to give me any definite answer to that. He said some persons might have suggested what might be put in and other persons might have written it, and so forth, with regard to it. I asked him the question as to whether he did not write it himself, and he declined to answer; and I asked him the ground on which he declined to answer, and he said on the ground that it might criminate himself; and I said, "very well, I don't wish you to answer any such question as that." And all of the witnesses who were exam-

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ined were extremely averse to making any statement of the fact, but every one of the witnesses—as my recollection is now, and I think I am not mistaken, was interrogated as to the connection of Mr. Stimson with this matter. There were questions propounded in that examination, as there are in nearly all examinations and legal proceedings, which, standing alone, may not seem to have a direct and definite connection with the subject-matter under consideration, but which were examined for the purpose of deducing the truth from those unwilling witnesses, if possible. I had been informed, previous to this time, of Stimson's connection with the circulation of this petition.

I had been informed, and when I came to inquire of some of the witnesses, some of the persons who had indicated to me that Mr. Stimson had presented the petition, or had been seen with it in his possession, why, even those witnesses were very averse to even stating what they had indicated before. I recollect a conversation with Mr. Schwan, who was upon the stand; it occurred in my office; I inquired of Mr. Schwan for the purpose of ascertaining the truth about the matter, and Mr. Schwan stated to me that he had seen one of them in the hands of Mr. Stimson, and I inquired of Mr. Schwan if it was presented to him, and he said that Mr. Stimson came into his store, but he did not answer that he presented it to him, or invited him to sign it; I inquired of him if he did sign it. and he indicated to me that he did not sign it; in fact I think he told me he did not sign it.

Q. In that conversation did you tell him you had paid him a good deal of money in the last five years, and say to him, "how dare you sign a petition of that kind."

A. Why, I didn't say anything of the kind, because Mr. Schwan told me in substance that he had not signed it; he gave me to understand that he had not signed it; I was enquiring of him with reference to Mr. Stimson's connection with it; I think Mr. Schwan afterwards, my recollection is, I wouldn't be positive, that Mr. Schwan afterwards stated that he had signed it; I won't be certain as to that, however.

Q. Did it not appear in that examination from that warrant that two petitions had been gotten up?

A. Yes, for the first time I learned on that examination that the original petition, that is the lengthy one, which I considered a gross libel, and which Mr. Kinsman himself, who was the attorney of Mr. Stimson, denominated as a libel, I learned that there was another petition of a milder character gotten up, and this fact involved the investigation in much more doubt than it would otherwise have been surrounded with. It seemed that from the testimony that was given, that some persons who were engaged in getting it up had objected to the form of the first petition, and it appeared in testimony that it had been stated by some of them that it was a libel, and that the persons who circulated it would render themselves liable by circulating it, and it was stated there also, that in order to meet this objection that was raised in the minds of some, another petition was gotten up of a milder form, in the form of Stimson's testimony, given on that point before me, or some of them said there was "too much h—l" in the first petition, but that Mr. Harwood and others persisted that it was all right, and that it ought to be circulated.

Mr. Harwood on the stand stated that he had circulated the petitions himself; that they were printed in his office, and that they were taken to the postoffice, and the postmaster there, and he had distributed them

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through the mails; and Mr. Stimson also stated, if I recollect right, that Mr. Harwood had given to him, from the postoffice, one of these petitions for circulation; not for circulation, but had given him one of these petitions, and which he admitted he had had; I think he claimed that the petition he admitted he had in his possession was the one—yes, I was correct; that it was given to him for circulation. I think Stimson's position was that after reflection about it, they had concluded, some of them, that they would not circulate it. Mr. Stimson said there was an agreement among a certain number of persons, that they should circulate that petition, and as a reason why he did not circulate it, he said he found the others were not doing their share of the work.

Q. You may state, judge, what Mr. Stimson's defense was.

A. Well, his defence was: First, that he had not actively engaged in the circulation; his defense secondly was, that he did not understand the nature, really, of the act he was doing; that he had no intention of doing an unlawful act; and also, he stated to me that he had been led into this matter by other persons.

I had a talk with Mr. Stimson—he did not give testimony, except very briefly, I think, on the stand—but I inquired of him as to the purposes—inquired of him in conversation after the adjournment at one time, as to what he engaged in the matter for. I considered that in a matter of contempt, of this kind, that it was perfectly proper for me to inquire into the circumstances and motives, and it seemed he had had very much to do with it, and I desired to arrive at the truth. Mr. Stimson very frankly stated to me that he did not understand the nature of the act; even what he had done, and he stated that he should not have gotten this up, or circulated it, had he not been led into it by other parties; and in connection with that conversation, which occurred after one of the adjournments, had taken place—it was in a private conversation which occurred between himself and me, I interrogated him with regard to such matters, talking in a very familliar way with him; and after he had stated to me, that he had been led into these matters, I then went on to state to him what I regarded as the enormity of an offense of that kind. That to get up and circulate a petition of that character—a gross libel—and misapprehension of the facts in the case, for the purpose of bringing a public officer into disrepute, and destroying his reputation and character, I regarded as a crime of very great magnitude.

And something has been said with reference to the Younger brothers. I —— perhaps, ——. I have no recollection, distinctly, of alluding to them in any way. It is probable, however, I think, on reflecting, that I may have used their names in designating, or illustrating rather, the enormity or magnitude of an offense of that character; that I considered that the persons who would engage, deliberately, in a conspiracy to get up and publish a matter of that kind, for the purpose, as it seemed to me, not of accomplishing any good result, not of securing an investigation, not of presenting it to me; and I think that I presented this: that I had no idea that they ever intended to present it to me; that persons that would do that were really no better than the Younger brothers. I thought so then and I still think so, so far as the matter is concerned; and in this conviction I used no persons' names. I did not refer to any individuals at all. I am clear with regard to that as ——

Q. State who was present at that time?

A. At that conversation?

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Q. Yes.

A. Well, there were several individuals in the room; I think Mr. Cameron was there during this conversation, and I don't recollect whether Lyman Baird was there or not. I do recollect that he came into the room; I have an indistinct recollection that he came into the room some time during the proceedings, and remained for a very few moments and then went out; it is possible that he was there at that time. I don't think Mr. Hall was there at that time, still it is possible he might have been. I think Mr. Morgan was there, the court reporter. I think, Mr. Stevens was present, and some other individuals; I wouldn't undertake to state. That was the only conversation I had with Mr. Stimson in which any of these matters were alluded to, or illustrated; and these were in this conversation with him, after it had been determined that the matter should be adjourned a given length of time for the purpose of enabling me to hold court in Fillmore county. It was on the eve of my term of court in Fillmore county, and I desired to go there, and, with Mr. Cameron's request, the case was adjourned until I should return from that term of court.

After I had returned from the term of court, there was a little more testimoney taken in the case, and I examined it carefully. I took time to look over the testimony, and examine it with the reporter—Mr. Morgan reported the testimony in the case, the whole or nearly the whole of it—and after arriving at a conclusion in the matter, I considered that under all the circumstances in the case, I would not be warranted in fining or punishing Stimson as for contempt. I filed my decision in the matter, I believe in regard to it.

Q. Did you have any talk with Mr. Stimson after you had discharged him?

A. After the conclusion of the matter, Mr. Stimson remained alone in my office a few moments, and expressed himself very well satisfied with the fairness with which he had been treated, and the conduct of the examination and with the results of it, and at that time said that he was satisfied, that he had been misled in these matters. It was about the first acquintance I ever had with Mr. Stimson. He was a stranger to me, I knew him by sight as a person who had been there in the place, but never had any acquaintance with him at all, except as the matter had come up in court. I think perhaps that the matter that occurred in court—the March term—was the most conversation I had ever had with him; in fact, I think it was the only conversation that I had had with him in regard to any matter.

Q. He had not long been a resident of Mower county, had he?

A. I think not; I had known him once as a party to a case in court; that is, I had seen him in court, but never to have any personal acquaintance with him. As I think of it now, in this conversation he adverted to the fact that he had had a trial in a case in court, and that he had conceived a prejudice by being told that I had been the occasion of his being defeated in that case.

Q. What was that case?

A. Well, it was an action brought on a promissory note.

Mr. CLOUGH. Well, I object to that.

Mr. LOVELY. We insist on it.

The PRESIDENT. I don't think that is material.

Mr. LOVELY. Well, we withdraw the question.

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The Witness. (Continuing.) During the progress of the examination of this case Mr. Cameron was present. It has been stated that I refused to entertain objections to testimony, &c. ; I did not refuse to entertain objections or to consider them, and some of the testimony that witnesses objected to giving, whenever they interposed an objection I considered it, and some of it I didn't require them to give.

Mr. Cameron, at one time while the witness was giving tesiimony, I recollect, interposed an objection to some question that was asked the witness; I stated to Mr. Cameron that I thought the question was a proper one, and that I should put no question except as I considered it essential to arrive at the facts, and also stated to him that the interest of his client would be fully protected, and Mr. Cameron, in connection with this same investigation, in a private conversation with me, admitted and stated that in all my official matters, he considered that I had been fair and impartial, and no fault to find at all; even after this occurrence it never occurred to me that he had taken any exception whatever to any matter that had occurred during that trial. This examination of witnesses with respect to the specific matters that were called out; the matter, for instance, of Mr. French, it occurred in that examination that a paper in his possession, and in the possession of some other parties, and for the purpose of ascertaining what this was, whether it was the same paper that we were trying to inquire into, it was necessary to pursue the matter and ascertain the facts with reference to it.

I had no desire to ascertain any facts with reference to any matters that were pending, and how they could have been of any service to me I am certainly unable to see, in any way; but the examination was the most peculiar of any that I ever had anything to do with, from the fact that it was really a combination of persons to get up this matter, and every one of the persons connected with it, or every one that was on the stand, was averse to telling anything about it. When we came down to the facts, "I don't remember," or "I don't recollect," or "I can't tell," or something of that kind.

Q. You may state what was said to Mr. French about his connection with the Pioneer Press?

A. I don't recollect. I recollect this, that in answer to some question that was propounded with reference to the paper that had been traced in some way during the examination, into his hands, he volunteered some statements about that matter. There was a great deal of volunteer testimony. When the witnesses would go upon the stand, and I would ask them a question, they would volunteer. For instance, Mr. Smith volunteered the expression that he had always considered that I "was unfit for a Judge." Well, in response to that I asked him why. Well, the question that I propounded to him would not seem to have any connection with the matter under investigation, but was called out by these voluntary expressions.

Mr. DAVIS.

Q When Mr. French informed you about the Pioneer Press, did you follow that subject any further or leave it right there?

A. Why, not at all. I didn't care anything about his connection with the Pioneer Press, it was open and notorious, previous to that, that he was the attorney.

Q. It is stated in article 9, that during that examination a question of this kind was propounded by you, to Mr. Chapman? "Now, sir, don't

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you know that A. A. Harwood wrote that petition and handed it to you to print," or words to that effect? Do you remember of asking a question of that kind?

A. A question of that kind might have been asked, but if it was asked, it was in connection with the endeavor to trace this petition from the meeting held in Crandall & French's office, where it was gotten up, to its final delivery into the hands of Mr. Chapman.

Q. Upon that question being asked, was an objection interposed by Mr. Cameron, and did you in reply to that objection, state to Mr. Cameron that you were running that thing?

A. I didn't make any such expressions to Mr. Cameron; I don't recollect whether Mr. Cameron objected to that question; I have no recollection that he did; he might have objected—

Mr. DAVIS. Wait a moment.

Q. Do you know anything which occurred during that examination upon which Mr. Cameron could predicate that testimony that you stated that you were "running this thing?"

A. Why, nothing, unless it might be some objection that he interposed; but I don't think of anything from which that could be deduced particularly.

Q. Did you use that expression at all?

A. I did not; I don't think Mr. Cameron himself claims I did; he did not so testify, as I understood him; unless I misunderstood him, he has never claimed anything of that kind himself.

Q. Well, something of that kind?

A. I know there was testimony, but I think given by other persons in regard to it.

On motion of Senator Gilfillan J. B., the court took a recess till 2 o'clock P. M.

AFTERNOON SESSION.

SHERMAN PAGE, RECALLED

on his own behalf, testified:

Mr. LOVELY. I will now call your attention, judge, to the matters contained in the specifications filed to the 10th article. Under the first specification Mr. McIntyre, the county auditor, has testified to a conversation that took place between you and him at your barn-yard. You may state what you recollect about that conversation?

A. I have no knowledge that Mr. McIntyre was ever on my premises at all. I do know that no such conversation as he narrated ever took place between us. That is a pure fabrication.

Q. Have you ever had any difficulty with Mr. McIntyre previous to the instruction given to the grand jury with reference to the public assemblages and meetings?

A. I never had any difficulty with Mr. McIntyre of any serious character. There was at one time a little transaction in the clerk's office. I was in the clerk's office to file some papers, and holding a conversation with the clerk;—and between the clerk's office and the auditor's—the clerk's office I have stated, is the treasurer's office also; there is an opening between that office and the auditor's office, perhaps a foot or more, square, and when I had been in there several times I had

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observed Mr. McIntyre in an effort to listen to a conversation between myself and the clerk—holding his ear up to this opening.

Q. Who was the clerk?

A. Mr. F. A. Elder; and on this occasion he was doing the same thing, and I spoke to him about it. He made some reply; what it was I don't know. I presume his statement of it was correct, although I didn't hear it. He was in his office, and that was about all there was of it. I felt at the time a little indignant at the fact of his listening. I had observed it several times; I didn't know what the purpose of it was. I was holding a conversation with the clerk of the court at that time.

Q. At the time you have stated of giving the charge to the grand jury with reference to the public meetings, was the only time I believe, that you ever charged them upon that subject, was it?

A. In 1877 was the only occasion that I ever instructed them in regard to that. I have stated, I believe, fully, as to that matter.

Q. The second specification relates to the appointment of an attorney to act in the place of Mr. Lafayette French, who was out of the court room. Mr. French testified that you directed the sheriff to send him out of the court room. You may state what you recollect about that matter, if it ever occurred?

A. I have no recollection whatever that any such occurrence as has been stated here took place in the court room. I frequently speak to parties who are whispering loud or making any disturbance that interferes with the business of the court in the court room. I however usually state to the sheriff, or request the sheriff to observe such things and attend to the matters without any intervention of mine. As I have already stated, the court room in Austin is a small room, and it is exceedingly difficult, frequently, when it is somewhat crowded, to transact business there. It is altogether too small for the purposes of court, and it is necessary to be more particular with regard to such matters than it is in other court rooms. But I have no recollection whatever of any such transaction. I am very positive that no such occurrence took place in the manner or when the parties were related to each other as has been stated; that is, that the sheriff was near the door, and that Mr. French was near the desk, so that I might have spoken to him instead of the sheriff, if he was disturbing the business of court. I do recollect, however, the factof requesting Mr. Greenman to attend to a criminal case until Mr. French should come in. I recollect further, that during that term of court there had been some degree of negligence on the part of attorneys with reference to attending to their cases when they were called in court; and that I had notified the attorneys, after having sent for them, I think, several times, that I should expect that they would be there to respond to their cases when they were called and when they were reached, and I think on this occasion that something of that kind had occurred in connection with the criminal calender, that I had had some talk with Mr. French previous to that time and told him about when the criminal calendar would be called. The criminal calendar was reached, or rather a case on the criminal calendar—I will not state that it was the first case that was reached—but this case was reached and Mr. French was not present, and I requested Mr. Greenman, an attorney, to attend to the matter until Mr. French should come in.

All that was done while Mr. French was absent, was the calling of a

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jury, or a part of a jury. I wont state whether we were through with a jury or not, when Mr. French came in. And when Mr. French came in, Mr. Greenman retired, or was about to retire, and I think I asked him if he desired to continue in the case, and he said "No," and he retired, and Mr. French took the case. There was no reprimand given to Mr. French at that time, nor any language used that could be construed in that way. I had previously said all that I desired to say to attorneys with reference to that matter. They were a little negligent as they are sometimes, I suppose everywhere. I had always been accustomed to send for attorneys, and notified them, and sometimes, more than once with regard to such matters; and I made no difference in this matter. With reference to the statement of Mr. Hall, that I told him he need not call Mr. French, I don't have any recollection with regard to that matter, and I don't think that any such occurrence took place. Sometimes officers, and sometimes others,—friends of the attorneys would go and notify them when cases were called: The appointment of Mr. Greenman was simply to provide for what seemed to be a necessity to prevent delay in business, just at that moment. That is all there was with regard to that matter. It is a matter that passed out of my mind, I had never thought of it from the time it occurred until it was brought up here in court; gone long ago from my attention; and I was never before aware that anybody took any exceptions to it, at all, until it was presented here in court. But those are the facts as I now recall them.

Q. You are acquainted with the witness George Baird, who testified relative to the third specification, are you?

A. I know George Baird; I have been acquainted with him for several years; in fact, I think, ever since I became a resident of Mower county,

Q. He referred to the conversation that took place on your premises in the month of June, 1874; at or about the time of the whisky riots, with reference to his conduct during those whisky riots; you may state the substance of the conversation and all matters that related to it in order to explain your statements to him.

A. On Saturday, night I think the 30th day of May, 1874—that is my recollection as to the time—there was a public disturbance occurred in the—

Mr. CLOUGH. Wait a moment. The managers wish at this point to interpose an objection to evidence concerning what is known as the whisky riot in Austin.

If that matter is gone into, it undoubtedly will occupy a very large proportion of the time of this Senate between now and some very distant time in the future. We make the objection for the purpose of submitting the question to the Senate. We think and believe it is entirely immaterial.

Mr. DAVIS. Do the learned managers think it is immaterial under the 5th article?

Mr. CLOUGH. It is immaterial under any issue.

Mr. DAVIS. Do you mean to insist on the 5th article?

Mr. CLOUGH. Yes sir.

The PRESIDENT. The question will be submitted to the court.

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Mr. LOVELY. We asked to have the 5th article quashed, and our motion was denied, and we propose to prove all the circumstances relating to the writing of that letter by Judge Page—the causes which led to the writing of it, and also to show the reason for his remarks to George Baird, such remarks as were made at the time.

Senator NELSON. I move that the court retire to consult in this matter.

The PRESIDENT. It is moved that the court go into secret session.

Mr. DAVIS. Mr. President. If this objection is really serious, and is considered serious by the Senators, we perhaps may want to be heard upon it more at length. We made our objection very laconic for the reason that we do not think, in all seriousness and candor, that there is anything in it.

Mr. CLOUGH. That is, anything in the objection?

Mr. DAVIS. Yes.

Mr. CLOUGH. I didn't know whether you meant the objection or your argument.

Mr. DAVIS. You may construe it to mean which you please.

Mr. CLOUGH. I can say that the objection is made in good faith; that we consider it entirely immaterial. It is a matter which relates to what is called a public disturbance in Austin. On the night mentioned by the witness it is undoubtedly true that a large concourse of people assembled there and that very many things happened, and it is a matter about which it is possible that there can be a very large amount of testimony produced; and, if the matter is gone into, why, I suppose the managers would feel themselves called upon, or at all events feel themselves at liberty, to bring evidence in such quantity and quality as to rebut any presumption that may be raised, if any were raised by the testimony, that would be injurious to the prosecution. We merely wish to state this to the Senate, giving our views that it is immaterial for the purpose of throwing the responsibility of such large amount of testimony upon the Senate.

Mr. DAVIS. Mr. President, the House of Representatives entrusted to the board of managers in this prosecution a series of articles of impeachment against this respondent, of which article five was just as fully adapted and as thoroughly stated as any other. That article has been fully answered. Certain acts of the respondent have been confessed, and the reason for them given and their legality asserted in our answer. For some reason, which is not at all material to be considered here, my learned friend, Manager Campbell, stated in the opening, as his individual opinion, that there was nothing whatever in the article. In that view the other learned gentlemen, associated with him, did not concur; but, whatever the diversity of their views were as to that article, they did concur in one thing—namely, that they would put in no evidence upon it whatever. In that point of view, we moved the Senate to quash that article as abandoned as unsustained by proof; because, with our answer to that article, which mentions certain transactions as taking place at that time; we also put in a general declaration of no intent of improper conduct, or of any unwarranted or censurable act on the part of the respondent in connection with it. Now, shall we be told, Senators, that, by reason of the adoption of a peculiar and unpre-

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cedented course of tactics on the part of those managers, that they, holding that article in their hand—with their voices hushed so far as testimony is concerned upon it—will demand the impeachment of this respondent thereon, and he shall not be heard in evidence to explain it or justify what he did.

If that is the position, then, I do move this Senate, and renew my motion to quash the 5th article now under discussion. But irrespective of that, there is another view in which the testimony is perfectly competent. It is assumed, and it will be pressed by the learned managers, that the respondent, in what he said to Baird in that out-door conversation, was actuated by malice. And the Senators will recollect that upon cross-examination I pressed him as to the various details connected with that riot, and various orders which Judge Page, as a peace-officer, gave him in connection with that transaction, and that his answers —answer after answer, consisted of nothing but denials. Shall we be told that our mouths are shut to contradict a witness for the prosecution upon a subordinate specification to this tenth article, which by its very terms is connected with that right? Now, in addition to the question which we propound here, and which is objected to, we renew our motion to quash the fifth article, together with subdivision three of article ten.

Senator NELSON. Mr. President, I withdraw the motion.

The PRESIDENT. The motion to go into secret session is withdrawn. The question will be submitted to the court first, upon whether the question is advisable. The clerk will call the roll.

Mr. DAVIS. We withdraw the motion to quash.

The clerk here proceeded to call the roll.

Senator GILFILLAN J. B. I would like to enquire whether the objection is to the answer or the question?

Mr. CLOUGH I objected to the evidence upon the subject of what has been alluded to as the "whisky riots" in Austin.

Mr. LOVELY: Mr. President, I would state, for the information of the Senate, that we propose to show all matters relating to that conversation, all matters which, in his charge, had any tendency to influence the statement that Judge Page made to George Baird, and such transactions at the whisky riots as are necessary to make that explanation under that specification and the fifth article.

Senator GILFILLAN J. B.: I desire to understand whether the objection is to the answer or the question.

Mr. CLOUGH: It is entirely to the matter. I did not raise any objection as to the form at all. I make this objection at this time for the purpose of having the Senate determine whether it would go into evidence as to what occurred.

Senator GILFILLAN J. B.: There is a question there and a part of an answer; I want to know what is objected to.

Mr. CLOUGH: I objected to the answer on the ground that it is going into testimony on that subject, that I think is entirely immaterial.

The PRESIDENT: The vote will be taken again then upon the question as suggested by the counsel, as to whether the witness shall be permitted to proceed in the line of testimony upon which he has commenced.

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Senator ARMSTRONG: Mr. President, I would like to vote upon the question just as it stands upon the record, or have the question that the counsel has suggested put upon the record.

Mr. LOSEY: The question we desire determined is whether the witness shall be permitted to proceed in the line of evidence in which he is now proceeding.

Senator ARMSTRONG: I am ready to vote upon that question that we have partly taken a vote upon already. If there is any other question to be submitted, then I would like it read from the table before I vote.

The PRESIDENT: The chair does not understand that that question is really a proper one for the Senate now, but it is a question as suggested by the counsel as to whether this line of testimony will be allowed to proceed.

Mr. DAVIS. We propose to prove by this witness and competent testimony, so much of the transactions connected with the whisky riots, as in the judgment of the Senate are material, as they arise upon article five, and to contradict the testimony of George Baird, on specification three, to article ten.

The PRESIDENT. And to that, the counsel for the Honorable Managers, as I understand, objects.

Mr. CLOUGH. No, your honor; I do not object to his proving so much as the Senate think is proper; I haven't made any such objection. I object to the line of the questioning, but not to the offer.

The PRESIDENT. The clerk will call the roll on this proposition.

Senator GILFILLAN J. B. I would like to be excused from voting, Mr. President; I don't understand that.

Senator NELSON. Mr. President, I vote "No," because the proposition is indefinite in its present shape.

Senator PILLSBURY. Mr. President, I vote "No," because I don't want to hear anything about the whisky riots on either side. I have a motion to offer upon that subject.

The question being taken on the proposition submitted,

The roll being called, there were yeas 17, and nays 5, as follows:

Those who voted in the affirmative were—

Messrs. Armstrong, Bonniwell, Clement, Clough, Deuel, Edwards, Gilfillan C. D., Houlton, Langdon, Macdonald, McHench, McNelly, Mealy, Morrison, Remore, Wait and Wheat.

Those who voted in the negative were—

Messrs. Goodrich, Morehouse, Nelson, Pillsbury, and Swanstrom.

So the proposition was agreed upon.

SENATOR PILLSBURY. I have a motion to make, I don't know whether or not it is in order.

The PRESIDENT. It is in order.

Mr. Pillsbury offered the following:

Ordered, That the Senate hear no testimony on the question of the so called whisky riots.

The PRESIDENT. Upon that the clerk will call the roll.

Mr. DAVIS. I rise to a question of order. That is nothing more than a motion to reconsider the vote already taken.

The PRESIDENT. The chair thinks not. If the court sustain that

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order they simply vote that no evidence is material—it is agreed to receive anything that was material.

Mr. DAVIS. I see the force of the ruling of the chair. Now I wish to be entirely in order, and as this proceeding is both parliamentary and forensic, I will take the liberty—I will venture to move, or ask some Senator to move to amend the motion of the Senator from Hennepin, by moving to quash the fifth article, and the third specification to arictle ten.

Senator GILFILLAN, J. B. I apprehend that if we could go right along with direct questions, calling for direct answers, we should dispose of this thing without any difficulty. As I understand the last question that was put to the witness there was no objection. The objection came to the answer as not responsive—did not seem responsive at all. Now, then, I presume there is no objection to that question as it was put. I do not wish to dictate nor suggest, but I apprehend we should not have much difficulty with direct questions.

Mr. Nelson moved to lay the resolution on the table.

And the roll being called, there were yeas 13, and nays 10, as follows:

Those who voted in the affirmative were—

Messrs. Armstrong, Clement, Deuel, Gilfillan C. D., Goodrich, Houlton. Macdonald, McHench, McNelly, Mealey, Morrison, Remore and Wheat.

Those who voted in the negative were—

Messrs. Clough, Edwards, Finseth, Gilfillan John B., Langdon, Morehouse, Nelson, Pillsbury, Swanstrom and Waite.

So the motion prevailed.

Mr. Nelson offered the following:

Ordered, that the examination of the witness proceed, and that in his answers he confine himself to the questions asked.

On motion, the court took a recess for ten minutes.

After recess, Mr. LOSEY said:

Mr. President: Respondent moves to quash article five and specification three of article ten. There have been many things said during the progress of this trial concerning this article five, but the charge contained in it is that Judge Page "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," in the manner set forth in the order, and the report of the letter, in the article.

Now the answer admits the giving of the order and the writing of the letter, and goes on and sets up the justification for the doing of the act. This is simply an ordinary pleading, it amounts to just that and only that, and in any court of justice the respondent would be permitted to come in and go into the matter fully and show the necessity of the giving of the order and the writing of the letter that he did write. Now, it is an act of injustice to him, after they have introduced Mr. Baird here for the purpose of showing the conversation that was had between respondent and Mr. Baird at or near Mr. Baird's barnyard; a conversation which certainly would not be impeachable at any rate, but is brought in here for the purpose of showing the general conduct of the judge; I say it would be an injustice to the judge not to permit us to go into the matter and explain fully what preceded this conversation so

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as to show why this conversation was had. Now, the fact is, the justification sets up that there had been a riot in the city of Austin; that there was great and imminent danger of personal violence being done and property being destroyed; that this sheriff had made no efforts to disperse this crowd, the mayor and aldermen in the lawful discharge of their duties called upon him to disperse this crowd; that he had refused to act at all: that he being too cowardly, had done nothing to disperse this crowd when called upon by the mayor and other officers of the city; that night guards and patrols were organized there for the purpose of protecting the people of that city; that the respondent had left his home the day before, and that he received notice down in Preston, Fillmore county, that it was necessary for him to do something with the sheriff for the purpose of inducing that sheriff to do his duty.

Now, shall he not be permitted to come in and show this justification? The Senate has permitteed Mr. Baird to detail the conversation throughout its length, stating precisely what the respondent said to him; now as an excuse for that conversation, we desire to introduce this evidence. I am free to say that if this matter is to be gone into, it is going to take some time; it will take probably three or four days, but it seems to me that unless this article be quashed, there is nothing that can be done in justice to the respondent except to permit him to go into the facts fully and show his defence.

Mr. CLOUGH. Mr. President and gentlemen of the Senate, so far as the motion to quash is concerned, the managers had supposed that that matter had been up and fully canvassed by the Senate before this time.

Mr. LOSEY. Mr. Clough, one word; the motion has not been up in the form in which it is now presented. It is a motion to quash article five, and specification three of article ten together.

Mr. CLOUGH. Well, it is the same thing precisely. Upon that motion to quash, the managers and counsel made a full argument, and the Senate, nearly all the members being present, or a very large proportion being present, after a full debate, decided not to entertain the motion but to overrule it. Such being the case, it don't seem to me that there is any precedent anywhere for renewing the motion.

So far as the latter branch of the gentleman's argument is concerned, as to what evidence shall be introduced, as I understand it, the Senate has already determined to receive the evidence which they have offered. Now what grievance the gentleman has I don't know. The objection which we made was overruled. We made it for the purpose of submitting the question to the Senate whether or not the Senate desired to hear the evidence. The Senate desires to hear the evidence as we understand it, and it strikes us that that is the end of the matter.

Mr. DAVIS. Mr. President, we share fully in the solicitude of the learned managers that too much time shall not be taken in this already protracted investigation. If we are compelled to go into this specification three and article five, linked as they are together, it is perfectly manifest from what has been said by counsel and expressed by Senators that a considerable time will necessarily be consumed.

The other day a motion to quash article five was made. It was not, however, joined with a motion to quash article three with it. It is always within the power of courts of justice, to reconsider questions which have been previously determined. The subsequent events of a trial may demonstrate that a motion at one time proper, has been made percipi-

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tately; the court may not be sufficiently advised of the facts yet to come to make a determinate consideration of any propositon at the time it ismade.

Now, George Baird was put upon the stand as to specification three of article ten; in his direct testimony he connected what, the respondent, is alleged to have said to him on that occasion with the precedent events which had taken place in the city of Austin—namely the riot. Upon cross-examination he was interrogated and answered without objection, as to the things he did which he ought not to have done and the things he left undone which he ought to have done, at that riot; and he denied various questions which were very pointedly addressed to him upon that subject.

In view of either specification or article, this testimony, if any testimony is to be gone into, is competent, but it is because we believe that, as a matter of fact, in the opinion of Senators as in our own, we know it has no foundation—I mean this charge—that we make this motion and renew it, and appeal again to the discretion and judgment of the Senate whether the time of the public and our time is to be taken in refutation of that which we seriously and candidly think stands in need of no refutation whatever.

But we, of course, cannot enter into the minds of the Senators and know here what views various gentlemen upon this floor take of this question. If it should so happen that we should put in no testimony upon this subject at all, and place our client in jeopardy by reason of a mistake in judgment and overweening confidence, perhaps, in our own convictions of what is right here, and what should be done, and it should pass to an unfavorable determination of the Senate, I never should forgive myself, and no counsel who did such an act ever would forgive himself.

Mr. Nelson moved that the Senate go into secret session, to consider the proposed order, and the motion of respondent's counsel.

And the roll being called, there were yeas 15, and nays 6, as follows:

Those who voted in the affirmative were—

Messrs. Armstrong, Bonniwell, Clough, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Houlton, Langdon, McHench, Morehouse, Nelson, Swanstrom, Waite and Wheat.

Those who voted in the negative were—

Messrs. Clement, Deuel, McNelly, Mealey, Morrison and Pillsbury.

So the Senate went into secret session.

Mr. Nelson offered the following:

Ordered, That respondent's motion be overruled.

Mr. Pillsbury moved to amend by striking out overruled and insert sustained.

Mr. Macdonald moved to adjourn.

And the roll being called, there were yeas 9, and nays 14, as follows:

Those who voted in the affirmative were—

Messrs. Armstrong, Clough, Deuel, Langdon, Macdonald, McHench, Morehouse, Morrison, Remore.

Those who voted in the negative were—

Messrs. Bonniwell, Clement, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Houlton, McNelly, Mealey, Nelson, Pillsbury, Swanstrom, and Wheat.

So the motion did not prevail.

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Mr. Pillsbury moved that the Senate adjourn to Monday at 3 o'clock P. M.

And the roll being called, there were yeas 12, and nays 11, as follows:

Those who voted in the affirmative were—

Messrs. Armstrong, Clement, Clough, Deuel, Finseth, Gilfillan John B., McHench, McNelly, Morehouse, Morrison, Pillsbury and Swanstrom.

Those who voted in the negative were—

Messrs. Bonniwell, Edwards, Gilfillan C. D., Goodrich, Houlton, Langdon, Macdonald, Mealey, Nelson, Remore and Wheat.

Pending the consideration of the subject, the Senate adjourned.

Attest.

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

TWENTY-SECOND DAY.

ST. PAUL, MONDAY, JUNE 10, 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, Drew, Gilfillan C. D., Gilfillan John B., Goodrich, Houlton, Langdon, Lienau, McClure, McHench, McNelly, Morrison, Page, Pillsbury, Remore, Rice, 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. J. P. West, and Hon. Henry Hinds, 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. DAVIS. Mr. President, with the leave of the Senate, we will withdraw our motion to quash the 5th article, and the 3d specification to the 10th article, without prejudicing our right to renew the motion at some future time.

Mr. CLOUGH. With the permission of the Senate, the challengers will withdraw, so far as they are concerned, the objection to the introduction of evidence, made by us on Saturday, and leave the matter to be determined as the Senate shall deem proper.

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SHERMAN PAGE RECALLED.

Mr. LOVELY. Q. I will call your attention to matters stated in the 4th specification to article 10, which sets forth that "at a term of court held at Austin, in said county of Mower, in the month of January, A. D. 1876, a venire was issued to summon jurors 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." It is stated there, that at that time, you reprimanded Sheriff Hall for not serving that venire expeditiously. You may state fully from your knowledge, the fact concerning that matter.

A. Concerning the reprimand?

Q. Concerning the matter set forth in the specifications; the history.

A. I understand the reference to be made to be an adjourned term of court that was held in January, 1876, for the trial of the Jaynes case. That case had been tried twice before, and there was a good deal of difficulty at that term of court in securing a jury. Several venires were issued, and a great many jurors were rejected; I cannot state the number. Considerable time was occupied in getting a jury, I should think now, from my recollection, two or three days, perhaps thee days. The sheriff in one or two instances selected men from the city of Austin, or about near by, and there were a great many of them, persons who had been present at the previous trials of this case, and had necessarily formed and expressed some opinion about the case. It was a case that attracted a great deal of public attention, and was talked over commonly in that vicinity. A large number of these persons were called and rejected, and it occupied a good deal of time. I then said to the sheriff, in open court, that it seemed to me that it must be apparent to him, that these persons that he was calling, were not such persons as would be qualified to sit in the case, and requested him to select a different class of persons, and to make as judicious selection as he could. I called his attention to this matter in open court, and, I think, in the presence of counsel, parties and so forth. In this connection my recollection is that I requested him to be as expeditious as possible in the service of the venires, for the reason that the court was attending to no other business, and that we were waiting for that purpose and no other. I think that in pursuance of that conversation which I had with him, or rather after that conversation, he selected persons from the remote part of the county. My recollection now is, that in the conversation with him first, I suggested to him that he take persons from certain towns outside of Austin, but within the range of a few miles. The next time he went to the other extreme, and selected men quite a long distance away, so that a good deal of time was occupied in getting them. In the mean time, before the venires were returned, I made some inquiry of him with reference to the matter, and simply suggested such things as I

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thought were necessary under the circumstances, to hurry him up so that the matter could be disposed of. I have no recollection of saying anything to Mr. Hall that could be construed into a reprimand—there was no such purpose at all.

Q. State whether you used this languuge: "I want that venire returned at a certain time."

A. I did not state to Mr. Hall that there was a definite and specific time within which that venire should be returned. I requested him that he instruct his officers to have the jury present at a certain time, if it were practicable to do so. That is my recollection with regard to it.

Q. Did you say further, at the opening of court that "if that venire is not here, I will investigate that matter."

A. I don't think that I made any such expression as that. I don't think that I referred to the venire as a process; I don't think I said anything about that. In fact, it was not a venire or a return that I was looking after, it was merely to get a jury to try that case in the quickest possible time—a competent jury. That is all I had in view in regard to it.

Q. He states that at the opening day of the court you asked if that venire had returned, and you answered "not a word" or "I don't want to hear a word from you."

A. I made no such expression of that kind. It seems to be a sort of a stereotyped expression, but it is not my expression. It is not an expression that I use.

Q. Is there anything further that you remember under specification four of article ten, that I have omitted to interrogate you?

A. I think of nothing. The conversation I had with Sheriff Hall with regard to the matter was in open court, in the presence of attorneys, and it is a matter that I had passed from my notice and recollection; my attention has not been called to it until within a few minutes past. Those are the facts that I recollect with regard to this matter.

Q. I will call your attention to specification six. Do you recollect the indictment of one Richard Huntley?

A. I recollect a person by the name of Richard Huntley was indicted in Mower county for the crime of larceny.

Q. What became of that matter?

A. I think it was finally tried; I think he was tried on the indictment.

Q. Shortly after the September term of the district court in 1876, did you have a conversation with sheriff Hall, with reference to the service of a bench warrant on Mr. Huntley?

A. I had a conversation with him in regard to the matter.

Q. More than one?

A. I don't recollect of more than one now.

Q. State that conversation?

A. My recollection of it now is, that I met Mr. Hall in the street in the city of Austin, and made some inquiry with reference to what diligence he had made in securing Mr. Huntley. It will be necessary to state the circumstances leading up to this, in order to know the whole matter.

Q. You may go on and state those circumstances?

A. At the term Huntley was indicted—the September term, either that term or the term afterwards, (I will not be positive as to the time

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the indictment was presented against him), it was stated that Huntley had escaped. He resided within a short distance of the State line, lying between this State and Iowa, and it was stated that he had escaped into Iowa. My recollection is that a bench warrant issued for his arrest; on that statement made to the court, I instructed Mr. Hall to see that an officer was on the lookout for Huntley, as it was then stated that he would probably come over to his place of residence near the line. I recollect now, that it was stated that he had probably stepped over into Iowa, for the purpose of evading the process, and in all probability, would return. Some time elapsed, and I heard nothing about it. I met Mr. Hall on the street one day, and asked him if he had found Mr. Huntley, or something to that effect; he stated that he had not; I asked him if he had made search for him, or if any of his officers had done so; he said to me, that he believed one of his officers had been down there once, to see if he was at home. I made some further inquiry with regard to it. He did not state to me that he had heen there himself, but he said that one of his deputies had been instructed to look for him, and I asked him if he knew what his deputies had done with regard to the matter, and he did not seem to know much about it.

I told him that he ought to make a more dilligent search and be on the lookout, under the circumstances of the case; he made me a very short answer, to this effect: that he guessed he understood his business, and he did not need any instruction with regard to it, or something to that effect, that is about all that was stated with regard to it. I paid no particular attention to it, and passed along. I made no threat toward him or anything of the kind; I had no occasion for it, really; I considered, however, that he had neglected his duty in the matter, and in telling him so, I said to him that I thought he ought to have been more dilligent than he had been, in looking for the accused.

Q. In that connection, did you use this language to Mr. Hall? "None of your beating around the bush! You get that man now—you get him or I will punish you."

A. I used no such language as that; it is not very probable that I would tell him to get a man, in that time, who was nearly thirty miles away. Huntley lived about twenty-five miles away, in the town of Leroy.

Q. Did you threaten him?

A. I made no threats to Mr. Hall.

Q. Is that all that you recollect with regard to that?

A. That is all the matter I recollect with regard to the transaction.

Q. I will call your attention to specification 7, wherein it is stated that you had habitually refused to permit the sheriff of said county to make his own selection of persons to be appointed and act as special deputy sheriffs of said county; you may state whether you have or have not interfered with the sheriff in the appointment of his deputies?

A. I have interfered with him just to this extent, that I advised with him at the commencement of the term of court, that he select competent and experienced persons to perform those duties. It is very desirable that deputies have some information, if possible, as to the duties that are required about a court room, and especially desirous that those who have charge of juries should be reliable men, and I have always talked with all the sheriffs in my district with regard to the matter, but

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no more with Mr. Hall than with others. That is the only restriction that I have placed on any of them.

There is another rule in connection with deputies that I have adopted, and that is the special deputies, or rather the deputies that are required to perform the court duties, such as taking charge of grand juries and so on, that should not be done by general deputies; my reasons were, that the general deputies are paid a fee for their services, and I found by trial and experience, that if general deputies were appointed for that service, they would not be present when they were wanted; they would be sent out through the county to serve subpœnas. I examined the law, and I was satisfied that I had the proper construction of it, and I made the same restriction there as I made in other counties with regard to the matter. I can state further as to what was done. Mr. Hall, the sheriff in Mower county, has frequently selected deputies himself before the term; talked with them, as I learned from conversation between Mr. Hall and the deputies themselves in my hearing, and he would make an arrangement with them, and would come forward and state that such and such persons had been selected by him. I have no recollection that I ever rejected any, or presumed to reject any. On the contrary, I never made any restriction except as I have stated.

Q. There were several orders approved for the appointment of deputies which I wish you to look over and explain how each of them came to be appointed, if you recollect. State if you controlled Mr. Hall's action in the appointment, or not, and all matters relating to their appointment bearing upon that question?

(Counsel here handed respondent the orders that were introduced in the evidence, June 4th, 1878, being appointments as court deputies of F. W. Allen, E. J. Phillips, T. Y. Cameron, E. H. Seley and Mr. Hunkins.)

A. Well, here is an order that seems to have been dated the September term of 1876: "The sheriff of said county is hereby authorized to appoint three special deputies: F. W. Allen, E. J. Phillips and T. Y. Cameron." These persons were selected by the sheriff and their names inserted in the order after the appointment was made, and the order was made up some time during the term, or at the close of the term. I never had any talk with any of them that I recollect of. They were persons selected by the sheriff himself. I make the same statement with regard to the other appointments.

Q. State whether or not Mr. Hall ever requested that Thomas Riley might act as a special deputy?

A. No sir, I have no recollection that he ever did; I don't think he ever did; I am quite positive he never did.

Q. Mr. Woodard, in his testimony between you and himself, refers to the matter of an affidavit that he had made, to be used before the bar investigating committee, and stated that you had an interview with him on the subject. You may state if you did have such an interview?

A. I did.

Q. You may state what conversation took place between you and Mr. Woodard at that time, with reference to that affidavit?

A. I called upon Mr. Woodard at his place of residence. I had the affidavit in my possession. I asked him if it was his affidavit. He said that it was not his affidavit; that it was his signature, but that he never swore to the statements that were made in the writing—what purported to be an affidavit. I asked him if he did not appear before

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the justice of the peace whose name was attached to it; he said that he had not. I asked him who wrote the affidavit. He said that A. A. Harwood wrote it. I asked him the circumstances connected with it. He stated to me that Mr. Harwood came to him and told him he was getting up some affidavits to be used before the bar committee, and he wanted his; Harwood wrote up the statement, and he signed it; that Mr. Harwood told him that it would not make any difference whether he appeared before a justice of the peace or not, that he would attend to the matter himself, and the justice of the peace whose name is attached to it, lived about a mile away; he had never sworn to it before him; that is the statement he made to me with regard to it. I then asked him if he was aware that many of the statements contained in the so-called affidavit were untrue. He said that he was not. I then took the affidavit and read it to him carefully, and as I read it I asked him if certain of the statements were correct, and he said that they were not. I asked him, I recollect, about the statement with regard to discharging the jury—the affidavit relating to the transactions before the grand jury, at the March term of 1877; the statement, if I recollect, was made in the affidavit that the jury came into the court room several times and asked to be discharged, and I refused to discharge them. I asked him if that was true, and he said that it was not; and so with a large number of statements that were made in the writing. I then said to him that that affidavit had been published to the world as true, and that, if those statements were not true, it was a matter of simple justice to me that he should correct the statement. He said that he was willing to do so. I then drew up a statement and an affidavit in pencil, and read it to him carefully. I also read to him the report of the bar committee, relative to that same subject-matter, and he signed the statement in my presence. That was the substance of the conversation.

Q. What time of the day was this?

A. This was in the afternoon; I should think perhaps 5 or 6 o'clock; it might have been 6 o'clock in the afternoon.

Q. Who was present with you?

A. Mr. W. H. Merrick went there with me, and was present at the conversation. There was another individual whom I do not know, and did not know then; he was about the door of the yard; the conversation took place in the door of the yard, or near Woodard's house; whether or not he heard the conversation, I don't know, nor do I know his name.

Q. He states that you read the minority report of the bar committee, and that he assented to that; did he assent to that any more directly than he did to the other?

A. No sir, all that he assented to was put in writing; it was put in the affidavit by myself, in his presence, and read to him, and he signed it.

Q. Did you read that writing in lead pencil literally to him, as it now appears in the affidavit?

A. Just as it is now.

Q. Just as it is now?

A. Where.

Q. Just as it was presented to him on the stand?

A. I don't know; I did not hear Woodard's testimony; I was not present.

Q. Did you use any harsh language to him, at that time?

A. I was no harsher to him than I have stated; I used no threats to

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him whatever. I went to him for the purpose of ascertaining whether he believed or thought that those statements that he had made in the paper writing were true. I was under the impression that he had been misled and deceived, and I went there for the purpose of finding out facts about it.

Q. I will direct your attention to a conversation between yourself and Mr. Crane, relative to another affidavit that was used before that bar committee. State whether you had such a conversation, and the substance of it?

A. I had a conversation with Mr. C. C. Crane.

Q. Where was that conversation?

A. At the door of Warner & Crane's mill, in the town of Austin.

Q. Who was present.

A. Mr. Hiram Warner was present.

Q. You may state whether you told Mr. Crane in a conversation, that if you had known that Mr. Ingmundson had been before the grand jury at the time stated, that you would have been more severe than you were?

A. No sir, I did not use that language to Mr. Crane, that if the matters that occurred in the grand jury room, part of which I had learned since the session of the court had been fully investigated, that I would have been warranted, in my judgment, in punishing the grand jury for contempt, as to their conduct, I think I made that statement to him, substantially.

Q. Mr. Levi Foss referred to an interview between yourself and him, at his harvest field, shortly after the meeting of the bar committee, in which you called his attention to the statements that were made, and after the affidavit was shown to him on the witness stand; you may state what occurred; if that affidavit was made, and if so, what passed between yourself and Mr. Foss.

A. I had an interview with Mr. Foss at his place in the town of Windom. I went there for the same purpose I went to see Mr. Woodard, and the conversation which occurred between Mr. Foss and myself was something similar, though not exactly. Mr. Foss was near his residence, and was engaged in unloading a load of grain or hay, or something of that kind when I went there. About the time that I came there, I exhibited a paper to him, and asked him if he had signed that; he said he had; I asked him who wrote it; he told me that Mr. A. A. Harwood wrote it.

He said Mr. W. H. Crandall, I think, came for it. I asked him if he swore to it; my recollection is that he told me he did not; I had some further conversation with reference to its appearing to have been sworn to before Mr. Crandall, and he said he never swore to it; I asked him if he was aware of the statements it contained; he said that he did not know that he was; that he was busy when they came there, and in a hurry, and it was written up and read to him hastily, and he did not know whether he was familiar with the statements or not. I then called his attention to certain statements that were made in the affidavit, and he admitted that some of them were untrue; others, he claimed, were nearly correct, and I told him that the affidavit had been published to the world as true, and if he was satisfied that it was not true, that it was a matter of simple justice for him to correct it; he then said to me that he was coming into town on the Saturday following, and that he would call and see me with regard to it. That is substantially

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the conversation that took place between us. I went away, and that was the last interview I had with him in regard to it. He did not call to see me. This conversation was also in the presence of Mr. Merrick.

Mr. LOVELY. I believe that is all.

Mr. CLOUGH. Are you through with the witness?

Mr. DAVIS. We may wish to recall the judge on some matter of minor importance.

CROSS-EXAMINATION.

Mr. CLOUGH. Q. The article in the newspaper for which Mollison was indicted was published in July or August, 1873?

A. I cannot state the time when it was published, I don't now recollect the time.

Q. It met your eye shortly after it was published?

A. I can't say as to that, I recollect seeing it in a newspaper.

Q. About how long after it was published was it, before you found it out?

A. I connot state.

Q. Well; was it a week?

A. It might have been.

Q. Was it longer?

A. It might have been longer.

Q. About how long before the September term of 1873, of your court?

A. I can't say as to that.

Q. A month, or six weeks?

A. It might have been.

Q. Don't you think it was that long?

A. I have no thought.

Q. You have no recollection on the subject?

A. I have no recollection as to the length of time, it was a long time ago.

Q. You don't remember whether it was one week or six months before?

A. It may have been six months.

Q. Well, was it four months?

A. Before I saw it?

Q. Yes sir.

A. I can't say, I should think not, however, my recollection is that I saw it very soon after it was published.

Q. Did you see it a month or six weeks before your term commenced?

A. I can't recollect that.

Q. Did you see it before your term commenced?

A. I think I did.

Q. Do you think it was a month before?

A. I can't say.

Q. Was it a week before?

A. I can't say, sir.

Q. You don't remember anything about it?

A. Not the lapse of time.

Q. When you did discover it, you waited on Davidson and Bassford?

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A. Afterwards I did.
Q. About how long was it?
A. I can't state; I don't recollect.
Q. Was it a week, or a month, or a day?
A. I can't state, sir.
Q. You haven't any idea on the subject?
A. You ask me if I have not any idea about it; no sir, I have not any idea as to the length ot time.
Q. Did you know Mr. Mollison at that time?
A. I did, yes sir.
Q. You had known him some time?
A. I had known him some time.
Q. His name was signed to the article?
A. My recollection is that it was.
Q. When you went to see Davidson and Bassford about the publication of this matter, do you remember what occurred?
A. I recollect quite distinctly.
Q. What? Tell us?
A. I went to see Davidson and Bassford, in company with Mr. Shaw, and called their attention to the article that was written. I had some conversation with them in regard to it.
Q. Oh, tell us what occurred, what they stated, and what you stated?
A. I asked them if they were aware of the nature of the article—that it was untrue; I asked them several questions with regard to it.
Q Did you tell them that it was libellous?
A. I presume I did.
Q. Did you tell them that it was an offense to publish such an article?
A. I can't state.
Q. Did not you tell them that they were laying themselves liable to a prosecution?
A. I think I stated this to them: that the article was untrue with reference to my official conduct, and that I considered that its publication was libellous, or words to that effect.
Q. Did you not tell them that the matter was not correct, and that you designed to punish any person who was guilty or concerned in it?
A. No sir.
Q. You did not say anything about punishment?
A. No sir.
Q. Did not say anything about anybody being guilty of any offenses?
A. I might have said that.
Q. You gave them to understand there, did you not, that the publication of that article was a crime?
A. I said what I have stated to you.
Q. Did you not give Davidson and Bassford to understand there, that the publication was a crime. Did you not mean to impress upon them that the publication of that article was a crime. Answer my question yes or no?
A. I don't know.
Q. Did you not?
A. Well, the answer to that question embraces a knowledge of what was going on in their minds; I don't think I can answer that.

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Q. Did you not design to do so?
A. No sir, I did not design to do so specially.
Q. Did you design generally to impress on their minds that the publication was a crime?
A. That was not the purpose of my interview.
Q. Did you not try to impress upon them that they had committed an offense?
A. Not specially.
Q. Wont you answer my question? I ask you whether you did it at all.
A. I used just the language, in substance, that I have stated; whether they were impressed with the idea that there was a crime committed or not, I cannot state.
Q. Did you not ask them to make a retraction?
A. I did.
Q. What did they say?
A. They said the article was signed or written by some other person, and that they did not consider they were responsible for it.
Q. You knew that before?
A. Yes sir.
Q. Mr. Mollison's name was signed to the article?
A. I think so.
Q. What did you tell them would be done if a retraction was not published?
A. I did not tell them anything.
Q. How long did that interview last?
A. A few minutes.
Q. Was there any agreement come to there?
A. No sir.
Q. The matter was left open?
A. So far as their further consideration is concerned, I cannot say as to that.
Q. Don't you remember that this interview you had with Davidson and Bassford was along in the week after the publication of the article signed by Mollison, or before the next issue of the paper?
A. No sir.
Q. You don't remember anything about that?
A. No sir.
Q. It might have been, for all you remember?
A. It might have been.
Q. Don't you remember that after you went away, and when the next issue of the paper came out, an explanation was published. In that paper, did not the editorial columns attempt or purport to explain away some parts of the article which had been published?
A. I don't know; I was informed, Mr. Davidson informed me, that he published something of that kind.
Q. You did not see anything of that kind?
A. I have no recollection of seeing it. I did not then take that paper.
Q. Where did you see a copy of the paper that contained the Mollison article?
A. I can not state, sir.
Q. Don't you remember? Let me refresh your memory a little. Did not the next paper after the article was published, publish an arti-

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cle which was a sort of an explanation of that article, and upon the publication of this retraction you sent a communication to them upon this subject?

A. I don't remember it, if it were put together in the connection in which you put it. I remember sending a communication to them, but the other part of it, I don't recollect.

Q. What did it relate to?

A. The same matter.

Q. Did it not relate to the retraction?

A. No, sir.

Q. You say that it did not?

A. I think not.

Q. Did it, or did it not?

A. I don't know.

Q. You ain't positive on the subject?

A. No, sir.

Q. You answer it by yes or no?

A. I think not.

Q. You did answer it a moment ago, no.

A. I am not positive.

Q. Don't you remember that in this communication, you referred to this retraction something in this way: "*This* pretended or *your* pretended retraction, is no retraction at all." Don't you remember that?

A. No, sir; I do not.

Q. Did not you send a communication containing anything of that kind?

A. I don't think it contained anything of that kind.

[Question repeated.]

A. I have answered it; I don't think I did.

Q. You deny it?

A. That is my answer.

Q. You deny that it contained anything of that kind?

A. I don't think it did.

Q. Are you merely giving you recollection?

A. Yes, sir.

Q. It may have contained something of that kind?

A. My recollection is that it did not.

Q. You don't say that it did not?

A. I don't state positively.

Q. It might for all you remember?

A. It might have been some language to that effect, but I don't recollect any such language.

Q. Now after you had sent this communication to them, did you wait on them again in person?

A. I did not, no sir.

Q. Who was county attorney at that time?

A. I don't know who was

Q. You don't remember who was county attorney at that time?

A. My recollection is that Mr. Wheeler was county attorney.

Q. Mr. Wheeler was formerly your law partner?

A. Yes sir.

Q. Went to Austin with you about 11 years ago?

A. 12 years ago.

Y. You had known him a long time before you went to Austin?

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A. Not a great while.
Q. You went there for the purpose of engaging in the legal business as his partner?
A. Yes sir.
Q. What time was that?
A. We went to Austin about the 1st of January, 1866.
Q. And from that time up to the time when you went on the bench, the 1st of September—the first of January, 1873, you had practiced law as partner, had you not?
A. Yes sir.
Q. Continuously?
A. Yes sir.
Q. You have had a law office with him, have you not, since you have been judge?
A. No sir.
Q. After you were elected judge you moved your office?
A. Yes sir, I moved my office to this extent, it was in the same building.
Q. When you were practicing law in Austin, did you not occupy the same room that you occupy now?
A. To a certain extent.
Q. Did you not occupy the same room as an office that you now occupy as an office?
A. As an office?
Q. Yes sir?
A. In one sense it was. It was occupied by us, by Page & Wheeler as a part office and counsel room.
Q. After you had been elected to the bench and taken your seat there, did Mr. Wheeler move his office?
A. He occupied that portion of the building that was used by Page & Wheeler.
Q. Will you answer my question directly?
A. Did he move his office?
Q. Yes?
A. No.
Q. And you did not move yours, did yo?
A. Yes sir.
Q. Well, explain how?
A. I moved out of the rooms that we had formerly occupied as an office.
Q. At that time you were elected judge; Page & Wheeler occupied two rooms as offices?
A. We occupied three.
Q. You occupied two at least?
A. Yes sir.
Q. They were adjoining each other?
A. Yes sir.
Q. You had your library, did you not?
A. Yes sir.
Q. Page and Wheeler had a library, did they not?
A. Yes sir.
Q. Did not you, when you were elected judge, and have you not ever since, used the room in which Page and Wheeler's library is located?
A. Yes sir.

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Q. There was no change made in the library at at all?
A. No sir.
Q. It has been there ever since?
A. Yes sir.
Q. You both have used it?
A. Yes sir.
Q. And it belongs to you jointly?
A. Yes sir.
Q. And since you have been on the bench you have both made additions to it?
A. Yes sir.
Q. And your new books that you have got right along, are marked "Page and Wheeler."
A. Some of them are and some of them are not.
Q. Most of them are?
A. I can't say that most of them are.
Q. You have been in partnership, have you not, since you have been on the bench, with Mr. Wheeler; and you both are partners in the library?
A. No sir; there is no partnership about that, it is simply an ownership.
Q. There is a door between those two rooms?
A. Yes sir.
Q. And Wheeler is in the habit of going into that room where that library is, to do his work there, just the same as he used to before you were elected judge?
A. I can't say that.
Q. Is it not to a great extent as it was before?
A. I can't say; I am very little there, myself.
Q. He has constant access to that, as he had before?
A. He has access when he chooses to go there.
Q. Is not the access just the same as it was before you went on the bench?
A. Well ———
Q. Answer my question?
[Question repeated.]
A. I said that there was a door there, and that he goes there when he sees fit. Is not that an answer?
[Question repeated.]
A. There is no difference in the door at all.
Q. Is there any difference in his means of access there at all?
A. No that I know of.
Q. You don't remember for a certainty, that Wheeler was county attorney at that time?
A. I say that I do recollect now that he was.
Q. But you don't recollect when I first asked you the question?
A. Well, I recollect it.
Q. But you did not recollect it first that he was county attorney at that time?
A. Yes, I did recollect it first.
Q. After the publication of this article there in town, were you in Austin from that time up to the time of holding your September term of court, in Mower county?
A. I can't say.

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Q. Your fall circuit commenced in September?
A. That is the fall term of court.
Q. You don't commence any of your fall terms of court, until after you are through with the Mower county court, do you?
A. What do you mean?
Q. I mean the terms of court in your district, are grouped into spring terms and fall terms.
A. I have not grouped them.
Q. Has not the law done it?
A. Not to my knowledge.
Q. I am aware of that myself. You commenced your fall term on the third Monday in September?
A. The first term that occurs in the fall months is in September.
Q. And it is in Austin?
A. Yes sir.
Q. Your last term in the spring is when?
A. The last term in the summer and spring is in June, the last of June.
Q. And you don't have any more terms then until you commence the September term, the 3d Monday in September?
A. No general term.
Q. And during most of the time you are mostly at home, in Austin, are you not?
A. I can't say that I am.
Q. How was it in that year, 1873.
A. I can't tell you, sir.
Q. You don't remember?
A. I have no distinct recollection; I might have been at home; I may have been engaged in official duties.
Q. You have no knowledge of being absent?
A. Not at this moment.
Q. Was Mr. Wheeler there during that time?
A. I can't say.
Q. You don't remember of his having been gone, do you?
A. I can't say, one way or the other.
Q. When Mr. Wheeler is at home, and you are at home, and at your office, you see Wheeler every day, don't you?
A. I can't state whether I do, or not.
Q. As a rule, you see him every day?
A. Frequently.
Q. Four or five times a day, don't yon?
A. I might see him four or five times, and I might see him just as I accidentally met him
Q. After this publication by Davidson and Bassford, of the Mollison article, when did it become the subject of conversation, as between you and Mr. Wheeler?
A. I don't know as I had a conversation with him about it.
Q. Do you say that you did not?
A. No sir.
Q. You regarded that as the very greatest of libels, did you not?
A. That it was libelous.
Q. And you knew that Wheeler was one of your firm and fast friends?
A. I don't know as to that.

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Q. You regarded him as being one of your particular friends?
A. No sir.
Q. You regarded him as being a friend of yours?
A, Yes sir.
Q. Would it not then be very likely that such a gross libel should come out against you, that it would be a matter of conversation between you?
A. No sir.
Q. Don't you remember that you and Wheeler, within a day or two after the publication had an interview on the subject?
A. No sir.
Q. Don't you remember that you had one shortly afterwards?
A. I don't recollect.
Q. You won't state that you did not?
A. I have answered the question three or four times over.
Q. Well, answer it again.
[Question repeated.]
A. I would not state that I spoke to Mr. Wheeler with regard to that. I have no recollection that I did.
Q. Within a week or ten days after that article came out, did you not have an interview with Mr. Wheeler, in which conversation the punishment of the guilty parties was discussed?
A. I can't say.
Q. Will you swear that you never had such an interview with Mr. Wheeler?
A. I never had such an interview with Mr. Wheeler.
Q. Prior to the September term of 1873?
A. I might have had some conversation with Mr. Wheeler in regard to that libel, although I have no distinct recollection with regard to it. I might have talked to a great many individuals with regard to it.
Q. You won't swear that when you did talk with Mr. Wheeler the subject of punishing the guilty party was not mentioned?
A. I have no recollection of ever having a conversation with Mr. Wheeler with regard to instituting criminal proceedings.
Q. Will you swear that such a conversation did not occur?
A. No sir.
Q. Then you mean to say that such a conversation might have occurred.
Q. I say there might have been such a conversation with regard to that matter with Mr. Wheeler. There might have been a great many persons in town that I spoke to about the matter.
Q. You were very much incensed over the publication of that article?
A. I felt that it was a gross wrong.
Q. You felt very indignant about it?
A. I can't say that I felt very indignant.
Q. You were very active in trying to get the article retracted?
A. Not specially active; I did what I have already stated to you in regard to it.
Q. Have you any reason to believe that, before Mollison was arrested or arraigned in court, he had ever heard the indictment read?
A. I don't know, sir, anything about that.
Q. Have you any reason to think that he had ever seen it, or heard it read?

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A. No sir.
Q. Who read the indictment?
A. Mr. Wheeler, I think.
Q. During the reading of this indictment was Mollison looking at you in particular; where was his attention fixed?
A. I can't say to what point his eyes were directed.
Q. He was not looking at you, was he?
A. I can't state.
Q. At any person in particular?
A. I don't know.
Q. Won't you give us the movement of his head; can't you illustrate the way in which he nodded. Just show us?
A. Something in this way: [witness illustrates.]
Q. Was that nodding addressed to you?
A. I can't say that it was addressed to me.
Q. Was it addressed to any body at all?
A. I don't know as to that.
Q. Where was he?
A. I can't state where he stood; he stood in front of the desk, or perhaps a little on one side from where Wheeler stood; he was nodding his head and looking forward; I can't say that he was looking at me or at Mr. Wheeler; I can't say that, because I have no recollection.
Q. Can you say that he was looking at any body at all?
A. No, I can't say that.
Q. Won't you move your head, as near as you can remember, as he did?
A. I have no objection to getting up and imitating Mr. Mollison as far as I can. Would you like to have me stand up?
Q. I have no doubt the Senators can see you without your standing up.
A. The movement was something like this: [Illustrates.]
Q. Mr. Mollison seemed to be entirely absorbed in what was being read, did he?
A. I can't say, sir.
Q. Did that movement of his head interfere with the business of your court in any way?
A. What do you mean—whether it prevented the reading of the indictment?
Q. Did that movement of his head interfere with the business of your court in any way, and if so, what business?
A. I think that calls for an opinion; my own is, that it did.
Q. What business of your court did it interfore with?
A. It attracted the attention of the people in the room, and the officers of the court, and called the attention from the business of the court.
Q. Was it a matter of any interest to the other people in the court, whether they should hear the indictment read or not?
A. I am sure I don't know.
Q. Do you think it interfered with the business of the court, that the attention of the people and the officers of the court should be directed to Mr. Mollison?
A. It might with the offieers of the court.
Q. Do you think it did?

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A. I don't think it interfered very seriously with the transaction of business.

Q. It did not interfere at all, did it?

A. My own opinion is that it did somewhat; we would have gone right on with the business of the reading of the indictment.

Q It could have gone right on anyhow, just as well as not, could it not!

A. I don't think it could.

Q. You say that after this indictment was read, Mr. Mollison was called upou to plead?

A. Yes sir.

Q. And he did plead not guilty. When was it, in what stage of the proceedings was it that you stated you could not try the case?

A. I said, after the plea was entered, I think.

Q. How long after?

A. Very soon; during the same transaction.

Q. When he entered his plea, did he say anything about trial.

A. I don't think he did; no sir.

Q. Will you be positive on that subject?

A. I am quite positive.

Q. But you told him he could not have a trial at that term of court?

A. I did not say that. I stated that, I considered it would be a case; that it would be improper for me to sit at the trial, and that the case would have to be continued until I could secure the attendance of another judge to sit in the case.

Q. That was before he had demanded any trial at that term of court, was it?

A. Yes sir. He did not demand one at all to my knowledge.

Q. When was it that you fixed the bail?

A. My recollection is that it was during the same transaction—about the same time.

Q. Did you fix the bail as a part of the statement you then made, or did you state that the defendant would be committed if he did not get bail, or held to bail, as a part of the statement you made that you could not hear the case at that term of court?

A. Yes sir.

Q. Was it right there in the same connection?

A. I don't think it.

Q. How long after?

A. Very soon.

Q. When you told Mollison that you could not sit on the case, and that the case would have to be continued, what did he say;

A. I don't recollect that he said anything.

Q. Was he standing up during the time?

A. My recollection is that he was; he may have been sitting down; perhaps he was.

Q. Did you dispose of his case, before you resumed other business?

A. So far as that matter was concerned, yes sir.

Q. Everything up to his actually giving bail was disposed of before you went to other business?

A. What do you refer to?

Q. I asked you of your disposition that you made of Mollison's case?

A. Whether I finished that transaction?

Q. Yes sir.

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A. Yes sir.

Q. Now, in what connection did you speak of Mollison getting bail; did he say anything about being in custody?

A. I don't recollect that he did.

Q. Did he say anything about bail, or where he would get it?

A. I don't recollect that he did.

Q. When you stated that you could not try the case you knew that some disposition would have to be made of the defendant.

A. I knew that some disposition would have to be made of the case.

Q. Did you not follow up your statement that you could not try him at that term of court yourself with one that you would have to get some other judge, and that he would have to be held to bail.

A. I can't state.

Q. What occurred in that statement with Mollison as to what his bail would be?

A. I can't state anything relatively to the time that was occupied in general, with that particular case, or just exactly in what order they occurred.

Q. Do you know that any thing occurred between your statement that he would be held to bail, and your statement that you should not try him?

A. No sir.

Q. You won't swear that anything occurred?

A. No sir.

Q. Mollison did not ask to be admitted to bail?

A. He had not formally made an application. As to that matter, I will not say but what he did some time make a formal application; it occurs to me now that some formal application was made for him to be admitted to bail, but I won't be certain as to that; what I refer to is, perhaps, of something that occurred afterwards.

Q. Did you announce the amount of bail that he would be held to, before any application was made to be admitted to bail?

A. I think it was before any application was made; that is my recollection about it.

Q. Was not his answer that he wanted his trial, and that he would go to jail?

A. I don't think he said anything about wanting a trial.

Q. Did not he, upon your statement that he should be held to bail in $1,500, state that he would go to jail?

A. My recollection is now that there was something said, either by him or his counsel, with reference to his going to jail.

Q. He had no counsel there?

A. No.

Q. He said he did not want any counsel?

A. Yes sir; not at that time; I have reference to a subsequent time.

Q. His bail was fixed, was it not, before the court went to other business?

A. I think so; that is my recollection.

Q. Won't you be kind enough to state what the purposes are of taking a bail bond, or taking a recognizance?

A. You want my legal opinion?

Q. I will put it in a more direct form. I will ask you if the legal purpose of taking a bail bond or recognizance is anything but to secure the attendance of defendants, to answer the indictment?

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A. That is the main purpose.
Q. Is there any other purpose? does the law permit any other purpose to be looked at?
A. At the time designated?
Q. Yes sir?
A. That is the purpose, in my judgment.
Q. In your opinion, does the law permit bail to be fixed with a view of punishing the defendant?
A. No sir.
Q. Then, in your opinion, if a sufficient amount has been fixed in the recognizance, or the bail has been fixed at a sufficient amount to secure the attendance of the defendant, all the purposes of taking bail, which the law permits, have been fully subserved?
A. Well—
Q. Answer my question?
A. You asked for a legal opinion.
Q. Your counsel has called out your motives, and I want your opinion?
A. I won't undertake to give an opinion that shall be clothed in in your language.
[Question repeated.]
A. I think I have answered it.
Q. In an answer to a question put to you by your counsel, you have stated that you always considered the circumstances surrounding each particular case, in fixing bail, but all the circumstances are controlled by one object, are they not—what amount would be necessary to secure the defendant in court?
A. The main purpose is always kept in view.
Q. Don't all other circumstances give way to that one controlling circumstance?
A. Not in that matter; not to give way; I should say to be kept in view.
Q. Then you mean to say that the main object—the securing of the attendance of the defendant in court—is not to be considered?
A. No sir, I did not say that.
Q. That is what you did mean?
A. Perhaps I did not understand you.
Q. What I mean is, that when sufficient bail has been required to secure the attendance of the defendant in court, the purposes of bail have all been subserved?
A. Yes, but that is a matter of opinion.
Q. Just answer my question?
A. It is not susceptible of demonstration.
Q. Now won't you tell us in what cases of felony in Mower county you have fixed bail since you have been judge, as high as $1,500?
A. I have not refreshed my recollection with reference to bail; it would be impossible for me to give you a statement of the different cases, or of the nature of the offenses and amounts, because I have not looked through the lists.
Q. You have reflected somewhat in connection with this case?
A. Not in regard to that matter.
Q. You knew that the statement of that bail was made, and that the matter was a good deal discussed before the judiciary committee?
A. Yes sir, but I did not think it was unusual in this case.

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Q. Can you recollect now a single case where you fixed bail to be given by any person accused of felony in Mower county, as high as $1,500?

A. Yes sir.

Q. Now won't you please name all that you can remember where the bail was higher?

A. I can't state the title of cases, I have not examined the records. I can tell you of one case. My recollection now is, that it was fixed at $3,000.

Q. That was the Jaynes' case?

A. Yes sir.

Q. Mr. Jaynes was let to bail several times, wasn't he?

A. Well, my recollection is that he was let to bail more than once, unless his bail was raised after he had been tried and found guilty.

Q. Jaynes was examined before you as a committing magistrate, was he not?

A. Yes sir.

Q. And he was afterwards indicted by the grand jury?

A. Yes sir.

Q. Do you remember what his bail was fixed at in the first instance?

A. I do not, no sir; I don't recollect.

Q. Wasn't it one thousand dollars?

A. I think not; my recollection is that it was fixed at $2,000; but I won't be certain as to the amount, because I have not thought anything about it since, but my recollection is that it was $2,000, that it was afterward raised to $3,000.

Q. Now, with the single exception of the Jaynes case, and the exception of these libel cases, can you remember a single case of felony while you were judge, where the amount fixed was to exceed one thousand dollars?

A. Well, I don't recollect any particular case, but there may be cases.

Q. You can't name any?

A. No, I can't name one now, because I don't remember as to that.

Q. Now, in the case of a person of the name of Pugh, you fixed his bail at $500. A person accused of forgery that occurred as I understood it did, in Freeborn county?

A. Yes sir.

Q. Mr. Pugh was accused of forgery, was he not?

A. I think that was the charge against him.

Q. And he was indicted for forgery by the grand jury?

A. That is my recollection in regard to the matter.

Q. And you fixed his bail at five hundred dollars?

A. Yes sir; the circumstances were very peculiar.

Q. That was fixed at first, at $500.00?

A. Yes sir.

Q. That man Pugh was a transient man, wasn't he?

A. I did not know it at the time, it was stated to me in court that he was out of the State, and it was not known where he was at all.

Q. You fixed the bail upon which he was to be at large, in case he was arrested, at $500?

A. I fixed it nominally, and left it for the county attorney.

Q. You fixed it at $500?

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A. Well, I have stated it five or six times.
Q. He was arrested after, wasn't he?
A. I think he was.
Q. And let to bail at five hundred dollars?
A. Not by me.
Q. It was upon an order which you made, wasn't it?
A. I think it was, yes sir.
Q. County attorneys have no right of themselves to let to bail?
A. I think not.
Q. And he ran away and forfeited his bail, did he not?
A. I presume he did, I don't know; I think he did though.
Q. Were you acquainted with Mr. Mollison's circumstances at the time you let him to bail?
A. I didn't know anything about his pecuniary circumstances at all.
Q. You had known him some time?
A. I had known him by sight, but knew nothing of his circumstances. I did not know that he was a farmer; I knew that he was a resident of Mower county.
Q. You did not suppose him to be a transint man, did you?
A. I did not suppose anything about it.
Q. You had never heard him accused of a crime before that, had you?
A. I don't recollect anything about it.
Q. Now, don't you think, Judge Page, that the sum of $250 would have been sufficient bail for the attendance of Mr. Mollison to answer that indictment?
A. I don't know as it was; I don't think it was.
Q. Don't you think it was?
A. I have no opinion in regard to it.
Q. Didn't you at that time think that bail in the sum of $250 would secure the attendance of Mr. Mollison?
A. No sir.
Q. Didn't you believe so?
A. I did not believe anything about it; it was not a matter of reflection with me particularly. I fixed the bail—
Q. Did you think Mr. Mollison required greater bail than a forger?
A. I did not compare Mr. Mollison with other persons at all. Mr. Mollison gave bail without any objection, and there was no application to reduce it at all.
Q. Those are the only libel cases that have ever occurred in your district are they not?
A. No sir.
Q. Have criminal libels occurred elsewhere in your district?
A. I don't recollect now that any have been tried.
Q. Well, have any occurred; have any persons been indicted for libel?
A. I can't state now; I don't recollect that any cases have been tried.
Q. Do you know of any having been let to bail in your district—any person indicted for libel?
A. I don't.
Q. You swear then, at this term of court, Mr. Mollison did not demand a trial?

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A. I say that I have no recollection of his demanding a trial; I don't think he did.

Q. When did Mr. Cameron appear on the scene, as acting attorney for Mr. Mollison?

A. At a time during the same term, and subsequent to the time when he was arraigned.

Q. What did Mr. Cameron say when he appeared before the court?

A. Mr. Cameron said that he appeared for Mr. Mollison, and desired to make a motion.

Q. Was the case the of State of Minnesota against Mollison, on the calendar?

A. At that time?

Q. Yes sir?

A I really can't tell, sir, whether the clerk had entered it or not, at all.

Q. You had a calendar before you, did you not?

A. I had a calendar—I ordinarily had a calendar before me.

Q. Do you recollect whether the case of the State of Minnesota against Mollison, was on the calendar before you?

A. I can't state whether it was or not; the clerk sometimes enters the cases; the statute provides; whether the clerk had discharged the clerical duty, I can't say.

Q. Now, if that case was not on the calendar, wouldn't you have put it on, or caused it to be put on?

A. Not necessarily; no sir.

Q. Are you not in the habit of having put on your calendar all the cases that come before the court?

A. No sir, not necessarily.

Q. How do you keep track of them?

A. There are certain cases that are not put down at the time.

Q. If they are not put down at the time, you cause them to be put down?

A. I don't look after it; I let the clerk look after those matters.

Q. Now, if Mr. Cameron had appeared as general attorney for Mr. Mollison, would not his name have been entered on the calendar as attorney?

A. Not necessarily.

Q. When do you remember of first seeing the case of the State of Minnesota against Mollison, on the calendar?

A. I have no recollection as to the particular term that I saw it.

Q. You saw it, certainly, as early as the first term afterwards, did you?

A. I think so.

Q. Did you see Mr. Cameron's name, or anybody as attorney for Mollison?

A. I don't recollect.

Q. Have you ever, at any time, when that case has been upon the calendar, seen Mr. Cameron's name appear as the attorney for Mr. Mollison?

A. I can't say sir; I have never looked after it. I couldn't tell you anything about it. Mr. Cameron appeared and I recognized him. It was a motion—I was well acquainted and I recognized him as attorney, but whether he was an attorney of record or not I don't know. My object in having a court calendar is for the cases, when they come into

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court, so that I may know them—the names of the attorneys are ordinarily entered, not always though; but generally entered.

Q. When a case appears upon the calendar, without the attorney's name being mentioned—you put it down don't you, when you discover who it is?

A. Well, not necsssarily; I may do so sometimes. Sometimes a case is called, and there is no attorney entered at all, and an inquiry is made.

Q. We come to the next term of court, now, I understood you to say in response to a question by your counsel, that you did not charge the grand jury at the September term of court, in regard to libel, in the year 1873. You so stated, did you?

A. I did sir.

Q. You have four counties in your district, and four terms of court each year.

A. Eight general terms.

Q. And at each one of these general terms there is a grand jury, is there not?

A. Yes sir, generally.

Q. Are you in the habit of writing out the charges to the grand juries?

A. Sometimes I do, and sometimes I do not.

Q. As a rule how is it?

A. As a rule—I have no rule upon that subject.

Q. You don't write them out as frequently as you do not write them; is that what you mean?

A. What I mean is, that there is no rule or practice established in my district in regard to that?

Q. How freqnently do you write them out?

A. I can tell you if you wish to know, just what my practice is.

Q. Yes sir?

A. Ordinarily I write a portion of the charge that I deliver to the grand jury, I do not read, however; I have never read a charge to a grand jury.

Q. The greater part then, of all your charges, is oral?

A. Yes sir; when I say I never read a charge I mean that I never read a written charge, to the grand jury. I read the statutes.

Q. In the four years, or more, that you have been upon the bench, then you have charged above thirty grand juries, and the greater part of those charges were oral, you say?

A. Yes sir.

Q. Now, can you remember what you said, or did not say, in any one of these charges?

A. I can remember some things.

Q. Would you pretend to say what you had said, or did not say upon a particular occasion, in charging a grand jury?

A. Very likely I might. In some instances I can, in some instances I can.

Q. Now, at your charge in this September term, was your charge written?

A. A portion of it was; yes sir.

Q. In what proportion?

A. I said a portion of it.

Q. What proportion of it?

A. Well, perhaps, aside from the portion that includes the reading

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of general statutes which judges are required to read to juries, there might have been three-quarters of it, perhaps.

Q. Have you looked at the written part of that charge to refresh your recollection?

A. No sir.

A. Haven't looked at it at all?

Q. No sir.

Q. And you still deny, positively, do you, here, that you are not mistaken in your assertion that you did not refer to the subject of libel in your charge to the grand jury at the September term of court?

A. I have never referred to the subject of libel in any charge to any grand jury in my district since I have been on the bench, to my recollection:

Q. Oh! to your recollection; will you say that you did not at the September term, 1873, positively?

A. Yes; I say positively.

Q. Without any qualificaaion?

A. Without any qualification whatever.

Q. You won't qualify in any shape?

A. Not in any shape at all; and I might in a little reflection, perhaps, tell you as positively with reference in my district, with reference to that matter.

Q. Now, at the next term of court, that would be March, 1874, wouldn't it?

A. Yes sir.

Q. Do you remember whether the case of the State against Mollison was on the calendar then?

A. My recollection is that it was.

Q. You were there at that term?

A. Yes sir.

Q. Held it yourself?

A. Yes sir.

Q. Called over the calendar, didn't you?

A. Yes sir.

Q. Was Mr. Mollison there?

A. I can't say whether he was there or not.

Q. Wont swear he wasn't, will you?

A. No sir.

Q. Did you call Mr. Mollison's case?

A. Yes sir.

Q. Do you remember what happened when you called that case?

A. Yes sir, I have a recollection in regard to it.

Q. Now just state what you said.

A. When I called the case?

Q. Yes sir.

A. I said the words, "The State against D. S. B. Mollison." I generally call the calendar, giving the number—number one, "State against D. S. B. Mollison;" No. 2, the State against John Brown;" No. 3, the State against John Smith." That is my habit of calling the calendar both civil and criminal.

Q. When you called it out did any one move a continuance of the case of the State against Mollison?

A. Not to my knowledge.

Q. Who was county attorney at that time?

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A. Well, sir, I really can't tell you, they change so often down there; my recollection is, though, that it was Mr. Wheeler; Mr. French, I think, followed Mr. Wheeler, and I don't recollect at this moment just when he came in.

Q. You have been on the bench now over five years, how many persons have been county attorney down in Austin during that period of time?

A. Well, I can tell you, perhaps, by thinking.

Q. Any more than two?

A. Well, I can't say at this moment; Mr. Wheeler and Mr. French have been county attorney; they may have been the only ones; Mr. French was appointed, my recollection is, and afterward elected; I wont be positive in regard to that; there are some resignations, I don't pretend to keep track of them.

Q. The county attorney, whoever he was, did not ask that the case be continued?

A. I think not.

Q. Did not ask that it be dismissed?

A. I don't recollect.

Q. You don't remember what he said or what the defendant said?

A. I can't recollect what occurred at that term of court, when the case was first called.

Q. State the conversation that occurred between you and Mr. Mollison.

A. I had no conversation with Mr. Mollison at all; I recollect Mr. Kinsman, the conversation that I had with him.

Q. Did you have a conversation with Mr. Cameron at that term of court?

A. No interview, I think, but in court.

Q. That is what I mean, in court.

A. I will state what occurred at that time; when these cases, that case including others, was first called, I made a statement with refereneo to the efforts that I was making to hold an adjourned term.

Q. Now, what did you say about that?

A. Well, I said that I had corresponded with Judge Mitchell, and had some assurance that I could make arrangements with him to hold an adjourned term during that summer for the trial of those cases.

Q. For the trial of which of those cases?

A. For the trial of this Mollison case, and others with it.

Q. You mentioned the Mollison case particularly?

A. I was talking about it, yes sir.

Q. Then you mean to be understood that you said you were going to get Judge Mitchell to hold a term for the purpose of trying that case?

A. That with others.

Q. You mentioned that Mollison case?

A. Yes sir.

Q. Was Mr. Cameron there?

A. Yes sir.

Q. What did Mr. Cameron say?

A. I can't say that he made any special remark in regard to the matter.

Q. At this term of court did he say a word to you in regard to this Mollison case?

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A. I can't say that he did; they were both present and did not object to it.

Q. And Cameron's name was not on the calendar as attorney?

A. I can't say; I know that he was the attorney.

Q. His name was not down as attorney?

A. I say I don't recollect.

Q. You don't remember anything about it, do you?

A. I said so.

Q. You say you can't say whether you and Cameron had any words in court or before court, in regard to that Mollison case?

A. Not specifically.

Q. Do you remember of Mollison having them in person in court?

A. I don't recollect.

Q. You know Mr. Mollison personally?

A. Yes sir.

Q. So that if he had been there; in your small court room, you would have seen him?

A. No sir, no sir. Not necessarily at all. There are men that come in there and go out, hundreds of them, probably, at a term of court, that I don't see at all.

Q. You say Mr. Mollison, after the proceeding had ended, went and sat down, and then desired to speak; did you say so?

A. Yes sir.

Q. Did Mr. Mollison say, when he got up any more than this, "may, it please the court; may I make a remark?"

A. He did not use that word.

Q. Just what word did he use?

A. I can't tell you the words that he used, but he indicated to me that he wanted to speak; and at the same time looked around over the audience. Mr. Mollison was very much excited.

Q. Did he tell you what he wanted to say?

A. No sir.

Q. How did you know that he was not desirous to demand a trial; that that was what he wanted to say?

A. Well, I didn't know anything about it.

Q. You didn't know what he did want to say, did you?

A. No, but his actions——

Q. You didn't know what he did want to say, did you?

A. Of course I did not.

Q. Did you tell him there was a time that would come when he would be heard?

A. I don't think I used those words; no sir.

Q. Did you tell him when you could hear him?

A, I don't think I used those words.

Q. Did you tell him he could ever be heard at all, to say what he wanted to?

A. No sir. Mr. Mollison was very much excited, and evidently wanted to get up a sensation.

Q. Now, what evidence did you have of that? Just tell us what he did?

A. Mr. Mollison is a very excitable man, and he indicated to me—

Q. Wait a moment. I asked you to state what he said?

A. Why, he said he wanted to speak.

Q. And you wouldn't let his say anything?

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A. Why, I didn't propose to have him make a speech there.
Q. Who was he addressing himself to?
A. Partly to me and partly to the crowd.
Q. Did he say he wanted to make a speech?
A. That's what I understood from him; yes sir.
Q. He said he wanted to speak?
A. Yes sir.
Q. You said something in your examination-in-chief with respect to a jury for the term which should be held by Judge Mitchel. Can you state now what provision, if any, was made for a jury?
A. At the July term, 1877?
Q. No sir; July term 1874?
A. '74; I have not refreshed my recollection from the records, but my recollection in regard to that is, that a jury was ordered for that term.
Q. When?
A. I think it was for the March term, but I will not be positive in regard to that. I am positive as to the jury; I am positive that a jury was summoned for that term, but whether it was ordered, at the March term of court, or between the March term and the July term, I cannot say. I was not present at the July term; I don't know, as a matter of fact, whether the jury was in attendance.
Q. You knew that the demurrer at that term was argued in the case of the State of Minnesota against Davidson & Barisford?
A. How could I if I was not there?
Q. You discovered it by an examination of the files afterwards, didn't you?
A. No sir, I never examined them. I never knew, except from what I was informed.
Q. You were informed of that fact?
A. I was.
Q. At the next term of court, which would be the September term of court of 1874, did the case of the State of Minnesota against Mollison stand upon the calendar?
A. My recollection is that it was upon the calendar.
Q. Did it properly stand for trial just the same as it had before at the September term, 1876?
A. I stated that it was on the calendar.
Q. Were there any attorneys' names on the calendar?
A. I can't say whether there was or not. I don't remember anything about that.
Q. Was there any motion to continue the case on the part of the county attorney?
A. Not that I recollect.
Q. That was one of the first cases on the calendar, wasn't it—had become at that time?
A. I won't state in regard to the order in which it occurred on the calendar.
Q. It was one of the first cases?
A. I say I can't state.
Q. Don't remember anything about it?
A. I don't know.
A. Have you any recollection of Mollison being in court at that term?

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A. No sir.
Q. Don't remember anything about that?
A. No sir.
Q. Don't remember whether he was there or not?
A. I can't say.
Q. Will you swear that he wasn't there at that term of court?
A. That Mollison wasn't there?
Q. Yes.
A. Why, no sir.
Q. Will you swear that he did not appear at that term and demand trial?
A. Yes, sir; I wont swear that he did not appear; I will swear that he did not demand a trial.
Q. Your recollection is better about that part than the other, isn't it?
A. It certainly ought to be; I look to the attorneys for parties, always.
Q. Did Mr. Cameron make any remarks of any kind in respect to that question, in your presence, when he spoke with reference to the bail?
A. At the first term?
Q. My question is whether Mr. Cameron said anything in respect to that case, in your presence, with reference to bail?
A. I will state this: that Mr. Cameron was present in the court room when that case was called.
Q. I am asking you after this time Cameron appeared in court with reference to the bail, whether he made any motion or had any connection with that case in your hearing?
A. I answered it.
Q. You said that he did not?
A. I did not state that; I stated that I did not recollect whether he did or not. I don't recollect his making any motion in the case after that time.
Q. You won't swear that he ever did, will you!
A. Oh! that is what I stated, that I did not recollect.
Q. Have you any recollection of his name ever appearing upon the calendar, as attorney, in that case?
A. I can't say whether it was entered on the calendar by the clerk or not. I can't say in any case whether their names were on the calendar. I never looked at that.
Q. At the special or adjourned term of court, which was held in the month of February, 1877, Gordon E. Cole, and yourself and Mr. Davidson, as I understood you to say, had some consultation in reference to a settlement?
A. Settlement of what?
Q. In reference to the settlement of the case of the State of Minnesota against Davidson & Bassford?
A. We had a conversation in reference to a settlement of some civil actions.
Q. Where did the first conversation take place; at your office?
A. Between whom?
Q. Between yourself, Mr. Cole and Mr. Davidson?
A. No sir.
Q. Where did it occur?

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A. In the court house.
Q. That was the first conversation you had in respect to the settlement of these cases, was it?
A. No sir.
Q. In the court house?
A. No sir.
Q. Now, I am asking you about the first conversation, where did that occur?
A. If you will put your question so as to get at what I am satisfied you want to get at, I will answer.
Q. I will put my question to suit myself?
A. You have put Mr. Davidson into a conversation which he did not attend.
Q. I will put my questions to suit myself.
A. Very well, then, I will answer them you.
Q. I am asking you when you had your first interview with Mr. Davidson and Mr. Cole?
A. I have answered it once and I will answer it again: in the court house.
Q. You did not meet Mr. Davidson, then, in respect to that settlement, at the time you met in the court house?
A. No sir.
Q. Did you go to the court house for the purpose of having that interview?
A. No sir, I did not.
Q. You were there?
A. I was.
Q. On other business?
A. Yes sir.
Q. At the interview which you had with Mr. Davidson, Mr. French was called in, was he not?
A. Yes sir.
Q. What was the object of calling in Mr. French?
A. I don't know, sir.
Q. Who suggested that Mr. French should be called in?
A. I can't tell
Q. Mr. French had nothing to do with any settlement of the suits, did he?
A. I don't know, sir.
Q. Did he have anything to do with the civil suits against Davidson & Bassford?
A. I don't know anything about it; I don't know that he had.
Q. Did you know of his having anything to do with any suit except the criminal suits?
A. I don't know anything about it.
Q. Didn't you understand that the object of Mr. French being called in, was to have an understanding with reference to the dismissal of the civil suits?
A. I did not have any understanding about it.
Q. You went off to a part of the court room that was not occupied?
A. I went there, but the other parties were there when I went, I can't tell you what they were there for.
Q. And that consultation occurred there.

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A. Yes sir.

Q. Did you hear the subject there of the dismissal of the criminal suits discussed?

A. It was not discussed; a settlement was made by myself in regard to it.

Q. Now I would like you to state everything that was said by each of the parties on that occasion, about the dismissal of the criminal suits?

A. I can give you the substance of what I said, and what I heard said.

Q. Yes sir, I want you to state as near as you can remember, the language of the parties?

A. When we arrived there, the first conversation, Mr. Cole requested me to go there. Do you want to know the reason why he requested me?

Q. Now I have asked you what occurred there?

A. Well, Mr Cole first made a statement, said he, Mr. Davidson wants this matter of these cases understood while you are present, he came and requested me to go there.

Q. Which cases?

A. The civil cases, that Mr. Cole and I had been talking about.

Q. Well, go on.

A. I told him that I had no objection to making a statement as to what the understanding was, or for him to make it in my presence; and either he or I, I don't recollect which, stated to Mr. Davidson. My impression now is, that I stated what my understanding of the stipulation was; that Mr. Davidson was to publish an unconditional retraction of the libel that he had admitted he had published concerning my official conduct, and that he was to make no editorial comments upon it. That was a part of the understanding, and that stipulation was to be drawn up by Mr. Cole and signed by the parties and put in the hands of Mr. Cole—that is my recollection in regard to it—and Mr. Cole was to retain it in his possession until the article was published. Then Mr. French or Mr. Davidson, one of them, asked something in regard to the criminal prosecutions against Davidson and Bassford. I then stated that so far as these criminal prosecutions were concerned, that I had no disposition *myself personally* to enforce or prosecute those cases; but I wished it distinctly understood that I did not make any stipulation with regard to them; that the matter would be left entirely in the hands of the county attorney. That was the substance.

Q. That is what *you* said?

A. Yes sir.

Q. Now tell us what the others said. You did not do all the talking, did you?

A. Pretty much; Mr. Cole and myself did pretty much all the talking.

Q. Now, what did Mr. Cole state?

A. I have stated to you that Mr. Cole said in substance to Mr. Bassford that the stipulation was as was stated to them.

Q. What did Mr French say?

A. I don't recollect that he said anything in particular—I can't state; he may have made some remarks with regard to the matter, but I don't recollect that he did.

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Q. Now wasn't Mr. French called up, after you and Mr. Davidson and Mr. Cole had assembled together in the corner.

A. Nor sir; Mr. French and Mr. Bassford were in the back part of the room, and Mr. Cole came after me. I was in the back part of the room—and he said that Mr. Davidson wanted I should make the agreement in his hearing, and I went back with Mr. Cole and had this conversation.

Q. Now, prior to this time, had Mr. Cole, in his interviews with you, mentioned the subject of the criminal case?

A. No sir; it had not been mentioned at all.

Q. He did not enquire of you, whether you had any interest to prosecute the criminal cases?

A. No sir; myself and Mr. Cole had no conversation with regard to it.

Q. Didn't you understand that the reason why Layayette French was called up there was so that he could understand that those cases were not to be prosecuted?

A. No sir, not at all. I can't tell you what he was called up there for, he was there when I went in.

Q You are positive about that?

A. I am sir.

Q. Was any motion made before Judge Dickenson at that term of court to dismiss the prosecution in any of the libel cases?

A. I don't know sir. I was informed by Judge Dickenson that there was. I don't know anything about it; I was not present at that term of court.

Q. Now, you held a term of court which commenced in March after that?

A. Yes sir, I think so.

Q. You found these cases, as usual, on the calendar?

A. I don't recollect as to that. They might have been on the calendar.

Q. You don't recollect anything about what occurred at that term?

A. I don't wish to so state; I don't recollect whether the cases were on the calendar. I think very likely they were.

Q. Now, when you called over the criminal cases and came to these criminal cases, the case ot the State against Davidson and Bassford—there were two of them?

A. I think so, I don't know; I couldn't tell positively.

Q. When you came to the case of the State of Minnesota against Davidson and Bassford, and the case of the State of Minnesota agaist Mollison, at that next term, in the call of the calendar, did you not call those cases at all?

A. I presume I did.

Q. Well, have you any recollection whether you did or not?

A. I have no distinct recollection in regard to it.

Q. You don't recollect what happened there, with reference to calling the cases?

A. I can't say, I presume I did so.

Q. Now, when you called those three cases, do you remember what, if anything, was said by the county attorney?

A. I don't recollect that anything was.

Q. Nothing at all.

A. Don't recollect that there was.

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Q. Were the cases of the State against Davidson and Bassferd, dismissed by the county attorney at any time?

A. My recollection is that they were. I think they were.

Q. Who made the motion to dismiss them?

A. I can't recollect as to that; perhaps the county attorney did?

Q. Is it the practice of the county attorney of your county, of his own motion aud without asking leave of the court, to dismiss criminal prosecutions?

A. Not usually, generally the cases are dismissed on motion of the county attorney, by some statement of fact in regard to them.

Q. But the court makes the order?

A. Yes, usually.

Q. How was it at this time?

A. I say I can't say as to that time; I don't think the cases were dismissed on the court calendar.

Q. Have you any recollection of the circumstances which did surround the actual dismissal of the cases?

A. I have not, my recollection is that—I haven't refreshed my recollection; Mr. French stated at one time that they were to be dismissed by Judge Dickenson and I think he said they were dismissed at the March term.

Q. It has been a little over a year, has it, since these cases were dismissed?

A. I can't say as to that; I know I paid very little attention to those cases, not any attention, in fact.

Q. Let me refresh your recollection; don't you remember that the county attorney moved, at that term of court, to dismiss the cases of the State of Minnesota against Davidson & Bassford, and the case of the State of Minnesota against Mr. Mollison, stating that it was the understanding that those cases were to be dismissed?

A. No sir, not the case against Mollison; he might have moved to dismiss the case of the State against Davidson & Bassford.

Q. Didn't he move to dismiss all three cases, stating that that was the understanding?

A. No sir, he never did.

Q. What did he say when he moved to dismiss the cases of the State against Mollison and against Davidson & Bassford?

A. I don't know, I say that no motion was ever made by him to dismiss the case of the State against Mollison.

Q. Well, you state a motion was made before you to dismiss the case of the State against Davidson & Bassford?

A. I have just said to you, I would not be positive in regard to that.

Q. How is it your memory is so much more distinct about the Mollison case, than the Davidson and Bassford cases?

A. For the reason that this Mollison case has been under my consideration more, and brought up more.

Q. Wasn't the Davidson and Bassford cases just as prominent?

A. No; I think not, they were investigated.

Q. Did they not form as much a subject of inquiry before the judiciary committee at which you were present last winter, as the Mollison case?

A. Well, I should say not as prominent, because it was generally conceded that their retraction made it a pretty weak case.

Q. So you don't remember, and can't state anything that occurred

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at the March term of court, 1877, about the dismissal of that suit, for libel against you?

A. What the Mollison case?

Q. No sir—the case of the State against Davidson and Bassford?

A. I say a motion may have been made, it was not made on the first call of the calendar?

Q. You don't remember anything about it?

A. I have not examined, to see with regard to that matter. It may have been made.

Q. Those were prosecutions against Davidson and Bassford for what you claimed to be a gross and malicious libel against you, and a motion was made in your court to dismiss it before you; and still you don't remember it?

A. I didn't say that there was a motion made; I have heard Mr. French state two different ways in regard to it; if I had an opportunity to examine the records I could see which is correct. I don't recollect whether a motion was made to dismiss; but it might have been made.

Q. Do you remember any circumstances that occurred when an order was entered dismissing the case of the State of Minnesota against Davidson & Bassford, indicted for libel of yourself?

A. No sir; I don't recollect that any order of that kind was made; it may have been.

Q. Do you remember of any mention being made, or do you remember the circumstances which occurred at the time of making any motion before you, at the March term of court, 1877, in the case of the State of Minnesota against Davidson & Bassford, indicted for libel of you?

A. I only recollect this: That on the call of the calendar, at the first opening of the court, that there was no motion made in these cases. If there was any motion made it must have been made near the close of the term, but I have no recollection of the circumstances of it. But the case of the State against Mollison, there was no agreement with reference to it at all.

Q. Now, in reference to the bail of Mr. Mollison, do you remember of a paper being presented to you by Sheriff Hall, at the March term of 1877?

A. I recollect a paper was presented to me by Sheriff Hall, but whether that was the term or not, I wouldn't say.

Q. Do you remember of its relating to the surrender of the bail of Mr. Mollison?

A. I can't say that it related to the surrender of the bail, I say there was a paper, but what the contents of the paper were I can't state now.

Q. You don't remember what they related to, do you?

A. Why, they related—there was some statement that purported to be signed by, I think, Mr. Jones and Mr. Gates; whether by all of them I don't recollect.

Was the court in session when this paper was brought up to you?

A. No sir, it was not.

Q. You were sitting at your desk in the court room, were you?

A. It was after court had adjourned, yes sir.

Q. But it occurred in the court room?

A. In the court room, yes sir.

Q. Now, when this paper was brought up to you did you take and open and examine it?

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A. I did look at it, yes sir.
Q. Didn't you say to sheriff Hall at that time to put it in his pocket, that it was none of his business?
A. No sir, I did not.
Q. You handed the paper back to him?
A. Yes sir.
Q. You don't recollect of making that statement and swear to it, do you?
A. Why certainly I do.
Q. Now with reference to the indictments against Benson, Beisicke and Walsh; these parties were indicted for a riot, were they not?
A. I can't state to you the specific charge contained in the indictment; it was some matter connected with a riot or so-called riot.
Q. The indictments were demurred to and the demurrers argued before yourself, were they not?
A. Yes sir.
Q. But you don't remember what the charge was?
A. I can't state the specific charge now.
Q. Don't you remember that it related to the conduct of those parties which occurred on the occasion of the so-called whisky riot?
A. Why I have just stated that it was some matter growing out of that riot.
Q. Don't you remember that the indictments were for what they had done, or omitted to do, on that occasion?
I think it was something of that nature, but what the specific charge was I won't state.
Q. The indictment was found during the September term of court, 1874?
A. 1874; that is my recollection in regard to it.
Q. They, before that time, had been complained of before a committing magistrate and had been bound over to answer the charge?
A. I won't say as to that neither.
Q. When they were arraigned they were arraigned the same term on which the indictment was found, were they not?
A. I presume they were; I won't be positive.
Q. They came into court and interposed a demurrer?
A. Yes sir, the indictments were demurred to?
Q. When was that demurrer argued and submitted to the court for determination?
A. I think the demurrers were argued partially at the March term, 1875, and then afterwards written arguments and authorities were submitted.
Q. Were not the demurrers submitted at the September term, 1874?
A. O! no sir; no sir; no sir.
Q. The cases were passed entirely at that term of court, were they?
A. Yes sir—continued.
Q. The cases were on the calendar, were they not, at the March term, 1875?
A. Yes sir; that is my recollection in regard to them.
Q. What day in March does that term of court commence in your county?
A. Well, the third Thursday in March, I think; there was a time when it was the second Tuesday in March; it was changed two or three times.

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Q. When did you first learn that the county attorney was subpœaning witnesses on behalf of the State to attend that term of court for the trial of those cases?

A. I learned it last winter before the judiciary committee of the House the first time.

Q. When did you first learn that witnesses were being subpœnaed to attend at that term of court, on behalf of defendants?

A. I learned that during the term of court, 1875.

Q. How far had the court advanced before you learned that fact?

A. That is, how long from the commencement?

Q. Yes sir.

A. I really can't say; my recollection is that we were engaged in the trial of causes.

Q. How did you learn that these subpœnas had been issued, and from whom?

A. I learned it of the clerk; that is, I inquired of the clerk in regard to it; my attention was first called to it from something that I saw going on in the court room, I think it was, what appeared to be, parties coming in and going out, if I recollect right.

Q. Now, who came in and went out?

A. I wouldn't be positive in regard to that.

Q. Don't remember anything about it?

A. No, I can't state.

Q. You knew who they were at the time?

A. Why, very likely I did.

Q. Was there anything unusual in seeing parties coming in and going out?

A. There was something unusual about this.

Q. What was it?

A. My suspicions in regard to the matter were aroused, form the fact that I had heard it stated on the streets that it was the intention to summon the whole town to give the evidence in those cases; I had heard such intimations.

Q. But you do not know who you heard it from?

A. I can't state.

Q. Did you hear the intimation that the subpœnas were being issued before you spoke to the clerk?

A, Well, I did not speak to the clerk until I saw movements in the court room, that indicated to me that such might be the case, and then I inquired of the clerk whether it was or not.

Q. When this inquiry took place, was it while the court was in session?

A. Yes sir.

Q. Was it not either before the court had commenced in the morning, or after dinner, or after the court had adjourned?

A. No sir.

Q. Wasn't it in this way; didn't you hear statements on the street that witnesses were being subpœnaed, and before the opening of the court speaking to the clerk about it?

A. The statements I have made, the inquiry that I made of the clerk was, during the session of the court—in open court.

Q. Did you make it so that the bystanders could hear it?

A. Mr. French was present, and he testified he heard it, I don't know whether he did or not.

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Q. Now wouldn't you please tell me precisely what you said to the clerk of the court?
A. What I said to the clerk of court?
Q. Yes.
A. I inquired of the clerk of the court if they were getting subpœnas and serving them in those cases.
Q. No, just give us your language?
A. That's what I am saying; that is what I inquired of him, if they were getting subpœnas in those cases.
Q. In what cases?
A. In those criminal cases.
Q. What did he say?
A. He said that they were, I think I inquired of him how many they had issued, and he said they had got a large number.
Q. Did he tell you how many?
A. I can't say that he stated the exact number.
Q. What did you say to that; give us your words?
A. Exact words?
Q. Yes sir, your exact words as near as you can remember.
A. Why Mr. Clough, if I should undertake to use the exact words, I could not do it. I will give you the substance of my words.
Q. Give us your exact words as near as you can remember?
A. I will, sir, give the substance of them: I said to them that there were demurrers pending in those cases, and that in my judgment there was no need of witnesses in the cases. There were no issues of fact to try, and that it was an unnecessary and useless expense; and I then said to him that the expenses on costs of serving those subpœnas, would not be paid by the county.
Q. Which subpœnas?
A. The subpœnas that had been issued that we were talking about, sir.
Q. Did you say anything about issuing any more subpœnas?
A. Yes sir; I told him not to issue any more.
Q. Did you say anything about making an order in the matter?
A. I didn't tell him anything further than that.
Q. That is all you said to him?
A. Yes sir; that is the substance of what I said to him.
Q. Did you, or not, say anything to him about entering an order in the case?
A. I did not tell him to enter any order; no sir. Did not consider it was necessary.
Q At that time the cases were still pending?
A. They were pending on demurrers, there had been no issue of fact joined.
Q. The cases had not come to a conclusion?
A. Well, they were pending; of course they had not come to a conclusion. I suppose you knew that.
Q. Now, when after that did you hear the subject of that order or direction you gave to the clerk, first mentioned or discussed?
A. I can't tell you sir.
Q. Did you hear it mentioned or discussed until the subject was brought up before the board of county commissioners when Thomas Riley's bill was before it?
A. I have no recollection that the order was the subject. I think

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the subject of the payment of the fees was discussed; that is the principal quession—the payment of those fees was discussed.

Q. When and where?

A. Well, my recollection now is that I had some conversation with one member of the board of county commissioners, but I will not say positively in regard to that.

Q. Who was that?

A. My recollection is that I had some conversation with Mr. Richards, who was a member in the district there; or with the chairman of the board.

Q. Now, at this time that you had the conversation with the clerk of the court, that you have narrated, was Thomas Riley present, or either of the defendants in those indictments?

A. I will not say that they were, or were not.

Q. You don't remember of either of them being there?

A. I don't recollect that either of them were there.

Q. Did you ever direct any notice to be given to either Thomas Riley or the defendants, or either of them, in those cases, that you would consider and determine the matter as to whether the county should pay for those subpœnas?

A. No sir. I told the clerk to tell them, if they applied for any more subpœnas, that they could not have them; and what I had said about them.

Q. They did not appear before you at any time, to be heard with reference to whether the county should pay the costs or not?

A. No sir, not before me.

Q. That's what I mean; before you had this conversation with the clerk, or before this suit was brought by Thomas Riley?

A. Yes, sir.

Q. Now, when did you first hear of Mr. Riley presenting a bill to the county in respect to the payment by the county of those costs?

A. I really can't tell you.

Q. You don't know who you heard it from?

A. No, sir; I couldn't state positively.

Q. Nor where you heard it?

A. No, sir.

Q. Do you know when Mr. Riley presented his bill to the commissioners?

A. I do not; no, sir.

Q. Do you remember when you first went before the county commssioners, when the subject was discussed of Mr. Riley's bill?

A. Yes, sir; I think I do.

Q. When was that?

A. I think the first time I was before the county commissioners when the subject was discussed—you mean the month or the day?

Q. Yes, sir; the month and the year.

A. My recollection is that it was in January, 1876.

Q. Are you positive as to the time when you were first before the board on that bill?

A. On the Riley bill?

Q. Yes, sir.

A. I could not say positively as to the exact date.

Q. Wasn't it in the month of March, previous to that time?

A. No, sir.

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Q. How many times was the Riley bill discussed when you were present before the board of county commissioners?
A. Only once.
Q. You are positive of that?
A. I am quite positive on that.
Q. You say that was the occasion when you had the words with Lafayette French?
A. No, sir.
Q. I understood you so?
A. You misunderstood me.
Q. When was it you had the words with Lafayette French?
A. That was the time Geo. Baird's bill was under consideration by the board.
Q. When was that?
A. That was a year previous, I think.
Q. Was it at the January term, 1875?
A. '75—I think so, yes sir.
Q. Have you anything in particular that you can state to the Senate, by which you fix that time when you had the discussion, or difficulty, with Mr. French?
A. Any particuiar event?
Q. Yes sir, any particular event of any kind?
A. No sir. I don't think of any event now; I think I have examined the records at some time, with reference to that matter.
Q. Let me refresh your recollection. Was it before or after the preliminary examination in the Jaynes case had occurred, that you had difficulty with Mr. French.
A. Whether it was before or after?
Q. Yes sir.
A. I never thought of it in reference to that event.
Q. Well, just think of it a minute with reference to that, whether it occurred before or after Mr. Jaynes had his examination?
A. I can't state the time when that examination occurred, now.
Q. Well, I am asking you with reference to that.
A. Well I would not state. I say I can't state without any reflection about it, and I don't know that I could if I did reflect about it.
Q. Up to the time you had this discussion before the board of county commissioners with Mr. French, you had been on friendly terms, had you not?
A. Well, we were friendly so far as I know, so far as I was concerned.
Q. At time of holding the first examination in the Jaynes case, what were your relations with Mr. French?
A. So far as I was concerned, I was friendly toward him.
Q. Had this difficulty occurred?
A. I can't say.
Q. Do you remember anything about it?
A. Whether it had occurred at that time?
Q. Yes?
A. Why, I have told you that I did not.
Q. Can't you tell within a year, when the examination in the Jaynes case occurred?
A. I think I can sir, by reflection.
Q. Well, just reflect a moment.

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A. It was in the winter; a conversation occurred, while there was snow on the ground. I recollect that very well.

Q. There is generally snow every winter here, ain't there in this country?

A. More or less there is, I believe.

Q. So that there being snow on the grouud, would hardly be a criterion?

A. Well, that would be something of an idea in this latitude, and I recollect there was snow from other reasons.

Q. Now, can you state the year?

A. It occurs to me that it was in 1875, but I will not be certain about that.

Q. Might it not have been 1874?

A. Well, my impression is, that it was not.

Q. Mr. Jaynes had had his examination before you as a magistrate?

A. Yes sir, I stated that once

Q. You have sat in that capacity a very few times.

A. Not a very great many times.

Q. Since you have been on the bench, can you state how many times you have sat as examining magistrate?

A. I really can't tell.

Q. I understand you, in your examination-in-chief, to state that you had only sat a few times?

A. That is what I stated.

Q. Not more than three or four?

A. I will not undertake to state the number.

Q. That was a very important and somewhat exciting case?

A. That was, yes sir. I have stated my best recollection in regard to it?

Q. Was it in the year 1875?

A. That is my recollection in regard to it; it might have been the winter of 1874&5. My recollection is, that it was the latter part of the winter of 1874 and 1875. That is my recollection in regard to it.

Q. Now, with reference to that examination of Jaynes, Mr. French appeared as county attorney, didn't he?

A. He did sir. Requested me to entertain—

Q. Did the discussion that you had with Mr. French before the county commissioners occur before or after?

A. I can't state, sir—I don't remember; but I think it was afterwards, though.

Q. Don't you remember that up to the time that examination in the Jaynes case, yourself and Mr. French were on quite friendly terms, so much so that he came to you and asked, as a favor that you should hold that examination yourself?

A. No sir. No relation existing between us led to that result at all. He came to me and asked me in behalf of Mr. Wilber's people; said that they sent a special request that I would introduce the complaint.

Q. Mr. French, at all events, was the party that made the request?

A. Yes sir; he came to my house on Sunday morning and made the request. I said a few moments ago that my impression is, that it was after that that his difficulty occurred between us.

Q. Do you remember at the March term of court 1875, in a case where a motion for a continuance was made by Mr. E. O. Wheeler that Mr. French who appeared on the other side, was in a very curt manner ordered by you to sit down?

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A. No sir.
Q. When he proposed to speak?
A. No sir.
Q. You don't remember anything about that?
A. No sir.
Q. Your memory has passed entirely from that point?
A. I have no recollection of any such transaction.
Q. Then there is no event in the world which you can give to this Senate by which you can fix the time when you appeared before the board with reference to this Riley bill, in January, 1876?
A. Why, I don't recollect it in connection with any particular event; there may be events by which I might remember it; I recollect that Judge Felch came up to my house and requested me to go down there to appear before the board.
Q. On the occasion when you say the Baird bill was up, and when you say you had the words with Mr. French, won't you state just what occurred there, on that occasion?
A. Yes sir, I will give you the substance of it; I went into the room and I think the commissioners were engaged in eating apples when I went in, sitting about the table with the clerk of the board.
Q. Sitting in what room?
A. In the auditor's office; the clerk of the court, Mr. J. P. Williams, was present, and after I went in a discussion occurred with reference to the bill—that is the bill—it seems Mr. Baird had presented a bill; I think he had just gone out of office, if I recollect right, and he had presented a bill covering the lapse extending back into his term of office, and some of the commissioners remarked with reference to that fact, that if a bill of that kind were to be presented, it perhaps ought to have been included in other bills; some general talk of this character took place, and the commissioners made some inquiry of me, with reference to some items of the bill.

And about this time I think Mr. French came in; my recollection is that he was not there at the time I went in; I would not state that positively, however, but that is my recollection of it; and he questioned some of the items; some questions arose in regard to them, and some of the items I had stated to the board that I thought ought not to be allowed, and some remarks that took place between us, the exact language I don't recollect now; but he finally charged me with being corrupt in office, said I was corrupt in office.

Q. You don't remember the intervening remarks just before that?
A. Well, very few words occurred.
Q. You don't remember what you said to him?
A. The discussion grew out of the fact of there being difference of opinion in regard to these items—
Q. Mr. Baird went out of office on the 1st of January, 1875, and was succeeded by Mr. Hall?
A. Do you make that as a statement?
Q. Well, I am asking you as a question?
A. Well, I didn't understand you so to state.
Q. That is so, is it?
A. You state it again.
Q. Mr. Baird went out of office the 1st of January, 1875, and was succeeded by Mr. Hall; is that a fact?
A. Mr. Baird was succeeded by Mr. Hall.

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Q. Well, was that on the 1st day of January, 1875?
A. Well, it might have been.
Q. Do you remember whether it was or not?
A. Well, I can't tell; I think Mr. Hall is on the fourth year; I think his term of office expires on the 1st of January, 1879; I think this is his second term; that would be four years.
Q. That would make the time that Baird went out of office the 1st of January, 1875?
A. Yes sir, I think so.
Q. Now, had this bill of Baird's, which he filed there, ever been seen before?
A. I don't recollect that it had; I don't recollect about that.
Q. Wasn't this a bill that Mr. Baird filed after he went out of office?
A. I don't recollect anything about that.
Q. Don't you remember that Mr. Hall had his bonds approved at that same meeting?
A. I don't know.
Q. Haven't you any recollection at all of ever having seen that bill of Mr. Baird's, before?
A. I have answered several times that I had not.
Q. Now, you testified before the House judiciary committee of the House of Representatives?
A. Yes sir.
Q. And among other things, you testified about this bill of Mr. Baird's?
A. I gave some testimony in regard to it.
Q. Did you not testify to this: that you found Mr. French, the county attorney, at this meeting, advocating some of the items of Mr. Baird's bill, and from that you knew that he had changed his opinion, because, on the previous occasion when that bill was up, he had opposed it?
A. I don't think I made such a statement as that, in the language that you give; I might have said that Mr. French was having some discussion in regard to that bill—
Q. No, this was the point: that that bill had been up before, and Mr. French had opposed some of the items, and, after that, he had changed his opinion and was advocating its payment?
A. I have no recollection of stating that I had seen the bill before, nor have no recollection of using the language you use.
Q. Do you remember what you did testify to before the judiciary committee, on that point?
A. I think I testified substantially as I have here, in regard to that matter; I don't say that I used the same words I use here.
Q. What did you say about that in your testimony before the judiciary committee, about the Baird bill having been up before?
A. Why it might have been up before.
Q. That is not the point; I am asking you what you testified to before the judiciary committee about that?
A. About its having been up before?
Q. About its having been up before, and Lafayette French objected to some of the items; then when it came up this time, he advocated their payment?
A. Well, there might have been a conversation about that bill.
Q. No, that is not the point; but what you testified to before the judiciary committee?

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A. Well, I don't think I testified to that in the language you give.

Q. Now what did you testify to before the judiciary committee?

A. I think I gave the testimony there in substance as I did here, if any question was asked me in regard to whether I had seen the bill before that, I stated as I do here, that I had never seen that bill before.

Q. Do you remember of there having been a session of the board of county commissioners, in March, 1875?

A. I can't say whether there was or not.

Q. Do you remember of being present at any such session?

A. In March, 1875?

Q. March '75, yes sir?

A. No sir, I have no recollection of it.

Q. Was there a regular meeting of your county board in March?

A. I cannot tell you sir; ordinarily, I think they have a session in March.

Q. At the time you went before the board of commissioners with respect to this Baird bill, how did you happen to be there?

A. I happened in there accidentally.

Q. Didn't go in there on purpose, on account of that bill?

A. No sir, not at that time.

Q. Prior to that time had you ever opposed the allowance of the bill of any official in that county?

A. I don't recollect; I presume I had, a great many times.

Q. Do you remember of any instance where you appeared before the county commissioners opposing any bill?

A. Why, yes sir.

Q. Since you were judge?

A. No sir, I don't recollect any such instance.

Q. Do you recollect of having opposed any county official's bill, since you have been judge, except Mr. Baird's and Thomas Riley's bill?

A. I don't think I have had anything to say.

Q. Answer the question, whether you have or not?

A. I say I don't think I have interposed any objection; as soon as I found there was any trouble about the bills I have kept away from the county commissioners entirely.

Q. Mr. Kinsman was present on one occasion when the Riley bill was up, and you were opposing it before the county commissioners?

A. I think he was.

Q. On that occasion, when the Riley bill was up, did any words occur between you and Mr. French?

A. Not to my knowledge; not that I considered so.

Q: Now, won't you tell us what Mr. Kinsman said on that occasion about the Riley bill?

A. Well, I have no recollection that Mr. Kinsman said anything.

Q. How did you happen to be there on that occasion?

A. I went there at the request of the chairman of the board, Mr. C. J. Felch.

Q. At what time of day did Mr. Felch see you, with reference to appearing before the board?

A. I really can't tell you; I think it was sometime in the middle of the day.

Q. Did you tell the board when you went there, in what capacity you appeared?

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A. I said to them—yes, I said to them, that I was a tax payer, and interested in the payment of bills, and that I appeared as a citizen and tax payer.

Q. You told them you appeared as a citizen and tax payer?

A. Yes sir.

Q. But you don't remember of Mr. Kinsman saying a word then?

A. I don't recollect that he did.

Q. Tell us what Mr. French said.

A. My recollection is that Mr. French was very quiet, and said but little.

A. I won't say that he didn't say anything, but he said very little, certainly. Mr. Kinsman said very little.

Q. Who was it that did most of the talking besides yourself, when you were there; or did you do it all when you were there?

A. Oh, I didn't do it all, the county commissioners asked me some questions in regard to the matter, and I made an explanation of the bill?

Q. Didn't you here refer to other bills that had been up before you, in other places, especially in Freeborn county?

A. No sir, no particular cases. I might have stated that a question of costs, and the allowance of costs, was a matter that frequently came up, but I mentioned no particular bill.

Q. Didn't you mention a case that had been argued by Mr. Wells in Fillmore county?

A. No sir, because no such thing ever occurred.

Q. Did you refer to Mr. Colburn having a case before you?

A. No sir.

Q. No lawyer in Fillmore county?

A. I don't think I mentioned anybody' name in regard to the matter.

Q. Will you swear that Mr. Kinsman did not say in your presence that if that bill was disallowed Mr. Riley would bring legal proceedings against the county, to enforce it?

A. I testify that if he said it I didn't hear it.

Q. Well, you testify that when that was said you did not say "let him sue?"

A. I do sir.

Q. Will you testify that one of the county commissioners said that if this bill was disallowed Mr. Riley would sue the county?

A. I will say that I did not hear it.

Q. Do you deny that you made the statement in reference to any of those statements, "let him sue?"

A. Yes sir.

Q. Did you say anything before the board of county commissioners, as a reason why this bill should not be allowed, that there had been too many witnesses subpœnaed for the cases?

A. I don't think that was the ground on which I placed it. The number of witnesses might have been mentioned, but I did not give that as a definite and specific reason why the bill should not be allowed.

Q. You did not make any point against the bill at all on the ground of too many witnesses?

A. Why! I made no point against the bill as to the number of witnesses.

Q. You did not say that it was a reason why this bill should be disallowed, that there were more witnesses than was necessary?

A. I don't think that was a specific point.

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Q. Did you make any other specific point, that demurrers were pending, and that witnesses were unnecessary?

A. I made another point—that I considered the whole bill and the manner in which it was gotten up, a fraud upon the county, if they attempted to enforce the collection of it.

Q. You knew Benson, Beiseicker and Walsh?

A. I can't say that they had ever been accused of crime before in Austin.

Q. They were respectable men for all you knew?

A. I knew nothing to the contrary.

Q. The offense they were charged with was a penitentiary offense, was it not?

A. I really couldn't say that; I don't know now.

Q. Did the examination take place before you as committing magistrate, when these parties were confined?

A. My recollection is that it did not; it is possible, perhaps, that some of them did. I believe some of those persons were examined before me. Some of them were brought before me and some before magistrates, but I will not say which one now.

Q. Before you; how many witnesses were subpœnaed by each of those persons for the trial?

A. I don't remember the exact number. I couldn't state the exact number.

Q. It was between twenty and twenty-five, was it not?

A. Well, I think about thirty; that is my recollection of it. The same witnesses were subpœnaed for all of them.

Q. There were three separate cases, were there not?

A. Yes, but they involved the same transaction.

Q. That is not what I am asking you?

A. There were three separate indictments.

Q. Now this occasion, where the act for which they were indicted took place, was one where there was a great concourse of people present, wasn't it?

A. There were a good many people.

Q. And saw what they did?

A. As I understood it, yes sir.

Q. In other words, the question that arose in this case was whether there was a riot at Austin on the occasion of the so-called whisky riots; wasn't that the question of fact if there had been one to be tried in this case; don't you remember that that was the question of fact?

A. I will answer that in this way: I have stated probably six or eight times that I couldn't state the crime that was charged in those indictments.

Q. Don't you remember that you drew the complaint?

A. No sir.

Q. Now, assuming that the question to be tried in that case, if there was one of fact, was whether there was a riot in Austin on the Saturday night that has been spoken of; you think that twenty-five or thirty witnesses were more than were necessary?

A. I think *entirely* more than was necessary.

Q. Now isn't it a fact that you have subpœnaed thirty witnesses here on that very point?

A. I don't think it is.

Q. How many witnesses have you subpœnaed here on the question of whether there was a riot on that occasion?

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A. I couldn't tell you.
Q. Havn't you subpœnaed thirty?
A. I should think not.
Q. How many have you subpœnaed?
A. I have just told you I couldn't tell you; I can't tell you because I don't know.
Q. Thirty isn't much above the figure is it?
A. I can't tell you; I don't know because I haven't counted them.
Q. You won't swear that thirty is much above the figure?
A. I won't swear; it may be above and it may be below.
Q. You examined each one of these offenders, didn't you, when he had this preliminary examination?
A. Well, I have answered all of that matter three or four times.
Q. You, yourself, was very much excited about the so-called riot?
A. No sir, not at all.
Q. And the farce in connection with the facts impress themselves very deeply upon your mind?
A. I recollect the facts, yes sir.
Q. And you examined, sitting as a committing magistrate, the case of each and all of these defendants?
A. I said to you that my recollection was that I examined some of them, but whether these defendants or not, I can't say.
Q. Well, who did you examine?
A. I examined some of the cases; there were one or two cases that were discharged, and some let to bail.
Q. The records show that you examined them; you can't remember the offense that was charged?
A. I can only state that the offense was some matter growing out of the riot; whether it was disobedience to the ordeas of an officer, or engaging in the riot itself I will not undertake to state, because I have not examined the indictments recently, nor refreshed my recollection about that.
Q. Didn't you make the draft or form in the case of the State of Minnesota against Beisicker, yourself?
A. I don't think I did.
Q. With your own hand?
A. I don't think I did.
Q. Will you swear you did not?
A. It is possible I may have reduced the complaint to writing, but my recollection is that these complaints were drawn up by other parties.
Q. You took a special interest in the prosecution of those cases?
A. The same interest I would have in the prosecution of any crime—no more, no less.
Q. Now, when the case came before you in court—this Riley case—Mr. Kinsman opened his case to the court, did he not?
A. The Riley case?
Q. Yes sir.
A. No sir.
Q. What was the first thing that was done there?
A. The first thing that was done after the parties came in?
Q. Yes sir.
A. I think the parties, one or the other of them, stated that they had made a stipulation in regard to the facts in the case.
Q. Who was it said so?

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A. Whether it was Mr. French or Mr. Kinsman, I am not prspared to say; but my recollection is that it was Mr. French.

Q. Was this trial in the court room or at your chambers?

A. At my chambers.

Q. Who was present besides Mr. Kinsman and Mr. French?

A. I think no one.

Q. When did you first hear of the circumstances of the case before that?

A. I have no recollection that I ever heard of it before they came there; unless, as I stated, that Mr. French, or one of the other parties had said to me that they had stipulated to try some case before me, naming the time and asking me if I would hear it at that time.

Q. Who wrote the stipulation?

A. My recollection is that Mr. French wrote it.

Q. During the progress of the reading of that stipulation did you interrupt Mr. French in reading?

A. During the progress of the reading. Mr. French read the stipulation through, and when he called attention to the fact—

Q. Well, just give us the words, as nearly as you remember—what you said to him?

A. Well, that is what I am saying, I said to Mr. French: There is one item in the stipulation, which I think is not in accordance with the facts.

Q. You said you thought they were not in accordancc with the facts? Was that the words you used?

A. Or "It is not;" I can't say that I used the word thought, but that is what I said to him, that it was not in accordance with the facts.

Q. Did you ask him then to let you see the stipulation?

A. I don't recollect. I might have had it; Mr. French might have handed it to me, but my recollection is, that he asked me what part it was; and I called his attention to the part of it relative to the making of an order; and then Mr. French said that it was not in accordance with the facts.

Q. When you called his attention to the fact, did you read the passage?

A. Why, certainly not; he had it when I called his attention to it.

Q. What I am speaking about is, when you took it from him, did you read it?

A. Did I read it?

Q. Yes sir; read it over so as to call his attention?

A. It might have been read over; I don't recollect as to that.

Q. You took it from him, did you?

A. I wouldn't state as to that; I don't think I took it from him; I say that Mr. French may have handed it to me. My recollection is this: That when I called the attention of Mr. French to that part, we then had some conversation in regard to it, and he either showed it to me, or I asked him to look at it, for the purpose of seeing how it was worded. I might have taken it; I might have had it in my hands.

Q. When you mentioned the fact of that not being in accordance with the truth, what did Mr. Kinsman say?

A. Mr. Kinsman didn't say anything of any account at that time; he didn't say but very little.

Q. When you said that that was not in accordance with the fact, what else did you say with reference to that part of the stipulation?

A. The next remark I made was in reply to what Mr. French said.

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Mr. French said that if it was not in accordance with the facts, he didn't want the stipulation to remain, or words to that effect, and he wanted to know how I understood that matter, or words to that effect, and I then stated to him the matter as I understood it, and he said that a part of the time he was in the court room, and heard me give this direction to the clerk, that the fee should not be paid, and then after saying that he recollected it, he took the position that that part of the stipulation should be stricken out.

Q. Now wait a moment. Do you remember that at that time Mr. French had been before the board of commissioners, when you said to the commissioners you had made an order, and had given the circumstances? I say, on this occasion you remembered, when you had spoken to Mr. French about that not being in accordance with the fact that Mr. French had been before the board of county commissioners, when you had called the attention of the board to what you had said to the clerk?

A. Yes sir, I knew all about the facts.

Q. Did you refer again, when you made the statement that this part of the stipulation was not in accordance with the facts, that you had so stated to the board on this occasion, that Mr. Kinsman and Mr. French were present?

A. I don't recollect that anything was said about the board, except what Mr. Kinsman and Mr. French said, if evidence would be allowed.

Q. Mr. Kinsman did not say anything at all about its being stricken out?

A. I don't think that he did, but I understood Mr. Kinsman to consent. Mr. Kinsman is a very quiet sort of a man.

Q. What did he say on this occasion?

A. I don't recollect any words he said to me, but he and Mr. French had a little conversation in regard to it. My recollection is that Mr. French turned to him and asked him something about it, and they had a little conversation in regard to it.

A. I can't say what Mr. Kinsman said. Mr. French,—I can recollect more distinctly what *he* said.

Q. Who had the stipulation in hand, at the time of this conversation between Mr. French and Mr. Kinsman?

A. I wont say which; I may have had it in my hands.

Q. Who finally struck out those words?

A. Iwont say that either; I might have erased them. I wont be positive in regard to that. Mr. French may have erased that. One or the other of us did.

Q. There was something said about the proof upon the subject, wasn't there?

A. Yes sir.

Q- Who was it first mentioned the subject of proof?

A. Well, I don't recollect; it was talked of by the parties that were present, that if the stipulation was taken out, the proof should be given on that question of fact—that would leave a question of fact to be tried.

Q. Did Mr. Kinsman want to have the privilege of introducing evidence?

A. Why, he had the privilege, yes sir.

Q. Well, did he ask for the privilege?

A. I don't know that he asked that specific question.

Q. Did he make any offer to bring in evidence bearing on that point?

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A. I don't recollect that he offered to make any proof on that particular question.

Q. Did he offer any proof as to whether or not you had made any direction to the clerk?

A. Well that is the point I say; I say I don't recollect that he offered to make any proof as to what I said to the clerk.

Q. You did not think your statement would be competent proof.

A. I didn't think it would be competent proof in that case.

Q. You did not think what you had said before the board of county commissioners, as to what you had done, was any evidence of what you had done?

A. I did, sir.

Q. Why didn't you let Mr. Kinsman prove it, then?

A. Because I didn't think it was in issue; Mr. Kinsman did not offer to prove anything; he asked me if I would hear evidence, as to what I had said before the county commissioners; I said to him that it did not occur to me that that was pertinent to the issues in the case, and that was all there was said about it.

Q. Did not Mr. Kinsman, right then and there, claim you had said before the board of county commissioners in January, only two months previous to this time, that you said you had made no order?

A. No sir, he did not say that; he did not say anything in regard to it; he did not make that statement.

Q. Didn't he make an offer to prove that?

A. No sir.

Q. Now, didn't you understand one of the issues of fact to be tried, was whether or not you had made an order, or gave direction for an order about the payment of Mr. Riley's fees, before the county commissioners?

A. That is one of the issues that remained after the stipulation was stricken out.

Q. Did you regard your own assertions, as to what you had done before the board of county commissioners, as no evidence of what you had done?

A. I did not consider it was evidence proper to be introduced in that case, hearing it before me.

Q. Then you thought what you had said upon the subject would not weigh at all with that court? [Laughter.]

A. I didn't think anything of that kind; I thought it would have very great weight with that court, if it was a proper thing to be considered in the issue; I did not consider it was a proper matter, or pertinent to the issue.

Q. And Mr. Kinsman sat all this time and allowed you to strike out that stipulation without making any protest against it at all?

A. He certainly did, sir.

Q. Because, you say, he is a very quiet man?

A. That is the fact.

Q. He is so quiet that he will let the interests of his client be taken away without making any efforts to save it?

A. I think Mr Kinsman, if you wish to know my opinion, frequently stipulates away the interests of his client in some cases.

Q. You thought he did so in that case, when he consented to the altering of that stipulation?

A. No sir, I did not; not at all.

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Q. You first met Mr. Riley on this celebrated Saturday night, did you not?
A. What do you refer to?
Q. Of the so-called "whisky riots;" I say you first met Mr. Thomas Riley on the night of the so-called whisky riots?
A. I think—my recollection is—that I saw Mr. Riley in the crowd on that night.
Q. Had you known Mr. Riley before that?
A. I had known him by sight.
Q. What official position did Mr. Riley hold on that occasion?
A. I don't know, sir.
Q. He was a city officer of some kind, was'nt he?
A. I don't know, sir.
Q. You don't know what the officials all are in the city of Austin?
A. I don't; I couldn't name the aldermen in the city of Austin to-day; I could not last year.
Q. Well, that is not important; you had some words with him that night, didn't you?
A. No sir.
Q. You thought he insulted you that night, didn't you?
A. No sir.
Q. You didn't think so?
A. No sir; I didn't.
Q. You did have some conversation, did you not?
A. I don't recolleet; I might have had some conversation.
Q. Now, tell us what the conversation was you had with him that night, on that occasion?
A. I have no recollection of having any conversation with him, sir.
Q. You don't remember any?
A. I may have met him, or may have said something to him with regard to the dispersing of the crowd that was there on that occasion; but I don't recollect, sir, certain whether I did or not.
Q. That matter has all gone from your mind?
A. There is no particular matter to go from my mind. I remember seeing Mr. Riley on that occasion, and my recollection is that Mr. Riley was there assuming to act as some sort of an officer.
Q. You never have been friendly with him since, have you?
A. I never have been friendly or unfriendly with him.
Q. When did you first hear of Mr. Thomas Riley's being one of the prospective deputies of Mr. Hall?
A. I can't say when; I don't know that I recollect; I can't tell you.
Q. Now, you speak about a conversation you had with Sheriff Hall, in respect to his election, and his procuring votes by agreeing to appoint certain persons deputies; Mr. Riley was the man you meant, was he not?
A. I did not mean any particular person.
Q. Well, didn't you mean Mr. Riley?
A. Well, I did not mean any particular person at that time, because I heard—the statement was made in a general way—I heard afterward that he had made such promise to Mr. Riley.
Q. When was it with reference to the election, that you heard Mr. Hall had made promises?
A. On election day.

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Q. That was the first time?
A. Yes sir.
Q. Who told you?
A. I really can't tell you.
Q. And you say no names were given?
A. No sir; I came home on election day, from a term of court in one of the eastern counties, and very soon went to the polls and voted; it was on general election; I went directly away; on my way from the polls I heard that statement made by some one
Q. How long was it after Mr. Sheriff Hall was qualified before he appointed Thomas Riley one of his deputies?
A. I don't know that he ever appointed him, sir.
Q. Don't you remember that it was very shortly afterwards?
A. I told you that I didn't know that he was *ever* appointed deputy sheriff. I have no personal knowledge in regard to it.
Q. When did you first have an interview with Sheriff Hall about the propriety of appointing Mr. Riley?
A. Not at all, sir; I do not say that the propriety of the appointment of Thomas Riley was ever mentioned by Mr. Hall in my hearing; it may have been, but I have no recollection. Well, in fact, I state that no interview of that kind ever took place between me and Mr. Hall.
Q. Now, those remarks that took place at Engle's store, when did that happen, with reference to the election?
A. It was after the election; that is my recollection.
Q. How long?
A. I really can't tell you; but it was very soon after; that is my recollection.
Q. Did Mr. Hall and you go that place together?
A. No sir; we met there.
Q. Which came first?
A. Well, my recollection is that I was there first, in conversation with Mr. Engle.
A. And Mr. Hall came in?
A. I won't be positive about that.
Q. Now, who opened up the subject, when you came there, of the appointment of deputies?
A. The subject of the appointment of deputies was not under consideration there.
Q. It was not mentioned at all?
A. If it was mentioned only incidentally in the general conversation with reference to another matter. The subject under consideration was the propriety of such kind of contracts—the contract of making promises for the purpose of securing votes at general elections.
Q. Had you and Mr. Engle been discussing that question before Mr. Hall entered?
A. I think we had; I think we had had some conversation about it; and then Mr. Hall came in and the conversation was continued. I cannot say how long we had discussed that.
Q. And you did not mention any names?
A. I do say that we had not.
Q. Had you mentioned names?
A. Names may have been mentioned, yes sir; Mr. Hall's name may have been mentioned.
Q. I mean the names of deputies?

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A. Not that I recollect.
Q. Didn't you mention Thomas Riley's name?
A. I don't think we had.
Q. Had you ever heard at any time any man's name mentioned as being the one Mr. Hall had promised a position?
A. I might have heard, previous to this time, that Mr. Riley was one of the men; I never stated in regard to that.
Q. You won't swear that you did not?
A. No sir.
Q. Then Mr. Hall came in and you opened up on him with reference to that subject?
A. Well, what do you mean by "opened up on him?"
Q. Well, you introduced the subject to him of the appointment of deputies?
A. We were conversing and he took part in the conversation.
Q. Did he commence it when he came in, or did you refer to him in the first instance?
A. I won't state which first spoke; I participated in the conversation.
Q. He did not open it himself; he did not consult you about the appointment of deputies then upon that occasion?
A. No sir, not at all; we were talking generally about this matter.
Q. But still you tendered him some advice upon that subject?
A. I tendered him some advice as to what I termed corrupt conduct in relation to that matter.
On motion the Senate adjourned.
Attest:

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

TWENTY-THIRD DAY.

ST. PAUL, TUESDAY, June 11, 1878.

The Senate was called to order by the President.
The roll being called, the following Senators answered to their names:
Messrs. Armstrong, Bailey, Bonniwell, Clement, Clough, Deuel, Donnelly, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan John B., Goodrich, Hersey, Houlton, Langdon, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Morrison, Page, Pillsbury, Remore, Rice, Shaleen, Smith, Swanstrom, Waite, Waldron and Wheat.
The Senate, sitting for the trial of Sherman Page, Judge of the District Court for the Tenth Judicial District, upon articles of impeachment exhibited against him by the House of Representatives.
The Sergeant-at-Arms having made proclamation,
The managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. S. L. Campbell, Hon. W. H. Mead, Hon. J. P.

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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. Are the managers ready to proceed?

Mr. CLOUGH. Ready to proceed.

SHERMAN PAGE, RECALLED,

On cross-examination, testified:

Mr. CLOUGH.

Q. Since you have been judge of the tenth judicial district, have you had occasion in any other case, unless it was the cases mentioned yesterday, to act under the provision of section 40, chapter 70, of the general statutes, which is in this language:

"When any prosecution instituted in the name of this State for breaking any law thereof, fail, 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."

Q. You understand the question?

A. Do you mean: have such matters been brought before me?

Q. Have you hah occasion, since you have been judge of the district court, unless it was in the cases mentioned yesterday, to act under the provisions of that section, to make an order under it?

A. I think so; that is, to act under it.

Q. In Mower county, have you?

A. I don't recollect as to that; very likely I have.

A. Do you remember any case now where an order was made by the court, under the provisions of that section?

A. I don't recollect any distinct case. Do you mean in that county?

Q. In any county in your district?

A. I don't recollect any particular case. I am quite clear that in some of the counties of my district—some of the eastern counties—the question as to the payment of fees, under that provision, has arisen.

Q. Has the court made any order, such as is mentioned in that provision?

A. There may have been orders, I think likely there have been orders made.

Q. Do you remember what practice you adopted?

A. I think the practice was this: that when these matters would come up sometimes at the term, I think, generally at the term, with reference to the payment of fees, and a simple direction has been given to the clerk in open court with regard to it, the same as there was on this case.

Q. Now, come down to Mower county, have you any recollection of any instances in Mower county, when you have been called upon to act under the provision of section 40?

A. I said that I could not recollect any particular instance.

Q. Now, after this conversation with the clerk of court, when did you next speak to the clerk of court in regard to what you said to him on that occasion?

A. I can't state when it was.

Q. Did you speak to him again in regard to that before the suit came up in court?

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A. I don't recollect whether I did or not; whether I had any conversation with him or not; I don't recollect of any.

Q. Now; after you had that conversation that you detailed yesterday, with the clerk of the court, the whole matter dropped, until it came into court on the suit, did it not?

A. The whole matter drop? What do you mean by that?

Q. As between you and the clerk?

A. Why, it was concluded then, and whether I had any conversation—

Q. Won't you answer my question, so far as you recollect, after you had the conversation with the clerk in the court that you detailed, as between you and the clerk, whether the matter dropped until he was called as a witness before you on the trial of the Riley case?

A. What do you mean by its dropping?

Q. Whether you had any further conversation?

A. I stated that I didn't recollect any further conversation; I won't say that there was, or was not. There may have been a conversation in regard to it, but I don't recollect any conversation now.

Q. Now, before that time, had you ever had occasion to make an order, while you were judge, under the provisions of section 40, and while Mr. Elder was clerk?

A. I don't recollect whether I had or not.

Q. Do you remember of making an order in Mower county under the provisions of section 40, since that time?

A. Why, I have stated that I don't recollect any distinct instance of that matter.

Q. Now, when you were before the board of county commissioners in January, 1876, wasn't the inquiry made by the county commissioners whether you had made an order?

A. Not in form; no sir.

Q. What was it the commissioners said, and who was it that said it?

A. The commissioner—I think it was Mr. Kimball—asked me if any order had been filed, or if I had filed any order in the matter.

Q. Now, when you get through with what he said, state if you please.

A. Very well.

Q. You are sure of that, are you?

A. That is my answer.

Q. Mr. Kimball was not a lawyer, was he?

A. Not to my knowledge; I don't know whether he was or not.

Q. And his words were: "Have you filed any order?"

A. That is my recollection of it.

Q. Or "Has any order been filed?"

A. Yes.

Q. It was not "Have you made any order?" or "has any order been made?"

A. No sir, I think not.

Q. Your recollection is that he used the word file, and not the word made?

A. Yes sir, my recollection is quite distinct.

Q. You said that no order had been filed, did you?

A. I said no order had been filed; no written order, or something

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to that effect, but that I might file one any time; I did not consider it necessary that an order should be filed in a case of that kind.

Q. Now, Judge Page, did you not say that you had not made any order, but you might make one yet?

A. No sir.

Q. You are positive about that?

A. I am; I had just been explaining to the board what had occurred in open court. I went there for that purpose to explain to them.

Q. Now, in your examination in chief, if I understood you rightly, you said that you had never spoken with Thomas Riley?

A. No sir, I didn't state that.

Q. I so understood it and put it in my minutes?

A. Well sir, you made a mistake.

Q. When did you first speak with him?

A. I really can't say. I said that I had no acquaintance with him. I had no personal acquaintance with him. I have not in particular. I knew him by sight.

Q. You spoke to him on the evening of the so-called whisky riots?

A. I stated to you yesterday that I might have spoken to him in regard to it.

Q. Now, what did you say to him and what did he say to you?

A. I don't recollect that anything passed between us—that is, I don't recollect anything distinct. I think that something was said to him with regard to his assisting the sheriff, or something of that kind in dispersing the crowd.

Q. He told you on that evening that you, yourself, was making all the trouble, didn't he?

A. No sir. He didn't say so in my hearing, I don't know but he might have said it; but I did not hear it if he did say it.

Q. It was to that effect, wasn't it?

A. Not that I heard.

Q. That you were the only one who was making any disturbance?

A. I did not hear anything of that kind.

Q. What was it that he did state to you?

A. Well, I have just stated to you I have no recollection of hearing anything that he did state.

Q. You knew him at that time, didn't you?

A. I knew him by sight, yes sir.

Q. You knew who he was; knew him to be an officer, didn't you?

A. I did not, no sir. I knew that he had assumed to act as an officer, and did not know but he was an officer, I think, perhaps, he was assuming to act as an officer there.

Q. You were pretty active there, wer'nt you?

A. Not specially so, no sir.

Q. You didn't say much?

A. Not much, only a little. I was somewhat interested in keepiug the peace of the public, and preventing a disturbance.

Q. The occurrences on that evening, were what gave rise to the talk with George Baird in his barn yard, the next morning?

A. Yes sir, that is what preceded it.

Q. Now, sir, you say in your examination in chief, that you gave a great deal of study to this case before you decided it?

A. What case?

Q. The case of Riley against the county commissioners?

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A. I did not say so.
Q. I understood you to say so?
A. No sir; I said I examined it carefully.
Q. When was that conversation?
A. After the hearing.
Q. After the hearing took place?
A. Yes sir.
Q. You had not examined it at all when you went before the board of county commissioners?
A. Yes sir, I gave considerable attention after the case was submitted.
Q. The examination you gave to it was not before but afterwards?
A. Why, I had investigated the question certainly to some extent; I investigated it further after the case was submitted.
Q. But did not change your opinion?
A. Not particularly, no.
Q. Where was it that Mr. Hall said that he thought it proper for a candidate to office to do anything to be elected to office?
A. I didn't use those words, sir.
Q. What words did you use?
A. I used words of this character, that Hall took the position that it was proper for a person who was a candidate for office to secure his election, and use whatever means he saw fit.
Q. Where was it he took that position?
A. In Mr. Engle's store. That was his position as I understood it, sir.
Q. Now I will call your attention in relation to the matters of Mr. Mandeville. When did you first become acquainted with Mr. Mandeville?
A. My recollection now is that I became acquainted with him in the winter of 1866.
Q. Shortly after you went to Austin?
A. Yes sir.
Q. You knew him as a brother-in-law of Mr. Charles H. Davidson, didn't you?
A. As a brother-in-law?
Q. Yes sir.
A. Why, I have since known him as a brother-in-law.
Q. When did you first discover that fact, that he was a brother-in-law of Charles H. Davidson?
A. Well, I discovered that he ought to be a brother-in-law that winter.
Q. When was it you discovered him to be a reputed brother-in-law?
A. Well, after he was married.
Q. When was it?
A. Well, very soon after I went to Austin.
Q. Can you give the year?
A. I stated that it was in 1866.
Q. You discovered, or learned him to be a brother-in-law of Mr. Davidson in 1866?
A. I think—well, I will not be certain when he was married; but I recollect the occurrance of his being married.
Q. You have had a great deal of controversy with Mr. Davidson, haven't you—C. H. Davidson?

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A. Very little; he has had a good deal of controversy about me. What do you mean: personal?

Q. Yes sir.

A. That is, talk with him?

Q. No sir, I don't mean talk with him; I mean hard feelings: there has been a great deal of controversy; bad feeling between you?

A. I don't think there has been any particular friendship between us for several years.

Q. That commenced very shortly after you went to Austin?

A. Well—

Q. You havn't agreed at all, have you, since you went to Austin?

A. Why, yes, I think so, I don't think it commenced until he commenced his attack upon me.

Q. When was that?

A. I can't state.

Q. What kind of attack did he make on you?

A. Well——

Q. You mean through his newspaper?

A. Yes sir, through his newspaper.

Q. You don't mean *personal* attacks?

A. Oh, no sir.

Q. He commenced to criticize your conduct very shortly after you went there, didn't he?

A. Well, I might have been there two or three years.

Q. It was some time before you were elected to the judgeship, wasn't it?

A. Why, yes.

Q. Now, at this January term, 1876, you say that but one case was to be tried, that was the Jaynes case?

A. One jury case, I said.

Q. That was the Jaynes case?

A. Yes sir.

Q. That case had been tried before, had it not?

A. Yes sir.

Q. It was a case that occasioned a great deal of excitement in the community?

A. It did.

Q. Public opinion was very much directed to that case, was it not?

A. Yes sir—it was; that is, when it commenced.

Q. The parties were somewhat prominent in Austin, and they had their advocates on both sides, didn't they?

A. Yes sir, I think they did.

Q. Now, you knew at this January term it would be very difficult to obtain a jury, did you not?

A. I knew it would.

Q. You supposed it would be a matter of great difficulty?

A. I don't recollect that I had any supposition about it.

Q. Well, you would naturally infer that, wouldn't you, that such a case would disqualify a great number of people from sitting, on account of its notoriety?

A. I might or might not, depending upon the circumstances.

Q. Well, you would suppose that would be the natural consequence of a case of such notoriety?

A. Why, certainly, on general principles.

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Q. Now, how soon, or when did you have the first talk with Mr. Hall as to who should be special deputies, or how many special deputies he should have at that term of court?

A. I think it was on—or it might possibly have been on the day before the commencement of the term, but my recollection is it was on the morning. It was customary to have a talk with the sheriff on the morning of the opening of court.

Q. You remember that you had that talk on that morning, do you?

A. I remember that I had that talk; yes sir.

Q. Was it after the court had opened or before?

A. I can't state as to the distinct time.

Q. Who were present at that conversation beside yourself and Mr. Hall?

A. Not any one.

Q. And it occurred in the court room?

A. Yes sir, I think it did. Mr. Hall might have spoken to me at some other time, as sometimes he did when he would meet me on the street.

Q. Never mind that; won't you please to state here what the conversation between yourself and Mr. Hall on that occason was; I would like the whole conversation?

A. I will give you the substance of it. The substance of it was this: Mr. Hall spoke to me with regard to the appointment of deputies, and how many would be required—how many I thought would be required—and I told him I thought we should be able to get along with one deputy at that time, and I said to him, that Mr. Allen was a person who had had experience, and was a trusty man to take charge of juries, and that was an important case, and asked him if he had any objection to his appointment. He said it would be perfectly satisfactory to him; he thought he would be a suitable person to appoint. That was the substance of the conversation.

Q. Did you tell him in the course of that conversation that he could not appoint but one deputy for that term of court?

A. I said that one deputy was all that was required—was all that would be required.

Q. Was there anything said that he should not appoint more than one deputy for that term of court?

A. Well, it was in substance said, yes sir, just as clearly—the understanding was just as clear as needed to be.

Q. That he should only appoint one, and that should be Mr. Allen?

A. That was the understanding between us.

Q. You supposed it would be necessary to issue a good many special venires, didn't you?

A. I hadn't thought anything in particular about it; it was necessary.

Q. How many days were occupied in empanelling a jury?

A. I can't tell you as to that; I should think two or three days.

Q. Now, at the opening of the court, was Mr. Allen present? That is, at the beginning of the term?

A. I can't state whether he was actually present in the court room or not, because I never notice what deputies—

Q. Never mind that argument; I didn't ask for an argument.

A. It is not an argument; it is simply a reason why I should make a statement.

Q. I call it an argument?

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A. Well, that is only a difference of opinion.
Q. Was Mr. Allen present at the opening of the court, or not?
A. I can't state whether Mr. Allen was actually in the court room at the opening of the court. I noticed him there during the first day of the term of court.
Q. Did any juror appear in any venire, during the first day of the term?
A. I really can't tell you the details of that; I think there might have—perhaps not.
Q. Did you commence at the work of empanelling a jury as soon as the court opened that day?
A. Well, at the work of empanelling, I should think that was the first work that was transacted.
Q. You did commence at that in the forenoon, didn't you?
A. I don't remember of actually calling the jury, but perhaps that might have been done.
Q. Was that the venire, the old one of the previous term, or a new one?
A. I can't state that.
Q. Do you remember how many jurors there were on this first venire?
A. I can't state as to that. the actual number.
Q. That first venire was exhausted in a few moments, wasn't it? The jurors on the first venire, with one or two exceptions, were found to be disqualified within a half an hour?
A. I can't state.
Q. Within a very short time?
A. I can't state as to that; not as to the time.
Q. You don't remember whether the jurors in the first venire were found to be disqualified the first day or the day after.
A. No sir, I can't state it in the form you put it.
Q. You remember special venires being issued almost immediately, don't you?
A. Special venires were issud very soon.
Q. Do you remember who issued any of those special venires?
A. I do not.
Q. Don't you remember that Mr. Allen did?
A. He might have done so; I don't know whether he did so or not.
Q. Do you remember of his remaining in court while the jury was being impanelled?
A. I could not state where he was.
Q. Don't you remember that several special venires were out at one time?
A. I can't state that.
Q. Don't you remember that a special venire was issued, and before that was returned another was issued?
A. I can't state; my impression is that it was not; I can't state; we made every possible effort to get a jury as soon as we could; I don't think two venires were out at once; that would be a very unusual practice.
Q. It might happen, might it not?
A. It is a possibility, but I have no recollection of it.
Q. Don't you remember seeing Mandeville at the opening of the court on the first day of the court?

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A. No sir, I do not; I don't remember of seeing him at all.

Q. At what time during the session of the court do you remember of first seeing Mr. Mandeville?

A. I can't say, from my recollection, that Mr. Mandeville was in that court at all, except at the conclusion of the term; I don't say that he wasn't there, but I have no distinct recollection at this moment, of seeing him there.

Q. When had you ever seen Mr. Mandeville in that court, in an official capacity, before that time?

A. Why, I really can't state; my recollection is that he had been deputy some time before that.

Q. What kind of a deputy, special or general deputy?

A. I think that he had been a deputy sheriff there some time; that is I understood he was; I don't state that he was.

Q. When did you understand him to be so?

A. I can't state the time.

Q. Whose deputy did you ever understand him to be?

A. Well, I had heard that he was a deputy of Mr. Baird at one time; a general deputy.

Q. Have you any recollection of Mr. Mandeville, before that, ever having been a general deputy in court?

A. I don't state that he had been, but I won't state positively in regard to it.

Q. You can't state what term?

A. No sir, I have stated to you that I don't fix the deputies in my mind at all.

Q. Never mind the argument, if you please, answer the questions.

A. Well, I do pretty distinctly, I think.

Q. Now, do you remember of Mr. Mandeville adjourning the court on one occasion during this term?

A. No sir; I have no distinct recollection at all.

Q. If a person should act as deputy, or as sheriff in your court, whom you had never seen act there before, wouldn't your attention be called to him?

A. Not necessarily.

Q. You don't pay much attention to what is going on in your court?

A. I pay attention to the business of the court and not to incidentals; I don't pay much attention to the deputies; I call on the sheriff when I want anything.

Q. You testified in this matter before the judiciary committee of the House last winter, didn't you?

A. I think I did.

Q. Didn't you testify on that occasion that you saw Mandeville acting about the court room, but you supposed he was a general deputy?

A. I don't think I said that. I said if ——

Q. Didn't you say that or didn't you; you can answer my question yes or no?

A. I don't think I used the words you have used.

Q. You can answer my question yes or no?

A. I say that I did not, according to my recollection, use the words that you have used.

Q. You deny then, that you swore so.

A. Is it necessary to answer it three of four times? You have a di-

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rect answer—and that is, that I have no recollection of stating it in the language you use.

Q. Do you mean to deny that you stated so?

A. Deny that I said the words you use?

Q. Did you see Mandeville acting about the court room and you supposed him to be a general deputy of Sheriff Hall?

A. I stated to you that I did not think I used the language you now use in asking me the question.

Q, Now I will ask you the question. What did you swear to?

A. My recollection is that I stated that if Mr. Mandeville was about the court room at that time that he acted in the capacity of general deputy, and I supposed he was, because I called on the sheriff when I wished anything done.

Q. Now, don't you remember that Mr. Allen was out during several of the first days of the term serving venires?

A. I have no knowledge about it. I might have known it, but I have no recollection now, that my attention was called to it.

Q. If he had been absent from the court room, would you have observed it?

A. Not necessarily. He might have been absent a day or so, and I not observed it.

Q. Didn't you know that so many venires being issued, required the work of several different officers?

A. No.

Q. I am asking you what you thought about it then?

A. I didn't think anything about it.

Q. Had you thought on the subject?

A. I don't say that I had no thoughts on the subject. I had the thought simply to get the venire and the jury.

Q. That term of court lasted about a week, didn't it?

A. It lasted during the first week.

Q. And adjourned to the following Monday?

A. That is my recollection.

Q. Do you remember what day the jury came in; whether it was Monday morning, or Saturday?

A. My recollection is they came in Monday, were out over Sabbath.

Q. And rendered their verdict in court, and were discharged?

A. That is my recollection.

Q. Was there any more business before the court for trial?

A. No jury cases.

Q. Did the business of the court, so far as the trial of cases was concerned, cease with that case?

A. Unless it might have been some little court business.

Q. But you don't remember any?

A. Any what?

Q. Any court business before the court?

A. I think there was, that's what I have stated.

Q. Now, what time of day was it that Mr. Hall came and spoke to you about the pay of his deputies?

A. I can't state to you the time of day.

Q. That was on Monday, wasn't it?

A. I can't state that.

Q. You don't remember whether it was on Monday or Tuesday?

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A. I have not fixed the day nor the hour of the day.
Q. But you remember distinctly of Mr. Mandeville approaching you and asking for an order for his pay?
A. Mr. Mandeville came forward with Mr. Allen and spoke about the pay.
Q. Who were present in the court room at that time?
A. I don't recollect of any persons being present except Mr. Mandeville and Mr. Allen; I don't think there were.
Q. Where were you sitting?
A. I was sitting at the desk in the other end of the room.
Q. That is the judge's desk?
A. Yes sir.
Q. Where you usually sit when you hold court?
A. Yes sir.
Q. Where is the stove located with reference to that desk?
A. It is in the opposite end of the room or nearly the opposite end.
Q. Do you remember whether Mr. Allen and Mr. Mandeville came up to you together to speak about the pay?
A. My recollection is that they did, sir.
Q. Have you any distinct recollection on that point?
A. Yes sir, I have.
Q. You recollect distinctly?
A. I recollect of their being there together, and think they came there together.
Q. What did Mr. Allen say; did he say anything?
A. I think he did.
Q. What did he say?
A. I think he spoke something in regard to pay as deputy.
Q. Do you remember what he said?
A. I can't state the words he said, no sir.
Q. Do you remember what he said in substance?
A. No, I don't recollect distinctly the words he uttered; the substance of what he said was: he asked me if I would make an order with reference to their pay—fixing their pay, or something of that kind.
Q. Give his words.
A. I have stated to you that I can't tell the words he used.
Q. What did you state in reply to what Mr. Allen said?
A. I said in reply to both of them, in substance when I heard what they had to say, and had asked Mr. Mandeville some questions; that I was busy at that time making up my records, and that I would attend to the matter afterwards.
Q. Did Mr. Allen or Mr. Mandeville speak first about the pay?
A. I really can't tell you; I don't remember about that.
Q. Did not Mr. Allen appear first and then go away to the stove?
A. No sir; I am positive they came there together and went away together. I can't say which spoke first.
Q. Did Mr. Mandeville say anything at all on that occasion?
A. Yes sir.
Q. What occasion was there for him to say anything? This was the conversation, as you say, the two came up to you together?
A. Yes sir.
Q. And Mr. Allen asked for an order for their pay?
A. I didn't say that.
Q. I understood you so?

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A. I said that he spoke in regard to their pay, or his pay. I stated that he spoke with reference to fixing their pay.

Q. He wanted an order for their pay?

A. I suppose that was what they wanted.

Q. And you stated merely that you hadn't time to consider it at that time?

A. I didn't say that

Q. What did you say?

A. I said I was busy making up records, and that I would attend to the matter afterwards.

Q. That terminated the conversation didn't it?

A. I think so, practically.

Q. What occasion was there for Mr. Mandeville to say anything at all?

A. I don't know what his occasion might be. If you would ask him, he would probably tell you.

Q. Would there be any if your statement was correct?

A. Perhaps not in my mind.

Q. Now, what did Mr. Mandeville say?

A. I can't state what he said first. I recollect the conversation Mr. Mandeville and I had, but the words by which he introduced the conversation I really cannot tell.

Q. I want you to repeat the conversation, word for word, as nearly as you can remember it, between yourself and Mr. Mandeville.

A. I will not undertake to repeat any conversation word for word that occurred, after that lapse of time. No man can do it.

Q. Repeat it as near as you can.

A. Shall I give you the substance of it, between Mr. Mandeville and myself?

Q. Yes sir.

A. Well, Mr. Mandeville made some expression with reference to the pay, and I asked Mr. Mandeville what service he had rendered, or what he had done which entitled him to pay from the county, in that matter. And he said he had been about there, and had been doing some chores for the sheriff. Well, I said to him that I had not authorized his employment or appointment as special deputy at the term; and if the sheriff had employed him to be there, that I supposed he would settle with him for it; something to that effect.

Q. Mr. Mandeville then said he had been doing chores for the sheriff, did he?

A. I didn't state that.

Q. I so understood you.

A. I did not.

Q. And you say, during all that time, Mr. Allen was standing at the desk?

A. Yes sir, Mr. Allen was present.

Q. When was it you told Mr. Allen you hadn't time, in answer to his question; was it before or after that conversation with Mr. Allen?

A. It was at the same interview; the interview occupied not more than a minute or two. There was no separate and distinct conversation with these individuals, except Mr. Mandeville.

Q. Did not your conversation with Mr. Allen precede what occurred between yourself and Mr. Mandeville?

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A. It might have preceded it; that is to say, Mr. Allen might have spoken first with reference to the matter.

Q. And if he did speak, you gave him the answer that you hadn't time that day?

A. I don't think I answered Mr. Allen in that way, but I answered them both with reference to their general inquiry in regard to that matter.

Q. Now when you told Mr. Allen that you had no futher time that day, did he still stand there?

A. I don't say that I told Mr. Allen that distinctly from Mr. Mandeville.

Q. When you announced that in response to Mr. Allen's request for an order, did he still stand there?

A. I haven't stated that I announced it in response to Mr. Allen.

Q. I so understood you?

A. Well, you didn't understand me.

Q. The reporter has it?

A. I think so.

Q. Did Mr. Allen stay there after you made that announcement, or did he go away to another part of the room?

A. They both went away together.

Q. You are certain about that?

A. Yes sir.

Q. Did you tell them, Mr. Mandeville or Mr. Allen, when you would have time to consider it?

A. I don't recollect that I stated—yes, I stated in the first instance that after I got through with my work, that I was busy about—I would consider the matter.

Q. Did they stay about there during that day?

A. I don't recollect of seeing them about there; I think this was after court had adjourned.

Q. This was after court had adjourned?

A. Yes sir.

Q. What time of the day was it?

A. I have stated to you that I don't recollect.

Q. Well, when did they come again, or either of them?

A. I don't recollect.

Q. Do you remember when Mr. Mandeville came again?

A. I think the next time Mr. Mandeville spoke to me, it was in the street, in regard to it.

Q. He did not go to your office again?

A. It was not at my office. That was the only interview I had with Mr. Mandeville in the court room.

Q. Didn't he come to your office the next day?

A. I think not; I think the only times I had conversations with Mr. Mandeville concerning that matter, was on the street, after that.

Q. Whereabouts?

A. I really can't state the exact location, except one or two instances.

Q. Where did that conversation occur; the one after the one in the court house?

A. I can't state; I know he spoke to me several times.

Q. Was it the next day?

A. I should think not, but I would not be positive.

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Q. Was it within two days afterwards?
A. It might have been, I won't be positive as to that.
Q. Who were present?
A. Not anybody but Mr. Mandeville and myself.
Q. Now, state what was said between you and him at that time?
A. Why, the substance of it, yes sir, I will state: The next time he met me, he asked me if I had attended or given my attention to that matter of fees; I told him that I had; that I hadn't changed the view that I stated to him in the court room, and that was, that I had not authorized his appointment. I told him further than that, however, that I did not consider that I had any authority whatever to make an order in the case. I had examined the law with reference to it, and that he would have to look to the sheriff for his pay, if he employed him, or whoever employed him. He said that the sheriff employed him.
Q. Were any prisoners arraigned during tha tJanuary term of court, 1876?
A. There may have been, I don't recollect of any; that is, I have no recollection in regard to it; there might have been prisoners arraigned.
Q. Do you recollect of Mr. Mandeville bringing up prisoners to be arraigned there?
A. I don't remember; Mr. Mandeville might have brought prisoners into the court room; I doubt very much whether Mr. Mandeville came up to the desk with persons for arraignment.
Q. Don't you remember at the fore part of this term of Mr. Mandeville and the sheriff being engaged in bringing in jurors on venires?
A. Both the sheriff and Mr. Mandeville?
Q. Yes sir.
A. I have no distinct recollection in regard to it, and I would have no means of knowing what the sheriff or deputies were doing outside of the court room.
Q. Don't you remember that Mr. Allen was absent from the court room about three days at the beginning of the term, in the service of special venires, and that the sheriff was on the same business?
A. No sir.
Q. You don't remember anything of that kind?
A. I say it might have been so, but my attention was not directed to it at all.
Q. Now, this written order that you made for these deputies, was it made after you had the conversation with Mr. Mandeville?
A. The written order fixing the pay of Mr. Allen?
Q. Yes sir.
A. I think it was; that is my recollection in regard to it.
Q. What day was that made?
A. I really can't tell you, sir.
Q. That was made on Tuesday, wasn't it?
A. I really can't tell you what day it was made; it might have been made—I sometimes made up the orders at the end of the term, or soon after, whenever I reached the matter.
Q. Don't you remember that this order was made after you had the interview with Mr. Mandeville and Mr. Allen, in the court room?
A. I think so; that is my impression in regard to it.
Q. Now, to whom did you deliver that order?

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A. I can't state whether I delivered it to Mr. Allen or the clerk; it might have been either of them.

Q. Didn't you deliver it to Mr. Allen?

A. I might have done so; I frequently did if the order was made at the close of the term.

Q. Was Mr. Allen one of Mr. Hall's general deputies?

A. I really can't tell you sir.

Q. Did you know, at that time, whether he was or not?

A. No sir; I don't know, at any given time, who Mr. Hall's deputies are?

Q. I am asking you if you knew at that time, whether Mr. Allen was one of Mr. Hall's deputies?

A. I have answered it twice; I answer it again, that I did not.

Q. Then you did not take any pains to know whether or not Mr. Allen was a general deputy?

A. Didn't take any pains; no.

Q. You didn't enquire, did you?

A. Why, no! I had no particular interest.

Q. I understood you to say, yesterday, in your examination in chief, that you always took pains not to appoint general deputies?

A. No sir, you misunderstood me.

Q. The reporter has your evidence, I have no doubt?

A. Well, I am not informed as to that, whether he has or not. I suppose there is a reporter taking the evidence.

Q. Now I will call your attention to the matter of Mr. Stimson's as deputy sheriff. The attention of the witness is called to the case of the State of Minnesota against Beisicker. I will ask you to look at that complaint. [A paper was here handed the witness.] In whose handwriting is that complaint?

A. That is my hand writing.

Q. You drew that complaint?

A. I think that is my hand writing.

Q. Do you remember the circumstances in which you drew that complaint—that is, who requested you to draw it, I mean?

A. Who requested me to draw it?

Q. Yes sir?

A. I have no distinct recollection as to the circumstance. I presume the person's name is attached who made the complaint before me.

Q. Mr. D. B. Smith?

A. Yes sir.

Q. Did he request you to draw the complaint?

A. I don't know whether he made any special request or not.

Q. Didn't he come before you at your own request, to make that complaint?

A. No sir.

Q. There was a county attorney, was there not, at that time, in Mower county?

A. I presume there was.

Q. Do you remember who it was?

A. I do not; I don't recollect whether it was Mr. French or Mr. Wheeler—one of them.

Q. When did you first learn that Mr. Stimson was deputy sheriff?

A. The first information that I had, that I considered reliable upon

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it, was when the sheriff stated to me in open court that he was a deputy. Do you mean when I first learned he was acting?

Q. Yes sir.

A. Well, it was some little time before that term of court. Just the day I can't state.

Q. Mr. Stimson had not been living in Austin, at that time, had he?

A. I should think not; I don't know how long a time he lived there.

Q. You were not personally acquainted with him?

A. No sir.

Q. Had not been up to that time?

A. No sir, not personally acquainted with him. I knew him by sight, and that is all.

Q. The case in which this matter arose, was the case of the State of Minnesota against Mr. Weller, wasn't it?

A. Yes sir.

Q. Dwight Weller?

A. I think so.

Q. And the case was that Mr. Weller had been convicted of larceny, in justice court, and had appealed to the district court? and the judgment there had been affirmed; that was the case, wasn't it?

A. I think the crime was larceny, sir.

Q. The proceedings were substantially as I have stated them, were they not?

A. Yes sir, the appeal was taken to the district court.

Q. He had been fined $20.00.

A. I can't tell, the record will show as to the amount. I have not refreshed my recollection as to the records; I wouldn't undertake to state what they contained.

Q. And when the matter came up in the district court the judgment of the court below was affirmed?

A. Yes sir, that is my recollection of it.

Q. And judgment was entered in the district court; I mean final judgment was entered?

A. I presume so; yes sir.

Q. Well, Mr. Weller waited on you in regard to the service of the execution in that case, didn't he?

A. Mr. Weller, previous to this term of court, came to me and stated that he had paid an amount on a fine that he had not got credit for.

Q. Where was it that Mr. Weller and you had that interview?

A. I think it was at my chambers.

Q. Won't you please to state now just what was said by Mr. Weller at that time, as near as you can recollect?

A. That is my recollection in regard to that interview; he said that he had paid an amount of money on the judgment against him and he had been to the clerk's office and found that he had not got credit for it. I asked him who he paid it to; he said he paid it to Mr. French. Well, I told him that he ought to have credit for what had been paid.

Q. Did you call the attention of the grand jury at the next term of court to that matter?

A. My recollection is that I did.

Q. Was it in your first charge?

A. I should think not; still I won't be positive in regard to that.

Q. Why didn't you call the attention of the grand jury to it, in the first charge, if you knew of it?

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A. Well, possibly I did; I won't state in regard to that. I think at sometime during the term of court, I called the attention of the grand jury to it.

Q. When you called the attention of the grand jury to the matter, won't you please to state what you said to them?

A. Well, I stated to them, (if I called their attention it—and my recollection is that I did.) I won't be positive in regard to that, but I stated to them the matter called for their attention; and stated to them the general facts in reference to it.

Q. Won't you please state what you said to the grand jury, if you can remember it; if you don't remember it, say so.

A. Well, I don't recollect the language that I stated to them?

Q. Did you state to the jury that Mr. Stimson, a deputy sheriff, had collected it under an execution, and had retained the money?

A. No sir, I think not.

Q. Did you mention Mr. Stimson's name?

A. I think not.

Q. Did you say it had been collected by a deputy sheriff?

A. I might have stated that it had been collected by some person, acting as deputy sheriff, I don't recollect the exact words.

Q. Did you have the execution or judgment before you, when you instructed the grand jury.

A. I should think not. I might have examined it in the clerk's office.

Q. But you hadn't any papers with you at that time?

A. Not to my recollection.

Q. Now the grand jury made a report; was there a report in writing?

A. I believe it was; yes sir.

Q. What became of that report? It was handed to you in court, wasn't it?

A. Yes sir, I presume that the clerk took it; I have no doubt as to that. I could not say positively, but that is my recollection.

Q. I will ask you if this is the report I read now, from pages 34 and 35, from the court journal for Mower county: "Now come the grand jurors into court, and being all present, reported findings in the case of the State of Minnesota vs. D. Weller, that twenty dollars ($20.00) had been paid by the defendant to D. H. Stimson, deputy sheriff, to be applied on payment of judgment entered in said case; that said Stimson had paid into the court, on said judgment, the sum of seventy-four dollars and 74 c."

Q. That was the report, was it?

A. Not the whole of it.

Q. Then that record is not correct?

A. It is not a copy of the report.

Q. That record is not correct then?

A. I don't know but that answer is correct; but if it purports to be a copy of the report, it is not correct.

Q. It purports to state the report, not the contents of the report. But it did state that D. H. Stimson was deputy sheriff, and that the money had been paid to D. H. Stimson?

A. I can't state that the report stated that D. H. Stimson was deputy sheriff.

Q. Didn't it state that twenty dollars had been paid to D. H. Stimson, deputy sheriff, to be applied on the judgment?

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A. It might have stated in substance what it states there.

Q. I ask that you answer that question. Didn't it state that twenty dollars had been paid by the defendant to D. H. Stimson, deputy sheriff, to be applied on the judgment?

A. I think it did substantially; I can't state whether it stated that Mr. Stimson was deputy sheriff or not.

Q. Now, when the grand jury made that report, didn't you believe the grand jury?

A. I did not give any particular attention to it; I don't know whether they examined the records to find out whether he was a deputy sheriff or not.

Q. You could not credit the grand jury in that respect that Stimson was deputy sheriff?

A. I might have credited them if I had seen fit to do so; but I considered it necessary to ascertain the fact whether he was a deputy sheriff before proceeding against him.

Q. The grand jury were in open court when they handed you that report?

A. Yes sir.

Q Court was open and a number of persons were present?

A. Yes sir.

Q. You had that report in your hand and read it?

A. I can't say that I read a report; I think I gave Mr. Stimson the substance of a report.

Q. I say you read it over yourself.

A. Well, you say that; I don't say that.

Q. I am asking you to state it.

A. Well, then, ask the question, and not make the statement.

Q. Did you have that paper in your hand and read it at all?

A. I had that paper in my hand and I read it to Mr. Stimson, or stated to him the substance of it,

Q. That is not what I am asking you; but when the grand jury came in and delivered that report, did you read it?

A. O, whether I read it to myself?

Q. Yes sir.

A. Oh! certainly I read it.

Q. You read it all over, and saw all there was in it?

A. Yes sir.

Q. Now, won't you please state in what respect this record is in accordance with the statement of that report (handing witness paper).

A. Well, sir, I don't think the record here is in the language of the report at all, but still there may be expressions, there are words here that were used in that, but I don't think the phraseology of this record is the phraseology of the report.

Q. Now won't you be pleased to state what that report was, giving the language as near as you can?

A. I can't state the language of it; I can give you the substance of it as near as I can recollect it. The substance of it was, that a judgment had been entered in the district court in the case of Minnesota against Dwight Weller in a criminal case. I think that statement was made in the report, and that the defendant had paid on that judgment an amount of money. I think the amount was stated at $20. That the deputy sheriff—[I cannot state whether it's the said sheriff or the deputy sheriff]—my recollection is that it stated it was a deputy sheriff.

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Whether it was Mr. Stimson's name that was mentioned by D. H. Stimson, I can't say, but I think it was. I think the statement was made in the report that it was collected by D. H. Stimson, was paid to the county attorney, and that he had failed to pay it over.

Q. They were to pay it over to whom?

A. To the county, so that the defendant might have credit. My recollection is that the statement was made in that; that the money was paid to the county attorney or Mr. Stimson.

Q. Have you any distinct recollection on that point?

A. I think I have. I think that statement was made in regard to it; that it had been paid to the county attorney.

Q. Now, what else was there in the report, if you are not through?

A. The statement was made that the deputy had retained out of this fine $5.50, and had paid over only $14.50; the defendant had credit for only fourteen dollars and fifty cents.

Q. Anything stated as to the fees being illegal or excessive, in that report?

A. Well, I can't state that there was any conclusion of that kind arrived at.

Q. Nothing said about fees being illegal or excessive, so far as you remember?

A. Not that I recollect now.

Q. Did not the grand jury find expressly in that report that the amount of fees which had been retained was the legal amouni?

A. No sir.

Q. You are positive about that?

A. I am very positive in regard to it.

Q. Then your opinion is that the report was merely silent as to the legality or illegality of the fees?

A. I don't think the conclusion was stated in the report.

Q. Now, when that report of the grand jury came in, had you any reason to doubt from that report that Mr. Stimson, who was deputy sheriff, had acted as such, in the collection of that money?

A. Had I any reason to doubt it?

Q. Had you any reason to doubt the statement of the grand jury?

A. I did not take the statement of the grand jury as evidence upon that point.

Q. You did not believe them on that point?

A. I did not believe them; nor disbelieve them; I considered it my duty to find out whether he was deputy sheriff, the first thing.

Q. You have never heard of his being deputy sheriff before?

A. I had heard of his acting before, just as I have stated.

Q. Now, when Mr. Weller was before you complaining about these fees didn't he tell you that this conversation had occurred between himself and Mr. Stimson, deputy sheriff?

A. He stated it was between himself and Mr. Stimson; he did not state to me whether Mr. Stimson was a deputy sheriff or a constable, or whether he was a constable. And if he did I shouldn't have accepted it as evidence of the fact at all.

Q. Did you think that a constable was executing an execution?

A. I really can't tell you; they do some very strange things there sometimes.

Q. And didn't you know that if Mr. Stimson had an execution issued from your court, that he must have it as deputy sheriff?

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A. No sir; I did not know that he must be a deputy sheriff. I knew very likely, that he must be acting; the presumption would be that he was acting. My impression is that a good many deputy sheriffs have acted there as deputies when they were not appointed.

Q. I am not asking you to go into that argument at all; if you would confine yourself to an answer of the question we would get along a good deal faster. Now, after this paper was presented to you, you say you read it over to yourself?

A. Yes sir.

Q. Then the next thing you did was this: "Mr. Sheriff, have you a deputy by the name of D. K. Stimson?"

A. D. K. or D. H.

Q. Didn't you say D. K. Stimson?

A. I might have said that.

Q. Didn't know Mr. Stimson by sight at that time?

A. I did; yes sir. I had seen him before.

Q. You had seen him in court that morning when you were making that statement?

A. What statement?

Q. When you were making inquiry of that matter?

A. No sir, I did not.

Q. Hadn't seen him before?

A. I might have seen him before that day, but I didn't see him at that time.

Q. You didn't know he was in the court room at all?

A. I did not until some motion was made in reference to it.

Q. When you said that to Mr. Hall, "Have you a deputy by the name of D. K. Stimson," what did Mr. Hall say?

A. I think he said he had.

Q. What next occurred after that?

A. I asked him to come forward.

Q. Was anything said about his being in court?

A. Well, he I think got up, or Mr. Hall pointed to him.

Q. When you mentioned that matter to Mr. Hall, Mr. Stimson got up, didn't he!

A. I think he did.

Q. And then you asked him to come forward?

A. Yes sir.

Q. Now when he came forward, did you read the report to him?

A. I don't think I read the report as it was stated, but I think I stated the substance of the report, and asked him some questions in regard to the matter.

Q. With that report which the grand jury sent in, did they send in any other paper!

A. I can't tell you whether there was any report made at the same time or not.

Q. I mean a paper accompanying that, as a part of the same transaction, or relating to it?

A. I think not; I won't be positive in regard to that.

Q. Didn't they send in the execution!

A. I should think not.

Q. Do you remember?

A. I don't recollect so distinctly as that I would state positively. I

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am quite clear about that. I don't think they did send in any other paper, except that report.

Q. When Mr. Stimson came forward, you stated you either read the report, or stated the substance to him. Now would you be kind enough to state what you said first, when Stimson came up?

A. The exact words I stated?

Q. The exact words as near as you can remember?

A. I wouldn't attempt to state the exact words. I will state the substance of it. I stated to him that it appeared from the report of the grand jury, that he had had an execution, in his hands, in a criminal case, of the State of Minnesota against Weller, and that he had, or rather there had gone through his hands, from the county attorney, I think it was, an amount of money, stated in the report, which I think was twenty dollars.

I asked him if that was the fact in regard to it. He said it was. And then I asked him if this money was paid to him by the county attorney, if I recollect; and he said thas it was, and that he had paid over fourteen dollars and fifty cents. I then asked him what he had done with that execution, and he told me, I think, that he had been up to Lansing once or twice. I inquired what he had done besides that. He said he hadn't done much of anything. I think he made some statement with reference to some piece of property, watch, or something of that kind, I won't be positive—made some statement in regard to it; and I inquired generally what he had done with regard to it, and then when I got through—

Q. No, don't state "inquired generally;" state what you said to him?

A. That is what I am stating.

Q. Instead of using the words "inquired generally," use the words you stated to him?

A. I then told him that an officer—in the first place, that I knew of no authority for an execution issuing in a case of that kind; but if there was authority to do that, that it was a fine for a definite and specific amount of money; and that where the defendant had paid that fine, he was entitled to a discharge; and that he was entitled to credit for all the amount. And I did not consider that an officer had the right to take out of money paid to him, or that was or came into his hands, and deduct as his fees in that way, any further than that; that I did not see that he was entitled to any fees at all in the matter, from his statement of the facts. That is the substance of what I said to him.

Q. Now, had you examined the records in that case to know what the proceedings had been, before you had this talk with Mr. Stimson in court?

A. I had seen the records, yes.

Q. How long before this occasion?

A. Why, I might have seen it during that day; I had seen it before.

Q. Had you ever seen the execution which had been issued?

A. I don't recollect.

Q. Don't you remember that the execution was in your hand that morning?

A. I do not.

Q. During this talk with Mr. Stimson?

A. I do not.

Q. Did you make any inquiry to know, at the time, whether the execution which had been issued had expired or not?

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A. I did not.
Q. Did you state to Mr. Stimson that the fees which he had collected, were illegal in amount?
A. I think I did.
Q. Did you tell him how much he was entitled to?
A. I did not. I considered the whole proceedings as illegal, Mr. Clough, from beginning to end.
Q. Your theory was then, that this being a fine for a particular amount, nothing could be charged?
A. That was one theory; that was the primary ground, and secondly, I did not think he had done anything that entitled him to fees at all. He admitted that he had not.
Q. Did you ask Mr. Stimson if he wanted to be heard on that matter?
A. No sir. Becaus he admitted everything I asked him.
Q. You didn't ask him if he wanted to have the point argued; as to his right to retain that money?
A. I did not ask him that question.
Q. Not at all?
A. No sir.
Q. Had any order to show cause, or notice been served on Mr. Stimson?
A. No sir. I did not consider it necessary.
Q. None had been made and served, previous to that time?
A. No sir, he admitted everything I stated, and I did not consider it necessary for any opportunity to show cause.
Q. Did you, upon the point of his right, to retain those fees, ask the question if such and such things were true, and he stated they were?
(No answer.)
Q. Did you ask him if he wanted to be heard as to his legal right to retain those fees?
A. No sir.
Q. Did you tell him you would hear argument on that point?
A. No sir.
Q. Nothing was said to Mr. Stimson about his having his legal right argued.
A. Nothing was said about argument there at all.
Q. But as soon as he admitted the fact, you ordered him to pay over the money in the presence of the grand jury did you not?
A. I directed him to pay the money over, and I think I stated to him that I wished him to pay the money over so that the grand jury could see it was disposed of.
Q. Didn't you order him to pay it over "right here now in the presence of the grand jury?"
A. Not in those words.
Q. Wasn't that the substance of what you said?
A. The substance of what I said was, I directed him to pay over the money so that the grand jury could see that the matter was disposed of, and I stated to him that I considered that the simplest method of geting along with it, as he was a new man in the business.
Q. Never mind; never mind that, I asked you if you ordered him to pay over the money in the presence of the grand jury.
A. Not in those words; no sir.

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Q. Now, why was it necessary that the grand jury should see that money paid over?

A. I wanted them to know that it was a matter that received some attention after they had investigated it.

Q. Didn't you think that if you saw the money paid over, and so informed the grand jury, that they would believe it?

A. I presume they would believe it; I didn't think anything in regard to it, whether they would believe it or not; I did not consider the matter at all; I gave that direction for the reason that the grand jury were investigating the matter, and I desired them to know whether any attention was given by the court to it.

Q. Wait a moment; didn't you think the grand jury would know that the court was attending to it, when in the presence of the grand jury you called up the party who was charged with taking these illegal fees?

A. I did not give that matter any particular thought at that time.

Q. Did you think that the grand jury would pay any more attention to that matter after they had made the report?

A. I did not give that matter any particular thought at that time.

Q. Well, I misunderstood you; now, this money which was coming on this judgment belonged to the county of Mower, didn't it?

A. As I understood it, yes sir; it might have been paid before the defendant was discharged.

Q. Won't you please to take the general statutes of the State and find the provision of the statute which authorizes an order to be made by a court on a sheriff who has collected that money for the use of the county, to pay that money over to the clerk of the district court?

A. No sir.

Q. Can you find any such provision?

A. If you want to take the time for me to examine the statutes; I have no reference to the statutes.

Q. There are the general statutes, and they are indexed in the back part; and now I would like you to take the statutes and find the provision in it which authorizes an order to be made by a court on a sheriff who has collected the money for the use of the county, to pay that money over to the clerk of the court?

Mr. DAVIS: Just wait a moment; we object; the statutes speak for themselves, and this is a court; the witness cannot be compelled, under the guise of cross-examination, to get into a legal wrangle with the counsel.

Mr. CLOUGH: I don't propose to get into a wrangle at all; the witness has undertaken to state in direct examination, his opinion of the law, and if there is any statute upon the subject, I want him to point it out; now I think this is a matter of importance.

The WITNESS: Allow me to correct you; I have not stated in my direct examination my construction of the law on that point at all; I am willing to do it, however.

Mr. CLOUGH. I have asked for a very easy matter, for you are familiar with these statutes; you can learn very readily if there is any statutes in the district court to order the sheriff, who has collected money for the use of the county, to pay it over to the clerk of the court; you

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can find it in a moment. Now, I submit the question, and insist upon it?

A. Well, I say this to you: that I don't know—

The PRESIDENT. The chair will decide that it is not a proper question; the question would seem to be, to ask the witness whether there is any such provision of the law.

Q. I will put the question in that shape, and in connection with it ask him if there is any such provision of the law, to point it out?

A. State your question, Mr. Clough, and I will answer it.

Q. Is there any provision of the statute, which authorizes the district court to order a sheriff, who has collected money for the use of the county, to pay that money over to the clerk of the district court, if so, will you please take the statute and point out the provisions which give that authority?

A. I don't think there is any express provision of the statute relating to that matter; whether the technical distinction is made, as to whether money is paid to the clerk of the court for the use of the county; I think that money should be paid to the clerk that is paid into court—should be paid into the clerk's hands, for the use of the public; and the general authority of courts over their officers, to require them to pay over illegal fees, I think, is clearly and well established.

Q Your order in that connection was to pay that money into the treasury—not into the treasury, but to the clerk of the court?

A. For the use of the county

Q. Your order was to pay it to the clerk of the district court?

A. Well, that was the nominal order, as given there as to the form of it, but for the use of the county, to pay it into the county treasury.

Q. But the order was to pay it to the clerk?

A. Why, the immediate order was given at that time.

Q. I mean what Mr. Stimson was to do with the money was to pay it over to the clerk of the district court?

A. It was not for his private benefit, it was for the benefit of the county.

Q. But it was to pay the money to the clerk of the district court?

A. Why, I stated that was the order.

Q. Your answer is "yes."

A. Why, certainly, that was the form of the order.

Q. Now, you insisted upon that being paid right there on the spot, didn't you?

A. I directed him to pay it at that time.

Q. Mr. Stimson stated to you that he hadn't the money in his possession at that time; he would have to go to the bank?

A. I don't recollect he said he had to go to the bank. I think he said that he hadn't the money.

Q. But would have to go and get it?

A. I don't know as to his saying that he would have to go and get it.

Q. You won't swear he didn't say so, will you?

A. No sir; I don't swear that he didn't say so.

Q. You suggested to him that he could borrow it of the sheriff, didn't you?

A. I don't recollect or not or whether he could borrow it of somebody.

Q. Don't you recollect that you said he could borrow it of the sheriff?

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A. Perhaps I did, but my recollection is that I said he could get it from somebody.

Q. And upon that Sheriff Hall said that he hadn't got it?

A. I don't remember.

Q. Did you stop the business of the court right there, until Mr. Stimson could "shin" around among the crowd and get the money?

A. Well, before I can answer that question, I will have to inquire what you mean by "shinning" around. If you will tell me what you mean, then I can answer your question and not before.

Q. Did Mr. Stimson perambulate among the audience for the purpose of attempting to raise a loan of money to pay for the amount which was required by the court to be deposited with the clerk of the court?

A. Well, my answer, according to my understanding of the meaning of the term perambulate, would be he did not.

Q. He did not perambulate?

A. No sir, not according to my understanding of the term.

Q. What did he do?

A. He walked around.

Q. O, you can understand that term walked?

A. Yes sir.

Q. But until he got the money the business of the district court of Mower county did not proceed an inch, did it?

A. An inch?

Q. Yes sir; it stopped right there.

A. Well, we don't go by inches in the district court.

Q. If you had gone by inches perhaps the public would have been better off.

A. I will state to you that the business of the court was not proceeded with until this matter was concluded, that is what I mean.

Q. How long was Mr. Stimson occupied in borrowing this money?

A. A very short time; I should think a moment or two; two or three minutes, perhaps.

Q. Will you swear that you did not require Mr. Stimson to pay that money over, before the grand jury, for the purpose of humiliating him?

A. I will swear that the thought of humiliating Mr. Stimson did not enter my mind at all.

Q. Didn't you say to Mr. Stimson that you presumed this was the first offense, but that he must be very careful hereafter not to take illegal fees or you would punish him?

A. I did not use that language; no sir.

Q. Now, what did you say in that respect?

A. I said to him that I presumed it might be the first offense, but that he might be inexperienced in such matters, and that I wished him to be careful with reference to such matters hereafter; I made no threats to Mr. Stimson at all, and made no promises to him in regard to that matter

Q. But still you did not think it would be a satisfaction if Mr. Stimson had paid that money over at some other time?

A. I did not give that matter any special thought.

Q. The only object in having him pay that over, then, was to have the grand jury see it?

A. There was at that time two or three objects; the first object was

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to correct a wrong which I considered had been done to the defendant; and the next object was—

Q. I am talking about its being paid in the presence of the grand jury; what object was there in having it paid in the presence of the grand jury?

A. Well, the object—I have stated that to you three times, I will state it to you the fourth time; the fourth is, in order that the grand jury might see that the matter they had investigated was disposed of.

Q. When did you first become acquainted with Mr. Ingmundson?

A. Well, I can't tell you the date.

Q. Where was Mr. Ingmundson living when yon first became acquainted with him?

A. At Leroy, in Mower county.

Q. You became acquainted with him some time before he became treasurer, didn't you?

A. Yes sir.

Q. Some years before?

A. I think so; yes sir.

Q. And you had had a speaking acquaintance with him, at least, for some years before he became treasurer?

A. I had seen him a few times.

Q. Had you ever hunted with him before he became treasurer?

A. I think not. He resided at Leroy, and I didn't go there much.

Q. Now, when Mr. Ingmundson came to Austin (that was in the fore part of 1874) you became considerably more acquainted with him?

A. More acquainted than I had been?

Q. Yes sir?

A. Yes sir.

Q. And Mr. Ingmundson lived in your neighborhood in town, so that he passed your house, as I understood you to say, in going to his office and going home again?

A. Well, whether he did when he first came there, or not, I am unable to say; he has for quite a long time lived in that part of town.

Q. Very soon after he came there he moved up there, didn't he?

A. I said to you I couldn't tell you.

Q. Don't remember anything about it?

A. Well, I remember he has been there for some years; that is my recollection of it; but my recollection now is—

Q. You have spoken of the matter that he lived in another part of town when he first came up there?

A. For some year or two, I think.

A. You have taken a pretty big interest in local politics since you have been upon the bench, down there in Mower county?

A. No sir, I haven't; not very much interest, not in local politics.

Q. You have assisted in starting a local political newspaper, called the "Republican," haven't you?

Mr. LOSEY: Let me enquire what the purpose of that is?

Mr. CLOUGH: Well, you will see the connection in a moment or two.

Mr. LOSEY: Well, go ahead.

Q. That's so, isn't it?

A. What is it?

Q. I say you took a good deal of interest in the local, political newspaper called the "Republican."

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A. No special interest, no sir.
Q. Didn't take any particular pains to get that paper established?
A. No especial interest in it; I assisted some in getting the paper started.
Q. Were you not the main man in getting Mr. Hotchkiss to start the Republican there?
A. No sir, I was not.
Q. You were hostile to both of the other local papers there, or rather they were hostile to you?
A. Well, they were; I should judge, from the contents of the papers, that they were hostile to me.
Q. How did that affect you; you were not friendly toward them, were you?
A. Not specially friendly, no sir; I had no reason to be.
Q. At what time was the Republican started, if you remember?
A. I can't tell you now.
Q. How long were you in making your efforts to get the Republican started before you succeeded in doing it?
A. I did not make any special efforts.
Q. Do you remember when the Republican was started as a matter of fact?
A. I have just answered you that; I did not.
Q. Don't remember when it was started?
A. I can't state; it has been there some two or three years, I should think.
Q. You took some interest in the election of the county officers in the fall of 1875?
A. No sir.
Q. Didn't take any interest in it all?
A. I don't say that I didn't take any interest.
Q. You took some interest, didn't you; were you some interested in all general election matters?
A. Yes sir.
Q. You took interest in the nominations which were made by your party in that district, that fall, didn't you?
A. What nominations do you refer to?
Q. The nomination of county officers of the republican party of Mower county?
A. You mean the county?
Q. I mean the county?
A. No special interest, no sir.
Q. None at all?
A. I don't say none at all.
Q. I say no special interest at all?
A. No sir, no special interest, any more than any other citizen.
Q. I will ask you, whether during that summer, previous to the fall election, you did not have a considerable discussion with various persons of your party about who should be nominated?
A. No sir, I think not.
Q. Not a bit?
A. I wouldn't say not a bit.
Q. Well, you have had some?
A. I may have had conversation with some parties, but not as to who should be nominated.

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Q. Were you not interested yourself very much?
A. Not specially, no sir, nor very much.
Q. Now when the Republican started in Austin, did you become a subscriber?
A. Yes sir.
Q. And you have been a subscriber ever since?
A. Yes sir, I think so.
Q. You have been a somewhat careful reader of it?
A. No sir. There have been months that I didn't read it at all.
Q. You have written communications for it?
A. No sir.
Q. Have you never done so?
A. Not that I recollect. I don't think I ever made any communication to it. I might have done so.
Q. Well, I will call your attention to a communication. [A paper handed witness.]
A. Yes sir, I recollect that communication. You ask me if I communicated that to this paper?
Q. Yes sir.
A. I think not, sir. It is not a communication addressed to this paper.
Q. Did you hand the communication, there referred to, to that paper?
A. I think not, sir.
Q. That purports to be a communication, an extract from the Pioneer-Press.
A. I think it does. Yes sir.
Q. Didn't you cause a publication of this communication in that paper?
A. No sir.
Q. Did you observe it when it was published?
A. I really can't tell you. I have no recollection that it was ever there until you handed it to me.
Q. Do you remember the time that the Republican county convention met in the fall of 1875?
A. I do not, sir.
Q. It met sometime in the latter part of September, didn't it, or fore part of October?
A. I really cannot tell you.
Q. That is the customary time for holdiug county conventions?
A. It might have been at that time.
Q. You knew that Mr. Ingmundson was a candidate for renomination for the office of county treasurer, before the convention?
A. I did not, sir.
Q. Delegates were elected from the city of Austin to that convention, were they not?
A. I presume so. I don't recollect.
Q. Didn't you attend the caucus that elected those delegates?
A. I might have done so.
Q. Do you remember whether you did or not?
A. I don't remember whether I attended the caucus that elected delegates to that particular convention. I attended one caucus since I've been on the bench, and only one.
Q. Will you swear that you did not attend that caucus?

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A. No sir. That is what I stated to you, that if it was a convention and caucus with reference to that convention, why I was not there.

Q. Did you not only attend that caucus, but make a speech?

A. I say, Mr. Clough, that I did not attend that caucus with reference to that convention, to my recollection. I attended one caucus since I was on ths bench, and if that caucus preceded that convention I was there at the caucus, and made some remarks in reply to a personal attack that was made.

Q. You don't remember of making a speech at that caucus?

A. I can't answer that by yes or no; for you insist upon fixing the time of a convention.

Q. You must remember either having made a speech, at that caucus, or you don't remember it?

A. What caucus?

Q. At the caucus I refer to?

A. The caucus I attended?

Q. The one which elected delegates from the city of Austin, to attend the county convention?

A. Well, you couple that with the one which I stated, I do not recollect.

Q. You can answer that question yes or no, whether you remember it or not.

A. I can't; because you coupled the convention—

Q. That is all then, if you can't say that you remember it, or don't remember. Dont' you remember of attending a caucus that fall?

Mr. DAVIS: Will you advise us what the object of this branch of the examination is?

Mr. CLOUGH: I propese to show, if I can do so, (and I think I can,) the knowledge of the respondent of the remarks which Mr. Ingmundson made at this convention.

Mr. DAVIS. We have no objection to your showing that fact, only we do not see the object.

Mr. CLOUGH. Well, you will see that before you get through.

Mr. DAVIS. You said a few moments ago that you would connect this question with what you proposed to prove.

Mr. CLOUGH. Well, I propose to do so by this witness, so far as I can.

Mr. CLOUGH:

Q. Were you in the habit of reading the newspapers at Austin during the fall of that season?

A. I think not, sir, I very seldom read them now; for several years back have read very little connected with them.

Q. I understood you to say a few moments ago that Ingmundson was a candidate for re-election that fall.

A. I have no recollection now that I knew at that time; I may have heard some remarks with reference to it.

Q. Have you any recollection of that county convention sitting?

A. No sir, I was not there.

Q. That is, you were not in the convention; you were in Austin?

A. I cannot tell you.

Q. Your own term of court commenced at that time, on the third Monday in October.

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A. The latter part of October; at that time it commenced on the fourth Tuesday of October.

Q. You remained in Austin all that fall, up to the time of your going away?

A. I can't tell you at this moment whether I was away or not.

Q. You don't remember whether you was away or not?

A. I don't say that I was there; I was there most of my time.

Q. You remember when you were in Austin after that time, or shortly after?

A. I don't recollect.

Q. Don't you remember that there was a good deal of feeling occurring in that convention between what was called the Page faction and what was called the anti-Page faction of the Republican party in Austin?

A. I don't know anything about it. I heard after the convention that there was some sort of wrangling there, but I didn't pay any attention to it.

Q. You knew that the convention was out before you heard that there was some wrangling, then?

A. I cannot tell.

Q. Was it that year?

A. I cannot tell you.

Q. Didn't you hear that Mr. Ingmundson was making a speech?

A. I have no recollection; I don't think I did.

Q. The same day, or the day after the convention was held?

A. I don't think that I did, sir.

Q. Didn't you know that the remarks that Mr. Ingmundson made in that convention became a subject of comment for all the local papers at Austin?

A. No sir, I did not know that; it might have been, though I knew nothing about it.

The witness is shown an article in what purports to be a copy of the *Republican*, under date of October 14th, 1875, entitled "The People's Letters—Politics in Mower County."

Q. Now, I would like to have you look over that article, so you may become familiar with its contents?

A. It seems to be quite lengthy; it seems to be two columns.

The witnesss, (after perusing paper). Well, I have not read it all through—what do you wish to know?

Q. I will ask you if you were the author of that article?

A. No sir.

Q. I will ask you if you had anything to do with printing of that article—the publication of it?

A. I think not; I don't recollect seeing it at all.

Q. I will call your attention to some passages which are marked with a led pencil, and I will read them.

Mr. DAVIS. What did you say the date of that paper is?

Mr. CLOUGH. October 14th, 1875.

Q. I will ask you to read those passages marked with a pencil, so as to refresh your memory, if you have not done so already.

The Witness. It is drawn in portions of the article, which do you mean?

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Mr. CLOUGH. It is there and those, (pointing out passages), only just a few sentences.

The Witness. [Reading.] Through the apathy or in activity of the party—

Mr. CLOUGH. I did not ask you to read it aloud. I will introduce it in evidence; I do this to refresh your recollection.

Q. Do you still, now, persist in your statement, that you did not cause the publication of that article?

A. I do, sir.

Q. You know nothing about who caused it to be published?

A. I know nothing about it.

Q. Now, regarding the passages in this article, which are marked in pencil—

Mr. DAVIS. We object to it as wholly immaterial; the counsel has shown by the witness that he has nothing to do with it, knew nothing whatever concerning it.

Mr. CLOUGH. The witness here has admitted that he knew nothing of that occurrence in the convention, regarding Ingmundson's speech. Now, we propose to introduce the newspaper that was printed in the town of Austin, shortly after the convention took place, and show that the subject of Ingmundson's remarks was commented on by the newspapers, and we propose to show there was a strong probability, that the witness was acquainted with these remarks. Ingmundson made a speech in that convention, and he says that Judge Page's hostility commenced shortly after he made it, the speech was a matter of particular comment in the newspapers, and it seems to me that that offers the strongest kind of circumstantial evidence, that this witness must have known in regard to this matter.

Mr. DAVIS: The Senate must have observed that there has been no disposition on the part of the counsel for the respondent, to interpose any obstacle to the fullest cross-examination by the managers. Many questions have been asked, which, upon technical grounds, undoubtedly could be objected to, and the objections sustained. But when a departure from what we consider to be the fundamental rules of evidence, is attempted—a departure so radically and inherently vicious as this is—we feel it our duty to interpose an objection.

The proposition of my learned friend is this: That where a witness denies publicly any knowledge of a public fact, such as what took place in a caucus, and that merely because that fact was commented upon in some newspaper, therefore knowledge of it may be imputed to him, and it may be presumed that he knew of it.

Now that is a most dangerous rule—that, in regard to the daily transactions of our lives, in a case where we appear before a court, and under the sanctions and solemnities of an oath, say that we know nothing about a certain occurrence, we are to be confronted with a newspaper published in our vicinity, or in our town, which shall impugn our veracity, impute notice, and bear upon us in the most important concerns of our lives, not only affecting the present time, but as to all the future.

Now, I have no doubt, gentlemen of the Senate, that the bickerings and contentions in the county of Mower have been the subjects of the most exascerbated newspaper controversy. I have no doubt but that the parties involved quarrelled and clawed like cats hung over a clothes

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line, but if this Senate is to go into all these matters, the invectives of editors hurled at each other, week after week, from their respective sanctums, where will be the end of it, where its justice?

Our client has denied that he inspired that article; he has denied that he wrote it; he has denied that he knew anything about it; he has denied that he took notice of any of the facts to which it refers, and now, simply because three persons in 1875 printed an article in a newspaper, my learned friend proposes to introduce it under the pretext that the respondent must have known of it, whereas the real intention is to spread before the Senate the private views of some correspondent or some editor, with whom the respondent on the stand denies all knowledge of, and with whom he had no connection.

Mr. CLOUGH. Has the counsel any objection to my saying one word?

Mr. DAVIS. Not the least.

Mr. CLOUGH. I offered this evidence in the utmost good faith, and an entire belief in its legality, and a good illustration can be put to sustain me.

Now, it is a fact that publications in a newspaper are a proper mode of evidence in a court of justice, to show the probability of those who live in the same community of knowing the facts so published, and I can cite you a case which occurs very frequently in court.

Take the case of a lost commercial paper, or a lost promissroy note. I am the *bona fide* holder of it, and if I lose it what do I do? I go to a newspaper and insert a notice to the effect that I have lost the note. Now, after a while, somebody turns up in that same community with that note, and claims to be the *bona fide* holder of it. I can show that he is not, and can introduce the fact of the publication in the newspaper where that man lived, of the notice I made public of the loss of that note. Now, that is perfectly legitimate evidence, and so is this here. Because this witness denies the knowledge of a public fact—that occurred in Mower county, are we to be estopped from proving the contrary. The fact that this article was a public matter—published in a newspaper circulated among the community, and in a place where the respondent resided, is circumstantial evidence that he was familiar with it, and is a proper legal inference. and should be received in testimony. Our offer is entirely sincere.

Mr. DAVIS. I take issue most decidedly, upon each and every proposition the learned counsel has made. He has produced no authority, for it is unheard of, and is not warranted by any precedent that occurs to me. Now allow me to put a case. Suppose in an action involving title to real estate, one person claims he has lost the deed, an unrecorded deed The other person has a deed from the last vendee, which deed has been recorded, and the question comes up whether the person claiming under the deed had notice, or whether notice was had of the unrecorded deed by any person who is interested in that controversy. That person is put upon the stand, and he testifies positively and decisively, unshaken by cross-examination, that he knew nothing about it whatever; that he bought the property in good faith, in ignorance of any quietus; that he paid full consideration for it. Was it ever heard of, that advertising the unrecorded deed in any newspaper was giving proper notice that such a deed was in existence, though not of record, and could be testimony in the case?

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The whole philosophy of law in regard to the effect of publications of this character being in evidence, is based upon exceptions to the general rule of exclusion which I have stated. For certain purposes, notice of dissolution of partnership is evidence, but such notice in a newspaper of dissolution of a partnership is not evidence as against a person who ever dealt with the partnership before it was dissolved.

Mr. CLOUGH. If the Senate please, I have an authority here on lost bills. It is the second volume of Parsons on Notes and Bills. I did not think the question would arise, or I would have had my authorities.

In speaking of the duty of a party who had lost a bill, he says: Parol testimony has been admitted to prove that the lost bill of exchange in suit was duly advertised, without the production of the advertisement itself, or of the newspaper in which it was published. But public notice not brought home to the buyer will not affect his title, for, here, as in other cases of advertisement, the notice operates upon those only whom it reaches. But a jury may draw the conclusion that the payor or buyer had seen the advertisement from any evidence rendering it sufficiently probable; as his taking the paper, or being in the habit of reading it, or the like."

So that is direct evidence. If a man claims to be the holder of a note which has been lost, and he has found, if an advertisement has been printed, and he is shown to have taken the paper in which the notice of loss has been advertised, why that fact is a material one to go to the jury, and the jury are justified upon that evidence, in finding for the party:

"And it has been intimated that due diligence in advertising, and so forth, by the loser, may raise a presumption of knowledge on the part of one to be affected by it; and on this ground, it was formerly held, that the loser of a note could not recover upon it, without having exercised due diligence in giving a public and accurate notice of its loss. This question of diligence in notice is left to the jury."

Mr. DAVIS. Gentlemen of the Senate, the chapter just read is upon the peculiar circumstances which existed in the case where the note or bill of exchange was lost; where the payee sues upon a lost bill, and is required to take some steps which will indicate to persons liable, so he may be protected thereafter, in case the document which has been lost, is questioned. It is wholly and incidentally collateral to the question of liability. That is all there is about this. I have no further comment upon that question.

Senator NELSON. I will inquire, Mr. President, the name of this paper?

Mr. CLOUGH. The *Republican*, the one I understood the witness he had taken.

The question being taken on receiving the evidence, and
The roll being called, there were yeas 6, and nays 25, as follows:
Those who voted in the affirmative were—
Messrs. Clough, Deuel, Finseth, Hall, Morehouse, and Shaleen.
Those who voted in the negavitive were—
Messrs. Armstrong, Clement, Donnelly, Edgerton, Edwards, Gilfillan John B., Goodrich, Hersey, Houlton, Langdon, Macdonald, McClure, McHench, McNelly, Mealey, Morton, Nelson, Page, Pillsbury, Remore, Rice Smith, Waite, Waldron, and Wheat.
So the evidence was not received.

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Q. You were on good terms with Mr. Ingmundson were you not, up to the time of holding this convention in 1875?

A. As far as I know, yes sir.

Q. You had been out with him hunting and shooting, had you?

A. Previous to that time?

Q. Yes sir.

A. I think I had been out with him, previous to that time.

Q. Had you not been out with him alone several times?

A. Not several times; I might have been out with him once or twice.

Q. Were yon not out with him three or four times?

A. Not alone.

Q. You were in the habit, while you were in Austin, of seeing him every day?

A. I saw him very frequently, yes sir.

Q. I mean every day?

A. I would not say; I think not, almost every day; not while he lived in the other part of the town; I don't know how long he lived there, but it was a portion of the time, about two years, and he came there to the opposite part of the town, and I seldom saw him during that time, only as I saw him when he was in the clerk's office.

Q. His office was in the office of the district clerk?

A. Yes sir.

Q. And he was a deputy clerk, was he not?

A. I believe he was at one time.

Q. After the convention was held in the county of Mower in the fall of 1875, were you then at Austin?

A. I would not be positive in regard to that; my recollection is that I was out in a hunting party once or twice after that.

Q. Won't you please to state when these parties occurred, who were along; I mean after the county convention, when you say Mr. Ingmundson was along?

A. I will not undertake to state definitely the time when I was out with Mr. Ingmundson in hunting parties at any time, except once or twice; I recollect one time, but the other dates I am unable to fix.

Q. Do you remember who were along?

A. Some of the parties, I do.

Q. Who were along; I mean after the convention was held in the year 1875, in Mower county, when Mr. Ingmundson was along?

A. I cannot distinguish the persons, nor connect them with particular excursions, all of them.

Q. Tell us, if you please?

A. At one time I was out with the party that was composed of six persons, and as I recollect it, the persons were Mr. Kinsman and myself went together in one buggy, and I think returned together; Mr. Engle and Mr. McWhorter, and Mr. Ingmundson and, I think, Mr. West. I think those were the persons who composed one hunting excursion with Mr. Ingmundson.

Q. You don't know whether that was after the fall convention or not?

A. I cannot state; I have no means of refreshing my recollection.

Q. The point that I want to get at now is, whether you had any

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recollection of any occasion where you were out hunting after that time; I am not particular as to the time before.

A. My recollection is that I was out, up the Turtle—the Turtle creek.

Q. Was Mr. West and Mr. Kinsman along on either of those occasions?

A. I won't say; I don't think that Mr. Kinsman was.

Q. Who were along?

A. It is possible that Mr. West was.

Q. Do you remember that he was?

A. I think D B. Smith was along on one occasion, when we went to Rice Lake; I think that was after the convention, but cannot state positive.

Q. Before this convention of 1875, whenever you had met Ingmundson you had conversation with him in a free and friendly way?

A. Whenever any conversation occurred between us—

Q. Whenever you met, you were in the habit of passing the time of day, were you not?

A. Whenever occasion demanded it I spoke with him as with any other citizen.

Q. After the fall election of 1875 can you recollect any single case where you ever had any friendly conversation with Mr. Ingmundson?

A. I can't recollect any particular instance or any conversation with Mr. Ingmundson, that is to fix the fact or to connect it with any particular or definite date.

Q. Can you state any occasion since the fall of 1875, in which you ever had any friendly conversation with Mr. Ingmundson?

A. I cannot fix any particular date.

Q. Will you swear that you have ever had any friendly conversation with Mr. Ingmundson since 1875?

A. So far as I am aware the conversation was entirely friendly on my part whenever I had any occasion to speak to him.

Q. Have you had any conversation with Mr. Ingmundson since the fall election of 1875, except in regard to the purest business matters?

A. I don't recollect any particular conversation that we have had; I noticed no difference in the conduct of Mr. Ingmundson, and I know that there was none as far as I was concerned, until after the fall term of court of 1876.

Q. But still you cannot give a single instance where you have had any conversation after the fall of 1875?

A. I cannot give you a single instance before that.

Q. You can after that?

A. The same with reference to all our acquaintance, unless it be with reference to particular hunting excursions, because I never had a friendly intimacy—

Q. Wait a moment; that is not in response to my question. Do you remember the occasion which Mr. Ingmundson speaks about—the time of holding this county convention, when he had arranged for a hunting excursion and did not go with him?

A. I have no recollection of his arranging a hunting excursion where we did not go; such, however, might have occurred, because I have frequently refused to go, when my official business occupied my attention.

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Q. You won't swear that Mr. Ingmundson's statement about that matter was not true?

A. No sir.

Q. Will you swear Mr. Ingmundson's statement is not true?

A. I don't recollect just what he stated.

Q. I refer to the statement that he made, that shortly prior to the holding of that convention you and he had an appointment for a subsequent day, and the next morning after the convention he met you and you declined to go with him?

A. No sir, not in that way.

Q. Do you deny that?

A. I deny this, that I never had any appointment to go with him shooting or hunting.

Q. Or in his company?

A. I won't say that.

Q. Do you deny that?

A. If he asked me if I was going?

Q. Yes sir.

A. I didn't state that he didn't ask me if I was going; such a conversation would be entirely natural.

Q. When was the subject of Mr. Ingmundson's irregularities first brought to your attention; the subject of the irregularities in his office?

A. I think the first time my attention was called to it, to that matter, or the first intimations that I had about it, was about the time of the fall term of court, 1876, that is my recollection about it.

Q. Shortly prior to the fall term, was it?

A. What intimations I had in regard to it were, perhaps, during the fall term; just what those were I will not state.

Q. Do you remember who gave you the intimation on the subject?

A. I cannot now state the persons; my recollection is now that some resident of the town of Clayton, I will not state who it was, gave it to me.

Q. It was Mr. D. B. Coleman, was it not?

A. I think not at that time.

Q. Do you remember what the subject of conversation was?

A. It occurred in connection with an incidental conversation, I think, with some citizen of the town, and it occurs to me now that while talking about it, that it was Mr. W. S. Root that gave me some information with regard to it.

Q. But you don't remember what Mr. Root said?

A. No sir.

Q. Was he in attendance in the court in any capacity?

A. I don't recollect; if I should give you my best impression with regard to it I would say he was a witness in connection with some of the defalcations.

Q. After that intimation had been given to you that there were irregularities in the county treasurer's office, did you call the attention of the grand jury to it?

A. Not to that definitely or specifically; the information was not of that character that warranted me in calling their attention to it specifically.

Q. Did you mention to the grand jury of that term, particularly, that they should investigate the facts of the county treasury?

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A. Not particularly or distinctly; I did in a general way.

Q. Did you intimate that there were matters that specially required looking over, without mentioning what they were?

A. Not specially.

Q. You testified in regard to this matter, did you not, before the judiciary committee of the House of Representatives?

A. I presume I did.

Q. Did you not then testify that you knew nothing at, or prior to this September term, 1875, about the irregularities in Ingmundson's office, and had heard of nothing of the kind?

A. I don't think I did at that time.

Q. Didn't you testify that you had no knowledge or information of any irregularities in his office at that time.

A. I think not; I think my testimony was in substance, as I have given it here: if it was in court, I don't recollect; if it was inquired if I had any specific knowledge of any particular irregularities prior to the fall of 1876, but I was inquired as to the knowledge I had prior to the term of 1877.

Q. You don't think that the information that you received from Mr. Root, was worthy of consideration enough to put it before the grand jury?

A. Not specially and distinctly.

Q. Now, the grand jury made a report on the county treasurer's office?

A. Not to me.

Q. Didn't make any report in court?

A. Not to me; I didn't know of the report.

Q. Didn't hear of any?

A. Not at that time; I knew of no report, and heard of none, at that term of court, until after the term had closed.

Q. You say you had heard of the report after the term closed. How did you hear of it; did you see the report on file?

A. I don't recollect as to that; the report, as I was informed, was handed in to the clerk of the court by the clerk of the grand jury, in connection with such papers as they had used in their deliberations?

Q. Did it go on to the files of the court?

A. So far as I know, it did. I can't say that I saw it there.

Q. Do you remember how long it was after the adjournment of that September term of court before you learned of that report?

A. No sir.

Q. You were satisfied with that report, were you not?

A. I cannot state to you that I had any particular satisfaction; I formed no opinion about it.

Q. You had no reason to think at that time that the report was not correct?

A. I did not know anything about it; it didn't come under my observation officially.

Q. Did you think that the grand jury had not sufficiently done their duty, when you heard that report?

A. I didn't give the matter any thought.

Q. When did you first come to the conclusion that the grand jury hadn't done their duty?

A. I can't say that I had such a conclusion, but my impressions were that the investigations were not thorough at all.

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Q. When, after the September term of 1876, were you informed about the irregularities in Mr. Ingmundson's office?
A. I cannot fix the date.
Q. Where were you when that information was given to you?
A. I would not be positive, but it occurred to me that it was in my chambers at Austin.
Q. Sometime before the March term of court of 1877.
A. Yes sir.
Q. Who was it gave you that information?
A. D. B. Coleman.
A. It was with him; you may call it private in one sense.
Q. No other person was present?
A. No.
Q. It was a confidential inverview?
A. What do you mean?
Q. Did he say that his name should not be used, that it should be suppressed?
A. No sir.
Q. Was the subject discussed between you and him, of the question being submitted, at the coming term to the grand jury?
A. Well I don't think there was any discussion about it at all.
Q. Was there any other subject before you in that interview, except the irregularities in the county treasurer's office?
A. Very likely, there might have been.
Q. Do you remember, or wont you state, what occurred in that interview between you and Mr. Coleman?
A. I cannot tell—what occurred with reference to this matter.
Q. Do you remember what Mr. Coleman's business was in your office at that time?
A. I don't know that he had any other business than that; I don't recollect now that he did.
Q. Wont you please state what he said to you about this business?
A. I cannot state to you the words, his statement was with reference to whether—he went on to state to me that there had been, as he claimed, a loss to the town; that there was money in the county treasury, that belonged to the town, and that he was unable to get it, that the treasurer had refused to pay it over, and that the order he held, as against the town, was a paid order, and that Mr. Quam, the treasurer, was a defaulter, and he gava me a general statement in regard to the town of Clayton.
Q. Did Mr. Coleman claim to be an official of the town of Clayton?
A. I don't recollect now.
Q. Mr. Coleman told you that he himself was the payee of that order?
A. I presume he did.
Q. Did he tell you, or give you to understand, that he had received his pay twice on that order?
A. No sir, he didn't state that.
Q. Mr. Coleman didn't claim that he had been paid that order more than once?
A. No sir.
Q. Was anything said about the subject of prosecuting the county treasurer at that time?
A. That is, the prosecution of him criminally?
Q. Yes?

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A. No sir, I think not; I don't recollect whether he make any request that it be brought before the grand jury; I think he did not.

Q. He was summoned as one of the grand jurors at that term, was he not.

A. I think he was; yes sir.

Q. Was this complaint that he made to you, or this information he gave to you, before he was summoned, or afterwards?

A. I cannot tell you, because I don't know when he was summoned.

Q. Didn't you tell him in the course of that interview that you would bring the matter before the grand jury?

A. I may have said so, but don't think I did.

Q. Did you have any other information of any other irregularities in the office of county treasurer, before the commencement of the March term of 1877, and from whom did you derive it?

A. I had no direct and positive information in regard to it, but it was a matter of quite general talk that there were other irregularities in connection with town orders and with reference to his use of the public funds. There had been considerable talk with reference to the matters connected with his office.

Q. Had you any information from any reliable man in regard to any irregularities prior to the March term of 1877, except in connection with this county order?

A. I had, previous to that time, no information that I considered warranted me in bringing the facts to the grand jury specifically, to no particular matter except those.

Q. What information had you, prior to this March term of court, of any kind in regard to the use being taken of the orders in the county treasurer's office, except this Clayton order?

A. Well, I had been informed—it had been said to me—that the treasurer was in the habit, or had received town orders, and not for taxes; that he had taken them.

Q. Who made these statements?

A. I cannot state to you.

Q. Any reliable person?

A. I considered him so.

Q. Any person who claimed to have any information himself on the subject?

A. I did not make any definite and specific inquiry to these matters.

Q. Did you receive that information before the fall term of 1876?

A. I think not.

Q. It was between the session of 1876 and the March term of 1877?

A. I will say it was also currently rumored and talked that he had been loaning the funds of the county.

Q. In what way?

A. I didn't make any specific inquiries in regard to that.

Q. Didn't you think it worth while to make any inquiry in regard to that?

A. I certainly should have thought it worth while, if I had taken the trouble to do it. I did not consider that was a part of my duty, at all, to look after those matters, except they were brought to my attention, so that I could notice them.

Q. Were you aware of the fact, that the treasurer had been depositing the money in different banks?

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A. I had been so informed.
Q. By whom?
A. I really can't state the names of the persons.
Q It was a matter of public notoriety; some of the banks may have stated it. The First National Bank in Austin had received some deposits; you stated so.
A. Yes sir.
Q. You have considerable business with that bank?
A. Very little, sir.
Q. Your office is in its building, and you are connected intimately with the officers?
A. My office is in the upper part of the bank building. I meet frequently with the officers?
Q. You see them frequently?
A. Yes sir.
Q. There was not any attempt, on the part of the officers of the bank, to conceal from you the fact that they were receiving the funds?
A. I never made any inquiries at all, after these matters came out.
Q. Did you ever hear of any attempt to conceal or suppress the fact that Mr. Ingmundson was depositing moneys in various banks of that county; was not that deposit a matter that was done openly, and above board?
A. I don't know; I had no opportunity of observing or knowing.
Q. Did you ever examine the public records to see what was the disposition of the interest arising from that money?
A. I never did.
Q. Was that when the March term of 1877 came on, that you had heard rumors, and it was publicly stated, that the county treasurer had made deposits in the bank?
A. I did not state that it had been publicly stated; I stated there were rumors and talk about it; when you state that it was publicly stated, that implies the fact that it was publicly stated.
Q. There was no denial of it.
A. I don't know as to that.
Q. When this March term of 1877 came on, you instructed the grand jury?
A. I did, yes sir.
Q. When you spoke of the treasurer's office, I will ask you if you referred the grand jury to this provision of the statute, section 37, chapter 107, of the general statutes, which I will read to you:
"Section 37—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."
A. That is a part of the general statutes which all judges are required to read to the grand jurors, and which I read to the grand jury at that time.
Q. You read that provision of the statute to them?
A. Yes sir, I did.
Q. I will ask you if you also read the provisions of section 8, chapter 91 of the said statutes:

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"Section 8. Where any duty is enjoined by law upon any public officer or upon any person holding any public trust or office, 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."

Q. Did you read that to the grand jury?

A. My recollection is that I either read it or called their attention to it; my recollection is that I read it.

Q. Do you remember any other provision that you read to the grand jury at that time; if so, please state it and cite the references to them; if you will be kind enough to take the statutes and refer to them, I will be much obliged to you?

A. I think I read section 26, page 606.

Q. Won't you just point out all the sections you eard here, so thatt we can have them together?

A. I don't recollect how many of these I read. I would not be positive with regard to that.

Q. The one in regard to the set-off?

A. Sec. 30. I think I read that.

Q. That was in your principal charge?

A. I think so.

Q. Was it reduced to writing?

A. Not all of it.

Q. What portion of it relative to that matter?

A. General matters—general statements. I don't mean by that, that any of it was made to the grand jury.

Q. Did any part of the charge reduced to writing go to the grand jury as it was written?

A. Yes, if any of it was written. A portion of it was reduced to writing—that is, memoranda of it was made; I can explain it, if necessary.

Q. What has become of those memoranda?

A. I never took them to the court room with me; they very likely may be home, or may be lost.

Q. You leave them at your home?

A. Generally at my home.

Q. You don't say that you didn't have it with you?

A. I do not.

Q. When you delivered your principal charge to the grand jury, and you spoke in reference to the county treasurer's office, did you say any thing about rumors that the treasurer was in the habit of depositing money in the bank?

A. I don't think I did.

Q. In your principal charge did you mention that other matter that you had heard about, to-wit: that he had received in payment of taxes, town orders?

A. I don't recollect that I charged the jury specifically upon any other matter except the matter connected with the town of Clayton.

Q But you did charge them directly upon the subject of the town of Clayton order?

A. Such as I had information about, that I considered reliable?

Q. In connection with the town order of the town of Clayton, you read to the grand jury secs. 26 and 30, on page 95, of the general statute; did you not?

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A. Well, the section I pointed out I read, I think. It was in connection with my general charge. I will state it to you that I read the law—general law—which I am required to read, and in reading that, I commented generally on misconduct in office, as I do everywhere; then I called their attention specifically to portions of the statutes and commented upon them; I then called attention to this matter. that had come to my knowlege, and about which I had been informed.

Q. Was not the reading of those sections of the statute that I have just referred to, secs. 26 and 30, of chapter 95, immediately in connection with your charge to the grand jury?

A. It was in connection with the county treasurer.

Q. You also spoke in connection with the county auditor's office; didn't you read the sec. 8, chapter 91, you remember that section, is the general one, in regard to misbehavior in office?

A. I don't think it was. It was read in the general charge, but not in connection with the matter of liability.

Q. Didn't you read this section of the statute as bearing upon that question, particularly?

A. No sir.

Q. You deny that?

A. Yes sir.

Q. You had known about the gatherings in the county auditor's office for some time?

A. I had known of it.

Q And you knew there was a band of musicians practicing there?

A. I knew the band was in there; I think we had been disturbed by them, and when we were in court we sent down to have them desist.

Q. It was a matter of public notoriety?

A. I can't say as to that.

Q. Knew that McIntyre was a member of that band?

A. I did not, no sir; I could not name the persons of the band.

Q. You had seen it frequently in public?

A. I cannot state that I had been present where they have played for years.

Q. They were out and serenaded you shortly before this term of court?

A. I have no knowledge of that.

Q. Were you not home that night?

A. You are talking of something I do not know about; if I was serenaded by the Austin band I have no knowledge of it.

Q. Was not the fact that the Austin band was out playing in your neighborhood sufficient to refresh your recollection that they were practicing?

A. No sir.

Q. How long had they been practicing before this term of March?

A. I really cannot tell you.

Q. A year or more?

A. I really cannot tell you.

Q. Several terms of court had elapsed since that band had commenced practicing before this March term of court?

A. I cannot tell you; I have no knowledge of the length of time.

Q. They didn't make any more or less noise before or after the March term of court?

A. I didn't take any occasion to compare the noises.

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Q. In your principal charge on that occasion you, as usual, instructed them to examine all the county offices?

A. I gave them the general instructions in regard to the county offices.

Q. You also gave them the general instructions to examine into the county treasurer's office. Did you tell the jury directly, in substance, that in the course of their investigations they were not to interrogate the officer at that time?

A. Not in that language.

Q. You didn't tell them anything of that kind?

A. I did tell them something of that kind, but not in that language.

Q. Are you in the habit of telling them that they are not to say anything to the officers?

A. Not in that language. I instructed them not to call defendants or accused persons before them.

Q. I am speaking about the examination of the grand jury in regard to the public offices; you are not in the habit of instructing them that in the process of their investigations they are not to call the persons before them who are interested?

A. Only as it is implied in the general charge.

Q. I should like to have you reproduce the words, as near as you can, what you did say upon the subject of county officers, if anything, of their being called before the grand jury, in the process of their examining into the condition of the county offices?

A. I will tell you all I can in substance. I have stated to you that I will not reproduce the exact words; I will reproduce the substance. I instructed the grand jury, in connection with the charge concerning the public offices, that they had no right legally to call persons accused of offenses before them to give their testimony in regard to the subject-matter of the different offenses under investigation. Further than that I did not call their attention to any specific officers, but told them generally that they had no right to call them before them.

Q. In your general charge to the grand jury, did you say anything about the conduct of officers being wilful and corrupt, in order to constitute a misdemeanor in office?

A. I think I did, sir.

Q. I mean any more than to read that provision of the statute to which I called your attention?

A. I don't recollect whether I commented particularly upon that particular matter or not.

Q. When did you first learn of Ingmundson having been before the grand jury?

A. I think it was during the term of court—the March term of court—something was said to me about it, but I cannot state now who said it.

Q. Did you compliment the grand jurors in your general charge upon their being intelligent men and tell them it was not necessary to charge them at length?

A. I have no recollection of commenting upon the physical features of the grand jurors.

Q. Their intelligent appearance, I mean?

A. Well, that is another expression altogether.

Q. Intelligent looks are good looks, are they not?

A. It depends upon what you understand by the word "good." I

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ıted to them from their appearance that they were an intelligent body of
:n, and from that fact, that they would act, in the discharge of their
ty, promptly and fearlessly.
Q. What did you tell them in regard to the band of musicians?
A. I did not refer to a band of musicians.
Q. But you knew what it was that was meeting there?
A. I think I knew; yes sir.
Q. But still, in your charge, you did not mention the fact?
A. No sir. In my general charge to the grand jury I am very care-
l not to use language that would be considered offensive, touching any
rson or individuals.
Q. Before this time, you had some difficulty with Mr. McIntyre, the
unty auditor,—some words with him?
A. Previous to this time?
Q. Yes sir?
A. I don't recollect whether the occurrence in the auditor's
ice was previous or after that time; it might have been ———
Q. You heard the evidence of Mr. McIntyre about the interview
ou had with him in the barn yard of your house, the subject being the
ndidacy of Mr. Irgens for secretary of state. Do you deny that
ou and Mr. McIntyre had an interview in your barn yard?
A. I deny that I had any interview with ——
[Question repeated.]
A. I never had an interview with Mr. McIntyre on the subject of
r. Irgens' candidacy at all; that is a pure fabrication.
Q. That is wholly untrue?
A. Wholly untrue.
Q. You never had a conversation with him on that subject?
A. No sir; not in regard to the candidacy of Mr. Irgens.
Q. You were very vigorously opposing the candidacy of Mr. Irgens.
A. No.
Q, You were talking and opposing it in Austin?
A. I talked very little about it.
R. Did you talk with one Mr. Greenman about it.
A. I might have.
Q. Did you talk threateningly with any person, in regard to that?
A. I never talked threateningly with any person in regard to that.
Q. You had then talked threateningly to persons?
Q. I had sometimes; on three or four occasions.
Q. Now, in the course of your charge to the grand jury, at the March
rm of 1877, when you talked about the office of the county treasurer,
hat did you tell the grand jury in respect to a report of facts, when
ou were speaking about the office of the county treasurer?
A. I don't recollect what I stated to them distinctly—I stated to
en, in a general way, with reference to the difference between a pre-
ntment and an indictment; in explaining these matters, and in con-
ction with their investigation of public offices, that they were author-
zed to make a report.
Q. Didn't you say to the grand jury, after explaining the difference
tween an indictment and presentment; that you desired them to report
ı indictment or presentment, or, if they were not warranted in
ing so, to present the facts?
A. I did not say so.

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Q. Did you say that if they did not report an indictment, or presentment; that they should report the facts?

A. Not at that time.

Q. When did that instruction occur?

A. Not at all, in the form that you put it.

Q. When you instructed the grand jury that they were to make a report of the facts, in case they did not find an indictment or a presentment?

A. I did not give them any instructions in the form that you put it.

Q. I am not speaking about the form—didn't you in substance?

A. Not in the connection you stated.

Q. I am not talking about connections; did you not say in substance, when you instructed the grand jury, that they should make a report of the facts, in case they did not find an indictment or a presentment?

A. Not in this form that you give it; not in the connection—

Q. I want an answer, yes or no.

A. I have answered that.

Q. You spoke of, or it has been testified here, that at some time the grand jury came into court, in reference to an instruction about the provision of law. Do you remember when that was?

A. My recollection of it was that it was during the second week: I think the eighth or ninth day, but I would not be positive.

Q. After you had instructed the grand jury the first time, and they had gone out, did you allude to the subject of the county treasurer to the grand jury in open court at all, about this information?

A. No sir.

Q. Won't you be kind enough to state what section of the statute, which was pointed out, to which the grand jury referred. Here are both the provisions of the statute?

A. I cannot state to you; I do not remember now; I have not seen the statement of the section, but I have examined the section.

Q. Do you remember the subject matter of this section?

A. I cannot now.

Q. Was the request verbal or in writing?

A. I will not state; it was made by the foreman, and whether he presented it in writing, or made the request orally, I do not now recollect.

Q. Was not the subject of that provision of the statute in reference to the intent, with which wrongful and illegal acts were committed, in order to constitute an offense?

A. I think that was not the general topic.

Q. What was it?

A. I said I do not recollect in regard to it; my impression is that they asked some instruction with reference to some section of the law, but what that section was I cannot state.

Q. Can't you remember the instruction you gave?

A. I gave them my general interpretation of the section.

Q. Did you stop with that interpretation of the section to them?

A. What do you mean?

Q. Did you merely answer that question, or did you still go on and give them instructions?

A. I gave them such instructions as I considered appropriate.

Q. But you do not remember what that was?

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A. It occurs to me that it was some topic in regard to the management of public offices.

Q. Didn't you urge upon them the propriety of giving the county treasurer's office some investigation?

A. I presume I may have done so.

Q. The next time the grand jury came in, in connection with the treasurer's office, did they present a verbal or written statement, so far as the county treasurer was involved?

A. The next time they came in, my recollection is, that they made a presentment that was not in any form as required by law, and it was not signed by the foreman.

Q. Was it verbal or in writing?

A. The paper which they handed me was in writing.

Q. Was there any verbal communication accompanying that made by the grand jury through its foreman or otherwise?

A. I don't recollect what it was at that time.

Q. Will you state that paper was not handed to you and whether you read it?

A. It was handed to me, yes sir; I won't say that I read it; I won't state that I looked at its form and the shape that it was in.

Q. But you won't swear that you read it or not?

A. My impression is, that I didn't read the whole of it.

Q. You won't deny that you read it?

A. No sir; I may have read it, but my impression is, that I did not.

Q. It was only three or four lines in length?

A. I cannot state the length, but my recollection now is, that it was made on foolscap paper, and that it covered half the side of a sheet.

Q. In whose handwriting was it?

A. I cannot tell you.

Q. It was delivered by the grand jury right in open court to yourself?

A. By the foreman, yes sir.

Q. There was no doubt in your mind that it was the report of the grand jury?

A. I suppose it came from the grand jury.

Q. Please state the contents of that report.

A. I cannot state the contents of it; I can state merely the subject matter of it, but not the verbiage of it.

Q. Did you tell the grand jury something, that that report was not proper?

A. I stated that the report was not signed by any one; and did not purport on its face to be a presentment of the grand jury, and I stated to them that all presentments of a grand jury should be signed by the foreman.

Q. The only objection you made was that it was not signed by the foreman?

A. That is the substance of the objection.

Q. You mean to convey the idea that it was all right, if it was signed?

A. I did not say that; I said that the presentment they made was informal because it was not signed.

Q. Because it was not signed?

A. Yes sir.

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Q. Did you suggest to them that if it was signed by the foreman that that would correct the difficulty?

A. I said that would correct one difficulty; I did not make any such statement to the jury as you state.

Q. Was not the main objection not that it was not signed, but that it was not an indictment nor a presentment within the statute, nor was it a statement of any specific facts?

A. I may have called the attention of the grand jury to the form, if I read it, and I may have read it.

Q. Didn't that document state the opinion of the grand jury in reference to the county treasurer?

A. I don't recollect that it did; it may have done so.

Q. Didn't it state in substance that the grand jury found no irregularities in the county treasurer's office sufficient to find an indictment or presentment; was not that the substance of it?

A. I have no recollection, but I should say not.

Q. If it did not say that, what did it say?

A. I do not undertake to state.

[Question repeated.]

A. I should say not.

Q. If your objection had been merely that it was not signed, could not that have been remedied in a moment by the foreman of the grand jury?

A. I did not consider it would be proper to do that in open court.

Q. That was not what I was speaking about, where it should be done. Do you mean to have it understood that that grand jury, only upon an objection upon your part that the paper was not signed, should incubate upon that matter two or three days more?

A. I do not say that that is all, that that was all I said to them at that time. I stated to them generally at that time that those matters that I had called their attention to at the opening of the court were matters that had been put off and delayed, and there seems to be that disposition to put off matters, and that the paper was in a defective form, and in order that it could be acted on at all, I requested them to make a statement such as they desired to make, and put it in such form as they desired.

Q. Did you hand the paper back to the grand jury?

A. I think I did.

Q. Didn't you tell the grand jury on that occasion, only, that that was their opinion about the matter, and that you wanted the facts?

A. I may have said something to them of the form of the paper. I criticised the form of the paper; the fact that it was not signed, and pointed out informalities in connection with it.

Q. Up to this time had you had any communication in court with any member of the grand jury about what the grand jury was doing with reference to the county treasurer's office?

A. No sir; not with reference to the county treasurer's office.

Q. Had you any communication with any member of the grand jury about what the grand jury was doing?

A. Not as to any definite matters. I had asked the foreman of the grand jury, what the occasion of remaining in session so long was; but I won't say that it was previous to that time.

Q. The foreman of the grand jury was Andrew Knox?

A. Yes sir.

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Q. Where did you see him, during this interview with him?

A. I think it was after the adjournment of court, either at noon or at evening.

Q. Did he live in Austin at that time?

A. I think he did.

Q. You met him when he was going home—or did you seek him out?

A. My recollection is, I met him incidentally, about the time of the adjournment of court; I asked him the question purposely.

Q. You started the subject with Mr. Knox?

A. I did not start that subject; you misrepresent.

Q Who spoke about what the grand jury were doing in there first, you or Mr. Knox?

A. There hadn't anybody spoke about it first.

Q. The subject you have just spoken of, was what was spoken of in the grand jury room?

A. No sir.

Q. You did not inquire what was transpiring, in open court?

A. I know that; I know just what I asked him, it was why the grand jury remained in so long, and what the occasion of the delay was?

Q. What did he say to that?

A. He answered me that there was a disposition, on the part of the grand jury to put off matters—to put off matters—he did not tell me what the matter was; he hadn't any power to compel them, and he could not get them to act on matters I had brought before them; there was nothing said about what matters were done in that room.

Q. You testified on that matter before the judiciary committee last winter?

A. I did.

Q. Did you testify to this effect that you saw Mr. Andrew Knox, and you inquired of Mr. Knox what the reason was that the jury showed reluctance to enter upon the matters that you had given them in charge?

A. I don't think I did, in that language.

Q. Didn't you so swear before the judiciary committee, just as I have stated, that you asked Mr. Knox?

A. I don't think I put it in that form; that was the substance of that idea in that conversation.

Q. What you meant to inquire of Mr. Knox was, why the grand jury hadn't proceeded more energetically in relation to the county treasurer's and county auditor's office?

A. I had no reference to any particular matter.

Q. What other matter had you told them except these two matters?

A. I don't recollect that they reported any other matters.

Q. Hadn't the grand jury reported indictments right along—

Senator NELSON:

Q. If you did not read the report of the grand jury how did you know the report was informal aside from the want of signature?

A. I did not state that I didn't; only I wish to be understood that I didn't read it; I said I may have read the report, and perhaps I did; I did not state that I didn't read it; I say that I have now no definite and specific recollection that I did read the report there; very like-

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ly I may have read the report, and probably did, but I don't think at this time that I read the entire report there; I read enough of it to show it was informal; no such presentment as the grand jury was required to make.

Q. Hadn't the grand jury reported indictments right along?

A. Oh; yes; I think they had; I refer to the specific matters that I called their attention to.

Q. Do you say you didn't know when you had this interview with Mr. Knox?

A. I do not fix the date of it.

Q. Do you remember whether it was the first or second week?

A. It was the second week.

Q. Up to that time you had the talk with Mr. Knox about the matters you had given in charge of the grand jury, had they not reported on or disposed of all things except the matter of the county treasurer?

A. My recollection is that they had not reported on any of the general matters with reference to the county officers.

Q. There was no matter then, except as to the county officers?

A. That is the only matter that I called their specific attention to, with exception of the matter of the town of Clayton.

Q. So far as the town of Clayton was concerned, did you give any other charge, any matter which resulted in the indictments against any persons?

A. In the town of Clayton?

Q. Yes sir.

A. I cannot say that it resulted in indictments.

Q. Don't you remember that it resulted in other indictments?

A. They were found.

Q. At the first term?

A. I do not now recollect.

Q. Then you now say that your subject of conversation with Mr. Knox was why the grand jury was delaying so about the county officers?

A. I did not talk anything of the kind, sir.

Q. How do you mean to be understood?

A. Just as I state precisely; and that is, that our conversation was general, and with reference to the general delay of the grand jury in finishing up their business.

Q. Hadn't the grand jury, before you had your conversation with Mr. Knox, found either an indictment or a presentment, and ignored officially everything you had given them in charge, except what you had given them about the county treasurer's office.

A. No sir.

Q. What then?

A. My recollection is that none of the business with reference to the auditor's office had been disposed of; there was the jail, and considerable misconduct of officers. My impression is that this Stimson matter had been disposed of at this time.

On motion the court adjourned until 2 o'clock P. M.

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AFTERNOON SESSION.

Sherman Page resumed the stand.

Continuation of cross-examination by Mr. CLOUGH.

Q. In the court minutes, on the tenth day of the term, is this entry;

"Now come the grand jury into court, and being all present, were further charged by the court, and retired to their room."

I will ask you if you remember on that occasion of the grand jury coming into court there?

A. Not specially as to the tenth day.

Q. You don't remember what you charged them about?

A. I don't associate the charge with that particular time. They came in two or three times and asked instructions, and were instructed.

Q. The point I want to reach is this, Was it before the jury came in to be instructed on that occasion, that you had an interview with Mr. Knox about what the jury were doing?

A. The 10th day?

Q. Yes sir.

A. I won't state positively, but my impression is that it was before the 10th day.

Q. How long did the interview between yourself and Mr. Knox last?

A. A very short time.

Q Anything said in the course of that interview about Ingmundson being before the grand jury?

A. I think not.

Q. He did not allude to it, or you?

A. I think not; I don't think I knew it at that time.

Q. When did you first learn, with reference to the conversation of Mr. Knox, of Ingmundson being before the grand jury?

A. I can't state how long.

Q. Will you state how you learned that Ingmundson was before the grand jury?

A. I can't state how. I heard some remarks there among the jurors, going to and from the court, with reference to this matter, but I cannot state the individual.

Q. Do you know when it was?

A. It was near the close of the term, I think.

Q. Do you remember how long before the close of the term—that is, before the grand jury was discharged?

A. It was before.

Q. Will you state, if you remember, if the grand jury informed you, or any other reliable person, that Ingmundson had been before the grand jury before that term of court; was the information given then?

A. Yes sir.

Q. Was that remark addressed to yourself?

A. I hardly think it was. I think it was some remark I overheard, in going back from the court.

Q. You heard certain grand jurors talking between themselves, and among other remarks was something about Ingmundson being before the grand jury?

A. Whether they were grand jurors or not, I would not state. It

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night have been before the opening of the court, when there was a gathering around the stove.

Q. Did the remark appear to be addressed to you at all?

A. I think not.

Q. After you heard that remark, did you take any pains to call the attention of the grand jury to the impropriety of Ingmundson being present?

A. I said nothing about it; I did not investigate it.

Q. Did not you tell Mr. Crane, in your interview with him after the close of term of court, when you were speaking of what the grand jury had said after they were discharged, that if you had known that Ingmundson was before the grand jury that you would have reprimanded them more than you did?

A. I did not use that language. I said in my direct examination that I told Mr. Crane that if I had known all those matters before that term of court closed, that I would have investigated them more fully.

Q. Did you not give him to understand that you didn't know that Ingmundson had been before the grand jury; did not you state that in substance?

A. No sir, I did not.

Q. You did not state any such language?

A. Not that language, or in such language. I used the language that I have stated to you. As I stated in my direct examination, I said to Mr. Crane that if I had known all the matters connected with the conduct of the grand jury, that I had learned since the term of court, that I would have felt it my duty to have pursued the investigation, and if it were true, that the jurors were liable to contempt, and might have been punished for it.

Q. Didn't you give him to understand about Ingmundson being being before the grand jury?

A. No sir.

Q. Did not you have a conversation with Mr. C. C. Kinsman, in which you stated the same thing to him, that you was not aware that Ingmundson was before the grand jury?

A. If you will call my attention to any particular time, perhaps I will tell you.

Q. State whether you did not, in the spring of 1877, shortly after you came back from holding your term of court for that spring in the county of Houston, at your office, in Austin, in an interview with Mr. Kinsman, say to him that you were not aware of Mr. Ingmundson's being before the grand jury during the March term of court of 1877, until after the grand jury were discharged?

A. I have no recollection of having any interview upon that subject with Mr. C. C. Kinsman at all or expressly.

Q. Do you deny that you said so to him?

A. I deny that I stated to Mr. Kinsman that I did not know, or had no information at all of that fact, until after that term of court. I might have stated to him that I had no positive or definite knowledge in regard to it.

Q. Didn't you state to him that you had no knowledge about it?

A. I had no interviews with him about it.

Q. You thought that it was an improper action?

A. Certainly I considered it so.

Q. Well, you didn't take any pains to inform the grand jury when

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you did hear that, that it was improper and warned them against doing it again?

A. I didn't say anything to the grand jury.

Q. You didn't think it was improper?

A. I didn't say so.

Q. Did you have any conversation during that term of court before the grand jury were discharged, with any other grand juror, in regard to what was occurring in the grand jury room, or outside of the court?

A. I don't think I had any personal conversation with them. I observed a great many things myself, that satisfied me as to what was going on there.

Q. Is it not the fact, that the conversation that you had with Mr. Knox, was what led to instructions to the grand jury, which are stated in these minutes to have occurred on the 10th day of the term?

A. I could not answer that question, sir.

Q. You don't remember?

A. I don't say I do not remember; it involves something I could not know possibly.

Do you remember whether the conversation you had with Mr. Knox was the occasion of the grand jury being charged on the 10th day of the term, as is stated in these court minutes?

A. You mean the cause of it?

Q. Yes, the cause of it.

A. That is something that I could not know; it is not a question of memory at all.

Q. You are satisfied with that answer?

A. I am satisfied that I am answering it correctly.

Q. I am satisfied with it, if you are.

A. Very well; I could not know what was going on in the grand jury room.

Q. What was said between yourself and Mr. Knox on that occasion; state it all if you can; give language and words; do you remember any of the particulars of that interview?

A. I never pretend to swear to the exact words of a conversation after that lapse of time; I give you the substance of the conversation.

Q. What you give does not purport to be any of the words.

A. I do not state positively some of the words, but I think I can give you some of the language.

Q. Give us all that was said, as near as you can remember it.

A. I asked Mr. Knox what the occasion—the reason was, that the grand jury remained in session so long, and why it was they remained in session a much longer time than usual; I called his attention to the fact; he said there was a disposition among the jurors to put off matters, and that he had no power to act; he didn't name any matters; that was the substance of the conversation; I said to him I hoped he would hurry the business of the grand jury, and get through as soon as possible; that was the substance of the conversation.

Q. You say that when you were going to and from the court, you yourself observed certain matters that were of a suspicious character?

A. I did not say so.

Q. When were those matters that you referred to as being observed by yourself, when you were going to and from the court room?

A. I observed that the grand jurors were a great many of them spending considerable time in the office of Mr. Ingmundson, and of the

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auditor; I observed them in the offices of these officers, and became satisfied—

Q. What did you see—it is not important what you became satisfied of; I want to know what you saw; other offices were in the court house?

A. Yes sir.

Q. Did you overhear any of the conversation?

A. I think I did hear some of the conversation that was going on.

Q. Won't you state what that conversation was between them?

A. I will have to state that I heard no definite conversation between Mr. Ingmundson and the grand jury. I heard a conversation in the hearing of a person, that I knew to be one of the grand jurors, and when I was going down.

Q. Did you understand the conversation between the members of the grand jury, and either Ingmundson or the county auditor?

A. I cannot state anything specially.

Q. The grand jury went out and brought in a report that purported to state certain facts; was that report delivered into your hands at court?

A. Yes sir; I believe it was.

Q. And read by you' was it?

A. The final report?

Q. Yes; I mean the one that purported to state the facts, the last that was brought in; did you read that through?

A. Yes sir.

Q. Did you deliver it back to the grand jury?

A. When it was presented?

Q. Yes sir.

A. I think I did, yes sir.

Q. Was that report afterwards returned into the court by the grand jury?

A. My recollection is, that it was.

Q. At the conclusion of the business of the grand jury that report was turned over to some officer of the court?

A. I filed the papers with the clerk, or handed them to him for his filing.

Q. The grand jury handed the papers to you?

A. I didn't say they handed all the papers to me.

Q. In presence of the court they handed them to somebody?

A. The clerk of the grand jury handed the report and papers to the clerk; they were handed either to the clerk or myself.

Q. After that report had been finally delivered to the grand jury, did you keep it in your possession, or was it with the clerk?

A. With the clerk, I think; that is, it was with the clerk for a certain length of time; I think that Mr. French had it afterwards, after the examination of the facts connected with it.

Q. Did you have it in your individual possession as judge of the court, or otherwise?

A. No sir; it was left with the clerk.

Q. When, after that report was delivered by the grand jury, did you next have it in your personal possession, either as judge or otherwise?

A. I cannot say as to that; it may have been in my possession during the examination of Mr. Ingmundson, or some time during that proceeding.

Q. Now, when the grand jury were present in court, and before

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they had left their seats, you ordered the county attorney to make a complaint, did you not?

A. I directed him to investigate those matters and make a complaint.

Q. Here is an entry in this court journal that I will read to you and see if it was correct: "Now came the grand jury into court," &c. "It appearing from the report of the grand jury (report on file) that a public offense has been committed, in connection with the official business of the county treasurer of this county, and no indictment being found, it is ordered by the court that the county attorney proceed at once to examine the said matter, and on filing his answer in this court, that a bench warrant issue thereon." Is that correct?

A. It is substantially as to the conclusions that were had.

Q. In what respect was it correct?

A. I don't know that in every material particular that it is correct.

Q. Did you direct a bench warrant to be issued?

A. I don't think that a bench warrant was issued; I don't think there was anything said with regard to issuing a bench warrant.

Q. Did you tell the county attorney what subject matter to investigate?

A. I told him to investigate this matter.

Q. Did you tell him anything more than to make a complaint, embodying the facts stated in that report.

A. Yes sir.

Q. Didn't you tell him to make a complaint embodying the facts in this report?

A. No sir.

Q. You deny it?

A. I told him to make a complaint on the investigation of the matter if the factscould be found from the examination of the report of the grand jury from inquiring.

Q. You told the county attorney to make complaint, didn't you?

A. I told him to investigate the matter, in connection with other language.

Q. When you told him to make a complaint didn't you say, "I would advise you to make a complaint."

A. No sir, not at that time.

Q. Didn't you subsequently tell him?

A. After that time he inquired of me with reference to where he could find the facts; I told him to take the report of the grand jury, and enquire into the matter, and that I would put him into possession of any facts I had.

Q. Didn't you tell him that the report of the grand jury had investigated matters?

A. Some of them.

Q. Did you have any knowledge of any other investigation than that?

A. I think not.

Q. In what particular was Mr. French's evidence as to the contents of that report incorrect, if it was incorrect in any part; you heard his testimony here on the stand?

A. I think I heard it, but don't recollect it now; I could not undertake to state the contents of his affidavit.

Q. Mr. French went away and made the complaint, didn't he—that

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is, he drew up a form of complaint; the complaint was to be preferred by you; that was the understanding?

A. There was not any understanding about it particularly, except that he drew it from the language; I did not tell him to bring Ingmundson before me, or any other person, but that would be the inference from the transaction.

Q. Now, when Mr. French had drawn up the complaint, didn't he present it to you?

A. Yes sir.

Q. Then didn't you read the complaint when he presented it to you?

A. Very likely.

Q. Didn't you criticise the form of that complaint, and suggest the addition of other matter?

A. I think the complaint was drawn up by Mr. French in accordance with his own views, which would be adduced upon that preliminary examination.

Q. Then you state that when the complaint was first presented, that it afterwards stood in the same form?

A. I don't say that; I may have made some directions in the matter with reference to the complaint.

Q. Don't you remember of reading over that complaint, and making suggestions to him, that matters should be stated that were not stated?

A. Not as to any substantial fact.

Q. What additions did you generally make; do you deny that you did make such complaint?

A. I don't deny it.

Q. Don't you remember of his reproducing it in court with his suggestions?

A. I do not now remember.

Q. When this complaint was presented to you by Mr. French you issued your warrant under your own hand as a committing magistrate?

A. The warrant was issued.

Q. Was anything said between you and Mr. French at that time as to the advantage of hearing his affidavit, which would be adduced upon that preliminary examination?

A. I think there was, either at that time or during this transaction.

Q. What was said between you and Mr. French upon that subject of when the hearing should take place, and as to what evidences should be produced?

A. We talked over the question of witnesses, where they were to be called from, and the length of time that would probably be necessary to procure their attendance. Such matters as related to time I cannot state definitely. That is about all that was said.

Q. Didn't you yourself state to Mr. French that you intended to obtain witnesses?

A. I don't know, sir.

Q. Where were you when Mr. French presented this complaint; in the court or in your chamber?

A. My impression is that I was at my chambers.

Q. The hearing occurred at chambers?

A. Yes sir.

Q. Was the clerk, Mr. Elder, there during this time?

A. I should say not.

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Q. They did not occur in his office; or at all events wherever they occurred, he was not there?

A. I should think not.

Q. When the witnesses were finally subpœnaed, did you give the directions of issuance of the subpœna?

A. I don't recollect that, I gave no specific directions with reference to the issuance of the subpœnas; the matter was done by the county attorney, for he stated to me he would attend to these matters; that he would take hold and prosecute the matter as effectually as he knew how.

Q. Didn't you yourself go to the clerk and give orders for the issuance of the subpœnas for the witnesses?

A. I should say not; I have no recollection.

Q. Do you mean to deny that you did?

A. I state that I have no recollection of doing anything of the kind.

Q. But you won't deny of going to the clerk and saying to him—at all events requesting him to issue subpœnas?

A. I don't remember of my having talked about the subpœnas with the clerk or Mr. French; I made no special directions or interposition in that case.

Q. Don't you remember after the subpœnas were issued that you secured the services of Mr. Hall?

A. I didn't procure the services of Mr. Hall, I may have said something to him about it.

Q. Didn't you say something to him about the clerk?

A. I never spoke with Mr. Hall with regard to the subpœnas, or had any conversation with regard to it.

Q. Will you swear that you did not request Mr. Hall to serve those subpœnas?

A. No sir.

Q. Did you ever hear Mr. French speak to the clerk, or did he ever spcak to the clerk in your hearing to issue subpœnas?

A. I don't recollect that Mr. French said anything to the clerk at all.

Q. Did you ever hear Mr French request sheriff Hall to serve the subpœnas?

A. I don't recollect whether I did or not.

Q. Then for all you knew personally in regard to the matter, the only direction the clerk had to issue subpœnas, and the only directions that the sheriff had to serve them, came from yourself?

A. My recollection in regard to the matter is that the subpœnas were issued in court.

Q. You can answer that question yes or no; do you know of any instructions to the sheriff or clerk in regard to the issuing of subpœnas in that case, or of any instructions being given?

A. I have no personal knowledge of that; Mr. French might have spoken to them; I may have incidentally spoken to them in regard to it; I may have spoken of that but I can't say.

Q. When the defendant was produced before you, he appeared there with his counsel, Mr. Cameron, and you stated furthermore that Mr. Cameron offered to waive an examination; you declined to receive that offer, didn't you?

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A. No, not absolutely; I stated what my position is in regard to it.

Q. That it was the duty of magistrates in all cases to inquire of the guilt of the accused party?

A. I didn't so state, sir; I said that my view of the matter had been, in cases of that kind, not to hold a person accused to bail unless there was some evidence that some offense had been committed, or that there was probable cause.

Q. Didn't you, yourself, write the names of the witnesses and the subpœnas with your own hand?

A. I have no recollection of it, sir; I mihht have done; so if it was so done it was not for the purpose of conducting the case.

Q. You understood that the purpose of that examination of Mr. Ingmundson was to determine whether Mr. Ingmundson had been guilty of any other offense; you understood that that was the object of the inquiry before that time?

A. Yes sir.

Q. Witnesses were sworn on the part of the State, and those witnesses were cross-examined by Mr. Cameron?

A. Yes sir.

Q. And finally, Mr. Cameron made an argument against Mr. Ingmundson being held to bail?

A. He said a few words.

Q. You understood it to be an argument against Mr. Ingmundson being held to bail?

A. It was an argument—a very brief one.

Q. And you committed the examination to writing, and filed it in court?

A. I did.

Q. Did Mr. Coleman and Mr. Haralson direct the entire proceeding?

A. I am unable to state whether they did or not.

Q. After the evidence had been closed, you gave as proposed by your own statements and that of the other witnesses, your reasons for holding Mr. Ingmundson to bail. I will ask you if, before the parties left, the subject of Mr. Ingmundson having talked in a derogatory manner of you, was not mentioned by yourself on that occasion, before the bail had been given; and if you did not accuse Mr. Ingmundson of having talked in a derogatory manner of you?

A. No sir.

Q. Didn't you state that he had talked in a derogatory manner of you at Leroy?

A. No sir.

Q. Was the subject of what he said at Leroy, mentioned?

A. It might have been, but I think not. The most that I have heard about it, and I think all that I had heard was from Mr. French, the county attorney.

Q. Mr. French himself?

A. Yes sir.

Q. And you did not hear what Mr. Ingmundson had said at Leroy against you?

A. I don't think that I did; I have no recollection of ever having heard anything that Mr. Ingmundson said at Leroy.

Q. In the course of giving these reasons, did you mention the fact,

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or state it was rumored, that other irregularities existed in the county treasurer's office?

A. In the course of giving the reasons for holding Mr. Ingmundson to bail?

Q. Now, at this time, did you give him any direction in regard to depositing money in the bank?

A. I did not.

Q. Was that subject before you, or discussed in any of this proceedings?

A. I should say not, unless it might have been incidentally, after the proceedings were concluded; not during the pendency of the proceedings, no sir.

Q. You have no recollection of doing so?

A. No sir.

Q. Now, during these proceedings, and especially during the time you were giving your last instruction to the grand jury, you were a good deal excited, were you not?

A. During these proceedings?

Q. Yes sir?

A. No sir, I was not.

Q. When you are excited, can you remember as well what occurred, as when you are not excited? I mean, can you remember what occurred in your presence, while you were under excitement as well as when you are cool?

A. I have no recollection of ever being excited, so but what I remember what occurs. I generally—

Q. You mean to say, you never get excited?

A. No sir, I don't say that.

Q. You occasionally do, but not enough to affect your memory?

A. I don't think I do sir; at all. I have a very clear and distinct recollection as to what occurs.

Q. You think you never on any occasion have been excited sufficiently to affect your memory of what occurred?

A. In my life?

Q. I mean during your judicial life?

A. During my judicial life. No sir, I don't think I have.

Q. Now you say that Mr. Ingmundson asked you a question upon that occasion. What was it he asked you about?

A. Mr. Ingmundson, at this time?

Q. Yes sir!

A. My recollection is that Mr. Ingmundson asked me a question substantially like this: "If a district clerk or a town clerk, should endorse and send an order to him, whether he would be authorized to disburse funds on the order to the town or district clerk." That was, as I recollect it, the substance of the question.

Q. At what term of court was Mr. Sever O. Quam indicted?

A. My recollection now is, that he was indicted in the fall of 1876.

Q. Do you remember when the defalcation or embezzlement for which he was indicted, occurred?

A. I can't state the time; I have no personal knowledge.

Q. Do you remember when it occurred, or when it was stated to have occurred, with reference to the taking of the county treasurer of the order on the town of Clayton, whether before or after?

A. I have no personal knowledge of those matters.

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Q. What witnesses were sworn and examined on the examination of Mr. Ingmundson; anybody but Mr. Coleman and Mr. Haralson?
A I don't recollect now; the record is here.
Q. The only point is, whether the entire record has been preserved; I ask with a view to that.
A. I think so.
Q. You don't remember of anybody but Mr. Coleman and Mr. Haralson being examined?
A. I don't remember; if there were their names are on the record.
Q. Did you tell the grand jury at the time you discharged them that it was a good thing that there was a higher power than grand juries or grand jurors, or words to that effect?
A. No sir, not in that language. I told them that there was authority to investigate these matters after the grand jury had finished them, as I considered under the law.
Q. Did you tell them that they, or any of the grand jury, could not stand between the law and the punishment of crime?
A. No sir.
C. Between criminals and the punishment of crime?
A. No sir.
Q. Anything to that effect?
A. No sir.
Q. Did you speak to the grand jury upon the subject of violating their oaths in any way?
A. Upon the subject of violating their oaths?
Q. Yes sir.
A. I did not make that a specific topic; I stated to the grand jury what would be a violation of their oaths.
Q. You can answer my question, yes or no. Did you speak to the grand jury on that occasion, upon the subject of their violating their oaths?
A. I might, or I might not, upon what subject?
Q. Upon the subject of whether they had violated their oaths?
A. Not of having violated their oaths, no sir; not upon that specific he me. I told them what a violation would be.
Q. Well, I didn't ask you to do anything but to answer it direct?
A. Yes sir; very well.
Q. Your counsel will give you a chance to make an explanation?
A. Why! I have explained already in my direct examination.
Q. I will now call your attention to some matters in connection with the case against Mr. Stimson for contempt at the term of your court for March, 1877, which commenced, as appears by the record, on the 20th day, and finally adjourned on the 28th day of April without day?
Q. What attendance on that term of court did Mr. Stimson do?
A. I have no personal knowledge that he did anything.
Q. At the time you issued the warrant against Mr. Stimson, had you any knowledge of his having attended upon the court at that time?
A. No personal knowledge.
Q. The only time you saw him about that court was when he had a law suit?
A. He had a suit there in court, but whether it was brought in that term or not, I am unable to say.
Q. The records state that it was during that term of court?
A. I recollect the case, but when it was tried I could not state. It

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seems to me the case was tried before that term, but won't be certain.

Q. Do you remember of having seen Mr. Stimson in court during the March term, 1875, except upon an occasion when he was called up to pay over the money of $5.50 that he collected; and upon the occasion of the trying of the suit, which he had if it was brought at that term?

A. I have no distinct recollection of that matter.

Q. When did you first hear of the existence of the petition which is presented upon page thirteen of the journal of the 18th day—that is, the long petition?

A. I can't state the day when I first heard of it.

Q. With reference to the time when Mr. Stimson was arrested—how long was it before he was arrested?

A. Some time before. I can't state the length of time.

Q. Was it more than a week before?

A. I should think it was.

Q. Was it two weeks before?

A. Perhaps so.

Q. Was it more than two weeks before?

A. It might have been.

Q. Will you swear it was more than two weeks before?

A. I won't swear to any definite length of time, because I don't know.

Q. Was the March term of court, 1877, in progress at the time you heard of its existence?

A. My impression is that it was not.

Q. Wasn't it more than a month after that term closed before you heard of its existence?

A. I should think not.

Q. That is, I mean before it finally closed?

A. Yes sir.

Q. It seems that this term of court, on March 29th, D. K. Stimson vs. Laura A. Tuttle *et al.*, that it is the 29th of March, 1877, about the jury coming in and rendered a verdict?

A. I recollect the case, but just when it was tried, I cannot tell.

Q. When did you obtain the first copy of the petition—that you first saw this petition?

A. It was sent to me.

Q. Sent by mail?

A. Yes sir.

Q. Do you know from whom you received it?

A. Yes sir.

Q. Who was it?

A. Mr. M. C. Potter, that lives in the town of Lyle.

Q. Did a letter accompany it?

A. I think so; yes sir.

Q. Have you preserved the letter and the envelope?

A. I have not.

Q. What did you do with it?

A. Well, I couldn't say; they may be among my letters at home; I can't say; I haven't it here.

Q. Do you remember the contents of that letter?

A. I do not, sir.

Q. Do you remember what the letter spoke of?

A. I do not.

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Q. Now, after you had reeeived this letter, did you see any other copy of the petition, of that same petition; have you ever seen more than that one copy, that one enclosed to you in the letter?

A. I think I have; I think that copy that Mr. Potter enclosed to me in the letter I gave to you last winter before the judiciary committee, and requested you to return it, and you never returned it.

Q. I must have returned it, because I did not keep it in my possession.

A. I don't say that you didn't, but I never saw it afterwards.

Q. When next did you see, after that, the copy of this petition?

A. I really can't tell you.

Q. When did you hear of Mr. Stimson—D. H. Stimson—having any connection with that petition?

A. I think that was before I received the copy, that is my recollection in regard to it.

Q. How long before?

A. I won't state how long before, but some little time.

Q. Who gave you that information with regard to Mr. Stimson?

A. I can't state definitely; I heard it from several parties.

Q. Can you mention one of them?

A. Well sir, Mr. Schwan was one of them; in the interview that he has spoken of in my office.

Q. Had you heard it from anybody else before you heard it from Mr. Schwan?

A. I think I had.

Q. From whom; of the existence of it, and the connection of Mr. Stimson in any way with the petition?

A. Yes sir, I heard that he exhibited it in a barbershop in Austin; just who stated it to me I won't be certain, but I heard of the fact. I don't recollect who told me of that.

Q. But you heard of this matter; you employed a person to investigate Mr. Stimson's connection with this petition?

A. No sir.

Q. Didn't you employ Wm. H. Merrick to search up the origin of this petition and the facts connected with it.

A. No sir.

Q. Not at all?

A. No sir.

Q. He was not in your employ at that time at all?

A. No sir.

Q. Was he in your employ at any time to find out the facts in respect to this petition, its origin or circulation in any way?

A. I think not, sir.

Q. You swear to that positively, do you?

A. I do, sir.

Q. Did you take the affidavit of any gentleman who spoke to you about Stimson being connected with this petition in any way?

A. Did I?

Q. Did you take the affidavit of any gentleman who had informed you of Mr. Stimson being connected with this petition in any way?

A. I did not, sir.

Q. Did any person state to you, before you issued this warrant, that during the month of March, 1877, Mr. Stimson had circulated that petition?

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A. That was the intimation I received?

Q. Who gave you that intimation?

A. I can't state to you now; I made inquiry when the statement was given to me, that Mr. Stimson was circulating it, with reference to the time when that originated, and from the best information I got, it was during that term of court.

Q. Who gave you any information to the effect that Mr. Stimson had that petition in his possession in March?

A. Well, my recollection is, that some of these persons who stated he had this circulating about town, said it was gotten up and circulated during the term of court.

Q. Can you give us the name of one of the persons that gave you any information of that kind?

A. I stated to you it was common talk around town, and I heard it from a great many different sources; I heard it on the street.

Q. Did you ever see Mr Stimson have one of these petitions in his possession?

A. I did not.

Q. Was one of these circulated in your presence, or in the court room to your knowledge.

A. Not in my presence.

Q. In the court room to your knowledge?

A. Not to my personal knowledge.

Q. Now, after you had heard of the existence of this petition, didn't you investigate the fact before you issued the warrant, and ascertain that this petition had no existence until long after that term was over?

A. No sir, according to the best information I could get, it originated at that term.

Q. Didn't you have a conversation before you issued your warrant, with Mr. Kinsman, either at your office or his, in which it was stated and admitted by yourself, that that petition was not gotten up or circulated until after that term of court had finally adjourned.

A. No sir; I did not know any such thing, until the evidence was taken in the case.

Q. Didn't you, in the course of conversation which I have stated, with C. C. Kinsman, discuss the question as to whether that could be called a contempt of court, it having been originated or circnlated after that term of court had finally adjourned?

A. No sir.

Q. Did not Mr. Kinsman, in the course of that conversation, express his opinion to you that for that reason no proceedings in contempt would lie?

A. I never heard any such expression of opinion from Mr. Kinsman at all.

Q. You deny having an interview at which those expressions occurred?

A. I had some talk with Mr. Kinsman, in which he expressed to me that it was a libel, and he stated to me that he so expressed himself when it was first presented to him.

Q. You deny having the conversations which I mentioned in your office or in Austin, in which it was stated by you that the petition had not been circulated after the term of court had adjourned?

A. Yes sir.

Q. Did you, before this warrant was issued, receive any information

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from any person of those facts while a general term of the district court was in session in said county, and while he was in attendance at said court as such officer write, print, circulate and publish that petition?

A. I received information that satisfied me that that was a fact.

Q. Did you receive any information to the effect that Mr. Stimson, while he was in attendance upon that term as an officer, had anything to do with that petition.

A. Well, it was stated to me that Mr. Stimson, during that term of court was engaged in the service of process.

Q. Who gave you that information that Mr. Stimson, while he was in attendance at that term of court, as an officer, had circulated that petition, or had it in his possession?

A. I have stated to you that this information came from those persons that I have named about town.

Q. You have only named Mr. Schwan?

A. Well, there were other persons who stated, with reference to the petition.

Q. Who were they?

A. I received information that one of these petitions was exhibited in Mr. Hall's store.

Q. I want you to answer my question; who were those persons?

A. Well, I stated to you that I can't name those persons; it was common talk throughout the town.

Q. Who else besides Mr. Schwan?

A. I have stated that I could not name the individuals.

Q. You were considerably interested in the matter of that petition?

A. Considerably interested, yes sir, in the fact of its being gotten up.

Q. Wouldn't that fact be apt to make you recollect who gave you the information?

A. I talked with a good many persons with regard to it, and I can't name the individuals who gave me the particular information that I speak of.

Q. It was a bare statement, was it?

A. That is all; it was not reduced to writing.

Q. You can't give the name of any of these except Mr. Schwan?

A. I can give you the names of persons with whom I talked about this matter.

Q. Give us the names of some pessons you talked with about it?

A. I talked with Mr. Richardson in regard to it; I think Mr. Richardson informed me that Mr. Stimson had asked him to sign a document of that kind in the barber shop.

Q. When did he say to you that Mr. Stimson had asked him to sign that document?

A. I can't tell you the date of it.

Q. Did he tell you what it was?

A. I don't recollect, now, that he did.

Q. When was it that Mr. Richardson gave you that information?

A. I can't tell; it was in Austin.

Q. Give the names of some other persons that you conversed with on that subject.

A I conversed with a good many individuals.

Q. Well, give some names; we have Mr. Schwan and Mr. Richardson; now who else?

A. Well, I think with Mr. Noble in regard to it.

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Q. What is his first name?

A. W. W., I think; I think I had some conversation, perhaps, with Mr. R. N. Paden in regard to it; I don't recollect any specific statement by Mr. Noble in regard to it.

Q. What did Mr. Paden say?

A. I can't fix any definite conversation with any of those parties; it was so common a matter of conversation after it was gotten up that it was in every body's mouth, nearly.

Q. Now, who besides these gentlemen you have named did you talk with about it?

A. I can't state.

Q. Did either Mr. Paden or Mr. Noble claim to have seen Mr. Stimson circulating this petition?

A. I don't think that they did; Mr. Richardson claimed that Mr. Stimson asked him to sign it.

Q. Upon this examination did you subpœna Mr. Richardson?

A. I don't recollect; perhaps he was not subpœnaed; Mr. Paden or Mr. Richardson said he had presented the petition to him; I think when we came to the subject that the reason why Mr. Richardson was not subpœnaed—that coming to inquire with reference to it, that he did not see the petition—that Mr. Stimson asked him to sign a petition.

Q. Before you issued this warrant did Mr. Richardson claim to you that he had ever seen Mr. Stimson have this long petition in his possession?

A. No sir, he did not state that in that language.

Q. Did you subpœna Mr. Noble?

A. I think he was not subpœnaed; I don't think Mr. Noble said anything about having seen it.

Q. Now, did you subpœna, upon that occasion or, upon the hearing against Mr. Stimson, any other persons with whom you had talked about this matter before you issued your warrant?

A. Yes sir.

Q. Who was one?

A. Mr. French.

Q. Who else?

A. I don't recollect any other one.

Q. Mr. Schwan denied that he ever told you that he had seen Mr. Stimson circulating it?

A. He made a different statement under oath from what he stated to me when he was not.

Q. When he was subpœnaed in court, he denied that he told you that he had seen Mr. Stimson have it?

A. No sir.

Q. He wouldn't admit, would he, that he had?

A. I think Mr. Schwan admitted that Mr. Stimson had talked with him about it.

Q. Did he admit, at the time of the examination, that he had ever seen Mr. Stimson have that petition in his hand?

A. My recollection is, that Mr. Schwan stated substantially, that he had seen Mr. Stimson have it, or that Mr. Stimson asked him to sign it.

Q. Then you issued this warrant upon mere rumor, didn't you?

A. No sir.

Q. What better was it than rumor?

A. It was information that I considered reliable.

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Q. Was that information sufficiently reliable, that you called in all your informants?

A. I just stated to you that I considered it reliable.

Q. Now, at the time you drew this warrant, you had a copy of the petition which Mr. Potter had sent you before you, did you not?

A. I had it in my possession.

Q. And you were acquainted with the contents of that petition?

A. Yes sir.

Q. Did you say that you had ever seen, before you issued that warrant, another copy of the petition besides the one Mr. Potter sent you?

A. I did not say so.

Q. What was it you said on that point?

A. I answered your question. I did not say that I had seen any other one; you asked me if I had seen any other; I told you I did not recollect seeing any other one.

Q. You say you considered the question, whether this was punishable as a contempt, before you issued your warrant?

A. I did, sir.

Q. Did you examine any authorties, except the statutes of the State of Minnesota?

A. I did sir.

Q. What authorities did you examine?

A. I haven't the authorities in mind. I looked up the general principles.

Q. Did you talk with Mr. C. C. Kinsman; have any conversation with him before you issued the warrant?

A. I might have have had some conversation with him, I don't recollect now any definite conversation in regard to the contempt matter.

Q. The attention of the witness is called to sec. 1, of page 87. In the course of examination upon this point, did you not find that the matters which are laid down in the provisions of sec. 1, of that chapter, as constituting the contempts of court, were the same matters which peculiarly constitute contempt of court?

A. Some of them are.

Q. Did you investigate that question?

A. Not that question, as you present it, particularly.

Q. Did you reach the conclusion that it would be a contempt of court, for a person to present a petition to the judge of a court to resign?

A. No sir; I think not. I did not think it was; I don't now.

Q. Did you reach the conclusion, that for an officer to present a petition to the presiding judge to resign, it would be a contempt of court?

A. Not necessarily; the act, *per se*, would not be, perhaps it would, if it was accompanied with—

Q. Did you form your opinion that the circulation of this petition constituted a contempt of court upon the ground that one or more of the assertions, or recitals therein contained were false in fact?

A. That perhaps might have been an element that entered into the consideration of the matter.

Q. Was it your opinion that the reason why this petition was libellous, if at all; that is, why the circulation of it was, that it contained matters that were false in fact?

A. Not necessarily, that was not the position taken at all.

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Q. This petition was never presented to you at all, nor shown to you?

A. Never presented to me by any individual; that is by any persons who purported to be—for the purpose of presenting the object which appears upon its face.

Q. Never presented to you, as a petition?

A. No sir.

Q. You thought it never was designed to be presented to you?

A. No sir; I think so now; I did not think so at the time I issued my warrant.

Q. When did you reach the conclusion that this was not to be presented to you?

A. I reached the conclusion when I heard the testimony of the witnesses in the case.

Q. Did you think before that; that it was to be presented to you?

A. Why it was stated generally, and published and heralded about, that it was for that purpose, and I did not know to the contrary then.

Q. Were you of the opinion that the circulation of a document, in the form of a petition, would be a contempt of court when another document containing the same recitals, would not be a contempt?

A. I was of the opinion that one document might be a contempt of court, while another—

Q. You can answer it yes or no?

A. No sir, I can't.

Q. Yes sir, I insist you shall, and must; that is, I insist yon shall do it; was it your opinion that it was a contempt of court, because it was in the form of a petition?

A. Not from that fact, no sir.

Q. If the same matters had been contained in the paragraphs which did not purport to be a petition to the judge of the court, would it, in your opinion, have constituted a contempt?

A. It would depend upon how it was used, sir.

Q. If it had been circulated and published, containing the same recitals, but not in the form of a petition, would it have made any difference in its character as a contempt?

A. It would depend upon how it was published and circulated, and who did it?

Q. This brings us to another question; is the circulation of false matter, in your opinion, by an attorney or officer of court (or did you come to that conclusion), any different in its legal offense; does it constitutute a contempt any more than if circulated by any other person?

A. Yes sir; if it is accompanied with the fact; if it is of such a nature that it is an offense, that is a crime.

Q. That is not the point; I will put it in a different shape: did you come to the conclusion that a libel which was uttered and published by an officer of the court, was a contempt of court, because it was uttered and published by an officer?

A. That is my position.

Q. Now, did you find any authority any where, which led to that doctrine?

A. I found the authorities in the statutes?

Q. Whereabout's? Won't you just refer to the statutes?

A. "Misbehavior in office," (on page 579, under the head of contempts,) "or other wilful neglect or violation of duty by an attorney,

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counsel, clerk, sheriff; coroner, or other person appointed or elected t perform a judicial or ministerial service."

Q. That is the one, is it?

A. That is the one I am referring to now.

Q. I want you to refer to all the provisions of the statute, on which you grounded that theory; that a libel circulated by an officer of the court, would be a contempt of court?

A. Well, that covers the ground. I considered it a violation and neglect of duty, on the part of any officer to commit a crime.

Q. Was there anything, contained in that subdivision of the statute, which did not exist at common law before the enactment of the statute, so far as you are able to learn by searching the authorities?

A. Yes sir, I think so.

Q. Was it not always at common law, a contempt of court, for an officer of court to misbehaive in office; or for an officer of court in any manner to wilfully neglect or violate his duty; or for an attorney counsel, clerk or other person, appointed or elected, to perform a judicial or ministerial service, to do so?

A. That may be true. I will state that statute covers one class of persons that may be excepted from that rule.

Q. Now, did you search any authorities, before you issued this warrant upon that point, as to the effect of the circulation, by an officer of court, of a libel?

A. I examined the general principles of such matters; yes sir.

Q. What authorities did you examine on that point?

A. I can't state to you; I have no brief of the authorities.

Q. Did you find a single authority anywhere to the effect that a circulated libel, by an officer of court, stood in any different position, from a libel circulated by a person who was not an officer?

Mr. DAVIS. Do you mean a libel ooncerning the court?

Mr. CLOUGH. Yes sir.

The witness. You will find plenty of authorities on the point, Mr. Clough—making the distinction.

Q. You can?

A. Yes sir.

Q. Did you find any at that time?

A. I did, yes sir; I found authorities supporting the position, that the commision of a crime by an officer in court is a contempt of court.

Q. Did you make any brief of the authorities that you found?

A. I did not make a brief at that time, no sir.

Q. Did you find any authority of that kind, if so I will give you all the time you wish to put it in; you can file it after your evidence is closed, at any time before the conclusion of this case.

Mr. DAVIS. We don't offer law books, except upon argument.

Mr. CLOUGH. I state that as a challenge.

Q. Now, if the allegations or recitals in this long petition were true in your opinion would it have constituted a libel?

A. It would at common law, sir.

Q. I don't mean a libel, I mean a contempt, I misspoke.

A. A contempt?

Q. Yes sir, a contempt of court.

A. I think perhaps it might, sir; you are asking for a legal opinion?

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Q. Yes sir, I was asking for the way in which you regarded it.

A. Under certain circumstances it might; yes sir.

Q. I mean for the circulation of it without its being presented to the court.

A. Well, you are asking legal questions now; I would ask you to be a little more explicit in your questions, and not ask me to be so explicit in my answers; it is a very difficult thing to give a legal opinion based upon a question that only propounds half of the facts.

Q. Assuming that the recitals contained in that petition had been true, in your opinion would it have been a contempt of court for Mr. Stimson to write, print, circulate and publish it, it not being presented to the court?

A. I think perhaps it would, yes sir. I think the mere question as to whether it was true, is not a question that an officer has any right to determine as long as he is an officer of court; I suppose you don't want any grounds for my opinion?

Q. Not at all. I have no doubt your counsel can call out from you anything of that character. Now, when you saw this petition, there were some statements in it which you did not believe to be true?

A. Well, I am under the impressisn there were.

[Laughter.]

Q. Now, then, for instance—

A. I am under the impression that there were statements which the men didn't believe true.

Q. Did you take this to be false, sir, "knowing you, and believing your prejudices to be 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 passion 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;" that you all admitted to be false, didn't you?

A. Well sir, taking the evidence of your own witnesses in this case, I should say now that it is false.

Q. I am asking you what your opinion was when you issued that warrant.

A. Why, certainly I did.

Q. Now, did you regard this to be false:—

"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. Did you regard that expression "one which you hold in violation of the spirit of the constitution if not of its express terms;" did you regard that to be false?

A. I certainly did, sir, and I am supported by very good authority.

Q. I don't care about expressions. Now, was it not a fact that the gravamar of this offense, in your opinion, at that time, consisted in the falsity of the matter which I have read?

A. Not necessarily.

Q. The matter of the petition?

A. Not necessarily; that is a part of it—one of the elements of it.

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Q. If Mr. Stimson had come into court and had plead not guilty; and had established the truth of the recitals coutained in this petition, would you still have regarded it as a contempt of court for him to publish and circulate it?

A. Do you mean on a hearing?

Q. On a hearing, yes sir.

A. If he had come in, and what?

Q. If he had come in and established the truth of the allegations contained in this petition would you still have regarded it a contempt of court?

A. That presents the same question exactly, that you propounded once before. My view is, that an officer has no right to assume ——

Q. Answer it yes or no?

A. Yes sir.

Q. But at the same time the truth or falsity of the matter constituted an important subject, didn't it?

A. No sir, it did not; it was not investigated at all.

Q. It was not investigated, but it might have been; might it not?

A. Well sir, I should think not; properly.

Q. You think it was wholly immaterial, then, as to whether the allegations of that petition were true or false?

A. I did not state that it was wholly immaterial.

Q. It was material, then, whether they were true or false, was it not?

A. I don't say that it was.

Q. Do you say that it was not?

A. It was not investigated in that hearing.

Q. Was it a material point for the investigation?

A. It might become material on the trial of the crime charged.

Q. I am speaking about this particular proceeding for contempt; was it an immaterial matter to be gone into?

A. It was plain that it was not true.

Q. That is not the point; I am asking you if the truth or falsity was a material point in that investigation?

A. No sir, I don't so understand it, and did not then.

Q. Didn't you think before you issued this warrant that it was libelous; that the ordinary proceedings for libel instituted in the courts of that county would do ample justice?

A. I can't say to you that I thought that.

Q. You were not afraid, were you, to submit a question of a libel of yourself to a jury of Mower county?

A. No sir, I am not to-day.

Q. I suppose not; then why didn't you leave the law to take its course?

A. I did, sir.

Q. By punishing for libel?

A. I did not consider that was necessary at all.

Q. Did you consider the circulation of the other petition, contained on page 15 of the same journal of proceedings, to be contempt of court?

A. I have answered that; I did not consider the presentation, the circulation of a similar petition to resign, as a contempt of court.

Q. That is what I want to know?

A. I did not. I consider people have a perfect right to ask any offi-

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cer to resign, and officers of court, as well as other people. I should not make any distinction with regard to that, if the statement—

Mr. CLOUGH: Wait a moment.

Mr. DAVIS. I insist on the respondent being allowed to answer.

Mr. CLOUGH. When you had issued your warrant—

Mr. DAVIS. Wait a moment.

Mr. CLOUGH. He has answered.

Mr. DAVIS. Have you answered fully?

The WITNESS. I said I did not make any distinction between officers and other people, with regard to the presentation of a respectful petition to resign.

Q. Neither of these petitions had ever been presented and you did not charge that in your complaint?

A. No sir. Neither of them was ever presented, as a matter of fact.

Q. Now, when you were about to institute these proceedings, did you consult the county attorney?

A. No sir.

Q. Did you ask him to institute, or to assist in the proceedings in any way?

A. I did not, sir. I did not consider it a part of his duty.

Q. Now, who issued the subpœnaes in the case?

A. I presume the clerk of the court did.

Q. At your instance?

A. Perhaps so.

Q. Do you know Mr. Richards, a reporter of the Pioneer Press?

A. I knew him by sight, yes sir—a person who goes by that name.

Q. You are acquainted with him, are you?

A. Somewhat; very slightly.

Q. Do you remember of his being present in court, at or about the time you instituted these proceedings?

A. I remember his being there sometime; I can't state the time.

Q. Don't you remember of Mr. Richards appearing at your office, after you had issued the warrant, and asking you to see the papers in the case, and that you refused to permit them to be seen?

A. I recollect this, that a person claiming himself—Mr. Richards, the person I suppose you mean—was in my office, and after the conclusion of some of the proceedings, he stepped up and wanted to see the files; I don' recollect what he asked for; he asked for some of the papers; I told him when the papers were filed, and became a part of the records, he could examine them.

Q. Now, after Mr. Stimson had been arrested, and had been arraigned before you on that proceeding, did you ask him to enter any plea of any character, or anything in the nature of a plea?

A. Did I ask him to?

Q. Yes sir; was he required to enter anything in the nature of a plea to the charge that was made against them?

A. I did not consider a plea necessary under those circumstances.

Q. That is what I am asking.

A. No sir, I did not consider it necessary, any more than on a criminal examination.

Q. You proceeded with the examination yourself?

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A. I interrogated the witness, yes sir.
Q. Mr. J. M. Cameron appeared there as attorney on behalf of Mr. Stimson?
A. He did, sir.
Q. The first witness you examined was Mr. Chapman, was'nt it?
A. I can't state the first witness, perhaps he was.
Q. Do you remember the names of the different persons who were examined?
A. I remember some of them, yes sir.
Q. Who were they.
A. Mr. Chapman was examined, and Mr. French was examined. Mr. Lafayette French, Mr. Smith and Mr. Harwood.
Q. Mr. Kimball and others?
A. I don't now recollect all of them.
Q. Was a stenographer in attendance at that examination?
A. Yes sir, there was.
Q Did he appear as a regular court stenographer, or as your private stenographer?
A. He asked—he was there—he had recently been appointed as the reporter for that district, and he was present, and I asked him to take the examination.
Q. He appeared there, not in your private employment, but as the reporter of the district court?
A. He did not appear in any capacity there officially; he appeared there as a reporter.
Q. That is what I meant to inquire.
A. He appeared there as a short-hand reporter.
Q. You employed him, did you not?
A. I did, sir. I asked him to take the testimony.
Q. Now, in the course of the examination of Mr. Chapman, you asked him a good deal about who had composed that petition, didn't you? and about whether Mr. Harwood had handed it to him?
A. I asked him with reference to the origin of the petition, for the purpose of finding out who circulated it.
Q. You made a great deal of inquiry, didn't you, about what connection Mr. Harwood had with it?
A. Not a great deal; I endeavored to trace the petition from its origin to its circulation.
Q. Did you ask Mr. Chapman whether Mr. D. H. Stimson had had any connection with handing him the petition?
A. I can't say whether I asked him that particular question. I asked him with reference to Mr. Stimson—the circulation of it.
Q. Won't you state what questions you asked Mr. Chapman with reference to Mr. Stimson's connection with that business?
A. I would not undertake to state from memory, just what questions I asked Mr. Chapman.
Q. Can you state one question you asked Mr. Chapman concerning the relation or connection of Mr. Stimson with it?
A. I won't undertake to state any questions that was asked Mr. Chapman directly; Mr. Chapman was at work in Harwood's office.
Q. In the course of the examination of Mr. Chapman, Mr. Cameron, as counsel of the respondent, interposed some objections, did he not?
A. I don't now recollect any objection that was interposed during

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the examination of Mr. Chapman; there might have been some objections.

Q. You heard the evidence of Mr. Cameron on that point, that he did interpose an objection?

A. I don't now recollect whether Mr. Cameron stated it was during the examination of Mr. Chapman or not; he stated that there were objections.

Q. Mr. Cameron, during the course of that examination, did interpose a considerable number of objections, didn't he?

A. Not a considerable number; what do you mean by—

Q. Three or four, at least?

A. I have no recollection of Mr. Cameron interposing but one objection.

Q. To what testimony was that?

A. That was to some testimomy that was being given by one of the witnesses and who it was, I will not now undertake to state.

Q. Do you remember the question that he objected to?

A. I do not now recollect.

Q. Do you remember what you said, when the objection was interposed?

A. I recollect, very nearly, what I said: I recollect what he said—something about it; yes sir.

Q. Well, what was it that was said there?

A. Well, the substance of it, he said he objected to certain testimony, or certain, statements of the witness, whoever it was. And the reply I made to him was that I wanted to get at the facts in the case, and that the interest of his client would be fully protected in the examination.

Q. Didn't you say to him, once or more, in that examination, when he interposed an objection, that you couldn't listen to objections; that you were running that thing?

A. I didn't say to him, at any time, that I couldn't listen to objections, Mr. Clough.

Q. Didn't you tell him that you were running that thing yourself?

A. No sir.

Q. No such language used?

A. Not in those words.

Q. You deny that?

A. I do, sir; not in those words.

Q. Now, when Mr. French was sworn, you inquired of him about his connection with the Pioneer Press Printing Company, didn't you; whether he was counsel for it or not?

A. Mr. French volunteered—

Q. Wait a moment; didn't you inquire of him—

A. I didn't ask him that question.

Q. You didn't ask that of him at all?

A. No sir; not that question; he volunteered that statement himself.

Q. Did you inquire of him whether he had written a letter to the Pioneer Press Company, or to the Pioneer Press newspaper?

A. I don't think I asked him that question.

Q. You deny that, do you?

A. Not in those words; I asked him some questions in regard to that.

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Q. Did you ask Mr. French anything about Stimson being connected with the circulation of this petition ; and if so, what ?

A. Yes sir, I did.

Q. Now, won't you state ?

A. Well sir, I won't undertake to state the language, but I can give you the substance. I asked Mr. French if Mr. Stimson was in his office at those meetings which had been held. And Mr. French stated to me that Mr. Stimson was in his office ; and, in the presence of Mr. Kinsman had one of those papers. I asked him the questions about it.

Q. Did you ask Mr. French if he had ever seen Mr. Stimson circulating that petition, or soliciting signatures to it ?

A. I can't state that I asked him that question in those words, sir.

Q. Now, Mr. R. I. Smith ; did you ask him if he had ever seen Mr. Stimson circulating it ?

A. I can't say that I asked any of your questions.

Q. Did you ask Mr. R. . ISmith if he knew anything derogatory to your character as a judge ?

A. I did ask him that question after he had volunteered a statement.

Q. What do you mean by volunteering ? You can explain that expression.

A. I meant just this : that when I would ask Mr. R. I. Smith, or when I did ask him a question with reference to a particular fact, Mr. Smith would answer the question, and then go on and make a statement of his own ; that I call a volunteer statement.

Q. That, you think, is a very improper thing in a witness, don't you ?

A. Not necessarily.

Q. It depends upon who the witness is ? [Laughter.]

A. I think it depends altogether upon the circumstances of the case. The question as to whether a man shall believe it is improper, may depend upon the voluntary statements.

Q. There is a difference whether a man is being examined himself as witness, or examining somebody else?

A. Well, sir, I should think so by your appearance; yes sir.

Q. Now what question was it you asked Mr. Smith, when you say he volunteered the statement about the manner in which you had conducted yourself?

A. Well, I asked Mr. Smith with reference to the circulation of that petition, and the circulation of the other petition, which, it appeared, had been circulated; (that is, I learned, for the first time during this examination)—

Q. What did you ask him about it?

A. I asked him if he had seen it, and I asked him if he had seen it in Mr. Stimson's hands, or words to that effect.

Q. And in response to that—

A. Well, wait; you wanted me to explain; he had seen one of the petitions in his Dauguerrean, his artist saloon, or whatever he called it; and then I asked him if he had seen it in Mr. Stimson's hands, and I don't recollect whether he said he had seen it; he gave some intimation of that kind, I think, and I inquired of him as to the signatures to it; whether it was signed; and generally, as to the circulation, and he volunteered the statement, in answer to some of those questions, that it was a common talk, he said the circulation of that, which everybody was engaged in; well, I asked him what the reason was, and he stated the general

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talk was that I was prejudiced, he said· "well," said I, "was that the reason of your circulating it, of your engaging in it?" and he said that he did not know as to that; then he volunteered the statement that I have spoken of.

Q. That voluntary statement you have talked about, came in about the last question, did it?

A. Yes, he volunteered in answer to a great many questions.

Q. Didn't that volunteer statement come in, in answer to the question, for what reason he had?

A. I asked him the reason why he had engaged in the matter, he said he had; I asked him if he knew anything, any cause; he said he didn't know—any personally.

Q. Now, you had Mr. A. A. Harwood arrested for libel, did you not? For printing that same petition in his paper?

A. I made a complaint against him. Yes sir.

Q. He was prosecuted for libel for printing that same petition, was he not?

A. The examination was had, yes sir.

Q. Do you remember how many days you were putting in the evidence, in that case, in that contempt proceeding?

A. I don't recollect how many days. The most of the evidence was taken in one day.

Q. That is, you commenced and did something in the evening, and then adjourned over to the next day, and it was most all taken the next day?

A. The most of it, but not the whole of it.

Q. Your second day was a Saturday, was it not?

M. That is my recollection in regard to it.

Q. And you convened on the evening of Saturday, did you not?

A. In the evening?

Q. Yes sir.

A. I won't state, positively, in regard to the time. Perhaps I did.

P. Wasn't it that evening you gave Mr. Stimson, what yon called the "good advice," "the friendly advice?"

A. It was on Saturday, I think.

Q. Now, that Saturday evening, the evening of the Saturday when you had taken the most of your testimony, who were present at the exercises during that evening?

A. I don't think, when I was talking with Mr. Stimson, anybody was present; I think I had a conversation with him when no one was present.

Q. Don't you remember of expressing your opinion about the matter, at great length, when several persons were present, on the subject of it?

A. Not at great length.

Q. Don't you remember of speaking about what bad company Mr. Stimson had fallen into that evening?

A. Very likely.

Q. That he had got into Ingmundson's and Harwood's company and would probably land in the penitentiary if he did not get out of it?

A. I used nobody's name, sir.

Q. That was the occasion on which you gave him that fatherly talk about the danger of his getting into the penitentiary?

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A. I did not tell him about getting into the penitentiary. About that matter, you are assuming a great many things that are not true.

Q. You didn't say that, on that occasion?

A. I didn't say any words that you use, on that occasion.

Q. I am calling your attention to the evening; I want to fix your mind on that evening, particularly, to know who were present at that time?

A. I have stated to you that during the evening session, I think there was nobody present except Mr. Stimson and his attorney; I think perhaps Mr. Cameron came up there a few moments, and went away; and Mr. Stimson remained a little time after Mr. Cameron went away.

Q. Now, after the evidence had been taken ,let me ask you again, if the evidence was not all taken before your adjournment on that Saturday evening; did you take evidence afterwards?

A. After the adjournment?

Q. Yes, sir.

A. Why, no; certainly not.

Q. I mean at any time subsequent to the adjournment on Saturday?

A. Yes, sir; there was a little evidence taken.

Q. Now, after the evidence had been taken, and at or about the time of the conclusion of these contempt proceedings, did you not have a conversation with Mr. C. C. Kinsman at Austin to the effect in which you stated to Mr. Kinsman that you did not intend to punish Mr. Stimson; but that the proceedings had enabled you to find out all you wanted to?

A. No sir.

Q. Or words to that effect?

A. No sir.

Q. That you had been enabled, by the proceedings, to get out all you wanted to, but you didn't mean to punish Mr. Stimson?

A. No sir.

Q. You deny that?

A. I certainly do, sir; I never said that to anybody, Mr. Clough, because it was not true.

Q. Now, after that Saturday evening; you adjourned for two weeks?

A. Yes sir, I adjourned to attend court, I think, in Fillmore county.

Q. What evidence, if any, did you take after you re-convened?

A. There was some evidence taken after I returned.

Q. Do you remember who were sworn?

A. I would not state positively; I think if I should see the papers I could tell;

Q. But you have no recollection on the subject?

A. My recollection is that Mr. Stimson gave some testimony.

Q. Do you remember any other person being sworn?

A. I don't know; there might have been.

Q. Did not Mr. Stimson deny that he had ever had anything to do with the publication, or circulation, or composition of that document, and claim and admit that he had circulated the short petition?

A. Well, that was his position, generally; there were some items of testimony that tended to contradict that.

Q. That was his general position, that he was not guilty of circulating it?

A. Yes sir, that is one of the positions he took.

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Q. Did he admit that he had circulated it?
A. Not in that language.
Q. And his intention was to deny, was it not, to the court, that he had ever circulated it?
A. I don't know what his intention was.
Q. Well, you understood that his defense was a denial?
A. Well, that was one branch of the defense.
Q. You didn't understand that he admitted he had circulated it, did you?
A. I have just stated to you that he did not admit that.
Q. Didn't you ask Mr. Lafayette French, in the course of that examination, if the Pioneer Press Company had paid him anything for his services as attorney?
A. I don't recollect asking that question—Mr. French volunteered the statement that he was attorney for the Pioneeer Press; and I asked him, I think, when he was employed.
Q. Now, won't you please state the connection in which that came out, so we can judge whether it was volunteered or not?
A. I can't state the exact connection; I know it was in response to some question; I think we were endeavoring to trace the origin of a paper, that had been circulated, or it was claimed had been circulated by him.
Q. What question did you ask him?
A. I can't state; I am very confident it was a volunteer statement.
Q. But you can't remember what occurred just before or just after the statement?
A. I told you some time ago that I didn't undertake to state the questions propounded to those witnesses; it was quite a lengthy examination, and it would be impossible for anybody to do that, in so many words.
Q. Now, you stated it was afterwards that Mr. French said he was the attorney of the Pioneer Press; what information had you at that time, or had you at any time, that Mr. French was ever the attorney of the Pioneer Press?
A. I have not stated that.
Q. I so understood you?
A. You missunderstood me.
Q. I understood you in your examination in chief to say that it was a public known fact, a notorious fact in Austin, that Mr. French was the attorney of the Pioneer Press Company?
A. You are mistaken, sir.
Q. Then I misunderstood you; I understood you to say, in your examination in chief, that this long petition, which was the subject of the Stimson proceeding, was gotten up in Mr. French's office?
A. You understood me to say that?
Q. Did you say so?
A. I didn't state that as a fact, sir.
Q. You referred to it as having been gotten up, did you not? You did refer to it in your examination as having been gotten up in Mr. French's office?
A. Very likely I stated that there was evidence; that it was gotten up there, there is no doubt of it. I did not state it as a fact, because I had no personal knowledge of it. It is a mere matter of opinion derived from the evidence taken in that case.

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Q. Now, I will call your attention to a conversation which you have spoken about, with Mr. C. C. Crane, in reference to the grand jury. That occurred at his mill, didn't it?

A. At the mill owned by Warner & Crane.

Q. Where is that?

A. In Austin, or near the city of Austin.

Q. Who were present at that conversation?

A. Mr. C. C. Crane, Mr. Herman Warner and myself.

Q. Well, did Mr. Warner remain throughout the conversation?

A. He did sir; all the time.

Q. It didn't occur in the mill?

A. Right in front of the mill.

Q. Is not this the fact: didn't you commence the conversation, in the presence of Mr. Warner, and didn't he go into the mill while the conversation was in progress?

A. No sir.

Q. You are certain about that are you?

A. I am sir.

Q. Didn't you have a conversation with Mr. Hall, the sheriff, in which you stated that you would not have Mr. Stimson in that court room as a deputy?

A. I have no recollection of any such conversation.

Q. You don't swear, though, that you didn't have it, do you?

A. Well, if you will fix some time or place, or something of that kind that will call my attention to any facts, perhaps I may recollect something in regard to it.

Q. Didn't you say so, about the March term of court, 1877?

A. No sir, I think not; I am very positive I did not.

Q. Didn't you say to Mr. Hall that Thomas Riley would not be permitted to act in your court as a deputy; that was along in the year 1875.

A. No sir; I do not recollect ever telling him that, at all. Mr. Hall never offered Mr. Riley as a deputy in my court, to my knowledge. Never spoke about appointing him.

Q. Now, when you were talking with Mr. Woodard about his changing his affidavit, did you merely tell him that it would be an act of simple justice to change his affidavit, or did you tell him something would happen to him, if he didn't change it?

A. I didn't tell him that anything would happen to him.

Q. Didn't you tell him that something would drop round there, if he didn't?

A. No sir.

Q. That he would be punished in any way?

A. No sir. The subject of his punishment, in any way, was not mentioned, at all.

Q. Mr. Merrick went along with you at that time?

A. Yes sir; he did.

Q. Mr. Merrick has done a great deal to assist you in various matters, down there, hasn't he? Mr. Wm. H. Merrick?

A. "Assisting;" what do you refer to?

Q. Assisting you in the past year, and previous to that time?

A. Mr. Merrick has assisted me sometimes. Yes sir.

Q. He assisted you in regard to the affidavits to be used before the the so-called white-wash committee—bar committee?

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A. What committee do you refer to? I didn't know that there was any of that kind.

Q. There is one that generally goes by that name; you know what I mean, don't you?

A. No sir.

Q. If you don't understand what I mean, that is all correct?

A. Well, sir, I didn't understand what you meant by white-wash committee.

Q. And you still swear that Mr. Merrick was never employed by you to look up evidence in the matter of the Stimson contempt proceeding?

A. I do, sir.

Q. Not to obtain any facts, in any way?

A. I do, sir.

Q. Didn't you request him to do so?

A. Mr. Merrick?

Q. Yes sir?

A. No sir, not to my recollection.

Q. Haven't you paid Mr. Merrick considerable money for his services of various kinds during the past year?

A. I have paid him for his services, yes sir. Whatever he has done for me I have paid him for, as I would you, or any other attorney.

Q. You paid him for services rendered in connection with his going 'round to obtain retractions from the grand jurors?

A. No sir.

Q. He did that for nothing, did he?

A. I don't know that he went around to obtain retractions; I have no knowledge that he did; if he did it, he did it without my request.

Q. Did you get any information from Mr. Merrick in connection with the Stimson contempt business?

A. Not to my recollection, sir.

Q. Did he assist you in connection with that matter, in any way?

A. Not to my recollection; I don't think he did.

Q. You won't swear that he did not, will you?

A. Well, I am very positive in regard to it, sir.

Q. Now, when was the last time you saw this report of the grand jury, in regard to the Ingmundson case?

A. I really can't tell you; I think it was about the time of the meeting of the bar of that district, in Austin.

Q. Who did you hand it to? Mr. Merrick?

A. At that time?

Q. Yes sir; you had it in your possession at that time, did you not?

A. Well, I will not state in regard to that whether I did or not. I think, however, I did have it in my possession, and my recollection is, that I returned it to the clerk of the court.

Q. Mr. Elder?

A. Yes sir.

Q. Mr. Elder has done a good deal of work for you in the past year, hasn't he, in connection with the bar committee proceedings, and the impeachment proceedings?

A. No sir! No sir! He hasn't done a good deal of work for me.

Q. Done some work for you, hasn't he?

A. Well, Mr. Elder during last winter, examined some of the records while I was here in Saint Paul, and that is about all he had done.

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Q. Did you ever have any communication with Mr. Elder about taking care of certain papers that contained a part of the history of this transaction, either verbally or orally?

A. Yes sir, I had a talk with Mr. Elder with reference to a certain affidavit that was in his office.

Q. Did you ever ask Mr. Elder to take any particular care of any of these papers that contained a history of this transaction involved in this impeachment?

A. Well, your question is too broad and general.

Q. Well, I ask you that question?

A. Well, the papers that I talked with him about are not necessarily involved in these matters. They are such papers, however, as might possibly be used in connection with these matters. I did request Mr. Elder to take a special care of a certain affidavit, which was made by our Sampson Hanson, or purported to have been made and sworn to before Mr. William M. Corbett, as a justice of the peace, and which Mr. Corbett stated was forged by Mr. A. A. Harwood; I requested him to take care of that.

Q. He did, didn't he, take particular care?

A. I don't know, sir, what he did; I only know that I went to the office of the clerk of the court not long afterwards, for the purpose of finding it, and had a very great deal of difficulty in getting it, and found it was detached from the papers.

Q. He took a great deal better care of that paper than he did of those that bear on the other side, didn't he?

A. I don't think he did, and I have no knowledge that he did.

Q. The occurrences that took place in March, 1877, created a good deal of excitement about Austin, didn't they?

A. Well sir, whether they created a great deal of excitement, I would be unable to state in regard to it; if you should ask me if they created considerable talk I should say yes; I don't know that anybody was excited about it, though.

Q. Do you know what the practice of Mr. Elder was in respect to making the term minutes up; did he make them on the original record or on loose papers, and then put them in?

A. I really can't tell you what the practice of Mr. Elder was in regard to that.

Q. Did you have any conversation with him in reference to the manner in which the records of that term of court should be made?

A. Never, only one.

Q. Never, at any time?

A. I never had, at any time, except until about the time he commenced the term of office.

Q. Did you request him ever to take any particular care with reference to the papers that might bear upon this case, except the one of Mr. Sampson Hanson?

A. No sir, I think not; that is the only one that I requested; I was satisfied that would be got out of the way if possible, and I think now it would if it had been looked after.

Q. What difficulty did you have in finding that affidavit of Sampson Hanson, and where did you find it?

A. Do you wish to know the facts about it?

Q. Yes sir; I wish to know the facts about the difficulties you had of finding it.

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A. Well sir I will tell you about it; I first requested Mr. Morgan, the court reporter, to go to the clerk's office and examine the records, and see if he could find that affidavit; Mr. Morgan stated to me that he went there, called on the clerk for the affidavit and the other papers connected with it, the papers in the case of the State vs. Harwood; they were produced, and the affidavit was not there; and that he inquired for it, and Mr. Kimball, the clerk, could not find it.

I went myself after that there, to the office of the clerk, and requested to see the papers in the case of the State vs. Harwood. I took those papers and examined them very carefully, and found that the affidavit was not there. The papers were attached together with mucilage. I looked at the justice's record to see whether that affidavit was filed or not; the records stated that it was filed. I called the attention of the clerk to the fact that the record stated that that affidavit was filed, and marked, &c. What it was, I can't state. I asked the clerk if he had ever seen that affidavit. He stated to me that he might have seen it, but he didn't know.

Q. Which clerk?

A. Mr. A. W. Kimball—this was only a few weeks ago—and I asked him if he did not recollect where it was. He said he didn't know anything about where it was. I asked him if the grand jury did not have it at the last term of court. He said that they might have had it, but he did not know. I asked him a number of questions about it, that satisfied me that he knew where it was, and then told him I would like to have him get that for me; he then went and got it. I told him then I would like to have him attach it to the papers. I called his attention to the affidavit, and the fact that it had been torn off from the package evidently, and he then went and put some fastenings through the papers and fastened them together.

Q. Did Mr. Morgan tell you that he had inquired of the clerk for the affidavit and could not get it?

A. Yes sir.

Q. When and where was that?

A. He told me at my house in Austin; I can't give you the time.

Q. Did he tell you when he had inquired of the clerk?

A. He didn't tell me the time when he had inquired, no sir. He said he had made search, and could not find the papers.

RE-DIRECT EXAMIMATION.

Mr. LOVELY.

Q. Judge Page, Mr. Clough has interrogated you as to some conversations which you had with Mr. Kinsman, with reference to what you expected to obtain by the examination of Mr. Stimson; you started to state something about a conversation with Mr. Kinsman, and was interrupted; you may explain that matter if you desire to.

A. I have no explanation to make except this: That I had conversations with Mr. Kinsman, but I never had any such conversation, or made any such statements as were involved in the question propounded by Mr. Clough, and that is that I found out what I wanted to; I did not intend to punish Mr. Stimson, nothing of the kind at all.

Q. Did you discuss the law of comntept at all with Mr. Kinsman?

A. I never discussed the law of contempt with Mr. Kinsman in my life, sir.

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Q. When Mr. Clough asked you if you did not interrogate Mr. French, as to the writing of the letter to the Pioneer-Press, you also started to state what you did ask him, and how it occurred.

A. I have stated that I am unable to state the particular questions propounded to Mr. French. with regard to that matter; what was said with regard to that, was called out by some voluntary statements on the part of Mr. French; I will state here in explanation of this matter, in connection with Mr. French's testimony, that Mr. French denied that he was present, at the meetings in his office,—denied that he had anything to do with the circulation of the libel or the originating of it; and all of the other witnesses who were present in the office at those meetings, nearly all of them, and I think all of them. testified that Mr. French *was* present at those meetings, and participated in those declarations, and that was the reason why I recollect I gave Mr. French an opportunity for rehearing, and stated to him frankly, that his testimony was controverted by the other men, who had been in those meetings, and Mr. French, as all those witnesses who were on the stand were very unwilling to give any testimony, and their answers were given generally with circumlocution, and I had to apply a great many questions, in order to arrive at any of the facts, with reference to it, and frequently there were volunteer statements with reference to my official conduct; a statement I think was volunteered by Mr. French that he was the attorney of the Pioneer-Press. I don't remember, in that proceeding, I asked questions that were impertinent to the issue, or any farther outside of the issue than are asked generally in legal proceedings, and probably not one tenth as many as have been propounded in these proceedings here, so far; nor a hundredth part, as to that matter; there were questions, however, which, standing alone, and without any relation to the case, or the issues, might appear to be unimportant, or not relative to the matter.

Q. You stated to Mr. Clough that you received information that Mr. Stimson was circulating this petition, from Mr. Schwan; I don't remember whether you stated what Mr. Schwan stated to you, previous to the examination, and what he stated at the examination.

A. I think I stated that at the meeting in my office with Mr. Schwan, he informed me, in this interview, that Mr. Stimson presented him one of those petitions, or that he saw Mr. Stimson have it; and at the examination he denied that he had signed it; that is my recollection about it; I think he denied that he had signed it.

Q. About how long do the general terms of court last, in your county?

A. They last from one to two weeks.

Q. About how many cases?

A. Perhaps, occasionally, longer than that, but not usually.

Q. About how many cases are there generally upon the calendar?

A. Well, the number varies from term to term.

Q. From the beginning of the term to the end of it. State whether you are continually occupied with the business of the trial of cases?

A. Certainly, that is usual. I generally intend to improve the time during a term of court, constantly.

Q. Mr. Clough interrogated you as to the fact of your knowledge of persons in the court room; of Mr. Stimson being there, and I think of Mr. Mandeville being there. You may give any reasons, if you have them, why you did not observe them, if they were there?

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A. I do not hardly observe the officers that are present at a term of court. I could not state to-day what officers were present and in attendance upon any definite and specified term of court during my term, unless some fact or circumstance called my attention to the fact that some certain man was there.

The fact that the Jaynes case was an important case and the only case tried in January, 1876; and also the fact that the appointing of Mr. Allen, leads me to connect his name with the term of court as a deputy who was there. I could not state now who was present at the term previous, or who the deputies were, without refreshing my recollection from the records—that is to say, my mind is wholly and entirely absorbed with the business of the court; my requests are always made to the sheriff; if he is present he responds, and if he is not present some person who is authorized to speak for him, responds in his behalf. I do not charge my mind with such things; I did not consider it necessary. I give my attention to the business of the court.

Q. Mr. Clough asked you if you said anything to the grand jury at the time they were discharged upon the violation of their oaths; you undertook to qualify and make a statement of what you did say. You may make that explanation now, if you desire?

A. What I meant by that answer was, that the topic as a distinct topic was not taken up and treated of. I have no doubt but that the impression that has been received from what I have said, is from not remembering or not understanding the whole that I said; I used the expression as a conditional expression; I stated that certain things would be a violation of the oath of the juror; that if the jurors had any of them done those things, which they were prohibited from doing by the terms of their oaths, that is, if they were influenced by fear, favor or affection, or anything of that kind, any of those matters that are contained in their oaths, that that would be a violation of their oaths.

Q. Did you use the words "violate their oaths" in any other connection?

A. No sir, I did not. I did not state to that jury that they had violated their oaths; nor that they had perjured themselves. I did not use the word perjury or perjured in that connection at all; I was not in possession of such facts as enabled me to know absolutely without an investigation, and I did not see fit to go into it at that time.

Q. I desire to call your attention to the court calendar again, to the March term of the district court of Mower county, in the year 1874; that was the term which you adjourned over to the July term of the same year for Judge Mitchell, was it?

A. It was.

Q. From the beginning to the end of the Judge's minutes on the calendar, I find two entries from page 71, to 96. I find in the disposition of these cases, that they were not tried; that entries are "continued over to the July term, '76" and "continued;" there is a distinction; I want to know what the cases were that were marked "continued over to the July term."

A. I will examine and see.

Q. You will see that there are cases—

A. I will state generally, before I examine the record, that my recollection, in regard to that matter is, that the cases in which I had been interested either directly or indirectly, on which this jury was intended

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to dispose of, were continued from the March term of court, to the July term of court.

The first case that I find, is the State of Minnesota against Phillip H. Cleveland,—a criminal case; my recollection is that I had been involved in that case somehow. That was continued to the adjourned term of July.

The State of Minnesota against David S. B. Mollison, continued to adjourned term, July 7th, 1874.

State of Minnesota against Davidson & Bassford, the same entry is made, continued to a term adjourned to July 7th, 1874.

Leonard C. Jellett and others, against the Southern Minnesota Railroad company, a case in which I had been attorney, continued to adjourned term, July 7, 1874.

John B. Lashier, against the Southern Minnesota Railroad company; continued to adjourned term, July 7th, 1874, is another case for which I had been attorney.

Martin Litchfield, against the town of Adams, another case in which I had been attorney, was continued to the adjourned term, July 7th, 1874.

J. B. Lemiche and others, against Prescott Fay and others, is another case in which I had been attorney, continued to adjourned term, July 7th, 1874.

J. B. Leverich vs. Maria P. Hughs; both of these cases I had been attorney in, and they were continued to the next term of court, July 7th, 1874.

D. J. Tubbs against the Board of Education of the village of Austin, is another case of the same character.

Erick Erickson, respondent, vs. W. F. Smith, is another one; both of those cases were continued to the adjourned term of court, July 7th, 1874.

John Johnson against Charles Smith, and James Doherty against Weller, two cases of similar character, were continued to the adjourned term, July 7th, 1874.

Margaret Mitchell against Buck and others, the same entry is made; I was attorney in that case.

John Brophy against Lawrence Wallace; my recollection is that I had been in some way connected with that case, so as to make it improper for me to hear it.

James Boyce vs. Joseph Deller *et als.*; E. O. Wheeler is marked as attorney, but I was interested in that case also, I recollect. It was continued to the July term; 1874.

Sarah C. Richards and others against Edwin French and others, is another case in which I was interested as attorney. Continued to adjourned term, July 7th, 1874.

Sarah C. Richards vs. French *et als.*; and Sarah C. Richards against West and others; both of these cases I had been attorney in, and they were continued to the July term, 1874.

Luther S. Bates against Bentley, and Sarah Richards and others against Joshua L. Davidson and others; the last one is continued. The first of these is continued to the adjourned term, July 7th, 1874. I think I was not engaged in that case; I am quite certain that I was not. Those are continued by consent of parties.

Harvey E. Anderson and others vs. Samuel Dundee; continued to the

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adjourned term, July 7th, 1874. That was a case in which I had been interested.

Dwight Weller against E. J. Vaughn. I have no recollection of being interested in that case. The entry is, "Continued by consent of parties."

A. Borsch, respondent, vs. John McCaskell; continued by consent of parties. I have no recollection as to that case. I think I was not interested in it.

John Morrill against Timothy ——; continued by consent of parties. I think I was not interested in that case.

That is all the entries continued by consent of parties

The cases in which I was not interested which came up at that term, were continued for trial. If they were continued, they were marked as continued by consent, general continuances.

Q. Then the only cases that were continued to the July term were cases in which you were interested?

Q. Well, I will examine.

Q. There is something like a dozen cases that are marked as continued by consent.

A. I don't see any cases that I was interested in as an attorney that was continued from March to July.

Q. These entries opposite them, continued to the adjourned term, July 7th, are all in your handwriting?

A. Those are in my handwriting, all of them.

Q. The same entry was made in the Mollison case, in which you are interested.

A. Exactly.

Q. Mr. Clough went into a lengthy examination of the relative situation of your office and Mr. Wheeler's. You may explain the relative situation of your office to Mr. Wheeler's office and the public, as it has continued from the time you went upon the bench.

A. The office in which is contained my library is in the east end of the building, that is, the second story of the building, the front part of which is occupied by Mr. Wheeler. There is an outside entrance to his office, and an outside entrance to my office. There is a door, as I stated, between the two. The library is kept in my office, and he has access to it the same that I do in my office. I occupy it for the purpose of the examination of the library, and for the purpose of hearing cases and motions. Most of my business, of my clerical work, and most of my study is done at my house, that is where the office is, for that matter.

Mr. DAVIS. Judge Page, I would like to ask you a question: If an officer of the court, and during the session, circulates under the guise of a petition not intended to be presented, a paper falsely charging the judge with prejudice, bias or corruption, whether you consider that at once a libel and a contempt of court?

A. I should, sir, most assuredly.

RE-CROSS EXAMINATION.

Mr. CLOUGH. I want to ask you whether, at the trial of the Jaynes case, there were not a large crowd of persons in attendance—the last trial?

A. There was not; at the previous trials there had been considerable

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attention given to that case, and quite a large crowd had been in attendance constantly during the term; but the morbid interest in the case had died out pretty much before the last trial, and during the trial there was not a crowd in the court room; during the time that the arguments were made there was quite a crowd there, but not anything such a crowd as there had been on previous occasions; during the term while the case wss undergoing trial I did not observe that there was any unusual crowd there; there was no restriction in the admission of the public to the court room; the restriction was as to the capacity of the room.

Q. The room was small, and the interest in the case was great wasn't it?

A. During the previous trial, but very much diminished.

Q. I did not know that the public interest ever flagged in that kind of questions.

A. Well, it does.

Q. Even in Austin?

A. Even there, yes sir.

Q. Does any one except Mr. Wheeler and yourself have any interest in that library of which you have spoken?

A. No sir.

Q. Mr. Wheeler has been a practicing attorney at the bar of that court ever since you were elected Judge, has he not?

A. Yes sir.

Q. Now there is one point that I don't know whether it is clear or not and that is the time at which the general term in March, 1877, convened, and when it adjourned?

Mr. CLOUGH. It commenced on March 20th, 1877, and was adjourned until April 2d; it was adjourned from April 3d until April 18, 1877, when it finally adjourned *sine die*.

WM. MEIGHEN SWORN

and examined on behalf of the respondent, testified.

Mr. DAVIS. We wish to examine Mr. Meighen a little out of order.

Q. Where do you live?

A. In Fillmore county in this State.

Q. In what town?

A. Fairmont?

Q. How long have you lived there?

A. I have lived in that vicinity some twenty-two years.

Q. Were you a grand juror at a term of court, held by Judge Page in that county, and if so, when?

A. I served as a grand juror last year, the last June term, Judge Page presiding.

Q. Did you hear the charge of the Judge, to the grand jury at that term?

A. Yes sir.

Q. Didn't he charge the grand jury at that term—(you need not answer for I anticipate from the counsel's motion that he is going to object)—did the respondent charge the grand jury at that term in regard to any specific offenses which he had been informed had been committed by any officer in the county of Fillmore, and if so, what did he charge?

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Mr. CLOUGH: That is objected to as being wholly immaterial. The managers think that scarcely any argument, if any, is necessary on that kind of a question. We have laid the commission of the transactions for which Judge Page is accused here in Mower county; we have not introduced any general evidence at all as we think we had a right to do; we have not done it. We have confined ourselves entirely to specific instances, and we have not gone beyond the county of Mower so far as I remember.

Such being the case, the only question here is, whether these specific acts with which we charge him, are true or whether they are false; whether those specific allegations are true or false. Now, it seems to me, that nothing that may have occurred in Fillmore county, could tend to prove or disprove any thing which we have alleged occurred in Mower county. The managers are totally unable to see any relevancy in this kind of testimony. If the conduct of Judge Page, throughout his judicial district, is a proper subject for inquiry, I don't know but we may protract the investigation of this concern, until a year from next summer. If what he said on one occasion to one grand jury in Fillmore county is material, I don't see why we might not go into what he said to every grand jury in his district, from the very beginning.

Now, the objection we make is this, as I stated at the outset: our evidence has been specific in its character; it has been addressed entirely to the establishment of the existence of certain specific facts; we have not gone into general evidence; and the only way that those specific facts can be disproved, which we have sought to establish here, is by producing evidence of similar character.

Mr. DAVIS. Mr. President, the learned managers seek to restrict the defense of respondent to very narrow limits. Now, let us see from an examination of the grounds, upon which they will ask the judgment of the Senate respecting the Ingmundson article, whether the line of examination that we propose to enter upon with Mr. Meighen is not warranted. I do not suppose my learned friends will argue, or that it has occurred to any Senator that it is wrong in itself or extra judicial in a magistrate to charge the grand jury in regard to any specific matters which will probably come before their attention. That being the case, they seek to show, that although that may be right as a general principle, yet it was improper in this case for the reason that it was instigated by malice, entertained by the respondent towards Mr. Ingmundson. They will argue not only from cross examination, but from their own testimony here, if we are not permitted to go into this branch of inquiry, that this mode of charging the grand jury was exceptional in its nature, that it does not appear that in that or any other county in his district, he ever charged a grand jury in that way at all.

They will endeavor to persuade the Senate that because he singled out, as they will maintain, the office of the county treasurer by that name, and invited the attention of the grand jury to the specific acts of malfeasance which had been perpetrated by its possessor, that therefore, the imputation of malice is directly traceable to the respondent, as against Mr. Ingmundson. Now, if we are able to show that it is a part and parcel of the history of this respondent's judicial life; that wherever he went through his district, when worthy citizens came to him and told him that such and such matters demanded the investigation of the grand jury, it was his practice not only to charge the general language of the statutes, but to tell them of the specific instances of

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which he had been informed. It surely goes very far to rebut, refute and reprove the imputation that he singled out Mr. Ingmundson or his office under any promptings of malice, imaginary or real.

Something more, may it please the Senate, is necessary to impute corrupt conduct in office, to any officer whose term extends over a long period of time, than isolated acts. If you take an act indifferent in itself, which is singled out by the prosecution and laid against the reputation of a man, but which act may become a wrongful one if prompted by wrongful motives, it is surely competent to show that that act was not wrongful, if we show that in regard to the person against whom it was committed, it is no more than part and parcel of the daily tenor of the respondent's life.

Apply the test of common sense to this question. Irrespective of any strict rules of law, if we were necessarily compelled fo appeal to such vague and general principle as those which spring from the dictates of common sense, we show that in Fillmre, Freoeborn and Houston counties, as well as in Mower county, this was the practice of respondent, what is the inference that any man of sense draws? That there cannot be any malice imputable to the respondent as against Mr. Ingmundson, for the simple reason that he charged directly in regard to the administration of an office which Mr. Ingmundson held.

Now, I will state to the Senate that upon this point we shall be brief. Not only with the gentleman upon the stand, but with such other witnesses as we may produce in that respect. And here we offer to prove, in the language of what I have said before, in regard to the office of county treasurer of Mower county, his habit, his custom, his legal practice through a series of years in every county in which he held his court.

Mr. Manager CAMPBELL. Mr. President, and gentlemen of the Senate: Counsel mistakes our position entirely in reference to the charge against Ingmundson; it is a charge of the respondent against Ingmundson. We have not taken the position that respondent had not the right to call the attention of the grand jury to any specific act that might have come to his knowledge.

We admit that as a legal proposition—that a judge has the right to call the attention of the grand jury to any specific act that has come to his knowledge; but our position is that in this identical case of Ingmundson he was not satisfied with calling the attention of the grand jury to the conduct of county officers generally, but he called their attention to it in 1873; that he again called their attention to it in March, 1877, and that when they did not bring an indictment against Mr. Ingmundson he showed his malice then and there by directing their attention over and over again to this matter, and attempting to force that grand jury to bring an indictment, against their will, against Mr. Ingmundson.

Now, we care not how many times this judge call the attention of a jury to specific acts if he allows the grand jury to use their own discretion whether they will bring an indictment or not, if it is not done from malice; we charge here that this was done, not from a good purpose; that it was done from malice, and malice against Mr. Ingmundson; and the specific fact that he charged the grand jury to inquire into the county treasurer's office the conduct of the county treasurer, is no part of our allegation.

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If this judge, ever in this respect—if it was his custom to call attention specifically to specific acts in other counties, they have not set it up in their answer. They set up no such defense because we had not alleged in our complaint any such allegation; but they set up that what he did in the Ingmundson case was right and proper, and on that this matter must rest.

Suppose they go into his charges in other counties, and trace his conduct back from year to year, when is this case going to end? We are not prepared to meet any of their statements that may come here. We have had no notice of it, and if all they want is to show that it was his custom to call the attention of the grand jury to specific acts, we are willing to admit it; we care nothing about it; it is not the issue here; it is not the issue at all; and we care but very little about this testimony. It is a matter for the discretion of this court how much time and attention they will give to the matters outside of the issues.

Mr. DAVIS. I wish to call the attention of the learned manager to an incorrectness of statement involuntarily made by him. The manager stated that the judge called the attention of the grand jury to Mr. Ingmundson's office in 1873, and again in March, 1877.

Mr. Manager CAMPBELL. I meant in September, 1873.

Mr. CLOUGH. No, 1876.

Mr. Manager CAMPBELL. 1873; I meant just what I have said.

Mr. CLOUGH. Oh! No, Mr. Manager Campbell; in 1873 or '74, he called the attention of the grand jury.

Mr. DAVIS. Why, Mr. Ingmundson wasn't treasurer then.

Mr. Manager CAMPBELL. In September 1873; yes, 1877, that is correct. I have got the Mollison case mixed.

The PRESIDENT. I will submit the question to the court.

The question being taken upon admitting the question in evidence, and,

The roll being called, there were yeas 12, and nays 20, as follows:

Those who voted in the affirmative were—

Messrs. Bailey, Bonniwell, Clement, Donnelly, Langdon, Macdonald, McClure, McNelly, Mealey, Morehouse, Rice and Wheat.

Those who voted in the negative were—

Messrs. Armstrong, Clough, Deuel, Doran, Edgerton, Edwards, Finseth, Gilfillan John B., Goodrich, Hall, Henry, Houlton, McHench, Morrison, Nelson, Page, Remore, Smith, Swanstrom and Waite.

So the question was not admitted.

Mr. DAVIS. I wish to make an offer now which will obviate an objection, perhaps, to the last question. I offer to prove by the witness that it was the general practice of the respondent, in Fillmore county, to direct the attention of the grand jury to the specific offenses alleged to have been committed by officers in that county. The question in that aspect relieves the issue of the objection made by Judge Campbell, the force of which I felt, namely: that if we are allowed to go on and prove his charges for various years all through his term of office, it would open up an apparently endless field of investigation.

Now, this question begins and ends right there, so far as the observation of this witness is concerned, what has been the practice of respondent in that respect.

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Mr. CLOUGH. We submit that to the ruling of the Senate—we object for that purpose.

Senator NELSON. Mr. President. That is the same question, substantially, that we voted upon before.

Mr. DAVIS: I beg the Senator's pardon; I don't think it is.

Senator EDGERTON: I would like to ask if that instruction was right, if the omission to give it in any other connty would make it wrong; and if it was wrong, if the practice of giving it to any other county would make it right.

Mr. DAVIS: Certainly not; I will answer the Senator that I do not claim that, but I maintain this; I want to relieve the respondent of any imputation that he was invidious as against Mr. Ingmundson.

Mr. CLOUGH: As we understand it, what occurred on the first day of the term, that is, the fact of the judge calling the attention of the grand jury as to irregularities in the county treasurer's office, is a mere matter of indiscretion; we don't claim that was wrong, provided the judge believed there was ground for it; we think it is right for a judge, if he has proper information which he believes to be true, that an offense has been committed, to call the attention of the grand jury to that fact; we have not disputed that at all, and if our position has been thought to be different, it has been entirely misunderstood; our theory was that when he called the attention of the grand jury to the irregularities that he thought existed in the county treasurer's office; if he believed they did exist, and he was not actuated in doing that by malice towards Ingmundson, that he has performed his duty, and we find no fault; but it is what occurred subsequent to that, that we charge as being offensive in the conduct of Judge Page.

Mr. Manager MEAD. Mr. President, in regard to any admission, the managers, I think, all agree that the judge charges generally as directed by the statutes of this State; and that he may, and perhaps often did, call attention to specific offenses throughout his district. The presumption is that in all the counties of his district, outside of Mower county, the judge did that which is legal and right, and performed his duty; for the State has made no charge, and introduced no evidence to the contrary. He has the presumption of law in his favor that, outside of these charges confined to Mower county, he has pursued a legal course in his official action; and if that is so, what is the need of evidence? It is presumed that he charge generally, or specifically, in other counties, as counsel claims he did, legally, and as we say he had a right to; he has that presumption without evidence, and there is no need of introducing testimony upon that point.

Mr. DAVIS. Will you admit that he did as a matter of fact?

Mr. CLOUGH. We don't care whether he did or not.

Senator NELSON. It makes no difference to this court whether they admit it or not. We are supposed to have knowledge sufficient to enable us to determine what is proper for a judge to charge a grand jury.

The PRESIDENT: I will state to the Senator that debate is not in order.

Senator NELSON. I desire to say this by way of explanation: If we do not know it then let him prove what would be a proper manner for a district judge to charge a grand jury.

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The PRESIDENT. The question will be submitted to the court. The clerk will call the roll.

Senator ARMSTRONG. Mr. President, I understand that the managers are substantially willing to admit the evidence proposed by Gov. Davis, and I vote "aye."

The PRESIDENT. The question is whether the last question propounded by Gov. Davis will be received.

Senator CLOUGH. What are we voting upon? Are we voting that he has made that offer? [Laughter.]

The PRESIDENT. Voting to sustain the offer or overrule it.

Mr. Manager MEAD. The question is that the counsel for respondent be permitted to give evidence embraced within his offer.

The question contained in the offer being submitted to the Senate, and The roll being called, there were yeas 12, and nays 19, as follows:

Those who voted in the affirmative were—

Messrs. Armstrong, Bonniwell, Clement, Donnelly, Langdon, Macdonald, McClure, McNelly, Mealey, Morehouse, Rice and Wheat.

Those who voted in the negative were—

Messrs. Deuel, Doran, Edgerton, Edwards, Finseth, Gilfillan John B., Goodrich, Hall, Henry, Houlton, McHench, Morrison, Nelson, Page, Remore, Shaleen, Smith, Swanstrom and Waite.

So the offer was overruled.

STERLING CHANDLER, SWORN,

And examined on behalf of the respondent, testified:

Mr. LOVELY. Q. Where do you reside?

A. Austin.

Q. How long have you lived there?

A. I have lived there 21 years with the exception of five years during the war.

Q. You are acquainted with the respondent?

A. I am.

Q. And one D. S. B. Mollison?

A. I am.

Q. Were you present and in attendance at the September term of the district court for Mower county in the year 1873?

A. I was.

Q. In what capacity?

A. I was special court deputy.

Q? Do you remember the occasion of Mr. Mollison being brought into court or coming into court and entering a plea to the indictment against him?

A. I do.

Q. For libel?

A. Yes sir.

Q. You may go on and state what occurred at that time, so far as Mr. Mollison was concerned.

A. He was presented.

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Q. What day of the week, do you remember?

A. Monday morning, he was presented by the sheriff Monday morning; he listened to the indictment; when presented to the bar, the district attorney commenced reading the indictment, and when he got about half through, I should think, may be not quite half through, Mr. Mollison bowing his head, [witness indicates] and continued bowing it a number of times, the Judge asked the district attorney to stop reading a moment, he says "Mr. Mollison what may I understand by the bowing of your head?" Mr. Mollison made some reply, and the district attorney went on, and he still continued bowing; the Judge asked him again if he understood by the bowing of his head that he assented to the truthfulness of the charge in the indictment, and he said something that I did not understand.

Q. State what, if anything was said by the counsel or the court to Mr. Mollison?

A. My recollection is, that the Judge asked him if he had counsel; and he said he had not, and did not wish any.

Q. Do you remember whether that was before the indictment was read, or afterwards?

A. That was when he was presented. When he first came up I think.

Q. Do you remember what particular portion of the indictment was being read, when he nodded his head—to whom that referred; if any one?

A. It referred to the portion of the indictment where it read "plowing with the railroad heifers."

Q. It has been stated by Mr. Mollison in evidence, that Judge Page spoke very forcibly to him and said "I will put you in the hands of the sheriff if you don't answer me." State whether he used that language?

A. Judge Page—

Mr. CLOUGH. Wait a moment; I object to that last question. Now, this is your witness; I insist that the way to examine this witness is, to ask him what occurred there.

Mr. LOVELY. I have asked him that question, and he has answered it; I now refer to the testimony and the exact language, as given by Mr. Mollison in his evidence here; because I understand the rule to be for the purpose of contradicting or impeaching a witness, you may call his attention direct to the language and put the exact language that was used, and I have directed his attention to it, in asking him to state all that occurred there. It is not expected that these witnesses, that we put on here, come here prepared to remember all the testimony that was given; and when I direct their attention to it, and ask them to contradict it, I am only, I think, applying the well-known and well established rule, that arises from the necessity of the case. If I had asked him as to any new matter, the point might be well taken.

Mr. DAVIS. I wish to call the attention of the Senate to the fact, that the other day, Manager Hinds was on his department in this case, that I took the precise objection that my learned friend takes here, to which Mr. Hinds responded, and I felt its force. I don't know that I pressed the objection. I think this was his language: "That if a matter has been gone through with a witness, it is proper to call his atten-

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tion to any specific fact that his own memory may have failed to give, and ask him whether that fact was so."

Mr. CLOUGH. I was not objecting to their merely calling the attention of the witness to a particular occurrence, but as to the question whether certain things took place at the time alluded to by the witness, and were done at that time and place. Now, I have no doubt, whatever, and shall always claim the right myself, to call the attention of the witness to a particular circumstance; but I don't think it right for a party to call a witness to testify as to what occurred at a given time and place, and then ask him a direct question; did not such a thing occur, or did such a thing occur, or was such a thing said?

Mr. DAVIS. I have found the passage of the journal on page one and two of the journal of May 30th.

I will read that examination as it will take me but a moment:

"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. Stimson?

"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. Stimson?'"

"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 had been 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. Stimson 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?

"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."

Now here is the question:

"Q. State whether there was anything said by Judge Page on that occasion about paying this over in the presence of the grand jury?"

"Mr. LOSEY. We object to the counselleading 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

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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."

Precisely my friend's position.

Mr. CLOUGH. On the contrary—

Mr. DAVIS. [Reading.] "The President. The chair thinks the form objectionable." [Laughing.] I shall have to submit, I see the President sustained the objection. [Laughter.]

Mr. LOSEY. As I understand the point made it is just this: Mr. Mollison came on the stand and swore that when he was brought before the respondent certain specific things were said to him by the respondent. Now the proposition is to prove by the witness, who was present at that time, that the specific things that Mr. Mollison swore was said to him by the respondent, were not said to him at the time. Now, it is always admissible in a court of justice for the purpose of contradicting a witness when they have proved what a witness states occurred, to prove by another witness who was present at the time and heard the conversation, that no such statement was made, and nothing of the kind did occur; it is a rule that always prevails in a court of justice, as any lawyer here will say, and that is the simple point here that has been made. Mr. Mollison swore that the judge told him a specific thing on that occasion. We propose to prove by the witness that the judge did not tell him that syecific thing on that occasion, and that is always admissible.

Senator EDGERTON. May I ask what the question propounded is.

Mr. CLOUGH. I do not think it is necessary for me to state anything in reply. The question is not what was said or done there. Now if what Mr. Mollison said occurred there did not occur, the way to prove it is by asking this witness what did occur.

The question being taken on admitting the question in evidence,

And the roll being called, there were yeas 27, and nays 5, as follows:

Those who voted in the affirmative were—

Messrs. Armstrong, Bailey, Bonniwell, Clement, Clough, Deuel, Donnelly, Doran, Edgerton, Edwards, Hall, Henry, Houlton, Langdon, Macdonald, McHench, McNelly, Mealy, Morrison, Nelson, Page, Remore, Rice, Smith, Waite and Wheat.

Those who voted in the negative were—

Messrs. Gilfillan John B., Goodrich, Morehouse, Shaleen and Swanstrom.

So the question was admitted.

The question having been repeated by the stenographer.

The Witness. Judge Page used no language of that kind; he did not say that he would put him in the hands of the sheriff; he spoke as he ordinarily speaks, his speaking to a witness or juror or asking a question; I do not think it was with anger at all.

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Q. State whether or not Mr. Mollison was prevented from making an explanation?
A. When?
Q. At the time he was arraigned.
A. He was prevented when the indictment was read.
Q. You may state what further occurred?
A. He plead not guilty.
Q. Well, what further occurred?
A. He then took his seat in the audience, back from the bar a few seats, and sat down; and got up and wanted to make an explanation, and the judge would not allow it.
Q. What language did he use at that time that he got up from his seat?
A. Well sir, I could not say the exact language.
Q. What was his manner?
A. I took it that his manner was for an explanation or a speech.
Q. To whom did he direct himself?
A. I don't know. I suppose it was to the judge.
Q. How near were you to him when he made these motions that you are speaking of—bowing his head?
A. I might have been six or eight feet from him.
Q. How long did he remain there, at the place where he stood when he was arraingned?
A. Until after the indictment was read.
Q. Have you stated all that occurred there at that time?
A. I think I have.

CROSS EXAMINATION.

Mr. CLOUGH.
Q. What is your present business?
A. I am not carrying on any business at present.
Q. Who appointed you court deputy at that term?
A. Sheriff Baird.
Q. Have you been court deputy since?
A. I have.
Q. Under whom?
A. Mr. Baird.
Q. Had you been court deputy before that time?
A. I think I have.
Q. How many terms?
A. I think one.
Q. At the time Mr. Mollison was nodding his head, was he looking at any one in particular?
A. Well, I think not.
Q. Didn't he appear to be listening very closely to what was said by the county attorney, when he was reading?
A. He was listening.
Q. Didn't his attention seemes to be entirely absorbed by what was read there, so that he was not looking at anybody in particular?
A. Well, his attention might have been absorbed.
Q. Were you looking at him all the time?
A. I was.

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Q. Your attention was absorbed by him, was it?
A. It was for a while.
Q. Won't you please illustrate by your head here what kind of a motion he was making with his head?
A. Yes; he bowed his head as much as that (indicating).
Q. Did that bowing interfere with the business of the court there?
A. It interfered with my business.
Q. It prevented you from going on and doing your duty as an officer of court, did it?
A. Well, I wanted to see what he meant by it.
Q You were very anxious to know what was going to be done with his head; what was going to be done with him about it; you did not hear what he said to Judge Page or Judge Page said to him, did you, when that bowing commenced?
A. I did.
Q. Did you hear what he said to Judge Page?
A. No, I did not; that is not to understand it; not that I can swear to.
Q. There was quite a dialogue about that bowing, wasn't there?
A. Well, he mumbled something, but I did not understand
Q. What was the last thing you heard the judge saying to him in that connection when they were speaking about the bowing of the head?
A. The last thing I recollect the judge saying to him was, "Mr. Mollison, what may I understand by the bowing of your head; do I understand you assent to the truthfulness of the charge?"
Q. Then Mr. Mollison said something you did not understand?
A. No, I didn't understand.
Q. Mr. Mollison made an answer to that, didn't he?
A. Yes, he might.
Q. Do you remember whether he did or not?
A. I don't know. I don't remember whether he made any answer or not.
Q. And if he made answer you don't remember whether the judge made any reply to it or not?
A. Yes sir.
Q. You remember all about the judgment; but you don't remember what Mr. Mollison said?
A. I do remember the judge asking that question?
Q. That was the last you remember of Judge Page saying?
A. I don't remember as the judge made a reply to his answer.
Q. You don't remember whether he did or not?
A. I think he did not:
Q. Will you swear he did not?
A. To the best of my knowledge he did not?
Q. Did you hear anything said there about what would be done with Mr. Mollison if he did not stop talking with the judge in the way he was talking?
A. There was nothing said to him as to what would be done with him.
Q. Now after the attention of the court was called to Mr. Mollison bowing his head, did he stop bowing it or did he continue?

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A. He stopped bowing it.
Q. When the judge mentioned the fact of his bowing his head, he stopped, did he?
A. When he mentioned it the second time.
Q. And did not continue to do it any more while the indictment was being read?
A. I did not notice it.
Q. You turned away about that time, didn't you? To attend to your business as an officer of the court?
A. Well, I went away as soon as he took his seat.
Q. You did not go away before?
A. I think not.
Q. Where were you standing when he was arraigned?
A. I was inside the altar of the railing at the bar.
Q. How far were you away from Mr. Mollison?
A. I might have been six or eight feet.
Q. How far were you from the judge?
A. Maybe ten feet.
Q. Do you pretend that you have stated here all that was said to Judge Page on that occasion?
A. All that I remember.
Q. Well, do you pretend to say that is all that occurred?
A. I think it is.
Q. You think that is the whole that occurred at that time?
A. Yes sir.
Q. Did you hear Judge Page say anything about when the case would be tried?
A. Not at that particular time.
Q. Did Judge Page say anything about the trial of the case there at that time?
A. Not to my knowledge.
Q. Did you hear Mr. Mollison saying anything at that time about being ready for trial?
A. No sir.
Q. Did you hear Mr. Mollison say anything about going to jail and giving bonds at that time?
A. Yes sir.
Q. You heard that, did you?
A. Yes sir.
Q. Then you did hear something that you have not stated?
A. Not inside the bar.
Q. Where was Mr. Mollison when he said he would go to jail?
A. He was in his seat.
Q. He was setting down in his seat, wasn't he?
A. He was near his seat.
Q. Where was his seat?
A. His seat was back three or four seats from the bar.
Q. He was standing up, was he, when he said he would go to jail?
A. He was in the attitude of just going to sit down.
Q. When was it you said he wanted to speak to the court?
A. I think it was after he had sat down. After he sat down he got up again.

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Q. Had the court entered upon any other business when he got up and wanted to speak?

A. I don't know; it seems to me there might have been. I don't remember whether there was or not.

Q. Do you remember what be said when he got up from his seat? Do you remember any words he used?

A. I don't know as I could give the words.

Q. Didn't he ask the court if he could address him?

A. I don't know whether he did or not.

F. W. ALLEN, SWORN

And examined on behalf of respondent, testified:

Mr. LOSEY:

Q. Where do you reside?

A. I reside at Austin.

Q. How long have you lived there?

A, I have lived there about nine years.

Q. Were you present at the September term of the district court for Mower county in the year 1873?

A. I was.

Q. In what capacity were you there?

A. I was there as a special deputy.

Q. Do you remember of the arrest of Mr. Mollison upon an indictment upon a libel?

A. I do.

Q. State who arrested him.

A. I made the arrest.

Q. Where?

A. At Rose Creek, about eight miles from Austin.

Q. State whether or not Mr. Mollison made any threats, and what they were, after he was arrested and before he was brought into court?

A. Well, I would say that Mr. Mollison was very much excited at the time I appeared there with the warrant, and he refused to go, and finalyl thought it was better perhaps for him to go right along quietly, and on his way up this excitement seemed to prevail with him, and he made repeated threats.

Q. What was the character of those threats; what did he say?

A. Well, he said that he would make his tongue wring against the judge. I think he called him some name at that time.

Q. Were you present in court when he was arraigned?

A. I was, yes sir, upon that day.

Q. You may go on and state what occurred upon his arraignment?

A. Mr. Mollison was arraigned on Monday in the forenoon, and the judge asked him at the time if he had counsel; he said that he had not, and that he didn't want any; the court directed the county attorney to read the warrant or to read the indictment to Mr. Mollison, and, during the reading of the indictment, Mr. Mollison made a motion with his head, forward and back, a number of times; I recollect of the judge asking why he made the motion with his head; and at the first time the question was propounded to him I think that he made no reply, and the second time that the question was asked him why he nodded his head, Mr. Mollison made some reply, I don't exactly know what the words were, but it was to the effect that his head was his own.

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Q. You may state how he nodded his head?

A. He made a motion with his head forward and back several times during the reading of the indictment. At the conclusion of the reading of the indictment Mr. Mollison was asked to plead, and he entered a plea of not guilty; and I think that the court told him at this time that he would be unable to try the case himself, and would have to procure some other judge to try it for him. I don't know that anything else occurred just at that time. I think Mr. Mollison was conducted to his seat back in the audience a little ways, and as he sat down he arose immediately and desired an opportunity to talk—to speak.

Q. What was his manner?

A. His manner was very much excited. The judge told him at that time that he could not hear him, but he insisted on talking, and finally the judge told him to sit down, and Mr. Mollison did so.

Q. What was the appearance of Judge Page in his conduct at that time towards Mr. Mollison?

A. Well, I don't know that there was anything strange or marked in his appearance.

Q. Was he excited?

A. No sir, I don't think that he was.

Q. Did he talk louder than usual?

A. I don't think he talked any louder than what he usually did in court. When he told him to sit down I think that his voice was firm and he meant about what he said.

Q. Did he threaten to put him in the hands of the sheriff?

A. No sir, he did not.

Q. Where did you stand in the court room at that time, while he was being arraigned?

A. Well, I was sitting back some three or four seats from the bar.

Q. How far away from Mr. Mollison?

A? I should think it was in the neighborhood of fifteen feet, perhaps twenty.

Q. How far was Mr. Mollison from you when he sat down?

A. Well, he was nearly opposite.

Q. How far away?

A. I was sitting on the north side of the house and he took a seat on the south side.

Q. How far away from you?

A. Probably six or eight or ten feet, somewhere in that neighborhood.

Q. You saw everything that he did?

A. Why, yes sir, I suppose that I saw all that was done.

Q. Do you remember of Mr. Mollison stating when he was arraigned that he was ready for trial?

A. No sir, I don't recollect anything of that kind.

CROSS EXAMINATION.

Mr. CLOUGH:

Q. When Mr. Mollison stated that his head was his own, did Judge Page make any answer at all?

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A. I don't recollect that he did make any answer; I don't know that Mr. Mollison really stated his head was his own; he said something to that effect.

Q. The judge saw him nodding his head, in the first place, didn't he?

A. I presume he did.

Q. Then the judge stated to him, what are you nodding your head for, or words to that effect?

A. Yes.

Q. Then what did Mr. Mollison say to that?

A. Well, I don't think Mr. Mollison made any answer the first time.

Q. Then the second time, what did Judge Page say?

A. The judge asked him why he was nodding his head, or why he made that motion, and that was the time that Mr. Mollison made that answer.

Q. To the effect that his head was his own?

A. Something to that effect; I don't know just the words he used.

Q. You don't remember what the words were that either party used at that time, do you?

A. I think the judge asked why he nodded his head.

Q. Did the judge say to him on that occasion, "do you mean by nodding your head to assent to the truth of the matters that are stated in the indictment?"

A. Well, I do not know, he might have made that remark; in the first place he asked him why he nodded his head, and that remark might possibly have followed.

Q. You don't remember whether it did or not?

A. I would not swear positively that that remark was made by the judge, still it might have been.

Q. The conversation progressed until Mr. Mollison gave the judge to understand that his head was his own, and he would do with it as he thought best.

A. There might have been.

Q. Then you mean to say that upon Mr. Mollison informing the judge that, the judge immediately dropped the whole thing?

A I say this after the indictment was read—

Q. I understand, but I am speaking about that conversation that Judge Page and Mr. Mollison had about Mr. Mollison nodding his head; you say it proceeded up to the point when Mr. Mollison curtly informed the judge—

A. I didn't say that; I said that Mr. Mollison made some reply.

Q. What was that reply?

A. I have not pretended to give just the words that Mr. Mollison used, it was to the effect that his head was his own.

Q. Wasn't that the substance of it?

A. Well, I rather think that he did make some such remark.

Q. When he made that remark, what did Judge Page say back to him; or did Judge Page drop the conversation right there?

A. Well, I don't recollect that there was anything said on either side after that; I think that silence prevailed, and the county attorney went on and read the indictment.

Q. Well, at the close of the conversation, whatever it was, between

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Judge Page and Mr. Mollison about Mr. Mollison nodding his head—the nodding quit?

A. Well yes, I think so; I don't think he nodded it any more.

Q. Now, when was it that Judge Page said that he, himself, couldn't sit in the trial of that case, in what state of the proceedings?

A. Well sir, to my best recollection it was after Mr. Mollison had plead to the indictment.

Q. When was it that the subject of Mr. Mollison giving bail was spoken of first?

A. Well, I don't know that I can state.

Q. Do you remember anything about anything being said about bail at that time?

A. Not anything at that time.

Q. Do you remember anything being said about bail before Mr. Mollison went out of court?

A. No, I do not.

Q. Do you remember much that did occur there at that time, do you?

A. Well, I recollect all I have stated.

Q. You don't profess that that was all that was said and done on that occasion, do you?

A. Well, there might have been more; my attention might have been called to something else.

Q. You don't pretend to say that you recollect the whole?

A. I pretend to recollect what I have stated.

Q. I understand that you don't say that is all that occurred; do you?

A. Well, there might have been something else that occurred there.

Q. Was there any particular occasion why you should treasure tha matter in your memory?

A. Well, I think there is, because I arrested the man and was with him in coming up, and his appearance and his feelings of animosity that he manifested against the judge.

Q. Now, when Mr Mollison was at his seat he arose as if to speak; did he say anything at all?

A. Why, he got up and he says, "Your honor, I would like to speak."

Q. What did Judge Page say to that?

A. The judge told him that he couldn't hear him.

Q. Did he tell him that he would hear him at any future time?

A. No sir; I don't recollect; I know that he had told him this, that he would be heard at a proper time.

Q. But did he say when that proper time would be?

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

Q. And you didn't remember of anything being said about bail on that occasion?

A. No sir, I don't recollect what was said in reference to bail.

Q. Do you remember of anything being said about the custody of the person of Mr. Mollison?

A. Well, Mr. Mollison was arrested on Saturday, and at the conclusion of the court he was left to run at large.

Q. I mean on this occasion, when the conversation between Judge Page and Mr. Mollison occurred, wheu Mr. Mollison was arraigned?

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A. Mr. Mollison was committed to jail.
Q. At that time?
A. That afternoon.
Q. That is, on Monday afternoon?
A. Yes sir.
Q. He was committed to jail?
A. I rather think Mr. Mollison was committed to jail at the close of the morning session.
Q. Have you ever talked with Judge Page recently about the occurrences on that occasion?
A. I have not had any conversation, as I know of, with Judge Page in regard to Mr. Mollison.
Q. You have talked with several persons since that time, with reference to that matter?
A. I have refreshed my memory some.
Q. Who have you talked with?
A. Well, I have talked with him and with other members of that court, with those who were present; I talked with Mr. Chandler, who was a deputy at the time.
Q. Did you and Mr. Chandler agree in your recollection, as you talked the matter over?
A. Well, very nearly.
Q. Who else did you talk with?
A. Well, I don't think I have with anybody in particular in regard to this.
Q. Do you know how Judge Page or his counsel, found out you knew about this matter?
A. Well, I suppose Judge Page knew I was there; of course he wanted to know what I recollected about it.
Q. Oh; then he did talk with you about it?
A. I said before, he had talked with me.
Q. Didn't you say that Judge Page had not talked with you?

A. I didn't say so; with regard to what I testified to, I have talked to him about what occurred there, some.
Q. With a view of your being a witness here?
A. Yes sir.

E. O. WHEELER, SWORN

And examined on behalf of respondent, testified:
Mr. LOVELY. Q. Where do you reside?
A. I reside at Austin, Mower county, this State.
Q. What is your occupation?
A. Attorney at law.
Q. You are acquainted with the respondent
A. Yes sir.
Q. How long?
A. About 13 years in all.
Q. What official position did you hold in September, 1873?
A. I was county attorney of Mower county.
Q. Was you present as such county attorney at the September term of the district court for that year?

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A. I was.

Q. You were in attendance upon the grand jury at that term of court, were you?

A. I was.

Q. State whether you heard the instruction of Judge Page, delivered to the grand jury at that term of court?

A. Yes sir.

Q. And at the opening of court?

A. At the opening of court.

Q. Mr. Kimball in his testimony stated that a great portion of that charge was on the matter of libel: State your knowledge as to that matter?

A. My recollection is that Judge Page never said a word about libel in his charge to the grand jury.

Q. Were you present in court when Mr. Mollison was arraigned? State what occurred at the time of his arraignment?

A. Mr. Mollison was brought in, I think by Mr. Allen the deputy sheriff, and brought forward; I commenced reading the indictment to him, and Judge Page asked me to stop a moment; and he then asked Mr. Mollison what he meant by nodding his head. Mr. Mollison made some remark, I don't know what it was; I presume what he stated here was correct—something about his head; and the judge asked him if he meant to be understood by nodding his head, to assent to the truths stated in the indictment, as being read to him. I think Mr. Mollison said "No" to that and the court——

Mr. DAVIS. The truth of the indictment, or the truth of the libellous allegations set up in the indictment?

A. Well, the truth of the allegation in the indictment, not the truth of the fact upon which the indictment was had.

Mr. LOVELY. Go on.

A. The judge said then, "proceed." I proceeded to read the indictment to him, and he plead to the indictment "not guilty." The judge stated that he did not think that he ought to try the indictment, and I think fixed the bail, and Mr. Mollison stepped back in to the audience into his seat. As he was about sitting down, as I remember it—he was about to sit down—he was part way down, and got up again, and turned sideways in this way [the witness indicates], partly towards the court and partly towards the audience, and told the court that he wanted to make a speech. I don't remember the exact language, but it was to that effect, and the court told him he could not; that it was not the proper time for him then, and that his case would be heard in court, and he still persisted once or twice making remarks, and the judge had to speak quite sharp to him—sit down—to make him.

Q. State whether anything was said to Mr. Mollison by the judge about having counsel?

A. When Mr. Mollison came forward, and before I commenced reading the indictment, the court asked him if he had any counsel and he said no, he didn't want any.

Q. What was Judge Page's manner at that time as to being excited or not?

A. At that time of the arraignment?

Q. Yes sir?

A. I don't think Judge Page was excited, he spoke in his usual tone of voice in court, and he spoke to Mr. Mollison when he attempted to

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speak; he spoke sharply to him. That was after he got back in the audience and got up and attempted to make a speech.

Q. State whether or not he threatened to put him in the hands of the sheriff?

A. I heard no such thing.

Q. State whether or not Mr. Mollison said anything about being ready for trial at that time?

A. I don't remember whether he did or not.

Q. State whether, after that, Mr. Mollison was ever brought into court by any one upon that indictment?

A. Brought into the court by the sheriff, do you mean?

Q. Yes.

A. Not that I know of.

Q. How long did you continue to act as county attorney after that?

A. My impression is that I resigned the office in August, 1874.

Q. Were you present at the March term of the district court for Mower county for 1874?

A. Yes sir.

Q. You may state whether this case of the State against Mollison was brought up at that term of court, or spoken of?

A. Well, I know it was called on the calendar.

Q. What was said by the court with reference to it?

A. I don't remember distinctly about the different times, or the different terms of court when the judge stated in reference to the fact that he did not consider that he could try the cause; whether he said it at that term or not, but I know the judge had so stated, and it was understood; and the cause, I think, was continued from that term to the adjourned term.

Q. For what purpose?

A. That cause with all the others in which the judge was interested, was adjourned to that term for trial.

Q. I will go back to the previou terms of court and ask you whether or not Mr. Mollison was represented by counsel at any time?

A. He was at the second day of the term. I don't mean the second day of the term, but the second day after the arraignment.

Q. Who appeared for him?

A. Mr. Cameron.

Q. What did he do?

A. Mr. Cameron appeared and wished to withdraw the plea of not guilty, and demur to the indictment.

Q. What proceedings were had upon that application?

A. The only proeedings we had, were that the Judge I think stated that he thought he would not take any part in this trial, in reference to this order or otherwise.

Q. Were you present at the term of court held by Judge Mitchell?

A. I was.

Q. When was that held; do you remember?

A. I think in July, 1874. Here is the court calendar for the March term of court of 1874; there are cases in the calendar which are marked continued to the adjourned term.

Q. I wish you would look through those cases that are marked continued to the adjourned term, and state whether Judge Page was inter-

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ested in all such cases as were so marked? State whether, before Judge Page went upon the bench, he was interested in the case of Henry E. Anderson vs. Samuel Dundee?

A. Yes sir.

Q. I see your name is mentioned alone as attorney?

A. I think that after Judge Page went on the bench, some terms, at least, the clerk put my name opposite the cases which we formerly were interested in—interest of the former firm.

Q. How was it with the case of Sarah C. Richards against Charles C. West and others?

A. He was interested in all those Richards cases against West and others.

Q. And Sarah C. Richards vs. French?

A. Yes sir.

Q. James Boice against Joe Deller and others?

A. Yes sir.

Q. John Bropher against Lawrence Wallace?

A. He was interested in those cases; he was as attorney, I believe.

Q. Do you know whether there was a jury in attendance upon Judge Mitchell's court held in July?

A. I think there was.

Q. You may state what was done with the Mollison case at that term.

A. Well, the Mollison case was continued.

Q. Was it continued on motion, or by consent?

A. Continued by consent.

Q. Who represented Mr. Moliison at that term of court?

A. Mr. Cameron; the case was continued at Mr. Cameron's suggestion.

Q. Do you know whether Mr. Mollison, at the time he was arraigned, stated whether he was ready for trial or not?

A. I stated that I did not remember whether he did or not.

Senator NELSON: I move that the court adjourn.

The motion prevailed.

Attest.

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

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TWENTY-FOURTH DAY.

ST. PAUL, WEDNESDAY, JUNE 12, 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 John B., Goodrich, Hersey, Langdon, Lienau, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Morrison, Nelson, Page, Remore, Rice, 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. 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 Friday, June 7, and Saturday, June 8th, were read and adopted.

E. O. WHEELER RECALLED

For cross-examination, testified:

Mr. CLOUGH. Won't you be kind enough to repeat the charge to the grand jury that was given by Judge Page at the September term of court, 1873?

A. I cannot sir; I can't repeat the charge as given by the judge.

Q. Can you repeat part of it as given by the judge?

A. I can give it to you generally, as I understand the substance of it.

Q. Well, won't you do so?

A. Well, do you mean the entire charge?

Q. The entire charge; yes sir.

A. I could not begin to do that.

Q. There were many things given in that charge that have escaped your memory entirely, are there not?

A. I presume there are some things that escape my memory. The judge charged the jury generally in reference to their duties as to investigating crimes, and calling their attention to the statute with reference to their duties.

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Q. Do you remember anything else that he talked about?
A. Well, I can't say that I remember any distinct language or subject.
Q. Do remember any distinct subject matter that he spoke about?
A. I do not, now, without calling things to my attention.
Q. You cannot now state, upon this general question, any single subject matter about which he addressed the grand jury in his charge.
A. Without calling my attention to the subject?
Q. I am speaking about this general question; upon being asked this general question you are unable to state any specific matter that he instructed that grand jury upon?
A. Other than as I have stated, his general charge, in relation to general crimes.
Q. When did you first commence to reflect upon the subject of his having spoken upon libel in his charge in 1873?
A. Well, I don't know when I first commenced to reflect upon it.
Q. Did you have any occasion when you heard that charge, if you did hear it all, to treasure up what was said?
A. My idea of that is this: that if there had been such a charge, or anything of the kind in the charge with reference to this matter, under the circumstances I should remember it.
Q. Won't you answer the question; did you have any occasion, when you heard that charge, to treasure up what was said?
A. I can't tell you, sir.
Q. Have you any distinct recollection of the circumstances which attended the giving of that charge?
A. I don't know what you mean by that.
Q. Do you recall to your mind what occurred while the charge was being given?
A. I do not think anything occurred except the charge being given.
Q. Who were the members of the grand jury on that occasion?
A. I can't give you the names of some of them.
Q. How many?
A. Mr. Spencer was the foreman, I think.
Q. What is Mr. Spencer's first name?
A. William B. I think.
Q. Well?
A. I think Mr. Grant was another one; I think Mr. Sterling was another.
Q. What Mr. Sterling?
A. James M.
Q. What Mr. Grant?
A. I think his name was James; I am not certain as to his middle letter. And there was a man by the name of Judson, who is now dead. I can think of several others if you will give me time to think of them.
Q. What did he say about the subject of larceny in that charge?

MR. LOVELY. He has not stated that he stated anything on that subject.

MR. CLOUGH. I ask him the question.

MR. LOVELY. You are assuming that he has.

Mr. CLOUGH. If anything?

THE WITNESS. I don't know that he stated anything definitely in reference to larceny except in his general charge.

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Q. Do you remember whether he said anything about larceny or not?
A. I do not now, sir.
Q. What did he say about the subject of forging if anything?
A. I don't know that he did.
Q. Do you remember whether he did or not?
A. I do not.
Q. What did he say about the subject of embezzlement, if anything?
A. I don't know, sir.
Q. Do you remember whether he said anything or not?
A. I don't remember now.
Q. What did he say about the offense of assaults with deadly weapons, if anything?
A. I don't remember about any specific charge.
Q Do you ever try to remember the charges that are given to the grand jury—have you any occasion to do so?
A. I can answer that question generally; no particular occasion.
Q. The charges of the grand jury are not given to the county attorney; but to the jury?
A. The county attorney is generally supposed to understand what comes before the grand jury.
Q. You thought it very probable that the subject of libel would come before the grand jury that time, did you not?
A. When do you want to know that I thought that?
Q. I mean prior to the term?
A. I presumed it would.
Q. You had no doubt prior to the term but what the subject of libel would come before the grand jury?
A. I presumed it would.
Q. And prior to the term, you had indictments already prepared, did you not, accusing certain persons of the crime of libel?
A. I don't think so.
Q. When did you prepare those indictments?
A. I don't remember, sir.
Q You prepared the indictments against Mollison and Davidson and Bassford?
A. I did, sir.
Q. Did you go before the grand jury with those indictments already drawn, before the subject was spoken of, before the grand jury?
A. No sir.
Q. Do you mean to say that the offense was agreed to by the grand jury, and the indictments drawn up afterwards?
A. I don't say, Mr. Clough, when I drew those indictments; I don't remember when I drew them.
Q. You won't swear, with reference to the time the grand jury acted upon them, whether you drew the indictments before or afterwards?
A. My impression would be that I drew them afterwards.
Q. Well, have you any recollection upon the subject?
A. No sir.
Q. Now, when Mr. Mollison was brought into court, you read, as I understand, the indictment to him?
A. Yes sir.

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Q. Consequently your eyes were on the paper?
A. Yes sir.
Q. Did you see any of the motions that Mr. Mollison made with his head?
A. I did not.
Q. You didn't know whether he nodded his head, or not?
A. No sir, as I said in my direct examination, the judge stopped me, and asked Mr. Mollison what he was nodding his head for.
Q. Can you give the language that Judge Page used when he first started that conversation with Mr. Mollison?
A. My impression of that is, he said: "Mr. Mollison, what are you nodding your head for?"
Q. Well, what did Mr. Mollison say to that?
A. I don't know that I can give Mr. Mollison's language; he stated something; something about his head being his own, or something of that sort.
Q. Now, whatever he said, Judge Page replied to the question, didn't he?
A. No sir, he didn't; when he said that, Judge Page says: "Mr. Mollison, what are you nodding your head for?" then he asked him if he was intending by that to assent or re-assert, so to speak, the truth s of the allegations in that indictment.
Q. Now let us see if we understand your testimony; you say that Judge Page interrupted you, and said: "Mr. Mollison, what are you nodding your head for?" that was the first thing?
A. Yes sir.
Q. And Mr. Mollison said to the judge, "my head is my own?"
A. I say that he stated something to that effect.
Q. Then Judge Page said: "What are you nodding your head for?"
A. I think that the judge asked him twice what he was nodding his head for, and he made same reply to it twice.
Q. And then the judge asked him the other. What was the second reply to the second question by Judge Page. What was Mr. Mollison's second reply?
A. I say I don't remember his replies definitely, but in his replies it was something about his head.
Q. You don't remember very well what was said on those occasions, do you?
A. I remember the circumstance very plainly, but I don't remember the exact language.
Q. When Judge Page asked him if he meant to assent to the truth of the charge in the indictment, or the matter that was being read, what did he say to that?
A. He said "No."
Q. Just simply "No?"
A. I think so.
Q. And then the reading resumed?
A. I think so.
Q. When was it with reference to the arraignment, or rather, with reference to the plea of Mr. Mollison, which I understood was entered immediately after the reading of the indictment, was it that Judge Page said he himself should not sit in the trial of the indictment?

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A. I don't remember whether it was before the plea was made, or just afterwards. It was about that time.

Q. What did Mr. Mollison say to that?

A. I don't think he made any remarks to it.

Q. When was it that the Judge made a direction in regard to the custody of Mr. Mollison, and in regard to his admission to bail. In what connection did that come?

Mr. LOVELY. He has not stated that.

The witness. I have not stated that he gave any direction with reference to the custody of Mr. Mollison.

Q. I will ask you if anything was said about Mr. Mollison being admitted to bail, on that occasion?

A. I think so; I think I stated that in my direct examination, but not as to his custody.

Q. The order that the court gave was, that if he gave bail in a certain amount he should be released from custody?

A. I don't know what the understanding was; that would be a natural result of the order.

Q. Now, what was it Judge Page said about bail?

A. I don't remember that he stated anything, only that the bail would be fixed at the amount it was fixed.

Q. Did you, or Mr. Cameron, request the judge to fix the bail, or did that come from Judge Page voluntarily?

A. I don't remember as to that.

Q. You don't know how that did happen?

A. No sir.

Q. Was it immediately after Mr. Mollison had plead not guilty, and the judge had stated that he himself was unable to sit in the case, that the judge said that the bail would be fixed at $1,500?

A. I think it was about that time.

Q. Do you remember what happened between the two, if anything?

A. I think that was stated before Mr. Mollison took his seat back in the audience.

Q. Now, Mr. Mollison did go back and take his seat in the audience, did he not?

A. Yes sir.

Q. And I understood that he arose and addressed the court; is that the fact?

A. Well, I can't answer it in that way, yes or no; he arose and said something.

Q. Were you looking at him at the time he arose and spoke?

A. I think I was.

Q. Do you remember whether you were or not?

A. Yes sir.

Q. You were looking at him?

A. Yes sir.

Q. What did he say when he arose?

A. I can't give the exact language; my impression is that he did not get entirely set down in his seat before he arose up again, and as I said, turned partially sidewise, towards the audience and the court, and started to make some remarks; I don't know what he said.

Q. You don't remember what he said at that time?

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A. No sir; he did not, however, address the court in an ordinary way of addressing the court.

Q. Did he speak to the court when he got up; were his words addressed to the court?

A. I can't remember definitely about that.

Q. Didn't he say to the court, "may I be permitted to speak a word," or something to that effect?

A. My impression is that there was something of that sort; the idea he conveyed to my mind is that he wanted to make a speech there.

Q. Do you remember of his saying anything except this, addressing the court: "May I have permission to speak," or "may I be permitted say a word," or something to that effect; did he get beyond that point?

A. I don't know whether he got beyond that point or not; I don't think that he made any particular speech before the judge told him to stop; that it was not a proper time for him to make any—

Q. Did he say what I have stated just now, in substance, "may I be permitted to speak," or, "may I be permitted to say a word?"

A. I don't think he did.

Q. Well, what language did he use?

A. I don't know that I can give you the language of Mr. Mollison as he arose there at that time; don't think I can.

Q. Well, when he said whatever he said, what did Judge Page say?

A. I think he told him he could not speak at that time; that it was not a proper time to speak.

Q. Did Judge Page inform him when he would be heard?

A. My impression is that he said he could be heard in court when his trial came; something of that sort.

Q. Did he say when his trial would come?

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

Q. Nothing of that kind?

A. No sir.

Q. And then Mr. Mollison finally sat down?

A. He did, because he told him.

Q. I say when he was directed to sit down he did sit down?

A. He did, sir.

Q. Now you speak about the adjourned term in 1874; the subject of that adjourned term was discussed more or less, was it, by the judge and others during the March term, 1874?

A. As to what would come before the July term?

Q. Yes sir.

A. Why, I don't know as it was discussed; it was spoken of that the cases to which we adjourned the term, and we expected that the cases in which he was interested, would be tried.

Q. Now, in that connection, did Judge Page mention in court the Mollison case, at this March term, that it would come on for trial at the July term?

A. I don't know that he mentioned that separate and distinct from the others; I don't remember that he did.

Q. Do you remember of Mr. Cameron appearing in court, at any time, in connection with the Mollison case, except on the occasion when Mr. Mollison was first arraigned, when he asked to withdraw the plea of not guilty, and interpose a demurrer to the indictment? Do you remember of his appearing in court and doing anything in the Mollison case after that time?

A. I do.

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Q. When?

A. He appeared in court at the time Judge Mitchell was there, and also at the trial of the case, when it was tried.

Q. He did assist at the final trial of the case?

A. Yes sir.

Q. I will ask you now what he said or what was done by Mr. Cameron in court, at the time Judge Mitchell was there?

A. The Davidson and Bassford cases—there were demurrers in those cases, and they were submitted upon argument to Judge Mitchell. General Cole was there and appeared for those defendants, and made some remarks for them; and Judge Mitchell stated that he would take those matters under consideration. Mr. Cameron then suggested to him that inasmuch as those matters, the matters contained in the Mollison indictment, were the same as those contained in the Davidson and Bassford indictments, that that matter go over and abide the result of the other cases. That is if Judge Mitchell should determine to sustain those demurrers that that would practically end the Mollison case, because it could be brought up on motion, and I consented to it, and stated to court that it would be continued by consent.

Q. The demurrers to the Davidson and Bassford indictments were general demurrers; that is, on the ground that a public offense was not stated?

A. Yes sir.

Q. The form of indictment against Davidson and Bassford, and that against Mr. Mollison, were the same in substance?

A. They were, in substance; with the exception of Mr. Mollison writing it.

Q. So that if the indictments against Davidson and Bassford had been quashed, or held insufficient, the same result would have occurred with reference to the Mollison indictment?

A. It would on motion.

Q. O! would have determined that to be insufficient?

A. That was our idea.

Q. Who made the motion for the continuance of the Mollison case?

A. There was no motion made about it.

Q. How was that brought to the attention of the court?

A. I just stated to you that I stated to the court that that was continued by consent.

Q. Now, after that time and up to the time of these impeachment proceedings, did Mr. Cameron appear in court, or do anything in reference to that case in any way?

A. I don't know sir.

Q. Have you ever made a motion, with the single exception as stated by you, at the July term, 1874, or a suggestion to the court, that the case of the State of Minnesota against Mollison should be continued?

A. I have not, because I resigned the office of county attorney in August, 1874.

Q. During the term that you were county attorney?

A. There were no cases after that, during my term of office. I had nothing to do with the case since.

Q. While you were county attorney, did you hear Mr. Mollison ask for a continuance, in court?

A. The indictment was found in the September term and we only had one term after it.

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Q. Since you have been county attorney, have you heard Mr. Mollison ask for a continuance?

A. No sir; I don't think I have.

Q. Do you remember if a jury was in attendance at the July term, 1874?

A. Yes sir.

Q. Was it called in court?

A. What do you mean? was the roll called?

Q. Yes sir?

A. I don't remember.

Q. Do you remember whether the jury actually appeared in court, or there was any call made by the court to indicate whether the jury appeared in the court?

A. My impression is that there was, but I am not certain.

Q. How did that jury get there, was it the jury at the prior term that had been adjourned?

A. I don't know as to that.

Q. You don't remember whether it was a special jury or the jury at the prior term?

A. I do not.

Q. Have you examined the records to see who constituted the grand jury at the September term, 1873?

A. No sir.

Q. You state that from memory, do you?

A. I do.

Q. Were you attorney for the defense in the case of the State of Minnesota against Jaynes?

A. I was.

Q. And also for the defense in the case of the State of Minnesota against Pugh, indicted for forgery in Freeborn county?

A. Yes sir. I don't know whether it would be proper for me to make an explanation. One question you ask me about my memory in connection with this grand jury matter.

Mr. LOVELY. Make any explanation you desire.

The witness. I would state that the matters in reference to the reading of the law and giving the definition of the matter of libel was given by myself to the grand jury at their suggestion. They sent for me to come in and give a definition of the law of libel, and I went before them at their request and did so.

Mr. CLOUGH. Are you through with your explanation?

A. I am.

Q. By Mr. CLOUGH. Don't it frequently happen that you are called upon, or didn't it while you were county attorney and in attendance on the grand jury as such, to explain the matters upon subjects about which the court itself had instructed the grand jury?

A. I don't think so. When they had been specifically charged upon any subject, I don't think it ever did; I think when there is a general charge I have been asked in regard to matters that came before the grand jury. I have often been called before them. When an explanation was made fully by the court upon any question, I never have had any occasion.

Mr. CLOUGH. That is not the question at all, but as to when the

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the court has alluded to some specific offense, as for instance, larceny, and the subject of what would amount to larceny, has come up before the grand jury, havn't you been interrogated by the grand jury as to what the legal proposition would be?

A. Yes sir.

Mr. CLOUGH. Q. Although the court may have alluded to the same class of offenses in its general charge?

A. Yes.

W. B. SPENCER, SWORN,

And examined on behalf of the respondent.

Mr. LOVELY. Q. Where do you reside?

A. Le Roy, Mower county.

Q. How long have you lived there?

A. About twenty-three years.

Q. What office do you hold in Mower county?

A. Do you mean at present?

Q. Yes sir.

A. County commissioner of Mower county.

Q. Were you present—in attendance at the September term of district court of Mower county for 1873?

A. I was.

Q. In what capacity?

A. As a grand juryman.

Q. You were foreman of that grand jury, were you not?

A. Yes sir.

Q. Were you present at the time Judge Page instructed the grand jury?

A. I was.

Q, At the first charge?

A. Yes sir.

Q. State whether or not Judge Page gave any instruction to the grand jury at that time, upon the subject of libel?

A. I have no recollection that he did.

Q. What is your best impression upon that subject?

Mr. Manager CAMPBELL. Well, I object to his impressions.

Q. Have you any impressions upon that subject?

Mr. Manager CAMPBELL. I object to that question; you need not answer that question unless the court says so

The PRESIDENT. Let him state what he knows about it.

Q. State whether you have any impressions?

A. I have no recollection of his giving any special charge in regard to libel, at all; I don't think there was any such thing, to the best of my knowledge.

Q. Have you reflected upon what occurred there, for the purpose of refreshing your memory?

A. I wish to state here that it has been a long time since this matter took place, and I have not thought of the matter at all; I heard Mr. Kimball here on the stand, and it struck me forcibly, at the time, that either Mr. Kimball was mistaken or I was, for I had no recollection; I could not bring it to memory—that Judge Page had given any special charge in regard to libel, in that matter.

Q. Did you hear a conversation between Mr. Mollison, Mr. N. N.

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Thompson and Mr. Phillips, here in the city of St. Paul, in relation to Senator Clough?

A. I think I did.

Q. State what Mr. Mollison said?

Mr. Manager CAMPBELL. What is the object of that testimony?

Mr. LOVELY. To impeach the statements of Mr. Mollison upon the stand.

Mr. Manager CAMPBELL. And as to what point?

Mr. LOVELY. We propose to show that Mr. Mollison stated when he was here that if Mr. Clough would not be permitted to take his seat there would be war in this country; for the purpose of showing his feeling of interest in this matter.

Mr. Manager CAMPBELL. You can't contradict a witness on that immaterial point; that has nothing to do with this case.

Mr. LOVELY. We think, your honor, it is a material point; we deny the interest of any particular witness in the matter is immaterial. Mr. Mollison displayed no feeling, or pretended to display no interest whatever, and he was interrogated as to his feeling—as to his interest, and he denied that he had any; denied explicitly that he made any statement with reference to this proceeding which is now pending carrying the idea, that he had no interest in it whatever.

The PRESIDENT. The witness may answer the question.

Q. State what he said?

A. Well, we met Mr. Mollison down here on the street, and Mr. Thompson asked him how that matter was decided; whether Mr. Clough retained his seat or not.

Mr. Manager CAMPBELL. When was this?

A. This was somewhere about Friday, I think. And Mr. Mollison made some remark that if he wasn't allowed his seat there would be war here, (laughter) or something to that effect.

CROSS-EXAMINATION.

By Mr. Manager CAMPBELL. Q. You say your attention has never been called to this matter of the charge to the grand jury, until you heard Mr. Kimball testify?

A. No sir; I never thought of it, that I know of particularly, until I heard Mr. Kimball give his testimony.

Q. Since that time you have tried to recollect to see if you could recollect it, have you?

A. I have. I have since that time, tried to recollect what took place.

Q. Now sir, can you recollect any specific charge that he gave you at that time?

A. Well, it strikes me that there was nothing special, more than his common charge that he gave to the grand jury.

Q. Then your impression is that he didn't charge you on any specific points?

A. I don't think he did.

Q. Will you state whether he charged you in regard to election frauds or anything of that kind?

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A. No; I have no recollection in regard to it.
Q. No recollection of his charging you in regard to county officers at that time?
A. Why, not specially; no. He might have done so, but I don't recollect it.
Q. Do you recollect his reading from the statute?
A. He did; I think so.
Q. Did he charge you what a presentment was?
A. I don't know but he did. I have no recollection in regard to that point. I never gave it my attention or thought of it until I saw Mr. Kimball here on the stand.
Q. The specific charges he gave you, you have no recollection of?
A. I don't recollect, no sir.
Q. You would not swear that he did not charge you specifically on libel or any other crime?
A. No sir. I am sure that I don't recollect that.

F. A. ELDER, SWORN,

And examined on behalf of respondent, testified:
MR. LOVELY:
Q. Where do you reside?
A. I reside in Austin, Mower county, that is my residence. I have recently opened business, in Moorhead, Clay county; my family are yet in Austin.
Q. How long have you resided in Austin?
A, I have resided at Austin a little more than four years.
Q. In Mower county how long?
A. I resided in Mower county about 19 years.
Q. What official position have you held in Mower county?
A. I have held the position of clerk of the district court.
Q. When did your official term commence?
A. The first of January, 1874.
Q. Were you present at the March term of the district court for Mower county in the year 1874?
A. I was.
Q. That was your first term as clerk?
A. Yes sir.
Q. Did you make up the calendar for that term?
A. I did.
Q. You may turn to the case of the State against Mollison.
A. I will qualify my answer. I said it was the first term—the first general term I would say.
Q. You made up the calendar, I believe you stated, for the March term; won't you turn to the Mollison case? That was in your handwriting?
A. That is my handwriting.
Q. Now, you may turn over to the June term; you may state what was done with reference to the Mollison case at the March term?
A. On the call of the Mollison case at the March term the judge stated with reference to this case, and in connection with other cases, that he was interested in it; that there would be an adjourned term of court held for the trial of these cases, and that they would be continued to this adjourned term; I think he stated then that it would be ad-

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journed to July 7; he also stated he had met with a great deal of difficulty in securing a judge to try these cases, and that he wished the attorneys would be prepared to dispose of all cases.

Q. You made up the calendar for the July term when Judge Mitchell was there?

A. Yes sir.

Q. You were acting as clerk at that time, were you?

A. Yes sir.

Q. I see there is an entry of the case of the State of Minnesota against D. S. B. Mollison, (attorney's name) E. O. Wheeler, county attorney; Cameron & Crane. Who made these entries?

A. The entry of the names Cameron & Crane are in my handwriting.

Q. In whose handwriting are the other entries?

A. In my handwriting.

Q. Who made this entry, "Continued by consent?"

A. I think that is in Judge Mitchell's handwriting.

Q. Do you know whether there was a jury in attendance at that July term, 1874?

A. Yes sir.

Q. Are those the minutes of proceedings at that term [handing witness book]?

A. Those are the minutes kept by me.

Q. Those two entries made by you on page 219.

A. Those entries were made by me at the time.

Q. We now offer to read entries on page 219 of minutes of the court record, July term, district court for Mower county, 1874.

Mr. Manager CAMPBELL. Well, we object to the reading of one of those entries there. The grounds of the objection are, that the record itself shows that there has been an alteration—shows a material alteration; that those were not the records that were made at the time.

Mr. LOVELY. Q. Has there been any alteration of these records since you entered them as they are now?

Mr. Manager CAMPBELL. That is not the question.

Mr. LOVELY. I will lay the foundation.

Mr. Manager CAMPBELL. The question is not whether there is any alteration of the records as they are now, but whether there has been an alteration since they were first made.

Mr. LOVELY. Q. Well, has there been an alteration since they were first made up? are they now as when you first made them?

A. The first entry there seems to be an erasure of a part of it, and rewritten.

Mr. Manager CAMPBELL. Well, I withdraw my objection to the entry, and simply call the attention of the Senators to look at this book before they pass upon it, to see what these alterations are.

Mr. LOVELY. The first entry—that is, the entry which you claim has been erased—reads as follows: "Jury excused until one and a half P. M." Third line from that entry: "No business appearing on the calendar for jury trial, the jury was discharged."

Mr. LOVELY [to Mr. Campbell.] You don't claim there was any erasure as to that entry, do you?

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Mr. Manager CAMPBELL. There is an interlineation.

[Mr. LOVELY to the witness:] You may explain whether those entries were made at the time—whether there has been any change in the entry since they were first made?

A. There has been no change in *that* entry—(referring to the one mentioned by the counsel for the managers.)

Q. Explain why the erasure was made.

A. I don't recollect now, why it was made.

Q. Is that a correct record of the proceedings at term?

A. It is as correct a record as I kept of them; in my handwriting.

Q. Did you ever make any erasure, or interlineation of those entries, after they were made or after the record was made up?

A. Not only except that one; you see it has been erased.

Q. Was that entry made after the record was made up?

A. Not after the record was made or completed.

Q. When did you make that record?

A. It was about the time the events transpired; probably shortly after.

Q. That is the record as it appears here?

A. I can explain how I kept them at that time.

Q. Go on and explain?

A. At that time I kept the minutes of the court on loose paper, and transferred them to the book from the paper, as I kept them in court.

Q. State what occurred at that term of court, with reference to the Mollison case?

A. When the Mollison case was called the attorneys had some consultation. (I could not understand what they said.) And when they were through one of them stated to the court that the case would be continued by consent.

Q. Who appeared as the attorney for Mr. Mollison?

A. Mr. Cameron was there; and I understood he appeared for Mr. Mollison.

Q. Do you know, of your own knowledge, whether there was a jury in attendance at that term of court?

A. I do.

Q. Do you know whether it was called or not?

A. I don't recollect whether it was called or not.

Q. Do you know whether they were present in court or not?

A. I think they were.

Q. Do you know how many were paid?

A. My book shows that 22 jurors were paid.

Q. At that term?

A. At what term?

Q. Had a jury been ordered?

A. Yes sir.

Q. When?

A. In the latter part of May.

Q. Who by?

A. By Judge Page.

Q. What followed at successive terms of court with reference to that Mollison case?

A. On the call of this case with others in which the court was interested, they would be continued.

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Q. Was there any objection made at any time, to their continuance?
A. None that I heard of.
Q. You may state, if you know, what efforts were being made by Judge Page, after that, to procure the attendance of another judge?
A. He usually stated—

Mr. Manager CAMPBELL. You need not state that; if you know of anything yourself what he did—not what he stated.
A. I know nothing only what I heard him say.
Q. But you have heard him state in court?
A. I have heard him state in court.

Mr. LOVELY. Well, we think that is competent, your honor.

The PRESIDENT. Do you object?

Mr. Manager CAMPBELL. Certainly; what he said in court we do not object to.

Mr. LOVELY. We will ask you to state what was said in court by the judge with reference to procuring another judge, to attend to those cases.

Mr. Manager CAMPBELL. That we do not object to.
The witness. The court usually stated on the call of those cases, that he had been trying to secure a judge to try them, but had not succeeded.
Q. At the September term of the district court in that county in 1875, what occurred with reference to that case?
A. I don't think of anything in 1875.
Q. Was that term adjourned over until October?
A. I think not.
Q. Refresh your recollection?
A. That is my recollection.
Q. Don't you recollect an adjourned term from September term to an October term?
A. I do.
Q. To be held by Judge Dickenson?
A. I think it was later than 1875; perhaps I am mistaken.
Q. Well, do you remember a September term being adjourned until October?
A. Yes sir.
Q. For what purpose?
A. It was adjourned for the purpose of trying the cases on which Judge Page was disqualified to sit.

Mr. Manager CAMPBELL. October of what year?
A. October of 1876 it was adjourned to, I think.
Q. Was it previous or after the Jaynes case was tried the last time?
[No answer.]
Q. Well, was the term held in October?
A. I think it was after the Jaynes case was tried; I can explain in regard to that if you wish.
Q. Well, explain.
A. My idea—I think there was an adjourned term from September, 1875, to some time in January, 1876. The object of this adjourned term was to try the cases in which Judge Page was interested, and also the Jaynes case; we expected to get another judge to sit at that time.
Q. Well, I refer to the September term that was adjourned till

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October. Well, after this adjourned term, did Judge Page give you any directions to call upon attorneys to notify them of the time that Judge Dickenson would be there to prepare their cases for trial?

A. I think about two weeks previous to October 24, 1876, the time to which the court had been adjourned. I called upon Judge Page to know what arrangements were necessary to be made for that term. He asked me if I would see the parties, see their attorneys, and ascertain if they were ready to try those cases. I told him that I would, and after conseltation with the attorneys I found the county attorney ready, I think, to dispose of all the cases in which the State was interested, or the county. The defendants were not ready; some had one reason and some another for not wishing to go to trial that October term.

Q. You so reported to the judge?

A. Yes sir.

Q. Did you see the attorneys or Mr. Mollison?

A. I am not positive in regard to the Mollison case; whether I saw the attorneys, or whether I saw Mr. Mollison, or whether I saw Mr. Cameron's partner; I am not clear in regard to that. My recollection is that I met Mr. Cameron on the street. I have thought the matter over carefully and tried to recall the matter. It is my best recollection that Mr. Cameron stated to me that he did not know much about it; thought they wa'n't ready for trial.

Q. What did you state with reference to that to Judge Page?

A. I think my report to him was, that the parties were not ready to go to trial at the October term.

Q. Was any objection ever made in court by Mr. Mollison, or Mr. Cameron, to a continuance of that case?

A. Not that I ever heard.

Mr. DAVIS. I would like to know, Mr. Elder, for my own information, when did your term of office expire?

A. The 1st of Jan., 1878.

Q. I call the attention of the witness, and the court, to pages 223, 231, 234 and 236, of this record; turn to page 223, there is an alteration there, isn't there?

A. Yes sir, in the name of the juror K. A. Neudstrom.

Q. Page 231—there is an alteration on that page?

A. Yes sir.

Q. In which it consists of an erasure of two lines, at which the following words are written: Grand jury brought in indictment found against John Walker. These words are all written over an erased passsage, arn't they?

A. I think they were.

Q. Page 234—there is an erasure over the middle half of one line, over which are written the words, "jury retire in charge;" is that so?

A. Yes sir.

Q. Page 236—there is an erasure over which the initials of a witness are written, "J. B.," instead of something occurring before?

A. Yes sir.

Q. Page 241—there is an erasure of a line and a half, I will say—not quite—over which are written the words, "The evidence does not show that defendant was injured by a defective," that is so is it?

A. Yes sir.

Q. Now in regard to the alterations to which I have called your at-

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tention, were they made by your own motion or were they made at the suggestion of any one?

A. They were made of my own motion.

Q. Do they express the fact as it was at the time?

A. They do, sir.

Q. Did you or did you not ever tamper with, alter, erase or change these rocords after you made them up?

A. Not after they were completed.

Q. And you completed them at what period of time in relation to the events which they record.

A. These were written into the book soon after the events took place.

CROSS-EXAMINATION.

Mr. Manager CAMPBELL.

Turn to the March term of the calendar, for that Mollison case. What year was it?

A. '74.

Q. Will you please to tell us, from these records, who appears there as attorney in that case?

A. E. O. Wheeler appears as county attorney.

Q. Who appears for defendant?

A. No one.

Q. State whether it was your custom, or not, when an attorney appeared for a defendant, to so enter on the records?

A. Some times I did, and some times I did not.

Q. Have you any recollection of any one appearing that term for Mr. Mollison?

A. At the March term of 1874 I don't know that I noticed any one appearing for Mr. Mollison.

Q. That was your first term in court?

A. Yes sir, general term.

Q. And you have no recollection of any one appearing for Mr. Mollison in that term?

A. No sir.

Q. Now then, turn to the July term; that case was then continued, on motion, you say, of the judge?

Mr. LOVELY. He did not say that.

Mr. Manager CAMPBELL. The July term, was it not?

Mr. LOVELY. He did not state that.

Mr. Manager CAMPBELL. He said the Judge continued the case.

The witness. I said that on call of his case with others, the judge stated that there would be an adjourned term for the trial of these cases and they could stand adjourned—continued to the adjourned term.

Mr. Manager CAMPBELL. That is what I stated; they were continued on the motion of the judge without any motion of anyone else, I think I am right.

Q. Now turn to the July term; they were continued to the July term, were they not, by the judge?

A. They were continued.

Q. Was that on the first or the second call of calendar that they were continued?

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A. It is my impression that it was on the July term.
Q. At the July term, Judge Mitchell presided, did he?
A. He did; yes sir.
Q. Was there any jury called, at that term, in court?
A. I don't recollect as to whether the jury were called in court or not.
Q. Was the Mollison case called?
A. It is my recollection that it was called.
Q. What was said when that was called, and by whom?
A. The conversation with reference to that case, took place, I think, between the county attorney and Mr. Cameron; what their talk was I did not hear. I gathered, though, from what I did hear ——
Q. Never mind what you gathered. Do you know what was said between them?
A. I do not.
A. Do you know that anything was said between them in regard to the Mollison case?
A. Only by what they stated afterwards.
Q. What; they—who do you mean by they?
A. Either Mr. Wheeler or Mr. Cameron; I would not be positive which.
Q. Will you swear that Mr. Cameron said one word about that Mollison case?
A. I am not positive which one stated that it was continued by consent.
Q. Then you won't swear that Mr. Cameron said anything in regard to the Mollison case?
A. I will not swear he made the statement.
Q. Did Mr. Cameron ever state anything, in your presence, in regard to the Mollison case?
A. He has stated with reference to the Mollison case.
Q. In court I am speaking of?
A. Well, I could not say.
Q. You could not say whether he has ever said anything in court or not.
[No audible answer.]
Q. Now you say you made the entry there of Cameron and Crane as attorneys. Was that made at the time you made up that calendar.
A. I think it was not.
Q. Will you state when you made the entry of Cameron & Crane?
A. No, sir, I cannot state, only from what I should judge would be the case.
Q. You can't tell anything about it, except what you should judge; well, from the looks of that writing, would you say, that the entry of Cambell & Crane was made at the same time there other entries were made?
A. What entries do you refer to?
Q. The other question in the case; E. O. Wheeler for instance, do you say that Cameron & Crane was entered at the same time you entered that, from the appearance of that book?
A. I can give you what my idea is in regard to it.
Q. Well, you can answer my question, whether you think Cameron & Crane was entered there at the same time you entered Mr. Wheeler?

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A. No sir, I don't think it was. I think that was entered while the court was in session, and Judge Mitchell called the case.
Q. Will you swear that is your handwriting, Cameron and Crane?
A. Yes sir.
Q. Same handwriting as the name Wheeler?
A. Yes sir.
Q. Same names as the other entry?
A. Yes sir.
Q. Well sir, can you tell now when you entered that?
A. No sir, I cannot give the date.
Q. Not the same ink that E. O. Wheeler's name is written in, is it?
A. Well, I should presume not.
Mr. Manager CAMPBELL. I will say here to the Senate, that these books are in evidence. I wish to call the attention of the Senators to the looks of this book.
Q. You say in your direct examination that you understood that Mr. Cameron appeared for Mr. Mollison, but now you say you can't tell of any one thing he ever did in open court of that case?
A. I can't remember anything he said in regard to that case in court.
Q. At the time Judge Dickenson was there you say that case was continued, how long; at the time Judge Dickenson was there, was any jury case tried?
A. I think not.
Q. Was there any jury in attendance?
A. I think not.
Q. Now, at the time Judge Mitchell was there, you say there was a jury in attendance?
A. Yes sir.
Q. That was on a special venire?
A. No sir.
Q. How came that jury there?
A. The jury was drawn on the order of court from the regular panel.
Q. That was an adjourned term?
A. It was an adjourned term.
Q. How do you know how that jury was drawn?
A. I helped draw it.
Q. By what authority?
A. By order of the court.
Q. In writing?
A. In writing.
Q. Was that order recorded?
A. That order, I think, is recorded.
Q. In the order book?
A. In the order book.
Q. What became of the jurors ; were their names put back in that had served?
A. I think they were.
Q. Any of the old jurors called?
A. I am not positive as to that.
Q. Now, you say that Judge Page asked you to call upon the attorneys?

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A. Cases in which he was interested.
Q. You are not positive you called on Mr. Cameron at all?
A. I am not positive in the Mollison case who gave me the information; it was either Mr. Mollison, Mr. Cameron, or Mr. Cameron's partner.
Q. Are you sure that you had any conversation with either of them?
A. I am; that is my recollection, that one of these three told me that the case would not be ready for trial at the October term.
Q. Where was that conversation?
A. I can't tell where; it is my recollection, however, that I met Mr. Cameron on the street.
You may be mistaken about it.
A. I may be mistaken in regard to that.
Q. Your recollection is that he said that he did not know much about it?
A. Yes, that he thought it would not be ready for trial.
Q. That he did not know much about it; and that is all you recollect about it?
[No audible answer.]
Mr. CLOUGH. Q. When were the matters contained in the minutes of court, which I hold in my hand, on pages 220-22, written in this book?
A. I cannot give the date.
Q. In keeping your minutes during this term of court, July, 1874, did you keep this minute book before you and write in the matters as they occurred—as they took place?
A. I did not.
Q. You may state the manner in which you kept your minutes at that term of court?
A. At that time I think I kept the minutes on legal cap paper, and, either during the term or soon after, I transferred them to the book.
Q. But you entered them in the first place on legal cap paper?
A. I did.
Q. Was that legal cap paper made up into the form of a roll or package, or was it on single sheet?
A. Single sheet.
Q. One sheet?
A. Well, that might have been one or more.
Q. What has become of that sheet?
A. I don't know.
Q. What did you do with it?
A. I don't know—I don't remember.
Q. Do you remember when it was that you transferred that matter on that sheet into this book?
A. I don't remember the exact date.
Q. Do you remember whether it was a month or six months afterwards; after the term of court?
A. It probably was not longer than from one to six days.
Q. You are positive about that, are you?
A. That is my recollection.
Q. What did you say you did with that sheet of paper?
A. I did not say.
Q. What did you do with it?

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A. I don't know.
Q. Were you in the habit of keeping those minutes you took yourself, original minutes?
A. Sometimes I did, and sometimes I didn't.
Q. Why didn't you keep them in all cases?
A. I did not not consider them of any importance.
Q. Why did you keep them in some cases?
A. I don't know that I did.
Q. Don't you know that you did in several cases?
A. I may have done; I don't know.
Q. Why did you single out a particular part of the term minutes to keep?
A. I did not, sir.
Q. You did not?
A. No sir.
Q. Do you know of any of the original minutes being in existence which were taken by you in the progress of the court?
A. I do not.
Q. How long since you have looked to find any such minutes?
A. I don't know that I ever looked after I wrote them in the books and completed the record; I don't know that I ever looked the original scraps over.
Q. Now at the time this was written in this book did you have your original scrap of paper before you?
A. I presume I did.
Q. Is this a literal transcript of what appeared on the paper?
A. I could not say that it was.
Q. Do you remember whether you copied what appeared on that paper into this book or used it as a mere memorandum, and wrote it differently in the minute book from what it appeared on the paper?
A. I presume I wrote it different if the entry on the paper did not suit me.
Q. You don't know, then, whether as a matter of fact you followed the paper?
A. I followed it in some cases and departed from it in others.
Q. Do you remember in what cases you followed the paper and in what respect you departed from it?
A. No sir.
Q. Can you tell any of the entries; and state which of them were copies of the original entries on the book, and which not?
A. No sir.
Q. Now, had you written on these pages, 219, 220 and 221, before you made these erasures occurring on page 219?
A. I think so.
Q. It had all been written in below you made those erasures?
A. Yes sir.
Q. Now, under the line which has been erased "jury excused until one and a half P. M." what was originally written?
A I could not say.
Q. Under the line immediately before it, what was originally written?
A. I can't tell what was written there.
Q. Do you remember how long it was after you had written the

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matter originally, on page 219, 220 and 221, before you scratched out the words?

A. My recollection is, in regard to that, as to the other erasures that occurred, that they occurred when I read the minutes over, as I compaired them, to see if they were right and properly written.

Q. But you cannot tell what matters you originally wrote in there?

A. I can't.

Q. But whatever you wrote in there, you scratched out?

A. I presume so.

Q. Now, I will ask you when you wrote these words, "no business appearing on the calendar for jury trial, the jury was discharged," when did you write that in?

A. I can't state.

Q. You did not write that in, when those minutes were originally transcribed in this book, did you?

A. I presume I did.

Q. Look and see if that was written with the same ink and pen that the balance of the entries were written in. These words "no business appearing for the jury, the jury were discharged." Tell me as an expert whether that is the same ink, and the same pen, that the balance of the entry is written in?

A. I should say that is the same.

Q. You give that as your opinion as an expert?

A. I give that as my opinion.

Q. Now, there seems to be an erasure also at this point; [indicating,] what matter was written in there?

A. Nothing.

Q. What was scratched out at that time?

A. A bracket.

Q. When did you scratch that bracket out?

A. I don't know.

Q. Will you swear that you have not made those changes within the last six months?

A. I will, yes sir.

Q. Will you swear that you have not made them within the last year

A. Yes sir.

Q. Now, did this jury actually appear in court, that was drawn?

A. Some of them did?

Q. Who appeared there?

A. I could not give their names.

Q. Can you tell how many, or the names of any?

A. I cannot tell how many.

Q. Isn't it the practice always in every court for the venire to be called over, when there is one, at the beginning of the term?

A. I think it is usually the practice.

Q. Do you remember a single instance where it was not done while you were clerk of court. Isn't that a part of the opening business of court to call the jurors to see if they respond to their names?

A. I think that is usually the case.

Q. What was done in this case—was the jury called?

A. At the July term, I could not say whether it was called or not.

Q. You have no recollection as to that subject?

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A. No sir, not as to whether it was called.

Q. You stated on your examination in chief, that Judge Page was in the habit of stating in court with reference to certain cases, that he was endeavoring to get a judge to try them. When did he first commence to make that statement?

A. He usually made that statement when the cases were called at each general term; he gave the statement as I understood it to me at the March term, 1874.

Q. Well, what did he say then?

A. He said that on the call of the Mollison case with others in which he was interested, that he had been trying to make arrangements for a judge; he thought he had secured a judge to sit in July, that these cases would stand adjourned till that time.

Q. What cases?

A. The Mollison, and the Davidson & Bassford cases.

Q. Did he mention the Mollison case particularly?

A. I think he called all the cases; and then stated in reference to those cases—that is all in which he was interested—that they would be continued to the July term, when the judge would preside to try them; that he wished the attorneys to be prepared to try those cases, as he admitted there was a great deal of difficulty in securing a judge.

Q. You were there at the July term of court from the beginning to the termination of the term of court.

A. I think so.

Q. Did you hear Mr. Cameron say a word on that occasion in reference to the Mollison case?

A. I did not hear Mr. Cameron say anything in reference to the case; that is, not so as I could hear what he did say.

A. Now, after the July term, did you hear Judge Page say anything again, about obtaining a judge to try the Mollison case?

A. It was his usual practice, on the call of these cases, to say that he was endeavoring to obtain a judge, yes sir.

Q. Did he say what effort he was making, or was intending to make to that end?

A. I would not say that he made the statement at all times, but he usually said that he had been corresponding with the different judges, and that as he was confined to judges in adjoining districts, he met with a great deal of difficulty; their business was so pressing that they could not aid him.

Q. Did he mention the names of any particular judges whose business was so pressing that they could not come?

A. I will not be positive that he did in court.

Q. While you were clerk of court did you ever hear of Mr. Mollison requesting his case to be continued?

A. I did not.

Q. While you were in court as clerk did you ever hear the county attorney move to continue these cases, except at this adjourned term in July, 1874?

A. I don't remember now, that I ever did; I think probably I did.

Q. You think probably you did; when was that?

A. I could not state.

Q. Have you any grounds for thinking so; have you any recollection, mean, of any occasion, or is that a mere guess?

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A. My recollection on that point is not as clear, because the county attorney frequently made such a motion in other cases, and I am not positive in regard to this.

Q. Well, whenever the county attorney made such a motion to continue a case, you always entered it, didn't you?

A. Not—well— .

Q. That is what you were there for, isn't it, to enter motions and proceedings in court?

A. Where it was made in the proper form of a motion.

Q. Wasn't it the practice when Judge Page was calling over this Mollison case, and the Davidson and Bassford cases, not to wait for any person to make any suggestion, but to volunteer the statement himself, that those cases would go over "one, two and three;" those were the Mollison and Davidson and Bassford cases.

A. Well, as to waiting, there was no particular waiting, and no haste; they were called and he made his statement in regard to his having tried to get a judge to sit for those cases.

Q. When did you go out of office?

A. The first day of January, 1878.

Q. Were you present at the term when the dismissal of the suits against Davidson and Bassford occurred?

A. I was present at the February term, 1877.

Q. At the February term of 1877, were those cases dismissed at that term; the criminal cases—"The State of Minnesota vs. Davidson and Bassford?"

A. I think not.

Q. Were you present at the March term, 1877?

A. I was.

Q. Were the cases of the State of Minnesota against Davidson and Bassford dismissed?

Mr. DAVIS. I object; it is not cross-examination.

The PRESIDENT. The objection is sustained.

Q. You state that Judge Dickenson was there to hold a term of court?

A. Yes sir.

Q. Was any jury present at that term of court?

A. I don't think there was any jury at that time.

Q. Do you remember of any jury having been summoned?

A. I do not.

Q. Were not the alterations in those court minutes made at the same time that the names Cameron and Crane were inserted as attorneys of Mr. Mollison, in the case of the State of Minnesota against Mollison?

A. I think not.

Q. You think they were made at different times?

A. I think so.

Q. How far apart were they made?

A. I could not tell.

Q. Will you swear positively that they were not made at the same time?

A. I will swear that my best recollection is that they were not.

Q. But still you can't remember when either of them was made?

A. Not the exact time; no sir.

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RE-DIRECT EXAMINATION.

Mr. LOVELY. You were interrogated by Mr. Clough as to the habit of calling the list of jurors; state whether you know anything about Judge Mitchell's habits of calling the list of jurors on the first day of the term?

A. I do not.

Q. You only speak in reference to Judge Page's practice?

[No audible answer.]

Q. You may state how that jury was drawn for the July term. You state it was drawn from a regular panel; what did you mean by that?

A. It is my recollection that the order was filed directing that a petit jury be drawn for this July term. I prepared the names as returned by the county commissioners; that the sheriff and one justice of the peace assisted me in drawing the jury.

Q. You drew it from the whole list?

A. Yes sir.

Q. Now, independent of all records, do you remember if a jury was summoned and in actual attendance on that term of court?

A. I do.

Q. When do you make up the calendar for a term of court; before, or at the term?

A. Generally before; usually before. There may be entries made during the term.

RE-CROSS-EXAMINATION.

Mr. CLOUGH. Do you remember who the justice was who assisted you to draw that jury?

A. I don't remember now; the venire, I think, will show.

Q. Who was the county commissioner that assisted you?

A. No county commissioner assisted me.

Q. I understood you so to state. Who did assist you?

A. The sheriff.

Q. Who was sheriff at that time?

A. I think George Baird was sheriff at that time.

RE-DIRECT EXAMINATION.

Mr. DAVIS. Q. State whether or not it is your recollection if Mr. Cameron was in court at that July term, when the county attorney said that the Mollison case might be continued by consent?

A. It is my recollection that he was present and had a conversation with Mr. Wheeler, when one of them—I would not be positive which—made a statement that the case could be continued by consent.

Q. Mr Wheeler, the county attorney?

A. Mr. Wheeler was the county attorney.

Q. Did Mr. Wheeler make a statement that the case might be continued, before or after the conversation he had with Mr. Cameron?

A. After the conversation.

RE-CROSS-EXAMINATION.

Mr. CLOUGH. Q. Mr. Cameron had business in court always, hadn't he?

A. Usually he had.

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Q. And at this other term of court he had other business besides the Mollison case, didn't he?

A. I presume he did; he was generally present from the beginning to the close of the term.

Q. That was so in other terms as well as this?

A. Yes sir.

E. J. PHILLIPS, SWORN,

And examined on behalf of the respondent, testified:

Mr. LOVELY. Q. Where do you reside?

A. In the city of Austin, Mower county.

Q. How long have you resided there?

A. I have been in Austin between five and six years; I have lived in the county eleven years.

Q. Are you acquainted with D. S. B. Mollison?

A. I have a passing acquaintance; I know him.

Q. State whether you heard a conversation in this city, since this trial commenced relative to the seating of Mr. Clough?

A. I did, yes sir.

Q. State what Mr. Mollison said.

Mr. CLOUGH. I object to that as immaterial.

The PRESIDENT. It has been decided to admit the question.

Mr. LOVELY. Go on and state.

A. Mr. Spencer and Mr. N. N. Thompson, and myself, met Mr. Mollison and George Sutton just a block or two from the capitol, and in answer to a question of Mr. Thompson's, in regard to how they were getting along with the question before the House in regard to Mr. Clough's seat in the Senate, Mr. Mollison stated that that had been an issue in the nomination and election of Mr. Clough; and that if he was not allowed his seat in this room there would be war in this country. [Great Laughter.]

Q. What was his manner of statement?

A. I would not attempt to describe nor imitate his manner, because no one but Mr. Mollison could do it.

Q. State whether or not he was emphatic and excited.

A. It took his whole body, and arms and all to express it; to show his real feeling.

CROSS EXAMINATION.

Mr. CLOUGH:

Q. Did he say that war was to be of words or guns, or how?

A. He did'nt say what the war would be. [Laughter.]

Q. When Mr. Mollison told you that the senator in Mower county was elected last fall, upon the issue as to whether Sherman Page was to be impeached or not, he did not tell you any news, did he?

A. Yes, sir; I think he did.

Q. You had'nt heard of it before, had you?

A. I don't think I had.

N. THOMPSON, SWORN.

And examined on behalf of the respondent.

MR. LOVELY.

Q. Did you hear this conversation, that Mr. Phillips has testified it?

A. I did.

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Q. State what was said?

A. Mr. Mollison said Senator Clough was nominated on the issue that he was to impeach Mr. Page. [Witness indicates.] "He was elected on that issue. [Illustrating Mr. Mollison's gestures] and he (Mollison) voted for him on that issue, and now if he was to be denied [illustrating by gesture,] his seat in this court [again illustrating] there would be war in this country." [Great Laughter.]

Q. I forgot to ask you where you lived?

A. I reside in the town of Windom, in Mower county, Minnesota.

Q. Is that near where Mr. Mollison lives?

A. Yes, sir.

Q. You are very well acquainted with Mr. Mollison, are you?

A. Quite well.

Q. Did you have any talk previous to this trial with Mr. Mollison about his conduct in court, about his nodding his head to Judge Page, and what he meant by it?

A. I heard him make statements.

Q. What did he say?

MR. CLOUGH. Is this to contradict Mr. Mollison?

Mr. DAVIS. That is the object.

Mr. CLOUGH. I don't know that Mr. Mollison's attention was ever called to this conversation.

Mr. DAVIS. Do you make that objection?

Mr. CLOUGH. We make that objection.

Mr. DAVIS. The objection is well taken.

CROSS-EXAMINATION.

Mr. CLOUGH. Now, were you subpœnaed here to testify to this conversation, so far as you know?

A. My understanding is, that I was not called here to testify to this, or I did not know it at that time.

Q. But that happened after you got here?

A. Yes sir.

RE-DIRECT EXAMINATION.

Mr. LOVELY. You were subpœnaed on other matters were you?

A. Yes sir.

Mr. LOVELY. We will now enter testimony on the second article.

J. P. WILLIAMS SWORN,

And examined on behalf of the respondent, testified:

Mr. LOVELY. Where do you reside?

A. In the town of Austin, Mower county.

Q. How long have you lived there?

A. I have lived in Mower county about 17 years.

Q. How long have you lived in Austin?

A. Since 1871.

Q. What official position have you held in Mower county?

A. I have been county auditor of Mower county.

Q. When?

A. From March 1st, 1871 to March 1st, 1875—four years—two terms.

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Q. As county auditor, you are clerk of the board of county commissioners?

A. Yes sir.

Q. You may state whether you were present at a session of the county board of commissioners, and Judge Page appeared before them, and when there was some controversy between him and Lafayette French?

A. Yes sir; I was present at that time.

Q. When was that meeting?

A. That was in January, 1875.

Q. You may state what occurred at that meeting?

A. You mean the proceedings that evening?

Q. I mean simply what occurred there after Judge Page came there?

A. Soon after Mr. Page came in the county commissioners, or the chairman of the board, Mr. Felch, I think, or one of the county commissioners, brought up the subject of Mr. Baird's bill. It had been acted upon during the day session, (this was in the evening.) Mr. Baird's bill was called up, and Mr. Page was consulted in regard to some items in the bill as to being legal. I think very soon after the bill was called up, Mr. French, the county attorney, came in; the bill was read over, I think, by myself. each item, I think, was examined and passed upon, either by the board or throught the advice, perhaps, of Mr. Page or the county attorney. The county attorney soon after came in, took part in the conversation and the thing was carried along, and some words were said in regard to the county officers of being corrupt. I don't know now, I can't say just what those words were. Mr. French accused or charged Judge Page of being corrupt in conduct, or something of that kind. The judge responded and said: "You are the first man that ever charged me (I think) to my face, of being corrupt, and I hope you will live long enough to see the day you will regret it." I think he used the words "regret," "be sorry," or something to that effect. The chairman of the board called the gentleman to order, saying that the board was really in session. The judge turned around and apologized, saying that he was not aware that the board was in session; that he thought it preceded the session, or something of that kind.

Q. You may state whether or not the Riley bill was under consideration at that time?

A. The Riley bill was not under consideration at that time.

Q. I refer to the bill of Thoms Riley for serving subpœnas in the cases of Beisicker, Walsh and Benson?

A. I have heard of that bill since, but did not know of any such bill at that time; there was no such bill before the board of that kind, during that evening session.

Q. Mr. French, in his examination, stated, "that Judge Page, at that time, made some allusion as to an 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; 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 the nomination, and so forth, that he was to receive the appointment of deputy sheriff;" I propose to ask the witness if that occurred. I will withdraw that question, and ask you if anything whatever, was said about Thomas Riley at that time?

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A. Those unpleasant words came up out of the Baird bill; I don't remember having anything to do with Mr. Riley there that night.

Q. You may state who was present at that meeting of the board?

A. Judge Page was there, Lafayette French and the board of commissioners.

Q. Who were the commissioners?

A. Mr. Felch, Mr. Richards, Mr. Tanner, A. J. French and Mr. Grant.

Q. Did Judge Page state at that time to Mr. French, that he had sold out the party for that "contemptible Irishman?"

A. I don't remember of hearing anything of the kind.

Q. Was anything said about "contemptible Irishman."

A. I don't know of anything of the kind.

Q. You were present and heard the whole conversation?

A. I was there, sir.

Q. Did you know the minutes of the bills presented at that session?

A. Yes sir; I did.

Q. Turn to the minutes that you kept, give the pages. Those are the minutes of the proceedings in that session of the board?

A. Yes sir.

Q. Kept by whom?

A. By myself.

Q. What session of the board?

A. This session was the January session, 1875.

Q. You may turn to the entry that referred to the bill that was under consideration when Judge Page was before the board?

A. I have it.

Q. What page of the record is it on?

A. Two hundred and eleven.

Q. Who entered that?

A. I entered it.

Mr. CLOUGH. We don't dispute the fact that Mr. Baird's bill was up in January, 1875. We claim it was.

Q. You may read the entry?

"A. On motion the bill allowed George Baird, sheriff, fees of $506, was reconsidered; and, on motion, was corrected and allowed—$446.15."

Q. Look through those records and see if there is an entry of any bill of Thomas Riley's at that evening session?

A. No sir; there is no such thing.

Mr. CLOUGH. Why, certainly, the Thomas Riley bill was not up in 1875.

Mr. LOVELY. That is what we purpose to show, Mr. Clough, about it—

Mr. DAVIS. Haven't some of your witnesses testified that there was?

Mr. CLOUGH. No sir.

Mr. LOVELY. They have testified at the time this conversation took place, that this Riley bill was up.

Mr. CLOUGH. They have not testified that was up in the January session of 1875.

Mr. LOVELY. Q. [To the witness] You state that the Riley bill was not up at that session?

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A. It was not up.

Mr. CLOUGH. We admit it.

Q. Were you present at the March term following?

A. Some of the time I was present, but not a great deal of the time; the board was in session up in one of the rooms over the jail, I think, and I was attending to the office.

Q. Where did you say that session was held?

A. Some of the time it was in session up stairs; it was not in the auditor's office all of the time in March.

Q. You were present when the board were in session at the auditor's office in March, were you not?

A. I would not be certain in regard to March; I attended to the duties of the office, I was not the clerk of the board at that time; I might have been some of the time, but I think not.

CROSS EXAMINATION.

Mr. CLOUGH. Judge Page and yourself have always been on particular terms of friendship, havn't you?

A. Very good friends.

Q. Been one of Judge Page's supporters haven't you, through his various conflicts down there?

A. Well, Judge Page has supported me, I think.

Q. You were in office as county auditor, were you?

A. Yes sir, four years.

Q. During that period of time, did you ever hear of Judge Page instructing the grand jury to investigate your office?

A. Yes sir, he specially instructed them to investigate my office, and examine—

Q. That is not the point, I ask you as to special matters?

A. Well, sir, he instructed them to go into my office and examine my office.

Q. Did you ever hear of Judge Page, while he was judge of the court, and while you were auditor, instructing the grand jury to inquire about special acts which he claimed to have heard you had done, or had information that you had done?

A. No sir, I don't think I ever heard of any acts that I had done.

Q. Well, you have been proceeded against, have you not, by the authorities of that county, for alleged illegal acts in your office?

A. No sir.

Q. Havn't you been proceeded against for illegally retaining money that you ought to have paid over?

A. No sir.

Q. Hasn't the county of Mower commenced legal proceedings against you to recover money that it alleged you had unlawfully taken and retained in your office?

A. They commenced a suit to recover money that they had already paid me. After I was out of office they paid me, they claimed, $81 more than I was entitled to.

Q. You did not pay that money back?

A. No sir, because I was entitled to it.

Q. That suit was pending in Judge Page's court, wasn't it?

A. I don't know whose court it was pending in.

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Q. You never heard of Judge Page requesting the grand jury to inquire into that?

A. Well, I was not county auditor at that time, and was not around there.

Q. That is not answering the question; did you ever hear of Judge Page instructing the grand jury about that matter?

A. No sir, I never have.

Q. Now, after Mr. McIntyre became auditor, you became his deputy clerk?

A. Well, a very short time.

Y. How long did you act in that capacity?

A. I was there first a week, and then afterwards I came over and assisted him; it was along some time in the summer.

Q. When did Mr. McIntyre come in as county auditor?

A. He went in, in March, 1875.

Q. He was not in office in January, 1875?

A. No sir.

Q. Now, this bill of Mr. Baird's was one he presented the same session of the board that he retired from the office, and his succesor qualified?

A. I think it was the last bill.

Q. Had some matters, that were included in that bill, been presented in any prior bills, or come up before the borrd of county commissioners?

A. There were some items that the board thought that might have been up before; we examined the bills on file—I did myself—I don't remember whether we concluded that there were items that had been already up.

Q. Do you remember whether, prior to that night, Judge Page had been before the board of county commissioners to oppose any of the items of George Baird's bills, or any of them?

A. I don't remember now. He might have been, but I don't remember.

Q. Which came into the presence of the board first; Mr. French or Judge Page?

A. Judge Page came in first.

Q. This was in the evening?

A. Yes sir.

Q. In the county auditor's office?

A. Yes sir.

Q. What business did Judge Page make when he first dropped in there?

A. I think at the time he came in he made some inquiries about the new jail, about the ventilating of it, but I would not be certain.

Q. His business, whatever he had, was before that board that evening?

A. It seemed to be with the board.

Q. He did not appear to come in to transact business with anybody else?

A. Nobody else, sir.

Q. When Judge Page came in, what were the board doing?

A. They were all there; they had been passing on some resolutions, but some one had brought some apples in and they commenced eating apples, and really were not doing anything when he came in.

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Q. Can you remember that he said anything at all that night, except upon the subject of George Baird's bill?

A. That was the subject mainly. There might have been something else.

Q. Can you remember his saying anything about any other except that?

A. It might have been that night, or some other time, that he spoke about the jail. The board commenced the conversation about George Baird's bill.

Q. Which one of the commissioners was it?

A. I will not be sure; I don't remember who it was.

Q. What did that commissioner say to Judge Page?

A. The commissioner said he would like to call Mr. Page's attention to some items in Mr. Baird's bill.

Q. When had that bill been filed in reference to that evening session?

A. Oh, the bill had been acted upon during the day. I presume it had been filed previously, I would not say when it was filed; it might have been a week in there.

Q. Now, prior to that time, had Mr. French's attention been called to any items in that bill.

A. I think, during the day, Mr. French was consulted in regard to that bill.

Q. Do you remember; have you any recollection?

A. No, not definite.

Q. Do you remember the items which were the subject of discussion between Judge Page and the board at that time?

A. No sir, I do not; there were a great many items.

Q. How long had the conversation between Judge Page and the board proceeded before Mr. French came in?

A. Very soon after Mr. French came in.

Q. When Mr. French came in what were the first words addressed to him?

A. I don't remember; he came right in and took part in the conversation.

Q. What did Mr. French say, when he came in?

A. I don't think he said anything particularly.

Q. Did Mr. French advocate the payment of those items that were the subject of discussion?

A. I think he did, during the day; I don't know but he reconsidered the law somewhat that evening.

Q. I am talking of that evening; did Mr. French, that evening, say one word in favor of those items of this bill?

A. I think he did.

Q. What did he say?

A. Well, he seemed to understand the law different from what the judge did.

Q. Did he explain his theory of the law in regard to those items?

A. There was a conversation occurred in regard to that matter.

Q. Well, did Mr. French explain his theory of the law in reference to those items, in the presence of Judge Page?

A. He said some things about it; I don't know whether he explained it.

Q. Did he express an opinion in respect to the legality of those items, in the presence of Judge Page?

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A. I would not be sure in regard to that; I was checking off the items.

Q. Now, at what point in the conversation did the corruption, in regard to county offices, come in?

A. Well, I think they had got through the discussion of the bill; we had got through with the discussion of the bill at that time.

Q. Mr. French was not there advocating the payment of Mr. Baird's bill at all, was he?

A. I think that there were items that he advocated there, that the judge did not.

Q. Do you mean that he was advocating them, or only expressing an opinion?

A. Well, you may take it that way; perhaps that was his idea.

Q. Mr. French was only giving an opinion that was called out by the county commissioners?

A. In that light he was not asked in regard to it.

Q. But he had been asked previously?

A. I presume he had.

Q. And whatever he said was simply in response to a call for information from him, or to a call for his opinion by the board of county commissioners?

A. No sir; the way it came up, I think the judge had condemned some items as being illegal.

Q. That is not the point; the question is, how Mr. French came to express an opinion?

A. The judge condemed some of the items and it rather hurt his feelings, because he had advocated, during the day session, and he did not agree there; the way I understood it was that he was rather censured for admitting those items; that the board would think he was to blame for favoring the items; that is the way I considered it.

Q. Where did the talk about the county officers being corrupt come in in this conversation?

A. At the close of the bill, I think, there was something said about county officers claiming more than their legal fees.

Q. Did Mr. French say anything about county officers being corrupt?

A. I don't think Mr. French made the charge; I think it came up on the items; from some of these items in Mr. Baird's bill.

Q. Did you make the charge that the county officers were corrupt?

A. No sir, I did not.

Q. Did any member of the board make the charge?

A. I don't think they did.

Q. Wasn't it Judge Page, himself, that made the charge that the county officers were corrupt?

A. I think he either insinuated it or brought that up that their bills —they were claiming more than their legal fees.

Q. Didn't he insinuate or state there that the county officers were corrupt, and that the county auditor was one of them?

A. Well I did not understand it; I did not take it to myself any. I was county auditor.

Q. But did not Judge Page refer to the county officers being corrupt, and that the county attorney was one of them and assisting them to get their illegal bills?

A. I don't know how—it might be in part that way.

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Q. Wasn't what Mr. Lafayette French said about corruption, in reply to what Judge Page said about corrupt officers?

A. I rather think Mr. French took it upon himself, rather shouldered it.

Q. Didn't it come in in response to what Judge Page said?

A. Yes sir, I rather think it did.

Q. Didn't Mr. French say this: "I would talk about corruption, if I were you?"

A. No, I think he said "You are corrupt yourself."

Q. He said "you are corrupt yourself," didn't he?

A. Something of that kind; I was not present at the March session of the board, so as to know what occurred.

RE-DIRECT EXAMINATION.

Mr. LOVELY. Mr. Clough interrogated you as to a suit that was brought against you to collect over pay. You may explain about that matter?

A. When I went out of office, I had a settlement with the board in regard to the balance of my fees due, and I had figured the amount up and explained to the board; and the board considered the matter and allowed me my demands; and I think it must have been the next fall, the matter was brought up again through Mr. Harwood, I believe, claiming that I had taken illegal fees.

Q. Brought up in his paper?

A. Brought up in his paper; came out in an electioneering document, and the board looked over the matter again; they considered, by throwing out enough accounts that was still due me, and not figuring the way I considered the law, that there was $31.00 still due the county that they had over paid me. But I concluded that they had not over paid me, and I believe Mr. French did start some kind of a suit.

Q. Has it ever been brought to trial?

A. No sir.

Q. When did it commence?

A. Well, I think it was some time in the spring of 1876; I will not be certain about the date of it.

Q. It never has been moved for trial, has it?

A. No sir.

Q. Nor put on the calendar?

A. No sir, I don't think it has been; I couldn't say how that was. It was generally considered an electioneering document to damage me, if possible.

Q. You stated about some instruction being given to the grand jury to inquire into the performance of your duties as auditor; when was that?

A. I think it was soon after the Judge came to the bench.

Q. Did that grand jury, in pursuance of that subject, make an examination of your office?

A. They did. I don't know whether they reported on it. They came in and examined my records.

Q. Did you get mad about it?

A. No sir, I did not.

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RE-CROSS-EXAMINATION.

Q. You submitted the question of your right to retain this $81 to the attorney general, and he decided against you?

A. No sir, I did not. I don't know but the matter might have been submitted.

Q. Didn't you agree to have the matter submitted to the attorney general and agree that you abide by his decision, and he decided against you, and then you backed out of it?

A. No sir, I did not.

A. G. TANNER, SWORN,

And examined on behalf of the respondent, testified:

Mr. LOVELY. Where do you reside?

A. Mower county.

Q. What town?

A. Town of Red Rock.

Q. How long have you lived there?

A. Twenty-one years.

Q. What official positions have you held in Mower county since you have been there?

A. I have been county commissioner.

Q. How long!

A. Five years.

Q. When were you county comnissioner?

A. From 1871 to 1876.

Q. Were you present at the January term of county board of commissioners for the year 1875?

A. I was.

Q. Where was that session of the board held?

A. It was held in the auditor's office.

Q. Do you remember of a controversy between Judge Page and Mr. French?

A. I do.

Q. When was it?

A. It was at the session of January, 1875.

Q. You may now state what occurred at that time and place, while Judge Page was present?

A. Well, Judge Page came in there; I don't know as I can state why or how, or how he happened to come in there; after he came in, or when he came in, we were sitting promiscuously around the room eating apples; we wasn't doing any business; we were sitting, some of us, on the counter, and some at the table, and some, I think, were standing at the counter in the auditor's office. Some members of the board had brought in some apples, and we were then eating apples. Judge Page came into the room, and at the request of Judge Felch, the chairman, Mr. Baird's bill was presented to Judge Page. He examined the bill, and Mr. Williams, our clerk checked off certain items of the bill, that Mr. Sherman Page said, he thought was illegal or improper to allow Mr. Lafayette French, our then county attorney, was present. He had examined the bill previous to this—had checked off some of the items that he considered illegal, and by some means, I could not tell exactly how,

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there was a difference of opinion arose betwixt Mr. Page and Mr. French in regard to certain items that Mr. Page thought were illegal. Mr. French stated that he thought they were legal, and the controversy arose, I think, in that manner; and this bill caused the dispute betwixt them; and they kept the thing agoing on until Mr. French says to Mr. Page, "You are dishonest in your office." Then I can't tell you how the thing did terminate exactly; but it was carried on to quite a length after that. Mr. Felch, the chairman, called them to order. Judge Page, however, says to Mr. French; "Young man, you are the first man that ever said I had done anything illegal, or that I had done any wrong in office," or something to that effect, and he says, "I hope you will see the day that you will repent of this," or "I hope you will see the day that you will be convinced of your error,"—or something to that effect; and then he was called to order, and Mr. Page apologized to the board for what he had said. He said he didn't know that they were in session. Mr. French made no apologies, I don't think he said anything about it. I heard it said there that Mr. Page accused Mr. French of being corrupt in his office, or something to that effect, I don't remember that that word was uttered by Judge Page at all; I don't know but it was, but I did not hear it.

Q. You may state whether or not the Riley bill was mentioned, or was before the board at that session?

A. At that session the Riley bill was not before the board, not this bill at any rate.

Q. The bill that has been referred to for serving subpœnas?

A. That bill was not before the board at that session.

Q. Was it discussed while Judge Page was there?

A. No sir.

Q. Was Mr. Riley's name mentioned at that time.

A. I don't know that it was. I have no recollection that it was.

Q. Did Judge Page say to Mr. French that he had sold out the party for that contemptable Irishman—

A. No sir, I have no recollection of hearing that expression, until I heard it here in court.

Q. You were present during the whole time of that conversation?

A. I was, yes sir.

Q. Where was that session held?

A. It was held in the auditor's office.

Q. Was it a small room?

A. Yes, a middling small room.

Q. You stated that the board were met in session, that they were not doing business?

A. The board were in session but not doing business. They had been called to order.

Q. How far were you from Judge Page and Mr. French?

A. I don't think I was more that four feet from Judge Page, perhaps eight, nine or ten feet from Mr. French; not more than that, at any rate.

Q. Now, who was there besides yourself and Judge Page and Mr. French?

A. Well, we had a full board; Mr. Williams and Judge Page is all that I recollect besides the board of commissioners.

Q. Well, who were the board of commissioners?

A. Myself, Judge Felch, Mr. Grant, A. J. French and Mr. Richards.

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Q. Were you there at the March session following?
A. I was.
Q. Was there any such controversy as you have related, occurred at that time?
A. There was not.
Q. Was Judge Page before the board at that session?
A. He was not to my recollection or knowledge.
Q. Where was that session held?
A. That session was held a part of the time in the auditor's office, and a part of the time up in the room, in the chamber up stairs.
Q. I understood you to say that your term of office as commissioner, expired the first of January, 1876?
A. Yes sir.

CROSS EXAMINATION.

Mr. CLOUGH. Q. Do you remember when this bill of Mr. Baird was filed, that came up before the board in January?
A. I do not.
Q. It was the last bill of Mr. Baird, who was about to go out of office, was it not?
A. Well, it wasn't the expiration of his office, that this bill was presented.
Q. Now had any of the items that were contained in this bill been before the board before, so far as you know?
A. Well, I think that is what we concluded that there had been.
Q. You had search made didn't you, as to whether the items of this bill, some of them had been before the board before, do you remember anything about that?
A. I don't think that the auditor had anything to do with the searching.
Q. Who did make the search?
A. Mr. French was appointed by the board as a committee to examine certain bills, or all bills, as far as he could, before they were presented to the board.
Q. Mr. French was county attorney at this time?
A. Yes sir.
Q. The county attorney was asked to examine the Baird bill?
A. Yes sir—not particularly the Baird bill, but that among the rest.
Q. He did examine the bill, and gave an opinion?
A. He did examine the bill and he checked off certain items of the bill that he thought ought not to be allowed.
Q. And he was of the opinion that the balance ought to be allowed?
A. Yes sir, he stated so.
Q. Now, do you remember how long this was before the evening session of the board?
A. I don't know when Mr. French checked off those items. I don't know whether it was done previous to the day's session, or at that day's session. We had had that bill under consideration during the day.
Q. Who came into the county auditor's office first?
A. I think that Mr. French was sitting at the table when Mr. Page came in.
Q. You don't agree with the last witness on the stand?

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A. Not in that respect. I think that Mr. French was there and Judge Page walked in.

Q. What was the first thing Judge Page said when he walked in?

A. I could not tell you.

Q. What subject of conversation was introduced first when he came in?

A. I couldn't say what subject of conversation was introduced at all till Judge Felch called his attention to some items on that bill.

Q. Did he call his attention to the entire bill or only some items on it; the whole bill was under discussion.

A. Well, I think he called his attention to certain items on it. The whole bill was under discussion.

Q. Did Judge Page have the bill in his hand?

A. I think he did, yes sir.

Q. Did he look over the different items of the bill, all of them?

A. I dont know; I couldn't say whether he looked over all of them or not, this was quite a lengthy bill; I don't think Judge Page sat down when he came in.

Q. Where did he have the bill when he was looking it over?

A. I think he stood up by the desk.

Q. How long a time was he engaged in looking over that bill?

A. Well, I could not tell you, of course.

Q. Five minutes or ten?

A. It might have been 5 or 10 minutes, perhaps.

Q. Examined it carefully, did he?

A. Well, I couldn't tell you; he had the bill looking it over.

Q. Now, before this, had Judge Page been before you there to oppose any of Mr. Baird's bills?

A. I don't think he was ever before us to oppose any bill before this time, or any time.

Q. While Judge Page was examining this bill, and the items of it, did he make any comments as he went along, on the different items.

A. Yes sir, he said that certain items he thought were illegal.

Q. Now, when he would read off an item, that he thought was not proper, would Layfayette French say anything?

A. I don't remember that he said anything unttl after Mr. Page had done reading the bill.

Q. Then what did Mr. French say?

A. Then he toook some objections.

Q. What did he say?

A. I could not give you his exact language.

Q. He took some objections to some other items, did he?

A. Some of the items that Judge Page had said he thought was illegal?

Q. Can you remember the words that were used by Mr. French?

A. No sir, I cannot.

Q. Can you remember what remark Judge Page made?

A. I cannot remember that he made any reply—only that he thought that certainly they were illegal, and he thought Mr. French would have known they were illegal.

Q. What did Mr. French say to that?

A. Well, I couldn't tell you the exact language, but that is what I say originated it.

Q. There was a good deal of talk between Judge Page and Mr. French, wasn't there?

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A. No sir; I can't say there was.
Q. How long did the conversation last, after the examination of the bill was over?
A. It might have lasted one minute, perhaps less; I don't think to exceed a minute.
Q. Did not Judge Page refer to the county officers taking illegal fees and being corrupt?
A. I don't think that he did, and I could not say he did. I remember what he stated certain in this bill were illegal charges, and perhaps he might have referred to other parties.
Q. Do you remember whether or not Judge Page insinuated that the county officers were corrupt, and were taking illegal fees?
A. I do not sir; I don't remember that he said so.
Q. Do you remember whether he did say so or not?
A. I could not swear that he did not—certainly I could not swear that he did.
Q. Now, you say that after this controversy had been going on some time, Mr. French spoke about Judge Page being corrupt. Won't you give the words of Mr. French?
A. Well, Mr. French said in words, I think, as near as I can recall them, to Judge Page: "You are corrupt in your office"
Q. Now, what had been said by Judge Page before that?
A. Well, sir, I could not give you the language. I could not exactly express it. I could not tell you what really had been said.
Q. Mr. Page and Mr. French were talking; they both grew warmer and warmer, didn't they?
A. The conversation, as I have said before, I don't think lasted more than one minute.
Q. Well, the conversatiou warmed up, didn't it, as it progressed?
A. They warmed up, yes sir.
Q. And became more and more personal all the time?
A. Yes sir, you can have it that way.
Q. Did Mr. French say this: "Yes, I would talk about corruption if I were in your place?"
A. No sir, I don't think Mr. Page said anything from which Mr. French could have said those words.
Q. Now, you say that conversation resulted in the chairman calling both of them to order?
A. He did not call either one: he called for order.
Q. And Judge Page apologized for what he had said?
A. Yes sir.
Q. So that there was something that Judge Page said there, that he thought he should apologize for?
A. Well, he apologized to the board.
Q. Mr. French did not say anything, did he?
A. No sir, not to my recollection, he did not.
Q. Mr. French did not make any apology at all?
A. I don't think he did.
Q. Don't remember whether he did or not?
A. I don't think he did; I certainly don't remember of hearing him.
Q. Do you remember when the bill of Thomas Riley came up before the board?
A. This particular bill never came up that year at all.
Q. This is in the year 1875?
A. Yes sir.

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Q. You were sworn as a witness before the judiciary committee of the House of Representatives, last winter, on this same matter?
A. Yes sir.
Q. Didn't you then swear that the bill of Thomas Riley came up and was acted upon, at the September session of the board of county commissioners, 1875?
A. I want to correct my statement.
Q. I am asking you if you did not swear so?
A. No sir; I swore that I thought it came up in September.
Q. Didn't you, on that occasion, swear that the bill of Thomas Riley came up, and was acted upon at the September session of the county board?
A. I think not.
Q. When did that first come up; that bill of Thomas Riley?
A. I can't tell you.
Q. Was the bill of Thomas Riley up before the board more than once?
A. I don't know that it waa.
Q. When was it that the bill of Thomas Riley came up?
A. I tell you I don't know if it ever came up.
Q. When did you say you went out of office?
A. I said I went out of office at the commancement of 1876.
A. And you don't remember that it ever came up while you were in office?
A. No sir.
Q. That is what you state now, and you take back what you said last winter, if you did say it was acted on in September, 1876?
A. Will you let me explain?
Q. If you did say so before the judiciary committee, you retract that statement?
A. I do.
Q. Were you present at the September term, 1875?
A. I think I was.
Q. Were you present at the March session, 1875.
A. I think I was.
Q. Was court in session at that time in 1875?
A. I think it was.
Q. Were you in court any of that term?
A. I wasn't, I think.
Q. You don't remember whether at the March, 1875, session, the board sat in day time or in the evening?
A. I don't remember.
Q. Now, in March, 1875, were you not present in the board from the beginning to the ending both day and evening?
A. I think I was.
Q. Were you at every session during the March term of 1874; were you there at the opening of the board, and then at the adjournment, and all through the session?
A. I think I was, sir.
Q. Nothing occurred whatever before that board during that March session when you were not present; you so swear, do you?
A. No sir, I don't so swear, I think I was present there during all that session.

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Q. Might not many things have happened during your temporary absence?

A. I don't think I was absent, I have no recollection of being absent at all.

Q. Do you recollect being present all the time?

A. No sir, I don't know as I do.

Q. Where did the board first meet at the March session, 1875?

A. I think they met in the auditor's room.

Q. Was that morning, or afternoon?

A. It was afternoon.

Q. What day of the week?

A. I think it was on Tuesday.

Q. In the afternoon in the auditor's office, did you remain there during all the afternoon?

A. I think we did.

Q. All the afternoon; then you had an evening session, did you?

A. I think we did.

Q. Where was that evening session held?

A. I think that evening session was held in the auditor's office.

Q. Then you adjourned until the next morning did you?

A. Yes, sir.

Q. Then where did you sit the next forenoon?

A. I could not say whether we went in one of the upper rooms or sat in the auditor's office then; I could not say where the second session was held.

Q. Where was the forenoon session of that day held?

A. I can't tell.

Q. Did you hold an afternoon session on the second day?

A. I think we did, yes.

Q. Who were present at that afternoon session on the second day?

A. I could not name any person.

Q. Did you hold an evening session on the second day?

A. I don't think we did, and yet we may.

Q. Don't you know if you did or not?

A. I don't think we had but one evening session, while we were there?

Q. What day did you finally adjourn at the March session, 1875?

A. I think we adjourned Thursday or Friday; Thursday night or Friday night, I think.

Q. Where did you sit on Thursday, in that place?

A. I could not tell you what particular hour or day we sat in the chamber, after the first day.

Q. Can you tell any day's business, or night or afternoon business during the session of the board?

A. I can tell that we had in consideration one of Mr. Riley's bills that session.

Q. What bill did you have under consideration during the March session?

A. I don't know; he was then, I think, deputy sheriff, and he had a bill under consideration and we had a bill under consideration in regard to boarding prisoners.

Q. Now wasn't one of the items of that bill an item for serving subpœnas in those cases?

A. No sir.

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Q. Don't you remember that Thomas Riley presented a long bill during the March session, 1875, of several different items, and that one of the items of that long bill was for serving these subpœnas?

A. I do not.

Q. Do you know what all the items were in his bill?

A. I did know at the time.

Q. Do you know?

A. I don't know what all the items were, no sir.

Q. Can you swear as to any particular matter being in that bill, or that was not in it?

A. Well, I am sure if this had been in Mr. Riley's bill I would have remembered it; I can remember that he had a large bill in there.

Q. Won't you state all the items that were in Mr. Riley's long bill that he presented at that time?

A. Well sir, I don't think that I could swear that there were any particular items; only for boarding prisoners, and for doing deputy sheriff's business generally.

Q. His bill was itemized; every particular service was set down in it?

A. I think it was.

Q. And there were a great many different items.

A. Yes.

Q. Now, with a single exception of boarding prisoners, can you tell the subject matter of a single item that was in Thomas Riley's bill?

A. There was some items I think, for feeding of prisoners, or putting prisoners in jail, that is for the city authorities; that is, I think what was rejected in the bill.

Q. Can you remember any other items except for bringing up prisoners, and for boarding prisoners, that were contained in that bill?

A. No sir, I don't think that I can.

Q. You don't say that the only items in the bill related to those matters?

A. No, sir; there was a great many items in that bill that I forgot.

Q. Now, can you tell who attended, at every session of board of county commissioners?

A. No sir, I don't pretend to tell; it would be unreasonable to think I could?

Q How frequently had you seen Judge Page before the board, opposing bills that have been presented by officers?

A. I don't remember of ever seeing him before the board before this particular time.

Q. Well, after that, did you?

A. Not to my knowledge.

Q. Did the board of commissioners have a session in June of 1875?

A. I could'nt say whether they did or not.

Q. You were a member of the board at that time?

A. I was.

Q. You don't remember anything about such a session?

A. I do not.

Q. Now, at the September session of 1875, did you have a session?

A. Yes sir. I don't remember whether I was present or not.

Q. State if you remember of yourself being present at the June or September session of 1875?

Q. I could not say that we had a session in June; I don't remember

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whether we did or not, I presume we did, because there was no session while I was a member of the board that I was not present.

Q. You can't tell to-day that there was a session in June, 1875?

A. There might have been a session; yes.

Q. Think there was a session in June?

A. No sir; not distinctly.

Q. Now, your name is Tanner?

A. Yes sir.

Q. Didn't you further swear before the judiciary committee that you were present when this bill for serving the subpœnas by Thomas Riley, came up at the September session of 1875, and that you was present and that Judge Page was present?

A. No sir; I don't think I did.

Q. Didn't you further swear before the judiciary committee—your name is H. E. Tanner?

A. Yes sir.

Q. Didn't you further swear before the judiciary committee, that on that occasion, Judge Page was present and that in reading over the bill, Judge Page said there was no necessity to issue the subpœnas and besides, there was no order allowing it; and if Mr. Riley got his pay it must be on an order of the court?

A. No sir, I don't think I did; I have no recollection of testifying to that.

Q. Or words to that effect?

[No answer.]

Q. You don't remember what you did testify to last winter, do you?

[No answer.]

Q. You will swear you did not say so?

A. I will swear I have no recollection of saying it.

Q. This might not have been the exact words, but did you use any words to that effect?

Mr. DAVIS: Oh, there won't be any objection raised on that, Mr. Clough.

RE-DIRECT EXAMINATION.

Mr. LOVELY:

Q. You started to make an explanation in reference to your recollection?

A. I will say this, that when I was subpœnaed to come here last March, I did not know what I was subpœnaed for; when I came here I saw some of the old commissioners; they said it was in the case of the Riley bill; well, I thought the matter over; I had no way of refreshing my memory then; neither books or anything else; merely from remembrance I thought the matter over, and finally came to the conclusion that this bill that was presented in March must be the same bill that they have here now, in controversy; Mr. Riley had a bill there before the board of commissioners, in March, as I have stated here before; I got the thing mixed together, and supposed that one was the other bill; there is where I was mistaken, and since then I have referred to the books, and find from the records what I have stated here to-day; I also stated, in that testimony, that I thought perhaps the bill of Mr. Riley's was presented in September; that is the substance, I think, of what I swore to lastMarch.

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Mr. DAVIS. So that you applied the conversation to the wrong vent?
A. Yes sir?
Q. You have since discovered your error?
A. I have since, from the record, yes sir.
Mr. LOVELY. Q. At the time Judge Page was before the board, hen the Baird bill was under consideration, did he state that he ap- eared there as a tax-payer and a citizen, and not as a judge?
A. He did.

RE-CROSS EXAMINATION.

Mr. CLOUGH.
Q. Now, that evening, or whenever he was before the board, with ference to the Baird bill, did Judge Page say anything about any mat- r except the Baird bill?
A. I don't think that he said anything in regard to any of the coun- y matters?
Q. Did he have any private business with any body there, so far as ou could observe?
A. I don't know that he had.
Q. I say, as far as you could discover?
A. I said, no sir.
Q. You say that you have been examining the record: who assisted ou to examine the record?
A. Well, sir; we examined the record the other day in connection ith Mr. French and Mr. Phillips.
Q. What record did you examine?
A. Examined the commission's records.
Q. That is, you mean the minutes?
A. Yes sir.
Q. Of what sessions of the board?
A. The sessions of the board in March and January, 1875.
Q. Any other minutes?
A. We did not go back—yes we did, too; we went back further than at.
Q. That is, you went back into "'74?"
A. No sir.
Q. You examined all the proceedings in those two sessions?
A. Yes sir.
Q. What did you find in either of those sessions to refresh your emory?
A. Well, we found this, as I said before, that this bill of Riley's— I think of, that was brought up here for boarding witnesses—was ought up in the March term.
Q. Refer to the entry that you found there, that you say refreshed ur memory?
A. I will tell you another thing; I don't pretend to be an accountant a bookkeeper.
Q. You state that you examined that book and found something ere that enabled you to refresh your memory; now, I would like you turn to the entry?
A. I said we examined the record on them two occasions.
Q. And you spoke about a bill that Mr. Riley presented in March. on't you turn to the minutes you say you found, and read it?

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A. Well, if I must go into it I will, if you will give me time.

Mr. DAVIS. What is the object of this testimony; has not he said that the Riley bill did not come up during the time this gentleman was on the board.

Mr. CLOUGH. No sir, he has not; it is alleged that it was up three times before that board—may I have the pivilege of recalling this witness?

Mr. DAVIS. Yes sir.

Mr. CLOUGH. Then you may go.

On motion, the court took a recess till 2:30 P. M.

AFTERNOON SESSION.

A. J. FRENCH SWORN,

And examined on behalf of the respondent, testified:

Mr. LOVELY. Q. Where do you reside?

A. Town of Windom, Mower county, Minnesota.

Q. How long have you lived there?

A. Seventeen years.

Q. What official positions have you held in Mower county during that time?

A. County commissioner.

Q. When did you hold the office of county commissioner?

A. 1875,-'76,-'77.

Q. Were you present at the January session of the board of county commissioners for that county, in the year of 1873?

A. No sir.

Q. In 1875, I mean?

A. Yes sir.

Q. You may state whether you recollect a controversy between Judge Page and Mr. French, with reference to a bill before the board?

A. I recollect that they had a slight conversation there one evening.

Q. You may state what occurred; how the conversation arose, and what was said between them?

A. Well, I don't think that I could state the conversation; it is past my memory, I think.

Q. You may state it substantially; what was under consideration at that time?

A. The most that was under consideration at the time they came in, was eating apples.

Q. Well, after that?

A. Well, I think after Judge Page came in that Judge Felch called his attention to a bill presented by Mr. Baird for sheriff's fees; that had been under consideration before.

Q. I will ask you if the bill of Thomas Riley for serving subpœnas in the case of Benson, Beisicker and Walsh was under consideration at that time?

A. It was not.

Q. Was it referred to in that conversation?

A. Not to my knowledge.

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Q. Was it before the board at that session?
A. No sir.
Q. Was there any other time than that occasion when Judge Page and Lafayette French had any controversy about any bill, before the board of commissionere?
A. Not while I was a member.
Q. How long did you continue to be a member after that?
A. Three years, 1875-76-77.
Q. Were you present at all the sessions of the board?
A. I think I was.
Q. Were you present in March, 1875?
A. I was.
Q. Was Judge Page before the board in March, 1875?
A. No sir.
Q. You may state when that Riley bill for serving subpœnas, first came up before the board?
A. Well, I will have to state, Mr. Lovely, that my memory does not serve me, when that bill was presented in the year 1875; but on looking at the records, it was presented the first time and acted upon in January, 1876.
Q. Was Judge Page before the board at that time?
A. He was.
Q. Do you know how he came to be there?
A. At the request of Judge Felch, I understand, the chairman of the board. I don't know but I may be mistaken about his being the chairman of the board; I don't know but Mr. Richards was elected chairman at that session.
Q. How many times did the Riley bill come up during that session?
A. Well, it was in the forenoon, and in the afternoon disposed of.
Q. That is, the January session, 1876?
A. Yes sir.
Q. One year after the controversy between Lafayette French and Judge Page?
A. Yes sir.
Q. Was there any controversy between Judge Page and Mr. French upon that occasion?
A. I think not.
Q. Do you remember what occurred on that occasion when the Riley bill came up?
A. There was some conversation going on. Mr. French was there, and Sheriff Hall was there. I could not state the exact conversation but there was something said in regard to the Riley bill, and Mr. French had thought that it was better to allow him about half of the bill, or said that Mr. Riley said he would take half of the bill. Judge Page came in, and said that the bill was illegal, and read the law to us, stating how much of the bill should be paid.
Q. Did he state to you at that time, that he had made a decision in a similar case in other counties?
A. Not to my knowledge.
Q. Did he have any words at all with Mr. French?
A. Not any that I know of, sir.
Mr. LOVELY:
Q. That is January, 1876?

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A. Not any that I know of; they might have had some slight conversation, but there was very little indeed, if any.

Q. Was there anything said by Judge Page of this character, that "he did not care about big men with little brains or small men with no brains at all?"

A. I have no recollection of any such thing happening.

Q. You was there present?

A. I was.

Q. You would have remembered it if it had been said, wouldn't you?

A. I think so; I dont think there was anything of the kind said.

Q. Was there anything out of the usual character to attract your attention, that happened at that session of the board?

A. All that I see out of the general routine of business before the board was, I think Mr. Hall asked Judge Page a question in regard to serving some papers or something, and the judge replied to him that he would answer such questions in court.

Q. Now, at either one of those sessions of the board did Judge Page make the remark to Lafayette French that "he had sold out the party for that contemptible Irishman?"

A. I don't think he did.

Q. You was there present at these times?

A. I think I was.

Q. You would have remembered it, wouldn't you?

A. If I had heard it I should think I would remember it.

Q. Was Judge Page before the board at any other times while you were a commissioner?

A. No sir.

Q. Than those you have stated?

A. No sir.

CROSS EXAMINATION.

Q. Where did the board meet in January, 1875?

A. In the auditor's office.

Q. What time did the first session commence?

A. Probably after dinner.

Q. Don't remember whether it commenced in the morning or after dinner, do you?

A. I am pretty sure it did not commence in the forenoon.

Q. Did you hold an evening session in January?

A. Yes sir.

Q. The first day?

A. I could not say whether it was the first day or not.

Q. How many evening sessions did you hold in January, 1875?

A. Perhaps two or three.

Q. Do you remember what days those were held on?

A. No sir, I do not.

Q. Do you remember whether you held any evening sessions in January at all—1875?

A. I said perhaps we held two or three.

Q. Will you be positive about it?

A. I think I am.

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Q. Will you be positive you held two or three?
A. Well, I am very positive we held two and I think three.
Q. But you can't tell which days you held them on?
A. No sir, I cannot.
Q. Had the bill of George Baird ever been before the board of county commissions before—this same bill or any part of it?
A. Well, I could not say as to that; I never was there before the board myself, or was not a member before that time.
Q. You took your seat there in January, 1875, for the first time?
A. Yes sir.
Q. Now this bill was referred to the county attorney, wasn't it?
A. It was.
Q. Mr. Lafayette French was the county attorney?
A. Yes sir.
Q. Do you remember what day that reference was made?
A. I do not, but I think it was at that session we passed a resolution referring all local bills to Mr. French.
Q. What day in the session was that?
A. I presume it was about the first day of the session.
Q. Did he make any report on it?
A. I hardly think he made any report; items he supposed illegal he checked. There was quite a number of items on the bill checked off.
Q. Was that bill of George Baird's a long bill?
A. About five hundred dollars.
Q. It covered quite an amount of paper?
A. It was itemized, I think, all the way through, and things were not in a lump.
Q. Now you say on this occasion that Judge Page came before the board in January, 1875, was in the evening?
A. It was.
Q. Had Mr. French as county attorney made his report before that evening on that bill?
A. Yes sir.
Q. Had the board of county commissioners acted upon the bill which was reported upon by Mr. French?
A. They had.
Q. What had they done?
A. They had allowed the bill, less the items which Mr. French checked off.
Q. They had passed a resolution allowing the items, less the items Mr. French checked off?
A. Yes sir.
Q. When was that, with reference to the time Judge Page was there?
A. I could not state the date.
Q. Had it been some little time before?
A. Well, it had not been a very great length of time; it might possibly have been a day or two before, and it might have been the same day.
Q. The board had passed a resolution allowing the bill, hadn't they?
A. At some time, whether a day or two, before Judge Page came there or—
Q. After the bill had been passed, it was allowed, by resolution, less the amount Mr. French had checked off?

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A It was allowed by the vote of the board.

Q. Was that bill ever reconsidered at that session before that board?

A. Yes sir.

Q. When, and on whose motion?

A. I could not tell on whose motion, but it was reconsidered that evening that Judge Page was before the board.

Q. Was a motion made to reconsider that bill before Judge Page came in on that evening?

A. No sir.

Q. After the resolution had been passed allowing the bill as Mr. French had corrected it, was anything said about the subject of a reconsideration of that bill under any circumstances at a later date.

A. I cannot say that there was; I don't know but that there was.

Q. Well, at the time Judge Page came before the board that night it stood in this way: Mr. Baird had presented his bill, that Mr. French had checked off certain items, that the board had passed a resolution allowing it?

A. I think that Judge Felch asked Mr. Page if the items were all legal. We had had considerable talk before it was passed.

Q. Mr. Felch voted himself in favor of passing the bill, didn't he?

A. I could not tell you.

Q. Was there any disagreement among the members of the board as to the passing of the bill as corrected by Mr. French?

A. I couldn't tell you.

Q. Had Mr. Baird been informed that the bill had been passed as corrected by Mr. French?

A. I couldn't tell you.

Q. Don't you know that he had been informed, and that he assented to it?

A. No sir, I dont know; it might have been so.

Q. It might have been the fact that both the board and Mr. Baird had agreed on the bill as allowed?

A. It might have been so.

Q. Now, when Judge Page came in who was present?

A. The board and Mr. Williams.

Q. Anybody else?

A. I don't think there was.

Q. Was Mr. French there when Judge Page came in?

A. I think not.

Q. You think Mr. Page came in first; and Mr. French afterwards?

A. I think so, but still I would hate to swear positively; that is the way of it.

Q. What was the first thing done when Judge Page came in? Was that bill shown to him the first thing?

A. I think not.

Q. What was said before that?

A. I think he was asked if he would eat an apple or two.

Q. Did he do so?

A. I think he did.

Q. How far had the eating of the apples progressed before the subject of Mr. Baird's bill was under consideration?

A. Oh, I think there was nearly a peck eaten.

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Q. How long did it take you to eat that peck of apples?
A. I could not tell; probably 15 or 20 minutes.
Q. Judge Page took that bill in his hand at that time?
A. I have no recollection that he did.
Q. Your recollection is then, that Mr. Williams read the bill to Mr. Page, and that he did not have it in his hand at all?
A. He read the bill to the board.
Q. Now, as he read along, would Judge Page object to any items?
A. He would state that he thought such an item was illegal; he would probably state his reason on some of them. I think Mr. Williams checked them off.
Q. In what stage in these proceedings did Lafayette French, the county attorney, appear?
A. Well, I think he came in before Mr. Williams commenced reading the bill; I think so.
Q. The reading of this bill you say, gave rise to a conversation between Judge Page and Mr. French?
A. I don't say that the subject of the bill gave rise to it.
Q. It occurred in that connection, didn't it?
A. Yes sir.
Q. Now, at the end of that conversation which you don't recollect, Judge Page apologized to the board, didn't he?
A. I think after the chairman of the board called him to order, Judge Page apologized to the board.
Q. Did you hold any more night sessions after that?
A. I think, very probable, we did.
Q. How many more night sessions did you hold during that session of the board?
A. I told you I was quite positive we held two; it might be three.
Q. You were not always present, you say, in March, 1875, at the sessions of the board?
A. I was.
Q. You remember that session distinctly?
A. I do sir.
Q. What time did it convene on the first day?
A. Probably in the afternoon.
Q. Who was there?
A. I think the full board was there.
Q. Was the March meeting an adjourned meeting?
A. A special meeting, I think, that had been called. I think all the board were there; I think Mr. Felch was there; Mr. Tanner was there, I was there, Mr. Richards was there, and Mr. Grant was there; that makes five.
Q. Where did you sit?
A. I sat in a chair.
Q. I mean where did the board sit?
A. In the auditor's room; a part of the session was in the auditor's room.
Q. When you first opened up, where did you sit?
A. I think we organized in the auditor's room.
Q. Did you sit during that same day in the auditor's room?
A. I could not state whether we did or not.
Q. Did you hold a session that night in March?

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A. We held one evening session, but whether it was the first or second day, I don't remember.

Q. Where were you when you held that evening session in March?

A. In the auditor's office.

Q. Did you sit anywhere else than there during the sessions of the board?

A. Yes sir, I think we did.

Q. Whereabouts?

A. Up in the jury room over the jail.

Q. You did not hold any session in March in the upper room of the court house, did you?

A. I think not.

Q. Was Mr. Williams present at any time during this March session?

A. I do not remember of his being there.

Q. While you were sitting in the auditor's office, wasn't he there?

A. He might possibly have been there.

Q. You knew Thomas Riley was deputy sheriff at that time?

A. Not in March, 1875; I should hate to swear I knew it. I presume he was, but I have no knowledge of knowing only by hearsay.

Q. Do you remember of Thomas Riley presenting any bills to the board as deputy sheriff during the March session of 1875?

A. I rather think he had.

Q. Do you recollect of his having one there?

A. I think he had.

Q. Do you remember the contents of that bill?

A. If it was at the March session, and I think it was, he had one bill of about one hundred and thirty-five dollars, or along there, for boarding the prisoners, and a small bill of about a dollar and a half for some service, I do not recollect what.

Q. Didn't he present a third bill at that session of the board?

A. I think not.

Q. Do you remember whether he did or not?

A. I think not, to the best of my recollection.

Q? You swear at this March session of the board, that he did not present a bill for serving subpœnas in the case of the State of Minnesota against Benson, Beisicher and Walsh.

A. I swear, to the best of my recollection and the records of the proceedings in the auditor's book, that there was no such bill presented at that time.

Q. Do you find anything upon the subject in the auditor's book, except mere silence.

A. No sir.

Q. Is that what you base your recollection on, that it was not presented in March, that the records show nothing about it.

A. Well, that is very good evidence to me.

Q. I am asking you if this is what you formed your opinion upon.

A. That is one.

Q. Will you swear that the first time that bill was before the board of commissioners was in January, 1876.

A. I will swear that this is the first record.

Q. That is not the point, I don't care about the record, I want to know the fact; can you recollect about it?

A. Well, my best recollection is now that it was not presented till January.

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Q. Are you as certain of that as you are of the other facts you testified to.

A. I say to the best of my recollection.

Q. Is your recollection upon that point as good as it is upon the other points you have sworn to?

A. I think it is very near.

Q. As reliable, isn't it?

A. I think it is very near.

RE-DIRECT EXAMIMATION.

Mr. LOVELY:

Q. You refer to a session of the board that was held in March, in the evening; what was the business of that session?

A. I think it was the appointment of a county superintendent.

Q. This bill of Mr. Baird's to which reference has been made, was a bill for sheriff's fees extending over a long portion of time?

A. I presume it did extend over quite a portion of time.

RE-CROSS EXAMINATION.

Mr. CLOUGH:

Q. Do you mean to say that the only business which was transacted at this March meeting was the appointment of the county superintendent?

A. No sir, I didn't say so.

Q. How many days was the board in session in March, 1875?

A. I think the greater part of three days.

Mr. LOVELY. Was that the only business in the evening?

A. I think it was.

MR. CLOUGH. Evening when; in March 1875.

A. Yes, sir.

C. J. FELCH, SWORN,

And examined on behalf of respondent, testified.

MR. LOVELY: Q. Where do you reside?

A. I reside in the town of Racine, Mower county.

Q. How long have you lived there?

A. Most of the time for twenty-two years.

Q. What official position have you held since you have lived in Mower county.

A. I have been county commissioner two terms.

Q. Commencing when; continuing how long?

A. Commencing in 1870 or 1871.

Q. What position did you hold in January, 1875?

A. I was chairman of the board.

Q. Do you remember a controversy between Judge Page and Lafayette French?

A. I do.

Q. At the January session of the board?

A. Yes sir.

Q. You may state how that occurred?

A. I cannot state all the particulars.

Q. State generally—where was that session in January, 1875?

A. It was held in the auditor's office.

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Q. What time of day?
A. It was an evening session.
Q. What did you have under consideration when Judge Page was there?
A. Well I don't think when he came in there we was considering anything in particular; I think we was engaged in general conversation; the board was not doing any business.
Q. Well, what did you have under consideration soon after he came?
A. I think soon after he came in I think I found him the bill of George Baird's for sheriff's fees—a bill—some of the items run back for I think a number of years.
Q. When you handed it to him, what did you say?
A. I asked him to examine it. I think he did so. I have no recolleciion of the bill being read to him; I think he looked it over; I think that he checked some of the charges in the bill or made some observation about their not being a legal charge.
Q. Well, come right down to the conversation he had with Lafayette French, and state what that was?
A. How that conversation commenced, I do not recollect the particular words.
Q. Was it about that bill?
A. I don't think it was about that bill; I think Mr. Page dropped some remark with reference to the bill over to our county attorney, and our Mr. French took exception to it.
Q. What did Lafayette French say to it when he took exceptions?
A. Well, I do not recollect the first words.
Q. What did he say finally?
A. He told the judge he was corrupt.
Q. What reply was made to that?
A. Judge Page replied to him that he was the first man that ever told him that he was corrupt in office, and he hoped he would live to repent of it or to be sorry for it, or words to that effect.
Q. Now, what did you do?
A. Well, they had a few more words, and I called them to order.
Q. Now, I will ask you if the Riley bill for serving those subpœnas in the cases of Benson, Beisicher and Mr. Welsh, was mentioned at that time.
A. No sir, it was not.
Q. Was it under consideration before the board?
A. No sir, it was not.
Q. Did Judge Page say to Lafayette French that he had sold out his party for that contemptible Irishman?
A. I do not recollect any such conversation. I do not think he did.
Q. You were present?
A. I was present.
Q. Would you have remembered it if it had occurred?
A. I should.
Q. You may state if Mr. Riley's name was mentioned at that meeting at all?
A. I do not recollect of its being mentioned.
Q. Were you present at the March meeting of the board held that same year?
A. I was.
Q. At the different sessions?

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A. At the different sessions.
Q. Acting as chairman of the board?
A. Yes sir.
Q. Was Judge Page present at any of those sessions?
A. Not to my knowledge.
Q. Was he before the board at all?
A. Not to my knowledge.
Q. Was this subject matter, the bill of Mr. Riley's for serving the subpœnas, before the board at that session?
A. The bill of Mr. Riley's?
Q. Yes sir?
A. No sir; not to my knowledge.
Q. Was there any other time than you have stated, in which there was a controversy between Judge Page and Lafayette French, before the board?
A. No sir.
Q. We come down to the next session of the board when Judge Page was present?
A. When was that?
Q. January, 1876, one year after?
A. About a year after.
Q. Do you know how Judge Page came to come before the board?
A. I think that I invited him before the board for to make a statement.
Q. A statement with reference to what?
A. The Riley bill for serving subpœnas in the riot cases.
Q. Had that bill been under consideration before the board previous to that time?
A. I have no recollection of its ever being before the board except at that session.
Q. I mean at that session?
A. It was before it in the forenoon.
Q. Now did Judge Page appear before you at that time in accepting your invitation?
A. At that time?
Q. Yes sir.
A. I think I invited—I know I invited him to come in and make a statement to the board in relation to the facts.
Q. He came in, didn't he?
A. Yes sir.
Q. He made a statement?
A. He made a statement to the board.
Q. Now, what was that statement?
A. Well, I could not pretend to give the exact language, nor all of it; he stated there was no occasion for issuing the subpœnas; there was no matter of fact joined, and it was not authorized by law, or something of that kind.
Q. Was Mr. Lafayette French present?
A. Yes sir.
Q. Did he have any words with Judge Page about that bill?
A. No sir, I don't recollect of his saying a word while the judge was present.
Q. State whether or not Judge Page made the remark that he did

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not care anything about the opinion of a big man with little brains, or a small man with no brains at all?

A. I don't think he did; I don't recollect of any such conversation.

Q. You would have remembered it?

A. I think I should.

Q. Was there anything unusual or peculiar in Judge Page's manner at that time?

A. No sir.

Q. Did Commissioner Kimball ask Judge Page any questions?

A. I think that he did.

Q. Well, state what they were?

A. Something about his filing an order and issuing an order; something in reference to the case under consideration.

Q. Well, what did Judge Page say in reply to the question?

A. Well, I can't recollect the words that he said; whether he said he had made an order, or there was none filed, or how it was; I don't recollect the language. It is my impression that he said he had made an order.

Q. Did he say he might file it afterwards?

A. I don't recollect.

Q. What occurred between Judge Page and Sheriff Hall, if anything?

A. Sheriff Hall asked him a question, something about——I guess the question was something like this: If an officer had a summons—or to that effect—put in his hands, that wasn't he obliged to serve it without asking questions.

Q. What reply did Judge Page make?

A. Judge Page told him that he would answer him in court; I think about that language.

Q. Was there anything said about Mr. Riley's suing the county, in Judge Page's presence?

A. I think there was something said in the forenoon, before Judge Page came in.

Q. Who by?

A. Mr. French.

Q. Was there anything said about that when Judge Page was there?

A. Not to my knowledge; I don't recollect of any conversation as regards that, when he was in there.

Q. You remember distinctly of its being spoken of in the morning?

A. In the forenoon.

Q. Not in the afternoon?

A. No sir.

Q. Was Judge Page before the board at any other times than those you have mentioned in January ,1875, and January, 1876?

A. Those are the only times I ever recollect of his coming before the board, only to come in and pass an hour something like that.

CROSS EXAMINATION.

Mr. CLOUGH. Q. How many evening sessions did the board hold in January, 1875?

A. I think they held one evening session; that is all I can recollect of.

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Q. You don't remember of two evening sessions; and think there was three, as the last witness did?

A. No sir, I don't recollect of but one.

Q. Now this bill of George Baird, was his final bill on going out of office, wasn't it?

A. Yes sir.

Q. That was presented the fore part of the session, wasn't it.

A. I don't recollect when it was presented.

Q. What was done with it when it was presented in the first place by the board?

A. I don't recollect whether it was laid over for a day, or whether they took action on it immediately.

Q. Do you remember of its being referred to the county attorney?

A. Why, at that time the county attorney took all the bills and looked them over.

Q. Do you remember of this particular bill going to him?

A. No more than any others.

Q. You have no special recollection as to what was done with this bill, have you?

A. I recollect that it had been in his possession, and he had checked some of the items; when it came back certain items were disallowed; checked as not being legal.

Q. Now, when that bill came back what was done with it by the board?

A. Well, I will state that the county attorney was with us at the session.

Q. I understand that; when it came from the county attorney's hands, checked, did he take those bills away with him and keep them for any time, at all?

A. I think not.

Q. Then whatever he did to the bills, he did in the presence of the board, did he?

A. Well, I don't think we always knew when he was checking the bills, but the bills passed through his hands.

Q. Do you remember how long this Baird bill was in his possession?

A. I do not.

Q. Do you know whether Judge Page was present at the time it was delivered over to him?

A. No sir, I do not. I know he wasn't present.

Q. Was Judge Page present at the time the county attorney got through with it, and handed it back with certain items checked?

A. Judge Page was before the board after it was checked.

Q. I am not talking about that time; I am talking about the time when the county attorney brought the bill back to the board with his work done on it, having checked certain items as being illegal. Do you remember whether it was in the day time or evening, that Mr. French handed this bill back?

A. I could not say.

Q. Now, when this was handed back, what did the board do with it when it came from Mr. French's hands; did they pass any resolution allowing it or disallowing it?

A. I don't recollect whether there had been any action taken by the board on it until Judge Page came in.

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Q. Now, had Mr. Baird been called before the board, had he been before the board concerning that bill, after the county attorney had made his checking.

A. I don't recollect; I don't remember anything about that.

Q. You don't remember what the board had done with it?

A. I don't recollect that the board had taken any action; it might have been passed; I have no distinct recollection.

Q. Now, when Judge Page came in there in the evening, do you know in what condition that bill was in then, whether it had been allowed by the board or not?

A. I don't recollect.

Q. Which came in first, Mr. French or Judge Page?

A. I could not say; I think Judge Page came in first.

Q. Who were present at the time Judge Page came in;

A. I think there was a full board.

Q. What I mean is, was there anybody there beside the board and and the county auditor?

A. I could not say whether Mr. French was in there at the time he came in or not.

Q. Did Judge Page announce his business when he came in?

A. No sir.

Q. Did you ask him to come in, before that time, and look at that bill?

A. I don't recollect as I had; it is my opinion that some one of the board had invited him.

Q. Don't you remember that you had invited Judge Page to come and look over that Baird bill at that time?

A. No sir.

Q. Will you swear you had not invited Judge Page yourself to come in that evening for the purpose of looking over that Baird bill?

A. I won't swear so, but it is my impression I did not.

Q. Did Judge Page announce any business when he came in there before the board?

A. No sir, not to my recollection.

Q. Just came in without announcing any business at all, and Mr. French was not there at that time?

A. I don't recollect whether Mr. French was in when he came in or not.

Q. Who first talked about the bill after Judge Page first came in?

A. I don't know. I handed the bill to the judge.

Q. He took the bill and read it over, did he?

A. I suppose he looked it over.

Q. He took it in his hand, did he?

A. I think he did.

Q Did the county auditor read it to him?

A. Not to my recollection. I would not say that the county auditor did not read it to him.

Q. Your recollection is that he took it in his hand and read it?

A. My recollection is he took it and looked it over, and the county auditor might have read it, I don't recollect.

Q. Did Judge Page read it aloud?

A. I don't think he did.

Q. As he read down that bill and came to a particular item, did he mention it?

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A. I don't recollect how that was.
Q. Now, what stage in the examination of this bill, did Lafayette French come in?
A. I would not say but what he was there before I handed it to him.
Q. When did Mr. French come in?
A. I told you I could'nt tell.
Q. Don't you remember whether he came in before Judge Page took the bill or afterwards?
A. No sir.
Q. Don't you remember anything about that?
A. I could not pretend to state; Judge Page gave his opinion as to certain items of the bill.
Q. Didn't he when Mr. French was there?
A. I think he did.
Q. Who commenced the conversation about the bill, Mr. French or Mr. Page?
A. I could not tell; I don't remember.
Q. Mr. French and Mr. Page got into a discussion about certain illegalities as to the items of the bill?
A. I think they did.
Q. Did Judge Page say anything about county officers being corrupt, and taking illegal fees?
A. Not to my recollection; I don't remember anything about that.
Q. Will you swear he did not say so?
A. No sir.
Q. You simply say you don't remember?
A. I don't recollect any such conversation.
Q. Now, wasn't it in reply to a remark by Judge Page, insinuating that the county officers, including Mr. French, were corrupt, and that they were purposely allowing illegal fees to be taken; that Mr. French retorted in respect to Mr. Page being corrupt?
A. I could not state what brought out this conversation.
Q. You don't remember, then, what immediately preceded Mr. French's expression?
A. No sir.
Q. Did Mr. French, say "you are corrupt" or "you are a corrupt judge?"
A. Corrupt in office, I think.
Q. Those were his words: "You are corrupt in office?"
A. Yes sir.
Q. That is what you remember his words to have been?
A. Yes sir.
Q. Now, after this conversation was over, Judge Page made an apology to the board, didn't he?
A. After they were called to order; yes sir.
Q. Now, at the March session in 1875, you say you were present?
A. Yes sir.
Q. Were you present at the opening of the session, or did you arrive late?
A. I think I was present at the opening of the session.
Q. You are sure about that, are you?
A. I am pretty sure.
Q. How many evening sessions were held during that March session?
A. I think there was one.

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Q Where was the March session held?
A. Well, I think the session was opened in the auditor's office, and we adjourned to some other room.
Q. Was any term of court going on at that time?
A. I don't recollect about the term of court.
Q. Did you ever hear of the Jaynes case?
A. I have.
Q. You were by reputation familiar with that case?
A. I heard it mentioned a good many times, or did during the trial of the case.
Q. Was that case up at the district court at that time?
A. I don't recollect whether it was or not.
Q. You knew Thomas Riley at that time, didn't you?
A. Yes sir.
Q. You knew him to be a deputy sheriff of that county, didn't you?
A. Why yes sir, I supposed he was deputy sheriff, and he had frequently had bills before us.
Q. Thomas Riley had several bills before you in March, didn't he?
A. I don't recollect, I think he had, though.
Q. Don't you think he had more than one?
A. He might have had two.
Q. Do you remember the subject matter of the bills he had before the board in March?
A. There was a bill for boarding prisoners; the other I don't recollect.
Q. Now what was that other bill, a long or short bill?
A. It was a short one.
Q. How many items were in it?
A. I don't recollect.
Q. Do you remember what the items were that were in that bill?
A. No sir.
Q. Will you swear that among the items in that short bill, was not an item for serving subpœnas in the cases of the State of Minnesota against Benson, Beisicker and Walsh?
A. I think the small bill was a very small one.
Q. Will you swear that one of the items in that small bill was not an item for serving subpœnas in the cases of the State of Minnesota against Benson, Beisicker and Walsh?
A. I will swear I have no knowledge that that bill for serving supœnas, was before us until the January session, 1876.
Q. I will ask if you will swear that among the items in that second bill there was not an item for serving subpœnas, as deputy sheriff, in the case of the State of Minnesota against Beisicher, Benson and Walsh?
A. I would not swear.
Q. Was Judge Page before you in March, 1875?
A. Not to my recollection; no sir.
Q. How many times was Judge Page before the board of commissioners since you have been commissioner, opposing a bill of any county officer, when he has spoken with referenre to any bill and what officers?
A. He has been before us twice.
Q. Only twice?
A. Only twice, to my knowledge and recollection.

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Q. Now, were you present at the June session of the board of county commissioners, in 1875?

A. I don't reeollect whether I was in June. In July we had a session, I won't swear we did not have a session in June.

Q. Will you swear that the bill of Mr. Riley, for serving those subpœnas, was not before the board until January, 1876?

A. Not to my knowledge.

Q. Is your recollection on that subject as good as it is on the balance of what you have testified to?

A. Well, you may be your own judge about that.

Q. Well I am asking you to judge. Is your recollection on that subject as good as it is on the balance of what you have testified to?

A. I told you I did not recollect of his ever being before us, except that one time.

Q. Have you any reason why your recollection should be any better on the other subjects you have testified to, than you have on that matter as to when that bill was presented to the board?

A. I recollect Mr. Riley's bill being before us just once.

Q. I ask you if there was any reason why your memory should be any better in the other subjects you have testified to than on this matter when that bill was presented to the board?

A. I don't know as it is any better.

Q. Have you examined the records?

A. I have some.

Q. I can refresh your recollection on this matter, I guess I will ask you to look at that.

[Handing witness paper.]

A. I don't recollect about this bill in particular.

Q. You have examined it so you know what it is?

A. I see, "sworn to" here "1875, June—"

Q. I will ask you if you remember about that bill being before the board of county commissioners at any time?

A. I don't recollect anything in particular about that bill.

Q. Don't remember anything about that bill being before the board of county commissioners, at the June session of 1875, do you?

A. I told you I did not recollect of there being a June session.

Q. Don't remember anything about that, at all?

A. No sir.

Q. Now, were you present at the September session, 1875?

A. I don't recollect of there being a September session.

Q. And don't remember that?

A. No sir.

Q. Now, you testified before the judiciary committee of the House, last winter, didn't you?

A. I did.

Q. Didn't you testify before the judiciary committee, in substance, that the bill of Thomas Riley came before the September session, 1875, and was disposed of then?

A. I don't recollect of so testifying.

Q. If you did so testify, do you retract it now?

A. No sir, I have no recollection.

Q. At the January session, 1875, or whenever the Riley bill was finally disposed of, you say you invited Judge Page to be present?

A. In 1876.

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Q. Have you any recollection that that bill, which was under consideration at that time, had ever been before the board before?

A. I have no recollection of it now, sir.

Q. Was the subject of the opinion of the Attorney General mentioned on that bill?

A. It might have been some time during the day; I think it was in the forenoon.

Q. Don't you remember that the opinion of the Attorney General had been obtained, upon the legality of a similar bill to that?

A. I think some one had received an opinion from the Attorney General.

Q. Don't you remember that an opinion upon the legality of the county to pay Mr. Elder, the clerk, for issuing these same subpœnas, and that that matter had been presented to the board?

A. It was my impression that a letter had been received by some one, from the Attorney General, but as for all the facts in the statement, I can't state.

Q. You think that was during the day that that was presented, and not when Judge Page was in? Was it in the day time or evening that Judge Page was there when this bill was finally disallowed, of Mr. Riley's?

A. Judge Page was there in the afternoon; the bill was under discussion all the forenoon.

Q. Who was it presented the letter in the forenoon?

A. Well, I don't recollect.

Q. Didn't you testify before the judiciary committee that the subject of this opinion of the attorney general was talked of at the time Judge Page was before the board?

A. I think not.

Q. If you did so testify at that time, do you wish to retract it now?

A. I would.

Q. Was the subject of the county being sued on Thomas Riley's bill mentioned at the time Judge Page was present in 1876?

A. It was not mentioned, to my knowledge.

Q. Are you positive it was not?

A. I am quite positive.

Q. As positive about that as you are of there not being a June session of 1875?

A. It was mentioned in the forenoon.

Q. At the time Judge Page was there?

A. I don't think it was mentioned.

Q. Did not Judge Page, when the suggestion was made that suit might be brought, say "let him sue?"

A. I have no recollection of it.

Q. Don't remember anything about it?

A. I have no recollection of it.

Q. Now, were you present at that session of the board that you attended during the entire session, from the beginning to the end at all times?

A. I was generally present.

Q. I understand you were generally present, but you were out sometimes, wern't you?

A. A few minutes at a time, sir.

Q. A good many things might have happened while you were out!

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A. Not many; I was present when Judge Page was before us, all the time—both times.

Q. Now, I will show you another bill [handing witness paper]; I will ask you if you ever saw that bill before?

A. I think I have, sir.

Q. When did you first see this bill?

A. I could not say, sir; I think I have seen it before.

[For first bill shown witness, see exhibit X.]

[For last bill shown witness, see exhibit XX.]

Mr. CLOUGH. Is there any objection to those being offered as part of cross examination?

Mr. LOVELY. No.

Mr. CLOUGH. I also offer page 225 to 235 inclusive of the records of the board of county commissioners of Mower county; it shows that there were several meetings held there in June, 1875, and that this witness was present.

[Received without objection.]

F. A. ELDER, RE-CALLED,

on behalf of the respondent, testified:

MR. LOVELY:

Q. Was you in attendance as clerk of district court at the March term, 1875?

A. Yes sir.

Q. Do you remember the direction being given to you during that term by Judge Page with reference to the matter of subpœnas in the cases of Beisicker, Benson and Walch?

A. Yes sir.

Q. State what that direction was.

A. Judge Page asked me if I had issued any subpœnas in the riot cases; referring to those three cases, I told him that I had; he said "you have done wrong, you should not have issued any subpœnas in those cases, neither you nor the officer serving them will receive any pay from the county for what you have done."

Q. Who was present at the time?

A. I don't remember who were present, quite a number.

Q. Was it in open court?

A. Court, I think, was in session.

Q. You had issued subpœnas in those cases, had you not?

A. I had.

Q. They had been served by whom?

A. I think they had been served by Mr. Riley.

Q. State who directed you or asked you to issue those subpœnas, and to whom did you deliver them?

A. My recollection is that Mr. Benson ordered subpœnas.

Q. In all the cases?

A. I think he did; there were subpœnas taken out at different times, I think, and directed that I deliver them to Mr. Riley.

Q. And not to the sheriff?

A. Nothing was said about the sheriff.

Q. Did you give testimony in that matter before Judge Page at his chambers?

A. I think I did.

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Q. Who went for you to get you to go to his chambers to give testimony?
A. I don't recollect.
Q. What statement did you make there at Judge Page's chambers in the matter?
A. I think I made the same statement in substance that I have made here.
Q. Do you remember whether Mr. French was examined there?
A. I do not.

CROSS-EXAMINATION.

Mr. CLOUGH. Q. Had you issued these subpœnas which you did issue and hand to Mr. Riley, before the commencement of the term of court?
A. I think I had.
Q. You had also issued subpœnas on the part of the State, had you not, in the same cases?
A. I think I had.
Q. For witnesses returnable at the same term of court?
A. At the same term of court.
Q. Now are you positive that the conversation which you had with Judge Page occurred while the court was in session?
A. That is my recollection.
Q. Have you always recollected it in that way?
A. I think so.
Q. Who were present at the time you gave your testimony before Judge Page on the trial of the case of Riley against the county commissioners?
A. I think Mr. Kinsman and Mr. French were present.
Q. Did you not swear on that occasion that this conversation you have detailed with Judge Page, was either just before the court opened in the morning or just after it had adjourned at noon?
A. I don't think I did.
Q. Will you swear whether you did or not?
A. I wouldn't swear as to what I said at that time.
Q. When was your memory best on the subject, then, or at the present time?
A. I think my memory is clear now.
Q. Do you think your memory is any better on that subject now than it was then?
A. I don't know why it should be.
Q. And you won't swear here that you did not swear before Judge Page that this conversation was either before court opened in the morning or after it had adjourned for dinner?
A. I won't swear as to what I said at that time; I don't recolleet.
Q. Do you swear now that it did not occur before court opened in the morning or after it adjourned for dinner?
A. I swear to the best of my recollection, court was in session.
Q. Are you clear on that point?
A. I could give the position—
Q. But I am not particular about the position.
A. And the circumstance.
Q. I want to know whether the court was in session?
A. Yes sir; my recollection is that the court was in session.

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Q. Was that conversation which was commenced by Judge Page, or had between you and Judge Page in a loud tone of voice, so that all the bystanders could hear?

A. I don't think it was.

Q. It was in a kind of suppressed tone, wasn't it?

A. It was in a tone directed to me; I think I was standing at the time.

Q. Were you standing at your desk?

A. No, I think I was standing near his desk.

Q. Where is the clerk's desk located in reference to the location of the Judge's desk?

A. At the left.

Q. Is it even with it on a platform, or down below?

A. On the same level, I think.

Q. Now, are not these the words Judge Page used: "If you issue any more subpœnas the county won't pay for them?"

A. No sir; those are not the words.

Q. Did you not swear that those were the words, when you gave your testimony before Judge Page, or language to that effect?

A. No sir, I never swore to that.

Q. Did you not in your examination before Judge Page, testify in substance like this, "That Judge Page informed you, that you had done wrong to issue these subpœnas that you had issued, and if you issued anymore the county would'nt pay for them?"

A. No sir.

Q. You did not so testify?

A. I did not so testify; I answered, that Judge Page, when he made that remark, that I did not care, so far as I was concerned, I should put in no bill for fees.

Q. Well, you did put one in afterwards did'nt you?

A. No sir, I did not, and have not yet.

Q. You put in one to the State, did'nt you afterwards?

A. I presume I did to the State.

Q. And the subpœnas you issued for the state were paid, was it not?

A. If I put one in, it was, I don't know whether it was paid or not.

Q Did'nt you write to the attorney-general and get his opinion as to the liability of the county to pay that bill?

A. No sir, that was not my object in writing.

Q. I know, but did not he express his opinion upon the liability of the county upon that bill?

A. I don't think he mentioned the qeustion of the county's liability?

Q. Have you got that letter with you?

A. I have not.

Q. What became of it?

A. I think it is at my home in Austin.

Q. Did'nt bring it with you?

A. I did not.

Q. You knew what letter had been spoken of frequently in evidence in the course of these proceedings, didn't you?

A. I didn't think anything in particular about it.

Q. What did the attorney general write—what were the contents of the letter?

Mr. LOVELY. We object to that.

Mr. CLOUGH. All right.

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Q. Now have you anything by which you can fix the time of day when Judge Page and you had the conversation that you have just detailed?

A. It is my recollection now, that it was on the first day of the term that I had stepped out for something, and as I came in, Judge Page spoke to me, and I stepped to his desk, and this conversation took place.

Q. Now wasn't it in this way; that you went into court in the morning, and just before the opening, Judge Page called you up to him?

A. No, I think it was as I have stated.

Q. You are sure it was the first day of the term?

A. No, I am not positive, but that is my impression now.

Q. Did you issue your subpœnas for the first day of the term?

A. I think I did.

Q. What day was the first day of the term; what day of the month?

A. I could not state now.

Q. Did you issue any subpœnas after the first day of the term?

A. I think not; not in those cases.

Q. Did any person come into court and get any subpœnas from you in this case during the first day of the term, or after the term opened?

A. They did not after the judge gave the direction.

Q. Did they after the term opened, at all?

A. I would not be positive; they might before the judge gave this direction.

Q. Will you swear positively, either one way or the other, whether persons came before the court and got subpœnas, before Judge Page gave you that direction?

A. I will not; Ithink they did not; they might, though.

Q. Then you think that what Judge Page said to you could not be caused by his seeing persons constantly running in to get subpœnas?

A. No sir; I think his attention was called to that by either Mr. Riley or Mr. Benson calling on me for subpœnas.

Q. When?

A. At about the time he gave the direction.

Q. Do you recollect who called upon you for subpœnas, if any body at all?

A. I don't recollect which, but I think it was probably Mr. Riley.

Q. Do you remember of Mr. Riley being in court, at all?

A. I do.

Q. At that time?

A. Yes. It was about that time.

Q. Now, you haven't any clear recollection on that subject, at all, have you, either as to when it occurred or what was said?

A. Yes sir, I have.

Q. You are clear as to both proposition?

A. I am clear as to what was said, and as to the time I have stated—

Q. But you don't profess to be clear as to the time, do you?

A. Not as to the exact time.

Q. Where was Thomas Riley when he asked you for subpœnas?

A. I presume they came forward.

Q. I am not asking about presumptions, I want to know what you

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know about it; what do you know about it? where did Thomas Riley, as you know, come to get subpœnas on that occasion?

A. Whoever came for subpœnas either spoke to me as I was going forward, or they came to my table when I was there.

Q. You don't know whether the persons saw you on your way to your table, or whether the persons came to your table?

A. I wouldn't be positive which.

Q. Now, don't you remember that whoever saw you saw you when you was coming into the court room before the opening of court, and went with you up to your desk when you went to take your seat?

A. I presume they did see me then.

Q. Then you remember that was the occasion that whoever called for those subpœnas overtook you on your way to your desk, and went up with you to your desk, where you sat down, just before court opened?

A. I would not be positive, but I think not. I was usually there before Judge Page came in, but he might have possibly been there.

Q. Do you remember of Judge Page being in his seat at the time you and this person advanced from the back end of the room toward where your desk was?

A. I think Judge Page was at his desk some time when I came in at that time.

Q. He frequently got at his desk and sat some little time before court opened?

A. Not usually. He might have done so, but I think not usually.

Q. He may have done so occasionally?

A. Not as a general thing.

Q. He did so sometimes, didn't he?

A. I think Judge Page generally, when he took his seat, had court opened.

Q. Without sitting there at all before?

A. Without sitting any length of time.

Q. How long did it take him to have this conversation with you?

A. About a minute, perhaps two.

Q. Did you deliver those subpœnas before Judge Page spoke to you?

A. I did not deliver any subpœnas after he spoke to me in that case.

Q. Did you deliver the subpœna that the person came for before Judge Page spoke to you?

A. I think I did deliver it before Judge Page spoke.

Q. That is not the point I ask you; I am asking you whether you did deliver any subpœna?

A. I am not positive whether I did or not. I don't remember whether I delivered any subpœnas before Judge Page spoke to me or not.

Q. Whatever subpœnas you did deliver were attested as of the day you actually issued them?

A. I suppose so.

Q. And the subpœnas would tell the date when they were actually issued?

A. Yes sir.

Q. Now, after that, were you applied to for any more subpœnas by any person whatever?

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A. I would not be positive; I think perhaps I was; at least I told the parties what Judge Page had said.

Q. Who applied to you for subpœnas after Judge Page made that statement?

A. I don't remember.

Q. Do you remember positively of any one applying at all?

A. I do not.

Q. Now, after you had had that conversation with Judge Page, did you send word to Mr. Riley, or to Mr. Benson, or any of those defendants in regard to the matter?

A. My recollection is, that I saw one of them myself.

Q. How long after?

A. I could not state how long after.

Q. Now, where did Mr. French stand while this conversation between yourself and Judge Page was going on?

A. I don't know.

Q. You say you remember of his being there?

A. No sir.

Q. Oh! I misunderstood you; you have no recollection of Mr. French being present at all?

A. No sir; he might have been.

Q. Have you any recollection of any person being within the hearing of Judge Page's voice at that time, besides yourself?

A. No sir; I have not.

Q. Did Judge Page say anything about making an entry of an order on that subject?

A. He did not.

Q. Did he say anything about making any minute of what he said to you?

A. He did not.

Q. Did he ever allude to the subject afterwards, until you were called on as a witness in this case?

A. I don't think he did; I have no recollection.

Q. Never asked you if an order of that kind had been entered, did he?

A. I don't recollect of anything of the kind.

Q. Now, had Judge Page, since you had been clerk, or any other judge of that court, had occasion to act on the provision of the statute in relation to fees of officers being paid out of the county treasury, where the prosecution had failed?

[No answer.]

Q. Had any order been made in that court while Judge Page was judge and you clerk?

A. I am not positive, but I think there had been.

Q. Prior to that time?

A. Prior to that time.

Q. Can you recollect any case where it had occurred?

A. I don't call to mind, now, the case.

Q. Now, after that time, was any order ever made with reference to the payment of costs out of the county treasury, under the provisions of that section, after the time you and he had the conversation about the Riley matter?

A. I think probably there had been.

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Q. Can you name a single case where any such order has been made?

A. I could not name any particular case.

Q. I suppose all such orders are usually recorded?

Q. If any order was made in any other case except the Riley case, either before or after the conversation with Judge Page, the order was recorded, wasn't it, in the court's minutes?

A. I presume so.

Q. Do you remember of Judge Page sitting down and writing out any order, and signing it, and filing it?

A. I don't remember.

Q. In any case?

A. No sir.

Q. But such orders, whenever they have been entered, with the single exception of the Riley case, were always entered by you, in writing, in the minutes?

A. If entered at all, I think they were.

Q. You have no positive recollection of any being entered, at all?

A. No sir.

Q. You can't point out any particular case?

A. No sir, not from recollection.

Q. Now, this letter that you received from the attorney general, whatever it was, did you show that to any body?

A. I presume I did.

Q. Did you show it to any member of the board of county commissioners?

A. If they asked to see it.

Q. Do you remember; have you any recollection?

[No answer.]

Q. Didn't you give it to Mr. French?

A. If Mr. French asked for it, I did.

Q. Have you any recollection on the subject; whether you did or not?

A. No, I have not.

The PRESIDENT. Here is a question that Senator Henry desires to ask the witness—

Q. Have you received your pay for the issuing of the subpœnas in the riot cases?

A. I have not received any pay for issuing subpœnas for the defendants in those cases.

Mr. CLOUGH. But have for those you issued for the State?

A. For the State, I presume I have.

By Senator HENRY. Q. Did you receive the sum of $25 from the respondent for services as officer or counsel, on this case or any other, since your election as clerk of the district court of Mower county?

A. I never received one cent that I know of.

Mr. LOVELY. Q. You stated in answer to a question from Mr. Clough, that after the Judge had made this order, had given this direction, you saw one ofthe defendants; did you tell him anything about the order?

A. I think I stated to him what the Judge had said.

Mr. CLOUGH. Q. Who was it; what defendant was it you saw?

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A. I said that I would not be positive whether it was Mr. Riley or Mr. Benson.
Q. Was Mr. Riley one of the defendants?
A. No sir.
Q. Well, if you saw Mr. Riley, you did not see any of the defendants, did you?
A. I presume not.
Q. Are you positive whether you saw Mr. Riley, or one of the defendants?
A. I am not positive which it was.
Q. Are you positive it was one of them?
A. I think I am.
Q. It was either Mr. Riley or Mr. Benson?
A. I think it was Mr. Riley or Mr. Benson; my impression is that it was Mr. Riley.

W. W. ENGLE, SWORN,

And examined on behalf of the respondent, testified:
Q. Where do you reside?
A. I live in Austin, Minnesota, Mower county.
Q. What is your business?
A. I am engaged in the milling business.
Q. Are you acquainted with the respondent?
A. Yes sir, I am.
Q. And Mr. R. O. Hall?
A. Yes sir.
Q. I will call your attention to the fall of 1874; state whether you had a conversation with Mr. Hall and Judge Page in your store in Austin at that time.
A. We did have a conversation in my store.
Q. What was the topic of that conversation?
A. The conversation was concerning the election that had just past during the fall, the election and the result of the election.
Q. State whether Judge Page—

Mr. CLOUGH [interrupting]. Oh! ask him what was said.

Mr. LOVELY. Did Judge Page state, in that conversation, that there had been a tremendous opposition to Thomas Riley's being appointed?
A. He did not, sir.
Q. Did he state, in that connection, to Mr. Hall, "Do you dare to do such a thing in the face and eyes of all this opposition?"

Mr. CLOUGH. Wait a moment. Now I object to that; we want the conversation that occurred there.

Mr. LOVELY. I have directed his attention to the statement of Mr. Hall.

Mr. DAVIS. We are not trying to prove another conversation, but to contradict Mr. Hall.

Mr. CLOUGH. We insist that under the ruling which has been adopted here, as well as the rule which is adopted everywhere else, before a question of that kind can be put to the witness, the witness must be exhausted.

The PRESIDENT. I think the objection is well taken.

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Mr. LOVELY. [To witness.] Well, go on and state what the conversation was?

A. Mr. Page came into my store; happened in there one day during the fall, after this election—and we were talking of the election that had just passed; the results of the election, and how it came about. Mr. Page said he had been informed or learned that Mr. Hall had used improper means to obtain his election. I told him I had heard nothing of it; and during the conversation Mr. Hall came in and engaged in the conversation with us, concerning the election or talk we had been having. And Mr. Page also said to Mr. Hall, that he had been informed or had learned, that he had used improper means to obtain his election; and Mr. Hall denied having done so in his estimation. That was about the substance of the conversation that was going on.

Q. Now, I will ask you if he said to Mr. Hall in conversation, this language: "Do you dare to do such a thing in the face and eyes of all this opposition?" Referring to the appointment of Mr. Riley?

A. He did not, sir.

Q. Was Mr. Riley's name mentioned in the conversation?

A. Not to my knowledge; I didn't hear it.

Q. Were you present during all that conversation?

A. Yes sir, all that was in my store; I heard it all I think; the office was very small, we were close together.

Q. What was Judge Page's manner towards Mr. Hall.

A. Well, his manner towards him, was as it had been towards me, in the conversation; the conversation was pleasant and agreeable, with the exception, at the close of the conversation Mr. Hall remarked to Judge Page, that he was very sorry that any thing should come up between them; as he had hoped that there would be nothing unpleasant between himself and the court. Mr. Page said he was not talking to him as a court or a judge, but simply as a citizen. That was about the substance of the conversation in my office that I heard.

CROSS EXAMINATION.

Mr. CLOUGH. Q. Mr. Engle, Mr. Page and you had been talking some about the election of sheriff that fall, before Mr. Mr. Hall came in, hadn't you?

A. We had been talking a little bit; not very long.

Q. Judge Page said he had heard Sheriff Hall had been using improper means in securing his election?

A. Yes sir.

Q. What did he say those improper means were?

A. He did not say.

Q. Either of you allude to what it was?

A. That is what I mean to be understood, that our conversation was concerning the election that had just passed, and that improper means had been used to obtain the election.

Q. Did he say what those improper means were?

A. Yes sir, I think he referred to them to some extent.

Q. What were the improper means?

A. Well, the means used were employing persons outside of the party that nominated him, to help elect him.

Q. In what respect?

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A. By a supposition that promises had been made for offices, or something to that effect.

Q. In other words, that the improper means of getting his election, that Judge Page and you talked of, was that he had promised somebody who was a Democrat that he would appoint him a deputy in case he should be elected to office?

A. Not particularly that he was a Democrat, that I know of.

Q. But that he was not a Republican?

A. I don't know whether he was a Republican or not. I don't know whether he was a member of the same party as Mr. Hall or not.

Q. I am talking about what you and Judge Page said at that time was improper conduct: what did you and Judge Page say was improper conduct, on the part of Mr. Hall, in securing his election?

A. Well, perhaps, to use the same means we do there in some cases.

Q. What did you consider to be improper conduct?

A. Employing parties to help vote for a man was what we considered improper conduct, that was opposed to the man that was running as a candidate as pertaining to temperance matters; that was really the subject of consideration; it was employing persons that we considered not temperance people to assist in the election.

Q. Employ them how?

A. I don't know, sir.

Q. Nothing was said as to how they were employed?

A. No sir.

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

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

Q. It was Jude Page that was finding fault?

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

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

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

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

A. Yes sir.

Q. Well, I agree with you, that was very improper; Judge Page spoke to you about going on Sheriff Hall's bond, on that occasion, didn't he?

A. No sir, he never referred to it in any conversation.

Q. Did you hear the conversation that took place between Sheriff Hall and Judge Page?

A. Well, I suppose I did; I was there in the room, and my office was very small, and I suppose that I heard all the conversation that was there; there might have been some that I did not hear.

Q. You won't swear that you did not hear it all?

A. I will not.

Q. Your recollection about that conversation always has been the same that it is now?

A. Yes sir.

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Q. Do you remember the time the judiciary committee of the House of Representatives had this matter under consideration, before them last winter?

A. I remember they had it before them.

Q. Do you remember Mr. Hall coming up here and testifying as a witness about this matter?

A. I remember he was up here; I saw him after he got back.

Q. Have you heard his testimony that he has given on the stand here, as to what occurred between Judg Pagee and himself, in your store that night?

A. Yes sir, I have heard of his testimony.

Q. Now, when he got back to Austin, he told you what he had testified to, in that regard?

A. Yes sir.

Q. And asked you if it was correct?

A. Yes sir.

A. And you told him it was correct?

A. No sir, I deny that,

Q. You deny that you told him what he testified to on that occasion was correct?

A. I will state the circumstances, if you wish?

Q. Yes sir.

A I was at the depot when Mr. Hall came home from St. Paul last winter, as I supposed, attendiug to some business; Mr. Hall came home on the train, and had got into the wagon to go to town; he saw me there and came back, and asked me if I recollected a conversation in my store between himself, Judge Page and myself, and I told him that there had been such a conversation there; I hadn't thought anything about it from the time it had occurred, probably, after that time; he asked me if I recollected Mr. Page's making this statement that has been referred to here; I told him I did not recollect his making any statement; I told him at that time it was something I had given no thought; I had never thought of it; I told him I would say that he had not made such a statement; I told him I did not hear that.

Q. Didn't he tell you on that occasion that he had testified before the judicial committee, substantially as he had testified here now?

A. Yes sir, I think he did.

Q. And that you said was right?

A. No sir.

Q. Will you swear you did not say so?

A. Yes sir, I will. I would like to answer one question; Mr. Hall has asked me about that since, and I also told him the same since I returned from the west, or since the time that I did before.

Mr. LOVELY. This completes our evidence upon the second article, I believe.

F. W. ALLEN RECALLED,

On behalf of the respondent, testified:

Mr. LOVELY. Q. You were present upon the trial of the Jaynes' case, were you?

A. I was, yes sir.

Q. In what capacity?

A. I was then as a special deputy.

Q. Do you remember when this trial took place?

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A. Yes; that trial took place in January, 1876.

Q. State what you did as special deputy during that term of court?

A. Well, I attended to all the matters that came up during that term, such as sweeping the court room in the morning; and at the close of a case I had the care of the jury.

Q. What day did you commence to act as deputy?

A. I commenced on the first day of the term.

Q. Continued until the term closed?

A. I did, yes sir.

Q. Did you see Mr. Mandeville about the court room?

A. Yes, Mr. Mandeville was about the court room, I think on the second day, perhaps, of the term; at the close of the term, on that day, the sheriff gave me a venire with a number of names, and wanted me to serve them that night, and I left Austin between——well, I guess about 3 o'clock in the afternoon; that was before the jury was impannelled; I went up to Lansing to serve it and came back.

Q. Who appointed you a special deputy?

A. The sheriff, Mr. Hall.

Q. When did he speak to you about the appointment?

A. Well, some time previous to the holding of that adjourned term Mr. Hall and myself had some conversation relative to my serving.

Q. What was it?

A. Well, I think I asked him something in relation to my serving as a special deputy and he said he would be glad to have me, and told me to be there at the opening of the court

Q. Did he state to you that Mr. Mandeville would act as special deputy?

A. No sir, he stated to me at that time that there would probably be but one, as there was to be but one case tried.

Q. What did Mr. Mandeville do during that term of court?

A. Well, I don't know that he done anything—there was no need of his doing anything.

Q. Who built the fires?

A. I built the fires.

Q. Who swept the court room?

A. I did that myself.

Q. Who took charge of the room generally and had the keys?

A. I did.

Q. Mr. Mandeville has testified something about your fixing the curtains, state what you did.

A. There was some curtains that required to be put up at the windows and I think that occupied a portion of the time in the morning after I had completed the work about the court room, and then at noon that same day they were finished. Two of the curtains were all that was put up to the windows; however I did not complete the work that morning, they were finished during the recess at noon.

Q. The same day?

A. Yes sir.

Q. Was there any special crowd there at that term?

A. No sir, there was not; only at the final summing up of the case, the time that the arguments of the counsel were submitted.

Q. Was there anything to do about the court room that required any assistance for you?

A. No sir, there was not, more than the sheriff might assist.

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Q. Was the sheriff there the most of the time?

A. I think he was all the time. I don't know of his being away; he might have been out of the court room occasionally, but he was there in attendance.

Q. You may state what occurred at the close of the term, when you went up to the judge's desk to obtain an order?

A. Well, at the close of the term, after court had adjourned, Mr. Mandeville and I was sitting at the back end of the room near the stove, and the sheriff came down from the judge's stand, and as he passed us he made a motion with his head, [indicating] and he said go and get your order for your pay. We sat there a few moments and then we went forward to the judge's stand. I think Mr. Mandeville asked for his order, and the judge asked Mr. Mandeville what service he had rendered or performed that he required pay for. Mr. Mandeville said he had been there during the term as a deputy. The judge told him that he had not authorized his appointment, and thought he was not entitled to pay.

Q. I will now ask you if, before you went up to the judge's desk, the judge made this remark: "Boys come up here and get your pay?"

A. No sir; he did not. I never heard him make that expression on any occasion.

Q. At that time did Judge Page ask Mr. Mandeville this question: What dirty work did you help do to help elect him that he appointed you court deputy?

A. No sir, he made no such statement or remark.

Q. Were you present during all that conversation?

A. I was.

CROSS-EXAMINATION.

Mr. CLOUGH: Q. Judge Page and yourself have been very warm friends for some time, haven't you?

A. Well, I don't know, we have always, that is, we have been friendly most of the time.

Q. He has caused you to be appointed as special deputy in court a good many times?

A. I don't know that he ever did in his life.

Q. You have exhibited a great deal of zeal in his behalf, haven't you, during these impeachment proceedings?

A. No sir, I don't know that I have.

Q. You know L. N. Griffith, justice of the peace in Austin?

A. I do.

Q. Did you have a conversation with him about coming up here as a witness, a short time before you came up?

A. No sir; I don't know that I ever had any conversation with L. N. Griffith; the question might have been asked if I was coming, by L. N. Griffith, but I don't think it was.

Q. Did not L. N. Griffith, a short time before you came up here, in Austin, ask you if you were coming up as a witness, and you answered: "Yes, even if I have to go afoot?"

A. No sir, I deny that positively; no such conversation ever occurred between us.

Q. Now, you say that sheriff Hall spoke to you about becoming a special deputy, before that term commenced?

A. I do, sir; I can't tell you the day, I think it was in his store.

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Q. Was it a week before that term commenced?
A. It might have been a week, and it might have been two weeks, and it might have been three or four days.
Q. It might have been the Saturday before, might it not?
A. It might have been
Q. It might have been the Monday or Tuesday morning, after the court had commenced?
A. No sir. I know that the sheriff and I had some conversation before that term.
Q. Now, when did you first go to the court room during that term?
A. I went there, I think, at the opening of the court.
Q. You are positive about that, are you?
A. I think I am; yes sir.
Q. Was the court room opened when you got there, and a fire built, and the room swept out?
A. I think it was; the jailor usually done that; prepared the house the first time.
Q Did you see Mr. Mandeville when you went there?
A. I don't know that I did; I don't know that I saw him on that morning.
Q. When did you first see him there?
A. I saw him there during the day, probably.
Q. At the beginning of the term a jury was being impanneled, wasn't it?
A. Yes.
Q. How long did that process of impanneling the jury last?
A. I don't recollect just how long?
Q. It lasted three or four days, didn't it?
A. I think it was about that time.
Q. There were several special venires?
A. I don't know how many; I know there was some.
Q. Don't you know that the court summoned there three or four hundred persons as jurors, before they got a jury?
A. No sir, I don't know that they summoned any such number.
Q. You say that Sheriff Hall was there all the time, do you?
A. I think he was there about town all the time.
Q. Did you hear anything about the number of special venires that were issued?
A. I might have at the time; I don't recollect just the number.
Q. Do you remember how many you heard were issued at the time?
A. No, I would not pretend to swear how many.
Q. Do you know who were the general deputies of Mr. Hall at that time?
A. I know some of them.
Q. Who were they?
A. Mr. West was a general deputy at that time; that is, it was reported that he was; he was doing business.
Q. Who else?
A. And I think Mr. Stimson was a deputy at that time; no, I don't think that he was; think Mr. Riley. It was reported that Mr. Mandeville was a deputy.
Q. Did you hear the report of any body except from Judge Page, that Mr. Mandeville was a deputy?

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A. Yes sir, it was reported there in town that Mr. Mandeville was a deputy. I can't say who said so; I can't name the man that said so.

Q. Now don't you know that during the first two or three days of the term that Mr. Hall, Mr. West and Mr. Thomas Riley were serving special venires during the first days of the term?

A. Well, I know his deputies were out. I don't know that Mr. Hall was out of town; if he was I never knew it.

Q. Don't you know the fact that each of his deputies served special venires, and that Mr. Hall served one or two, and that you served one?

A. There was some five or six names that were given to me

Q. Now do you know how you came to be sent out to serve that special venire?

A. I don't know just how I came to go. It was at the close of the term of court.

Q. Don't you know that it was because the sheriff and both of his deputies were engaged in the same thing.

A. No sir. The sheriff was then in town and gave me the names.

Q. Don't you know that he had a special venire himself that he was serving?

A. No sir.

Q. Now, when do you first remember to have seen Mr. Mandeville in the court room?

A. Well, I don't know; I presume I saw him there that day.

Q. Do you have any recollection of seeing him there that day?

A. No, I could not swear; I would not swear that I did see him there that day.

Q. Did you ever adjourn court during that term?

A. I don't recollect whether I did; I have frequently.

Q. Have you any recollection of who adjourned that court during that term?

A. My recollection is that the sheriff adjourned court during that term.

Q. Adjourned court in the evening?

A. Why, yes, as a general thing.

Q. Don't you remember Mr. Mandeville, on one or more occasions, adjourned court?

A. No sir.

Q. Don't you remember Mr. Mandeville being in court every day from the beginning to the ending of that term?

A. No, I don't; he might have been.

Q. Didn't you understand all through that term that Mr. Mandeville was acting there as a special deputy?

A. No sir, I did not.

Q. When did you first learn that fact?

A. I first learned the tact when—well, about the time that we went up for our pay. Mr. Hall came down and told us to go up and get our pay.

Q. Did'nt you understand that Mr. Mandeville was acting as a deputy sheriff until the term of court was adjourned?

A. I knew nothing about it; there never had anything been said to me that Mr. Mandeville was acting as a special deputy

Q. You did not understand that he was acting as a special or general deputy until after the jury was discharged?

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A. I know that Mr. Mandeville was never there in the morning to help to assist in preparing the house, and every special deputy that we ever had, was there in the morning.

Q. You mean to be understood then that the first intimation you had that Mr. Mandeville was attending that court as deputy sheriff, was after the jury had been discharged?

A. I did not so say.

Q. When did you first understand that he was there as a deputy?

A. I say that Mr. Mandeville was there during that term; but how much of the time, nor in what capacity he was acting, I could not state.

Q. When did you first learn that he was there acting as a deputy sheriff, either a general or special?

A. I don't know as I really learned the fact at all.

Q. You don't know it now?

A. I don't know it now, only as they claim; I don't know how he was appointed nor by whom; I was sitting there at the stove, and Mr. Mandeville on the other side; and Mr. Hall says: "Go up and get your order for your pay:" he did not call my name, neither did he call Mr. Mandeville's.

Q. What did he say?

A. He said just the words—as I recollect them—as I have said here; he said: "Go up and get an order for your pay."

Q. He did not say: "Boys, go and get your order for your pay"?

A. No sir.

Q. Mr. Mandeville went along, did he?

A. Yes sir.

Q. Any body present besides yourself, Judge Page and Mr. Mandeville?

A. I think that was all; I won't be certain whether the clerk of the court was in the room or not.

Q. Judge Page was sitting at his desk, was he?

A. He was.

Q. Did both of you advance together?

A. We both went up to the desk together; I think that Mr. Mandeville spoke first; I think that Mr. Mandeville asked him for an order for his pay.

Q. Did you ask for an order for your pay, there?

A. I think I did not at that time.

Q. Well, what did Mr. Mandeville say?.

A. I don't know what Mr. Mandeville said in reply to the judge asking him what service he had performed; he said he had been there during the term.

Q. What did Mr. Mandeville say when the subject of pay was first introduced to Judge Page; what did he open the conversation with?

A. He said words to this effect: "That he would like to have an order for his pay."

Q. Did he say he would like to have an order for his pay, or "we would like to have an order for our pay?"

A. No sir, there was no *we* put in at all. He said he would like to have an order for his pay; he spoke words to that effect.

Q. Where were you standing?

A. I was standing near the clerk's table; we stood just a little south of the judge's desk

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Q. How far from Judge Page and Mr. Mandeville?
A. Probably four or five feet.
A. No more than that?
A. I don't think it was.
Q. You was paying attention to everything that was said?
A. Yes sir.
Q. Strict attention?
A. Well, yes; I went up there to get my pay; I don't think I said anything. The judge made this remark when he was sitting there, that he was busy making up his calendar and could not attend to us.
Q. Did he close his conversation with Mr. Mandeville to that effect?
A. Well, I remember of that remark being made
Q. Before you said anything at all to Judge Page, he says to Mr. Mandeville, asking him the question, what he had done for which he should claim pay, or what services he had performed, &c. Now when Judge Page said he had not time to attend to that matter, then you and Mr. Mandeville both went away, did you?
A. Yes.
Q. And you did not say a word during the entire conversation?
A. Well, I don't recollect just what I said; I might have said something in relation to getting my pay, but the Judge made that remark that he was busy making up the calendar, and that he would attend to it some other time.
Q. If Judge Page had told Mandeville that he was busy and had not time to attend to it, you would persist in talking to him: would you?
A. No sir; of course I wouldn't.
Q. Now, don't you think, on reflection, that you did not say a word during that entire conversation?
A. Well, I would not swear positively, whether I did or not; I have no distinct recollection of saying anything at that time.
Q. Isn't it your distinct recollection that the conversation terminated with Judge Page stating to Mr. Mandeville that he had not time to attend to it then, and both of you went off?
A. Well, we went away very soon after that.
Q. You did not stay to bother the Judge when he told you he didn't want you around there?
A. No. The Judge told me that I could call, I think, at his office.
Q. Didn't he say so to both of you?
A. No.
Q. Didn't he say so to Mr. Mandeville?
A. No, I don't think he did.
Q. Didn't he tell Mr. Mandeville, and didn't he tell both of you, to come at such a time?
A. No; I was standing at his side, and he turned and he says: "You can call at my office," or something to that effect.
Q. Were you present at any subsequent interview between Judge Page and Mr. Mandeville?
A. No sir, I was not.
Q. You swear that on this occasion Judge Page did not ask Mr. Mandeville in substance, "What political work he had done for Sheriff Hall that he should appoint him deputy?
A. I do.
Q. Have you always told that conversation as you tell it here to-day?

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A. I have.
Q. You know Sheriff Hall, don't you?
A. I do.
Q. Didn't you in a conversation with Sheriff Hall in Austin, a few months ago, say to him that in that conversation Judge Page did use the language?
A. No sir, I never——
Q. Wait a moment, that is not all the question. "What political work have you done for Sheriff Hall that he should appoint you deputy?"
A. No sir, I never——
Q. Wait a moment, that is not all; saying that when he used the word "political work," he did not put in the word "dirty?"
A. No sir, I didn't.
Q. Now, at the same time didn't you state the same thing to Mr. Crandall and Mr. French?
A. No sir, I did not state that thing to any live man. I never said that to Lafayette French nor to Mr. Crandall.
Q. Nor to Sheriff Hall?
A. No sir.

RE-DIRECT EXAMINATION.

Mr. LOVELY. Q. During that term of court on whom did Judge Page call when he adjourned the court?
A. He called on the sheriff.
Q. When he wanted anything done?
A. He called on the sheriff.
Q. Did he address anybody by name?
A. No sir, I never heard him.
Q. After you got through there after going up to get your order, did not you and Mr. Mandeville go away together?
A. We did, yes sir.

RE-CROSS EXAMINATION.

Mr. CLOUGH: Q. You did go back to Judge Page and get an order, didn't you?
A. I went to his office, I think; that is my recollection.
Q. And he made out an order and gave it to you?
A. Yes sir.
Q. When was that, with respect to the time, that you and Mr. Mandeville had an interview with Judge Page, which you have spoken about in the court room?
A. It was at the close of the term, in the afternoon.
Q. Was it after or before you had the conversation?
A. What conversation?
Q. The conversation when Mr. Mandeville was present.
A. Yes sir.
Q. Was it the next day?
A. I could not say whether it was or not.
Q. But it was after?
A. Yes, it was after that.
Q. And you took the order and filed it with the clerk?
A. I did.
Q. And drew your pay?
A. Yes.

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JOHN B. AUSTIN, SWORN,

And examined on behalf of the respondent, testified:

Mr. LOVELY. Q. Where do you reside?

A. Austin, Minnesota.

Q. How long have you lived there?

A. Five years last February.

Q. Were you a juror at the last time the Jaynes case was tried?

A. I was.

Q. Who was the deputy who did the work around the court room, during that trial?

A. Mr. Allen.

Q. Who took charge of the jury?

A. Mr. Allen.

Q. Did you see Mr. Mandeville around the court room?

A. I think I saw him the first day.

Q. Did you see him there after that?

A. I have no recollection of seeing him there after that.

Q. Sheriff Hall around there during the term?

A. Yes sir.

Q. Was there any particular crowd during that term of court?

A. There was not; the court room was not half full?

Q. At the conclusion of the trial was there a large crowd?

A. There was a large crowd at the summing up, when the lawyers made their plea.

Q. When was the case given to the jury?

A. Saturday night, just at night, I think.

Q. When did they come in?

A. They did not come in again until Monday morning.

Q. Brought in by Mr. Allen, were they?

A. By Mr. Allen; Mr. Allen had charge of us during Saturday night and Sunday and Monday morning.

Q. Did you notice anything about the court room that required more help than Mr. Allen and the sheriff?

A. Well, I don't know how many men it requires to do that work?

Q. Did you see Mr. Allen fixing windows?

A. I did.

Q. How long was he engaged in that work?

A. Well, my recollection is that he finished it the first day.

Q. The first day that he worked at it?

A. The first day, yes sir.

CROSS-EXAMINATION.

Mr. CLOUGH: Q. Were you there as a juror summoned in the first venire?

A. I couldn't say whether it was the first venire, or not.

Q. You were on a special uenire, wern't you?

A. I was summoned to appear there the first day of court.

Q. You did appear on the first day of the court?

A. I did, in the morning at 9 o'clock.

Q. You were found to be qualified among the first jurors?

A. I was the third man.

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Q. And was there all the time after that?
A. All of the time, sir.
Q. Wasn't there a large crowd of jurors there all the while?
A. There was a good many in there, in and out.
Q. There were three or four hundred men summoned as jurors?
A. I could not state how many; I know that there was a good many men in there that were summoned as jurors, and had expressed an opinion, for some reason or other was not accepted.
Q. Was you there when court adjourned each day?
A. I was.
Q. What officer adjourned the court on Monday evening?
A. I couldn't say.
Q. What officer adjourned the court on Tuesday, in the evening?
A. I couldn't say.
Q. What officer adjourned the court on Wednesday evening?
A. I know Mr. Hall adjourned the court three or four times during the session.
Q. Did Mr. Hall adjourn the court every time during that term?
A. I could not say, sir.
Q. When Mr. Hall did not adjourn it, who did?
A. I couldn't say.
Q. Do you remember of seeing F. W. Allen adjourning it?
A. I don't recollect of his adjourning it; I couldn't say, he might have done it.
Q. Was your attention directed somewhat to the facts that were being deduced, or to the deputy sheriff?
A. My attention was directed to the evidence that was given by the men that were brought in there.
Q. It was more directed to that than to who were officers, and what they were doing?
A. I didn't pay any attention to who were the officers of court, or what they were doing. I don't know of only two officers there. There might have been a dozen there for all I know.
Q. Have you ever been sheriff?
A. No sir, I never have; I never was deputy sheriff.
Q. Have you ever been a deputy in attendance on court?
A. Never, sir.
Q. Do you know what work belongs to the officer?
A. No sir, I don't.

W. K. HUNKINS, SWORN,

And examined on behalf of the respondent, testified:
Mr. LOVELY. Q. Where do you reside?
A. I reside in Austin.
Q. How long have you lived there?
A. Nine years or thereabouts.
Q. What has been your experience as an officer?
A. Well, I have had considerable experience, as an officer of court.
Q. You have had considerable experience; what is it?
A. I have been six years as sheriff and deputy sheriff.
Q. Were you present at the trial of the Jaynes case?
A. I was.
Q. The last time it was tried?
A. I was.

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Q. In what capacity?
A. As juror.
Q. You were a juror on that case?
A. Yes sir.
Q. State who were the officers in attendance at that term of court?
A. Well, I saw Mr. Allen and Sheriff Hall; that is all I remember of seeing.
Q. You don't remember of seeing Mr. Mandeville?
A. I don't remember of seeing Mr. Mandeville in the court room during that term of court?
Q. When did you first see Mr. Allen there?
A. I saw him there very shortly after I went there. I think it was Tuesday, about noon.
Q. The first day?
A. Yes sir.
Q. You were one of the first jurymen called?
A. Well, it is my opinion that there were four or five when I came there.
Q. Was there much of a crowd in attendance at that term of court?
A. No sir, not at first, not the forepart of the week, there wasn't.
Q. Who took charge of the jury?
A. Mr. Allen.
Q. State whether you observed anything that required greater attention the than sheriff and one deputy?
A. I did not.
Q. You have been court deputy in Mower county, were you not?
A. Yes sir.
Q. At terms of court?
A. Yes sir.
Q. How many terms?
A. Well, I believe four or five terms.
Q. Where were you sheriff?
A. In Wisconsin, in Waukasha county.
Q. How many deputies were used in Mower county at the general term's of court?
A. Two generally, I think.
Q. You may state whether, in your opinion, there was any necessity of more than one deputy at that term of court in which you sat as juryman at the trial of the Jaynes case?
A. I don't think there was.
Q. Did you see Mr. Allen engaged in fixing windows there?
A. I did not, no sir; I don't remember that I did.
Q. What was he engaged in doing the most of the time?
A. Well, the general court business, looking after the court house generally, and the fires.
Q. Now you have had experience as a court deputy there in Austin, and you was also present at that term of court; now I will ask you upon whom Judge Page called when he gave any direction when he desired anything in the court room.
A. He always called upon the sheriff.
Q. Did you ever hear him call upon a man by name?
A. No sir, I never did.
Q. He always addressed the officer as sheriff?
A. Yes sir.
Q. If the sheriff was not present, who responded?
A. The deputy.

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CROSS-EXAMINATION.

Mr. CLOUGH. Q. Had you been a deputy sheriff at that time in Mower county?

A. Prior to that time, yes sir.

Q. Under whom?

A. Under sheriff Baird and sheriff Hall.

Q. At what terms had you acted as special deputy?

A. Well sir, I acted as special deputy at the last term of court.

Q. I mean before the time that the Jaynes case was tried.

A. Well sir, I can't tell you what term, but several different terms. I won't say that they were all previous to the Jaynes trial.

Q. Did you state that any were previous to the Jaynes trial?

A. I think they were.

Q. Now, when you were special deputy, how many other special deputies were there in attendance on court?

A. I think not but one.

Q. Don't you know of several terms when there were three or more, sometimes as high as four?

A. No sir; I was not acquainted with those facts.

Q. You went in on a special venire, did you not?

A. I think so.

Q. On what day of the term?

A. The first day of the term.

Q. What day of the month was the first day of the term?

A. I can't tell you.

Q. Was it on Monday, or Tuesday, that you went in?

A. It was on Tuesday, I think.

Q. That was the first day of the term, was it?

A. I think it was.

Q. How many jurymen had been obtained when you went in?

A. I can't tell you, but my best recollection is, that there were three or four.

Q. When you have been special deputy, has it been a part of the duties of the special deputy to serve special venires for jurors, when the regular pannel has been exhausted, after obtaining a jury?

A. I think not.

Q. It never has been done?

A. Never, to my knowledge.

Q. Were you aware of the fact at the commencement of this special term of court, it was necessary to issue seven or eight special venires?

A. I don't know how many special venires there were issued; I know there were several.

Q. You were not aware of the fact that there were seven or eight issued, were you?

A. No sir.

Q. Didn't you see Mr. Mandeville about the court room all the time while this case was going on?

A. I suppose I must have seen him, but I can't place him.

Q. For all you recollect, he was there all the time?

A. Well, I don't recollect him being there at all.

Q. I say for all you do recollect, he might have been there all the time, might he not?

A. Well, it is possible he might have been.

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Q. Of course, your attention, as a juryman, was directed to what was going on in the trial of the case?
A. Yes sir.
Q. It was not directed as to who were the court officers?
A. I don't think I can remember who adjourned the court at that time.

F. W. ALLEN RECALLED

By Mr. Clough for further examination, testified;
Mr. CLOUGH. Q. Is there any other person by your name, living in Mower county?
A. I don't know of any one.
Q. Any F. W. Allen living in that county?
A. I don't know of anybody else by that name.
Q. Were you in attendance upon that special term of court in January, 1876, as a juror?
A. I was not.
Q. Were you drawn as juror at all?
A. If I recollect right, I think that the sheriff called me forward, and that I was discharged at once.
Q. You were discharged at once?
A. Yes sir.
Q. How did the sheriff come to call one of his special deputies forward to take a seat in the jury box?
A. Well, sir, I don't know nothing about that; he certainly knew that I could not have served.
Q. I will ask you if you were summoned on a special venire—just let me show you this venire.
A. I know nothing about the venire at all; the venire was never shown to me.
Q. Now, I find on January 12, 1876, (it was the second day of the term) this entry: "F. W. Allen was drawn and challenged for cause by defendant; challenge denied; juror sworn and examined, and denial challenge withdrawn." You were drawn and challenged as juror?
A. I don't know that it was drawn; Mr. Hall called me forward, and I was discharged immediately.
Q. There was an examination; you were challenged, were you not, for cause?
A. They simply asked me if I had formed and expressed an opinion, and I said I had, and that was the end of it.
Q. And the challenge was withdrawn and you were dismissed?
A. Why, yes.

Mr. CLOUGH. We introduce this record.

Mr. DAVIS. We have no objection.

WILLIAM M. HOWE, SWORN,

And examined on behalf of the respondent, testified:
MR. LOVELY: Q. Where do you reside?
A. Austin, Mower county.
Q. What official position do you hold there?
A. Register of deeds.

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Q. Have you the record of the appointment of deputies?
A. I have.
Q. Have it there in your possession?
A. Yes sir.
Q. Look through it and state whether there is any record there of the appointment of W. T. Mandeville as deputy.
A. I have looked it through.
Q. Is there any such appointment?
A. No such appointment from R. O. Hall.
Q. From whom?
A. There is one from George Baird.
Q. How long ago?
A. March 21, 1873.
Q. Since then there has been no appointment of Mr. Mandeville?
A. Not on record.
Q. George Baird, the predecessor of Sheriff Hall?
A. He was.

CROSS-EXAMINATION.

Mr. CLOUGH. Just let me see that record of appointments, if you please.

[To Mr. Lovely.] Now you introduce in evidence the record of this appointment, do you?

Mr. LOVELY. No sir, we do not.

Mr. CLOUGH. Well, I ask that it be introduced and also the revocation as written on the margin.

Mr. LOVELY. Well, read it.

Mr. CLOUGH. Now the date of this appointment is March 21, 1873; on the margin of this record is this entry: "The within appointment is this day revoked. Dated August 20th, 1873. George Baird, Sheriff."

Q. Did you ever know of Mr. Mandeville having acted as deputy sheriff under and by virtue of that appointment?
A. I did not, sir.
Q. Don't know of his having done a single official act, do you?
A. No sir, I can't say that I do.

Mr. LOVELY. That closes our evidence upon this article.

R. A. MURRAY SWORN

And examined on behalf of respondent, testified:

Mr. LOVELY. Where do you reside, Mr. Murray?
A. Rushford, Fillmore county, in this State.
Q. What is your business?
A. An attorney-at-law.
Q. How long have you been engaged in that business in that court?
A. Nine years.
Q. Were you present in Mower county, at the March term of court, 1877?
A. I was not.
Q. Were you present at the September term, 1876?
A. I was.

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Q. How long did you remain in Mower county at that time?
A. I went there September 18th, I think.
Q. And remained about how long.
A. I think it was September 25th, that I left there.
Q. Do you know Mr. Ingmundson, the person who has been sworn here?
A. Yes sir. I did not see him sworn here. I suppose you refer to the county treasurer of Mower county.
Q. Yes. Did you see him during that term of court?
A. I did.
Q. Did you see him at the saloon under Fleck's hotel?
A. I did.
Q. Did you hear a conversation between him and certain persons, who were acting as grand jurors, at that time?
A. One person.
Q. You heard a conversation between Mr. Ingmundson and one person who was acting as a grand juror.
A. I did.
Q. Did you have a conversation with Mr. Ingmundson at that time. Did you engage in this conversation that you speak of?
A. I did not realy have a conversation; the grand juror was an acquaintance of mine, and as I was passing them he offered to introduce me to Mr. Ingmundson.
Q. Go on and state what occurred.
A. When he mentioned my name to Mr. Ingmundson he also stated that I was a friend of Judge Page; Mr. Ingmundson withdrew his hand, and refused to shake hands with me; and stated that he would not, or did not, shake hands with Judge Page's friends; and I then withdrew mine and started to pass along. This friend of mine asked me to go back, asked me not to leave just then. Then Mr. Ingmundson stated, or asked me or those present there, if we knew what Judge Page was fit for; no one answered that, and he then stated that he would tell them what he was fit for. He then stated that he was fit to be cut in two in the middle and set upon end, and used for some purpose I prefer not to state.
Q. Anything further said by Mr. Ingmundson at that time concerning the Judge?
A. Nothing that I recollect.
Q. Were you present in court at Austin at the time Judge Page requested Mr. Greenman to attend to the impanelling of a jury in a criminal case?
A. I was.
Q. You may state what occurred at that time; just what preceded the impanneling of the jury, and what occurred during the impanneling of it, and what followed it, the whole thing.
A. It was the custom in Judge Page's district, so far as I know, to complete the trial of all cases on the civil calendar, and then take up the trial of the criminal calendar; as I now recollect, Judge Page stated that the cases on the civil calendar were finished; then he stated the first cases to be tried on the criminal calendar; (Mr. French, the county attorney, was present,) and the judge asked him if he was ready to take up that case; Mr. French stated that he was ready; the judge then stated to the clerk, or directed the clerk to call a jury in that case; the clerk called a juror; the juror came forward and a part of the attorneys of the

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parties were asked if they had any objections to that juror; Mr. French stated he had none; I did not observe the proceedings any further than that for a moment or two; but within a moment or two I heard the judge say, "Mr. French;" I then looked up; Mr. French had gone from in front of the judge's desk, where he was sitting, and had gone to that side of the court room on which I was sitting, and was talking was a person, a stranger to me. Mr. French made no answer, nor did he look around when the Judge spoke to him; the Judge spoke to him the second time in a louder tone of voice, and he did not look around then or answer. He spoke to him the third time, still louder, and then Mr. French turned around and looked toward the Judge. Judge Page then said: "Mr. French, it is necessary for you to attend to the drawing of this jury;" or, I think he said, "it is necessary for you to attend to this business." Mr. French stated: "I *am* attending to my business." Judge Page then said: "If you are attending to the business, let us proceed with the drawing of the jury;" and another juror was called. Mr. French went forward to nearly in front of the stand, to attend to that business, as I supposed. Mr. French then, or within a moment or two, started and went out of doors,—went out of the court room The Judge was writing at the time, I think, and the business delayed for a moment, when the Judge looked up and said, "Where is Mr. French?" said that to the sheriff, Mr. Hall. Mr. Hall stated that Mr. French had stepped out of doors. He asked him what he had gone out doors for. He stated that he thought he had gone out to look after his witnesses.

I think Mr. Hall then said, "I will go and call him if you wish." The judge said to him, "Go and call him." Mr. Hall, the sheriff, went out of the court room, I supposed for that purpose, and returned in a few moments, and Judge Page asked him, on his return, if he had found Mr. French. He stated, I think, that he was at the foot of the stairs, talking with his witnesses. Judge Page then said to Mr. Greenman, who was sitting there, "Mr. Greenman, will you attend to the drawing of this jury until Mr. French returns?" Mr. Greenman stated that he would do so, and he did do so. Mr. French returned about the time the drawing of the jury was finished, I think a little after; shortly after the drawing of the jury had been completed, Mr. French and Mr. Greenman had some conversation, which I did not hear and do not know what it was. There was something said between Judge Page and Mr. French and Mr. Greenman, in reference to Mr. Greenman remaining in the case. I don't recollect what that was.

Greenman withdrew from the case, and Mr. French proceeded to read the indictment and try the case, and did so. I have now stated all that was said and done there at that time.

Q. Did Judge Page, at that time, say to Mr. French: "Mr. French, you ought to be here; if you are absent again I shall consider it a contempt of court"; did Judge Page use that language to Mr. French?

A. Not those words; I will state this: that when Mr. French came in, Judge Page stated to him that, "you ought to remain in court and not go away and leave your case in this way"; he made a remark, I think, in about those words.

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CROSS-EXAMINATION.

Mr. CLOUGH. Q. What time in the progress of the September term, 1876 court, was it that you had this interview with Mr. Ingmundson?

A. I could not state the day.

Q. Was it in the first part or the latter part of the term?

A. I think it was about the third day of the term—I think it was.

Q. Do you remember whether the grand jury had finished its business at that time?

A. They had not finished their business, at least I know they had sittings after that.

Q. You had never met Mr. Ingmundson before?

A. I had seen him before, but not to know him; I did not know him.

Q. At that first interview he impressed himself as a man of discrimination, didn't he?

A. I could not say that he did.

Q. Let me ask you who this grand juror was you met in the Fleck Hotel?

A. His name is George Corsell.

Q. Where does he live?

A. In the town of Racine, in Mower county.

Q. In the term of court when Lafayette French went out of the door, (I might have misunderstood your evidence in chief,) I understood you to say a case was called, and Mr. French was there, and the impannelling of the jury proceeded a certain distance and then the whole business was dropped, and Mr. French went out of the door; Is that it?

A. You have stated it partially. I say that one juror was called; the question was asked: "Have you any objection to this juror?" Mr. French stated that he had none, and the juror was sworn.

Q. And upon that Mr. French went out doors?

A. No sir, I did not say so.

Q. Well, I want to know what you did say on the subject?

A. I stated that he started and went to the other side of the room, near where I was sitting.

Q. Was any other juror sworn then?

A. I think there was.

Q. The point I wish to reach is this: The jury was in the process of being impanelled when Mr. French went out doors?

A. Yes, another juror was called; then Mr. French had passed over to the side of the room, where I was sitting, commenced conversation with the man who was afterwards sworn as a witness?

Q. Who was it?

A. I don't know.

Q. A witness sworn on the part of the defense, or on the part of the prosecution?

A. I think it was on the part of the prosecution. I think Mr. French called him as a witness, on the part of the prosecution. Judge Page was busy writing at the time, and Mr. French came over there, as I have stated, and commenced conversation with this man.

Q. And then the judge spoke?

A. Yes sir, when the Judge looked up I noticed that the business was not proceeding He spoke to Mr. French three times.

Q. Now, won't you be kind enough to repeat what the Judge said to Mr. French, on that that occasion?

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A. He then said, "Mr. French." Mr. French did not pay attention to that. He then said again, "Mr. French," [speaking louder.] Mr. French did not look up. He spoke the third time, and said: "Mr. French!" [still louder.] And at that Mr. French looked at the Judge.

Q. When did Mr. French go out doors on this occasion?

A. The judge asked him to come forward and attend to the drawing of that jury; he did so. There was a juror waiting there to be examined, and I noticed, as I think, that that juror was sworn, but I am not positive about that. But Mr. French started within a minute, less than a minute, and went out doors.

Q. That is after the second juror had been called and sworn?

A. I think—sworn—yes sir.

Q. Did you hear anything said on that occasion, by Judge Page about Mr. French being under the necessity of going out doors, talking to the witness on account of talking so loudly?

A. No sir, there was nothing said of that kind.

Q. Judge Page did not say, "Mr. French, if you wish to talk with that witness you must go out doors to do it!"

A. No sir, he did not say that; my recollection is very clear on that.

Q. Did you see Mr. Cameron in the court room at that time?

A. I can't be sure that I did or not; I think that G. M. Cameron was present and was defending in this case. I may be mistaken.

Q. Now, let me refresh your memory a little; did not the matter arise in this way: Was not a civil case being tried, and was not Mr. French in the back part of the room conversing with a witness quite loudly, and upon that, Judge Page informed Mr. French that if he wished to talk with the witness, he must go out doors?

A. I heard nothing of that kind. Mr. French was called forward, and when the civil calendar was reached, his attention called to that case, and he was asked if he was ready to take up that case, and he said that he was?

Q. At what time of day was it that this conversation between Judge Page and Mr. French occurred?

A. It was in the forenoon and after court commenced in the morning; the hour I did not notice.

Q. You went in then about the time court opened in the morning, did'nt you?

A. I was in there before the court opened, I did not leave the court room that forenoon.

Q. Do you remember what immediately preceded this occurrence you speak of?

A. It was the trial of a civil action, if I am not mistaken.

Q. Was the case summed up to the jury—this civil action?

A. I don't recollect distinctly whether it was or not; but I think it was.

Q. Do you remember who the counsel were in that civil case?

A. No, I would not undertake to state who they were, I know the trial of the case commenced the day before. I think Mr. Greenman was one of the counsel in that other case.

Q. Now, was that case on trial, that civil case, which immediately preceded the calling of this criminal case, in the morning when you went there, or was it called that morning?

A. It was finally disposed of that morning, but just what was done I don't recollect.

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Q. Was the case on trial when the court opened that morning—the civil case?

A. I say I think that the trial was closed that morning. I think the trial of it commenced the evening before.

Q. How long did the trial of the civil case, which immediately preceded this criminal case, occupy?

A. I could not state.

Q. Don't remember anything about that, do you?

A. I don't say I don't remember anything about it. I remember it was a civil action.

Q. All you remember is that a civil action immediately preceded this criminal action?

A. I think so, yes sir. Mr. Greenman, I think, was in the case.

Q. Was the criminal case tried that day?

A. This one that you speak of; yes sir.

Q. Was it finished that day?

A. I could not say whether it was or not; I don't recollect.

Q. You are sure this was in the forenoon that this criminal case was called on?

A. I am very sure it was in the forenoon; in fact, I *know* it was.

RE-DIRECT EXAMINATION.

Q. How far was Mr. French away from the judge at the time the judge spoke to him?

A. As far as from where I am to that gentleman there; about twelve feet may be.

Q. Who was the grand juror who was present at the time those statements were made by Mr. Ingmundson in Mr. Fleck's saloon?

A. George Carrell.

Q. Was Mr. C. H. Cotton there also, a LeRoy man?

A. There was a man there by the name of Colton or Cotton; I was introduced to him, but I don't recollect; I would know the man if I should see him.

RE-CROSS EXAMINATION.

Mr. CLOUGH. Q. This criminal case that Mr. French was in that you spoke about, do you remember what the offense charged was?

A. Yes sir.

Q. What was it?

A. Larceny.

Q. You heard the trial, did you?

A. I did; I heard Mr. French sum up the case.

Q. What time was it when it was summed up?

A. I can't state when it was summed up; I recollect a remark that was made while he was summing it up; I am not sure whether it was before court adjourned at noon or afternoon—it was one of the two.

F. H. ELDER, RE-CALLED.

On behalf of the respondent, testified:

Mr. LOSEY. Q. [Handing witness paper.] Look at that paper; what is it?

A. It purports to be a copy of the minutes of the March term of court of 1877 in my hand writing.

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Q. Is it a copy of the minutes of the March term, 1877, as they appear of record. I mean of what occurred in connection with the grand jury?

A. Yes sir.

Q. When did you make this?

A. The date shows August 20, 1877.

Mr. LOSEY. We desire to introduce that in evidence.

Mr. CLOUGH. I suppose you have a right to introduce that.

Mr. LOSEY. I read it: "State of Minnesota, County of Mower, District Court, Tenth Judicial District——

Mr. CLOUGH. Wait a moment. Does that purport to be a copy of any other minutes of that term?

The Witness. No sir.

Q. What is this a copy of?

A. It is a copy of the entries made on the return of the grand jury into court.

Q. Is it a copy of all the entries made by you in regard to that thing?

A. I think it is.

Did you compare it with the original, so as to see if it was a copy of the whole record?

A. I think I did.

Q. Do you swear that it is a copy of the whole record, according to your best belief?

A. Let me see the certificate, please. [Witness examines paper.] I think it is.

Mr. LOSEY. I will now read it.

[EXHIBIT 22.]

State of Minnesota, County of Mower—ss.—District Court, Tenth Judicial District.

Copy of the minutes of said Court entered at the March term, 1877, on return of the grand jury into court.

1st Day, March 20th, 1877.

"Now come the grand jury into court and all being present except O. W. Shaw, through their foreman the grand jury presented an indictment against Henry Thies, said indictment placed on file and jury retired to their room"

"The grand jury coming into court, and being all present except O. W. Shaw, they presented an indictment duly signed by their foreman, against James Cummings for the crime of assault with a dangerous weapon, with intent to do great bodily harm. Indictment placed on file and the jury retired to their room."

"The grand jury coming into court and being all present except O. W. Shaw, presented an indictment against Charles A. Johnson for the crime of larceny. Indictment was duly signed by foreman Andrew Knox. Jury retired to their room and indictment placed on file."

2d Day, March 21, 1877.

"The grand jury coming into court and being all present except O. W. Shaw, presented an indictment against Garratt Cavenaugh for the crime of assault with a dangerous weapon with intent to do great bodily harm, duly signed by their foreman. Indictment placed on file and jury retired to their room."

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4th Day, March 23, 1877.

"Now come the grand jury into court, and being all present except O. W. Shaw, through their foreman presented an indictment against Geo. Richards for the crime of selling personal property previously mortgaged. Indictment placed on file and jury retired to their room."

"Now come the grand jury into court and being all present, through their foreman presented an indictment against Henry Hildebrand for the crime of selling intoxicating liquors without first having obtained a license therefor. Indictment placed on file and jury retired to their room."

"Now come the grand jury into court, and being all present except O. W. Case, through their foreman presented an indictment against Henry Hildebrand for the crime of selling intoxicating liquors without license. Indictment placed on file and jury retired to their room "

"Now come the grand into court, and being all present, presented an indictment against Henry Hildebrand, for the crime of selling intoxicating liquors without license. Indictment placed on file and jury retired to their room."

"Now come the grand jury into court, and being all present presented three separate indictments against Samuel Sweiningson, for the crime of selling intoxicating liquors without license. Also an indictment against John Casey, for the crime of selling intoxicating liquors without license. Indictments placed on file and jury retired to their room."

8th Day, March 28th, 1877.

"Now come the grand jury into court, and being all present except D. B. Coleman, presented indictments against Z. Clayton, J. W. Powers and A. O. Johnson. The jury having further business, retired to their room."

"Now come the grand jury into court aud being all present except D B. Coleman, requested the instruction of the court, on the construction of section 105, chapter 13, Statutes at Large. Instruction given, and jury retired to their room."

9th Day, March 29th, 1877.

"Now come the grand jury into court and being all present except D. B. Coleman, presented indictments against Lucian J. Mason, Marion L. Park, and Charles Bell, for the crime of conspiracy. Also presentments against O. N. Forthum, E. Anderson Wiste, and Ole Fother. Jury having further business, retired to their room."

Now come the grand jury into court and being all present, presented an indictment against Lucian J. Mason for the crime of assault with a dangerous weapon. The grand jury having further business, retired to their room."

10th Day, March 30th, 1877.

"Now come the grand jury into court and being all present, asked instruction of the court. Instruction given and jury retired to their room."

"Now come the grand jury into court and being all present, were further charged by the court, and retired to their room."

"Now come the grand jury into court and being all present, presented an indictment against Samuel Sweiningson for the crime of selling liquors without license. Indictment placed on file and jury retired to their room."

11th Day, March 31st, 1877.

"Now come the grand jury into court and being all present, reported 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. Stimson, deputy sheriff, to be applied on payment of judgment entered in said case; that said Stimson had paid into court on said judgment but $14 50. On order of the court, D. H. Stimson paid into court said $5.50, and grand jury retired to their room."

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"Now come the grand jury into court and being all present, desired instruction by the court, which was given and the jury retired to their room."

"Now come the grand jury into court and being all present, reported that they had completed their business, and were duly discharged."

CERTIFICATE OF TRANSCRIPT.

State of Minnesota, County of Mower,—ss.

I, F. A. Elder, 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 entries on the minutes of said court on report of the grand jury, remaining of record in my office, and that the same is a true and perfect transcript of said original entries, and the whole thereof.

In testimony whereof, witness my hand and the seal of said court, at Austin, in said county, this 20th day of August, A. D. 1877.

F. A. ELDER,
Clerk of the District Court.

Mr. LOSEY. Q. In entering these reports made by the grand jury in this record, did you enter a full report of what the grand jury brought in?

A. I did not.

Q. What part of such reports did you enter?

A. I entered a minute of the fact that they came in, that they presented an indictment, and noted that fact.

Q. If they presented a finding, you noted that fact?

A. Yes sir.

Q. But you did not pretend to make full minutes of all the facts that they brought in?

A. No sir.

Q. You did not embody every written paper in your report?

A. I did not.

Q. Now, in this entry that you have made in the case of the State of Minnesota against Dwight Weller, where the jury came in, for the 11th day of March, 1877, what part of the report made by the jury did you enter in your minutes?

A. I could not say how much. I entered sufficient, as the matter was transpiring there in court, as I thought to identify the case and the transaction.

Q. Do you remember about the finding that was brought in, or the jury's bringing in the finding in the case of the State of Minnesota against D. Weller—or rather a presentment against Mr. Stimson?

A. I remember of the the grand jury's bringing into court a statement in regard to this transaction.

Q. What occurred in that statement that was brought into court?

A. The foreman of the grand jury handed the statement to the judge; he looked it over, and asked Mr. Hall if he had a deputy by the name of D. H. Stimson or D. K. Stimson; I am not positive which. Mr. Hall said he had. I think at that, Mr. Stimson arose in the back part of the room. Judge Page asked him to come forward. He did so. Judge Page then stated to him the finding of the grand jury in that case

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and asked him if it was true. He said that it was. I think Judge Page then asked him what he had done for which he charged those fees of $5.50; and he stated that he had been to Lansing; I think he said twice, and, maybe, some other statement as to what he had done. The judge made some remark as to the legality of the charges and then requested Mr. Stimson to come forward and pay the $5.50 to me.

Q. For what purpose did he state, for the use of the county?

A. I think so.

Q. Did Mr. Stimson at that time, or at any time in your hearing, while the proceeding was going on, state to the court he would like to explain?

A. I heard no such statement.

Q. How far away were you from Mr. Stimson at the time this conversation occurred between him and the court?

A. Well, perhaps ten or twelve feet.

Q. How much nearer the judge was he than you were?

A. Well, hardly any nearer; not more than a foot.

Q. Were you giving attention to it all the time?

Q. I was.

Q. Mr. Stimson said under oath, "I told him (that is, the judge,) I would like to explain; he told me he didn't want any explanation;" did anything of that kind occur?

A. I heard nothing of the kind.

Q. Mr. Stimson goes on further and says that the court said to him, "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."

Q. Did you hear any such remark as that?

A. I heard no such statement as that. The judge said something in regard to his paying it in the presence of the grand jury.

Q. Were the grand jury present at the time the money was paid over?

A. I think they were.

Q. Was any threat of any kind made by the judge of the court to Mr. S imson at that time?

A. I heard no threat made.

Q. What was the manner of the court at that time?

A. I think it was his usual manner. I saw nothing different.

Q. Anything further said to Mr. Stimson by the judge about getting the money?

A. I think Mr. Stimson replied that he had not the money with him. The judge said perhaps you can borrow it of the sheriff or some one. The sheriff said I think that he was in the same fix. There were then several persons I think offered to lend him the money. I remember of one, D. B. Johnson, I think, stated that he would let him have the money if he wanted it.

Q. He is an attorney at the court is he?

A. Yes sir. He obtained the money and paid it to me, $5.50.

Q. And you paid it?

A. I paid it to the county treasurer.

Q. When?

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A. I presume after court adjourned, about that time.

Q. Did Judge Page hear all that Mr. Stimson had to say then; did he interrupt him, or anything of that kind?

A. Not that I know of.

Q. You heard nothing of that kind?

A. I heard nothing of that kind.

Q. Did Mr. Stimson admit all that the court asked him?

Mr. CLOUGH. Now I object to that. I think these corkscrewing questions have gone far enough.

CROSS EXAMINATION.

Mr. CLOUGH. The case of the State of Minnesota against Mr. Weller, on which this execution was issued, was this: Mr. Weller had been prosecuted before a justice of the peace for larceny, and had been fined by the justice, and he had taken an appeal to the district court for Mower county, and final judgment had been entered, affirming the judgment of the court below; that is the case, isn't it?

A. It was a case of an appeal from a justice court.

Q. Wasn't the offence larceny?

A. I think it was.

Q. The execution was issued and placed in the hands of Mr. Stimson at some time prior to the March term, 1877?

A. I think it was.

Q. You issued the execution yourself?

A. Yes sir.

Q. And within the sixty days after it had been placed in the hands of Mr. Stimson, it was renewed for another sixty days, was it not?

A. I presume likely; I am not positive.

Q. Do you remember when the sixty days would be up? Expire?

A. No sir.

Q. Do you remember of Judge Page giving any instructions to the grand jury at that term in regard to Mr. Stimson's action in that case?

A. I think Judge Page made some statement to the grand jury.

Q. What was that?

A. I don't remember what day of the term.

Q. You don't remember whether it was the first day or in his general charges or at some subsequent day in his special instructions?

A. No sir.

Q. Would your minutes which you kept show?

A. No, I don't think they would.

Q. Did you keep your minutes in such a way as to show the substance of any instructions given by the judge to the grand jury?

A. No, I don't think I did.

Q. So that your minutes won't show and you can't show when the instruction was given by Judge Page to the grand jury?

A. No sir.

Q. Do you remember about how long it was before that instruction had been given before the grand jury came in with a report on the subject?

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A. It is my recollection that they came in the same day. I think I was called before the grand jury that day, as a witness that day; and soon after I was called they brought in their report.

Q. You were called in as a witness the same day Judge Page charged the jury, and after you had been before them as a witness, the grand jury came in and made the report?

A. I think it was the same day, although I am not positive. It was very shortly afterwards, if not the same day.

Q. Now, did you have the execution in your possession when you were brought before the grand jury?

A. I did not.

Q. When the grand jury came into court and made their report, that report was in writing?

A. I think it was.

Q. Was it written on more than a single piece of paper?

A. I am not positive.

Q. Was it signed by the foreman?

A. I could not say.

Q. Did you ever see that report?

A. I did.

Q. Was it delivered to you by the Judge?

A. I think probably that it was; I am not certain; I am not positive.

Q. Have you any recollection?

A. No, I am not positive in regard to that.

Q. And you don't know when, if at all, it was handed to you?

A. No sir.

Q. Now, at the time the grand jury came in, did they hand in to the court any report, any other paper besides a report?

A. I could not say positively.

Q. Do you remember that they handed in an execution also?

A. They might have done so, I am not very positive.

Q. You don't recollect whether they handed in the execution or not?

A. No sir.

Q. When the grand jury came in and handed that paper to the Judge, did he read it aloud, or silently?

A. I think he first read it over to himself.

Q. Then what followed after he had read over that report?

A. I think he asked Mr. Hall if he had a deputy by the name of D. K. Stimson.

Q. Now, at the time he read that report, and in the same connection, did he examine any other document that might have been returned by the grand jury with that report?

A. Not that I know of.

Q. He might have done so for all you remember?

A. Oh! he might have examined the matter; I don't know positively.

Q. Where was the sheriff?

A. I think he was near by. The grand jury were sitting in their seats at the time.

Q. A case was on trial before a petit jury, and the trial of that case had been suspended, hadn't it?

A. I am not positive about that. I don't remember whether a petit jury case was in progress or not.

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Q. But the petit jury were all there in court?
A. A quorum, likely.
Q. And business was suspended for the purpose of disposing of this Stimson matter?
A. There was nothing else going on when they were discussing this matter.
Q. Now, when Judge Page called out if the sheriff had a deputy by the name of D. K. Stimson, Mr. Stimson arose, didn't he, in the back part of the room?
A. I think so.
Q. And came forward?
A. Yes sir.
Q. Did he come forward of his own motion?
A. I think Judge Page asked him to step forward.
Q. He did step forward in front of the judge's desk?
A. He stepped forward I think before the bar.
Q. How far did he stand from the judge when the conversation between himself and the judge occurred?
A. Ten or twelve feet, I should judge.
Q. Stood up in the presence of the entire assembly?
A. Yes sir.
Q. Then what did the judge say when Mr. Stinson came there and stood up in front of him; what was the next thing that was said?
A. He stated to him the substance of the report.
Q. Now what did he say to him; give the judge's language as near as you can remember?
A. It is difficult to remember the language.
Q. I will show you, in these minutes, what purports to be a statement of this order. I have the report of the grand jury on pages 34 and 35. I ask you to read that and state wherein that is an incorrect statement of the report which was presented by the grand jury. [Witness examines paper.]
The witness. What was your question?
Q. In what respect is that record an incorrect statement of the contents of that report?
A. It is incorrect in not stating the whole of the report.
Q. Now, what is there in that report that is omitted from this record?
A. I could not state ; it is my recollectiou now that the report stated the facts of the case; that the execution had been issued in this case; placed in the hands of Mr. Stimson; that he had recovered thereon $20; had paid over $14.50 to the clerk; retaining $5.50 as his fees.
Q. Do you remember anything else that was contained in the report except what you have stated?
A. No, I do not.
Q. You have stated just about what the substance of the report was, haven't you?
A. As I recollect it.
Q. And the substance of that report Judge Page stated to Mr. Stimson?
A. I think he did.
Q. And asked him if those facts were true?
A. Yes sir.

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Q. Mr. Stimson said they were true, didn't he?
A. He assented.
Q. Upon that, Judge Page said to him—made an order to him, did he not, to pay over the $5.50 to the clerk of the court?
A. I think there were some questions and conversation between Judge Page and Mr. Stimson, as to what he had done for which he took ——
Q. Judge Page asked Mr. Stimson what he had done; and Mr. Stimson told him?
A. I think so.
Q. Did Mr. Stimson say something about Mr. Weller pledging a watch for this twenty dollars, in that conversation?
A. I don't recollect that he did.
Q. Will you swear that he did not say anything about that?
A. I don't think he did.
Q. Will you swear that he did not tell the court that this twenty dollars came by reason of Mr. Weller having pledged that watch to him for that same money. In substance; he might not have used the very words, but in substance?
A. I don't recollect of that statement.
Q. You wont swear that it was not made, do you?
A. I will swear that I don't recollect it.
Q. Now, when that conversation, and when Mr. Stimson had told the Judge for what he claimed these fees, then the Judge said to him to step forward and pay over the $5.50 to the clerk of the court, and pay it in the presence of the grand jury, so that they could see it done, didn't he?
A. I think he said something of that kind.
Q. Did he ask Mr. Stimson if he wished to be heard on the subject of the legality of his right to his fees?
A. I don't remember that he did.
Q. He made a permtory and unconditional order, didn't he, to pay the money over, there in the presence of the grand jury, to the clerk of the court?
A. I so understood it.
Q. Did not Judge Page suggest that he should borrow it of somebody after the sheriff said he had not got it?
A. I don't think he did; my recollection is that when Mr. Hall said he did not have the money there were several parties who offered to let him have the money.
Q. He obtained the money from somebody else besides Mr. Hall and went forward and paid it over to you?
A. I think he did.
Q. In the presence of the grand jury?
A. Yes sir.
Q. And of the assemblage?
A. Yes sir.
Q. Now, when that payment was made, did not Judge Page say to him that if he took any illegal fees in the future he should punish him to the extent of the law; don't you remember that?
A. I don't recollect of any such statement.
Q. Don't you remember after he had paid the money, Judge Page said this was probably the first offense; that if he took any illegal fees in the future he would punish him, or he would be punished?

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A. It is my impression that some remarks were made, but just what they were I could not remember.

Q. That performance did not conclude there, did it, by the mere payment of the money to the clerk?

A. I think that was about the conclusion of the matter.

Q. Did not Judge Page, after that payment, make some statement similar to what I have said, to Mr. Stimson?

A. I don't remember what was said.

Q. Didn't he warn him against taking illegal fees in the future?

A. He might have done so; I am not certain he did not.

Q. Until this money was paid into court and this warning and advice given, the whole proceedings of court were suspended?

A. Yes sir.

Q. Nothing was done while that was transpiring?

A. No sir.

RE-DIRECT EXAMINATION.

By Mr. LOSEY. Q. Do you remember who took out that execution in the case of the State of Minnesota against Weller?

A. It was issued, I think, on the order of the county attorney?

Q. The order of Lafayette French?

A. Yes sir.

Q. Delivered to you by whom?

A. It was delivered by me to Mr. French.

On motion, court adjourned.

Attest:

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

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TWENTY-FIFTH DAY.

ST. PAUL, THURSDAY, June 13, 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, Donnelly, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Goodrich, Hall, Henry, Hersey, Houlton, Langdon, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Morrison, Nelson, Page, Remore, Rice, 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. W. H. Mead, Hon. J. P. West, and Hon. Henry Hinds, 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, June 10, was read and approved.

HARLAN PAGE, SWORN,

And examined on behalf of respondent, testified:

Mr. LOSEY. Where do you reside?

A. Austin, Mower county.

Q. What is your business, and what has it been for the last three or four years?

A. I have been cashier of the First National Bank of that place.

Q. For how long a time?

A. Since its organization, in 1869.

Q. Do you know Mr. I. Ingmundson, county treasurer of that county?

A. I do.

Q. How long have you know him?

A. Since February or March, 1874, I think.

Q. Were you present in court in Austin, Mower county, at the March term, 1877, at the time David Stimson was brought up for hav-

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ing received certain moneys belonging to the county, from the Weller case.

A. Yes sir.

Q. State what occurred in court at that time in your presence?

A. I cannot tell it all.

Q. State what you recollect, and give substantially what occurred there as you remember it?

A. The judge said, "Mr. Sheriff have you a deputy by the name of D. H. Stimson?" Hr. Hall assented and the judge said, "is he in the court room?" Mr. Hall said, "yes," and looked in the back part of the room; and then the judge said, "you will call him." Mr. Stimson immediately started forward and stepped inside the railing. The judge made some statement in reference to the Weller case, and asked him some questions with reference to it, as to the collection of some money to which he assented, stating, I think, that he had collected $20; or rather, I think, he had received from Mr. French $20, and that he had paid it over. There was some question about the fees; he had deducted his fees, and the amount brought out then was $14.50, I believe, $5.50 being deducted for fees; the judge stated in the first place that the fees were too much, and that he was not entitled to the fees, and then he said something connected with the case that the punishment was a fine, and the law contemplated that as a limit of punishment, and that he should not be made to pay more than that; he then asked him to pay the money over—the balance—to the clerk of the court in presence of the grand jury, so that the grand jury might see that it was paid. I don't remember if that was the form of the expression. Mr. Stimson said he hadn't the money by him, and the judge said to him, "you can get it." Mr. Stimpson said, "can I go to the bank;" the Judge said, "certainly, or perhaps the sheriff"——turning his head towards Sheriff Hall, to his right—"perhaps the sheriff can loan it to you." Mr. Hall said he guessed the sheriff was in the same fix. Mr. Stimson, I think, in the mean time had started toward the back part of the room as though he was going to the bank, and several persons offered money to him. I don't know who they were, and he steped up and paid it over.

Q. Did he ask to be heard—anything of that kind?

A. I don't think that he did. He stated something about he supposed he was entitled to his fees.

Q. Did the court say anything about information or a presentment that had been brought in by the grand jury in relation to the matter, do you remember?

A. I don't remember that; I just happened in; I think the judge had some paper in his hand.

Q. Did Mr. Stimson assent to questions that were asked by the court?

A. He did.

Q. Was there anything said about the watch at that time?

A. I don't recollect the word "watch" was mentioned.

Q. What about the manner of the judge at that time? How long a time have you been acquainted with Judge Page?

A. Since I first went to Austin, twelve years ago.

Q. Did he seem to be excited at that time?

A. No sir.

Q. What was his tone of voice?

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A. I think it was his ordinary tone. It is rather louder and more distinct than people generally speak, ordinarily, I think.
Q. It was his ordinary tone of voice?
A. Yes sir.
Q. Did the Judge say to him: "Young man, if I ever catch you a doing an act of this kind again I will punish you to the full extent of the law?" or anything of that character?
A. No sir, not those words at all.
Q. Was there anything of that character?
A. He said something to the effect that he presumed he was inexperienced; he must be careful not to do it again.
Q. Anything in the way of a threat used by the court to Mr. Stimson at that time?
Mr. Manager CAMPBELL. I object to the question, because you are leading the witness.
Q. Anything further said that you remember of?
A. Something was said about an officer, "That he was presumed to know what he ought to do," but I think he said that he must be careful not to do it again, or some such warning, as that was the close.

CROSS EXAMINATION.

Mr. Manager CAMBPELL. Q. How long had you been in the court room, when this conversation commenced?
A. I can't tell just how long; not very long, I had just gone in.
Q. A very few minutes?
A. Yes sir.
Q. Where abouts, were you; in the next room, or what part of the court room?
A. I was near the middle of the court room, upon the right hand side of the middle aisle.
Q. How far from the Judge?
A. Well, perhaps thirty feet.
Q. Where was Mr. Hall?
A Mr. Hall, I think, was upon the north side of the court room, within the bar.
Q. Nearer the Judge than you were?
A. Yes sir.
Q. The first remark you heard then was directed to Mr. Hall, was it, by the Judge?
A. The Judge was talking when I went in.
Q. Who was he talking to when you went in?
A. I think to the grand jury.
Q. Can you tell what he said to the grand jury?
A. No sir; I heard something about not being signed.
A. How soon did he commence his conversation to Mr. Hall?
A. Very soon after I went in.
Q. What did he say to Mr. Hall?
A. "Mr. Sheriff, have you a deputy by the name of D. H. Stimson?"
Q. Do you pretend to give his precise language?
A. I think that was his precise language.
Q. Where was Mr. Stimson?
A. Some where back of me, I think, in the room.
Q. You knew Mr. Stimson?

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A. Yes sir; thst is, I knew him by sight.
Q. You knew him then?
A. Yes sir, I had a speaking acquaintance with him.
Q. What did the Judge say in reply to Mr. Hall when he said he had a deputy by the name of Stimson?
A. I think he said is he in the room; I am not sure whether it was in court or in the room.
Q. You won't be sure about his language?
A. I think it was "is he in the room?"
Q. What next did he say?
A. I think he said, "Will you call him?"
Q. Did Mr. Hall call him?
A. I don't think he did. Mr. Hall stepped up and looked back to the back part of the room to Mr. Stimson, asking him to come forward.
Q. How near did he come to the judge?
A. I should think it might be ten feet, perhaps it was inside of the rail, near the attorney's chair.
Q. He and Mr. Hall then were very close to the judge, and you were about 30 feet off?
A. Well I should think it might be 30 feet, as near the middle of the room—
Q. About that I am not particular; you were considerably further off than Mr. Hall and Mr. Stimson?
A. Yes, that is, I must have been twice as far.
Q. When was your attention called to the conversation after that time?
A. I should think—I cannot tell when it was first called.
Q. Well, give us your opinion; the first you recollect of its being called to your attention?
A. I cannot tell the first; I remember now of my attention being called to it last winter on the hearing of the matters before the House judiciary committee.
Q. Who was it first called your attention to this?
A. The newspaper reporter, I think.
Q. Did you have a talk with Judge Page about it?
A. I have since I come up here.
Q. Not before?
A. No sir.
Q. Have you talked with any one about what you could swear to before you came up here?
A. No sir?
Q. Were you a witness before the judiciary committee?
A. No sir.
Q. Now sir, you swear that Judge Page said at that time, that the fees he had taken were too much?
A. I think I did.
Q. Will you swear, positively, that he said anything about fees being too much?
A. No sir; I should not want to swear positively, because I was not especially interested to call my attention to it.
Q. You had no more interest in paying attention to this talk than what is said to the grand jury?
A. Yes sir; because I was right before him, and when I came in the talk to the grand jury was evidently closing.

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Q. Can you tell us of anything else he said there to the grand jury, or anyone else?

A. Any other transaction?

Q. Yes?

A. I don't recollect anything. I was there merely incidentally.

Q. How long were you there after the Stimson matter was talked over?

A. I can't tell the time, it was but a very few minutes.

Q. Can you tell us what the judge did next after this; what business was done by any one, after the Stimson matter?

A. I think he said the "grand jury may retire."

Q. Are you sure of that?

A. No sir. I am sure they went out.

Q. Did he say to Mr. Stimson that he wished him to pay over the money then and there?

A. I don't recollect that he used those words.

Q. Well, what did he say?

A. "You may pay over the balance of the money here to the clerk of the court in the presence of the grand jury," or that "the grand jury may see that it was done." I cannot tell which of those expressions he used.

Q. You won't be positive, then, about his language?

A. Whether it was as to these words?

Q. You are positive he said that in substance?

A. Yes sir.

Q. Now then, about Mr. Stimson's reply; are you positive as to the reply, what it was?

A. I am positive he said he had not the money there.

Q. Is not that all he said?

A. No sir.

Q. What did he say?

A. Can I go to the bank and get it?

Q. What did the judge say in reply to that?

A. "O, certainly."

Q. You are sure he said that?

A. Either the word "certainly" or the word "yes;" I think it was "certainly," or a gesture of assent, and then stated "perhaps the sheriff can loan it to you."

Q. You feel very positive about that language?

A. Yes sir.

Q. Do you know the precise amount he was to pay over?

A. It was talked $5.50.

Q. You are positive about the sum?

A. I am positive I heard that sum.

Q. Well, what next did the judge say to him after he paid over that money?

A. I think it was in that connection that he said something about his presuming he was inexperienced and he must be careful for the next time and not to repeat it.

Q. If he did repeat it what was he going to do to him?

A. I don't think he said.

Q. You won't swear that he stated that if he did repeat that, he should punish him?

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A. I will swear that I have no recollection of anything of the sort.

Q. You have no recollection of hearing him say that?

A. No sir.

Q. But you won't swear he did not say it?

A. I will say that I don't believe he said it.

Q. Mr. Hall and Mr. Stimson could hear what he said as well as you could, could they not?

A. They were in a position to.

Q. It was their business to pay attention to what the judge said as much as it was yours?

A. I don't know, sir.

Q. Were you paying more attention to what the judge said than they were?

A. I was less accustomed to being there; it might make some difference.

Q. You think that was more of a reason why you should hear than Mr. Stimson, who was directly interested in the conversation?

A. That might be.

Q. And you think your memory would be better than his, who was directly interested?

A. I don't know, sir.

ANDREW KNOX SWORN,

On behalf of the respondent, testified.

Mr. LOSEY. Q. Where do you live, Mr. Knox?

A. At Austin, Minn.

Q. For how long a time have you lived there?

A. About ten years.

Q. Do you know the respondent?

A. I do.

Q. How long a time have you known him?

A. Ever since I have been in Austin.

Q. What is your business?

A. My business is farming, now.

Q. Were you a member of the grand jury in 1877, of Mower county?

A. I was.

Q. What position did you occupy on that grand jury?

A. I was foreman of that grand jury.

Q. Do you remember the circumstances of the grand jury bringing in a presentment in court or a statement of facts concerning the collection of fees by David Stimson, in the case of the State of Minnesota against Weller.

A. I do.

Q. State what the grand jury brought in?

A. I can't state in the words now.

Q. State it as near as you can recollect it?

A. They found that there had been a fine imposed upon Mr. Weller by a justice's court and there had been an appeal taken to the district court and the judgment was affirmed, and the judgment, I think, was something about $80. I would not be positive as to the amount, but it was about $80. We found Mr. Weller had paid $20 of this amount to Lafayette French, then county attorney, and that Mr. French had paid

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the $20 to Mr. Stimson, who was deputy sheriff, or acting so, and that he had paid $14.50 of it to the clerk of the court, or into the county, (I don't remember whether he paid it to the clerk of court or the treasurer) and had retained $5.50 as fees for his services.

Q. You found these matters and presented them to the court?

A. Yes sir; that is, the substance. I could not say that those are just the words that we presented it to the court in.

Q. From whom did you ascertain these facts? From Mr. Weller, Mr. French and Mr. Elder?

A. I think it was Mr. French, but I would not be positive as to him. I know that Mr. Weller and Mr. Elder, the clerk of the court, and I think Mr. French, was there.

Q. When you brought these statements in the court, what occurred?

A. As to this matter?

Q. Yes sir, as to this matter?

A. When we handed our presentment to the court he looked it over before we retired; he asked Mr. Hall if he had a deputy by the name of D. H. Stimson—or D. K. Stimson, I am not positive which, because I did not know his name myself at the time. He said he had. He asked him if he was in the room, and Mr. Stimson at that suggestion rose up in the audience back from the court's desk, and the Judge said, "Mr. Stimson, please step forward." He stepped forward inside the railing that is around the bar, and the Judge then asked him if these facts as we had presented,—naming them over, that is, the substance,—if those were the facts in the case.

Mr. Stimson said it was, or gave his assent to it, and the judge then stated that that was an illegal proceeding, and that it would be necessary for him to pay the money over to the clerk of the court, where it belonged. Mr. Stimson put his hands in his pockets, and says he: "I don't think I have got the money;" says he, "I think I can get it by going to the bank." I think the judge said: "You can borrow it from the sheriff or some one, or you can get it." Mr. Stimson merely turned, perhaps, one step, and there was two parties offered to loan him the money; took out their pocket-books, and one of them handed him a bill (I don't know how much), and he then stepped forward and paid it over; but before he paid it over, while the judge was asking the questions—at the close of his asking the questions, whether those were the facts or not: "You are an inexperienced officer," said the judge, and "I hope this will not occur again in your practice, as it is an illegal one;" after Mr. Stimson paid the money over he spoke, or turned to me (as I sat close by to his left), and says he, "the jury may retire."

Q. Did you bring any other business in the court, for the consideration of the court, at the time you came in with the Stimson matter?

A. I think we did.

Q. Did the court, at the time, use this language: "Young man, you step up here before this grand jury and pay over the fees that you have collected, and if I catch you again doing anything of the kind, I will punish you to the full extent of the law," or anything of that character?

A. Not in that language.

Q. Did he say anything of that character?

A. He said to Mr. Stimson: "You can step forward and pay this over to the clerk of the court in the presence of the grand jury"—I think he said.

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Q. Have you stated all that was said by the court, so far as you can remember ?

A. Perhaps if my attention was called—it is very hard for me to repeat.

Q. Well, it is all you can remember?

A. It is, at this time.

Q. Did Mr. Stimson at that time make any application to the court to be heard?

A. He did not.

Q. Did he ask to explain anything of that character?

A. He did not, sir; he made no objection to the proceedings in any way.

Q. What was the tone of the judge of the court in addressing Mr. Stimson?

A. In his ordinary tone of voice that he used in court.

Q. Did he seem to be excited in the least?

A. Not at all.

CROSS-EXAMINATION.

Mr. Manager CAMPBELL. Q. Do you pretend to give the exact language of the judge in this case.

A. I do not; I said that I could not.

Q. You simply give the substance as you understand it?

A. Yes sir.

Q. How came the grand jury to investigate that matter?

A. Our attention was called by the court to it.

Q. Had you the execution before you?

A. I am not positive whether we had or not.

Q. Did you return that execution to the judge at the time you returned those papers?

A. I am not positive as to that, whether we did or not. I have heard the evidence here, but I cannot fix it in my mind positively as to whether we did or not.

Q. Did you ever see that execution to your knowledge?

A. Well I am not positive as to that, whether we examined the execution or not. I would like to explain here as to what Mr. Campbell has called out, that we had before us the fact that Mr. Stimson had been to Lansing—it is as to the execution. I would not say whether he was there with the execution or not, but he had been there to see Mr. Weller in regard to it, and Mr. Weller hadn't come down. As to the execution, positively I am not able to state, sir.

Mr. LOSEY. Q. Was the matter of a watch talked of there before the judge?

A. No sir.

Q. Anything of the kind mentioned there in your hearing?

A. No sir.

Mr. Manager CAMPBELL. Who drew up this report?

A. I am unable to say whether it was Mr. Crane or myself; sometimes I drew the reports and sometimes he did it.

Q. Mr. Crane acted as clerk ?

A. Yes sir.

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F. A. ENGLE, SWORN,

And examined on behalf of respondent, testified:

Mr. LOSEY. Q. Where do you reside, Mr. Engle?

A. In Austin in this State.

Q. How long have you known the respondent, if you know him?

A. I came here about seven years ago and got acquainted with him soon after I came.

Q. Were you a member of the grand jury in Mower county, in the March term of 1877?

A. I was.

Q. You are a little hard of hearing, are you not?

A. A little bit.

Q. You did not hear the evidence given by Mr. Knox, sir?

A. I heard some of it when I was in the back part of the room—most of it, I guess.

Q. Do you remember the fact of the grand jury coming into court and making a written statement to the court, in relation to the transaction of David Stimson, in connection with a judgment in the case of the State against Weller?

A. I do, some of it.

Q. What occurred in court?

A. My recollection is, that we presented the matter to the court, and he looked it over; he asked the sheriff if he had a deputy there by the name of Stimson; he said that he had; I then noticed that Mr. Stimson was brought up to the bar, and stood to one side.

I think the judge said to him to step forward, and he stated to him the matters that we had reported and he asked him if they were correct. Mr. Stimson assented to them that they were correct, and then the court requested him to pay over the money to the court; Mr. Stimson replied that he guessed he hadn't the money with him, and my recollection is that the judge said to him perhaps the sheriff would let him have it; just then the sheriff remarked that he was in the same fix. At that instant there was some one, I think there was about two, rose up and let him have the money, and he handed it to the clerk.

Q. Did Mr. Stimson wish to be heard or to explain?

A. No sir, I have no recollection that he said anything.

Q. Did the court say to him, "Young man you step up here before the 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 again I will punish you to the full extent of the law." Did the court use any such language to him?

A. Not to my recollection; I think about the time that he was handing the money over, he said something, perhaps, to the effect that he might be new in the business, and hoped that it would not occur again.

Q. The court said that to him?

A. Yes sir.

Q. What was the manner of the court in addressing Mr. Stimson in the matter?

A. I did not observe anything different from what there had been all the time when we were in the court: I did not observe that there was any difference.

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CROSS-EXAMINATION.

Mr. Manager CAMPBELL. Q. Mr. Engle, what did Mr. Stimson say when the court first addressed him?

A. I don't remember that he made any remark only to assent to that report.

Q. He told him he had taken the fees?

A. He admitted it when the court called his attention to it.

Q. He said he thought he was entitled to them, or supposed he was, did he not?

A. I don't remember that he did.

Q. You don't remember of his saying anything about it?

A. No.

Q. What did he say; can you tell anything that he said?

A. I think, my recollection is that he assented.

Q. Well, what did he say after he assented; did he say yes or no, or what was it?

A. I think that he said, in the different pauses, that he had done so.

Q. You think he stated, "I have done so;" what made him say "I have done so;" why should he say so; what remark did the judge make to him, that he should say so?

A. He asked him whether these things were so.

Q. What did Mr. Stimson reply?

A. To the report he assented.

Q. What did he say?

A. Well I don't know that I can give it in any different form only he assented.

Q. He did not say anything?

A. I did not say that he said anything else at that time; I think the court requested him to pay the money over, and he then said he didn't think he had it.

Q. What did the Judge say then?

A. My recollection is that he said to him that the sheriff might let him have the money.

Q. Is that all he said?

A. I think it is. That is all that was said.

Q. You are pretty positive about that, Mr. Engle?

A. That is all that I can remember that he said.

Q. Didn't he ask him if he could have permission to go to the bank and get it?

A. I think when he stated that he hadn't the money, that he stated that he would have to go to the bank and get it.

Q. The Judge told him that he could borrow it?

A. That is my recollection.

Q. Of Mr. Hall?

A. That is the way I remember it.

Q. And you have told all that took place there as near as you can recollect it?

A. I think that I have as well as I can remember at the present time.

Q. Do you think that you have told all that did take place; all that was said.

A. I think that I have in substance.

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Q. When did you first think of this matter after that day?
A. I don't remember that I ever talked anything about it at all up to the time of the investigation here last winter.
Q. What made you think of it then?
A. Well, I saw it published in the papers.
Q. Did you expect to be called as a witness then?
A. I did not.
Q. When did you have the impression that you would be called as a witness upon this point?
A. I did not know until I was subpœnaed by the sergeant-at-arms to appear here in St. Paul; I did not know upon what point.
Q. Were you sworn upon this point last winter?
A. I don't think that I was.
Q. Nothing said to you about this point last winter?
A. My recollection is now that I was not on this point.
Q. You were sworn about the grand jury matter, were you not?
A. I think that was all, and I was only a few minutes before the committee.

O. W. CASE SWORN

And examined on behalf of the respondent, testified:

Mr. LOSEY. Q. Where do you reside, Mr. Case?
A. In Mower county.
Q. How long have you lived there?
A. Seventeen years.
Q. What is your business?
A. Farming.
Q. Were you a member of the grand jury at the March term, 1877, held in Mower county?
A. I was.
Q. Do you remember the fact of the grand jury presenting a statement to the court in the matter of David Stimson collecting fees in the case of the State of Minnesota against Weller?
A. I do.
Q. What occurred in court when that matter was brought before the court?
Speak up Mr. Case.
A. Well, I think when the report was presented to the judge, that he asked Sheriff Hall if he had a deputy by the name of Mr. Stimson. The sheriff answered that he had. I think Mr. Stimson arose in the back part of the court room, and the judge asked him to come forward; he came up inside the bar, and the judge stated the report that the grand jury had presented, and asked him if those were the facts—if that report was true. He answered that it was. I think the judge then told him to step forward and pay the balance that he had retained as fees to the clerk of the court in the presence of the grand jury, that they might see that the matter was disposed of.
Mr. Stimson, I think, said that he had not the money with him; the judge then asked him if he could not borrow it from Sheriff Hall, or from some other party; I think Mr. Stimson said he would have to go to the bank, or made a remark to that effect. About that time some person near him handed him the money, and he walked up to the clerk and paid it over.

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Q. Did he make any application to the court to be heard?
A. I think not.
Q. Did he make application to explain any thing?
A. I did not hear anything of the kind.
Q. Did the court say to him that if he caught him doing this thing again, that he would punish him to the full extent of the law, or anything of that character?
A. No sir.
Q. How long have you known the respondent, Judge Page?
A. Well, I have known him by sight ten or twelve years I should think.
Q. What was his manner at the time this Stimson matter was going on before him?
A. Well, his manner was the manner of Judge Page; earnest, dignified, and gentlemanly, I call it.

CROSS-EXAMINATION.

Mr. Manager CAMPBELL. Q. Mr. Case, this matter was called to your attention by the judge, was it not, in his opening to the jury?
A. Yes sir, I think it was.
Q. That is the reason that the grand jury investigated it?
A. Yes sir.
Q. Do you recollect whether you had the execution before you or not?
A. I don't recollect whether the execution was before the grand jury or not.
Q. Do you recollect seeing the execution at any time?
A. No sir, I do not.
Q. Do you know who drew the report?
A. Well, it would be my impression the report was drawn by the clerk of the grand jury. That would be my impression—Mr. Crane.
Q. Do you pretend to give all the conversation that took place there in court?
A. I pretend to give the substance of the conversation that took place.
Q. Did Mr. Stimson say anything about that he thought he was entitled to fees?
A. Well, 'tis my impression that he did.
Q. You think he did?
A. I think he did.
Q. You think he asked to be allowed to explain?
A. I don't think he did.
Q. But you do think he stated he was entitled to fees?
A. I think he did.
Q. Did the Judge then tell him that he was not entitled to fees?
A. Yes, he told him that it was an illegal transaction.
Q. That no fees were allowed?
A. He was not allowed to retain any fees of a fine.
Q. In a criminal action?
A. Yes; that he would have to look to the county for his pay.
Q. Then you did not tell all the story?
A. Well, it was not inquired.

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Q. Then there might have been other things?
A. It is posible.
Q. Your attention was not called to this until some time afterwards?
A. Until this matter?
Q. Until this investigation before the judiciary committee?
A. This matter of Mr. Stimson, I never had any idea of being called as a witness to testifiy in this case until I came to St. Paul this time, although I have seen statements in regard to the evidence that was given in regard to that matter.
Q. When you were before the judiciary committee, were you not sworn upon this matter?
A. No sir.
Q. And you tried to refresh your memory since you have been here?
A. I have thought that matter over considerably since seeing the evidence that was sworn to, in print.
Q. I will call your attention to another matter that you have not stated anything about; did he say anything about if this occurred again that he should punish him.
A. No sir.
Q. Did he say anything about his being a young officer, perhaps inexperienced?
A. Well, I think he did.
Q. What did he say?
A. I think it was—the substance of it was that he judged he was an inexperienced officer; new in the business, and that that accounted for his illegal transaction, or words to that effect.
Q. You cannot give the language he used?
A. I do not pretend to give the judge's language.
Q. Then that was another matter that you had forgotten?
A. I have not forgotten any of those occurrences at all, but it didn't come to mind; I may not tell them readily but they did not come to my mind.
Q. He said he was an inexperienced officer?
A. He presumed he was.
Q. Did he tell him not to let this occur again?
A. Well, he said something about it not occurring again, or it would be better that it should not occur again.
Q. You cannot use his language?
A. I do not pretend to.
Q. He did say something about in not occurring again?
A. Perhaps so.

J. D. RUDD, SWORN

and examined on behalf of respondent, testified:
Mr. LOSEY. Q. Where do you live?
A. In the town of Red Rock, Mower county.
Q. What is your business?
A. Farmer.
Q. Were you a member of the grand jury in Mower county; of the March term, 1877?
A. I was.

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Q. You remember a matter coming before the jury in which David Stimson was concerned?

A. I do.

Q. You remember what occurred in court when the matter was presented to the court?

A. Partially.

Q. Go on and tell what you remember what occurred?

A. I remember the grand jury bringing the matter before the court; that they had investigated something in regard to Mr. Stimson's case. The judge looked at the article, and asked Sheriff Hall if he had a deputy by the name of Stimson; and Mr. Hall rose up and said he had. And Judge Page said he would like to have him step forward. Mr. Stimson stepped forward very near to the altar around the foot. He asked him if those were the facts, that he had retained $5.50 of the matter that came up in the Weller case. Mr. Weller had paid in $20.00 and that there had been $14.50 endorsed, and that Mr. Stimson had kept the balance of $5.50. The judge asked him if that was the fact, and he said it was.

Q. Did Mr. Stimson ask to be heard?

A. Not to my recollection.

Q. Did he ask to explain?

A. Not to my recollection; he did not.

Q. Did the court say to him during the proceeding that if he caught him doing this thing again he would punish him to the fullest extent of the law; or anything of that character?

A. No sir.

Q. Where were the grand jury sitting relative to the position of the judge?

A. Well, the judge was sitting the same as here, and the grand jury were sitting right along down in this way (witness illustrates.)

Q. About how far away?

A. I should judge probably six or eight feet; maybe ten.

Q. The jury was sitting away from the judge?

A. Yes sir.

Q. Where was Mr. Stimson?

A. Mr. Stimson was on the right hand—on the north side of the building.

Q. About how far away were the jury?

A. Well, it was across the hall—something like this shape; right across the hall; probably it might have been twenty feet or more.

Q. How far away from you was Mr. Stimson?

A. I should think probably twenty feet.

Q. Could you hear him distinctly?

A. Yes sir.

Q. Which was nearest, the judge, Mr. Stimson or the jury?

A. When Mr. Stimson stepped forward?

Q. Yes, after he stepped forward and commenced speaking?

A. The judge—that was when Mr. Stimson rose up and come forward.

Q. Who was nearest the judge, the grand jury or Mr. Stimson; at the time Mr. Stimson was speaking?

A. The judge was the nearest.

Q. You do not understand my question; who was nearest the judge, Mr. Stimson or the grand jury at the time Mr. Stimson was talking?

A. Mr. Stimson was the nearest—nearer than the grand jury was.

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CROSS EXAMINATION.

Mr. Manager CAMPBELL. Q. Your attention was called to this matter by the court in his opening charge?
A. I don't recollect.
Q. You don't know whether it was or not?
A. I don't recollect.
Q. You don't know how you came to investigate it?
A. I think it was called at the opening of the court.
Q. Was the district attorney before you while you were investigating this matter?
A. I could not swear that he was.
Q. Did he not come in there and bring the execution that Mr. Stimson had?
A. I don't know whether he did or not.
Q. You don't know whether you saw the execution or not?
A. No sir, I do not.
Q. Were you in the front seats of the grand jurors or the back seats!
A. I was pretty well back.
Q. Mr. Stimson was directly in front of the stage when the judge was talking to him?
A. Yes sir, and in this shape where I sit.
Q. That is, the judge was faced toward Mr. Stimson?
A. Yes sir.
Q. With his back partially toward the grand jury?
Q. No sir, sideways.
Q. Can you tell what language was used by Mr. Stimson there when the judge spoke to him?
A. When the judge spoke to him and asked him if he had retained those fees?
Q. Yes sir?
A. He said he had.
Q. Was that what the judge said to him?
A. It might not have been in that language.
Q. Then you cannot tell any of the language that was used there?
A. I would not say positively in the language, but the purport of it.
Q. You think you are giving the substance of it?
A. Yes sir.
Q. As you understood it?
A. As I understood it.
Q. You say you only remember partially what took place there?
A. Yes, I could not state everything that took place there.
Q. Didn't the judge say to him, "Mr. Stimson, is this true; are the facts in this paper true;" was not that the language that the judge used?
A I don't know, sir.
Q. He may have said that?
A. I don't think he did.
Q. What did he say?
A. He asked him if those were the facts.
Q. What facts?
A. That he had retained $5.50, and he said that he had.
Q. You think that is the exact language?

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A. Well, that is the substance of the language used.
Q. What did Mr. Stimson say about his fees?
A. I think Mr. Stimson said that he had retained it as fees.
Q. Did he say he thought he had a right to retain them?
A. I don't recollect.
Q. You don't recollect precisely what Mr. Stimson did say; did Mr. Stimson speak loud or low?
A. In the ordinary tone of voice, I should think.
Q. He did not speak as loud as the judge did?
A. Probably not; it did not sound so loud.
Q. Did he speak as loud as you do now?
A. I think probably he did.

Mr. CAMPBELL. Then there could not anybody hear him. [Laughter.]

A. Well, probably louder.

Mr. LOSEY. Q. What was the judge's manner at that time?
A. His manner was as it generally is when addressing the court.
Q. Did he appear to be excited, or anything of that kind?
A. Not a bit.

D. B. COLEMAN, SWORN

And examined on behalf of the respondent, testified:

Mr. LOSEY. Q. Where do you live, Mr. Coleman?
A. In Mower county, Clayton township.
Q. What is your business?
A. Farmer at present.
Q. Do you know the respondent?
A. I do.
Q. How long have you known him?
A. Ten years.
Q. Were you a member of the grand jury at the March term of 1877?
A. I was.
Q; Do you remember of the grand jury coming into court with the statement of facts in the matter of which D. K. Stimson was concerned in the collection of fees of the State against Weller?
A. I do.
Q. What occurred in court?
A. Upon the presentation of papers to the judge, he examined and read apparently—read the statement made by the grand jury—then inquired of the sheriff in these words, I think, "Mr. Sheriff, have you a deputy by the name of Stimson?" the sheriff replied that he had. "Is he in court?" the sheriff replied that he was, and at that time Mr. Stimson rose up and the judge requested him to come forward; Mr. Stimson came forward and stopped just within the bar; stepped up to or within the bar and the judge read statements made by the grand jury, certain portions and questioned Mr. Stimson in regard to the truth of these statements Mr. Stimson acknowledged the truth of the statements; the judge then said to him—of course I am not giving the exact words of the judge—the judge says to him, "the fees or money that you have retained in this matter, you have retained illegally; you will please pay them over—pay over this retained money to the clerk of court," I think, "for use of county." Mr. Stimson remarked that he hadn't the money with him,

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and I think the judge told him perhaps he could borrow it; I am not sure but that he said the sheriff might have it; the sheriff remarked that he was in the same condition of Mr. Stimson and another party handed him the money and he went forward and paid the money. Immediately upon the payment of this money, the judge remarked to him that he was young in this business and that he hoped a mistake of this kind would not again occur in his business, or words to that effect.

Q. Did Mr. Stimson make any application to the court then and there, to explain the matters; did he ask to be heard?

A. He did not, sir.

Q. The court didn't refuse to hear him then?

A. No sir.

Q. Did the court say to him, "If I catch you doing this thing again I will punish you to the fullest extent of the law," or anything of that character?

A. No sir.

Q. What was the manner of the judge at that time?

A. His appearance?

Q. The conduct of the business of the court?

A. His usual plain, dignified and calm manner on the bench.

Q. Didn't appear to be excited at all?

A. Not at all, sir.

Q. How frequently have you been in this court, Mr. ——

A. I have never been in the court as juror except that time, and have never had occasion to be in court after, perhaps anymore than 2 or 3 times during—that is, I mean in Mower county. In Fillmore county I had often been in court when the judge held court there.

Q. Was there anything said about "yound man if I catch you going that thing again," or anything of that character?

A. There was not, sir.

CROSS EXAMINATION.

Mr. Manager CAMPBELL. Q. Mr. Coleman, you are very positive just as to the language that was used?

A. I remarked that I was not positive to the exact words.

Q. You don't pretend to give all that the judge said?

A. Do I pretend to give all that the judge said?

Q. You said you could not; not in the exact language, but you can tell everything that Mr. Stimson said?

A. I don't pretend to say that I would use other men's exact language.

Q. You pretend to say that Mr. Stimson could not have said to the Judge, "can I explain?"

A. Yes sir.

Q. You are positive he could not have used that language?

A. I am; he was so near me that I could very readily hear him, for Mr. Stimson spoke in a good fair tone of voice. I was not distant from him.

Q. You are positive that everything was said by Mr. Stimson that you have related here, is the substance of what he said?

A. I am positive that he made no objection.

Q. Are you positive that you have given the substance of everything that Mr. Stimson stated?

A. I have endeavored to do so.

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Q. What is your opinion; have you given it all or not? Do you think you recollect it all?

A. There were but very few words used by Mr. Stimson in the matter.

Q. And you have given all he stated?

A. I think I have given the gist of all he said.

Q. He didn't ask if he might go to the bank?

A. He may have said something about going to the bank.

Q. He might have said that?

A. Yes sir.

Q. Do you recollect whether he did or not?

A. I think he did.

Q. There may have been some other thing that you have forgotten. Do you know what the Judge said precisely, every word?

A. No sir.

Q. The Judge could not have said that "if this occurs again I will punish you to the full extent of the law"—that was not used?

A. It was possible for him to have said it at that time.

Q. Could you not have heard it?

A. No sir, that is not possible; he could have said it if he was so inclined.

Q. You also testified that his manner was dignified, calm, and I believe you testified before, with an air of great responsibility; is that true you so testified?

A. I am not sure that I testified before the committee in regard to the Stimson matter.

Q. But then his manner was calm and dignified?

A. At a certain time which I testified in regard to a certain transaction, or a certain time.

Q. Do you think that was his manner—do you not now?

A. I do sir.

Q. Calm, dignified and with an air of great responsibility?

A. The air of responsibility was at another time that I spoke of.

Q. Well you did testify?

A. I testified how that he was calm and dignified.

Q. You were the man that told the judge about Ingmundson, are you not?

Mr. LOSEY. That we object to as being no part of the cross-examination.

Mr. CAMPBELL. Q. Well, you are intimate with the judge are you not?

A. I am sir?

Q. You have gone to him and told him certain things about his duty, what he ought to call the attention of the grand jury to?

A. No sir.

Q. Have never?

A. No sir.

Q. In no case?

A. Only in the town of Clayton matters.

Q. Then you have in one instance—that answers my question?

A. Only in that matter.

Q. You say you never have been in court but once?

A. No sir.

Q. You have been there under indictment once, have you not?

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A. I happened in, but you might say I was there two or three times.
Q. Ten times?
A. Eleven times I guess; I think it was as many as eleven, but if you will allow me to say—
Mr. LOSEY. You can explain if you wish to.
A. I was going to say it was for no fault of mine—no criminal act of mine, that I was called into court upon an indictment.
Mr. LOSEY. What was it for, Mr. Coleman?
A. It was a claim that liquor had been sold contrary to the law, at my drug store, in the town of Grand Meadow, and very many men that knew me, and that knew these circumstances,—men of my acquaintance, knew it was against my positive orders, and I never was more pleased than I was when the judge imposed a fine upon me; and I paid it, and the thing was stopped then and there, and my employees submitted to my orders by the compulsion of the judge.
Mr. Manager CAMPBELL. Q. Did you plead guilty ten times—how many times did you plead guilty? [Laughter.]
A. I think my counsel entered a plea of guilty; one fine was imposed upon me, and one fine upon each of my employees. As I said before, not for any crime of mine.
Mr. LOSEY. Have you been on particularly friendly terms with Judge Page for the last five years?
A. I have not, sir.
Q. Did you support him for judge?
A. I have not, sir; I opposed him with all my powers.

H. T. DEMING, SWORN,

On behalf of respondent, testified:
Mr. LOSEY. Q. Your business, Mr. Deming?
A. Farmer.
Q. Where do you live?
A. Nevada, Mower county.
Q. How long have you lived there?
A. Fifteen years.
Q. Do you know D. H. Stimson?
A. I know him by sight.
Q. Do you know the respondent?
A. Yes sir.
Q. How long have you known him?
A. Twelve years by sight.
Q. Were you a member of the grand jury of Mower county at the March term of 1877?
A. I was.
Q. Do you know of the fact of the jury presenting a statement of facts before the court against Stimson for collection of fees in the case of the State of Minnesota against Weller?
A. Yes sir.
Q. What occurred in court?
A. Upon the examination in the court, the judge inquired of the sheriff if he had a deputy by the name of Stimson; he replied that he had; the person was in the back part of the room, and the judge said he wished him to come forward; he came near the judge's desk, and I think that he gave him the substance of which the jury had returned, and asked him if these were the facts; I think he said "yes, that is so;" he

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then explained to him in regard to the nature of the matter, and the impression I got was, that the execution was for a fine, and he was not entitled to take any fees from the fine; he directed him to pay over the money to the clerk of the court for the use of the county; Mr. Stimson remarked that he hadn't the money; that he would have to go to the bank to get it; I think the judge then said, "perhaps you can get it of the sheriff;" the sheriff was a little distance—near the chairs that were occupied by the petit jury, and he remarked he was in the same fix; some one in the range of seats near Mr. Stimson, rose up and reached back, and got some money from some other parties, and handed it to the court.

Q. Did he make any application to be heard?

A. I didn't notice.

Q. Did he make any application to explain matters?

A. No sir.

Q. He paid over the money; what then occurred?

A. I think the Judge cautioned him not to repeat a matter of that kind.

Q. Did the court say to him if ever he caught him doing anything of that kind again, he would punish him to the fullest extent of the law, or anything of that character?

A. No sir.

Q. What was the manner of the court at that time?

A. His ordinary manner.

Q. Did he appear to be excited?

A. No sir.

[No cross-examination.]

N. A. SUMNER, SWORN,

And examined on behalf of the respondent, testified:

Mr. LOSEY. Q. Where do you reside?

A. In Sergeant, Mower Co.

Q. How long have you lived in Mower county?

A. Six years.

Q. Were you a member of the grand jury for the March term of 1877?

A. I was.

Q. Were you present in court on the grand jury at the time a statement of facts were brought in, in regard to David Stimson?

A. I was.

Q. Do you remember what occurred then; if so, state it?

A. The Judge looked over the articles, and inquired of the sheriff if he had a deputy sheriff by the name of Stimson; he said he had. Mr. Stimson stepped forward, and he explained to him what the grand jury had returned in regard to the Weller case, and asked him if the facts were as stated. And he admitted that they were; he admitted the facts that the grand jury had returned was correct, that he had collected $20 of fees, and had taken $5.50 for his fees, and paid the balance into the treasury; either to the clerk or to the treasurer, I am not positive which.

Q. Did he make any application to the court to be heard?

A. Not that I heard.

Q. Did he ask to explain?

A. I don't think that I heard.

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Q. What was the manner of the judge of the court?
A. The usual manner, I should think, in addressing any one in court.
Q. Did he appear to be excited?
A. Not in the least.
Q. Did he make any threats towards Mr. Stimson?
A. No threats.

CROSS-EXAMINATION.

Mr. Manager CAMPBELL. Q. You say you were a member of the grand jury?
A. I was.
Q. Do you know how this matter was brought up before this body?
A. I am not positive; the matter was brought in by some one; whether it was the county attorney or who.
Q. Have you any recollection about seeing the execution?
A. Yes sir, it was in the room, but whether I heard it read I am not positive.
Q. All the grand jury did then, was to detail the facts that were presented before them?
A. That was all.
Q. Were there any recommendation of any kind?
A. I don't think there were any recommendations.
Q. When you returned that report, didn't you return that execution?
A. I have my opinion that we did, still I was not foreman; the foreman carried in what paper we did return.
Q. Do you pretend you can give anything more than an outline of what took place?
A. Probably not, I could not say the language; I would not try.
Q. You give what you recollect?
Q. And give them as you recollect?
A. I do sir.
Q. You don't pretend to give the language that was used?
A. Not entirely.
Q. There might have been several other things said by the court and Mr. Stimson?
A. Not a great many sir, because it was a very short time.
Q. Still there might have been something said?
A. There might have been a few things.
Q. Mr. Stimson might have said something about his fees and you not catch it?
A. Perhaps he did.
Q. Well you don't recollect that?
A. Well I think he might have said he thought he was doing right.
Q. He might have said he would like to explain?
A. No sir, I think I would have remembered that.
Q. You are pretty positive that he did'nt say that?
A. I am very positive he did'nt say that.
Q. But you do think that he said he thought he was entitled to his fees?
A. I think he made some remarks that he thought he was doing his duty, and had a right to retain the money, he may have made that remark.

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Q. Do you recollect the Judge giving any instructions to the grand jury about this afterwards?

A. No sir, the language ended there.

Q. Do you recollect of his giving any instruction to the grand jury at all at that time?

A. In regard to this matter?

Q. To any matter at that time after the return?

A. No sir, I don't think there was anything said.

Q. If the records of the events should show that he did would you think that you may have forgotten it?

A. I might.

Q. There was several things taking place there that you might have forgotten?

A. Not very many.

Q. If the court had given these instructions at the same time on any subject would not you be likely to remember it?

A. I suppose I would.

Q. You think he did not?

A. I think he did not.

Mr. DAVIS to Manager Campbell. Do you refer to the instruction of the court on any subject?

Mr. Manager CAMPBELL. On any subject at that time of any nature. It is simply testing the meaning of the witness.

Mr. DAVIS. Mr. President, we have other witnesses on that point, but we shall not proceed any further on that branch of the investigation unless requested by the Senators.

E. R. CAMPBELL, SWORN,

And examined on behalf of respondent, testified:

Mr. LOSEY. We will now proceed with the Ingmundson matter. Specifications six and seven, we will put in the evidence together. It is the Ingmundson matter contained, as a whole.

To the witness. Q. Where do you reside?

A. In Austin, Mower county.

Q. How long have you lived in Austin, Mower county?

A. Two years.

Q. Were you a member f the grand jury of the September term, 1876?

A. Yes sir.

Q. How long had you lived in Mower county?

A. I have lived there since June, 1876, in Mower county.

Q. Haven't you lived there previous to that time?

A. I had lived in Mower county since the spring of '71.

Q. What position did you occupy upon that grand jury?

A. Clerk.

Q. You were the clerk, were you?

A. Yes sir.

Q. Do you remember the charge of the grand jury at that term in relation to the matters of the county officers?

A. I believe I do substantially—not the words, but the essence of the matter; I should think—

Q. Did the court call the attention of the grand jury, at that time, to the treasurer's office particularly?

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A. No sir, not to my recollection.
Q. You are positive of that?
A. I am positive; I don't remember if he did do it.
Q. What investigation did the grand jury make in reference to the office of Ingmundson, the county treasurer, if any?
A. Well, I think Mr. Ingmundson was called in, also the county auditor and chairman of the board—the county board. Some few general questions were asked them with reference to those matters, and that was about all I remember.
Q. Do you remember that the grand jury presented a report at that time in relation to those matters?
A. No report was presented to the court in relation to the Ingmundson office.
Q. What was done?
A. Well, what I have stated, was done there, and nothing further, except as an item of that report. Something was said in reference to Mr. Ingmundson's office in our final report which was handed to the clerk.
Q. Was the attention of the judge of the court called to it by the grand jury?
A. No sir.
Q. It was returned to the court in what manner?
A. Returned in the form of the minutes of one of the meetings.
Q. Which was handed in by the grand jury to the clerk of the court?
A. Yes sir.
Q. How long previous to the time when you were discharged from your duties as grand jurors, were those minutes handed in?
A. After we were discharged.
Q. Immediately after?
A. Immediately after, on the same day. I don't know how quick.
Q. Who drew that report?
A. Myself.
Q. Was it submitted to the grand jury?
A. Not in any regular form; I don't think.
Q. Any vote taken on it?
A. No; at least, I could not swear that it was taken or not; my recollection is, it was not.
Q. Was the subject matter that has been sworn to here, as having been examined by the grand jury at the March term, 1877, called to the attention of the grand jury of the September term of 1876, or did they make any examination on it?
A. I don't think they did.
Q. The Coleman order of Sever O. Quam?
A. The Coleman order I never heard of at that time.
Q. You made the examination of the affairs of the town treasurer of the town of Clayton—of Sever O. Quam—in regard to his embezzlement?
A. Yes sir.
Q. He was indicted, was he not?
A. Yes sir.
Q. Was any examination made at all by the grand jury at that time, in regard to any irregularities committed by I. Ingmundson, county

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treasurer, with Sever O. Quam, town treasurer of the town of Clayton?

A. I don't recollect.

Q. What is your best judgment?

A. I think not; I have no recollection of anything of that kind; I think I would have have had if such had been the case.

CROSS EXAMINATION.

Mr. Manager CAMPBELL. Q. You say you acted as clerk of the grand jury.

A. Yes sir.

Q. You made up the report?

A. Yes sir.

Q. You made the entire report?

A. Yes sir, and handed it in.

Q. You saw that report that was handed in here and sworn to as the report of the grond jury at that term with reference to that Ingmundson matter?

A. I have no knowledge of its having been here?

Mr. Manager Campbell here handed the witness the report of the grand jury of Mower county, as printed in the Senate journal of May 30th, page 58.

Q. Is that a part of your report?

A. In substance, I think that expresses it.

Q. Do you not think it was not the exact language used by you in your report?

A. I think it was very near it.

Q. You made that report there as the report of the grand jury?

A. I so understood it.

Q. You would not make such a report unless it was submitted to the grand jury, and consented to by them?

A. Well, it would take perhaps considerable, many words to answer that question.

Q. I should think you might answer yes or no?

A. I can't.

Q. Were you in the habit of making out reports to satisfy yourself, and passing them in as the report of the grand jury?

A. No sir.

Q. Why would you vary in this respect than with any other?

A. I cannot tell you; there was difficulty to get the attention of the grand jury to it, even of those persons that were inclined to take hold of it. Little or nothing was done except as I have stated, until the last hour of the two sessions, I think, and I had got a very strong impression from what had been said in regard to it, that it was a moral impossibility to believe that there was any necessity for investigating Mr. Ingmundson's affairs in that hasty and inconsiderate manner; and I think at the very close of the session, that article of the report was inserted as a means of closing up a disagreeable affair that I expected would never be heard of again, in a manner satisfactory to everybody concerned; at all events I don't recollect exactly why that was embodied there in the way it was.

Q. You don't know much about this report, then?

A. Yes I do, I put it there myself.

Q. You know you drew it?

A. Yes sir.

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Q. You drew it as the sentiment of the grand jury?
A. I think it expressed what the great bulk of them meant.
Q. Was not part of that report written by the grand jury?
A. It was written on a separate piece of paper, and I read it to them; there was no dissent, and a universal assent.
Q. You had read this yourself to the grand jury?
A. Yes, before it was put in the minutes.
Q. Are you now prepared to state that this was never called to the attention of the grand jury?
A. I said it was read to them.
Q. There was no objection to it?
A. No sir.
Q. And you think it expressed the opinion of the grand jury?
A. I do.
Q. And you was morally certain it was correct yourself at that time?
A. I didn't say that.
Q. You did say it just now?
A. I said that I had got a very strong impression that it was a moral impossibility almost that there should be any necessity of investigating Ingmundson's matters.
Q. Did you say you handed this to the clerk?
A. I handed it to him, with the other minutes of the meeting—the clerk of the court.
Q. Do you know whether Judge Page examined that report?
A. I do not.
Q. You don't know that he did not?
A. No sir.
Q. Do you recollect seeing any report published in the newspaper?
A. Yes sir.
Q. This was published, was it?
A. In substance, I think it was.
Q. Do you not think it was word for word?
A. Very nearly—as nearly as I can recollect.
Q. How came this grand jury to take up the Ingmundson matter unless the court called their attention to it?
A. That would perhaps be necessary for me to say what I underssood the judge's charge to be, in order to state it.
Q. State what you understood the judge's charge to be?
A After speaking of the two—supposed to be two defaulting town treasurers at that time, he said in substance—I do not pretend to give anything like his words—that he had reason to believe that certain irregularities existed in the offices of the officials of the county, standing in much higher official position than those town treasurers. At that time I didn't know, to the best of my recollection, what officers of the county he referred to.
Q. That was in reference to the Sever O. Quam matter, the Sever O. Quam defalcation as town treasuner?
A. Yes, and one other.
Q. That Sever O. Quam matter was connected directly with Ingmundson, as town treasurer, was it not?
A. I don't recollect that it was.
Q. You don't recollect that it was not?
A. I say that I do not recollect whether it was or not.

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Q. If you and the county treasurer had'nt understood that this referred particularly to the treasurer, how came you to call the treasurer before you and not others?

A. For my part, I supposed that the treasurer handling most of the county funds, more than any other officers of the county, that it seemed to me a very natural case to look for a defalcation, if any of the county officers were defaulting.

Q. You suppose the judge did refer to the county treasurer in that charge?

A. I never said that.

Q. Did you not draw it as a natural inference?

A. I said that I did'nt know which of the county officials he referred to in this charge.

Q. But you drew the inference that it must be the treasurer?

A. I can not say I drew that inference.

Q. Will you swear that you did not say that he understood that irregularities had occurred in the county treasurer's office?

A. I swear that I did'nt think he did, and farther that if he did, I believe I would have remembered it.

Q. If you did not know what county officer he referred to, why did'nt you report on all of them?

A. We would not be likely to recollect anything that we did not investigate.

Q. Why did'nt you investigate all as well as Ingmundson's; he charged you to investigate them all as much as he did Ingmundson?

A. No sir.

Q. He did charge you then to investigate Ingmundson more than anybody else; that is the county treasurer's office?

A. I have not so stated.

Q. You said he didn't charge you to investigate the other county officers as much as he did the treasurer's?

A. I didn't say that

Q. I so understood you, sir.

A. At least I don't remember.

Q. You had investigated Ingmundson and didn't investigate the other officials?

A. We done something towards investigating the affairs of Ingmundson, or was supposed to.

Q. But didn't towards any other officers?

A. Not that I recollect.

Q. You made no report as to the other offices?

A. No sir, we did not.

RE-DIRECT EXAMINATION.

Mr. DAVIS. Q. Do I understand you to say the grand jury called Mr. Ingmundson before them?

A. Yes sir, I think they did.

Q. What was the moral impossibility you spoke of a few moments ago, that prevented a full investigation of Ingmundson's office?

A. I said that I had got a very strong impression.

Q. Will you go on and state the facts how your impression was based?

A. Well, the statements in general of the other members of the grand jury.

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Q. Was there an unwillingness manifested to go into a full and thorough investigation of that office?

A. Yes sir.

Q. By members of the grand jury?

A. I thought it would be impossible to do that by the grand jury.

Q. Do you mean to say that that unwillingness was such that other members who did desire an investigation could not have it?

A. Yes sir.

Mr. Manager CAMPBELL. Q. Do you mean to be understood that you thought it impossible for the grand jury to investigate Mr. Ingmundson?

A. No sir, I don't think that; I didn't think there was sufficient disposition on the part of some of them to do that.

Q. Then you speak of these moral impossibilities, you speak of your own feelings towards Mr. Ingmundson, do you not?

A. I think my language was sufficiently plain.

Q. Was that what you meant to be understood?

A. I said that I had got a very strong impression, from what had been said by other members of the grand jury, that that was the case.

Q. Didn't you say this—that it was morally impossible?

A. I didn't say that.

Q. You don't mean to be understood so?

A. I mean to be understood exactly what I stated—that I have got a very strong impression that way.

Q. What way?

A. I had a very strong impression that it was a moral impossibility that there should be any necessity for investigating the Ingmundson matter.

Q. That is precisely as I understood you in the first place. The counsel have simply, for the other side, insinuated that it was a moral impossibility for the grand jury to investigate it.

WILLIAM LITCHFIELD SWORN

And examined on behalf of the respondent, testified:

Mr. LOSEY. Q. Where is your residence?

A. Lansing, Mower county, Minnesota.

Q. How long have you lived there? (Speak up loud.)

A. Twenty-one years.

Q. How long have you known respondent, if at all?

A. About ten years.

Q. Were you a member of the grand jury of Mower county, of the September term, 1876?

A. I was.

Q. What position did you occupy upon that grand jury?

A. I was foreman of that grand jury.

Q. Do you remember the fact that the grand jury brought into court certain minutes at the close of the term?

A. I do.

Q. Do you remember anything in regard to the charge of the court to the grand jury? Did he call your attention to the irregularities in the county treasurer's office specifically? Did he say anything about the county treasurer's office in his charge to the jury?

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A. His language, as near as I can recollect, was like this: that he was informed that there were irregularities in some of the town treasurer's offices, and that other higher offices might be investigated, or might need investigation.

Q. Calling your attention to any particular officers?

A. No sir; he might possibly have called our attention to the town of Clayton—the treasurer of the town of Clayton.

Q. You found an indictment against the treasurer of the town of Clayton at that term—Sever O. Quam—did you not?

A. Yes sir, we did.

Q. What was that indictment for, a general embezzlement by defalcation?

A. By defalcation.

Q. Do you remember the circumstances under which this report that was finally presented in the minutes of the grand jury, was passed by the grand jury; what had preceded it, and how came it to be made?

A. Have you reference—did you ask me in regard to Ingmundson?

Q. Yes, that short report?

A. We had attempted to examine into the matters of Ingmundson, and as I thought, with but little success. Mr. Ingmundson was brought before us, and the auditor of Mower county; there appeared to be a disposition among a portion of the grand jury to evade an investigation. When our business was concluded, and the grand jury had agreed to go and report "no further business," the clerk of the grand jury sat down and embodied in the minutes of the meeting this article.

Q. Was it put to a vote.

A. It was not; I put no such vote.

Q. What obstacles were there in the way of an investigation of the Ingmundson matter?

A. Well, in my opinion—the obstacle in my mind was that we had before that had trouble with one of the treasurer's office, and we employed an expert there for ninety days to ferret that out, and my opinion of trying to investigate the treasurer's office in the short time the grand jury had before them, and as little wit as we possessed, didn't appear possible.

Q. Was any examination of the office made; any thorough examination?

A. There was not.

Q. Didn't you examine the books?

A. We examined the auditor's books; the statement of the treasurer with the county board.

Q. Did you find any imperfections in that?

A. We found, I think, next to the last statement of the county treasurer that the chairman of the county board was not signed to the statement.

Q. His name was not signed?

A. His name was not signed to it.

Q. Did you call the attention of the auditor to that?

A. Yes sir, we did.

Q. Did you discover anything in relation to his depositing money in banks around the county?

A. There was no investigation made of that, not to my knowledge.

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Q. Did you discover anything anywhere of his receiving town orders in payment of taxes other than town taxes?
A. We did not.
Q. Did you make any investigation of that?
A. We did not.
Mr. CAMPBELL. I would suggest to the counsel to let the witness tell what was done and not lead him too much.
Mr. LOSEY. Was the matter of the town order of the town of Clayton for $114.42 investigated?
A. It was not.
Q. Your attention was not called to that at all?
A. No sir.
Q. Did the grand jury know any more about the affairs of Ingmundson as county treasurer, after this investigation was closed, than when it commenced?
Mr. CAMBBELL. I object to that question; I have no objection to the witness proving that he didn't know anything.
Q. Your investigation didn't shed much light on the matter?
A. Not much.

CROSS-EXAMINATION.

Mr. Manager CAMPBELL. Q. What do you mean when you say you investigated this matter with very little success; what do you mean by that?
A. I intended to mean that our investigation—we had so short a time and so much to trace in so short a time, that we could not look so as to inform ourselves much in regard to an investigation.
Q. What you meant to say was that in the time you had you could not give the matter a full investigation?
A. Yes sir.
Q. You do not mean to say you found things there that looked suspicious, do you?
A. No sir, I do not.
Q. As far as you went, you considered Ingmundson's conduct correct?
A. We found nothing out of the way except what I have mentioned.
Q. That is all you found; that the auditor's book hadn't been signed in one place?
A. Yes sir.
Q. This report that was made, was read to you?
A. Yes sir.
Q. I will read that report to you: "The jury find in this investigation nothing irregular, or any appearance of wrong doing in any affairs of the county treasurer. [Signed,] E. R. Campbell, clerk of the grand jury." That was read to you by the clerk?
A. I heard the clerk read it.
Q. You knew of it?
A. I protested against it.
Q. You did?
A. I did; that is, to him.
Q. Did you protest against it in the grand jury room?
A. It was in the jury room, yes sir.

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Q. You knew it was the report?
A. I did.
Q. Any of the other jurors object to it?
A. I don't think there was more than eight of the jury in the room at the time he wrote it; we had agreed that there was no further business, and to so report; he sat down and wrote this thing.
Q. He sat down and wrote this thing?
A. He did.
Q. And it was read there before it was written into the minutes which were written?
A. I have no recollection of the reading.
Q. Did any of the other grand jurors object to it?
A. I think not.
Q. It went in as a part of your report?
A. It went in as his report.
Q. Did you hand in the report?
A. I did not.
Q. Who handed it in?
A. He did to the clerk; I will take that back, I could not say that he handed it to the clerk.
Q. You supposed it was going to be handed in?
A. I supposed it was to be handed in to the clerk.
Q. You made no objection to its being handed in by your clerk as your report?
A. I did not to him; I simply protested against that being embodied in the report.
Q. You thought they hadn't investigated; that was your objection?
A. I know they hadn't investigated.
Q. That was your objection?
A. No sir, that was not my main objection.
Q. Did you make any objection known to the grand jury as a body?
A. To that being embodied in that?
Q. Yes sir?
A. I did not.
Q. You say you did not investigate fully; was there any obstruction thrown in your way?
A. No sir.
Q. No one objected to your calling any testimony—any witnesses?
A. No sir.
Q. None of the grand jury?
A. No sir.
Q. Who sent for Mr. Ingmundson?
A. I think Mr. Ingmundson was sent for by—I won't be positive—by a vote of the grand jury.
Q. He was sent for with the knowledge of the grand jury?
A. Yes sir, with the knowledge.
Q. He didn't come with his own motion?
A. No sir, he did not.
Q. Did he bring his books?
A. I think he brought, I won't be positive—I think he brought one book with him.
Q. He didn't refuse to bring any books—to show you any books?
A. No sir.

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Q. The auditor brought his books?
A. He did.
Q. There wasn't objection on the part of the auditor, to a full examination, was there?
A. There was not on the part of any one.
Q. Suppose as far as you could see or know, everything was right?
A. As far as we looked, but that was very vague.
Q. You had had trouble, you say, with a former treasurer, and his matters had been investigated for ninety days.
A. We employed an expert for ninety days, at ten dollars a day.
Q. He was sued, was he not?
A. He was.
Q. Tried?
A. He was.
Q. And acquitted?
A. No sir.
Q. What became of that suit?
A. It was remanded back for a new trial.
Q. I am speaking of the final end; it was referred, the report of the referees was what—in his favor?
A. Well, I will tell you; at the last end the case fizzled out; (laughter,) the result was that he was remanded for a new trial. Of course this was simply my opinion.
Q. You know whether it fizzled out or not?
A. I know we never got any thing back; the county has never got any thing back. [Laughter.]
Q. You knew the report of the referees was, that he owed the county nothing?
A. The report of the referees was, I think, $17,000.00 or thirty.
Q. You may as well swell it to fifty?
A. But I think the report was $17,000; the majority report of the referees or all three of them.
Q. Are you speaking of the first judgment or the final report of the referees?
A. The first.
Q. I am talking about the final end of the suit, and it was a notorious report that it was in favor of the treasurer?
A. If it was, it didn't satisfy the people's minds.
Q. It didn't satisfy you, you mean?
A. No sir.
Q. Judge Page stirred this thing up, did he not, against the other treasurer?
A. I don't know; it was stirred up.
Q. Is not that the general impression, down there, that this was all stirred by Judge Page, and cost the county some fifteen or twenty thousand dollars?
Mr. LOSEY. It seems to me that you are getting in pretty broad statements; they are certainly not true.
Q. At whose request was Mr. Ingmundson brought in there; was it at the request of C. H. Cotton?
A. It was at the request of Mr. Cotton.
Q. What aid he say when he requested the grand jury to allow Mr. Ingmundson to come in?

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A. I could not give it in his exact words.
Q. State what the idea was?
A. The idea was as conveyed to me that when the last charge was read by the judge to us this is simply my opinion; that Mr. Ingmundson took that as referring to himself, and went in in the charge of Mr. Cotton.
Q. Went in or at the request of Mr. Cotton?
A. Yes sir.
Q. That he be permitted to come into the grand jury room?
A. Yes sir.
Mr. Manager CAMPBELL. Q. Do you know that to be so?
A. No, sir; I am giving it simply as my opinion.
Q. You were not asked for your opinion; you were asked for what you know. That is all?

M. C. POTTER SWORN.

And examined on behalf of the respondent testified:
Mr. LOSEY: Q. Where do you reside Mr. Potter?
A. In Lyle township, Mower county.
Q. How long have you lived in that county?
A. Nearly twelve years.
Q. Do you know the respondent?
A. I do.
Q. How long have you known him?
A. About ten years.
Q. Were you a member of the grand jury in the September term of 1876, in Mower county?
A. I was.
Q. Did the court charge the grand jury at that time, specify anything in regard to the treasurer's office, mentioning it by name?
A. He said nothing about the treasurer's office.
Q. In his general charge?
A. No sir.
Q. Do you remember about a report that was handed in to the clerk of the court by the clerk of the grand jury in his minutes in relation to Ingmundson's office?
A. I don't know as anything was handed in.
Q. You know nothing about that?
A. No sir.
Q. Was there any report adopted by the grand jury?
A. There was not.
Q. The treasurer of the town of Clayton was indicted at that term, was he?
A. He was.
Q. For general defalcation in his office?
A. Yes sir.
Q. Was there any investigation had of Ingmundson's office?
A. There was not any direct investigation.
Q. Did the grand jury take any action upon that matter, so as to arrive at any conclusion by vote?
A. It did not, and it would have been impossible to have voted.
Q. Why would it have been impossible to have voted?
A. On account of the confusion.
Q. What do you mean by that—what was the trouble?

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A. There was noise and loud talking.

Q. You think I refer to the time of the report, and for what preceded the statement made by the clerk?

A. I don't understand there was any statement at all after the grand jury adjourned.

Q. Was there any investigation—any thorough investigation of Ingmundson's office had?

A. There was not.

Q. What action was taken by the grand jury in relation to it?

A. No action as a body.

Q. Was that report ever put to a vote!

A. It was not.

Q. Did you have any knowledge that it was brought into court at all; that it was returned to the clerk as a part of the minutes?

A. I did not.

CROSS-EXAMINATION.

Mr. Manager CAMPBELL. Q. Mr. Potter, will you state now just what was done before that grand jury in regard to the office of county treasurer?

A. The proposition was made by some members of the grand jury to investigate Mr. Ingmundson; that is the way it was stated, and one member of the grand jury volunteered to go and bring him in, and he went.

Mr. LOSEY. Who was it?

A. It was a stranger to me.

Mr. Manager CAMPBELL. That was done with the consent of the grand jury, was it; was there any objection to that by the grand jury?

A. I don't recollect as there was.

Q. It was done with the knowledge of all the grand jurors that were present?

A. I don't know; there was a great deal of confusion; I noticed it for one.

Q. So much confusion that you din't know what was going on?

A. I knew what some were doing, but very few.

Q. Well now, go on and detail.

A. Another man proposed to send after the auditor, and I think, two grand jurors were sent out for the auditor; volunteered to go, and were permitted to go.

Q. Without objection that you heard?

A. I objected to that; I objected to the grand jurors leaving the room.

Q. You objected to grand jurors going after the auditor?

A. I did.

Q. Did you object to their going after Ingmundson?

A. I didn't suppose anybody had gone after him, I supposed that was a farce.

Q. You supposed the whole grand jury was a farce, did you?

A. I did. [Laughter.]

Q. That is what I have thought for years. Well, go on now and tell us what was done?

A. Well, there was a great many cigars smoked, and a great many apples eaten, and a great many speeches made.

Q. Was that all that was done in the investigation of this Ingmund-

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son motion; I ask you to detail what was done in regard the Ingmundson movement?

A. There was nothing done but speech making and loud talking.

Q. Did you do your share of the loud talking?

A. I did some of it.

Q. Have you detailed all that was said and done in regard to Ingmundson?

A. No, I could not in a year, there was a good many talking at once.

Q. Any books brought in?

A. Some books were brought in.

Q. Examined by anyone?

A. They were laid upon the table, and a crowd gathered around; I could not see them then.

Q. Did you try?

A. I did.

Q. Did you get hold of them at all?

A. I did not.

Q. How long were they in there?

A. I could not say.

Q. Who took them away?

A. I could not say.

Q. You can't say how long they were there?

A. I cannot.

Q. And all the time they were there you hadn't a chance to look at them; do you mean to say that?

A. I mean to say what I did.

Q. You mean to say you did not look at them?

A. I mean to say I could not get near enough to look at them.

Q. Did you make any objection or any request that the crowd stand aside so you could look at those books?

A. I did.

Q. Did anybody object?

A. I guess nobody heard it.

Q. You are sure you made the request?

A. I did.

Q. To whom did you make the request?

A. I elbowed my way through the crowd and requested the privilege of seeing them.

Q. Did any one hinder you in particular?

A. Not that I know of.

Q. They were all stronger men than you were?

A. Well, a dozen men are stronger than one.

Q. They were in at the books first; do you mean now to say in earnest that you could never have seen those books while they were in the room; do you swear to that?

A. I will swear that I could not have seen them distinctly none of the time they were in the room.

Q. Did you object to their being carried out?

A. I did not know that they were carried out.

Q. You don't know how long they were there; did you ask any questions of Mr. Ingmundson?

A. I did not?

Q. Did you see the county auditor's books?

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A. I don't recollect.
Q. Did you see the county auditor's books?
A. I saw the county auditor, but I did not see Mr. Ingmundson.
Q. You don't know that he was before the grand jury there?
A. I do not; I thought I heard his voice.
Q. Were you present in the grand jury room all the while?
A. I was.
Q. How many were present?
A. I should think from twelve to twenty part of the time.
Q. Were no questions asked by anyone, in regard to the county auditor's books, in your hearing?
A. I could not hear the questions?
Q. Were any witnesses examined there while you were present?
A. Witnesses were examieed during the term in other matters.
Q. Was one of the county commissioners there in regard to this, when they were examining this Ingmundson matter?
A. I think I saw him.
Q. Did you try to ask him any questions?
A. I did not.
Q. Any questions asked him?
A. I could not say.
Q. And you think because you don't know anything about what was going on there, that the rest of the grand jury were in the same fix that you were?
A. I think that the majority were in the same fix.
Q. Did you hear this resolution that I read a short time ago?
A. I think I did.
Q. Did you hear that report in the grand jury room?
A. If you will tell me what report it was, I will answer you.
Q. "We 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."

Q. Was that made then?
A. I think not.
Q. You didn't hear it?
A. I did not; I saw it written.
Q. You knew it was written?
A. I saw something to that effect written after the grand jury had adjourned.
Q. Did you raise any objection to it?
A. I did.
Q. What did you say?
A. I said that we had burlesque enough without sending that in.
Q. Who did you say it to?
A. To the foreman.
Q. Did you say it to any one else?
A. I said it to the foreman only; his back was turned to me.
Q. When you said it to him his back was turned to you?
A. He was bending over the table.
Q. You made no protest in court against this after it was handed into the court; you made no protest against it?
A. I didn't suppose it was handed in.
Q. You didn't suppose this was handed to the clerk of the court?

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A. I didn't suppose it was.
Q. What did you suppose it was written for?
A. For a burlesque.
Q. Burlesque on that grand jury?
A. And on the court.
Mr. DAVIS. Whenever that Ingmundson matter came up, state whether the proceedings of the grand jury were orderly, or whether they became riotous and quarrelsome?
A. They were riotous—and terrific.
Q. Did you hear Mr. Jones testify—Mr. Richard A. Jones, of Rochester?
A. I did; that is where I got that term.
Mr. DAVIS. I thought so.
Q. State whether or not any angry feelings arose whenever it was proposed to investigate Mr. Ingmundson's office?
A. I think there was.
Q. Did you hear Ingmundson's voice, as you supposed, in the grand jury room when these angry feelings were being disposed of?
A. I thought I heard it.
Q. Take part in the "shindig," in the room?
A. I could not say, I am not positive of that.
Q. You heard a voice that you thought was his?
A. I am not positive as to that, I did not see him.
Q. How many times was it attemped to bring the mind of the grand jury to bear upon the Ingmundson business?
A. How many; did who?
Q. How many times was it attempted to investigate Ingmundson's office; I mean those desirous of having an investigation?
A. I should think as many as a dozen or fifteen or twenty.
Q. Whenever such a motion was advanced, now, was it not?
A. With rude talk and ridicule and laughter speeches, and harangues.
Q. And that was the end of it?
A. And that was the end of it.
Mr. Manager CAMPBELL. Can you tell us what was said?
A. I recollect of hearing one voice, a little louder than the rest, say, "Let us give the judge all the Ingmundson he wants;" that is one thing I can remember.
Q. Who said that?
A. I could not say—a loud voice.
Q. Then you were aware that the judge had called attention to Ingmundson?
A. I was not.
Q. The grand jury was aware of it?
A. I don't know that they were.
Q. Is that all the language you heard that you recollect?
A. That is about all, yes, during the excitement.
Q. Did you know that Ingmundson was there then?
A. I did not.
Q. And you can not tell who said that?
A. I can't.
Q. That is what you call riot, do you?
A. Riotous proceedings, yes sir.
Q. For a grand jury to say, "Let us give the Judge all the Ingmundson he wants?"

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A. There was a great many other similar expressions, but I could not state them.

The PRESIDENT. Senator Nelson desires this question to be asked the witness:

Did Ingmundson interpose any obstacles to any investigation of his office?

The witness. I don't know that he did.

Mr. CLOUGH. Are you the gentleman by the name of Potter, that in the year 1877, some time in the summer, sent a letter to Judge Page inclosing a copy in which purported to be a petition asking Judge Page to resign?

A. I am.

Mr. Manager CAMPBELL. What is your business, Mr. Potter?

A. Farming.

F. A. ELDER, RECALLED,

On behalf of the respondent, testified:

Mr. LOSEY. [A book handed to witness.] Turn to the record of the proceedings of the grand jury of the March term of 1877.

Mr. DAVIS. I will say to the Senate that we are through with that branch of the article, viz.: The grand jury of 1876; and in order to prepare for the introduction of the testimony this afternoon, a recess at this point would be desirable.

On motion, the court took a recess until half past two, P. M.

AFTERNOON SESSION.

F. A. ELDER, RECALLED,

On behalf of respondent, testified:

Mr. LOSEY. Q. You have already testified that you were the clerk of court in Mower county, during the March term of court, 1877, have you not?

A. Yes sir.

Q. Do you remember how many times during that term of court the grand jury were instructed by the court in relation to the Ingmundson matter, if at all?

A. I do not remember definitely the number of times.

Q. Did the grand jury ask to be discharged at any time during the term, until they were finally discharged?

A. They did not, to my knowledge.

Q. You heard the charge of the court to the grand jury during that term, several charges, did you?

A. Yes sir.

Q. You may state when the first charge was made to the jury, whether you noticed anything unusual in the tone of the judge to the jury, in addressing them?

A. I did not.

Q. Did you, at any time during the term?

A. It is my recollection now, that when the grand jury were discharged, his manner, and tone perhaps, were a little different from that in the first charge.

Q. In what manner different?

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A. He was more earnest and positive in what he said.
Q. Did he address the jury in any louder tone than usual?
A. I think not.
Q. What occurred between the judge and the jury when they came in last to be discharged—what was said by the judge to the jury?
A. I can only state in substance what I remember.
Q. That is all that we expect of you.
A. It is my recollection that, when the jury came in finally to be discharged, that the judge stated to them that they had been prompt in the discharge of all their business that had come before them, except this matter which they reported on; that there was something about it that he could not understand; that they had taken an oath to present things truly as they came to their knowledge, without fear, favor or affection or reward; that if they had been influenced by any of those motives it was a violation of their oaths; that their consciences were something that he could not control; I think then he turned to the county attorney and directed him to draw a complaint from the statement as presented by the grand jury, that a warrant might issue thereon.
Q. Was this before or after the grand jury were discharged?
A. I think the grand jury were discharged before he directed the county attorney to draw the complaint.
Q. Did he say to them at any time during the charge that they had committed perjury?
A. He did not, to my recollection.
Q. Did he say to them they had violated their oaths?
A. Only as I have stated
Q. That if matters were so and so?
A. Yes.
Q. You testified yesterday in relation to your custom as to the entries that you made when the grand jury came into court; that you did not make full entries of all their proceedings, but simply a memorandum?
A. Yes sir.
Q. Of what they had done; I believe, you testified also, that that was a correct transcript of the proceedings of the grand jury at that time?
A. I think so.
Q. As entered by you in the record?
[Witness examines transcript of the record,]
Q. What was done at that term by the court; what charge was made in relation to the auditor's office, if anything?
A. It is my recollection, now, that sometime during the term, Judge Page called the attention of the grand jury to the fact that it had been brought to his knowledge that the county auditor was in the habit of allowing assemblages there after business hours in the evening. That he stated to them that important records were kept in that office, and such practices he thought were unsafe and improper, and asked that they inquire into the matter.
Q. Did they make any presentment to the court during the term in relation to the matter, that you remember of
A. They made some report to the court in regard to the matter.
Q. Do you remember what action was taken?
A. It is my recollection that when they made their statement

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to the court, that in connection with that statement, they reported that the county auditor had been acting by permission of the county commissioners. I think he stated that the county commissioners had no authority to grant such permission, and advised them to call the auditor and county commissioners before them and see if they couldn't have the matter corrected or stopped.

Q. Did the jury report to the court upon the matter?

A. Subsequent to that the jury reported that the county auditor and the chairman of the county commissioners, had been before them, and had informed them that the practice would cease.

Q. What did the court then say to the jury?

A. He said in substance, that that was sufficient.

Q. Did the judge of the court say to the jury that such action, on the part of the auditor, was an indictable offense.

A. Not to my recollection.

Q. Did he give any directions to the jury, that you remember of, directing that an indictment be found on that matter?

A. Not that I remember of.

Q. Well, could you remember it if it had occurred?

A. I think I should.

Q. In the first charge what did the court call the attention of the grand jury to?

A. It is my recollection that in connection with the first charge he called their attention to a transaction between the county treasurer and the former treasurer of the town of Clayton. That it had been brought to his knowledge that the county treasurer had refused to pay over money to the town treasurer of Clayton, unless he would take a certain order, thereby compelling the town to pay an order twice; something to that effect—asked them to investigate the matter and take such action as the facts in the case would warrant.

Q. Did he use the treasurer's name during that charge?

A. Not to my recollection.

Q. Do you remember of the jury's coming into court and asking for instructions in relation to a provision of the statute?

A. I do.

Q. What was asked for and what instructions were given?

A. I do not remember now the section; they asked for instruction on a certain section of the statute and the instruction was given.

Q. Do you remember the jury bringing into court an informal statement or informal paper, an unsigned paper; state what occurred in relation to that?

A. During the term the grand jury brought in a statement (I did not see it.)

Q. What occurred between the grand jury and the court at that time?

A. The court stated to the grand jury that such a statement was not proper or what he wanted. That it stated nothing and was not signed. I think the grand jury retired to their room after that.

Q. About when did this occur?

A. It is my recollection now that it was during the last of the term. Probably Thursday or Friday of the second week.

Q. Did the jury report no further business more than once?

A. Not to my knowledge.

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Q. Were you present in court during the whole session of court?
A. I was.
Q. You were present then every time the jury came in?
A. Yes sir.
Q. What was the manner of the court during the first time?
A. It was his usual manner in charging the jury.
Q. What was his manner when he gave the jury instructions at the other time?
A. I think it was his usual manner in giving instruction to the grand jury.
Q. Did the judge of the court at any time during the term seem to be excited or angry?
A. I did not consider him so.

CROSS EXAMINATION.

Mr. CLOUGH. Q. Mr. Elder, when did you make this document you have in your hand?
A. It bears date, I think, the 20th of August.
Q. Did you make it then?
A. I presume I did
Q. Do you remember when you made it?
A. I remember nothing only as the date shows.
Q. Who did you make it for?
A. I could not tell now.
Q. You made it for Judge Page, didn't you?
A. I may have done so; I do not remember.
Q. Didn't he come to your office and ask you to make it?
A. Not that I recollect of.
Q. Do you remember the occasion for which you made it?
A. I do not remember now.
Q. When you made it, who paid for it?
A. I do not remember as anyone has ever paid for it.
Q. Did you work for nothing in making it?
A. I do not remember now, whether it was paid for or not.
Q. What became of it when you made it; who did you hand it to?
A. Well, I do not remember.
Q. How long after you first handed it ouer to some one who, you do not remember, was it before you saw it again?
A. Well, I do not remember whether I saw it last March or not.
Q. How many days were you occupied in making that?
A. I don't presume I was one day.
Q. Do you remember how many days you were occupied?
A. No sir, I do not.
Q. Do you recollect any circumstances surrounding the making of this paper?
A. I do not.
Q. Do you remember how many papers you got made before you got this paper to suit you?
A. I presume that is the first paper I made.
Q. Do you remember whether it was or not?
A. I don't remember.
Q. Where did you get your material from which to make this; from the book or something else?

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A. From the book.
Q. That purports then, to be a copy of certain minutes that are contained in this book does it?
A. It does.
Q. Now, during this March term of court, 1877, you kept some sort of a memorandum, did you?
A. I kept some sort of a memorandum.
Q. What did you keep it on?
A. Loose paper.
Q. What became of the pieces of paper from day to day?
A. The book was written up during the term.
Q. I am not talking about the book; I am talking about what became of the pieces of paper you wrote on from time to time.
A. I don't know.
Q. You do not know what ever became of them?
A. No.
Q. Do you mean to say that you took a sheet of paper at a time and filled it up and then laid it away?
A. As business transpired in court, events came too rapid to write them out in full; I was compelled to make a note, that is, take proof minutes, and then when I wrote them in the book I filled them out.
Q. Now, you say every time anything happened in court you had this paper before you and wrote down a memorandum?
A. No sir, I didn't say so.
Q. How often did you write down the memorandum?
A I wrote down the memorandum of such events as I thought ought to be made a record of.
Q. And such events as you thought ought not to be made a record of you didn't mention at all?
A. Yes sir, I did not.
Q. And when you came to make up your book, you then took your memorandum and you expanded it to suit you, did you?
A. I wrote the events in the book, in its proper form, as I understood it.
Q. Now, when you came to write up your book, did you set down any more events or matters in this book than were contained on your memoranda?
A. They were enlarged.
Q. I mean, did you set down matters in this book that were not mentioned or contained in your memoranda—transactions that had occurred in court?
A. I would not be positive as to that.
Q. You won't swear whether you did or not?
A. No sir.
Q. When you took that memoranda and made up your court minutes, were these matters contained on it which you omitted to state in your court minutes?
A. I don't remember.
Q. There don't any of these court minutes compare with the minutes you had in your memorandum from time to time?
A. No sir.
Q. Now then, which do you think would be correct, this memorandum which you made from time to time, or this record you drew up afterwards, if there was any difference between them?

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A. I think this record would be correct.

Q. Now when did you first commence to make the memorandum, or rather to write down the matter that is contained in this book?

A. I commenced the first day of the term.

Q. Won't you take this record, and show what part of it you wrote in the first day of the term [hands witness book]?

A. I don't know that I can tell exactly how much; but I think it was nearly all written up the first day of the term, if not quite.

Q. That is, you mean nearly the whole of the day's proceedings?

A. Yes sir.

Q. The proceedings of the court on the first day of the term were those written up in this book from your memoranda, or from your memory?

A. Both.

Q. Now, when after that did you write any more in this record?

A. I wrote the second day.

Q. Now, won't you please take that record, and show what you wrote in it the second day?

A. I wrote nearly all that is contained of the second day's proceedings, if not quite.

Q. On the second day of the term did you write any of the first day's proceedings?

A. I would not say positively—if there was anything left on the first day, I would finish it. I think the first day's proceedings were completed on the first day. My recollection is that the first day's proceedings were written up on the first day.

Q. And the second day's proceedings were written up all through on the second day?

A. On the second day.

Q. How was it on the third day?

A. I presume that was the case on the third day.

Q. Then you pretend to say, do you, that when the business of the term finished that was held from day to day, that you had all of this record written up, do you?

A. It was written up, or nearly so, I say it was finished probably on the day the term closed. The term finally closed on the 18th; it adjourned *sine die* on the 18th. No, that is not what I mean wholly, I think the term adjourned over to about April 3rd, perhaps.

Q. You mean to say then, that on April 3rd, you had all the matters contained in this book written up to that date, do you?

A. I think that is the date; and all matters contained in that or nearly so.

Q. And you think that this book which is from your original memorandum, you took in court is right, and your memorandum wrong?

A. I think the book is right.

Q. Now suppose the memorandum you took at that time, the statements that contain things occurred in court, and this written record here, does not mention those things, would you think that your memorandum were incorrect, or this record in that particular?

A. If a thing of that kind were to occur, I should think this, that when I wrote the record, I made up my mind that there were things on the memorandum that were not proper to go into the record, taken down in a hurry, and when I had time and wrote the record up, I concluded that it should not go in.

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Q. You had plenty of time, as business was progressing in court, to make a memorandum of what occurred?

A. Yes sir, a brief.

Q. For instance, was it your practice whenever the grand jury came into court on any business at all, to make on your slips a memorandum of that fact?

A. It was.

Q. What was it your practice to do noting upon the memoranda? bare fact that the jury came into court?

A. It was owing to circumstances.

Q. If your memoranda you had upon your paper showed that the grand jury came into court at a certain time, would you now think that the memoranda was wrong, providing it did not appear upon this record?

A. I could tell better after seeing the memorandum.

Q. I ask you the question, if your memoranda, which you had upon your paper, show that the grand jury came into court at a certain time, you would now think it wrong, providing it did not appear upon this record?

A. I should presume, without seeing the memorandum, that perhaps the memorandum was correct.

Q. It would not be possible for it to appear upon this memoranda that the grand jury came into court at a certain time unless they did come into court.

A. I should presume that such an entry would not be made unless they did come in.

Q. Now, do you pretend to say—will you swear from your recollection that this record contains a statement of every time that the grand jury came into court during that term?

A. That is my recollection.

Q. Have you any recollection yourself, independent of the records; as to the number of times that they did come in?

A. No sir; I would not state.

Q. That is, you cannot state at this time; you can't recall to your mind the number of times?

A. I should be compelled to look at the record, to know the number of times.

Q. Now, in the first instruction which the judge gave the grand jury, I will ask you if the judge did not call the attention of the grand jury (you say you have been admitted to the bar. A. Yes sir.)—to this provision of the statute, section "8" chapter "91," "where any duty is enjoined upon any public officer, or upon any person holding any public trust, or employment, every wilful neglect to perform such duty, and every misbehaviour in office, where no special provision is made for the punishment of such delinquency or malfeasence, is a misdemeanor punishable by fine and imprisonment." In the first instruction which the court gave to the grand jury, did he read that as a part of his instructions?

A. He might have done so, I don't remember.

Q. You don't remember whether he did not?

A. No sir.

Q. Did the court, as a part of its first instruction to the grand jury, read any statute at all?

A. He did.

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Q. Do you remember what statutes he did read?
A. I don't remember now.
Q. Do you remember the subject matter in the statutes he read—the subject matter relating to the duties of grand jurors; did he read any provision of the statutes which related to particular offenses?
A. He might have done so, I don't remember.
Q. Did he read any provision of the statutes that related to embezzlement by officers of public funds?
A. I don't recollect that he did the first time—the first charge.
Q. Do you remember whether he did or not?
A. No sir.
Q. Did he read the statutes in relation to what was a proper case in which to find an indictment, and a proper case in which to find a presentment?
A. My recollection is that he did.
Q. Did he read to the grand jury that provision of the statute which enjoined on the grand jury to inquire into illegal and corrupt conduct of public officers of every description and kind in the county?
A. I should presume that he did; I don't remember whether he did or not, only that is his usual practice.
Q. Was that what you are stating here? You infer from his usual practice instead of from your general recollection?
A. Quite as much so.
Q. And that is the truth of all your evidence, here isn't, that what you state here is a matter of inference from Judge Page's usual practice as much as from recollection of specific matters?
A. No sir.
Q. Now, when the judge was speaking in regard to the auditor's office, did he say that the county auditor permitted the band to practice there?
A. I don't recollect that he used the word "band" at all.
Q. Didn't he say that it was a matter of public notoriety, "in fact I know myself," did he not say, that the county auditor was in the habit of permitting a band of musicians to practice at night in his office?
A. I don't recollect that the word "band" was used.
Q. Will you swear that it was not used?
A. I will swear that I don't recollect it was.
Q. Now what kind of conduct did the court tell the grand jury it was on the part of the auditor to permit that kind of a thing to be done?
A. I don't remember that he stated anything in regard to what kind of conduct.
Q. Did he say it was lawful conduct?
A. No sir.
Q. Did he say it was unlawful conduct?
[No answer.]
Q. What kind of conduct did he say it was?
A. He might have said it was improper.
Q. Didn't he say it was misbehavior in office?
A. I don't recollect that he did.
A. Didn't he make his statement in regard to the county auditor's office in connection with the reading of the section which I read first about misbehavior in office?

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A. I don't recollect that he did.
Q. Do you remember that he did not?
A. I don't remember about his reading that section; I don't remember anything about it, either one way or the other.
Q. Now will you swear that this record here—this book of minutes, contains a statement of every time the grand jury came into court?
A. That is my recollection now.
Q. But you won't be positive about that?
A. Yes sir, I am positive; I am positive it was my intention in making up the record, to make it correct.
Q. That is not what I ask you? (Question repeated.)
A. That is my best knowledge.
Q. Were there any circumstances when the grand jury came into court that are noted here of a charge, or instruction given the grand jury that is not mentioned here?
A. I did not enter any.
Q. Did you note the fact of an instruction being given at every time when the instruction was given?
A. I think that it is noted.
Q. Do you remember whether you did or not?
A. It is my recollection that it is noted.
Q. Might there not be several cases where it appears that the grand jury came into court when instructions were given as a matter of fact, and it is not stated upon your minutes that an instruction was given?
A. The grand jury might have come in, brought in indictments, the court might have made remarks to the grand jury, and I made no note of the occurrence.
Q. Might that not have occurred several times?
A. Such might have occurred.
Q. The grand jury were in every day, from the begining to the end of the term—sometimes twice a day?
A. They were in quite frequently.
Q. Don't these minutes show that the grand jury were in, and in communication with the court nearly every day of the term, if not every day.
A. I think they do.
Q. And might it not be true, that on several occasions the judge gave instructions to the grand jury, and the fact of the instructions having been given to them, not appear upon the minutes?
A. It might occur as I have stated.
Q. Now I will call your attention to a particular case; you remember when the grand jury came in and presented their report in the Timson case?
A. I remember of that fact.
Q. Were any instructions given to the grand jury at that time, upon any subject?
A. I could tell better perhaps by looking at the minutes. [Book handed witness.]
Q. Are there?
A. I could not from my recollection now state whether any remarks were made by the court, when that was brought in, or not.
Q. There is no minutes of anything of that kind occurring?
A. No sir.
Q. Now, if it appeared from the original memorandum that you

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made upon that occasion, that the grand jury were in upon the Stimson case, that the court instructed the grand jury, which would you take to be correct, your original memorandum, or this record here?

A. It might be that the court gave instructions to the jury at that time.

Q. Well, I say if it appeared upon your original memoranda which you took upon that occasion that he did give that instruction, would you take that to be correct now, or this record?

A. I should say that the instructions were given, and that the record did not contain it.

Q. You could not get such a fact down upon your memorandum, that the court had given the jury the instruction unless it occurred?

A. I should not presume, I should have taken it down unless it had occurred; I don't know that it was a material matter to mention that at all; I don't know that it was material, although, I think, quite proper.

Q. Now, I will call your attention to another matter. Did the court order a bench warrant to issue for the arrest of Mr. Ingmundson?

Mr. DAVIS. We object to the question.

Mr. CLOUGH. I have a right test him.

The PRESIDENT. I do not understand that the witness has been questioned with reference to anything but that transcript which was produced here.

Mr. CLOUGH. It would certainly be a very singular thing, when there is a transcript produced here, that we could not impeach the portions of it which are contained in that transcript, by showing that other portions relating to the same subject matter are incorrect. I think that when the record is introduced here, and it is stated to be correct, that the opposite party have a right to impeach it in any way they see fit, and that it is proper cross examination to do so.

Mr. DAVIS. That is very true, in a proper way and at a proper time.

Mr. CLOUGH. That is now.

Mr. DAVIS. Excuse me, Mr. Clough, we insist that it is not. When he desires to rebut the testimony produced by us, that will be a proper time.

The PRESIDENT. I will submit the question.

Mr. CLOUGH. No, I won't take up the time of the Senate; I won't put the Senate to that trouble; I would rather waive the question.

Q. [To witness.] Now, was there ever any occasion, prior to this term, when Judge Page instructed the grand jury as to the same subject matter more than once?

Mr. DAVIS. We object to that, as not proper cross-examination.

Mr. CLOUGH. I insist that is correct.

Mr. DAVIS. The only questions we asked this witness were in regard to his instructions at this term.

The PRESIDENT. Do you insist upon the question, Mr. Clough?

Mr. CLOUGH. Yes sir.

The PRESIDENT. I will rule it is not proper.

Mr. CLOUGH. All right.

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Q. (To the witness.) Now, you say that, at the close of the business of the grand jury, when they came into court, the court told the jury that they were prompt in all matters except one, didn't the court say the same thing to the grand jury upon this matter, upon a previous occasion?

A. Previous occasion during that term?

Q. Yes sir.

A. I do not now recollect; it might have been done so.

Q. You speak about a report coming in, which was said by the court to be irregular?

A. Yes sir.

Q. Don't you remember that upon the occasion of that report coming in, the judge stated to the grand jury then that they had been very prompt in other matters submitted to them, and he didn't see why they delayed so, or were so reluctant to enter upon that matter of investigation?

A. I do not now recollect whether he did or not.

Q. Was that report read in court?

A. I think not.

Q. You don't know what the contents of it were, then?

A. Not the first one.

Q. Did not the court say, on that occasion, that that report only stated the opinion of the grand jury; that what the court wanted was not the opinion of the grand jury but the facts in the matter?

A. It is my recollection that he stated something of that kind.

Q. Do you know what became of that paper when the grand jury went out again?

A. I do not.

Q. You saw the paper handed by the foreman of the grand jury to the Judge. didn't you?

A. I did.

Q. Did you see the Judge hand it back to the grand jury again?

A. I am not positive; I presume he did, though.

Q. Well, do you recollect?

A. I don't recollect.

Q. That presumption is only an inference from his usual habit of handing back papers to the grand jury?

A. I don't know that that is his usual habit.

Q. Now, had not the grand jury, prior to the time when they brought in this report, been instructed, between the first charge and this, on one or more occasions, on this same matter, by Judge Page?

A. I do not remember now whether they were or not.

Q. Now, after that report was handed in and refused to be received by Judge Page as the report of the grand jury, how many times after that before they finally came in, did Judge Page instruct them about that matter?

A. I do not recollect now.

Q. During any of these interlocutory instructions—that is, I mean instructions between the first and the last, did he say anything about the subject of permitting officers who were being investigated by the grand jury?

A. I think that statement was made when the first charge was given.

Q. What was the statement of the judge upon that point?

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A. I do not remember his language.

Q. Did the judge in any of his charges to the grand jury, say anything about the county treasurer depositing his money in banks?

A. I don't remember that he did.

Q. In any of his charges did he call attention to anything but the Clayton town order, so far as the county treasurer was concerned?

A. It is my recollection, now, that the jury asked instruction—something in regard to taking orders for taxes.

Q. I was just coming to that point. You say that the jury came in and asked for instruction upon a provision of the statute; do you remember what the subject matter of that statute was?

A. I do not remember, but think it was upon that subject.

Q. On the subject of taking town orders?

A. Orders for taxes.

Q. Do you remember, on that same occasion, of the judge instructing them with reference to the intent with what any act might be done by the county treasurer?

A. I don't, now, recollect.

Q. You remember of his delivering one instruction in the course of the term on that subject, don't you, with reference to the intent with which the county treasurer should do an act?

A. I do not now remember.

Q. Now, was the instruction which the grand jury asked for upon that point and not upon the matter of receiving town orders, as to whether it was necessary that there should be any improper intent on the part of the county treasurer, in order to constitute his act an offense; was'nt it that that they requested instruction upon, and not upon a town order?

A. Well, I think not.

Q. Your recollection is not clear at all upon that subject?

A. My recollection is not clear as to that point.

RE-DIRECT EXAMINATION.

Mr. LOSEY. Q. You did not add anything to, nor subtract anything from the record, as it was made in court, did you?

A. No sir.

Q. Have you ever made any additions to the record or any erasures, at the suggestion of any person?

A. No sir.

Q. You kept as perfect a memorandum of the proceedings of court as you were capable of making, did you?

A. Yes, sir; under the circumstances.

Q. You entered that memorandum in the record as you believed it made from to be correct?

A. I entered the proceedings in the record as I believe to be correct.

RE-CROSS-EXAMINED BY MR. CLOUGH.

Q. The grand jury, at the close of this term, handed in their minutes, did they not?

A. I presume they did, although I do not now remember.

Q. And they handed in their reports, and all papers that had been before them?

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A. I presume they did, that is the usual custom.
Q. What did you do with them?
A. I presume I put them in their proper place.
Q. Do you remember what you did with them?
A. I do not remember now.
Q. Do you remember the last time you saw them, where they were?
A. If you refer to some particular paper, perhaps I could tell.
Q. No, I mean all of them; and particularly the report of the grand jury upon the Ingmundson matter. When did you last see that report of the grand jury in regard to the Ingmundson case.
A. Well, I do not now recollect when I did last see it.
Q. Didn't you hand all of those papers over to Judge Page himself while you were in office?
A. I do not remember now.
Q. Don't you remember shortly after Mr. Kimball come into office, he had occasion to look for those papers, and they were missing, and inquired of you where they were, and you told him you had given them to Judge Page, don't you remember that?
A. I don't remember whether that referred to these or not.
Q. I mean this report and documents of the grand jury?
A. I don't remember whether this report was contained in these documents or not.
Q. Don't you remember, shortly after Mr. Kimball came into office he enquired of you where they were, stating to you that he looked for them and could not find them, and you told him that you had given them over to Judge Page, and that Judge Page must have them.
A. I don't remember whether this order might be included in those papers or not, I don't remember in regard to the report of the grand jury.
Q. Don't you remember in regard to the other papers connected with the Ingmundson matter; I mean the minutes of the grand jury, and the report in regard to the Ingmundson matter, and in the Stimson case?

Mr. DAVIS. In regard to that report, what is the materiality of the cross-examination? They have been shown to have gone into Mr. French's hands, and been used undoubtedly in the examination of Judge Page. Mr. French has testified that the report is embodied in the complaint he framed against Mr. Ingmundson.

Mr. CLOUGH. Mr. French has testified he got the report from the possesion of Judge Page and returned it to him.

Mr. DAVIS. Supposing he did, I object to the immateriality of the cross examination. I object to it as not proper cross-examination.

Mr. CLOUGH. Now if any part of these original documents are traced into the hands of Judge Page and gone, we want to know what it is.

The PRESIDENT. You may ask the question.

Q. Didn't you tell Mr. Kimball shortly after he came into office, when he inquired of you what had become of these minutes of the proceedings of the grand jury and of the Ingmundson report, as well as of the Stimson report, tell him you handed them over to Judge Page, and that he probably had them?
A. I don't remember as to that report.
Q. Well, do you remember as to the minutes of the grand jury?

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A. It is my recollection that there were no particular minutes of the grand jury; there were the subpœnas and a few slips of paper that they used, but as to any full minutes of the grand jury, I do not think he returned them.

Q. What documents were they you told Mr. Kimball had been turned over to Judge Page, and that he probably had them?

A. It is my recollection now that several affidavits—

Q. What affidavits?

A. Well, I don't know that I could state what.

Mr. LOSEY. Q. You speak of a number of papers being in the hands of Judge Page; do you refer to some presentments relating to the matter of the town of Clayton—presentments against officers of the town of Clayton?

A. I did not refer to these, but it is my recollection that Judge Page had those papers, whether he returned them or not I don't remember.

ANDREW KNOX, RE-CALLED

On behalf of the respondent, testified:

Mr. LOSEY. Q. Were you a member of the grand jury of Mower county the March term, 1877?

A. I was.

Q. Do you remember the charge of the court, as given to the jury when he first charged them? do you remember the fact of his having charged them at that time?

A. I remember that he did.

Q. What did he say in regard to the treasurer's office?

A. He stated, in connection with his charge, in regard to individuals and offenses of officers of the town of Clayton, that he had been informed that there were certain irregularities existing in the county treasurer's office in regard to the disbursing of funds, bat belonging to the town of Clayton. I think that he stated that his attention had been called to certain orders that had been paid to the town treasurer of the town of Clayton, and was afterwards turned over to the town of Clayton in settlement, as money—this same order; and that it would become the duty of the grand jury to investigate those matters, as they should all other matters that might come before them.

Q. Did he state any time during that charge "that if you found these facts true, the county treasurer ought to be indicted?"

A. No sir; he did not.

Q. Did he say anything to you about indicting the county treasurer?

A. He did not.

Q. Did he call your attention particularly to the county treasurer, except in connection with this town of Clayton transaction?

A. He did not.

Q. What was said in relation to the auditor's office at that time?

A. He said that his attention had been called to the fact that the auditor had been permitting public meetings or gatherings to be held in his office after office hours, and it would be the duty of the grand jury to examine into it, and see what there was of it.

Q. What reason did he give for desiring the grand jury to examine into it?

A. He stated that there were very important papers belonging to the county, in which we were all interested, in that office, and we could

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readily see the danger of such a practice; that those papers might be lost or taken out of that office, and that it was a matter of importance to the county, that those papers should be safely kept.

Q. Was there, in fact, at that time any vault in the auditor's office, for the safe keeping of valuable papers?

A. No sir; I don't think there is now or ever was.

Q. Did he state that, if you found these statements to be true in relation to the auditor's office, that it was an indictable offense?

A. No sir, he didn't.

Q. But he stated you ought to indict him if you found these facts?

A. No sir, he did not.

Q. What action did the grand jury take in relation to that matter?

A. The grand jury examined into the matter, and found that the auditor had allowed the meeting of the Austin band in his office, or had allowed the band to meet in his office, and practice there evenings quite frequently.

Q. What did you do?

A. The grand jury considered the matter, and made a statement unanimously, that the practice was a dangerous one and disproved of it; thought it ought to be stopped.

Q. What was done in connection with Mr. McIntyre in regard to the matter?

A. This report, as we made it up, was handed to him.

Q. What did the court say?

A. The court then stated to the jury that, when we retired, we might call the auditor and inquire of him if he intended to persist in this practice, or would stop it.

In connection with this report when we found the facts of the case reported, it was found that these meetings had beeu authorized by the chairman of the board of commissioners, and we so stated, I think, in our report to the court. And stated, also, what the meetings were, and he stated then, "Gentlemen, when you retire you can call the auditor and ask him if he intends to continue this practice, and you can also call the chairman of the board of commissioners, and ask him if he intends to continue the practice of permitting such meetings." And when we returned to our room, we called the auditor. (I think sent the officer in charge of the grand jury.) He appaered before us, and I read him the resolution, or the statement as we had made it up, condemning the practice. I asked him the question, if he intended to persist in the practice, or whether he would stop it or not. He stated that if that was the opinion of the grand jury he would stop it of course. I stated to him that was the unanimous expression of the grand jury; I also referred to the jury then, if there was a member present that did not assent to it to state it then. No one said anything, and I so stated it as his answer that he would stop. We then called the chairman of the board of commissioners, and he refused to come without being subpœnaed; we had adjourned until after dinner; we subpœnaed him and he came in.

Q. Who was it?

A. That was William Richards, and stated the same thing to him that I had to the auditor, and he said that if that was the wish of the grand jury he would cease to give his consent to it, but if it was the request of the Judge, he wouldn't. I stated to him that it was not the finding of the Judge, it was the expression of the grand jury unani-

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mously. He stated that he would stop. I so stated, wrote his answer and read it to him, if that was the answer as he wished to have it returned to the court; he stated that that was right. We returned the findings with their answer to the court.

Q. What direction did the court then give?

A. The court merely stated that was satisfactory.

Q. The jury then took no further notice of it?

A. We took no further notice of it.

Q. Did the grand jury ask, at any time during the term, to be discharged, until they came in to be discharged finally?

A. No sir, they did not.

Q. Did you have any conversation with Judge Page during the term, in relation to the action of the grand jury?

A. I did.

Q. When was it and where was it?

Q. It was about the middle of the second week. As I was going to dinner, I think it was, we met, or came together, near where I boarded, and he made the remark—said he "Mr. Knox, your grand jury is a long time in session, what are you doing so long? Grand juries usually get through in the course of a week"—and said he, "have you taken any action on the matters I laid before you in the first charge;" and I told him that we hadn't. I said to him then: there was a disposition on the part of the jury, to delay matters; and then I could not make men act. I stepped into the gate and passed into the house; there was nothing further said by me. The judge was on his way home then. We did not walk to exceed 150 feet together, that I remember of.

Q. Did the grand jury at that time, take any action on the Ingmundson matter?

A Yes sir.

Q. When first did the grand jury appear in court, asking instructions from the court?

A. Well, sir, I think they appeared very soon in court, very soon in court for instructions, very soon after we convened.

Anything connected with construction of statute relating to the county treasurer?

A. Oh, I think it was the last of the last week. It was in the middle of the last week, I think, perhaps Thursday or Friday, I would not say positively as to the date.

Q. That you came into court and asked instruction?

A. Yes sir.

Q. When did you bring the matter to the attention of the grand jury first, after they retired?

A. The matter of the county treasurer?

Q. Yes sir?

A. It was, I think, about the second or third day; it was as soon as we had disposed of the criminal cases laid before us by the county attorney.

Q. The second or third day of your session?

A. I think it was perhaps the third day; about that time; I would not say it was positively.

Q. When was action upon it finally taken by the grand jury?

A. Final action was taken at the close of the term. I called it up at that time and stated that that came next in order after we had disposed of the criminal cases, and there was an attempt made to dispose of it, but it was put off for some reason.

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Q. Put off by whom?
A. By the jury.
Q. How frequently did you call it up after that?
A. I called it up, I think, almost every day that we were in session.
Q. What was done?
A. Well, they would—it was put over—put off. I can't state just the reasons that were given by members taking up some new matters, and occupying the time in that way; the time I urged it was after we had examined the individuals connected with the embezzling of funds of the town of Clayton. We had the officers there and found it was necessary for the clerk of the district or that town, and the treasurer of that town, to produce their books in order to satisfy us in our investigations, and, when we had commenced them, when they went home after their books I called this matter up and stated then that it would be the time for us now to proceed and finish up what had been laid before us by the court.
Q. What action was taken by the grand jury?
A. There was not any action taken only that they did not do it at that time. That was, I think, Thursday or Friday of the second week. After dinner, when we went into our room there was one of the jurors stated that Mr. Ingmundson had stated to him that he wished to come before the grand jury and make an explanation of how he understood the laws in relation to his duties as county treasurer in regard to town orders, etc.
Q. What was said there?
A. It was objected to by one of the other jurors, he stated we had been instructed not to call any one before us whose case was under examination.
Q. Had you been instructed originally by the court?
A. Yes sir.
Q. In the first charge?
A. Yes sir.
Q. Then what after that was said?
A. I stated that the matter was not before the jury for discussion unless there was a motion before the jury, and there was some one made a motion that Mr. Ingmundson should be called; I put the motion and it was carried. The officer in charge, Mr. Phillips, was then called and sent for Mr. Ingmundson; he came in before the jury.
Q. What action was taken then?
A Mr. Ingmundson gave his testimony before the jury.
Q. Was he sworn?
A. He was; he stated his understanding of the statutes in regard to the receipt of town orders, that he had a right to receive town orders.
Q. He expounded the law to you, did he?
A. Well, I suppose that is what you call the expounding of the law; he explained his understanding of it; yes, sir. He stated that he had taken this order, that he had positively refused to pay over to the town treasurer of the town of Clayton, Mr. Haralson, then any money belonging to that town, unless it was paid on the town order; he also stated that Mr. Haralson protested against the taking of this town order, and that he proposed to him then they would go and see his attorney, Mr. Cameron, and see what he stated in regard to it. He stated that he went and saw Mr. Cameron, and Mr. Cameron said he

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guessed he would have to take it. Mr. Haralson returned and took the order and the balance in money.

Q. Whose attorney did they go to see, Mr. Ingmundson's or Mr. Haralson's?

A. Mr. Ingmundson's.

Q. Well, what then occurred, after that?

A. Well, there was a discussion in regard to the matter among the jurors.

Q. Was it a quiet or heated discussion?

A. O, it was not particularly heated at that time.

Q. Go on.

A. Some of them stated that they did not think that Mr. Ingmundson had made anything out of it; that was the time we learned in regard to this order—in regard to the check that he gave on the Le Roy bank, that he gave a check then of $100 to the town treasurer against the funds of the town of Clayton, or as county treasurer, rather, against his funds in the Le Roy bank; and that he took it; and afterward Mr. Sever O. Quam, the former treasurer, had brought him the order; he stated that Mr. Quam told him he wanted that money to pay that order; that Mr. Coleman was entitled to his money, and ought to have it; and he gave the check for that purpose to pay that order, and afterward that Mr. Quam brought him the order. That is the way he came into possession of it; and he held it, as against the town.

Q. What day of the second week do you say this occurred on?

A. I don't say this was the second week; I think it was Thursday or Friday of the first week; I would not be positive; it was after the middle of it. That was about the extent of his——

Q. What further action did the jury take then?

A. They did not take action on that matter particularly; there was some new matters that came in occasionally.

Q. When next did they take any action in relation to it?

A. Well, they did not take any action; I called it up frequently—almost every day, most every day, I think, whenever the business we were transacting was through, I would call this matter up to dispose of it—I wanted to get rid of it.

Q. Well, what was done with it?

A. Finally, toward the last of the second week, (I won't state distinctly what day), after we had inquired,—we went in and inquired of the court as to the construction of a certain article of the statute, (it is my impression now that this was Thursday or Friday of the second week), that we did not seem to understand the construction of the statutes in the same way; and we went in to the court, the whole jury at that time, as I remember it, and inquired of the court, what the meaning of the law was.

He gave his construction of the law to us, and we returned into our room to consider the matter further; after we returned (at that time) there was then a motion made by some one of the jurors, that a committee be appointed to investigate the county treasurer's office, and report upon it; a committee of three, I think, was spoken of; that committee was appointed, and afterwards added the clerk and the foreman of the jury to the committee, making five; I stated then that I would not act under those circumstances—did not wish to act under those circumstances, unless the whole jury would go into the treasurer's office, and let the examination be taken before the entire jury; that was consented

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so, and we proceeded then from our room to the treasurer's office, and there we examined the town orders that was in his possession; as we asked for them, and he gave us, he said that was all there was; we made no further investigation, only as he handed them out; we did not examine any of his books at all, and in our examination there we found orders of quite large amounts; two parties holding the orders were members of the grand jury—Mr. Sampson Hanson, and Mr. Corbett, all of the town of Marshall.

After we returned we found orders I say; I think Mr. Corbett's amounted to some fifty-two dollars, two town orders, Mr. Samson Hanson's, I think, amounted to some forty dollars, perhaps more. There was a record made while we were in the office of the county treasurer, of all the town orders that he gave us and it was handed to him and the clerk of the jury made that record, took down the orders as Mr. Bacon, of Le Roy, I think, read them off to him, and I examined them as they came from the clerk to see whether he had it right or not, and passed them back to Mr. Ingmundson.

Q. Did you discover that these town orders had been paid for general taxes; had been received by Mr. Ingmundson?

A. We had no means of detecting that there; we did not know how he received them. After we returned to our room I called on Mr. Corbett, and he was sworn and gave his evidence as to how he disposed of that order to the county treasurer. He stated that he had paid his taxes, his county and personal taxes and delinquent taxes; I think he paid all his taxes and received the balance in money, paid it in those town orders; Mr. Hanson stated that he had paid all of his taxes with his order, and received the balance in money; I think Mr. Corbitt stated there that he transacted his business with Mrs. Ingmundson. Mr. Ingmundson's wife was acting as deputy or clerk in the office, and Mr. Samson Hanson, I think, stated that he transacted his business with Mr. Ingmundson; that is my recollection of it now.

Q. What further action did the grand jury take after that?

A. We did not call any further evidence; that is, we did not call any more witnesses. There was other orders of larger amounts than either of these. One on the town of Waltham. There was a matter there that we were all perfectly satisfied—at least I was—Mr. Ingmundson had stated that he held the orders over on his settlement in returning all the orders returned to the town on settlement, and would pay the money, and hold the orders over to the next settlement: We did not call on the town treasurer of the town of Waltham, so it was left without report. We knew nothing about it, only as Mr. Ingmundson had stated.

Q. After you had ascertained these facts, what did you do?

A. We attempted to present them to the court.

Q. Well, you say attempted—what do you mean by that?

A. There was a motion made that a committee of three should be appointed, and draw up a statement of facts as we had found them to exist, and report it to the grand jury for further action, in order that we might arrive at a presentment of the facts in proper shape to present to the court.

Q. Well, what occurred?

A. There was two reports from that committee presented to the grand jury; one of them was adopted and the other was not. The report of the minority of the committee was adopted by a majority of the jury, and we spent considerable time in discussion on that matter.

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Q. What was the nature of the discussion?

A. The nature of the discussion was, that it was not a presentment of the facts at all; it was not a statement of the matter as we had found it at all, and we did not consider that it was a proper document to present to a court, as we considered it our duty to present things just as we found them.

Q. Did you sign that report?

A. I did not.

Q. That this committee sat on?

A. No sir.

Q. Why didn't you sign it?

A. The jury sat on that report.

Q. Why didn't you sign it?

A. Because it was not the truth; it was not a statement of the facts.

Q. Did you go into court then, after you had made up this paper?

A. Yes sir, I don't think we went in immediately.

Q. How soon after?

A. I think I stated that we went in the evening, and then in the morning—before the judiciary committee—but we did not go in until the next day with it.

Mr. CLOUGH. I don't recollect what your evidence was on that point.

Q. You did not go in until the next morning?

A. No. I think this was in the evening of Friday night.

Q. When you went in next with this paper, what occurred?

A. We had other papers, and I am not positive as to what they were, but the court called our attention to the irregularities of the paper, stated that it was not a presentment as we were in the habit of presenting to him; it was not clear and definite, and it was informal, it was not signed by the foreman or anyone, and that it was necessary to have all documents furnished the court—presentment or any thing of that kind—signed by the foreman, and requested us to retire to our room and put the matter in proper form as we had done other matters before. We retired.

Q. You retired, did you?

A. We retired to the jury room.

Q. Now, at the time you handed that paper to the court, did the court use the language: "That the facts in relation to the county treasurer's office, which he had represented to you, were open and notorious, and were not in dispute;" and, as a question of law, did he instruct you that "the treasurer was guilty of a felony, and ought to be indicted?"

A. No sir he did not.

Q. Did you understand him as using anything the equivalent of this language?

A. No sir, no sir, he did not.

Q. Did he go on and instruct you further that "it did not make any difference if the treasurer did not mean to do wrong, that he was supposed to know the law, and the intent followed the act?"

A. No sir, he did not make any charge of that kind to us at any time.

Q. When you returned to the jury room with this informal paper, what then occurred, how did the jury then treat the matter?

A. Well, there was considerable feeling manifested on the part of the jury in regard to the matter, and some one stated to me that "if you had signed that it would have been all right. I don't know that I

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nade any particular reply one way or the other, but there was a motion nade that we make a presentment of the facts as they were."

Q. Do you remember the contents of the first paper, the unsigned paper that was carried in?

A. Well, I can't give it word for word.

Q. Well, can you give about the contents of it?

A. It was in the shape of a resolution: "Resolved, That the jury, n their judgment, find that there is some irregularities, but not directly raceable to the treasurer," or something to that effect. That was the irst paper.

Q. After you put it to vote after you went out the second time, what liscussion arose then on the matter?

A. Well, the discussion continued, in the line that if we had found he facts as they were the law indicated that it was an indictable offense, and the disposition of the jury was not to find those facts.

Q. The disposition of all the jury, or a portion of them?

A. A small majority of them.

Q. What was said and done there?

A. Well, there was a good deal said by some of the jurors, in an attempt to bulldozing them into doing that, that they ought not to, and of course there was a discussion as to who was doing the bulldozing; a portion of the jury thought that those who were not determined to find the facts as they were, were the ones that were trying to do the bulldozing.

Q. What did it finally result in?

A. It finally resulted in a statement of the facts, principally as we found them. The statement was not as full perhaps as it might have been.

Q. Not as full as it might have been with the facts proved, you mean?

A. Yes.

Q. Well, how long was this previous to the time when you came in and were finally discharged?

A. The last time. It was the same day I think.

Q. When did you present this finding to the court?

A. The finding of the facts? We brought that matter in, I think, with the same matter that morning, before we was discharged, in connection with other papers—I think with the Stimson matter.

Q. What occurred then?

A. In regard to the treasurer's office?

Q. Yes?

A. The Judge took the paper; he looked it over, turns to the jury and stated that "if you find the facts substantiated by evidence as you have furnished them to the court, it constitutes an indictable offense," or something to that effect; I would not attempt to state just the words that he used.

Q. What further did the court instruct you at that time; any further?

A. I think it was at that time that the court stated—said there was something strange about our actions in regard to this matter. It was a matter that he had laid before us in the first charge, and that we had been prompt and clear on all other matters except this, and he could not understand why there was such a disposition manifested to delay or put it off—"evade," I think he used the word "evade"—the facts, as he

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had directed; and stated to us: "You can retire to your room and consider it." We returned to the room; it was a very short time. There was no further examination of law nor evidence, but merely took a vote then as to whether we should find an indictment or not, or a presentment.

Q. What then?

A. It was voted by a majority that there should be nothing done with it.

Q. Did you then return into court?

A. We then returned into court to ask our dismissal or discharge.

Q. What occurred between the court and the jury then?

A. When we went in, just as we had took our seats, I said to the judge, (my seat was just to his left). I said to him, there was no further business before the jury; and I don't think that we took in any paper that time. I don't think we was handed back the paper—the statement of facts; I am not positive as to that, whether we were or not. And the judge turned to the jury on that occasion, and stated that if the jury had been influenced; that the facts as they had been furnished them, if they were substantiated by evidence, and the jury had been influenced by improper motives, either by fear or favor, or anything of that kind, of any person, that it was a violation of their oaths,—their action—and he made a remark then: "As to you individually, or to your own conscience, I have nothing to say." He then turned, it is my impression, although I would not be positive, that at that time he stated: "Gentlemen, you are discharged," and turned to the county attorney and says "you will draw up a complaint against the county treasurer in accordance with the facts as furnished the court by the jury," but whether he said that before he said "gentlemen, you are discharged," or just immediately after, I am not positive; it was about the same time.

Q. Did he state to the jury that they had violated their oaths?

A. He did not on that occasion, that is, in that way.

Q. Did he state to the jury that they had perjured themselves?

A. He never stated that in any way at all.

Q. What was his manner at the time he was addressing you?

A. Well, his manner was just as it was when he was giving his evidence here, and turned to Mr. Lovely on his direct examination to explain the matter that had been called out by Mr. Clough; he talked in a straightforward, earnest manner, perhaps a little louder than he had in some of the other transactions, and not any louder than he did in some of the others.

Q. Did he appear to be excited?

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

Q. Did he say anything about there being a higher power than grand juries?

A. No; he stated that it was fortunate; I think he stated something like this—I would not attempt to speak the words—"that it was fortunate for the public that a grand jury was not in a position to stop the investigation of anything that might—or any persons—something of that kind.

Q. Of any crime?

A. Yes, of any crime, I think that was the word.

Q. What was the manner of the judge in the first charge?

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A. It was in an earnest, straightforward manner through his whole charge.

Q. Did you notice anything unusual in his manner of charging the jury at that term?

A. Nothing.

Q. From what it usually is in talking to jurors?

A. No sir; we felt very well when we went into our room in regard to the charge the first time.

Q. When the jurors came in with this paper, which you say was unsigned, had they had some difficulty—an excitement in the jury room in relation to the paper?

A. Yes sir, there had; had been considerable of a discussion there.

Q. What form did that discussion take; was it excited?

A. Some of them seemed to be excited.

Q. Which portion of the jury?

A. Well, I think, perhaps, both portions were somewhat excited.

Q. It was a heated discussion, was it?

A. Yes sir.

CROSS EXAMINATION.

Mr. CLOUGH. Q. You have interested yourself a good deal in behalf of Judge Page since these impeachment proceedings have commenced, haven't you?

A. Not particularly so, I circulated a petition.

Q. Did you circulate a petition to the House of Representatives last winter?

A. Yes sir, I did.

Q. Did you not also assist him in getting evidence to use before the judiciary committee?

A. I did not that I know of.

Q. Now, you assisted him in getting testimony for this trial?

A. I have not that I know of.

Q. Not at all? You have talked with Judge Page frequently, haven't you, about this matter since this impeachment proceeding began?

A. Not very, no sir.

Q. You and he agree entirely in your theory as to what occurred there, don't you?

A. That occurred where?

Q. I mean when you talk this matter over as to what occurred at the court, you agree as to what occurred there?

A. Not always.

Q. You differ on some points?

A. Well, he might differ from me; I have stated it as I understand it.

Q. Now, when this first instruction was given by the court to the grand jury, did the Judge read any statute?

A. Yes sir, he did.

Q. Do you remember what statutes he read?

A. Well sir, I couldn't state the articles.

Q. Did he read any statutes at the time he was talking about the county treasurer's office, and the county auditor's office in that connection?

A. He read the law in regard to the county treasurer's office—he did not read any law in regard to the county auditor's office.

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Q. Now let me call your attention to certain statutes, or one of the statutes:

Sec 8 of chapter 91, "When any duty is enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful 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."

A. I don't remember of his reading that statute to us.

Q. Not at that term of court?

A. I do not.

Q. Now, do you remember of his reading "Section 30", "Chapter 95": "Whoever is mentioned in the 26th section of this chapter shall pay over the *same* money that he received in the discharge of his duties, and shall not set up any amount as a set off against any money so received, and all justices of the peace, clerks of the district courts, sheriffs and other officers, shall pay into the respective treasuries all the money collected on fines, within thirty days after said moneys are collected:"

Did he read that?

A. I don't remember that he read that to us at all.

Q. Did he read any statute in regard to treasurers or persons collecting money, setting up offsets against money they had collected?

A. Well sir, I can't remember just what he stated.

Q. Did he read any statute on that subject of treasurers setting up offsets?

A. He read the statutes in regard to the duties of treasurers.

Q. But did he read a statute which related to treasurers who had collected money setting up offsets against it when moneys were demanded?

A. I don't remember that he did.

Q. Would you swear whether he did or not?

A. I would not swear whether he did or not.

Q. Now did he read this:

"Sec. 26, of chapter 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 treasurer or any other officer of the State, or any other person holding any office under any law of this State; or any officer of any incorporated company, who is, by virtue of his office, entrusted 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 entrusted 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."

Did he read that?

A. I don't remember that he read it, I remember that we read it distinctly in the jury room.

Q. You don't remember in that first charge that Judge Page read any of these three sections?

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A. I don't remember as to those distinctly, no sir.
Q. Did he read anything on the same subject?
A. I think he did.
Q. So far as you remember?
A. I think he did.
Q. Now did he read those provisions of the statute before or after he stated to you what were reported to him to be the facts, about the town of Clayton order?
A. In the first charge?
Q. In the first charge, yes.
A. I am not positive as to just where the reading of the statute came in.
Q. Now he said, as I understood, that he had been informed it had come to him, that the treasurer of the county had in his possession a town order of the town of Clayton, amounting to $114 and some cents and that when the town treasurer of the town of Clayton came to get his money, that the county treasurer set this order up as an offset to the amount of it as against the town; did he so state that he had been so informed?
A. Not in that way, he did not. He stated that he had been informed that there were certain irregularities existing in the county treasurer's office in connection with the town of Clayton, that he understood that the county treasurer had refused, or failed to disburse the funds of that town according to law, and it would be our duty to investigate the matter.
Q. Did he mention particularly a town order in that first charge?
A. I am not positive that he did.
Q. Will you swear positively he did not mention that town order?
A. I will not positively swear whether he mentioned that town order or not.
Q. Your memory is not very good as to what occurred in that first charge, is it?
A. That I leave for the court to judge.
Q. Do you recollect; do you profess to recollect what was said in the first charge?
A. I do not.
Q. You can't even remember whether the town order was mentioned in the first charge, can you?
A. I am not positive as to that because it was a matter that came up, and was not talked about so much.
A. Now, Judge Page in his first charge said, that this matter in regard to the connection of the county treasurer with the town of Clayton—did'nt he state, that he did not know what the facts were, himself.
A. He did not state that; he said that he had been informed.
Q. Now, what did he tell that grand jury should be done in case the grand jury should find the facts in the case as he had been informed they were?
A. I don't think he stated what they should do or should not do in his first charge, only in a general way; he stated in his general charge that would be their duty
Q. Didn't he state to the grand jury, in that first charge, that if they found that the facts were as he had been informed, that it was their duty to find an indictment?
A. I don't think he did.

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Q. Didn't he state, furthermore, that if they couldn't find an indictment, that it was their duty to find a presentment?
A. Not in connection with that.
Q. And if they could not find a presentment, it was their duty to present the facts?
A. Not in that charge in that connection.
Q. What did he state in the general charge?
A. He explained the difference between an indictment and a presentment.
Q. Didn't he give the grand jury to understand that if, upon investigation, they found the facts to be as he eadstated, that it would be their duty to find an indictment?
A. He did not.
Q. Didn't he give the jury to understand that it would be ther duty to find an indictment because they found the facts as he stated them? Didn't he say they would be warranted in finding an indictment?
A. Not at that time; not to my recollection in that first charge.
Q. If he said so you have forgotten it, have you?
A. Well, I can't state that he stated that; I don't remember that he did.
Q. Is your recollection any better about other matters than it is about what occurred in that first charge?
A. Well, I can't state that.
Q. Now, you say after he had spoken about the county treasurer he spoke about the county auditor?
A. Yes sir, I am not positive as to which was first.
Q. Didn't he say when he was speaking about the county auditor that the county auditor permitted a band of musicians to practice?
A. He did not.
Q. Didn't he say it was a matter of public notoriety, in fact he knew himself?
A. He did not.
Q. That the county auditor was permitting a band of musicians to practice there?
A. No sir, he did not state anything of that kind.
Q. Did he tell the grand jury to investigate that matter?
A. The matter you have cited?
Q. Yes sir.
A. I deny that matter that you have cited, as you state it.
Q. Did he iell the grand jury to investigate the matter of the county auditor permitting meetings to be held in his office?
Q. He stated that he had been informed, or that it came to his notice that such was the fact, that he had allowed public meetings in his office. He said that it would be the duty of the grand jury to examine into aud see what there was of it. He did not state what it would be their duty te do after they did examine it.
Q. Did he tell them what kind of conduct on the part of the county auditor that was?
A. Yes sir, he stated it was dangerous conduet.
Q. Did he state that it was unlawful conduct?
A. He did not.
Q. But merely it was dangerous conduct?
A. It was dangerous to the county.

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Q. He mentioned the fact, did he not, that there were papers in there relating to the case of the county of Mower against Smith?

A. I am not positive as to any specific papers being mentioned; it is rather my impression that he mentioned something about that, but I am not clear.

Q. About there being in the county auditor's office papers that were important papers in that suit, the case of the county of Mower against Smith.

A. He might have mentioned that.

Q. Didn't he give that as a principal reason why those meetings should not be in the office?

A. No, I did not so understand it at the time, and his language did not convey that idea to me.

Q. You say the grand jury went out, and after two or three days they commenced to investigate the Ingmundson matter?

A. It was called up, yes sir.

Q. And you say that a motion was then made by some member of the jury that Mr. Ingmundson be examined before the grand jury?

A. I stated that there was one member of the jury stated that Mr. Ingmundson requested to come before the grand jury.

Q. And I understood you to say that you meant that a motion was made that he be examined before the grand jury?

A. It was afterwards made, when there was objections made to this request.

Q. How long after the suggestion made by this individual before the vote was put?

A. It was only a few minutes.

Q. And that vote carried?

A. Yes.

Q. Unanimously?

A. No sir.

Q. It was almost unanimous, was it not?

A. I don't know whether it was or not.

Q. Was the subject of the right of the grand jury to call Mr. Ingmundson before them discussed there?

A. That was the grounds of the objection made by the member who made it

Q. Wasn't it claimed on the other hand that Mr. Ingmundson the county treasurer, could not be indicted after inquiring of the county treasurer in regard to it?

A. I don't think there was any discussion made after the motion to allow it.

Q. And you called Mr. Ingmundson before the grand jury?

A. Yes sir.

Q. You sent for him yourself didn't you, after the motion was carried?

A. After the motion was carried, I suggested to some one to call the officer, and the officer appear—

Q. And you gave him the instructions?

A. He told him the grand jury wished to see Mr. Ingmundson.

Q. Hadn't you yourself had a conversation with Mr. Ingmundson, about Mr. Ingmundson appearing before the grand jury?

A. No sir.

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Q. You deny that, do you?
A. I do, wholly.
Q. How long did Mr. Ingmundson remain before the grand jury on that occasion?
A. Well, I should say, perhaps twenty or twenty-five minutes.
Q. Was he interrogated by anybody?
A. Yes sir.
Q. By yourself?
A. Yes sir.
Q. By any other person?
A. I don't remember whether he was or not.
Q. Do you remember what testimony he gave?
A. He stated his understanding of the law that he thought he had a right to take town orders.
Q. Wasn't he interrogated in regard to transactions connected with this town order; didn't he testify as to matters of fact?
A. Yes sir, in regard to that, and made a statement in regard to other matters that that was his custom.
Q He was interrogated as to various matters?
A. Interrogation was made in regard to town orders.
Q. He claimed he took that and held it as a voucher, didn't he?
A. Yes sir.
Q. He claimed, furthermore, that the money which was paid out was paid directly to the town treasurer, of the town of Clayton, and out of the moneys of the town of Clayton, didn't he?
A. Yes sir.
Q. And that he took this order as a voucher?
A. Yes sir.
Q. He claimed, did he not, that he had paid that order with two checks?
A. No sir; he claimed that he had given that in one check; that he had given $100 to Mr. O. Quamm, asking a hundred dollars at that time for the purpose of paying Mr. Coleman.
Q. You are sure of that?
A. Yes sir; that is as I understand it.
Q. Mr. Coleman testified before the grand jury, didn't he?
A. He did.
Q. Did not Mr. Coleman himself say, when he called upon Mr. Ingmundson in regard to the matter, that Mr. Ingmundson showed him the two checks with a memorandum upon them?
A. I didn't so understand Mr. Coleman's testimony.
Q. Who interrogated Mr. Coleman?
A. I did.
Q. You did not do it very thoroughly, did you?
A. I did, sir; as thoroughly as I knew how.
Q. You are not a lawyer, are you?
A. No sir, I am not.
Q. Now, that first day, when this matter came up, how long was under consideration?
A. The first day that it came up in the jury room it was not very long; perhaps Mr. Ingmundson occupied most of the time in his explanation.
Q. And then the matter was laid aside, was it?
A. It was laid aside.

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Q. When was it that it came up again?
A. I couldn't tell you exactly as to the number of days.
Q. It was considered more or less every day after that, during the first week, wasn't it?
A. Yes, I think it was.
Q. Now, after it was taken up, didn't it form one of the leading subjects of consideration by the grand jury throughout the entire session of the court, occupying a larger part of each day?
A. No sir, it did not.
Q. Do you remember what days after it was taken up, that it was not considered at all before the grand jury?
A. No, I can't tell what days that it was not considered.
Q. Can you name a single day from the day it was first taken up when it did not come before the grand jury, up to the close of the session of the court?
A. When we adjourned over once.
Q. I mean when the grand jury were in session?
A. I don't remember as to that.
Q. Now, what day did you adjourn over, as a matter of fact?
A. I think we adjourned on Saturday morning until the next Monday noon, that is, of the first week.
Q. Now, between the time the matter was first taken up and this Saturday morning you adjourned, the matter had been up two or three times, hadn't it?
A. I don,t think it had been up only the time when Mr. Ingmundson was called.
Q. When was Mr. Coleman sworn?
A. Mr. Coleman was sworn in connection with the order of the town of Clayton; I think he was sworn before Mr. Ingmundson came in.
Q. What day was that?
A. As to that I could not be positive, I should think it was about Wednesday.
Q. It was then two or three days after the beginning of the term that Mr. Coleman was sworn?
A. I think it was, yes.
Q. When he was sworn he not only told about the town of Clayton, but he told also about the order Mr. Ingmundson had, didn't he?
A. I don't think he did upon that occasion; I think he was before the grand jury more than once.
Q. When was he called particularly with reference to the Ingmundson matter.
A. I would not say positively whether he was sworn twice or not, but I think he was; I think he gave his evidence twice.
Q. When was the second time?
A. When we was discussing the Ingmundson matter at the last time.
Q. Now don't you remember at the first time, when he was before the grand jury, that he spoke about this order against the town of Clayton that Mr. Ingmundson held, as well as other matters?
A. He might have done—he might have stated in regard to that matter.
Q. You have forgotten in reference to that matter, whether he did or did not, haven't you?

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A. I think he did, come to think it over.

Q. I think, on reflection, you will remember that he gave his testimony, also, about this order that Mr. Ingmundson had when he was first examined?

A. I think that I stated that was in connection with our investigation of the town treasurer's office of the town of Clayton.

Q. And this matter of Mr. Ingmundson having that order, naturally came right in there?

A. Yes sir, I think so.

Q. So at the time Mr. Ingmundson came before the grand jury, you were pretty well posted about this town order; were you not?

A. Yes sir.

Q. You had gotton at that time, all the main facts so far as the prosecution was concerned, hadn't you, at the time Mr. Ingmundson came in the first time?

A. He gave the most of the facts himself.

Q. He did not try to conceal anything, did he?

A. I don't know whether he did or did not.

Q. He did not appear to try to refuse to tell anything, did he?

A. No sir. I didn't ask him very many questions, myself.

Q. Now I will call your attention to another matter: Mr. Haralson, the treasurer of the town of Clayton, when was he axamined?

A. I think he came there on the first week, he was examined partly in regard to the town of Clayton, and then went home after his books, and also Mr. Miller, I think, the town clerk of the town of Clayton. They went home for their books, and then the matter came up on the second week. We had Mr. Harolson's testimony, I think, then.

Q. Didn't you, during this first week, when Mr. Haralson was there, have his testimony in regard to the town order?

A. I think we did.

Q. Didn't the two matters dovetail right in together, so that they both came out at the same time?

A. What matter?

Q. The matter of the town order which Mr. Ingmundson came before the grand jury upon, and the defalcation of Sever O. Quam.

A. We was not investigating the defalcation of Sever O. Quam.

Q. What was it?

A. We were dealing with the present town officers and individuals of the town of Clayton.

Q. But they all came in together?

A. This order was mentioned in connection with the investigation of that.

Q. So that this matter of the transaction between Mr. Ingmundson and the town treasurer of the town of Clayton came up almost at the beginning of the term, didn't it, as a matter of fact?

A. I think that it was after the middle of the first week that we commenced investigating them; as I stated before, we first investigated the individuals who had embezzled funds of the town of Clayton, and it was a matter that occupied some little time.

Q. Isn't it a fact that within two days after the commencement of the term, after the grand jury had commenced their business, that they commenced to take testimony bearing upon the point of this order which Mr. Ingmundson had?

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A. The matter of the order might have come in there, but we did not commence to take evidence upon that.

Q. Now, from the time that that was first mentioned before the grand jury—every day the grand jury was in session until the final close—that matter of the county treasurer was before the grand jury, wasn't it?

A. I frequently called their attention to it; that we ought to dispose of these matters; that our attention had been called to it by the court; that is the way I put it. I did not speak of that matter anymore than I did of the auditor's office, or any other matters that he had presented.

Q. Now, you say after this investigation had been running awhile, you went into court; you say that you asked instructions in regard to a provision of the statute; was that the first time that the grand jury had been in to ask instructions about the county treasury matters after the commencement of the term?

A. We never went in and asked instructions in regard to the county treasurer's office; not stated in that way. When we went in to ask instructions, it was in regard to the statutes.

Q. Wasn't it a statute that related to the duties of the county treasurers?

A. Yes sir, as I remember.

Q. You asked it for the purpose of giving you light upon your proceedings in respect to the county treasury, didn't you?

A. Yes sir.

Q. Now, do you remember what day of the term it was when you went in?

A. I think that was about Thursday, perhaps, of the second week.

Q. Now, let me read you this extract from the minutes of Wednesday, and see if this was not the occasion when you went in: "Now came the grand jury into court, and being all present except D. B. Coleman, requested the instruction of the court upon the construction of section 105, chapter 13, statutes at large; instructions given, and jury retired to their room." Wasn't that the occasion when you weer in?

A. I think, perhaps, it might be; I wouldn't say positively.

Q. That was the occasion you referred to, wasn't it?

A. I think it was.

A. That section 105 is the one which defines the duty of the county treasurer to pay over moneys?

A. If that was the section, that is what the instruction was wanted on.

Q. Now, with reference to your connection with Judge Page when you were going home in the evening; was it before you had come in for that instruction, or afterwards?

A. I can't state positively whether it was or not; whether it was before we asked that instruction or after.

Q. You have no recollection on that subject, as to which preceded?

A. I am not positive at all.

Q. Now, in that conversation with Judge Page, did he say anything about the grand jury being neglegent in reporting on the Stimson matter?

A. No sir. There was not any person's name mentioned.

Q. Prior to this time, had the grand jury reported into court, in reference to the county auditor?

A. I don't think they had.

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Q. Do you remember when the report, in regard to the county auditor, came in with reference to this request, for instruction which I have just referred to? Was it before or after?

A. I am not positive.

Q. Don't remember which happened first?

A. No sir; they were along about the same time; but I am not positive which occurred first.

Q. You understood when Judge Page asked about what the grand jury were doing, he referred to the matters he gave to you the first day. You know he meant the Ingmundson matter, did'nt you?

A. I suppose that he referred to all the matters that he had spoken of there.

Q. Did'nt you understand him to refer to the Ingmundson matter?

A. I—the—the matter of the county treasurer, and the county auditor both, I think, I don't think we had reported on either.

Q. Did you have any difficulty; had you had a difficulty at all in getting the jurors to act in the matter of the county auditor.

A. They had deferred the matter, that is they would take up new business instead of finishing up that they were talking about. If there was any new business which came in—which very frequently did—there was a great deal of business that came in accidentally along, and they would always drop either of these matters, and take up the new business.

Q. Then you understood that the judge referred to the matter of the county auditor and the county treasurer in that conversation?

A. I supposed he did; I am not positive as to whether the grand jury had reported their findings on the town officers at that time or not; I know that was put off to the second week.

Q. But you don't know whether you referred to that when you were talking to Judge Page?

A. I am not positive as to whether we had reported on that or not.

Q. This was in the evening, wasn't it, when you had the conversation with Judge Page?

A. No sir, I think it was at noon.

Q. Now when you went into court that afternoon or the next morning did not Judge Page, when the grand jury came in on some other matter, take occasion, after he had that talk with you, to call the attention of the grand jury to the matters of the county auditor, and the county treasurer?

A. I don't remember that he—I think when we brought in our report in regard to the county auditor's matter he called our attention to our delay of matters that he had laid before us in the first place.

Q. Now, very shortly after you and he had this conversation, you brought the report of the county treasurer, didn't you? and then Judge Page took occasion to speak about other matters he had given you in charge?

A. I think it was at that time?

Q. And you understood he meant the county treasurer's affairs?

A. I understood it so, yes sir.

Q. Now you say there was a good deal of discussion in the grand jury room about what should be done, and afterwards you say it was agreed that there should be a committee appointed to investigate the county treasurer's office?

A. Yes sir.

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Q. And you all went in there?
A. Yes sir.
Q. Was Mr. Ingmundson there at that time?
A. No sir.
Q. Was it before or after the grand jury had come back from investigating the affairs of the treasurer's office, that they had passed on or carried the resolution which was afterwards returned in to court?
A. The resolution that was unsigned?
Q. Yes sir.
A. It was afterwards.
Q. They came back, and then that resolution was adopted?
A. It was adopted, yes sir.
Q. By a large majority of the jury?
A. No sir, not by a large majority.
Q. Was there considerable discussion of it?
A. There was.
Q. Did you state to the jury while that matter was being discussed, that they might as well find an indictment first as last, because it they did not, Judge Page would keep the grand jury there all summer?
A. I did not, sir.
Q. Wasn't that the occasion on which you said that?
A. I never said that, I deny it wholly.
Q. Your recollection is as good on that as it is on the other matters, is it?
A. Yes sir, it is I should think; Idon't know whether it is as good, I know I made no such remarks.
Q. You knew your duty as chairman, to sign all reports that were agreed on by the grand jury?
A. No sir. I did not know it in that way. I understood it was my duty to sign an indictment.
Q. You knew it was your duty to sign reports such as was agreed upon by the grand jury?
A. If they were facts I did.
Q. Didn't you understand it your duty to sign reports that were agreed upon by a legal and a constitutional majority of the grand jury?
A. Yes sir.
Q. Now a constitutional and legal majority of the grand jury agreed to that resolution, didn't they?
A. They agreed to it, yes sir.
Q. Did you say anything in the jury room about you being willing to sign it?
A. I stated that was a false statement.
Q. Did you say you would not sign it as foreman?
A. I would not.
Q. Don't you believe that that grand jury thought you had signed it in accordance with your duty when they went into court?
A. I presume they did; some of them.
Q. You did not take pains to undeceive them?
A. I did not take pains to get up and state that I would not sign it.
A. You presented that paper; what become of it after it was presented.
A. I don't remember whether it was handed back or not.
Q. Did not Judge Page on that occasion say to you that that only expressed the opinion of the grand jury; that he did not want the opinion of the grand jury, that he wanted the facts?

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A. I don't remember of his using that language.

Q. Didn't he use it in substance?

A. He stated that the grand jury had been very clear on all other matters and it was strange to him—I think that was the occasion—I would not state positively, but I think it was at thet occasion th tahe stated that the grand jury had been very clear on all other matters that had been brought before them, at least their reports were, and it was strange to him that they were not on this matter as they had on others.

Q. Did he not state there that the difficulty with this piece of paper was that it did not state the facts; that it only stated the conclusion of the grand jury, that he did not want their conclusions or their opinions but what he wanted was the facts?

A. I did not understand it that way.

Q. You did not tell your story in the same way before the judiciary committee last winter, did you?

A. I don't know as I did.

Q. When you testified before the judiciary committee last winter, didn't you swear that Judge Page—in connection with this resolution—that he said it stated nothing but the conclusion of the grand jury, and did not state the facts?

A. I don't think I said that.

Q. That he did not want the conclusion, but he wanted the facts?

A. He might have stated that this was not such a statement as a presentment of facts as they had been in the habit of finding.

Q. Didn't he tell you he wanted you to find the facts, and that this was only a conclusion?

A. No, not that way, he did not.

Q. Was not that the substance of the fault that he found with that report?

A. No sir, he said it was not signed.

Q. Didn't he also say that it didn't state any facts, but mere conclusions?

A. I am not positive whether he used the word conclusion or not.

Q. Do you remember what evidence you gave on that point before the judiciary committee last winter?

A. I am not positive.

Q. Didn't you then swear that he said it only stated conclusions, that he didn't want conclusions, but wanted facts?

A. I am not positive whether I did or not.

Q. Now, when you went back into the jury room, do you remember whether you had that report with you or not?

A. I am not positive in regard to that.

Q. Don't you remember when you wen't back into the jury room, that the majority of the grand jury were indignant that you had deceived them, by taking that paper in without being signed?

A. I only heard two jurors express themselves, and their expression was, "If you had signed that we would have been all right."

SENATOR NELSON. Q. Suppose the jury had found an indictment to which you did not assent, would you have deemed it your duty not to have signed it, because you did not assent to it, or believe it to be true?

A. No sir; I would not have dissented; an indictment is a matter drawn by the county attorney, and there was not an indictment—I would like to state, however—there was indictments found that I voted

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against, but that I signed. But there was facts conected with that, that were false. I think it was Mr. Bacon, of Le Roy, that drew up that report; I did not copy it.

Q. You went to work, after you went back again, and took more evidence?

A. No sir.

Q. How long were you engaged in getting up this finding of facts.

A. Not but a very short time.

Q. In whose handwriting was that drawn?

A. I think it was in D. B. Coleman's; I will tell you how that came. He was one of the committee that was appointed in the first place to draw up a statement of facts, that is, informal, that we might act upon them, and I think when they were returned, he was called upon to draw the statement of facts now, if he wanted to; I think that was the word that was used.

Q. Now, the paper that was handed in to the court, as the report finally, was not that drawn by you and in your handwriting?

A. No sir.

Q. You are positive about that?

A. I know it was not.

Q. You say it was in the handwriting of D. B. Coleman?

A. I think so. I think it was D. B. Coleman that drew that up.

Q. You signed that, didn't you?

A. I did sir.

Q. And you took it into court?

A. Yes sir.

Q. And then the court read it over, and said if those were the facts it was your duty to find an indictment?

A. Not in that way, he did not.

Q. What did he say?

A. He stated if we had evidence to substantiate the facts as found by our report, that it constituted an indictable offense.

Q. What did he say the duty of the grand jury was in that connection; didn't he say it was their duty to find an indictment?

A. I don't know whether he said it was their duty or not; we understood it was our duty.

Q. Now, you went back, and the resolution was passed not to take any action in the matter?

A. Yes sir.

Q. And then you came into court?

A. Yes sir.

Q. And you made a written report, didn't you, of some kind?

A. I think not.

Q. You came into court, and the court asked you if you had any further business?

A. I think the way it was when we came into court finally, we stated there was no further business for the jury without his asking?

Q. This writing that you took in purported to be a statement of facts. You don't remember whether you took that back with you to the jury room?

A. I am not positive whether we did or not; I don't think we did. When we came back I don't remember that we had it.

Q. Then you merely came back and reported no further business?

A. Yes sir.

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Q. Was there any report in writing, referring to the Ingmundson matter, either one way or the other, when you finally came in?

A. I don't think there was any paper handed to the jury.

Q. Was there anything said by any member of the grand jury, either yourself or any other member in regard to that matter either one way or the other?

A. In the court room I don't remember that there was.

Q. You immediately came in, and the entire business was, that you stated you had no further business?

A. I think so, as I stated before, I am not positive whether we had this paper out, and returned it to the court or whether we did not.

Q. But you made no report of any kind, either verbally or written on the subject of your not concluding to act on the Ingmundson matter?

A. No, I don't think we did.

Q. Then whatever statements may have been made to the grand jury were entirely voluntary, and not called out by any report the grand jury made?

A. I say I am not positive whether this was submitted, in writing, that is our final report, or whether he handed me back the paper or not, I am not positive.

Q. At all events, no report the grand jury made mentioned the Ingmundson case, did it?

A. I don't know that it did.

Q. Didn't you understand, on that occasion, the judge charged the grand jurors that they had violated their oaths in neglecting of indicting Mr. Ingmundson?

A. We did not state that.

Q. Didn't you understand him to intend to carry that idea to the grand jury?

A. He stated—

Q. Didn't you so understand? I am not asking what he stated.

[No answer.]

Q. I am asking you if you did not so understand it; you may state if you so understood.

A. I did not understand it as you put it.

Q. Didn't you immediately go out of that court room, and in the presence of Mr. Slider, and Mr. Dunn and C. C. Crane, and perhaps others, in Slider & Dunn's store, state that the judge had just charged the grand jury with having violated their oaths in refusing to indict Mr. Ingmundson?

A. I did not, sir; I deny that positively.

Q. Or words to that effect?

A. Or words to that effect.

Q. And didn't you claim before those gentlemen, to have been insulted by the court in that transaction?

A. I did not feel insulted I felt that he had done just exactly his duty and right. I felt at that time just as I feel now, that he told the truth.

RE-DIRECT EXAMINATION.

By Mr. LOSEY. Q. What was said by any jurors as to why they would not indict Mr. Ingmundson?

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A. There was one of the jurors stated that he was a particular friend of his.

Q. Who was that?

A. That was Mr. Baker of Le Roy.

Q. Did the county attorney give any attention to this matter while it was up before the grand jury?

A. He did not; he was very seldom before the jury.

Q. Who were those two men who spoke to you when you got back into the jury room about this paper not having been signed?

A. One of them was Mr. Hammond of Austin; N. N. Hammond I think. He is the hotel man there. I am not positive as to the other but I think it was Mr. Crane.

Q. It was not a presentment or an indictment, was it?

A. I did not consider it so.

Q. Some questions have been put to you in relation to a petition that was sent to the Legislature. About how many signatures were there to these several petitions?

A. Well, I don't know; I never counted them. They were circulated by, perhaps, half a dozen men. One day was all I had to do with it.

D. B. COLEMAN, RE-CALLED

on behalf of respondent, testified:

Mr. LOSEY. Q. You have already testified Mr. Coleman, I believe, that you were a member of the grand jury, at Mower county, in the March term of 1877?

A. I was.

Q. Are you the D. B. Coleman that was named as payee in a certain order against the town of Clayton, in the sum of $114 and some cents?

A. I am.

Q. Did you have a talk in relation to that order previous to that term of court?

A. I had.

Q. You may go on and state what that conversation was?

A. And where?

Q. And where and when?

A. The conversation between myself and Mr. Ingmundson commenced in the auditor's office during, I think, the month of April, 1876; I was in the auditor's office on business; I had been in there but a short time before Mr. Ingmundson came in; perhaps it would be well enough for me to explain that between the two offices, the auditor's and the treasurer's, there is a window, and when he came in I perceived that, after the conversation began, that he was aware of my being in there; he presented me the order that you have spoken of, placed it before me, and says he: "Coleman, how in h—l did I become possessed of that order?" [laughter] says I, "Mr. Ingmundson, it strikes me that it would be a more pertinent question for me to ask you than for you to ask me; I can tell you where that order *should* be: it should be in the hands of the treasurer of the town of Clayton; that order was paid me by the treasurer of the town of Clayton.

Q. Did you explain to him how it was paid to you?

A. In a subsequent conversation occurring a few minutes afterwards, in his own office, it seemed to refresh Mr. Ingmundson's memory, and he immediately turns to me, and he says to me, "Oh," says he, "now I

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know all about that order," says he, "you come into my office and I will explain this matter to you how I became possessed of that order." Said I: "Mr. Ingmundson, I will be in your office in a short time; I was coming on business, and after I get through here, I will come in." I went into his office, and in the conversation—I can't relate this conversation, perhaps, exactly as it occurred from beginning to end; that is, beginning at the beginning and ending where we left off.

Q. Go on and state the substance of it.

A. I stated to him that I had received my pay for that order in the month of August, 1875; that a portion of this order, twenty oollars, was paid to me upon demand, upon my first demand for money, upon the order, on my first presenting it; that when I first presented this order to the town treasurer he stated to me that he hadn't the money on hand to pay that order.

He may have given me to understand that his money was kept in Austin, at all events I got the idea at that time, and so stated to Mr. Ingmundson in that order that that money, the town money, was at Austin, and after paying me the twenty dollars a few days subsequently, that he paid me the balance in Ingmundson's check of a hundred dollars on the bank of Le Roy. When I made this statement to Mr. Ingmundson, he says: "Yes, I gave him that check of a hundred dollars in the month of August, and if I recollect correctly, he told me that he wanted that money to pay you; that he was short of money enough to take up an order of yours, and that he wished this money to finish the paying of the order to you." "Now," says he, after I got this far in my conversation with him, "Now," he says, "I will explain to you how I became possessed of this order." He then took his checkbook, and in connection, I think, with some other book, perhaps what I would call a cashbook, but from his check he showed me where he had drawn three orders on the bank of Le Roy which he delivered to Sever—

Q. Three orders or three checks?

A. Three checks on the bank of LeRoy which he delivered to Sever O. Quamm; one for a hundred dollars in I think the month of August, as I have heretofore stated, at which time I received my pay, one for $100, another for $44.52, I think, and a third one for $70. "This first order," he says to me, "I believe was to take up your order. I think he told me that he wanted to take up your order, that he hadn't money enough and wished that I would let him have money enough to take up your order." The second check for $44.52 he said that he drew and gave to Sever O. Quamm, upon his request for money and upon his agreeing to deposit with him, within a few days, a town order amounting to $114.52, which had been drawn in my favor, which he said Mr. O. Quamm did bring to him within a few days, and that he then drew another check on the bank of LeRoy for $70, making, as I said before, the three checks. I asked Mr. Ingmundson in the course of that conversation, and perhaps immediately following this statement that he made to me, why he should take this order of the town treasurer. Said I, "perhaps if I had brought this order here, you would not have taken it if I had been short of money?" "No," says he, "I would not have taken it of you nor any other private individual."

Said I, "that is strange; the order in my hands you would know was an unpaid order, you would know I was entitled to my money on it somewhere, either at the county treasurer's office or the town treasurer's office."

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"Yes," says he, "but the law strictly prohibits me from paying out to you or any other private individual one single dollar on town orders except as I may receive them in payment of town taxes, and to the amount of town tax due from the individual presenting the same.' And then read the statutes to me, showing me and explaining to me that such was the law relating to his conduct with private individuals.

"But," he says, "I took this as a voucher from Sever O. Quamm, which I had a perfect right to do. If Mr. O. Quamm has an order in his hands belonging to the town and wishes to draw money, I have a perfect right to give him money to the amount of that town order."

Said I, "Mr. Ingmundson, why didn't you take the same course with Mr. O. Quamm in regard to this second lot of money that you did in regard to the first?"

He says, "I might just as well have done it."

He had previously told me that he had taken Sever O. Quam's receipt for the hundred dollars that he drew, the first one hundred dollars, and that upon the next drawing of town money by Sever O. Quam, upon the order of the auditor, upon the drawing of the next apportionment that he returned this receipt of Sever O. Quam to him in lieu of the $100 that he had previously drawn; and he says, "if I had done the same thing with the second lot of money, I guess it would have been better." If my memory serves me, too, in looking over the matter that day with Mr. Ingmundson, he showed me that he had paid out one apportionment of town money to Sever O. Quam the treasurer, after the taking of this $114.52 order.

Q. About to what extent was O. Quam a defaulter to the town of Clayton?

A. About $860. I would state further that the $114.52 was never credited to the town of Clayton by Sever O. Quam, that Sever O. Quam gave me and the town board to understand that he wanted money for his own private use.

Q. When he disposed of this order to Mr. Ingmundson?

A. To Mr. Ingmundson.

A. To Mr. Ingmundson; and that he used it for his own private business.

Mr. CLOUGH. Wait a moment; I object to his stating what Sever O. Quamm said.

Mr. DAVIS. We admit the force of the objection.

Q. What position do you hold in the town of Clayton?

A. At the present time?

Q. Yes?

A. I am chairman of the town board.

Q. What position did you then hold?

A. High private.

Q. Have you examined all books of the town to see whether Clayton township had that amount in the county treasurer's office, from October to March?

Mr. CLOUGH. I object to that as not the best evidence.

Mr. LOSEY. We withdraw the question.

Q. What did Mr. Ingmundson do with the order?

A. He returned it to the town as money.

Q. In this settlement that he had with the town?

A. In the settlement that Mr. Ingmundson had with the town.

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Q. Do you know that personally?
A. I don't think I do, sir.
Q. Do you remember the instructions given by the court to the grand jury at the March, 1877, term—the first instruction given?
A. Well, do you wish the general instructions?
Q. You are asked if you remembered?
A. Yes sir.
Q. Did he give you any instructions in relation to the county treasurer's office?
A. He did.
Q. What was the substance of the instruction given?
A. He said to the grand jury, in words to this effect: That it had come to his knowledge that irregularities existed in the county treasurer's office, and, in connection with his remarks, I think he spoke in regard to a certain town order issued by the town of Clayton, and which had been disposed of by the town treasurer of that town; and he stated that he wished us to investigate the matter, and also spoke in regard to the auditor's office; that he had been informed, or that it had come to his knowledge that public gatherings were allowed in the auditor's office at late hours—spoke of valuable papers there, and suggested that it was an improper place to hold public meetings on that account.
Q. What action was taken by the grand jury in regard to the auditor's office?
A. We ascertained that public meetings or gatherings were held there, and so reported to the judge. He then desired us to confer—I should have said, perhaps, that those meetings or gatherings were allowed by the chairman of the county board. The judge then proposed that we should confer with the auditor and the chairman of the board of county commissioners in reference to the matter.
Q. Which you did?
A. We did; they expressed a willingness, if the grand jury disapproved of those gatherings, to have them cease; we so reported to the judge.
Q. What did he say?
A. He said that was satisfactory, or words to that effect.
Q. Did he charge you that that was indictable?
A. He did not, sir.
Q. Did he tell you if you found the facts to be the way he had stated them, in relation to that office, it was your duty to indict the auditor?
A. No sir.
Q. Nothing equivalent?
A. No sir.
Q. What was the manner of the judge in giving his charge to the jury at that time?
A. Nothing unusual, his usual manner.
Q. How long have you known the respondent?
A. I have known the respondent for ten years; I have been in his court a number of times where I formerly lived, but a few times at Austin, perhaps three or four times.
Q. What action was taken by the grand jury in relation to the county treasurer's office?
A. The matter was examined into (perhaps not very thoroughly), and I don't know whether you want me to state what we did then.
Q. Go on?

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A. But what we did in the matter.

Q. Go on and state what you did, and what occurred between the grand jury and the court afterwards?

A. Upon the examination, the grand jury were found to disagree in regard to what report to make. Finally a majority of the grand jury agreed to make a report, and drew up one to this effect, "That we find irregularities to exist in the county treasurer's office; but not directly traceable to the treasurer himself."

Q. Well, what was done with that?

A. That was carried into court.

Q. What occurred then?

A. And he then remarked to the jury, that the paper was informal; that it was not such a report as we had summitted in similar cases to which we had called his attention; or in other cases to which he had called our attention, and wished us to retire and bring him in a report of the condition, or of what we actually found, or make a formal statement—in words to that effect.

Q. What day of the week was this, and which week?

A. It was on the day on which we adjourned, which I think was on Saturday.

Q. What occurred then, in the grand jury room, after you retired?

A. Well, there was considerable conversation and some rather high words, but finally what had been previously a minority report was adopted, almost or quite unanimously, as the report of the grand jury.

Q. Who drew up the report?

A. I drew it up, I think.

Q. It was taken into court, and then what?

A. The Judge, on reading it, remarked to this effect: "That if we found by evidence such a state of facts to exist as we had shown, or did show to him by that report, that those acts there spoken of constituted an indictable offense," and requested us to retire.

Q. You retired; then what action was taken?

A. There was no action really taken. The majority proposed that we should take no action in regard to the matter; that we should make no further report in any way to the Judge.

Q Well, on the return into the court again?

A. We returned into court again.

Q. What occurred then?

A. I think the foreman stated that there was no further business before the grand jury.

Q. What did the court then say?

A. I shan't be able, of course, to give the words; the court expressed some surprise that in some cases he had laid before us, we had been very willing and ready to act upon; and in others we had refrained from acting; and in the course of his remarks, he said if we had been influenced by any improper motives in our actions; that we had been guilty of a violation of our oaths. But, gentlemen, if my memory serves me correctly, he says, "this question rests with yourselves. You are discharged;" and then turns to the county attorney, and instructs him to draw up a complaint, based on the statement of facts found by the grand jury, or words to that effect—draw up a complaint against Mr. Ingmundson.

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Q. Did the judge say to Mr. French, at that time, "Draw up a complaint and have Mr. Ingmundson arrested at once!"
A. No sir.
Q. He used no such language as that?
A. No sir.
Q. Did the court, at that time, state to the jury that they had perjured themselves?
A. No sir.
Q. Or any such language as that?
A. No sir.
Q. What was the manner of the court at that time?
A. Calm and dignified as usual; no more excited, I should say, than usual.
Q. You have heard Judge Page charge grand juries at other terms than that?
A. I have at Preston, I don't remember that I ever have at Austin?
Q. You did not notice anything different from what his usual conduct is in charging a jury?
A. I did not.
Q. You did not notice anything "terrific" about his charge?
A. No sir, I did not.
Q. Nor anything very violent?
A. No sir, if there had been anything of that kind I should have noticed it.
Q. Had you drawn the attention of the judge to certain of these matters in relation to the town of Clayton previous to the term of court?
A. I had sir, and previous to my knowing that I would be a grand juror at that term of court.
Q. When was this that you drew his attention to it?
A. In the forepart of the winter of 1876-7, if my memory serves me correct.
Q. Where was it?
A. It was in Austin, and I think that it was in his office.
Q. Did you go there for that purpose?
A. I went to his office for that purpose.
Q. Of your own motion?
A. Yes sir.

CROSS EXAMINATION.

Mr. CLOUGH: Q. This order was issued to you originally that has been spoken of?
A. Yes sir.
Q. How long did you hold it before you went to Mr. O. Quam for your pay?
A. A very short time.
Q. You only received the pay once on that?
A. I don't understand.
Q. I say that you did not receive your pay on that order more than once, did you?
A. No sir.
Q. When you went to Mr. O. Quam he told you that he kept his money in Austin, didn't he?

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A. He gave me to understand that; he said he should have to go to Austin for the money; I don't think he stated directly that he kept his money there, but I inferred from what he said that he kept the town moneys at Austin.

Q. The first time you went to him he paid you nothing at all, did he?

A. Well, the first time I went to him he paid me $20.00 upon my receipt.

Q. In currency?

A. Yes sir.

Q. Do you remember when that was, the date of it about?

A. No sir, I was looking over my old books; I have looked them over two or three times, to ascertain about what time.

Q. And you don't remember what time it was?

A. It was soon after the issue of the order.

Q. That was along in the month of August, or fore part of September, 1875, wasn't it?

A. It was in the month of August, 1875.

Q. Did you keep the order after he paid the $20 on it?

A. I did sir, and gave him my receipt for $20.

Q. You kept the order?

A. I kept the order.

Q. You went to him again?

A. Yes sir, at a time specified by him.

Q. He stated he would go to town and get the money?

A. Yes sir.

Q. To pay on it?

A. Yes sir.

Q. He went to town and came back again, and then you called on him?

A. Yes sir, when I called on him again, he said that he had been to Austin, that he had got the money or rather a check on the bank of Le Roy, for a hundred dollars.

Q. Now, by whom was that check drawn?

A. By Ignatius Ingmundson, county treasurer, I think.

Q. Was it dated about the time you got it?

A. Yes sir.

Q. Do you remember whether the date was an old date or a fresh date?

A. It was dated previous to the day of its being paid to me, if my memory serves me correctly.

Q. And then I understood you to say that that over paid you?

A. Yes sir, it over paid me.

Q. How much?

A. $5.48, I think.

Q. You are sure Mr. Ingmundson didn't give you two checks?

A. I had no checks of Mr. Ingmundson's.

Q. I mean Mr. O. Quam.

A. No sir; he gave me one check of $100.

Q. Had you spoken to Mr. O. Quam about having the order, and wanting your pay before he paid the twenty dollars?

A. No sir, I never after receiving the order, saw Mr. O. Quam at all

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till he paid me the twenty dollars, made no demand, and said nothing to him in regard to it.

Q. Mr. O. Quam knew, though, that you had the order?

A. I don't think he did, for my impression now is that I presented to him the same day, or the next day on which it was drawn. The work had just been performed, my job was just finished; I was in need of the money for use, and I asked the town board for my pay, and they drew an order on the treasurer, which I almost immediately presented.

Q. Now, when you got that check, what did you do with it?

A. I went to the bank of Le Roy and drew the money the same day.

Q. You took the check to the bank yourself?

A. Yes sir; and it was payable to the order of Sever O. Quam, or bearer; my impression is—

Q. It was payable to bearer?

A. I think it was payable to bearer; at all events, if it was not, Sever O. Quamm backed the order; it was negotiable at all events when I got to the bank.

Q. Was Mr. Sever O. Quamm known to be a defaulter at that time?

A. I am not aware that he was.

Q. Now when was it that he was discovered to be a defaulter?

A. When it was positively known?

Q. Yes sir.

A. It was not until the month of March, 1876.

Q. The month of March following this transaction?

A. Yes.

Q. Now after you had received this check, this $100 check, then you turned the order over to Mr. O. Quamm?

A. Yes sir, I took up my twenty dollar receipt I had given him.

Q. Now do you remember the date you called on Judge Page?

A. No sir.

Q. In regard to that matter?

A. No sir.

Q. When did you first discover that the county treasurer held this order with reference to going to Judge Page, before or after?

A. Long before sir.

Q. How long?

A. The discovery that Mr. Ingmundson held the order?

Q. Yes?

A. It was made in the month of March, immediately after the town meeting.

Q. On that occasion, when you had the interview with Mr. Ingmundson, he claimed to have paid the amount of that order, in two checks, didn't he?

A. Yes sir.

Q. He showed you the stubs of the checks, didn't he?

A. Yes sir:

Q. One was for $70.00 and the other for $44.52?

A. That is as my memory now serves me.

Q. And he showed you the dates, didn't he?

A. Yes sir.

Q. Now, when the matter came up before the grand jury—

The witness. Would it be proper for me to state what I know in regard to these dates?

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Q. No, I am not particular about that.
A. Well; I think, perhaps, it might be well for the Senate to know.
Q. I have no objection at all.
A. Those stubs as he showed me were dated, as I now remember, either in September or October, 1875, some months after I had received my pay on the order.
Q. Now, when the matter came up before the grand jury, you testified in regard to the town of Clayton matter?
A. Yes sir.
Q. Do you remember when you were first called?
A. My impression would be that it was the latter part of the first week, and I should think perhaps on Friday. We held no session on Saturday of the first week.
Q. Now, when you went into court, did not the judge say, "Gentlemen, if you find such a state of facts as set forth in this statement, you should find an indictment"?
A. Do you mean the second paper that we took?
Q. Yes sir.
A. He said, "if we found such a state of facts to exist, supported by evidence as we had there on paper, stated to him, that it constituted an indictable offense."
Q. Did'nt he say that it was your duty to find an indictment?
A. My impression is that he used the words that I have used, or very nearly those words.
Q. You testified on this matter before the judiciary committee of the House of Representatives last winter?
A. Yes sir.
Q. Did you not then testify that the judge said: "Gentlemen, if you find such a state of facts as are here stated in this statement you should find an indictment?
A. Well, I did not take any record of any testimony.
Q. Well, I am asking you whether you didn't testify so?
A. My impression is that I testified about as I am testifying now.
Q. Then you did not testify as I say?
A. Will you please repeat that question?
Q. The judge said: "Gentlemen, if you find such a state of facts, as is stated or found in this statement, you should find an indictment?"
A. I may have so stated because, as I understand the English language, it makes very little difference whether it is an indictable offense, or we should find an indictment. I understood that the judge construed it was an indictable offense according to that statement of facts.
Q. And that it was the duty of the grand jury to find an indictment upon it?
A. I understood—I got the idea that with that evidence before us it was an indictable offense. If it was an offense, of course we would only be performing our duty in finding an indictment.

RE-DIRECT EXAMINATION.

Mr. LOSEY. I think there was a little confusion in your statement, as to when it was, that you called Judge Page's attention to this matter; when was it that you went to his office and called his attention to it?

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A. That was in the fore part of the winter, previous to the meeting of the grand jury in the spring of 1877.

Q. That was some time then in the latter part of 1876, or the fore part of 1877?

A. Correct, sir.

Q. It was a long time after you had had this conversation with Mr. Ingmundson?

A. Those conversations with Mr. Ingmundson were held in the spring of 1876. This must have been, certainly, nine months after this conversation with Mr. Ingmundson.

RE-CROSS-EXAMINATION.

Mr. CLOUGH. Q. You were present at the time of settlement between the board of supervisors of the town of Clayton and the treasurer, Sever O. Quam?

A. I was. Let me qualify a little. You speak of a settlement; that settlement was not, understand, of a statement and an adjustment. It was not an adjustment, understand; it was simply a statement to ascertain the condition in which Sever O. Quam stood toward the town.

Q. Now when you went to tell Judge Page about this matter of Mr. Ingmundson, you had a civil suit on the calendar that was to come up at that term of court, hadn't you?

A. Yes sir.

Q. You thought it would be a very agreeable thing to the judge to hear the news about Mr. Ingmundson you were going to tell him, wern't you?

(No answer.)

Q. Wasn't Mr. Wheeler your attorney in suit?

Mr. DAVIS. We object.

Mr. CLOUGH. Withdrawn.

The Witness. I would be very glad to answer your questions.

On motion, the court adjourned.

Attest:

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

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TWENTY-SIXTH DAY.

ST. PAUL, FRIDAY, June 14, 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, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Hersey, Langdon, Macdonald, McClure, McHench, McNelly, Mealey, Morrison, Nelson, Page, Remore, Rice, Smith, Swanstrom, 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. 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.

D. D. COLEMAN, RECALLED.

On behalf of the respondent testified.

Mr. LOSEY. Q. Were you sworn before the grand jury about the town of Clayton matter?

A. I don't fully understand your question.

Question repeated.

A. Yes sir, I was.

Q. You gave evidence that you have given here as to the admission given in that transaction?

A. Virtually the same.

Q. Did you hear Mr. Ingmundson's statement before the grand jury?

A. I did.

Q. What statements did Mr. Ingmundson make there about the refusal to pay over the money?

A. He stated that when Soren Haralson demanded the money due the town of Clayton, in the spring of 1876, that he refused to deliver or pay over the moneys due the town, or any portion of them, if I recollect correctly, unless he would take a certain town order which has been spoken of here.

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Q. This Clayton order for $114?

A. Take that town order as money.

Q. There is one thing that I forgot to ask you, whether at the time you received the $100 check from the town treasurer, Sever O. Quam, you had already received $20 on the order; did you pay to him a certain balance in money?

A. I did, sir; I paid to him, as my memory now serves me, $5.50; there was $5.48 his due, and I paid him the difference upon the reception of the check on the bank.

CROSS EXAMINATION.

Mr. CLOUGH. Q. Mr. Coleman, you gave your evidence also before Judge Page at his chambers one evening when you were examined?

A. I did, sir.

Q. Do you remember what you testified to at that time? I don't ask you what it was, I merely ask you if you remember?

A. I testified, virtually, to the same matters as I do here.

Q. Do you recollect what you did testify before Judge Page?

A. I remember a portion of it, perhaps not word for word.

Q. Do you remember it well enough so that you could state it here, whether the evidence you gave before Judge Page was the same as that you gave before the grand jury?

A. I think that it was with, perhaps, this exception, that in the evidence before Judge Page, I am not positive that I testified in regard to the one hundred dollar order, in which I received my pay; I am not positive that I did. I think that, perhaps, questions were asked me and that in answer to those questions that this particular point was not brought up. I am not positive that it was.

Q. About you receiving the $100.00 check?

A. I am not positive that it was brought up.

Q. That was before Judge Page?

A. Before Judge Page? It was brought up before the grand jury.

Q. Anything further respecting your evidence before Judge Page and that before the grand jury; it was the same, was it?

A. I think that in most respects, that my evidence was more full before the grand jury.

Q. I mean you testified when you testified before the judge, you testified about the same matters?

Mr. DAVIS. Are those questions framed with a view of contradicting the witness?

Mr. CLOUGH. They are framed for the purpose of cross-examination.

Mr. DAVIS. I object if it is testimony for the purpose of contradicting Mr. Coleman; his attention must be called to what he testified to before Judge Page; and questions be asked so that his mind may be turned upon it, whether he testified so and so.

Mr. CLOUGH. The evidence which Mr. Coleman gave before Judge Page, is already in testimony and spread upon the record of this court. I have a right to ask this question on two or three different grounds; in the first place I have a right to enquire whether he has made different statements at different times. I, furthermore, have a right to enquire with a view to testing the recollection of the witness.

Mr. LOSEY. Is there any evidence in the case showing that all the evidence taken before Judge Page was kept.

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Mr. CLOUGH. There is a record; the statute requires that to be kept.

Mr. CLOUGH. Q. State if you testified before Judge Page upon all matters, unless it was of the matter of this order—that you testified before the grand jury?

A. I don't know whether I fully get your idea.

Q. I will explain it to you so as to make you understand it if I can, whether there were any matters unless it was your receiving this check which you testified to before the grand jury, that you did not testify to before Judge Page?

A. I am not positive whether I testified in regard to a certain conversation I had with Sever O. Quamm in both cases.

Q. When you testified before Judge Page, did you testify to any conversation with Mr. Ingmundson?

A. I think I did, sir.

Q. Did you testify to any conversation in regard to Quamm?

A. I think I did, sir.

Q. When Mr. Ingmundson was before the grand jury, who questioned him?

A. The questions were mostly asked by the foreman.

Q. By the foreman, Mr. Knox?

A. Yes sir.

Q. Did you ask any questions yourself?

A. I am not positive now whether I did or not, I may have.

Q. Did Mr. Ingmundson when he spoke about the refusal to pay over the money, did he say that he declined to pay over the $114 dollars and fifty-two cents, or did he say that he declined to pay over the whole?

A. He said he declined to pay over any money.

Q. I want you to be certain about that which he testified to?

A. Well, I am.

Q. You don't wish to change that or modify that in any respect?

A. No sir, that he declined to pay over any money unless the treasurer would receive the $114.52.

Q. And you stand by this statement as being as true as the rest of your testimony?

A. Yes sir.

Q. I want to ask you one or two more questions about this check you received; you say you first presented your order to O. Quamm, a day or two after you got it?

A. Yes sir.

Q. Didn't he then tell you this money was at the bank at Le Roy?

A. No sir, I want to say here now, that he did not in so many words tell me this money was anywhere, but the general tenor of the conversation gave me to infer from his saying he had to go to Austin for his money; gave me to infer that the moneys of the town were probably at Austin; he said he had to go to Austin for the money.

Q. Did he say that he had a check upon the Bank of Leroy to the amount of $100?

A. No sir, I did not so understand him.

Q. Did he not say to you that he had a check upon the Bank of Leroy for one hundred dollars, and that he would go and get the money on that and pay you a part of it? Was not this in the chief interview that you had with him?

A. Nothing of that kind whatever.

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Q. Now, you say he did pay you twenty dollars in currency?
A. Yes sir.
Q. Did you indorse that on the order?
A. No sir; I gave him my receipt for $20.
Q. And kept the order in your possession?
A. Yes sir.
Q. How long was it after he paid you the $20 before he gave you the check of $100?
A. I cannot state the exact number of days, but not to exceed, I should say, ten; my impression would be within less than ten days.
Q. Was it not several weeks, now?
A. No sir.
Q. You are sure about that?
A. Yes sir.
Q. When this check was handed over to you, did you write your name on it at all; did you endorse it with your own name?
A. At the time I received it from Quam?
Q. At any time?
A. I am not positive in regard to that. I was not acquainted at the bank, and my impression would be that I did endorse it, but I cannot now state positively.
Q. You don't remember whether you did or not?
A. I do not.
Q. Did you take it to the bank the same day that you go it?
A. I did sir.
Q. Do you remember to what person you presented it for payment?
A. No sir.
Q. You were acquainted at the bank, were you not?
A. Very little indeed sir. I am not sufficiently acquainted with those men at the bank to be able to designate; I have never known any member of the firm or any clerk by name.
Q. Do you remember the appearance of the man; could you describe the appearance of the man that paid you the check at the bank?
A. I could not.
Q. You do not remember whether he was young or old?
A. My impression is now however, he was a young man.
Q. Do you know Mr. Henderson, the cashier of the bank?
A. I don't think I do; I might recognize him.
Q. How far do you live from from Le Roy?
A. Twelve miles.
Q. You go there frequently?
A. Seldom sir, I have no business often to call me there; once or twice a year.
Q. And you could not recollect now anything about the man at the bank that paid you the money so that you could describe him?
A. I don't know that I could.
Q. And don't remember whether you endorsed the check or not?
A. I don't remember that I did, but it is my impression that I endorsed the check.
Mr. DAVIS. Who conducted your examination before Judge Page in the Ingmundson matter, and asked you the questions?
A. Judge Page asked me a few questions, and I rather think Mr. Coleman asked me a question or two.
Q. Was Mr. French there?

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A. I am of the opinion that Mr. French was not there, sir. I don't remember it, that he was.

Q. Are you a heavy tax payer there, relative to other citizens?

A. I am the heaviest tax payer in the town of Clayton.

O. W. SHAW, SWORN,

And examined on behalf of respondent, testified:

Mr. LOSEY. Q. Were you a member of the grand jury in Mower county of the March term, 1877, during part of the term?

A. I was.

Q. What time did you remain on the grand jury?

A. When the original charge was given, and during the organization of the jury; I was then excused.

Q. You were then excused by the court?

A. I was.

Q. How long have you known respondent?

A. Since December, 1868.

Q. What is your business?

A. Banker.

Q. You reside in Austin?

A. I do.

Q. State whether the court, in that charge, called your attention to the county treasurer by name?

A. He did not.

Q. What was his charge in relation to the duty of the grand jury in connection with the offices of the county?

A. He said that he had been informed that there were irregularities in the affairs of the county treasurer, in connection with a certain order of the town of Clayton, which it was the duty of the grand jury to investigate, and if certain facts were apparent, it would be a public offense.

Q. Did he say anything about its being your duty to indict him—to find an indictment?

A. No sir.

Q. What was said by him in relation to the auditor's office?

A. He said his attention had been called to the habit of meetings being held in the auditor's office after office hours, a practice which he condemned.

Q. What reason did he give for condemning it?

A. He pointed out the dangers that might occur to the records that were exposed—the papers.

Q. Was there a vault in that office?

A. I think there was no vault in the office, there is a safe—a small size safe.

Q. What was the manner of the judge, at the time he was giving that charge?

A. I didn't notice any unusual manner.

Q. His manner was as usually is in charging juries, was it?

A. I had never heard him charge a jury before.

Q. Did you ever him charge a jury since?

A. No sir.

Q. Did you notice anything peculiar about his manner from what it ordinarily is?

A. No sir.

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Q. You state that you are a banker; what bank are you connected with?
A. The First National Bank of Austin.
Q. What position do hold in that bank?
A. President.
Q. How long have you occupied that position?
A. Since its organization, since "1868."
Q. Were you in the court again during that term, after you were excused?
A. I was not.
Q. Did he tell you during his charge, that it was your duty to indict the auditor, if you found these facts were as he had stated?
A. I did not hear it; I am quite sure I did not.

CROSS-EXAMINATION.

Mr. CLOUGH Q. How long have you been connected with the First National Bank?
A. Since its organization, since "1868."
Q. You have been acquainted with Judge Page ever since that time?
A. Yes sir.
Q. He has been doing business there since that time?
A. He has; I think.
Q. He was the attorney of that bank since he has been on that bench?
A. We gave him what business we had to do; we gave the business to Page & Wheeler.
Q. He has had his office over that bank ever since?
A. Yes sir.
Q. And since he has been on the bench he has transacted all his business with the bank?
A. Yes sir, so far as I know.
Q. E. O. Wheeler is a director in the bank now is he not?
A. He is.
Q. Did Judge Page in course of his charge tell the grand jury in what circumstances it would be the duty of the grand jury to find an indictment?
A. I cannot recollect.
Q. Did he tell the grand jury under what circumstances it would be the duty of the grand jury to find a presentment?
A. I can't recollect that.
Q. I mean in any part of his charge?
A. He explained to the grand jury the meaning of the words presentment and indictment, but otherwise my memory don't serve me.
Q. Don't you recollect this, allow me to refresh your memory, if Judge Page in that charge told the grand jury that if in any other investigation they found any other public offense had been committed by any person, it was the duty of the grand jury to find an indictment against that person?
A. I don't recollect.
Q. Do you remember whether he said anything on that subject or not?
A. I could not state clearly about it at all.

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Q. You don't remember whether he did or not?
A. No sir.
Q. You would not say he did not, would you?
A. I would not say he did.
Q. Will you say he did not?
A. If he said it, I did not hear him.
Q. Don't you remember that Judge Page, in his charge to that grand jury, explained to them that it would be their duty to find an indictment?
A. I don't remember; he may have done so.
Q. Did you ever hear a charge to the grand jury, even?
A. No sir.
Q. So you don't know what is customary to tell grand juries in the process of instructing them?
A. Not from observation.
Q. Did you take any pains to recollect what was said in the charge particularly?
A. No sir; otherwise than the matter of the treasurer's office.
Q. That is all you have any distinct recollection of?
A. Yes sir.
Q. But the general propositions that were laid down you don't recollect about?
A. I don't recollect.
Q. When he was speaking about the county treasurer's office, did he say to the grand jury that he had been informed, or it had come to his knowledge, that the county treasurer had a certain order of the town of Clayton, and that when the treasurer of the town of Clayton came to demand the money. which had been collected by the treasurer as taxes for that town, that the county treasurer refused to pay over the money, by which means the county was obliged to pay the money twice?
A. I don't recollect, only—simply the fact that he referred to the town order.
Q. Didn't the judge say something about the order being paid twice?
A. I got the impression that he did.
Q. Didn't he say so; that the order had been paid twice?
A. I think he did.
Q. And you so testified before the judiciay committee last winter?
A. I presume I did; that has slipped my mind now, however.
Q. Your recollection is quite clear now, is it not, that he stated that that order had been paid twice?
A. Yes sir; I am very sure he said it.
Q. You say in your examination in chief that the judge instructed you in that same connection, that if certain offenses were found it would constitute a public offense. What facts do you mean?
A. I could not state them to you, because they have passed from my mind.
Q. Did the judge in that connection, speaking upon the matter of the county treasurer of that town, say that if the grand jury found certain facts to be true, that that would constitute a public offense?
A. Yes sir.
Q. That was in the first charge?
A. Yes sir.
Q. That was the only charge you heard?
A. Yes sir.

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Q. He named the facts in connection with what matter would constitute public offense?
A. I presume he did.
Q. Don't you recollect?
A. No sir.
Q. Didn't he state to the grand jury, that if the grand jury found the matter as he stated it to them, that it would be a public offense?
A. It may be.
Q. Did the judge, in giving his instructions to the grand jury upon the matter of the county treasurer, read any statutes?
A. He did.
Q. Do you remember what was the subject of the statute?
A. The statute prescribing the duties of the county treasurer
Q. Did he read any statute which says that the county treasurer shall pay over the identical moneys which he receives, and that he shan't set up any offset?
A. I don't remember that.
Q. Did he read more than one section of the statute in regard to the duties of county treasurers?
A. My impression is that he did, but I could not state.
Q. In respect to the county auditor, did he say that a band of musicians were permitted to practice in the county auditor's office?
A. He didn't say anything about a band of musicians there; I think he used the word assemblage or meeting.
Q. He said public assemblage, did he?
A. He may have said that.
Q. What papers did he say were in the auditor's office that were in danger of being destroyed?
A. I don't recollect, sir.
Q. Didn't he mention something particular in the case of Smith against Mower county?
A. I don't remember.
Q. You won't swear that he did not?
A. No sir.
Q. You know Mr. Ingmundson?
A. I do, sir.
Q. Does he do business with your bank?
A. He does sir.
Mr. LOSEY. Q. The court in calling your attention to these matters, did he state to you that he had been informed of such and such facts, and if you found them so? was that the manner in which the statement was made by the court? did he state these things as facts, or he had been informed?
A. He had been informed.

O. W. CASE, RECALLED,

On behalf of the respondent, testified:

Mr. LOSEY. Q. You have already testified that you were a member of the grand jury of Mower county, March term, 1877.
A. Yes sir.
Q. Do you remember the charge that was given to you by the court, or portions of it?
A. Yes, I recollect the substance of it.

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Q. You may state about the substance, what you remember as the substance of it, the first charge made; that is, that part that related to the county officers more particularly.

A. He said to the grand jury that it had come to his knowledge that certain irregularities existed in connection with the county treasurer's office, and the treasurer of the town of Clayton; and that it would be the duty for the grand jury to investigate the matters; that if those charges were correct that it constituted a public offense.

Q. Did he say to you that you were to indict the treasurer?

A. No sir, in that charge he did not.

Q. Did he at all use that language?

A. I think at one time.

Q. Well, we will come to that presently. Was there any charge made at that time in relation to the office of the auditor?

A. Yes sir.

Q. Go on and state?

A. That he had been informed that the auditor was in the habit of allowing gatherings—public meetings—in the auditor's office after office hours, and there was valuable papers or papers of importance in the office, that there was danger of being mislaid or destroyed, and that he considered it a wrong practice for the county auditor in allowing those meetings in the auditor's office.

Q. What action was taken?

A. The grand jury investigated the matter and fouud, from the evidence, that the chairman of the board of county commissioners had given permission to the county auditor that the band could meet there for practice.

Q. Tell what occurred?

A. The facts were reported to the court.

Q. What were you directed to do?

A. We were directed to call the county auditor and chairman of the board of county commissioners, and see if the practice could not be discontinued or stopped.

Q. Did you do so?

A. We done so, and they both stated that if it was the wish of the grand jury to have it discontinued, that they would discontinue it.

Q. Was that fact reported t . the court?

A. We so reported to the court.

Q. What did the court instruct you then?

Q. The court instructed the grand jury then to call on the county auditor and county commissioners and see if they were willing to discontinue the practice.

Q. You did?

A. We did so.

Q. They were willing to do so?

A. They were; we reported the facts to the court.

Q. What did the court then say?

A. I think the court then charged us that that was sufficient, and hat was all that would be necessary.

Q. When first did you ask instructions from the court, after that ime in relation to any matter connected with the construction of the aw, applicable to the county treasurer's office?

A. Well, I could not give the day or date.

Q. About what time was it?

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A. It is my impression it was during the last week of the term, along towards the last end of the week.

Q. Had Mr. Ingmundson appeared before you at that time?

A. Yes sir.

Q. Did he give evidence?

A. Yes sir.

Q. What instructions were asked for, and what instructions were given?

A. The instructions that were asked, was on a certain section of the statutes; I don't remember the chapter or the section.

Q. Can you remember what the court instructed in relation to it?

A. I don't think I can.

Q. Then what occurred in the grand jury room after that, in connection with the Ingmundson matter?

A. Well, it would be a long story, and something I could not give the history of in detail.

Q. Well, you can give a general outline of it—its characteristics?

A. You mean in regard to the whole proceedings of the grand jury in the Ingmundson case, or the county treasurer's office?

Q. Yes.

A. I think after the organization of the grand jury, we were given to understand, to take up in the first place the criminal cases, and that where parties were in jail, or awaiting trial, or out on bail, during this investigation, whenever there was any immediate business before the grand jury, that they should take up the matter of the county offices.

Q. I ask you more particularly what occurred after you had received the instructions of the court, and went to the grand jury room?

A. That is it, as near as I can recollect, I cannot recollect just what cases.

Q. Well, go on then?

A. We were to follow up that practice; we were to take up the criminal cases and dispose of them as fast as they came; and when ever there was a particular case, that evidence had to be sent for as Adams and Le Roy and Clayton, and whenever those cases were delayed, for want of evidence, they took up the matter of the county officers and discussed them, whenever the evidence appeared, and they could go on with the cases in hand, they went to work and finished them up.

Q. After you asked the instructions of the court and retired to the grand jury room, what then occurred when you—after you had come in and asked for instruction in relation to the construction of the statute?

A. I cannot tell you exactly; I think that the matter was brought before the grand jury and a report made; I think that before any report was made, there was a committee appointed to visit the county treasurer's office.

Q. Did you come into court with that report?

A. Yes sir.

Q. What occurred at that time?

A. I think the judge said to the grand jury that the report was informal; not such a report as the court could receive under the circumstances.

Q. And he instructed you to go out?

A. To perfect the report; to put it in such a shape as to report the facts of the case.

Q. What did you do?

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A. We returned to the grand jury room, and the question was brought up again, and we agreed to report the facts as we found by the evidence, and put before the grand jury in regard to the matter.

Q. Did you so report?

A. So reported.

Q. Then what occurred?

A. I think the judge said after looking over the report, said to the grand jury that if those were the facts as they had found them, with sufficient evidence to substantiate it, that the facts constituted an indictable offense.

Q. Did the grand jury then retire?

A. I think they did.

Q. And then what occurred when next you came in?

A. The next time we came in was when we reported "no further business."

Q. What then occurred between the court and the grand jury?

A. I think the language of the judge, as near as I can recollect it was, "gentlemen of the jury, there is something about this matter that I don't understand; you have been very prompt in all other matters entrusted to you by the court, except this, and there seems to be a disposition on the part of the grand jury to delay or put this matter off, or has been," and that if the grand jury had been influenced in their findings, by any outside influences, either from friendship or from fear or favor of any kind, that they had violated their oaths of office as grand jurors.

Q. Did he say to you at that time, that you had committed perjury?

A. He did not.

Q. What was the judge's manner during those several charges?

A. The judge's manner on the first charge to the grand jury was his usual manner in charging the grand jury.

Q. What was his manner in the last charge?

A. I think his last remark to the grand jury, was a little more positive and a little more firm.

Q. Did he appear to be excited, or anything of that kind?

A. I discovered no excitement or any appearance of anger.

Q. Did the judge make any qualified statement at that time that the grand jury had violated their oaths?

A. If they had been influenced?

Q. Did the judge make any qualified statement at that time, that the grand jury had violated their oaths?

A. He did not.

Q. He made the statement qualified as you state it?

A. As near as I can give his language.

Q. Was there a great deal of excitement in the grand jury room, during the investigation of the Ingmundson matter?

A. At times, there was considerable excitement.

Q. You were known as one of the men who desired to find an indictment, were you not, Mr. Case?

A. I don't know.

Q. What has Ingmundson's treatment been of you since that time?

A. Very coolly; even when I went into his office on one or two occasions, he did not notice me; at other times he merely nodded his head and passed by me.

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Q. Previous to that, what were your relations with him?
A. Previous to that time what little acquaintance I had with him, we were on friendly terms.
Q. Did the judge in his charge say anything to you about parties accused of, or committing crime appearing in the grand jury room?
A. He did.
Q. What did he say?
A. I think he said no person accused of crime, should be permitted, under any circumstances to give evidence before the grand jury.
Q. Was Mr. Ingmundson before the grand jury?
A. He was.
Q. Sworn?
A. Yes sir, he gave evidence before the grand jury.
Q What evidence did he give in relation to his retaining the money of the town with which to pay this $114 town order?
A. I think he said he held that order as an off-set for town moneys due the town.
Q. He stated he compelled the treasurer to accept it?
A. I don't recollect whether Ingmundson made that statement or not; it was in evidence before the grand jury either by Ingmundson or the town treasurer of the town of Clayton.

CROSS-EXAMINATION.

Mr. CLOUGH. Q. You only remember a small part of what Judge Page said to the grand jury during that term?
A. I don't know whether it is a small part; I state the substance of the matter as near as I can recollect; perhaps not every word; it would be a very difficult matter.
Q. I mean in relation to the county treasurer?
A. That is what I mean.
Q. In the first instruction that the court gave the grand jury, did he tell the grand jury when it would be their duty, under what circumstances to find an indictment in any part of his charge?
A. I don't think he did.
Q. He didn't say anything about when it would be the duty of the grand jury to find an indictment?
A. I think he read to the grand jury from the statutes the duties of the grand jury.
Q. Among the rest he read the provision of the statute which states when it is the duty of the grand jury to find an indictment?
A. I presume he did, I have no definite recollection.
Q. I will ask you if he didn't read this section of the statute:
"Section 35. The grand jury ought to find an indictment when all the evidence taken together is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury."
A. Perhaps he did.
Q. Do you remember whether he did or not?
A. I am not positive.
Q. Do you remember of his reading any statute that sounded like that?
A. I think he did, something similar.
Q. Didn't he state to you also when it was your duty to find presentment; that is, in the first charge?

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A. No specific act, I think. I think in cases he may have said—in cases where the evidence was not sufficient to find an indictment, to find a presentment.

Q. He told you what an indictment was, and in what cases it would be proper?

A. Only in that way.

Q. In reference to the town treasurer of the town of Clayton and the county treasurer, didn't he say to you that if the grand jury found the facts as he stated it to them, that it would be an indictable offense?

A. It is very likely, I am not positive, but I think that is very likely that was the case.

Q. Didn't he state in that same connection, that when the town treasurer of the town of Clayton came to the county treasurer to get his money, that the county treasurer set up the order as an offset?

A. I have no recollection of anything of that kind.

Q. Did he say anything about the town order being set up as an offset at any time during the term?

A. I have no recollection.

Q. Did he read any statute at any time during the term in relation to it being a duty of county treasurers to pay over the moneys which they have collected without setting up any offset. Do you remember anything of that kind anywhere during that term?

A. I think I do, but I cannot place it exactly.

Q. You don't know where that came in?

A. I don't.

Q. Might it not come in on the first charge?

A. My impression is that it came in at the time the grand jury reported the facts in the case.

Q. After the grand jury was charged you went out—very soon after you went out. Within a day or two you commenced to investigate the affairs of the town of Clayton?

A. We commenced it partially.

Q. Didn't you commence to swear witnesses within two or three days?

A. We did not.

Q. When was the first witness sworn?

A. On Friday of the first week. I would not be positive whether it was the town treasurer of Clayton, Mr. Coleman, or the county treasurer himself.

Q. Hadn't it been several days before Mr. Ingmundson was examined before the grand jury?

A. I don't remember. I will state to you that I have kept no memoranda of this matter, it is only my memory

Q. It was nearly Thursday or Friday of the first week that Mr. Ingmundson was called before the grand jury, was it?

A. I could not say on what day he was called.

Q. But it was the first week?

A. In my opinion.

Q. Hadn't Mr. Coleman been sworn a day or two before that?

A. No sir, I think the evidence in that matter was taken very nearly at the same time.

Q. Hadn't Mr. Coleman been called in reference to the affairs of the town of Clayton two or three days before Ingmundson was called in?

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A. I think not; my impression is he was not.
Q. You heard the Knox evidence on that point?
A. I think I did.
Q. You disagreed with him?
A. I don't recollect his testimony.
Q. After the matter was taken up—the matter of the town order of the town of Clayton—was not the subject under the consideration of the grand jury until they were finally discharged?
A. It was not.
Q. Can you remember any days between those two others; when it was not?
A. I can remember the first two or three days of the term that the matter was not before the grand jury at all.
A. You misunderstand me; I mean from the time that matter was first brought up, was it not under discussion every day?
A. It may, as I said before, between times they discussed that matter.
Q. Didn't the discussion of that matter and the examination of the county treasurer, and the taking of the testimony take up a large part of each day, from the time it was first taken up until you were discharged?
A. No sir.
Q? And occupied some portion of each day?
A. Yes sir.
Q. A good deal some days?
A. One or two days it occupied a good deal of time.
Q. Do you remember upon what day of the term you went into court with the report of the auditor's office?
A. I should think it was either the Friday or Saturday of the last week.
Q. Before you went into the court with a report about the county auditor's office, had you been in court in reference to the county treasurer's office?
A. Yes sir; I think we had; I think we asked instruction of the court in regard to some matter of the law.
Q. You went into court, as the question occurred, and you asked instruction in regard to a provision of the statute.
A. Yes sir.
Q. Do you remember what day that was?
A. I don't know.
Q. Was it not on Wednesday?
A. I do not remember.
Q. Do you remember what statute it was?
A. I do not.
Q. Do you remember the subject matter of the statute about which you asked instruction?
A. I have it not in my mind.
Q. How long were you in at that time?
A. I should say ten or fifteen minutes.
Q. Had you any other business before in court at that time, except the instruction of yourselves upon that statute?
A. I don't recollect.
A. The court gave you an instruction of that provision of the statute, didn't he?

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A. I think he did.
Q. Was anything said at that time about the intent with which the treasurer did the act?
A. I don't think there was.
Q. At any time, was there any question presented by a grand juror, yourself or any member, whether the act of the treasurer ought to be corrupt and wilful, in order to constitute an offense?
A. It is my impression that there was.
Q. Was it not on that occasion?
A. I could not tell you; it would be very difficult for me to remember the days.
Q. You went out again, and after you went out, and having come in and inquired of the court about this provision of the statute, you then examined the county treasurer's office, didn't you, by a committee?
A. There was a committee appointed to examine into the affairs of the county treasurer's office.
Q. And all the grand jury attended that committee over to the county treasurer's office?
A. It was agreed that all the members of the grand jury should go.
Q. And did they go?
A. Yes sir.
Q. Mr. Ingmundson was not sworn then?
A. No sir.
Q. How long were you in there?
A. Fifteen or twenty minutes.
Q. You went back?
A. Yes sir.
Q. And then the resolution was offered—that there was no ground for an indictment or presentment?
A. There was two resolutions offered by the grand jury.
Q. There was one offered by the grand jury, that there was nothing wrong?
A. Yes sir.
Q. And that was adopted?
A. Yes sir.
Q. Who drew up that resolution?
A. S. P. Bacon of Le Roy.
Q. Then you determined to go into court and present that resolution?
A. I think directly after.
Q. Did you have any other business in court when you went in to present that?
A. I think we had.
Q. You think you had other business?
A. I cannot tell you.
Q. Can you tell anything that occurred?
A. I think the judge spoke to the grand jury in regrad to the matter; that the report was informal; that it was not signed by any persons—by the chairman of the board or by the clerk; and requested them to return with it and put it in formal shape.
Q. Was that all that was said?
A. It might not have been all, but that is all that is in my mind.
Q. Did he say anything about that in stating the facts; didn't he say that it stated the opinion of the grand jury?

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A. I think that was his language.
Q. That it was only the opinion or conclusion of grand jury, and not the facts in the case?
A. That is it.
Q. What was done with that paper after the conversation between the court and the grand jury was over?
A. I have no knowledge.
Q. You don't remember whether the Judge handed it back?
A. I think he handed it back to the foreman of the grand jury.
Q. Didn't the Judge say that the grand jury appeared to be very loth to make an investigation of that matter?
A. I don't think he did at that time.
Q. Had he said so before?
A. I don't remember.
Q. What is your memory?
A. My memory is that he didn't at that time.
Q. Didn't he state anything about the law at that time?
A. I have no recollection that he did.
Q. Did he refer to any provision of the statute at that time?
A. I don't remember.
Q. When you got back to the grand jury room, some of the grand jurors found a good deal of fault because the foreman hadn't signed the report?
A. I think one or two said something.
Q. Considerable words were said?
A. I think there was very little said about it; my recollection is that two members of the grand jury called the foreman's attention to it.
Q. Then you went to work and called in the testimony, did you, before the grand jury?
A. No sir.
Q. Had nothing before you except what you then had?
A. No sir.
Q. And you sat down and drew up the report, or somebody did; who drew it?
A. Well, I think D. B. Coleman; I think he wrote out the statement.
Q. With reference to the report in the county auditor's office; was the report on the county auditor before you, before or after the judge pronounced this other report to be irregular?
A. I am not positive about that, whether it was before or afterwards.
Q. When you went in with the report of the county anditor, did you have any other business before the court?
A. My impression is that we did, but I am not positive.
Q. When you were in about the report of the county auditor, did not the judge remind the grand jury that it had not yet acted with reference to the county treasurer?
A. Not that I heard.
Q. Your recollection is clear on that point?
A. My recollection is clear, that I didn't hear it.
Q. Is it clearer on that point than it is on the other matters about which you have been asked to testify here?
A. No clearer than it is on some of them.
Q. When you brought in those facts, the judge told you it was sufficient to find an indictment?

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A. I think so.
Q. Didn't he tell you to find an indictment?
A. He might have told us.
Q. When was this?
A. On the last day of the session.
Q. In the morning?
A. I think so.
Q. Did you take the report back, or not?
A. I don't recollect.
Q. You went into the grand jury room, and concluded to do nothing more about the matter?
A. We concluded that the facts had been as stated, and that that was all that was necessary.
Q. Was any written report presented when you finally went back to be discharged?
A. I don't remember.
Q. Was any verbal report given?
A. Not that I recollect of.

E. J. PHILLIPS RECALLED,

On behalf of the respondent, testified:
Mr. LOSEY. Q. Where do you reside, Mr. Phillips?
A. In Austin, Minnesota.
Q. How long have you lived in Austin?
A. I have lived in Austin between 5 and 6 years.
Q. What was your business during the March term of court of 1877, Mower county.
A. A special deputy.
Q. Sheriff?
A. Yes sir.
Q. Who had charge of the grand jury during that term?
A. I did.
Q. All the time?
A. I did.
Q. State whether you came into court with them, each time they came into court to be instructed?
A. I went in every time they went in for any purpose.
Q. When were you placed in charge of the grand jury?
A. Immediately after they received their first charge.
Q. Do you remember the matter embodied in that first chagre?
A. I remember the principal points, I think.
Q. Did the court instruct them it was their duty to find an indictment?
Mr. CLOUGH. Wait a moment; that hardly will do at this stage of the game.
Mr. LOSEY. I think it would at this stage of the game, as you have adopted this plan all the way through; I will, however, modify this question:
Q. What was the charge made by the court to the grand jury; state its general features—the first charge?
A. The whole of the charge?
Q. Yes, in relation to the county officers.
A. I think, after the Judge had given them their duties from the

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statutes, and explained the difference between an indictment and a presentment, that he called their attention to the county treasurer's office, in regard to an order belonging to the town of Clayton, and requested them to examine into it; he also stated that there had come to his notice, or perhaps, that he knew—I won't be certain about that—that there were gatherings—public gatherings, held in the county auditor's office after business hours; which, he thought, was a dangerous practice. I think that is about the idea.

Q. What reason did he give?

A. He said that there were valuable papers belonging to the county, that might be destroyed or misplaced.

Q. Did he state afterwards in the Ingmundson matter, to the grand jury, that he had been informed concerning certain matters connected with the town officers of the town of Clayton; did he state anything in relation to the treasurer's office?

A. I don't know as I understand the question.

Q. After stating to the grand jury that he had been informed concerning certain irregularities in the town treasurer's office, of the town of Clayton; did he then say anything to the grand jury in relation to the county treasurer's office in connection with that?

A. He said that he understood—that it had come to his knowledge—to his notice—that there was certain irregularities existing in the county treasurer's office, in regard to a town order belonging to the town of Clayton.

Q. What did he inform them would be their duty in connection with that matter, if anything?

A. He informed them that it would be their duty to examine into the conduct of all officers—in both town and county offices.

Q. Do you remember the fact of Ingmundson being before the grand jury?

A. I do, yes sir.

Q. Do you remember the fact that the grand jury came into court to be instructed in relation to the construction of a certain statute?

A. They went in for instructions, and the court explained certain things.

Q. Do you remember the fact of their going in?

A. Yes sir.

Q. Was that before or after Ingmundson had been before the grand jury?

A. I should say it was after; I won't be positive, however.

Q. Who went after Ingmundson?

A. I went after him.

Q. You went after him yourself?

A. Yes sir.

Q. Mr. Woodard swore that he went after him?

A. Well, I went after him.

Q. After the grand jury had asked the court for the construction that he placed upon this statute, what did the court say to the grand jury then and there, as near as you remember?

A. I don't know as I can recall what happened at any given time.

Q. Well, the grand jury retired after they had received their instruction from the court; what happened then in the grand jury room, in relation to the Ingmundson matter?

A. I was not in the grand jury room.

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Q. Did the grand jnry go into court with a paper at any time during the latter part of the term?

A. I don't know as they ever went in.

Q. I speak now of the paper that was not signed by the foreman.

A. If the grand jury handed any paper to the court I could only tell what was done from what the court said.

Q. Do you remember of the court saying anything about informalities being in the paper?

A. I remember of hearing him saying at one time that this paper was informal—that it had no signature either of the foreman or the clerk—that he would refer it back to them for further action, or correction, or something to that effect. He wanted them to put it in due form.

Q. What did the grand jury do then?

A. They returned to their room.

Q. Did they bring in another paper in the Ingmundson matter?

A. They did.

Q. What occurred between the court and the grand jury at that time?

A. I think at that time that he told them that if they believed the evidence in the case to warrant a statement that they had made that it constituted an indictable offense; that would be my recollection.

Q. Anything further said by him at that time, do you remember?

A. I could not place any language distinctly at that time.

Q. Were you in the grand jury room during their deliberation on this matter?

A. I was not.

Q. Do you remember of any of the grand jurors talking about the indictment of Mr. Ingmundson?

A. I don't know that I do at this time.

Q. Did you, at any time, hear any remarks of the grand jurors?

A. Yes sir, I heard some remarks.

Q. What did you hear?

A. Well, their casual remarks, something in regard to bulldozing, but the special one afterwards, in talking with one of the grand jurors he said—

Mr, CLOUGH. Q. When was this, afterwards?

A. It was after they were discharged.

Mr. CLOUGH. Go on.

A. One of the grand jurors said—

Senator GILFILLAN J. B. I dislike to interrupt the progress of this examination, but I was not present yesterday, and I don't know what action the Senate may have taken with reference to disclosing the proceedings of the grand jury. I raise the question right here whether it is the desire of this court to disclose the sanctity of the grand jury?

The PRESIDENT. This matter was gone into very fully, and the court decided to hear this class of questions.

Senator J. B. GILFILLAN. I will inquire whether the Senate went into that question yesterday?

The PRESIDENT. It did not.

Mr. Manager CAMPBELL. I stated heretofore that we should not object, leaving it entirely with the Senate, and they went right along with

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that kind of testimony without passing upon it. Clearly, in my opinion, such a course was entirely wrong.

The PRESIDENT. No objection was made.

Senator J. B. GILFILLAN. The point I raise right here is that the Senate, perhaps, has something to say about this matter. Now, if the respondent is permitted to dritt into this line of testimony, then the prosecution may attempt, by and by, also to go into it, and a ruling may hereafter be called for, which may, under the circumstances, be somewhat embarrassing to this court; hence it is that I raise the question now. It seems to me that this is the opportunity for the Senate to consider the matter, and as to whether the opposing counsel shall be permitted to agree upon this line of examination.

Mr. CLOUGH. I had supposed, and the managers had supposed, that their position in regard to this matter, was clearly defined a long time since. They stated their views at considerable length, when the question arose before, as to the propriety of admission. They understood that the Senate had, in a secret session, deferred the consideration of the question. The managers then stated, and it has always been their position, that they were entirely ready to enter upon the transactions of this grand jury in the grand jury room; provided the Senate was of the opinion that it was competent; that instead of fearing that the prosecution would be injured by the admission of such testimony, they were very anxious to go into the question, if it could be done properly. The managers supposed they had discharged their entire duty by throwing the responsibility of the matter on the Senate; supposing, however, that whatever action was allowed to be taken on this question by the respondent, could be equally and properly met by the prosecution. It was stated by the management that they did not consider it their duty to interpose any further objection; leaving it with the Senate to act as they pleased, except to call the attention of the Senate yesterday, that they had tacitly acted upon the matter; and a considerable amount of testimony has been put in by the respondent, upon the subject of what occurred in the grand jury room. Such being the case, the managers claim the right to call in similar testimony at the proper time, in the rebuttal of anything the respondent has put forward; otherwise, the two sides of the question would not be on an equal footing.

Senator J. B. GILFILLAN. The counsel are aware, that if either side allow immaterial evidence to go in without objection, that that does not acquire for them license to go into the same immaterial question. It seems to me that we ought to understand this matter before we go any further.

The PRESIDENT. Has the Senator any motion or order to make?

Senator J. B. GILFILLAN. I would ask before that question is determined, that the Senate consider it in secrect session, and I so move.

Mr. DAVIS. If I may be allowed one word here, may it please the Senate. By reference to the journal of the day when that question arose, the Senate will find our views fully expressed, and the authorities which we then cited, are there fully set forth, and unless we are challenged by additional discussion, we have no desire to reiterate any argument that we made upon that subject. I wish, however, to make this statement, that in the investigation before the House committee, upon which these articles were predicated, that rule, real or imaginary, as to the sanctity

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of these proceedings before the grand jury, was not respected. In the House committee, these matters of what occurred in the grand jury room, were gone into.

Mr. Manager CAMPBELL. I think the counsel is mistaken. When that question came up in the investigation, what took place in the grand jury room, was ruled upon. My ruling was that we had no right in that grand jury room. That was the discussion, and Mr. Knox stated on the stand, yesterday, that I stopped him when he attempted to go into matters occurring in that grand jury room. The question was argued fully, and overruled. It may, however, have crept in accidentally, or incidentally.

Mr. CLOUGH. It was gone into, Mr. Campbell.

Mr. DAVIS. I speak, of course, under instruction and advice, for I was not there. It is evident that my learned friends, the managers, are not entirely correct in their recollection of that transaction. I am advised that the grand jury room transaction was gone into, and Judge Campbell is partly right and partly wrong. When the respondent, before the House committee, was examining witnesses, in the cross examination, you did go into that question without objection, and developed, without a ruling against it, what took place in the grand jury room. At a subsequent stage of the proceedings, and after the transactions in the grand jury room had been fully disclosed, this question as to the inviolability of those proceedings was raised, as such things are apt to be raised, and then it was ruled upon, as my learned friend, Mr. Campbell, asserts, but that it was gone into and considered, I do not suppose will be contradicted.

Mr. Manager CAMPBELL. I think I am wrong in one respect. Mr. Clough tells me it was gone into while I was not present, but I will say that while I was there it was not permitted.

Mr. CLOUGH. As soon as any evidence was offered on that point, I think a formal objection was made, and the whole matter ruled out.

Mr. DAVIS. Yes, as affecting your side of the case.

Mr. LOSEY. The Senators will find that the arguments on this question, as heretofore raised, appear on page 19, of the journal of May 31st.

The Senate then went into secret session.

Mr. Gilfillan J. B., offered the following:

Ordered, That all testimony concerning proceedings in the grand jury room while the grand jury were in session as such jury, be excluded from this case, except as the same appear from the reports of the grand jury to the court.

Mr. Gilfillan C. D., offered the following as a substitute:

Ordered, That all testimony hereafter taken relative to evidence given before the grand jury, or as to votes, remarks, or acts of any member of the grand jury be stricken out.

The question being taken on the substitute, and the roll called, there were yeas 10, and nays 24, as follows:

Those who voted in the affirmative were—

Messrs. Clough, Drew, Gilfillan C. D., Hall, Houlton, Macdonald, McClure, Morrison, Remore and Smith.

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Those who voted in the negative were—

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Donnelly, Doran, Edgerton, Edwards, Finseth, Gilfillan John B., Goodrich, Henry, Hersey, Langdon, McHench, McNelly, Mealy, Nelson, Page, Rice, Swanstrom, Waite and Waldron.

So the substitute was not adopted.

The question recurring on the adoption of the resolution, and

The roll being called, there were yeas 19, and nays 15, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Bailey, Bonniwell, Clough, Doran, Drew, Finseth, Gilfillan John B., Henry, Hersey, Houlton, McClure, McHench, Nelson, Page, Remore, Smith, Swanstrom, and Waldron.

Those who voted in the negative were—

Messrs. Armstrong, Clement, Donnelly, Edgerton, Edwards, Gilfillan C. D., Goodrich, Hall, Langdon, Macdonald, McNelly, Mealey, Morrison, Rice, and Waite.

So the resolution was adopted.

Mr. Nelson offered the following which was adopted:

Ordered, That sessions of this court be held every day except Sundays, until all the evidence is heard.

On motion, the court took a recess until half past two o'clock, P. M.

AFTERNOON SESSION.

The PRESIDENT. I wish to state to the counsel, before proceeding, that the court determined, in secret session, to exclude all the proceedings had before the grand jury, while in secret session as a grand jury, except the reports made by them to the court.

E. J. PHILLIPS, RECALLED,

On behalf of the respondent, testified:

Mr. LOSEY. Q. While going from the court room to the grand jury room did any of the grand jurors talk with you concerning their voting in the Ingmundson matter; if so, what was said?

A. A grand juror stopped in the turnkey's room, where I stopped, and as they went out—I think it was the last time they went out—and he wanted to know what I thought of the position; I told him I did not know what was in the statement, but from what was said by the court I did not know how they were going around an indictment; he said he didn't see how they were going around it.

Mr. CLOUGH. Well, what was this question you asked?

Mr. LOSEY. I asked him for statements made by grand jurors outside of the grand jury room.

Mr. CLOUGH. Single grand jurors?

Mr. LOSEY. Yes, single or more.

Mr. CLOUGH. Well, we object to that as immaterial, if that is the question.

Mr. LOSEY. Well, we withdraw it.

[To witness.]

Q. Have you already testified as to what occurred in court when the grand jury came in the last time, to be charged?

A. No sir.

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Q. Did the grand jury come in more than once, and ask to be discharged? or did they ask to be discharged more than once?

A. I think they never asked to be discharged until the last time they came in. They were then discharged.

Q. What occurred, when they came in the last time, between the grand jury and the court?

A. I don't remember whether it was at that time or the previous time that the judge told them that there seemed to be something peculiar in this matter; that they had been prompt in all other matters before them except this one, and there seemed to be a disposition to hold back, or something to that effect, in this matter. He told them that if they had been influenced by any improper motives, such as "fear, or favor, or hope of reward," anything of that kind, that it was a violation of their oaths.

Q. Anything further?

A. I think he told them that that was with their own consciences—something to that effect.

Q. They were then discharged, were they?

A. I don't think of anything more before they were discharged.

Q. Did he say to the grand jury that they had violated their oaths?

A. He did not.

Q. Did he say to them that they had committed perjury?

A. He did not.

Q. Did he say to them that there was a higher power than grand juries?

A. Well, I could not remember his words; the way I understood him, in my way of telling it, would be, that they did'nt stop the proceeding from being investigated further, or something to that effect.

Q. Did he say anything to Mr. French in relation to Mr. Ingmundson; if so, what was it?

A. Immediately after discharging the jury he turned to the county attorney, and told him that he should make up a complaint on the statement of the jury. I don't remember what he said in regard to Mr. Ingmundson; but to make a complaint on the statement of the jury.

Q. Did he direct him to have Mr. Ingmundson brought before him?

A. I don't remember anything of that kind.

THE PRESIDENT. Here is a question Senator Dueul desires to have asked the witness.

Did the grand jury, at any time before the final adjournment, report to the court that they had no further business before them; if so, how often?

THE WITNESS. I did not hear any such report.

MR. LOSEY. Q. Was you present at all times when the grand jury was in the room with the judge?

A. When they were in the grand jury—I was there always.

Q. You was near enough so you could hear what took place between him and the grand jury?

A. I was; yes sir.

CROSS-EXAMINATION.

MR. CLOUGH. Q. During the course of the term the grand jury was in once or more every day, was it not, having communication with the court?

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A. I don't remember distinctly whether they were in every day or not; they were in quite frequently.

Q. And you attended them in every time?

A. I did.

Q. Every time they went in, they had more or less conversation with the court?

A. No, I think not. Often there was no correspondence between them and the court; and as I stated, he asked them if there was any further business; and they said there was; and he would tell them to retire.

Q. Several times, at all events, during the term of court, the court addressed the grand jury, when they were in, did'nt he?

A. He addressed them,——well, I was a little in the blind, in regard to the subject, only as I got it from the replies.

Q. I am speaking about his addressing them on any subject—I am not particular what it was; quite a number of times, when the grand jury was in, the court would make remarks to them, wouldn't he?

A. I think probably, three or four times.

Q. Not more than that?

A. I don't think there was more than four, there might have been, but I should say about four times.

Q. Those four times were all about the county treasurer's office, weren't they?

A. I think that once was instructions in regard to some article they had asked instructions on; and once was more particularly on the county auditor's office, and perhaps, in connection with that, this informal report, but I am not certain about that.

Q. Don't you remember that at the occasion that the judge spoke to the jury about the county auditor, he also mentioned the affairs of the county treasurer?

A. I don't remember it.

Q. Your recollection is different, is it; your recollection is that this occurred at two different times?

A. No, I said, that at this time there might have been something said in regard to that informal statement, but I could not say that it was at the same time.

Q. Now, the last communication between the grand jury and the court, were in the shape of written papers that were handed by the jury to the court, were they not?

A. On the part of the jury, yes sir.

Q. Did you read those, before they were handed to him?

A. No sir.

Q. Then you don't know what was in them?

A. That is what I undertook to tell you a little while ago.

Q. For all you know there might have been written requests on the part of the grand jury to the court, to discharge them, a half dozen times?

A. These might have been, for what I know; but he always asked them if there was any further business; and they said there was.

Q. But you don't know what was in those written communications, at all, do you?

A. I don't know; I didn't know at that time; the grand jury didn't consult me about it. They did, whenever they wanted to come in for

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instructions. They didn't consult me about what they should put in the reports, &c.

Q. Now. didn't the judge, at the time the grand jury were discharged, at the time he spoke to the county attorney, making complaint, say anything about a warrant being issued?

A. Perhaps he did; I don't remember it.

Q. You don't mean to say that he didn't say so, but simply that you have no remembrance whether he did so, or not?

A. I have stated that my recollection stopped about that point, that I don't remember what further was said. He had discharged the jury, and I don't remember any more, than that he turned to the county attorney—

Q. Didn't the judge, right in the same connection, when he was talking about the complaint being filed, direct the issuance of a warrant?

A. I don't know whether he did or not.

Q. You stayed in there until the whole of that was over?

A. I did.

Q. As soon as the judge spoke about the complaint you didn't start and go out of doors, did you?

A. No sir, I didn't go out of doors.

Q. You stayed there until the whole of that was over, and the judge went on to some other business, didn't you?

A. I think I stayed right along.

Q. Now, can you remember his speaking about a warrant?

A. I presume he did: but I can't call it to mind. I can't call to mind now, what he said after he turned to the county attorney and told him to make up a complaint on this statement.

J. M. GREENMAN, SWORN,

And examined on behalf of respondent, testified:

Mr. LOSEY. Q. Mr. Greenman, where do you reside?

A. At Austin.

Q. How long have you resided there?

A. Seven years last winter.

Q. What is your business?

A. I am engaged in the practice of law.

Q. How long have you been engaged in that business, in Mower county?

A. Since I came there.

Q. Do you know the respondent?

A. I do.

Q. How long have you known him?

A. I have known him since, I think, the first month that I was there; the month of January.

Q. Were you in court at the March term 1877, during the time the grand jury were being charged?

A. I was in court at the time the grand jury were charged, at the time they were impannelled, and also at the time they were discharged finally.

Q. What did the court instruct the jury at the time he first charged them in relation to their duties in connection with the county officers?

A. The judge charged the jury after the general remarks—peliminary

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remarks—he read the statute, and in reading the statutes in regard to the investigation into the conduct of officials, he then stated that there had been brought to his notice certain irregularites of the treasurer in regard to a town order. I think that it was claimed to have been paid, or something of that kind, by the county treasurer, and I don't recollect that he stated anything particularly as to the facts in the matter, but merely called their attention to that, and directed them to investigate it.

Q. Did he tell them that it was their duty to indict the county treasurer?

A. No sir, there was nothing of that kind said.

Q. Did he call Mr. Ingmundson by name at that time?

A. No sir, he did not call him by name; he only spoke of the treasurer's office.

Q. What did he say in regard to the auditor's office at that time, do you remember?

A. I have no recollection that he said anything at that time in regard to the auditor's office.

Q. What occurred between the grand jury and the court, when they finally came in to be discharged?

A. When they finally came in, I think the judge said to them that he was at a loss to know why they had been so dilatory or loth to investigate some matter that had been before them; this Ingmundson matter I think he stated (I don't know that he called Mr. Ingmundson's name, I don't think he called Mr. Ingmundson's name.) I think he merely referred to the matter of the county treasurer, and he stated in that conversation to them, I think, that they had reported the facts in regard to the matter, and that he didn't see if those facts were warranted by the evidence before them, how they had failed to take further action in regard to the matter, and my recollection is, that he said something in regardto their having been influenced by improper motives, and if so, that it was a violation of their oaths; and then he followed by the statement that theiir oaths were within their own keeping and consciences; that he had no control or had nothing to say about it, or something of that kind; I don't recollect the exact language that he used.

Q. Did he tell the jury that they had violated their oaths?

A. Well, not directly. Only as I have stated.

Q. That if they had been influenced by fear, favor, or hope of reward, or friendship?

A. Yes sir.

Q. Did he tell the jury that they had committed perjury in acting as they had stated?

A. No sir.

Q. What was the Judge's manner at that time, as compared with his manner at other times?

A. Well, so far as his tone of voice was concerned, and general manner perhaps, the tone of voice, I think, there was no great difference between that and his general tone of voice. He was more earnest, and I thought rather more deliberate in what he said to the grand jury, than usual.

Q. He generally speaks in an earnest way, does he not; that is, in charging the jury?

A. Yes sir.

Q. How was it the first time?

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A. The first time there was nothing that I noticed unusual at all in his charge.

Q. No difference from any general charge he gave?

A. No difference.

Q. You have frequently heard him charge the grand jury, have you?

A. I think I have heard him charge every grand jury since he has been upon the bench, in Mower county.

Q. Did he ordinarily call attention to the public officers?

A. He always has, I think, in every instance; that is, he has read the statutes that apply to such matters.

Q. What is the general conduct of the respondent towards the officers of his court in Mower county?

A. So far as I know of my own knowledge, I suppose that is all that—

Q. Yes, your observation.

A. So far as I know, it has been such as I have usually met before other judges.

Q. It is a little out of order, but we desire to let you go, and so I will question you as to this appointment of yourself to act in the impannelling of the jury while Mr. French was out. This same matter that I called the attention of Mr. Murray to; go on and state what occurred, how you came to be appointed as near as you can recollet?

A. My recollection of that is that when this criminal case was called, the first juror, I think, was called, and at that time it was discovered that Mr. French was not in the room.

Q. Well, was the first juror there in the box, and passed, or was he just called?

A. My recollection is somewhat indistinct in regard to whether he was called at that time; my recollection is clear that at the time he took his seat by the table to complete the calling of the jury that the juryman was then in the box; my recollection is clear as to that; I would not say that he had been passed.

Q. But he was then in the box?

A. He was in the box at the time.

Q. Was he rejected?

A. No sir.

Q. Go on.

A. At that time Judge Page inquired for Mr. French, and I think Mr. Hall, I am not certain who—some one remarked that he had gone out—and Judge Page turned to me and inquired of me if I would take Mr. French's place until he came in. I took his place and impanelled the jury. I think the jury were fully impanelled at the time Mr. French came in. He came in and I motioned him to the place where I was, and we were conversing, and while we were conversing Judge Page inquired of me if I desired to remain in the case.

Q. What were you conferring about? How far away were you from the Judge?

A. We were just in front of the bench, probably five or six feet. The Judge inquired of me if I desired to remain in the case, and I answered him that I did not, and withdrew from the case.

Q. Did he say anything of the county's paying you if you remained in the case?

A. I have no recollection of his saying that the county would pay me.

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Q. Was Mr. French at that time desiring you to go on with the case?

Q. When Mr. French came up where I was he said, "go on with the case, the Judge has appointed you, and try the case."

Q. That was four or five feet from the Judge, and it preceded the Judge's asking you if you desired to go on?

A. Yes sir.

Q. What did Mr. French say?

A. Well, I have given what he said; I don't know whether you desire any more of the conversation or not.

Q. Did the Judge at that time state to Mr. French, in your presence or hearing, that if he did that again—an act of that kind—he would punish him for contempt, or did he use any language of that character?

A. No sir, I heard nothing of that kind at that time.

Q. How long had you been in the room there?

A. Well, sir, that I can't tell you.

Q. About how long do you think?

A. My impression is that I came into the room while a civil case was being tried; my recollection is that I sat there and heard the arguments of counsel upon some motion in court, and that upon the decision of that motion I think the jury were discharged. Then some little time elapsed until this case was called. That is my recollection of it.

Q. Where you sitting in the court room?

A. I was sitting within the bar.

Q. Did you hear the respondent, the judge, call to the sheriff in the rear part of the room and say:

"Tell Lafayette French if he wants to talk with his witnesses to go out doors."

A. No sir, I didn't hear that.

Q. You heard nothing of that kind?

A. I did not.

Q. Did any such thing occur immediately preceding your appointment?

A. No sir, not,—I don't think anything of that kind occurred while I was in the room.

Q. Had the judge during that term frequently called the attention of the attorneys to the necessity of their being prompt in their attendance upon court?

A. I can't say how frequently; he had sent out for the attorneys previous to this time, who were not there.

Q. Had you known of his sending out for Mr. French?

A. I am not certain that he sent out for Mr. French, he had sent for me, and I think that the most of the attorneys were out.

Q. He frequently sent out for attorneys?

A. I have never known him to refuse; that is his practice.

Q. This special time when you were sent for, when most of the attorneys were out and sent for, was it then that he called attention to the fact that you must be more prompt in the future?

A. At the time we came in he said he desired to call the attention of all the attorneys to the fact that we were officers of the court, and that it was our duty to be on hand to attend to our business, that it was delaying the proceedings of court and that he considered it a contempt of court if we were not there to attend to our business.

Q. He addressed that to all of you, generally, did he?

A. Yes sir.

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Q. When did that occur?
A. That I can't tell you; it was before the civil case that was tried.
Q. Did he say anything to you about its being expensive to run courts?
A. Yes sir. He remarked that the expense of court was large, and I don't recollect just what he said about it, but he spoke of the expenses of court.

CROSS-EXAMINATION.

Mr. CLOUGH. Q. Now in regard to this occasion when the judge appointed you in place of Lafayette French, was it in the forenoon or afternoon when that occurred?
A. That sir I cannot tell you.
Q. How long had you been in the court room before that happened?
A. As I remarked before, I cannot state how long I had been in the court room, I have only an impression in regard to that.
Q. Was this criminal case the first criminal case that had been taken up that term?
A. I can't state as to that.
Q. You do recollect though, that a civil action immediately preceded it?
A. Yes sir.
Q. There was a civil action that immediately preceded it?
A. I am very certain that there was.
Q. Do you remember what case that was, that civil action?
A. I am not entirely clear as to that. I think, however, that it was a case of the town of Sargent, either with King or Sargent. There was a case, either Mr. King as one of the parties, and the town of Sargent, or Sargent against the town of Sargent. I think it was one of those cases.
Q. Were you counsel in that case?
A. I think not.
Q. Were you present when that civil case you speak of came on, or was that on trial when you went into court?
A. The civil case that I spoke of was on trial, and I spoke to the judge and said to him that I was going out of the office and that I would return by the time that that case was completed, I thought, and if not, left word for one of the deputies to let me know, and I went out and came in again. I think the same case was on trial when I came in again.
Q. How long were you gone?
A. Oh, I can't tell you that; I may have been gone a half or three-quarters of an hour.
Q. And you came back?
A. Yes sir.
Q. And this case, which immediately preceded the criminal case, was still on trial?
A. Yes sir.
Q. Did you stay there until the trial of the case was over?
A. My recollection is that I remained there until the case went by the board, from the motion that was made by the attorneys; that is my recollection of it.
Q. How long was it after you got back before the case went by the board, as you say?
A. That, sir, I can't tell you.

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Q. Was it more than a few moments?
A. I could'nt say that it was.
Q. Did you see Lafayette French in the room when you got back there?
A. No sir, I did not.
Q. Did you see him in there before you went away?
A. I think I did. I think he was in the court room before I went away, but I am not certain.
Q. And when you got back there you didn't see him in court?
A. I did not.
Q. Had the trial of this civil case, before you went away, progressed to any considerable extent?
A. No sir. My recollection is, that the jury—they had just completed calling the jury when I went out; that is my recollection.
Q. Who were the attorneys in that case?
A. I couldn't state. I think, however, that Mr. Cameron and Mr. Wheeler were the attorneys.
Q. What do you think about Mr. Greenman having been attorney in that case?
A. I don't think that I had any thing to do with the case; not in court. I had a case once between Mr. King and the town of Sargent, but that was tried before a jury out on the prairie, and I think when it came to the district court, if it did come to the district court, and of that, (I am not certain that it did), that I had nothing to do with it in the district court. I am not certain but that I tried a case in the district court for Mr. King.
Q. Was it this case—this civil case that was dismissed just before the criminal case went on?
A. No sir, I think not; it may have been, but that is not my recollection. I won't undertake to state that this King case was tried, or was the one that was on trial; I know that the case that was on trial, I was not in.
Q. But you remember that the case was very suddenly dismissed there, do you.
A. Yes sir.
Q. And then the criminal case was suddenly called on?
A. Yes sir. The criminal case was called, I think, the next case.
Q. And that was a few minutes, you say, after you arrived back in court?
A. I can't say how long it was.
Q. And you don't remember whether it was the forenoon or the afternoon?
A. I am not certain as to that; my recollection would be that it was in the forenoon.
Q. Now, while you were gone, you don't know what may have occurred between the court and Mr. French?
A. No sir. I don't know anything about it.
Q. Have you any recollection of seeing Mr. French in the court room at all, after this criminal case was called, and before you were assigned as counsel in it?
A. No sir.
Q. Do you remember anythimg being said about Mr. French being sent for, after that criminal case was called?
A. I don't think I remember about anything having been said of his

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being sent for, my impression is, that some one, and it may have been Mr. Hall, said he would go after him.

Q. Did he go after him?

A. That, sir, I can't undertake to say. I was under the impression that he did, and I heard him state that he did not.

Q. Your recollection is not very vivid about what happened on that occasion, is it?

A. Well, I think it is; I know so far as what occurred with myself, personally, I think I recollect; but other matters I would not undertake to say, that I could not be mistaken.

Q. Now, about this charge to the grand jury in the March term, 1877, were you there during the entire charge?

A. Yes sir.

Q. Did you hear the court, in the course of that charge, say anything upon the subject of the circumstances under which it would be the duty of the grand jury to find an indictment?

A. I think the judge, when reading the statute in regard to finding an indictment and a presentment—I think there was something occurred at that time in regard to finding an indictment and a presentment. I don't recollect, very distinctly, what it was.

Q. Do you remember whether he told them under what circumstances it would be their duty to find an indictment?

A. I don't recollect that he did; it seems to me that he read the statutes in regard to that matter, and left it without explanation.

Q. He did read the statute which says "under what circumstances the grand jury shall find an indictment?"

A. Yes sir.

Q. Now, with reference to the town order of the town of Clayton, and the county treasurer, won't you give the exact words of the judge, and all of them, in relation to that matter, as near as you can remember?

A. Well, I will give you as near as I can remember. I can't undertake to give the exact words. He stated that there had been information brought to him that there had been a town order, either taken by the county treasurer or paid by him; and I think he stated that the county treasurer had no authority to take town orders except for town taxes; but I can't give you the exact or very near the substance of what he said. He merely referred to that matter; I don't think he attempted to state all of the circumstances.

Q. Did he say anything about the town being compelled to pay the order twice by reason of the treasurer holding it?

[No answer.]

A. Do you remember about that, whether he said anything about that or not?

A. He may have said something about that.

Q. Do you remember of his reading in that connection the statute that speaks about treasurers paying over moneys which have been collected without setting up any offset?

A. I have no recollection; he may have read that statute.

Q. You don't remember whether he did or not?

A. No sir.

Q. Now did he say that if the grand jury—anything about the grand jury finding an indictment in case they found the facts to be as he stated?

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A. In his first charge?
Q. Yes sir.
A. No sir.
Q. Did he say anything about the conduct of the treasurer in that matter being an indictable offense if it was as he informed the jury?
A. I don't think he did, sir.
Q. Do you feel positiue on that point?
A. I am quite positive; I would not swear positively, but then I am quite positive that he did not.
Q. Now, in reference to this last charge and what occurred there; how long had you been in court before the grand jury came in?
A. I think I either immediately preceded the grand jury or followed them into the court room.
Q. Do you remember what communication passed between the jury and the court when the grand jury came in?
A. No sir, I was of the impression ihat they handed him a paper, but I did not see it. I think I at one time, in making the statement, stated that I thought they handed him a report, but afterwards I concluded that I was mistaken in regard to the matter.
Q. Now, didn't you get in there after the communication with the grand jury and the court had well gotten under way?
A. No sir, I immediately preceded the grand jury or followed them.
Q. So that you saw all that took place between the court and the grand jury?
A. No sir, I won't undertake to state that I saw all that was done or heard all that Judge Page said in regard to the matter.
Q. Do you remember anything being said by the foreman of the grand jury to the court; if so, what?
A. I don't recollect that the foreman said anything.
Q. Now, do you remember the instruction the court gave to the county attorney?
A. In regard to the further investigation of this matter?
Q. Yes.
A. I think I do.
Q. What was it?
A. I think that he stated to the county attorney that he would make a complaint in accordance with the facts found by the jury and have a warrant issued, and I think he stated that there should be a full examination or investigation of the matter.
Q. Did he say anything to the grand jury on that occasion about the grand jury not being able to stand between the punishment of crime and criminals?
A. Well, nearly that—not just that.
Q. What was his exact language in that particular?
A. Well, I won't attempt to give his exact language; my recollection is that he said that it was not the province of the grand jury to stand between—criminals—I think of crimes, and the full investigation of those matters.
Q. Didn't he say that a grand jury could not stand between the conduct of persons charged with offenses and the law?
A. No sir, I think not.
Q. You testified in this matter before the judiciary committee last winter, did you not?

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A. Yes sir, I did.

Q. On that occasion did you testify that Judge Page said, "he then stated that the grand jury could not stand between the conduct of persons charged with offenses and the law." Did you so state before the judiciary committee?

A. Well, I may have stated that; I won't say that I did not, but my recollection now is that—

Q. He said substantially that, didn't he?

A. Well, I think I have stated substantially; perhaps I have stated it a little stronger now than that term is; I think I have.

Q. When he was giving directions to the county attorney, didn't he say that the county attorney should have Mr. Ingmundson arrested and brought before him (the judge)?

A. I would not undertake to say that he said that.

Q. Well, what is your recollection on that subject?

A. My impression at the time was, that a warrant was to be issued, and my impression was that Mr. Ingmundson was to be taken before the judge, but I won't undertake—

Q. You understood the direction of the judge to be so?

A. That was the impression that I had.

Q. And you so testified before the judiciary committee?

A. I think so.

Q. Is the practice of the law your principal occupation?

A. Not principal; I have other business, or at least, myself and partner have. My partner has, until the last year, attended to the other branch of the business, and I have attended to the law.

Senator WAITE. Q. Have the matters involved in this controversy, and the impeachment of Judge Page created any excitement in the community at Austin and its vicinity; if so, describe the extent of it; has such excitement affected the social relations of members of the community, and if so, how, and to what extent?

Senator DEUEL. I would ask for a vote of the Senate on whether that question is admissable or not.

The PRESIDENT. Will the Senate permit the question to be answered?

Senator WAITE. I would like to be heard, if there is no objection.

The PRESIDENT. If there is no objection the Senator can be heard.

Senator WAITE. For myself I have very little to say; I think the questions are proper and profitable, for the purpose of giving the Senators some idea of the contradictions in the testimony of witnesses. It may throw some light upon the minds of Senators, and it is with that view that I have propounded the questions; for instance, in times of great excitement there is more reason why witnesses should disagree in their recollection and their statements, than there would be if no excitement existed; and if we have an idea of the nature of the excitement and the extent of it, I think they are entirely proper.

Senator DEUEL. I simply propose submitting the question on the very ground that the gentleman has stated; it is evident that the thing is about as he represents it.

Senator NELSON. I would like to hear the questions repeated. (The questions were read.)

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The PRESIDENT. The question is shall the questions be answered by the witness.

The question being taken on the reception of the evidence, and

The roll being called there were yeas 16, and nays 13, as follows:

Those who voted in the affirmative were:

Messrs. Ahrens, Bailey, Bonniwell, Clement, Clough, Donnelly, Doran, Edgerton, Finseth, Henry, Macdonald, Morehouse, Morrison, Nelson, Rice and Waite.

Those who voted in the negative were:

Messrs, Deuel, Drew, Gilfillan C. D., Gilfillan John B., Goodrich, Hall, Hersey, Houlton, McClure, McHench, McNelly, Page and Remore.

So the questions were received in evidence.

Witness. So far as the first part of the question is concerned.

Mr. DAVIS. Read it.

(Witness reads the question.)

Q. "Have the matters involved in this controvery and the impeachment of Judge Page created any excitement in the community at Austin and its vicinity?"

Witness. I should say "yes," decidedly.

The PRESIDENT. Now the next question; "if so, describe the extent of it."

The Witness. I don't think I can. [Laughter.]

Senator WAITE. Well, do it as near as you can.

A. Well, as near as I could describe the extent of that controversy is that it has extended itself into every nook and corner of the city of Austin at any rate, and how far outside of that I can't say, but in the immediate vicinity of Austin we are all of us decided as to the parties that we are supporting in this matter. [Laughter.]

Senator WAITE. Well, that is enough; pass on to the next question now; that is the most important of all. [Witness reads.]

"Has such excitement affected the social relation of members of the community, and if so, how and to what extent?"

A. I can only say, so far as myself is concerned, that in some cases there has been a disposition to sever the social and friendly relations that have existed with myself and others. I have attempted to avoid it as far as I can, but I have sometimes been charged of telling that that was not so, and it makes me mad. [Great laughter.] I don't like to treat a man as friendly as I would if he didn't say so and so.

Senator WAITE. Well, we want to know how it is, generally, there.

The WITNESS. Well, I think that it probably extends, so far as my observation goes, just to that extent, generally. That people calculate that one of them tells that that is not so, and the other that the other does. I suppose we want the Senate to decide that matter, which is right. [Laughter.]

Senator WAITE. That is all, unless you can answer still further as to the extent of it in the community.

The WITNESS. Well, outside of the city of Austin?

Senator WAITE. No, I mean in the city, more particularly, if you can describe it in full; as to how it has affected the social relations there.

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The WITNESS. So far as the social relations are concerned, I only know, of my own knowledge, what has occurred with myself and others. There has been some severing of the social ties: that is, we have not been as social, and I don't think we shall be until this matter is settled, and we get over it; and then we will be probably. I hope so, at any rate, so far as I am concerned.

Mr. CLOUGH. Q. A Senator requests to know if any divorces have grown out of this conflict.

A. Well, not that I know of. It has had a rather bad effect on *our folks* down there. [Great Laughter.] A boy some seven days old.

Mr. CLOUGH. What about the boy?

A. Well, he is a young one yet. [Renewed laughter.]

W. K. HUNKINS, RE-CALLED,

On behalf of the respondent, testified:

Mr. LOSEY. Q. You have stated, I believe, that you were a member of the grand jury at the March term of court, 1877, in Mower county?

A. No sir.

Q. You were there acting as special deputy at that time; was that what I understood you to say?

Q. Yes sir.

Q. Were you present at the time the charge was given to the grand jury by the judge of the court?

A. I was.

Q. What did he charge them in relation to county officers?

A. I think he told them there was a matter that came under their consideration concerning the town of Clayton, and that the county treasurer had something to do it; that that would be a matter for them to investigate.

Q. Anything further that you remember?

A. Well, he told them something about the county auditor's office; I think it was at that time.

Q. What did he say to them in relation to the county auditor's office; did you hear him?

A. He said that there was unusual gatherings and meetings congregated there in the night-time after usual hours. He said that would be a matter for them to investigate.

Q. Were you in court when the grand jury came in and asked for instructions, or when they came in and presented a paper to the court that was not signed?

A. I was.

Q. What then occurred?

A. The judge spoke to the foreman, I think, of the grand jury, and said that their paper was informal; that no one had signed it, and requested them to put it in proper shape.

Q. Did the grand jury then retire?

[No answer.]

Q. What occurred between the judge of the court and the grand jury when the grand jury were finally discharged?

A. The grand jury came into court and presented the court with a paper. I think when they were finally discharged, they reported no further business. The judge said to them that there seemed to be something singular about certain deliberations of theirs; that they had been

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prompt in most matters, and that there was something about it that he didn't understand.

He said that if the facts in the case would warrant, or if proof could be had of the facts as they presented them, that it constituted an indictable offence, and he said if they had been influenced by improper motives, or outside influence, such as through fear or favor or of hope of reward, or friendship, that they had been guilty of violation of their oaths as grand jurors.

Q. What further did he say?

A. I think he told them, about that time he discharged them.

Q. After they were discharged, what occurred?

A. I think he turned to Mr. French, and told him, or requested him to make out a complaint upon the facts as the grand jury had presented them in the matter, and have them investigated.

Q. Did he direct Mr. French to have him brought before him?

A. I think not.

Q. Did he at any time tell the jury that they had committed perjury?

A. No sir.

Q. Did he tell them that they had violated their oaths, except in the manner in which you stated?

A. No sir.

Q. What was the manner of the Judge in addressing the jury at the time they were discharged?

A. Well, I think a little more earnest than his usual manner; not very much.

Q. Was his tone of voice louder than common?

A. Well, I don't know that it was, but, as I looked at it then, and as I remember it now, that I thought possibly he was a little more earnest.

Q. Did he seem excited or angry?

A. No sir.

Q. What was his manner in addressing the jury when he first charged them?

A. I discovered nothing unusual.

Q. Have you frequently heard him charge juries?

A. I have.

CROSS-EXAMINATION.

Mr. CLOUGH. Q. What were your duties as court deputy during that term?

A. Doing general work around the court room.

Q. Taking charge of juries whenever out?

A. Yes sir.

Q. Any work outside of the court room?

A. No sir.

Q. Were you in the court room all the time?

A. I will qualify it by saying that I was outside of the court room a part of the time.

Q. Were you in the court room all the while?

A. No sir, I think not all the while.

Q. Did you pay particular attention to what occurred between the grand jury and the court?

A. I did, while I was there, yes sir.

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Q. Was that any part of your duty to do so?
A. Well, not strictly speaking.
Q. Now, at the time the grand jury came in and presented a report that the court said was irregular, did the court say anything about its not containing a statement of facts?
A. I think he told them the paper was not in proper shape; that it was signed by no one.
Q. Did he say anything about its not containing a statement of facts?
A. I don't think he did.
Q. Did he say anything about its containing merely the conclusion of the grand jury?
A. Well, sir; I am not prepared to say, but I think not.
Q. Did he say anything about its containing merely the opinion of the grand jury?
A. I don't think he did.
Q. The only thing you heard the judge say against the report was that it was not signed?
A. I don't think there was much else said.
Q. Do you pretend to remember all that was said at that time?
A. Well, no sir; not in just the language that the judge said it.
Q. What was done with the paper after the judge had got through talking with them?
A. It is my impression that it was handed to the jury.
Q. They took it out again?
A. I can't say what they did with it.
Q. Did you see them in there after that, with any report?
A. I did, sir; with what purported to be another report.
Q. When was that?
A. I think it was the day they were discharged.
Q. Do you remember of the grand jury being in there with any report concerning the treasurer's office, after this informal report that you have spoken of, at the time when they were discharged?
A. I think they made a report when they were finally discharged, or brought in some paper.
Q. I mean at the time they were finally discharged, and the time of this irregular report?
A. No sir, I do not.
Q. Now, when the grand jury came in the last time, and were discharged. What were you doing about the court?
A. I think I was there, sitting inside the bar at the time.
Q. Had you any special duty on hand?
A. No sir, I think not.
Q. What time of day was it when the grand jury was discharged?
A. I think it was some time in the afternoon.
Q. You had been sitting there since the beginning of the court, had you?
A. I did not say that I had, or had not.
Q. Where had you been?
A. Around the court, different places.
Q. Where were the petit jury kept when they were out?
A. They were kept in a room adjoining the court house.
Q. Adjoining the court house or court room ?
A. Well, adjoining the court room.

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Q. When you had a jury out, where were you in the habit of staying?

A. Well, I was sometimes in the court room, and sometimes in the jury room.

Q. Were you out with a jury that day?

A. I think—it is probable—that might have been; I don't remember now.

Q. Have you any recollection of being out with the jury that day?

A. I have not

Q. Have you any better recollection as to what occurred between the court and the grand jury, than when you were out that day with a petit jury?

A. I might have been out with the petit jury. I would not say whether I was or not. I have no recollection at present whether I was or not.

Q. Was there any other W. K. Hunkins that was deputy sheriff at the time?

A. I don't think there was.

Q. I read now from page 36 and 37 of the court journal for the term 1877. This is the case of the State of Minnesota against Charles Johnson, indictment for the crime of larceny:

"Now comes the prosecuting attorney, and the defendant being brought into court in the custody of the sheriff, and the jury, heretofore impaneled and sworn, herein being all present; argument of counsel heard, and jury charged by court; the jury having heard the evidence adduced, argument of counsel and the charge of the court. W. K. Hunkins was sworn as officer of jury and retired with jury to their room."

The next entry is:

"Now come the grand jury into the court, and being all present, report that they had completed their business; and were duly discharged."

Q. Do you remember now, about that petit jury?

A. I think so.

Q. Well, you were out of the court with that petit jury, weren't you?

A. I was out with them; yes sir.

Q. When the grand jury were discharged?

A. No sir; I was in the court when they were discharged.

Q. You are sure about that, are you?

A. I am.

Q. You went out, didn't you, with the petit jury?

A. I think I did.

Q. How long did you stay out?

A. Well, I might have staid out long enough to have locked them out, and I might have staid out a half an hour.

Q. You don't remember how long you did stay out?

A. No sir, but I was in the court room when the grand jury was discharged.

M. J. SEVERANCE, SWORN,

And examined on behalf of defendant, testified:

Mr. LOSEY. Q. What is your business, Mr. Severance?

A. Attorney at law.

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Q. Where do you reside?
A. Mankato.
Q. How long have you been practicing law?
A. Twenty-five years.
Q. Were you in Mower county attending court in the month of January, 1876?
A. I was.
Q. I refer to the time when the Jaynes case was tried?
A. I was present at the trial, and assisted the prosecution in the trial of the case.
Q. You may state what occurred between the court and the sheriff in relation to issuing venires, and getting jurors at that term. State all that occurred, as far as you can remember?
A. I could not state how many special venires were issued, but there were several, that were taken by the sheriff that is, the first four or five, or quite a number were, and I supposed were served in Austin, in the village of Austin, as they were returned very speedily. Quite a number of special venires were returned. My recollection is that they were for twenty-four men each along at first. I think the first day, we only obtained one juryman; that is my recollection about it, and the first two days I think we only obtained two; my recollection is that we were three days, at least, in impanneling a jury—for the trial of the cause. I think out of all of those venires that were served in the village of Austin, we only got two jurymen; I would not be perfectly certain about it. Then I know of nothing occurring between the sheriff and Judge Page, except as to the service of a certain venire.
Q. Go on and state what that was?
A. Judge Page said to the sheriff, who was standing in the audience, that he thought there was (I don't pretend to use the exact language, but the substance of what was said,) he stated to the sheriff that he did not think it was of any use to serve those venires in the village of Austin; that the cause had already been heard there three times, and he thought that every man in Austin had already made up his mind, either one way or the other, as to the merits of that cause; and he told him that he ought to go out into some distant townships in the county to serve the venire. My recollection is that Judge Page said this to the sheriff: That we had now examined a large number of men, and we had only got a very small number of jurymen, and it looked to *him* as if they were summoned, that these venires were summoned in Austin, for the purpose of running up a bill against the county. He said to him that he would order a venire, I think, for fifty men, and that he desired to have him go outside of the village of Austin into some neighboring towns and summon the jurymen.
That venire, for whatever number it was issued, was taken by the sheriff, and, as we all understood, he went into some of the towns distant from Austin and served it immediately, and the jurymen came in, and we got a jury from that venire.
Q. Did the court call his attention to certain towns lying in the immediate vicinity of Austin?
A. I could not say that he did; I do not remember that the judge mentioned any town, but the judge said that he had no doubt there were towns where the people had hardly heard of that case, at all events they had not heard of the details, and probably had not made up their minds about it.

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Q. Did you think, at that time, that the respondent was talking to the sheriff, or at any time when he was talking to him, in your presence or in court, in relation to the sheriff's conduct in the serving of these venires; that the language used was harsh?

Mr. CLOUGH. That is objected to; ask him what his manner was.

Mr. LOSEY. Q. Well, what was his manner; how did it impress you?

A. The manner was not extraordinary; he spoke emphatically, and it gave me the impression that he was a little out of patience; that was just the impression that I got about it.

Q. Had the attorneys complained of the delay?

A. Well, we all thought that we were wasting a good deal of time on getting that jury; my recollection is, as I said before, that we were about three days.

Q. What had become of this large number of men that were summoned right out of Austin?

A. Why, we simply asked a man where he lived. He said in Austin. Have you made up your mind about this case, and he said "yes." And it got to be a perfect farce before we got through with it.

Q. You got somewhat sick of it, then?

A. Yes sir.

Q. Was that the only direction the judge addressed to Mr. Hall in regard to it?

A. That was all I heard in regard to it. I was in court during the trial of that case, from the time of impaneling of the jury commenced, until I closed my argument. When I closed my argument I left. I did not hear Mr. Cole's argument in summing up, or Judge Page's charge to the jury.

Q. Mr. Hall, when asked the question: "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 returned;' 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.'" Did you hear anything of that kind?

A. I never heard of any thing of that kind in court there.

Q. The next question was, "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 the 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." Did you hear anything of that kind?

A. I did not; I don't recollect hearing anything of that kind.

Q. Well, you have quite a clear recollection about what occurred in relation to that officer?

A. Well, I think I have; Mr. Cole and I talked the matter over about the venire at the time. If any such thing as that occurred, I don't recollect; I won't say that it did not, but I don't recollect it.

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CROSS-EXAMINATION.

Mr. CLOUGH. Q. You attend 20, 30 or 40 terms of court every year don't you?

A. Well yes; I do.

Q. Wouldn't it be a maricle if you could recollect everything that passed between the sheriff of a court and the judge, at every term of court?

A. I should not expect to recollect it, sir.

Q. Might not many things have passed between the judge and the sheriff, at this term of court, that you have forgotten?

A. Why of course there might.

H. F. DENNING BEING RECALLED

On behalf of the respondent, testified:

Mr. LOSEY. Q. You have already stated that you were a member of the grand jury at the March term, 1877?

A. I have.

Q. Did you hear the first charge?

A. Yes sir.

Q. Did the judge instruct the jury in that charge, to indict Mr. Ingmundson, the county treasurer?

Mr. CLOUGH. I object to that. I object to your leading your own witness.

Mr. LOSEY. What if anything, did the judge instruct you in regard to indicting the county treasurer?

A. Not anything.

Q. What if anything did the judge instruct in regard to indicting the auditor?

A. Not anything.

Q. What, if anything did he say to the jury in regard to the fact that if the auditor allowed the band to practice in his office, it was an indictable offense?

A. I did not hear anything about a band.

Q. Did that grand jury report to the court no further business more than once during that term?

A. No sir.

Q. Did the grand jury wish to be discharged more than once during that term?

A. No sir.

Q. Did the court at any time during the term, tell the county attorney to have Mr. Ingmundson arrested, and brought before him?

A. I did not hear him.

Q. What occurred between the judge and the jury, at the time the jury were discharged?

A. The judge said there was something singular in our work, he didn't exactly understand; that we had been prompt in some matters, we had indicted parties for very small crimes, or crimes that amounted to but little; and we had hesitated, on some matters, and why he could not understand; but, if we had been influenced by fear or favor, or any improper motives we had violated our oaths.

Q. Did he state to the jury that they had committed perjury by reason of their acts?

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A. I did not so understand it.

Q. Did he state to the jury that they had violated their oaths, except in the qualified manner you state?

A. I did not understand him so.

Q. What was his manner at the time he was talking to you about it, the time you were finally discharged?

A. I think he was more in earnest than he had been at first.

Q. Did his voice seem to be loud?

A. No, sir, somewhat stronger than it was in the first charge.

Q. Did he seem to be excited?

A. I thought not.

Q. Judge Page's usual tone is what, firm, or—

A. I thought so, from what I have heard him speak, and charging juries in court, I mean.

CROSS-EXAMINATION.

Mr. CLOUGH. Q. What had the grand jury said to Judge Page when they were finally discharged?

A. I did dot hear anything said. The foreman communicated with the judge.

Q. What did the foreman say?

A. I didn't hear what he said.

Q. You were there with the grand jury?

A. Yes sir, I was right next to the foreman. Mr. Knox was the foreman. I did not notice that he spoke; he might and he might not. I know there was something passed between them; I did not hear the words that passed between them.

Mr. LOSEY. Did the court send for the jury at any time to give them instructions?

A. We had no such communication that I heard of.

J. D. RUGG, RECALLED

On behalf of the respondent, testified.

Mr. LOSEY. Q. You have already testified that you were a member of the grand jury at the March term of 1877, in Mower county, have you not?

A. Yes sir.

Q. You heard the first charge given you by the court, did you?

A. I did.

Q. What, if anything, did the court charge the grand jury in relation to indicting Mr. Ingmundson, the county treasurer?

A. Did not say anything in regard to indicting Mr. Ingmundson.

Q. What did the court say, if anything, to the jury, that if the auditor allowed the band to practice in his office it was an indictable offense?

A. He did not say that it was an indictable offense.

Q. Did the jury report no further business more than once?

A. Not that I know of, sir.

Q. State what occurred when the jury finally came in between the court and the jury, of their discharge?

A. The judge stated if these facts are as you represent them, if you find these facts as you have represented them, that—

Q. I speak now of the final discharge.

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A. Of the final discharge of the jury?
Q. Yes. Had you previously made a report?
A. Yes sir.
Q. How long previous to that time?
A. Well, quite a few minutes before this.
Q. Did you retire after you made this report?
A. Yes sir.
Q. You then came in again?
A. Yes sir.
Q. And announced no further business?
A. We made two reports.
Q. Well, I understand: but when you came in and announced no further business, then what occurred between the grand jury and the court?
A. The judge says: "If you have been influenced, through fear, or favor or friendship, it is a violation of your oaths;" or, "that you have violated your oaths."
Q. Did he tell you you had violated your oaths in any other way in that qualified manner?
A. No sir.
Q. Did he tell the jury, at that or any other time, that they had committed perjury in acting as they had done?
A. Not to my knowledge, sir.
Q. Was anything said at that time to the county attorney in relation to Mr. Ingmundson?
A. Well, I don't know whether it was after or just before.
Q. What was said?
A. He ordered him to make a complaint, that an arrest might be issued for the county treasurer.
Q. A warrant might be issued?
A. Yes sir.
Q. What was the manner of the judge?
A. Well, his manner was, I think, more strict than it was in the charge of the jury.
Q. Did he seem to be excited?
A. More earnest; I don't know that he was excited, but it was more earnest, and I should think a little louder tone of voice than it was in the first charge.

CROSS-EXAMINATION.

Mr. CLOUGH. Q. When the grand jury went in the last time when they were discharged, did the foreman say anything to the court?
A. I did not hear him; no sir.
Q. Did he pass any paper up to the court?
A. I did not notice whether he did or not.
Q. What was it that the grand jury had said or done to Judge Page, that caused him to speak about violating their oaths, on that occasion?
A. Why, they had brought in a report.
Q. Oh! they brought in a report?
A. Yes sir.
Q. Was that report in writing or verbal?
A. Yes sir; there was a report before the last charge.
Q. I am speaking about the last charge?
A. No sir.

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Q. They did not bring in anything?
A. Not that I noticed.
A. You don't remember whether they said anything or not?
A. No sir.
Q. When the grand jury were discharged, did they get right up and leave, or did they sit in their seats awhile?
A. As soon as they were discharged they got up and went out.
Q. At once, didn't they, without waiting?
A. I think they did.
Q. You heard what was said between the Judge and the county attorney, didn't you?
A. Yes sir.
Q. That must have happened before you got up and left your seats, didn't it?
A. Yes sir.
Q. Don't you remember, now, that what he said to the county attorney was before the grand jury were discharged?
A. I don't recollect if it was just before or just afterwards; it was right close together, at all events.
Q. Did he tell the county attorney what kind of complaint to make against Mr. Ingmnndson?
A. I don't know that he did; I think that he told him to make a complaint on those facts.
Q. What did he say was to be done with Mr. Ingmundson when the complaint was made?
A. I don't remember that he said anything.
Q. Did he say anything about arresting Mr. Ingmundson?
A. I think the complaint was to make an arrest.
Q. The county attorney was to make his complaint on the facts that were stated by the grand jury in the report, and then Mr. Ingmundson was to be arrested?
A. That was the way I understood it, yes.
Q. Now, when Mr. Ingmundson was to be arrested, what was to be done with him?
A. I don't know; I don't recollect as he said anything must be done with him.
Q. Didn't he say, upon the making of the complaint, that Mr. Ingmundson was to be arrested and brought before him, the judge, for examination?
A. I don't recollect that he did, no sir.
Q. You say he didn't say so?
A. I don't say that he didn't say so; I say I don't recollect.
Q. Your memory is not very clear about what happened, is it?
A. In some things it is, and in others it is not.

O. B. MORSE, SWORN,

And examined on behalf of the respondent, testified:
Mr. LOSEY. Q. Where do you reside?
A. I reside in the town of Racine, in the county of Mower.
Q. Were you a member of the grand jury of the March term, 1877, in Mower county?
A. I was.
Q. What, if anything, was said by the judge to the grand jury in

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relation to their indicting Mr. Ingmundson, the county treasurer, in his first charge given?

A. There was nothing said in respect to indicting the county treasurer, Mr. Ingmundson.

Q. What, if anything, was said by the judge to the jury in that charge, at any time during the term, if the auditor allowed the band to practice in his office, it was an indictable offense?

A. There was nothing said as to its being an indictable offense.

Q. Did the judge speak of the band to the grand jury in the first charge?

A. He did not.

Q. Were the jury sent for, to your knowledge, for the purpose of being instructed by the court?

A. They were not sent for; they came themselves, they came voluntarily.

Q. Did they notify the court each time that they came in that they had further business until they were finally discharged?

A. They did each time.

Q. Did they request to be discharged before they were finally discharged; that is, before they came in?

A. They requested to be discharged only once, and that was their final discharge.

Q. What occurred between the court and the jury, when the judge finally came in and asked for their discharge?

A. Well, the judge spoke something about the delay in the transaction of business. He stated he did not understand it; he did not know if they had been influenced by any improper motives, he thought that it would be a violation of their oaths, something like that.

Q. If they had been?

A. Yes sir, if they had been.

Q. Did he tell you that you had violated your oaths, only in that qualified way?

A. Only in that qualified way.

Q. Did he say to the jury that they had committed perjury in acting as they had done—anything of that character?

A. No sir. No sir.

Q. Did you hear him give any direction to Mr. French?

A. I believe I did.

Q. Was it before or after the grand jury were discharged?

A. Well, I would not be positive as to that. I would not be positive as to which came first. His request or direction to the county attorney was to take the facts which had been reported to the court, and draw up a complaint for further investigation, when that investigation was to be made, I did not understand. I presumed that it was before a justice of the peace.

Q. What was the manner of the judge in addressing the jury when they were finally discharged?

A. He was firm, not severe; gentlemanly, like a judge.

Q. What was his manner when he addressed you in giving the general charge?

A. His tone was clear; nothing improper in the charge, in his manner.

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CROSS-EXAMINATION.

Mr. CLOUGH. Q. What was it the judge did say about the county treasurer's office in the first charge—he alluded to it, didn't he?

A. He did?

Q. What was it he said about it?

A. He called the attention of the grand jury to a matter in reference to the town of Clayton, I believe.

Q. That is what he said?

A. It was a matter in reference to the town of Clayton.

Q. Did he say to the jury that he called their attention to a matter in reference to the town of Clayton?

A. Well, that was not the exact words, that was the substance; that he called the attention of the grand jury.

N. A. SUMNER, RECALLED

On behalf of the respondent, testified:

Mr. LOSEY. Q. Were you a member of the grand jury, March term, 1877.

A. I was.

Q. State what, if anything, what the judge stated to the grand jury in his first charge in relation to instructing them to indict Mr. Ingmundson, the county treasurer?

A. He did not give them any instructions in regard to indicting him.

Q. State what, if anything, he said to the grand jury at any time during the time you were acting, in relation to the fact of the auditor's allowing the band to practice in his office; that if he did, it was an indictable offense?

A. He did not say anything in regard to the band at all.

Q. Did he tell you it was an indictable offense, for the auditor to allow them to practice in his office?

A. He did not.

Q. Did the grand jury report no further business, more than once?

A. Not to my knowledge.

Q. Were the grand jury directed at any time during the term, by the judge, to come into court, to be instructed?

A. He did not.

Q. Were they sent for at any time during the term, by the judge?

A. No sir; not to my knowledge.

Q. What occurred between the court and the jury, when they finally came in and were discharged?

A. Well they brought in a statement of facts in regard to the treasurer's office.

Q. And then went out?

Mr. CLOUGH. Wait a moment; this is a single handed game here.

Mr. LOSEY. Well sir, I am aware of it, but it is so patent from your witnesses and mine, that I thought it was proper for me to call the attention of the court to it.

The Witness. We had, heretofore, previously brought in a statement of the facts in regard to the treasurer's office, and we had reported that we could not find an indictment.

Q. What then occurred?

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A. The judge said that he could not see why we had delayed this matter so long; we had acted upon other matters, and that if we had been influenced by friendship or favor or any other outside motive, we had violated our oaths.

Q. Did he state to the jury that they had committed perjury, by reason of acting as they had done?

A. No sir.

Q. Did he use that word at all?

A. No.

Q. Did he state to the jury that they had violated their oaths except in the qualified manner you have stated?

A. No, he did not.

Q. Did he give any directions to Mr. French, the district attorney, previous to the time when the jury were discharged?

A. I think it was just before our discharge.

Q. What was the direction?

A. That the facts in the case presented were sufficient I think, and that he would make a complaint, or something of that kind.

Q. Directed him to make a complaint?

A I think so, yes sir.

Q. What was the manner of the judge in addressing the jury, finally?

A. Well, his manner was in addressing the jury, it seemed to me, that he felt as though the jury had not done their duty in presenting a statement of facts, and not finding an indictment, because he had before told us that the statement of facts would warrant an indictment.

Q. What was the manner of the judge in addressing the jury; what was his tone of voice as compared to the usual tone?

A. It might have been a little louder than natural speaking.

Q. Did he seem to be excited?

A. Not very much.

Q. Was his language violent?

A. Not in the least.

Q. Tone of voice violent?

A. I would not call it so.

Q. What was his manner in addressing you, in the first instance?

A. Well, his general manner in the first instance was the same; his natural tone of voice as near as I would know.

Q. Louder than ordinary tone?

A. I should not say it was.

CROSS EXAMINATION.

Mr. CLOUGH. Q. You say that the grand jury came in the last time, when it was discharged, they reported that they had found no indictment against the county treasurer?

A. Yes sir.

Q. Was that report in writing?

A. I am not certain about that.

Q. Who delivered the report into court, if it was in writing?

A. The foreman.

Q. Are you certain there was any such report made at that time?

A. Well, it is my opinion it was; whether it was written or not, I know we had acted upon it, and found no indictment.

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Q. Have you any recollection of the subject of the county treasurer being mentioned by the grand jury or the foreman on the occasion when the grand jury were discharged?

A. If it was alluded to, it was in a low tone of voice.

Q. How do you say then that there was such a report?

A. That was the intention when we separated from the grand jury.

Q. That you were to make a report to the court that you found no indictment against Mr. Ingmundson?

A. Yes sir, that we failed to find an indictment; that was the understanding of every grand juror; we did not personally.

Q. When you went into court you had no recollection whether any such report was made or not?

A. I could not swear; I did not hear any such report; we went in; that was our understanding of what we was going in for.

Q. Do you remember what occurred when you got in, in that respect; whether you made any such report or not?

A. I could not say that that report was spoken or written.

Q. Or whether it was given in at all?

A. It was probably written if it was given at all.

Q. Did you hear the writing read?

A. No sir.

Q. Do you know that any such thing was written down at all?

A. No.

Q. Nor given into court at all?

A. Well, it was the understanding when we started.

Q. I am talking about what was done in court, whether you have any recollection of any such report, as you say, being given in on that occasion at all.

A. No sir; I don't know that it was given in, because I didn't hear it.

Q. Now, what did the court say in the first charge to the grand jury about the county treasurer's office?

A. He referred to the matter of the town of Clayton; I presume I could not repeat his words now.

Q. Do you remember what he did say about it?

A. He referred to the matter of the town of Clayton; said there had been irregularities there, and I think the county treasurer had done something in regard to it; there was some order, I think—

Q. What was it the judge said about the order?

A. I could not say—irregularities which we should investigate.

Q. But you don't remember what he told you these irregularities were?

A. I hardly think he did.

Q. He did not tell you what they were?

A. He might have done it?

Q. But you don't remember whether he did or not?

A. I could not say.

RE-DIRECT EXAMINATION.

Mr. LOSEY. Q. When the grand jury came in finally they reported no further business, didn't they?

A. Well, I expect they did; that is what we went in for, that was the understanding.

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FRANK TICHNOR, SWORN,

And examined on behalf of the respondent, testified:

Mr. LOSEY. Q. Were you present at the term of court held in Mower county, March, 1877?

A. Yes sir.

Q. What business had you there?

A. I was listening to the proceedings in court.

Q. Was you a juror?

A. No sir?

Q. Were you present when the grand jury came into the court, and were finally discharged?

A. I was.

Q. What occurred between the court and grand jury at that time?

A. Well, he reprimanded them a little, I believe.

Q. I ask you what was said by the court?

A. They brought in a statement, I believe, a statement of facts.

Q. I speak now as to what occurred between the court and the grand jury, when they finally came in and asked to be discharged?

A. Well, he told them that he was—he could not understand why they were so loth—to investigate certain matters that had been brought before them—that all other matters had been attended to promptly—that he could not understand why a certain matter was not attended to.

Q. What further did he say?

A. And he thought that if they had been influenced by outside influence, that they had violated their oaths as grand jurors.

Q. Did he state that they had been influenced by fear or favor?

A. Yes sir.

Q. If they had been influenced then they had violated their oaths—did he say anything to them about the jury having committed perjury?

A. No sir.

Q. By not having acted?

A. No sir, he did not use that expression.

Q. What was the manner of the judge at that time?

A. His manner was stern, decided and gentlemanly.

Q. Did he talk in any louder tone than usual in addressing juries?

A. I have heard him talk fully as loud before.

Q. In addressing juries?

A. Well, I could not say in regard to addressing juries.

Q. Had you ever heard him charge a jury before?

A. Yes sir.

Q. How did his manner compare at this time?

A. About the same.

Q. Is this language that you have given, the reprimand you speak of?

A. Well, no sir.

CROSS-EXAMINATION.

Mr. CLOUGH. Q. You live in Austin?

A. Yes sir.

Q. What was your business at that time?

A. I was selling buffalo robes at that time.

Q. How much of that term of court did you sit around the court room?.

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A. Nearly all the term. I wasn't there all the time; I would drop in occasionally.

Q. What day of the term was it you heard this conversation between Judge Page and the grand jury?

A. The discharge of the grand jury?

Q. Yes sir?

A. It was on Saturday.

Q. Forenoon or afternoon?

A. I should think it was afternoon, on Saturday.

Q. Had you been all Saturday forenoon in court?

A. I was.

Q. Then when the court adjourned for dinner you went away, and when it came iu you came in again; is that it?

A. Well, I don't exactly remember whether I went to dinner before the grand jury were discharged or after; I think I did before.

Q. Did you stay in the court room during recess that day?

A. If there was a recess, I went away with the rest of the people.

Q. Just before that grand jury came in, what was the business before the court?

A. I could not tell exactly; there were several law suits tried there that term when I was there.

Q. What was the business that immediately preceded the grand jury coming into court?

A. Well, I could not tell exactly, I don't remember what business preceded it.

Q. Do you remember whether it was a trial or a suit, or not?

A. No I do not.

Q. Do you remember of anything being done at this court before the grand jury came in?

A. Yes sir.

Q. What?

A. Well, there was different law suits.

Q. No, I am speaking of this session of court, this afternoon court; did the grand jury come in the first thing that afternoon?

A. I would not say that they came in the afternoon; it is my impression that they came in in the afternoon.

Q. How long had you been in the court room before the grand jury came in?

A. Well, I could not say how long.

Q. Was it a half hour or two hours?

A. I could not say.

Q. You don't remember now about it, do you?

A. I remember being there when the grand jury came in, and when they were discharged.

Q. Didn't you come in after the grand jury were in—didn't they come in first?

A. No sir, I was there when they came in.

Q. Where did you sit in the court room?

A. I was clear to the back end of the court room.

Q. How far would that be from the foreman of the grand jury?

A. As far back as the entrance to this chamber, I think.

Q. Could you hear everything that was said, perfectly plain, by the udge to the jury, to the foreman of the grand jury?

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A. I could hear everything that the judge said; he always speaks distinctly.

Q. When the grand jury came in, was the other business that was going on, suspended?

A. It was.

Q. But you don't remember what that other business was?

A. I don't remember exactly, no.

Q. Did anybody come into the court room with the grand jury?

A. I think the officer came in.

Q. Who was he?

A. I think it was E. J. Phillips.

Q. Do you remember of the petit jury sitting there, trying a case at the time the grand jury came in?

A. There might have been.

Q. I ask you if you remember whether there was or not?

A. I remember there was a petit jury at that term of court that tried several cases. I could not say what business was going on at that time.

Q. When that grand jury came in and took their seats, what was the first thing that was done after that?

A. I don't think they took their seats; my impression is that they stood up.

Q. When they came into court and the court noticed their presence, what was the first thing that was done after that?

A. He asked them if they had any further business. They might have reported some transactions they had before.

Q. Do you remember when the grand jury came in there and the court noticed them, what was the first thing that was done?

[No answer.]

Q. Did the clerk say anything to them?

A. I think there was some conversation, or report handed in.

Q. Did the clerk say anything to the grand jury?

A. I could not swear that he did.

Q. Do you remember whether he did?

A. I don't remember whether he did or not.

Q. Did you see any papers passing between the judge and the grand jury?

A. I don't remember whether I did at that time, or not.

Q. Did the foreman say anything to the judge?

A. Yes sir.

Q. What did he say to the judge?

A. The judge asked him if there was any further business, and I believe he reported there was not.

Q. Was that the first thing when the grand jury came in?

A. Well, I could not say whether that was the first thing or not.

Q. You don't know what was the first thing that was done before that?

A. I could not swear positively, what first happened.

Q. How long was the judge talking to them on that occasion?

A. A few minutes.

Q. Fifteen minutes?

A. I should judge not.

Q. How long?

A. Somewhere from 3 to 5 minutes, I should think.

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Q. Then he told them a great many more things than you have stated here, didn't he?

A. Well, he discharged them.

Q. Didn't he tell them a great many more things, than you have stated here?

A. Yes, I don't pretend to state everything that he said.

On motion of Senator Armstrong the court took a recess for five minutes.

AFTER RECESS.

F. A. ENGLE BEING RECALLED,

And examined on behalf of the respondent, testified:

Mr. LOSEY. Q. You have testified, I believe, heretofore, that you were a member of the grand jury of Mower county, March term, 1877.

A. Yes sir, I believe so.

Q. In the first charge given you as grand juror by the court at that time, did the judge say anything, and if so what in regard to the grand jury indicting Mr. Ingmundson as county treasurer?

A. My recollection is that in his first charge he called our attention to an irregularity between the town of Clayton, and the county treasurer; and I think in that connection he read to us a portion of the statutes in relation to the investigation of misconduct in office, and requested that we make an investigation into the matter, and report to the court.

Q. Did he say anything to the jury in relation to the indictment of Mr. Ingmundson, the county treasurer?

A. I did not so understand him.

Q. Did the jury report no further business more than once?

A. Only one time.

Q. State what occurred between the jury and the judge at the time they came in and asked to be discharged?

A. As near as I can remember, he said there seemed to be something strange in this matter, that he could not understand; we had investigated other matters, and reported on, and if we allowed ourselves to be influenced either by fear or favor, or in disregard of the law as given us by the court, such conduct would be a violation of the oaths which we had taken.

Q. Did he say to you, "you had violated your oaths," or used that language except in the qualified manner in which you have stated?

A. I think not.

Q. Did he say to the jury, that they had committed perjury, or anything of that character?

A. Not that I remember of.

Q. What was the manner of the judge in addressing the jury at that time?

A. My recollection is, that he spoke in the manner of good earnestness.

Q. Did he appear to be angry?

A. I didn't so take it at all.

Q. What was the manner of the court when first charging the grand jury?

A. I believe I never heard him charge only one jury previous to that. I was not on that jury, and I did not notice any difference?

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Q. You noticed no difference in the charge then made and the one you had heard previously made by him?

A. No I did not.

Q. How long have you known Mr. Ingmundson?

A. I think it is about four years, when he came there and took the office.

Q. What were your relations previous to this March term, 1877?

A. There had never been any difficulty with us, whatever.

Q. Had you been on friendly terms?

A. We was all the time.

Q. How has it been since that time as between Mr. Ingmundson and yourself?

A. Well since about the fourth day we was in session, at that term of court, he has never recognized me at all since I have been there.

Q. Have you frequently met him?

A. I met him every day and every few days.

Q. Who commenced failing in the recognitions, yourself or himself?

A. The first that I noticed when we were in session, I think about four days, I went into the office to inquire about some business; he stood by the desk, and I noticed as I came in he turned away, and I made inquiries of his wife and went out—thought nothing of it. I came to meet him again while we were there in session, and the second time of meeting him I discovered he did not wish to recognize me, and from that I took no pains.

CROSS-EXAMINATION.

Mr. CLOUGH. Q. Won't you just state what the Judge said about the county treasurer's office in the first charge; just repeat all the Judge said on that subject?

A. I will do so as near as I can. After he got through with the general charge, as I took it, he said it had come to his notice that there had been irregularity between this town of Clayton and the county treasurer. And just previous to that, or it came in right there, he read from the statute in relation to the investigation, as to our duty in the investigation of public officers..

Q. That he had been guilty of misbehavior in office?

A. In regard to the investigation of his conduct in office, and he wanted we should investigate this matter, and report to the court in such a manner as we considered proper. Previous to that he had explained to us the difference between a presentment and an indictment.

Q. That was all he said on the subject of the county treasurer's relation to the town of Clayton, was it?

A. There might have been more words in it than I have said, but I have given the idea as near as I can.

Q. You have stated the substance of all he said about investigation in the county treasury?

A. At that time, I think so.

Q. Did he say anything in his first charge about certain matters having come to his information about irregularities in the county treasurer's office?

A. That is what the irregulation was.

Q. What the irregularities were?

A. I don't remember of that at all. My impression is that he did

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not mention what the irregularity consisted of. I don't remember it at all.

Q. Now, when the grand jury came into court the last time to be discharged, did the foreman have any communication with the judge, and if so, what did the foreman say to the court the time you were discharged?

A. I don't think he said anything to him when we went in. I was a little back, and am a little hard of hearing. I don't remember that he said anything to him.

R. Did he hand him any paper?

A. I don't remember as to that. I don't remember what communication, either writteu or verbal, was had between them.

Q. Now, have you stated here all that the court said on that occasion, when the grand jury were discharged?

A. I think I have in substance.

Q. How long did the court speak to the grand jury at that time?

A. Well, it only occupied a very short time; I don't know as I could possibly tell how long.

Q. Five minutes?

A. No, I doubt if it was five minutes.

Q. Three minutes?

A. Probably near that; I could not tell only by imagination.

Q. According to your estimation, then, the court talked to the grand jury about three minutes?

A. Probably near that.

Q. Now, didn't the court, as a matter of fact, say a great many things that you have not stated here?

A. The court said at that time—I don't remember of anything, in substance, relating to this matter?

Q. Let me refresh your recollection a little; did the court say anything about putting themselves between the punishment of guilty persons and the law?

A. I think not, I don't remember it.

Q. Did he say anything about its being a good thing about there being a higher power than the grand jurors?

A. I did not hear anything of that kind.

Q. Didn't you hear what the judge said imperfectly, in court, on account of your deafness?

A. Well, I think I understood him. My recollection is that I could understand every word that he said. There was more said.

Q. Did you hear the judge say anything about the arrest of Mr. Ingmundson for examination?

A. He turned to the county attorney—my impression is, that when he said we were discharged, that he turned to the county attorney and told him to take the facts brought, and draw a complaint for the further investigation of this matter, as he considered it one of great public importance.

Q. Did he say anything in that connection about Mr. Ingmundson being arrested?

A. I don't think that he did.

Q. Did he say anything in that connection about a warrant being issued?

A. I don't remember that he did.

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Q. You didn't hear the subject of a warrant for the arrest of Mr. Ingmundson being mentioned at that time at all?
A. I have no recollection now of hearing it.
Q. When the grand jury went in that time, did they stand or sit?
A. Well, I think that a part of them sat down and I think a part of them stood up.
Q. No. When the court said that the grand jury were discharged, did the grand jury still sit on the stand there, or did they leave?
A. They left very soon.
Q. Did the court tell the county attorney what to include in the complaint that he should make out, on what facts he should make out the complaint?
A. I understood that he should take this report and found his complaint upon it.
Q. What did the court say was to be done after the complaint was made?
A. I did not hear anything further than that; that closed it up at that time, as far as I can remember.

W. H. MERRICK SWORN,

And examined, on behalf of the respondent, testified:
Mr. LOSEY. Q. Where do you reside, Mr. Merrick?
A. I live at Austin, in this State.
Q. How long have you lived there?
A. Eleven years.
Q. What is your business?
A. A lawyer.
Q. How long have you been engaged in business at Austin?
A. About two years.
Q. Were you present at the March term of court, in Mower county, 1877?
A. I was present at the opening of that term.
Q. Did you hear the charge of the judge to the grand jury?
A. I did.
Q. What was his manner in charging the jury at that time?
A. Well, his manner was the same as it usually is.
Q. Describe it?
A. In what respect?
Q. Well, as to whether it was violent, or mild, or what?
A. No sir, I don't understand that it was; he spoke in an ordinary tone of voice that he does when he is speaking on matters in general, that is, addressing anybody.
Q. What is his usual tone of voice in addressing a grand jury?
A. Well, I can't state in reference to his tone of voice in addressing grand juries.
Q. Well, as compared with other interviews?
A. Well, his voice is a little louder and stronger than others.
Q. State what, if anything, the judge stated to the jury in regard to their indicting Mr. Ingmundson, the county treasurer on that charge?
A. Well, I think he said nothing about indicting Mr. Ingmundson. He called the attention of the grand jury to the office of county treasurer, and also to the county auditor.
Q. Did he say anything about the band?

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A. I don't think he did by name, no sir.

Q. What did he say about that office?

A. Well, he stated in substance that there were public assemblies, or assemblies of people after hours in the auditor's office, and that there were public records there of great value, and that in his judgment it was an improper thing for an auditor to do, or words to that effect.

Q. Did he state whether it was an indictable offense or not?

A. I don't think he used any such language as that in connection with the auditor's office.

Q. Do you know Mr. Woodard, the witness who was sworn here, J. D. Woodard?

A. Yes sir, I know him.

Q. Are you the Mr. Merrick referred to by him as having been at his house with Judge Page?

A. I was at his house with Judge Page.

Q. When was that?

A. That was last summer some time.

Q. What occurred between himself and Judge Page there at that time in your presence and hearing?

A. Judge Page called his attention to an affidavit that he had made with reference to some matters connected with the grand jury.

Q. In what manner did he call his attention to it?

A. In a quiet and pleasant manner.

Q. What did he say to Mr. Woodard?

A. Well, I think that he introduced the conversation by saying to Mr. Woodard that he had called to see him with reference to an affidavit that he had made, and he wished to talk with him with reference to it; that there was some things contained in his affidavit that were not true, and he did not believe that Mr. Woodard thought they were true. There was considerable conversation between Judge Page and Mr. Woodard with reference to this affidavit.

Q. Can you remember any more of it now?

A. I don't know that I can detail the conversation word for word.

Q. Was the affidavit read to Mr. Woodard by the judge?

A. I think it was.

Q. What was the judge's tone in reading the affidavit to Mr. Woodward?

A. Well, his tone was the same as it is in ordinary conversation; there was no high tone of voice during the whole conversation.

Q. Any excitement?

A. Not at all.

Q. What did the judge say to him after he had got through reading the affidavit?

A. Well, he said in substance, to him, that he supposed that if the statements he had made were not correct with reference to the matters contained in the affidavit, that he would have no objection to making a retraction to that extent, and he stated "no," that he would not.

Q. Was anything used like this: Mr. Woodard says on page 48 of the journal of Friday, May 31st, "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." Did the judge address any such language as that to Mr. Woodard?

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A. No sir, he did not.

Q. Then Mr. Woodard goes on and says the judge said "that was the greatest libel that he had yet had." Did the judge make any such statement as that to Mr. Woodard?

A. I don't think the judge made any such statement, that it was a libel, to Mr. Woodard. I recollect nothing of the sort.

Q. Were any threats used?

A. Not at all. Nothing that had the appearance of a threat. The conversation was carried on in an ordinary tone and in a pleasant manner.

Q. You state he signed a paper, do you not?

A. Yes sir; Judge Page called his attention to a statement of the bar committee, and I think showed him a statement made by Mr. Denning, and Mr. Woodard said that the report of the bar committtee was substantially correct with reference to the Ingmundson matter; and Judge Page wrote on the babk of the original affidavit made by Mr. Woodard, this retraction, and Mr. Woodard signed it here in my presence.

Q. Did you hear it here the other day?

A. I think I have seen the affidavit and the retraction since I came to St. Paul, I don't recollect when.

Q. Did Mr. Woodard sign it voluntarially?

A. He did, he made no objection to signing it.

Q. What time was it when you were there?

A. My judgment is that it was between six and seven o'clock in the evening.

Q. What time of the year?

A. Well, I have no means of stating precisely the time; my best judgment is that it was in the month of August.

Q. How far from Austin was it?

A. Six miles.

Q. What time was it when you got back to Austin that night?

A. I can't say.

Q. Was it dark yet?

A. Not quite dark, I think.

CROSS EXAMINATION.

Mr. CLOUGH: Q. You have been very active in Judge Page's behalf since these proceedings have commenced, have you not?

A. Well, not especially so, sir.

Q. You have not; haven't you circulated petitions to the Legislature in his behalf?

A. Well, what do you mean, soliciting names?

Q. Yes sir.

A. I have.

Q. You wrote a petition last winter, to the Legislature in behalf of Judge Page, for the people to circulate?

A. I did.

Q. You were here while the question of his impeachment was pending before the House of Representatives, and active in his behalf?

A. A part of the time, yes sir.

Q. How long were you here last winter?

A. Well, I don't recollect.

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Q. Several weeks, weren't you, while that question was pending before the House?
A. I think not.
Q. Do you remember when you came and when you went?
A. I do dot.
Q. Were you not here as many as three weeks while these proceedings were pending?
A. My recollection is that I was not.
Q. Did you not talk to members of the House of Representatives upon that subject frequently?
A. To make it my business to do so?
Q. Did you not talk to members of the House of Representatives frequently upon the subject of Judge Page's impeachment, last winter?
A. Well, no sir, no more than would come up in casual conversation.
Q. But you did talk frequently to them, didn't you?
A. I don't think I did in a half-dozen instances.
Q. Were you not here in Judge Page's interest, before the Legislature, last winter?
A. No sir.
Q. Didn't you solicit the votes of several members in favor of Judge Page, in favor of that proceeding?
A. I don't know that I ever solicited the vote of one.
Q. Didn't you advocate Judge Page's cause in that matter to several members of the Legislature, last winter?
A. Well, I will answer that question in this way: that, in conversation, I have no doubt that I have expressed myself friendly to Judge Page.
Q. You were sworn as a witness before the judiciary committee, last winter?
A. I was.
Q. How long were you in town before you were sworn?
A. That I don't recollect; only a few days; only two or three days.
Q. How long after were you sworn?
A. That I don't recollect.
Q. Several days, weren't you?
A. I think so. I remained here untill the vote was taken.
Q. Now, don't you remember that that was about two weeks?
A. I don't recollect the length of time.
Q. But whatever the length of time was between the time you were sworn, and the final vote was taken, you remained here?
A. I did.
Q. What was your business here?
A. Well, I had no business in particular.
Q. Had you any other business here, except you advocated Judge Page's cause in that matter?
A. Well, I had a part of the time.
Q. Did not Judge Page pay your expenses here?
A. He did not.
Q. You paid your own expenses after you were examined by the committee, did you?
A. I think so, yes.
Q. That is as true as the other evidence you have given here, is it?
A. Well, I would state this: that with one exception Judge Page

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paid no expenses of mine, while I was here, whether that occurred afterwards or before, I can't state.

Q. Don't you remember that up to the time you were discharged, you were here at the expense of the State, and that after that Judge Page paid them?

A. No sir.

Q. He certainly did not pay your expenses while you were at the expense of the State, did he?

A. Well, I will say I don't recollect Judge Page paying my expenses except one time, when I was here.

Q. When was that?

A. That I can't say, whether it was before or afterwards.

Q. Didn't you come here in pursuance of a subpœna issued by the judiciary committee to testify in Judge Page's behalf?

A. I did.

Q. Then you came at the expense of the State, didn't you?

A. Yes sir.

Q. And were sworn?

A. I was.

Q. Judge Page did not pay any part of your expenses up to the time you were sworn, did he?

A. I paid my own expenses all the time.

Q. But you, Oh! you did, and he reimbursed you, is that it?

A. No, I don't mean to be understood that; I was here on a subpoena, and I got my pay as a witness, but the State did not pay my hotel bills either time.

Q. As soon as you were examined you were discharged as a witness?

A. I presume so.

Q. During the period of time after you were discharged, and up to the time the final vote was taken, do you mean to say you received no reimbursement from Judge Page for your expenses?

A. I do mean to say so.

Q. But still you staid here, having no other business here?

A. I stated that I had private business, but perhaps not enough to have kept me here; I mean to be understood by that, that I was perhaps prolonging my stay here, in consequence of the interest I felt in this matter of Judge Page's.

Q. And you spoke to a good many members, did you not?

A. I did not.

Q. You spoke to several about it?

A. I did.

Q. Advocated Judge Page's cause to them, didn't you?

A. I don't think I spoke to them with a view of advocating Judge Page's cause at all. When I talked to them at all, I talked with them as a friend of Judge Page.

Q. You did not say anything against Judge Page, but spoke in his favor?

A. I certainly did.

Q. How long have you been a member of the bar?

A. Nearly two years.

Q. Were you a member of the bar at the March term of court, 1877?

A. I was.

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Q. What was your business before that time?
A. Well, I was a lawyer before that.
Q. What was your business before you were a lawyer?
A. I have been engaged in different businesses.
Q. You were city justice a long time?
A. I was.
Q. In Austin?
A. I was.
Q. Went out of office when?
A. Four years ago.
Q. Judge Page and you have been particular friends for the last four or five years, havn't you, or more?
A. Well, I can't say that.
Q. Isn't it a fact that you have been on very intimate terms during all that time?
A. No sir.
Q. Were you not on intimate terms for several years while you were city justice?
A. No sir.
Q. On quite friendly terms, weren't you?
A. Well, I was not at variance with Judge Page.
Q. Were you not on quite friendly terms during that period of time?
A. I was friendly to Judge Page during that time.
Q. Did not Judge Page throw whatever business he had, before you as justice?
A. Not at my solicitation.
Q. I don't care at whose solicitation it was?
A. I think the business of Judge Page and Mr. Wheeler, generally was brought before me.
Q. Did you ever hear of Judge Page instructing the grand jury of Mower county, to inquire into the matter of your collecting and detaining moneys as city justice, which you failed to pay over to the parties entitled to them?
Mr. LOSEY. To that we object as improper and no cross-examination.
The PRESIDENT. I don't think it is a proper question.
Q. Where did you sit during the delivery of the charge to the jury during the March term af court, 1877.
A. I don't recollect.
Q. Did you sit in the bar?
A. Inside of the bar, yes sir.
Q. Heard every thing that the judge said?
A. Well, I think I did, yes sir.
Q. Had you ever heard the charge of a court to the grand jury before?
A. I presume that I have.
Q. Were you quite familiar at the time with the general subjects treated of by the court in charges to the grand jury?
A. Well, I can't say that I had ever given that matter any particular attention.
Q. The question is whether at that time you were familiar with the statutes, to the duty of grand jurors?

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A. I don't know that I was, particularly.

Q. If Judge Page referred to a statute at that time would you remember it now?

A. I don't know that I would, in particular.

Q. What proportion of his charge do you remember?

A. Well, I recollect particularly the charge in reference to the treasurer's office and the auditor's office.

Q. You don't remember any other part of it?

A. Yes, I recollect that he read from the statutes.

Q. But you don't remember what provisions?

A. I could not say now what provisions he did read, particularly.

Q. Did he read from the statutes as to when it would be the duty of the grand jury to find an indictment?

A. Yee sir; I think he explained to the grand jury the difference between a presentment and an indictment.

Q. Did he not also either read the statutes bearing upon that point, or explain to them when it was their duty to find an indictment, under what circumstances?

A. Well, I am quite strongly of the impression that he did not. What the subject that he read to the jury from the statutes was, I can't say; I don't recollect.

Q. Now, in coming to the question of what he said to the grand jury about the county treasurer's office, won't you be kind enough to repeat what he did say upon that subject; I want you to repeat the whole of it?

A. Well, I don't know as I can give you the exact language; I think I can give you the substance of it. With reference to the treasurer's office, he said he wished to call their attention to the county treasurer's office; that information had come to him that there were some matters there that were (I don't recollect the language that he used) the idea conveyed was that there was something out of the way; that he had been informed that the county treasurer had declined to pay over money in his hands belonging to the town of Clayton, upon a warrant drawn by the county auditor; that it was the duty of the grand jury to inquire into this matter, and take action upon it.

Q. Anything said about the county treasurer having in his possession a certain town order of the town of Clayton, which caused him to refuse to pay over the money?

A. Well, I have no recollection that he specified the town order particularly.

Q. You don't remember that he said anything about the town order?

A. I have no recollection that he specified the town order.

Q. Did he say anything to the grand jury that the acts he charged against the county treasurer being an indictable offense, if they were found by the grand jury to be true?

Q. I don't think he did; I don't think he said anything on that subject, either one way or the other.

RE-DIRECT EXAMINATION.

Mr. LOSEY. Q. You have always been a political opponent of Judge Page, have you not?

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A. Yes sir, he is a republican and I am a democrat.
Q. Did you run for office against him?
A. Yes sir.
Q. What was it?
A. State Senate.
Q. When?
A. Seven or eight years ago.
Mr. CLOUGH. Q. Did you oppose his election when he was candidate for Judge?
A. I voted for Judge Page at that time; I did not advocate his election.
Q. You did not state anything but just went up and deposited your vote in his favor?
A. You have stated the case exactly.

E. O. WHEELER, RECALLED

On behalf of the respondent, testified:
Mr. LOSEY. Q. Were you present at the March term of court, 1877, of Mower county?
A. Yes sir.
Q. Did you hear the charge of the judge to the grand jury?
A. I did.
Q. When he first gave the grand jury the charge?
A. Yes sir.
Q. Did you hear his statement made to the grand jury when the grand jury were discharged?
A. Yes sir.
Q. What was his manner at the first charge to the jury?
A. His manner at the first charge was his usual and customary manner in charging grand juries.
Q. How frequently have you heard him charge grand juries?
A. I think I have been present at every term but one since he went on the bench in our county.
Q. What was his manner when he talked to the jury the last time?
A. His manner when he talked with the jury the last time was more forcible and it was with more earnestness than the first one.
Q. How was it as compared with the tone of voice?
A. Well, I think it was more forcible, perhaps a little louder.
Q. Did he appear to exhibit any anger?
A. No, sir, not to my judgment.
Q. Any excitement?
A. I did not notice any excitement.
Q. Did he, in the first charge given to the jury—what if anything did the judge say in his instructions to the grand jury in regard to their indicting Mr. Ingmundson, the county treasurer; did he use the name of Mr. Ingmundson?
A. I don't think he used the name of Mr. Ingmundson in the charge; he charged as he usually does in regard to county officers, the county treasurer and auditor, as he may often have done, (I don't say he usually does that), but he very often does that, and to other officers in the county, and called special attention to matters at this time; I think to some matters in the treasurer's office in connection with the town of Clayton; some town order.

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Q. Did he say something in relation to the auditor's office?

A. He did speak of the auditor's office in reference to meetings being held there, and in reference to the propriety of their being held; in fact of the records and papers—there being no vault there, were in such a position that they might be injured or destroyed, and he thought it was certainly improper and a matter which the grand jury had a right to, and he thought it was it was their duty to, examine into and report upon.

Q. Were there to your knowledge, important papers in that office?

A. Well, I would say that there usually are; I suppose they were there as they always have been.

Q. What was the statements made by the judge to the jury when the jury were finally discharged, as to any influences that might have been brought to bear upon them?

A. He spoke of this matter—of the county treasurer's office, and said that there was something strange about it to him—something singular—that he did not understand; he did not understand why it was that the grand jury would investigate the treasurer's office and find a statement of facts, which the court had instructed them, and which he stated constituted, if true, an offence, he did not see why it was that they should bring in that kind of a statement of the facts and still take no action upon it, and he went on to state still further that if they had, from any cause of fear or favor or anything of that sort, failed to discharge their duties in that respect, that that would be violating their oaths that they had taken as grand jurors; but that that matter was for them to determine; it was a matter of their own, not that he could say whether they had or had not. It was a matter within ther own consciences, but that it was a matter which he could not understand; and at the close, or about the close, when the grand jury were discharged—I don't remember whether it was just before or after—he instructed the county attorney to make up a complaint upon the facts as brought in, as I understood it by the jury, and to have the matter investigated.

CROSS-EXAMINATION.

Mr. CLOUGH. Q. You heard the entire charge the first day, did you?

A. I think I did, Mr. Clough.

Q. Did he say anything in his charge as to what the circumstances would the grand jury to find an indictment?

A. In reference to the treasurer's office?

Q. No, anything, I am not particular what?

A. I don't think that he did any particular circumstances.

Q. Did he read the statute which states when it is the duty of the grand jury to find an indictment?

A. He read the statutes as he generally does in reference to the duties of grand juries, and as to the difference between a presentment and an indictment; and explained to them in reference to indictments and presentments?

Q. But did not say anything to them as to when it would be necessary to find an indictment, under what circumstances?

A. I think the statute provides in relation to that; I think he read it.

Q. Section 35 of chapter 107. "The grand jury ought to find an indictment when all the evidence, taken together, is such, as in their

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judgment, would, if unexplained or uncontradicted, warrant a conviction by the trial jury." Was that statute read?

A. Yes sir, I think statute was referred to.

Q. Now, when he was speaking with reference to the county treasurer's office what language did he use?

A. Well, I don't know if I can give you the language, I can give you the substance of it: That information had come to his knowledge, or that he had received information, that there were irregularities in the treasurer's office, and particularly with reference to matters between the treasurer and the town of Clayton, which has been referred to here.

Q. Just state what he said as nearly as you can remember?

A. I think he referred to a town order; I can't tell you only the substance, it was in reference to a town order which had been paid to the town treasurer, and came into the treasurer's hands, and he had refused to pay the money over; my impression is, in substance, something of that sort.

Q. Now, what kind of conduct did he say that was if the grand jury found it to be as he stated it; did he state that was lawful conduct?

A. I don't think he charged the grand jury in reference to the treasurer taking orders, without taking them for taxes under the statute.

Q. Didn't he state to the grand jury that if he found the facts in regard to that particular town order as he stated, that that would constitute an indictable offense?

A. I don't remember that he stated it in that way.

Q. Well, do you remember whether he did or not?

A. I don't think he did; if he did I think it would have been indictable.

Q. Is your memory clear on that point?

A. It is not perfectly clear; I don't say positively that he did or did not.

Q. Did he read the statute in regard to the county treasurer's paying over money without setting up any offsets?

A. I didn't know that there was a statute of that kind; I don't remember any statute of that kind.

Q. Do you remember of his reading any statute about embezzlements by officers?

A. I don't know whether he did or not.

Q. Do you remember of his reading any statute about misbehavior in office?

A. I don't know whether he did or not.

Q. Your recollection of what occurred during that charge is not very good, is it?

A. Well, my recollection is just as I have stated it; that he read the general statutes in relation to the duties of grand jurors; he might have read other portions of the statutes, and whether he did or not I don't know.

Q. And you don't recollect whether he said that if the grand jury found Mr. Ingmundson had done what he was informed, it was an indictable offense?

A. He never said anything about Mr. Ingmundson.

Q. I mean the county treasurer?

A. I say I don't remember if he said it.

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Q. Now what papers did he refer to as being in the county auditor's office?

A. I can't say that he did, or whether he did or not, he said there were important papers in there

Q. Didn't he refer to papers in the case of Mower county against Smith?

A. I can't say.

Q. Were you in court and heard any intermediate instruction between the time they were first charged, and the time they were last charged?

A. I was in the court and heard two.

Q. What were you doing in court at the time the grand jury came in last?

A. I can't say now.

Q. What business was going on in the court when the grand jury came in last?

A. I can't say.

Q. Any business that you were engaged in yourself as attorney?

A. If I could remember the business I could remember that; I don't remember what was occurring at that time at all.

Q. When that grand jury came in, was it in the forenoon or afternoon?

A. I am not certain as to that.

Q. When the grand jury came in were any communications had between the foreman of the grand jury and the court?

A. What do you mean by communications?

Q. I mean was any verbal statement made, or any paper handed in?

A. I don't now remember whether there was or was not; I don't remember how that was. The court asked the grand jury if they had any further business, and they stated they had not.

Q. Then the foreman of the grand jury said they had no further business?

A. Yes.

Q. Did he say anything about wanting to be discharged?

A. I should think not.

Q. Then when the foreman of the grand jury had said there was no further business before them, the judge made quite extended remarks, didn't he?

A. I don't know what you would call extended.

Q. How long did he speak?

A. Well, he might have spoken as long as I have been sitting here on the stand.

Q. Five or ten minutes, perhaps?

A. No, I don't think so; he might have spoken five minutes.

Q. There was considerable excitement among the grand jury and the audience at that time, wasn't there, at what the judge was saying?

A. Well, I don't know as there was any indication of excitement; there were parties listening to what was said; I did not see any occasion of excitement; did not see any moves or stirs, or anything of that sort.

Q. Now did you tell us all that the judge said in the course of that conversation?

A. I should presume that I hadn't; I should presume he said a good many things that I have not detailed.

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Q. Did he tell the grand jury that it was a good thing that there were higher powers than grand juries, or words to that effect?

A. I don't remember that.

Q. Did he tell the grand jury that it was not in the province of a grand jury to put itself between the punishment of criminals and the law?

A. I don't remember that he stated that either.

Q. Didn't he state that in substance?

A. I can't say that he did; I can't state whether he did or not.

Q. Didn't he tell the county attorney to make a complaint, embodying the facts which had been reported by the grand jury?

A. I say, I have stated that just as I have stated on direct examination.

Q. Didn't he state furthermore that a warrant would be issued and Mr. Ingmundson arrested and brought before him for examination?

A. I don't think he did; I don't remember of his stating anything about a warrant. He instructed the county attorney to make out a complaint, and have this matter investigated.

E. J. PHILLIPS, RE-CALLED,

on behalf of respondent, testified:

Mr. LOSEY. Q. Have you been special deputy in Mower county at several terms of court, if so, how many?

A. I have been special deputy three times.

Q. How were you appointed at those several terms?

A. By Sheriff Hall.

Q. How did you make application to get the appointment?

A. The first time the sheriff met Mr. Cameron and myself on the sidewalk just as I was going to my work, after dinner, the first day of the term, and he said we were just the men he wanted; he needed two deputies; and I did not see how I could attend then, but he insisted on it, and, for his accommodation, I went.

Q. When was that?

A. That was in September of '76.

Q. When were you again appointed?

A. In March, '77.

Q. Are you positive about that, or do you state it as nearly as you can remember?

A. I think that I am correct.

Q. By whom were you appointed then?

A. I spoke to Mr. Hall, the sheriff, previous to that time, and requested the position.

Q. What did he say to you?

A. Well, he told me to be on hand the first day of the term, and he thought he could give me a job.

Q. Did he give you a job?

A. Yes sir, I had it.

Q. When, again, were you appointed?

A. I can't tell.

Q. By whom were you appointed?

A. I was appointed always, as far as I know, by Sheriff Hall.

Q. Did you ever make any application in the matter to Judge Page in relation to the matter, or did he ever interfere in the matter of your appointment, so far as you know?

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A. Not that I know.

Q. What has been his demeanor toward the officers of court in Mower county, during the several terms of court since you have been a deputy?

Mr. CLOUGH. We have not introduced any general evidence on that subject.

The PRESIDENT. The chair is of the opinion that the question has been ruled on. I don't think the question should be received, but I will submit it to the Senate.

The question was then submitted to the Senate, and the ruling of the chair was sustained.

Senator Nelson moved that the Senate adjourn.

Which motion prevailed.

Attest:

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

TWENTY-SEVENTH DAY.

ST. PAUL, SATURDAY, June 15, 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, Clement, Deuel, Doran, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Hall, Hersey, Lienau, McClure, Morehouse, Morrison, Nelson, Page, Remore, Rice, Smith, Swanstrom 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. 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 Tuesday, June 11, was read, and approved.

ANDREW KNOX, RECALLED,

on behalf of respondent, testified:

Mr. DAVIS. Q. Were you foreman of that grand jury in March term, 1877?

A. Yes sir, the March term.

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Q. How long had you known Mr. Ingmundson, previous to that time?
A. I had known him since he came there to take his office.
Q. I mean acquainted with him?
A. Oh, it was, perhaps, two years.
Q. Previous to that had you been friendly?
A. Yes sir, he was very friendly in a business way. He done all his trading with us; that is, I was in business at that time.
Q. State when Mr. Ingmundson first ceased to recognize you?
A. Since the discharge of the grand jury he has not spoken to me to my knowledge.

CROSS EXAMINATION.

Mr. CLOUGH. Q. Since when have you ceased to recognize Mr. Ingmundson?
A. When he ceased to recognize me; after I had spoken to him two or three times.
Q. You are sure about that?
A. Yes sir.
Q. When did you meet him first after the grand jury were discharged?
A. Shortly after.
Q. What did you say to him then?
A. I think when we went in to get our pay—"will you please give me the meaning of the term of that document that we received our money on?"
Mr. CLOUGH. I don't know myself. A certificate, perhaps.
The Witness. That is what it is.
Q You spoke to him?
A. I don't know as I spoke to him at that time.
Q. You went there and presented you certificate?
A. Yes sir.
Q. No particular conversation arose?
A. No sir.
Q. He paid it?
A. Either he or his wife paid it; I don't remember which.
Q. Do you remember whether he was in the office at that time?
A. Yes sir.
Q. Several grand jurors went in together?
A. Yes sir.
Q. They were all presenting their certificates, and waiting to be paid at that time?
A. Yes sir.
Q. As fast as they got their certificates they went out?
A. As fast as they got their pay.
Q. Did you get your pay first or last?
A. I am not positive.
Q. Whenever you got your pay you went out?
A. Yes sir.
Q. You didn't interrupt the payment of the rest by any particular conversation?
A. No sir.
Q. When was the next time you met him?

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A. On the street; it was the first time I noticed that he refused to recognize me.
Q. How long after?
A. The Monday following; I think this was on Saturday.
Q. Whereabout on the street?
A. I would not say positively.
Q. Somewhere in the city of Austin?
A. Yes sir.
Q. What did you say?
A. I said: "Good morning, Mr. Ingmundson!"
Q. You passed?
A. Yes sir.
Q. What did he say?
A. He didn't say a thing.
Q. Did he look at you?
A. Scarcely looked at me.
Q. Do you know whether he heard you?
A. I don't know.
Q. The next time?
A. It was some place on the street.
Q. Where abouts?
A. In the city of Austin.
Q. What passed then?
A. I recognized him by passing the time of day, as I said before.
Q. What happened then?
A. There wasn't anything happened.
Q. That was the close of the occurrence?
A. It was; he did not recognize me.
Q. Was he alone?
A. He was.
Q. Were you with anybody?
A. I was not.
Q. Any person around the neighborhood who was near by?
A. Well, I could not tell. I didn't pay particular attention to that.
Q. Do you know whether he heard you or not?
A. I could not state whether he did or not.
Q. Since then when did he speak to you?
A. I went into the office to pay my taxes; he was there in the office, I think, alone. I don't think there was any other person in the office but himself; I asked him what the taxes was on a certain piece of property, in the city of Austin, on which I wished to pay the taxes; he never made any reply whatever, but took up the book, opened it, and turned it right around on the desk.
Q. What did you say after this?
A. I asked him a question about this, and remarked also that the taxes were lower than I paid the previous year; there was no answer made by Mr. Ingmundson at all, and I noticed it very particularly.
Q. Did you think he had any occasion to answer it?
A. I thought it very strange that he didn't answer, the fact that he had always been very familar with me.
Q. You paid your taxes and went out?
A. I did sir.
Q. After that, when did you have conversation with him?
A. I did not afterwards; I did not wish to continue it.

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Senator GILFILLAN J. B. For the purpose of saving time, I will ask the counsel to ask the witness if he ever sought an explanation why Ingmundson's conduct toward the witness was changed.

Mr. CLOUGH. Q. You have detailed all of the intercourse, if it may be so called, that has occurred between you and Mr. Ingmundson since that time?

A. Yes sir.

Q. You have not asked him for any explanation at all?

A. I had no reason to.

Q. You never suggested to him that his course of conduct towards you was overt?

A. It was voluntary on his part, and I had no reason to wish for an explanation whatever.

W. H. DEAN, SWORN,

On behalf of the respondent, testified:

Mr. LOVELY. Q. Where do you reside?

A. I reside at Rose Creek, in Mower county.

Q. How long have you lived there?

A. I have lived there, with my family 2 years, but I have been handling the farm and living there myself a little over three years.

Q. Carrying on what is known as the Gov. Marshall Farm, I believe?

A. Yes sir.

Q. Are you acquainted with Mr. I. Ingmundson, the county treasurer of Mower county?

A. Yes sir.

Q. How long have you known him?

A. I have known him, I think, 4 or 5 years.

Q. I will you call your attention to a conversation in Mr. Ingmundson's office, relating to the town order of the town of Clayton owing to Mr. D. B. Coleman; about what time did that occur?

A. I went into Mr. Ingmundson's office sometime in the spring of 1876—early in the spring; while I was there a man came in and said to Mr. Ingmundson: "Why don't you pay over that money that belongs to the town of Clayton?" Mr. Ingmundson said: "They wanted to settle with me; I hold an order against the town and they won't take it;" and the man says: "Mr. Coleman says that order has been paid;" Mr. Ingmundson says, "I don't care a damn, that has been paid; and they have got to take the order if they get any money from me."

Q. What order was that you have spoken of?

A. I did not know at that time.

Q. Was Mr. Coleman's name mentioned in the conversation?

A. Yes sir, Mr. Coleman's name was.

Q. Were you acquainted with Mr. Coleman?

A. I was acquainted with Mr. Coleman.

Q. What was discussed in that relation?

A. He says: "Coleman says the order has been paid."

Q. What other conversation did you have there?

A. I didn't say very much more or hear very much more. I don't know of any particular conversation; I soon went out.

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CROSS-EXAMINATION.

Mr. CLOUGH. Q. Who was present on that occasion?
A. I think Mr. Elder was present; I went in to see Mr. Elder on some business.
Q. The clerk of the court at that time?
A. Yes sir.
Q. Was this unknown individual in there when you went in, or did he come in afterwards?
A. I think he went in about the same time I did.
Q. What kind of a looking man was he?
A. Well, I would not pretend to say; but he looked like a farmer.
Q. Had you ever seen him before?
A. I never had, and I don't know whether I have seen him since.
Q. Have not any knowledge who he was?
A. No sir.
Q. Did he say who he was or what his business was?
A. I only heard him say that the town owed him money; and that they could not pay him any.
Q. What was you and Mr. Elder doing at that time?
A. I went in there to get something in regard to a certificate of a justice of the peace. I was transacting some business that it was necessary for me to get a seal of the court.
Q. A certificate that a particular individual was a justice of the peace?
A. I think that was it.
Q. In what particular room were you in reference to the one in which Mr. Ingmundson and that gentleman were?
A. It was all right there together; it was a little bit of a room and Mr. Elder's room was right close—well, the whole room was not larger than that table (indicating).
Q. What time of the year '76 was that?
A. My memory serves me, it must have been the fore part of April or somewhere along there; it was pretty early.
Q. The fore part of April, 1876?
A. Yes sir, it was very bad going.
Q. Did you hear the town of Clayton mentioned?
A. I did, yes sir.
Q. Who mentioned the town of Clayton first?
A. This man, he says, "Why don't you pay the money over due the town of Clayton?"
Q. And then Mr. Ingmundson said he held the order?
A. Yes sir.
Q. Did he say anything about the character of the order for which he held it?
A. He did not.
Q. Did he say anything about how he held it?
A. I don't think that he did.
Q. Now what was it that was said about Coleman?
A. This man says, "Coleman says it has been paid."
Q. That was all that was said about Coleman?
A. That is all, I think.
Q. Were you paying particular attention to what those other men were doing there?
A. No sir, I don't know as I was in particular.

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Q. It didn't concern you in particular?
A. Not particularly, as I know of.
Q. What was the clerk doing at the time you heard this conversation?
A. I think he was busy, with his back towards me, when I went in there, I didn't speak to him until after this conversation, when I turned and done my business with him.
Q. What was the nationality of this man, if you remember, that had that conversation?
A. I could not say whether he spoke very plain English.
Q. You don't remember anything about him—what his nationality was; whether he was an American, Irishman or Scandinavian?
A. I know he spoke the English language very plainly.
Q. Did you see his face?
A. He had a good, honest looking face.
Q. Undoubtedly, he lived in Mower county?
A. Yes sir. (Laughter.)
Q. Was he a young man, or an elderly looking man?
A. I should think he was a man of about 30 years old.
Q. There was no other man there but what you have stated?
A. There might have been another man, but I could not swear.

C. J. FELCH BEING RECALLED,

on behalf of the respondent, testified:

Mr. DAVIS. Q. How long have you been county commissioner of that county?
A. I am not county commissioner now.
Q. I mean from 1873 up to what time; when you began, and when did you go out?
A. My term of office expired 1st January, 1877.
Q. And when did it begin?
A. The first of January, 1871.
Q. So between those dates you continued to be county commissioner?
A. Yes sir.
Q. Will you state what knowledge you had, what consent you have given during that period of time, that Mr. Ingmundson should deposit money in banks and take interest therefor?
A. I will state that the auditing board advertised for bids for banks to receive the money; there was no bids received, and consequently the auditing board had no more to do with it to my knowledge; I don't recollect that they ever advertised for bids but once.
Q. I am speaking of your personal knowledge and consent, Judge Felch; what knowledge did you have or consent did you give during the period of time when you were county commissioner personally, did the county commissioners know that Mr. Ingmundson had deposited the public moneys in banks and received interest therefor?
A. I knew he was depositing his money in the banks.
Q. When did you know it?
A. I don't know as I had any particular—I supposed that I knew it all the time.
Q. Did he ever apply to you to know if it was all right?
A. I did not consider that it was my business.
Q. I merely asked you, judge?

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A. Not to my recollection.
Q. Did you tell him it would be all right?
A. I do not recollect that I did.

CROSS-EXAMINATION.

Mr. CLOUGH. Q. When was it that the auditing board made advertisement for bids?
A. I think it was in the spring of 1874.
Q. Not in the year 1873 at all?
A. I think not; I have searched the record.
Q. And you say there were no bids at all?
A. Not any.
Q. After that one advertisement, had he ever done anything after that?
A. No sir.
Q. You were a member of the auditing board?
A. I was.
Q. Who were the other members?
A. F. A. Elder and Mr. Williams.
Q. After the auditing board had advertised, and no bids had been received, didn't Mr. Ingmundson mention the subject of the safe keeping of the money; what should be done in that case?
A. He might.
Q. Do you remember whether he did or not?
A. I didn't think that was any of my business.
Q. Oh, that is not the point; you need not be afraid to answer; you ain't going to be punished for Mr. Ingmundson putting the money in the bank; you can answer freely. Was it not often a matter of discussion between the members of the county commissioners, that question of Ingmundson, and about the custody of the money?
A. I don't recollect.
Q. You don't recollect of its ever being talked of at all?
A. I presume it was; I have no recollection of any particular time when it was talked of.
Q. You knew, at once, then, that Mr. Ingmundson was depositing the money in the banks?
A. I supposed he did.
Q. And you have known that ever since?
A. I have not been in the board for a year.
Q. You knew it all the time you were in the board?
A. I suppose I did.
Q. You never made any objection to it?
A. I never did.
Q. You knew that interest was being paid on the balances?
A. I supposed that was the case.
Q. And you knew that was being carried to the credit of the county?
A. I knew in instances.
Q. Knew it at the time?
A. I don't know as I did.
Q. Don't you remember Mr. Ingmundson stating to the county commissioners, that interest was being carried to the credit of the county, and saying how much it was from time to time?
A. I think that he received interest.

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Q. And passed it to the credit of the county?
A. I think so.
Q. And you knew it at the time—from time to time when that happened. Didn't he explain to the board what he was doing?
A. I should not wonder if he did; I don't recollect the conversation.
Q. The auditing board settled with the county commissioners from time to time?
A. Looked over his accounts, yes sir.
Q. Didn't you always discover in those accounts credits to the county of interest that had been received from the banks on the average deposits?
A. I don't recollect.
Q. If there were any such entries in the accounts you never objected to them at all?
A. I think not; we never had any difficulty.
Q. You never objected to Mr. Ingmundson making deposits in the banks?
A. Not to my recollection.
Q. You never heard any other members object?
A. I don't think I did.
Q. The auditing board had their periodical settlements?
A. They looked over their accounts at any time. The auditor and the treasurer settled periodically.
Q. I mean the auditing board?
A. At stated periods?
Q. Yes sir?
A. No sir, I think not.
Q. Were there not, then, usual settlements each year?
A. With the auditor and treasurer.
Q. Didn't the county commissioners examine the accounts?
A. The county commissioners examined the accounts of the auditing board.
Q. That is it; and the auditing board examined the accounts of the treasurer?
A. Yes sir.
Q. And did you ever hear any objection made by any member of the county commissioners during that time, of what Mr. Ingmundson was doing with the money?
A. No sir, I don't recollect that ever I did.

H. E. TANNER, RECALLED,

On behalf of the respondent, testified:

Mr. DAVIS. Q. Have you been county commissioner of that county during Mr. Ingmundson's term of office?
A. I was county commissioner from the commencement of 1871, to the commencement of 1876.
Q. Did that board, as a board, ever authorize Mr. Ingmundson to deposit money in the banks?
A. I think not; not to my recollection.
Q. Will you state whether during that time, Mr. Ingmundson ever applied to you for your personal consent, that he might so deposit that money?
A. I don't think he did; I have no recollection that he ever did.

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Q. State what knowledge you had during that time, that he was handling that money in that way?

A. I think it was generally understood by the commissioners that he was depositing the money in the two banks at Austin, but I have no recollection of knowing anything that he deposited money in any other bank except at Austin; I could not state how we came by that information, except I supposed it was generally known.

CROSS-EXAMINATION.

Mr. CLOUGH. Q. Do you remember of an advertisement being published in the newspapers in 1873, for bids in banks?

A. I don't remember; I remember that there was one proposition.

Q. Have you ever heard of any advertisements since that time?

A. No sir, I have not to my knowledge.

Q. Shortly after that advertisement was published, and the time had expired for receiving bids, and no bids were put in, don't you remember of Mr. Ingmundson talking over with the county commissioners what he should do with the money, how he should keep it safely?

A. Don't remember of such conversation.

Q. Never heard anything of that kind?

A. I never heard of Mr. Ingmundson coming before the board.

Q. I am not talking about his coming before the board?

A. I have no such recollection.

Q. How did you find out that he was depositing money?

A. I could not state, he might have told it; I could not state positively.

Q. Did you ever hear any members of the board object to Mr. Ingmundson doing so?

A. I don't recollect.

Q. Did you see the Ingmundson account from time to time that he gave to the county commissioners?

A. I don't think I did; I never was a member of the auditing board, and if we saw the reports of the auditing board, we looked that over or talked it over, and I don't think I ever saw the auditor's books or figures.

Q. Those reports were that everything was all right?

A. It is simply—

Q. Anything to the contrary?

A. I don't think I ever heard anything to the contrary.

Q. Didn't you hear about Mr. Ingmundson receiving interest upon the average balances that were in the banks and crediting them up to the county?

A. I heard of that, yes sir.

Q. You have no reason to doubt that every member of the board heard it?

A. I suppose they did at the time.

Q. And you never heard any objection to that?

A. Not a bit.

Mr. DAVIS. Q. Did you ever hear of Mr. Ingmundson paying the Wilkins bank interest on $12,000.00 while he had money there and got no interest whatever?

A. I have heard so, but that was since I was a member.

Q. Since you ceased to be a member?

A. Yes sir.

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H. W. PAGE RECALLED

On behalf of respondent, testified:

Q. Which is the bank of which you are cashier?

A. The First National.

Q. At Austin?

A. Yes sir.

Q. How long have you been cashier?

A. Since its organization—about the beginning of 1859 or close of 1868.

Q. What arrangement, if any, did Mr. Ingmundson have with that bank, as to depositing the county funds or public funds, and when was that arrangement made?

A. There was no definite arrangement; there was an understanding that we were to have a proportion of the deposits.

Q. State right there among what other banks those funds were to be divided?

A. The Mower county bank of Austin, and I think he stated he should like to have some in the bank of LeRoy.

Q. Did these bankers agree upon their respective proportions, or have any understanding, tacit or expressed?

A. Yes, I think there was an understanding; I am speaking of the time the auditing board had advertised for bids.

Q. I was coming to that; was there such an understanding, Mr. Page?

A. Yes sir.

Q. No bank bid for these deposits?

A. No sir.

Q. Now, go on and state what the understanding with Mr. Ingmundson was?

A. About the time—I think it was on the very day that bids were to be received in the auditor's office—I met Mr. Ingmundson; Mr. Wilkin of the Mower county bank was there, and I think Mr. G. L. Henderson of LeRoy.

Q. A banker?

A. Yes sir; I am not positive in reference to that; I think so. In course of conversation, as to the views of Mr. Ingmundson with reference to the deposits, he stated his idea as to how it ought to be divided. He should like to leave some of it for the convenience of that portion of the county at LeRoy, and the rest, he thought, should be divided in the the banks of Austin about in proportion. It was supposed that if a bid was put in that we should take the entire amount.

Q. And your bank, of course, is a capitalized bank with stock?

A. Yes sir; we felt as though it would be fair that the other bank doing business in the town should have a portion; and, knowing Mr. Ingmundson's views as expressed, I became satisfied that that understanding would be agreed to, and I stated that I would put in no bid.

Q. And the rest stated the same thing?

A. Yes sir.

Q. What was the understanding as to the amount of interest those banks should pay that treasurer?

A. I stated that I was willing to pay the same amount of interest that I would be entitled to put in the bid.

Q. What was that?

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A. Three per cent. per annum upon the average monthly balances.
Q. Was that the understanding that was arrived at with the other banks?
A. I think it was. I spoke to Mr. Wilkins; I am not sure as to Mr. Henderson.
Q. Did your bank receive deposits under that arrangement?
A. It did.
Q. How long, and for what interest thereon?
A. Until the close of October, 1876; we stopped paying interest upon all deposits last fall.
Q. All private depositors?
A. Yes sir, everything.
Q. On balances?
A. Yes sir.
Q. Did you ever give any bonds to the county for that transaction?
A. No sir.
Q. Or to Mr. Ingmundson?
A. No sir.

CROSS-EXAMINATION.

Mr. CLOUGH. At this interview you had with Mr. Ingmundson about the depositing of the money, who was present?
A. I think Mr. G. M. Henderson, of Leroy, representing the Leroy bank. I think that Mr. J. C. Easton was there also, connected with the Mower County Bank; he came in there and was there some portion of the time.
Q. What day did you say this was, in reference to the time of putting in the bids?
A. You mean the day of this interview?
Q. It is the day with reference to the time of putting in the bids; was it before or after the day when the bids should have been put in?
A. I am not sure whether it was on the very day, or on the afternoon preceding it.
Q. It was one of the two?
A. Yes sir.
Q. Had your bank contemplated putting in any bids under the law at any time?
A. Not if we were going to have our proportion of the deposits without.
Q. How did the bankers, that were present in the auditor's office, come to go there; who asked them to go there?
A. I don't know with reference to that.
Q. Were they there at the invitation of Mr. Ingmundson?
A. I think not.
Q. In other words, the bankers themselves got together, and went to see Mr. Ingmundson?
A. Yes sir.
Q. The bankers went up there for the purpose of knowing what would happen, if no bids were put in, and deposits were not awarded to a bank?
A. I went prepared with a bid in my pocket to put in, in case I thought I could not get our proportion of the deposits.
Q. Didn't they go there to interview Mr. Ingmundson, and know what his course would be in case there was no bids, with reference to

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the county moneys, if the money should not be to any individual bank under the law?

A. Well, I went there for that purpose.

Q. The rest went there for the same purpose?

A. I presume so; I don't know definitely.

Q. Had the bankers had any interview between themselves on the subject before they went up there?

A. I think Mr. Wilkin's son had had some conversation in reference to it.

Q. Hadn't you also had a conversation with the representative of the Le Roy bank?

A. Very likely; I think it was in the bank before that.

Q. Hadn't you agreed between yourselves that you would not put in any bid before you went up?

A. No sir, not unconditionally.

Q. What was the conditional agreement you had between yourselves?

A. I don't remember any distinct agreement.

Q. You talked the matter over as to what you should do about deposits?

A. I remember expressing myself as willing to pay the same interest, without putting in the bid.

Q. And after you bankers had talked this matter up among yourselves, you went to see Mr. Ingmundson to see what he would do?

A. I went for that purpose.

Q. And he told you what he should do in case you put in no bids?

A. I don't think we asked him; I think that he gave us his views and what would be fair in it.

Q. In case there were no bids?

A. Yes sir.

Q. If there were no bids he thought a certain division of money between the bankers would be fair?

A. Yes sir.

Q. But he didn't say what he would do, did he?

A. No, we didn't ask him to make a definite agreement.

Q. He didn't make a definite agreement or promise?

A. He wasn't asked.

Q. So that he was just as free then, as far as the promise was concerned—the disposition of the money, as he was before?

A. So far as any promise was concerned, I think I understood, however——

Q. Was anything suggested in that interview about the subject of interest upon balances?

A. Yes, I remember stating that I was willing the county should have the interest just the same as if we put in a bid.

Q. Any of the gentlemen say anything?

A. I think Mr. Wilkin assented to the idea of carrying interest on balances.

Q. What did he say?

A. I could not give his precise language.

Q. That was in 1874?

A. Yes sir.

Q. Was there anything as to how long that arrangement would continue after the division of the money between the banks?

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A. I don't think anything was said definitely; I don't remember that; suppose as long as it was mutually satisfactory, and he was treasurer.
Q. And you didn't put in any bid?
A. No sir.
Q. Have you ever heard of any attempt made to advertise since that ime?
A. No sir.
Q. Have you heard of any attempt of the auditing board to do that, or any talk in regard to that!
A. Not to my knowledge.
Q. How were those moneys deposited by Mr. Ingmundson in your banks; I mean how did you keep your account with him, as county treasurer?
A. With I Ingmundson as county treasurer.
Q. And you did, for a certain period of time, upon the average balance—whole balances, pay interests?
A. Monthly, yes sir.
Q. That interest, as collected, was credited up to the county?
A. Yes sir.
Q. And stood on the credit side of that account, just the same as the money that had been paid in?
A. Yes sir.
Q. And you say, in October, 1877, you ceased the practice of paying interest on deposits at all, and ceased paying interest on these deposites?
A. Yes sir.
Q. Do you remember what the average balances have been of this money put in that bank?
A. No sir; it ranged from, perhaps, $500.00 to $26,000 or $28,000.
Q. And you always got your share, didn't you?
A. Well, sometimes; when they were pretty low we didn't think we got our share.
Q. You remonstrated somewhat, then?
A. No sir, I have never spoken to him on the subject.
Mr. DAVIS. Q. Was that Mr. G. L. Henderson that you referred to?
A. Yes sir.
Q. Do you know whether he has been in this State for some time, or not?
A. I don't know; I have not seen him, that I remember, for a long time.
Q. These funds used like common banking funds, like the funds of any other depositor?
A. Yes sir.

CROSS-EXAMINATION.

Mr. CLOUGH. Q. During the greater part of this time that these moneys have been on deposit in your bank, your bank has been solvent, has it?
A. Yes sir, that has been so with the other banks.
Q. Mr. Wilkin's bank has been solvent since that time.
A. I never heard of its failure.
Q. You never heard of its insolvency since that time?
A. No sir.

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Q. How about the Le Roy bank, you never have heard of its refusing payment, on any paper since that time?

A. No sir.

The counsel for the respondent here directed the stenographer to enter an admission for both the prosecution and the respondent, that the banker, Mr. Henderson, has been out of the State some time before this trial began.

W. M. CORBETT SWORN

And examined on part of the respondent, testified:

Mr. DAVIS. Q. Where do you live?

A. In the town of Marshall.

Q. Is that in Mower county?

A. Yes sir.

Q. How long have you lived there, Mr. Corbett?

A. Eight or nine years.

Q. What is your business?

A. Farming.

Q. Were you a member of any of these grand juries that we have been talking about?

A. I was.

Q. Which one was it?

A. '77.

Q. The jury of 1877, September, I believe?

A. March.

Q. Did Mr. Ingmundson after you were sworn as a grand juror, during that term, accost you as to any duties you were expected to perform as a grand juror?

A. There was a very little said between Mr. Ingmundson and I, there was just this much said; Mr. Ingmundson said that the grand jury of 1876 had examined into the records of his office, and also in to this town of Clayton affair—order business, and that they had made a statement that he was clear in the matter; that they had made a statement that they were clear in that matter.

Q. Well, what else did he say?

A. There was very little said between him and I, only that I understood that.

Q. Not what you understood but your best impression; we don't ask you to reconstruct it?

A. That is my best impression, that is all that was said.

Q. What, if anything, was said as to its being a personal matter of the judge against him; do you recollect anything about that?

A. He said that he was,—as near as I can recollect,—he thought that the judge was pushing the thing forward without any good use, as I understood from the conversation.

Q. What, if anything, did he say with regard to being indicted, or not being indicted; his own desire on that subject?

A. I think that he said he did care to be indicted, that is about all.

Q. This was after you were sworn as a grand juror, and charged?

A. Yes sir.

Q. When was it Mr. Ingmundson appeared before you in this manner?

A. In his office; I was doing some business there.

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Q. Did what you heard Mr. Ingmundson say on that occasion, influence your action on that matter?

Mr. CLOUGH. I object to that.

Mr. DAVIS. I withdraw the question.

CROSS EXAMINATION.

Mr. CLOUGH. Q. I don't understand you where you said you had this conversation with Mr. Ingmundson?

A. In his office.

Q. I didn't understand when it was?

A. It was in the beginning of the session of the grand jury, about the 1st, 2d or 3d; somewheres along there, of 1877.

Q. After the grand jury had commenced to investigate the case?

A. I think the case had been commenced upon.

Q. After the grand jury had been charged in the beginning, was it?

A. Yes sir.

Q. What were you doing in there, in his office?

A. A very little business—nothing very special.

Q. In there on business?

A. Yes sir.

Q. With the county treasurer?

A. Yes sir.

Q. Who else was there?

A. I don't recollect if any one else except his wife.

Q. But what he said to you was that the grand jury of 1876 had examined his affairs and found no indictment?

A. Yes sir.

Q. Had examined him?

A. Yes sir.

Q. And that he didn't care to be indicted?

A. That is about it.

Q. He thought the Judge was malicious?

A. He said the Judge was persecuting him without just cause.

Q. And that he didn't care to be indicted?

A. Yes sir.

Q. That was the sum and substance of all that was said?

A. That was the sum and substance of all that was said.

HENRY BAGLEY SWORN

on behalf of the respondent, testified:

Mr. DAVIS. Q. Your name is Henry Bagley?

A. Yes sir.

Q. Where do you live, Mr. Bagley?

A. In Mower county.

Q. What town?

A. The town of Rudolph.

Q. How long have you lived there?

A. I was raised there, and lived there most all the time for twenty years.

Q. What is your business?

A. Farming.

Q. Were you a member of the grand jury in September, 1876?

A. No, I was a petit juror.

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Q. While you were a member of that petit jury, and in attendance upon the court, did you hear Mr. Ingmundson make any remark to Judge Page?

A. I did.

Q. When was it he made it?

A. Well, I think it was as we were going up in the court room?

Q. By that do you mean the panel?

A. Several of the petit jurors.

Q. What did he say?

A. He says: "Boys," I forgot whether he said 'boys' or 'men', "take off your hats to the d—d old d—l, he will have you fined." [Laughter.]

Mr. CLOUGH. We don't want anything of this witness.

Mr. DAVIS. I should not think you would.

THOMAS F. STEVENS, SWORN,

on behalf of the respondent, testified:

Mr. DAVIS. Q. Where do you live, Mr. Stevens?

A. In Austin, Mower county.

Q. What is your profession?

A. My profession is the law.

Q. How long have you practiced?

A. I have not practiced much in Minnesota; I have practiced a number of years in Illinois. I don't remember the year in which I was admitted.

Q. How long have you lived in Austin?

A. Now four years in the city; that is, I have been in the county longer than that.

Q. Were you present in court at any time when the Stimson contempt case, so called, was under investigation by the respondent?

A. I was at Judge Page's office; I think it was one Saturday evening while Mr. Stimson was there, but I didn't hear any testimony given.

Q. What is your recollection as to whether the young gentleman, Mr. Baird, was there when you were there?

A. Lyman Baird?

Q. Yes sir, I think so?

A. He may have been there, but I don't recollect.

Q. While you were there no testimony was being given?

A. I heard none.

Q. Was there any conversation on that occasion between the respondent and Mr. Stimson?

A. Yes sir, I heard Judge Page make some remarks to Mr. Stimson; I think his conversation was directed mainly to Mr. Stimson, and if my recollection was correct, perhaps a part of it was to Mr. Cameron, Mr. Stimson's counsel.

Q. Was this in the course of any ruling that he was making, or was it a conversation; that is what I want to get at?

A. I don't know; I understood it was a talk of Judge Page to Mr. Stimson.

Q. Was it any particular question or ruling that he was giving upon any point of law or evidence?

A. I think not, sir, if I recollect correctly. When I went into the

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room Judge Page was sitting at his desk, and I think he had some manuscript before him, a paper of some kind, I didn't notice what it was, and of course didn't know what it was, and that he raised his head just as I went in and went on with these remarks or this talk with Stimson, directed mainly to Mr. Stimson and a portion of it to Mr. Cameron.

Q. Do you recollect whether Judge Page went off to Preston to hold a court?

A. I heard the judge say that were it not the fact that he had to go to Preston, he would not have adjourned the case until Monday.

Q. Will you state what Judge Page said on that occasion?

A. I don't think I could give all that Judge Page said.

Q. Of course I only mean your recollection so far as it serves you?

A. As I say, when I first went in I think the judge had been looking over some papers; but whether this was the commencement of the conversation or a continuation of it, I don't know: I think the conversation continued perhaps three or five minutes after I went in—a man will say a good deal of course within that length of time. The judge was talking to Mr. Stimson as I inferred from what I had seen basing his remarks mainly upon the testimony that Stimson had given during the investigation; whether it was the first remark after I went in or not, I don't know; I cannot give these remarks in the regular order that it was had; but he said to Stimson that he didn't believe that he was actuated by any personal vindictiveness or malice in the case; he had done as I had gathered from the conversation and the talk of Judge Page, the action of Mr. Stimson on the investigation was concerning a libelious petition, that he claimed Mr. Stimson had been circulating, he went on to say to Mr. Stimson that he didn't believe he had been actuated himself by any malice—personal malice in the matter; that he had been influenced evidently by other parties, and drawn into this thing by parties who were conspiring to drag him down or something to that effect, and that such persons were very dangerous to the peace and welfare of the community, and that the enormity of such an offense—of such a crime was equal to that committed by the Younger Brothers, or would be characteristic or the Younger Brothers, or something of that kind, and that he thought that Mr. Stimson had been in bad company, and had better get out of it, and if he got into trouble through doing this work, those parties who had inveigled him into it would not help him out. They had deserted him and would always do so.

Q. Now, in connection with those remarks which Judge Page made on that occasion, state whether in connectian with the Younger brothers any individual names were used. that of Mr. Harwood, Mr. Ingmundson or Mr. French?

A. I didn't hear him say so.

Q. Mr Stimson has testified as follows: "And he looked at the testimony before him and he says, 'such men as A. A. Harwood, Ingmundson and French, men that are no better than the Younger brothers;' and said that they should be behind the prison bars and said that he could or would put them there; he says 'he would not act hastily in this matter?'"

A. I did not hear him say anything like that while I was present.

Q. Did he make any threat to the respondent?

A. Not while I was in there.

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CROSS-EXAMINATION.

Mr. CLOUGH. Q. What time in the evening was it when you went there?

A. I could not say definitely; my impression is, it was late in the afternoon or early in the evening, from the fact it was after dark when I left the office; I remained in the office until after the others, except Mr. Morgan and Judge Page had gone out.

Q. Do you remember whether that occasion when you was in there was before or after tea?

A. Well, sir, I cannot.

Q. When you went in there who was there?

A. I would not undertake to state all that were there.

Q. State some of them that were in there when you went there.

A. Mr. Stimson and Mr. Cameron and Mr. Morgan, I think; sheriff Hall was there and Mr. Lovely, I believe, I don't know what his initials are, and I think other parties.

Q. That is the time when you were there?

A. Yes sir, that is my recollection of it; I think probably there were other parties there, but I don't recollect.

Q. Do you remember whether it was daylight or dark when you went in there?

A. As I said before, I don't recollect; it was either in the afternoon or early in the evening.

Q. When you went in, what was the business before the court?

A. That I can't say; I didn't hear the testimony.

Q. You don't remember, you say, about any testimony being given?

A. None while I was present.

Q. Was Judge Page sitting at the desk?

A. Yes sir.

Q. Was he saying anything when you was in?

A. I don't recollect about it, only, as I say, Judge Page was looking over some manuscript at his desk.

Q. Was he saying anything at the same time?

A. If he was not, he commenced immediately after I came in; I know he raised his head from the manuscript and went on with his conversation.

Q. The manuscript was lying before him on the table?

A. Yes sir.

Q. And he raised his head and commenced to speak?

A. Yes sir.

Q. Do you remember everything that he stated on that occasion?

A. I don't think I do; I don't suppose I do.

Q. He may have said a great many things that you have forgotten?

A. I think so.

Q. When he was speaking about these men that had conspired against him, whose conduct was like that of the Younger brothers, or sumething to that effect, you understood whom he meant.

A. I think I did have it in my mind.

Q. You understood that Mr. Harwood was one of the parties?

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Mr. DAVIS. I object. He may have got an understanding from some outside parties.

Mr. CLOUGH. This question is a pertinent one; he says a great many things that he don't remember. If he got the impression whom it was that Judge Page was talking about at that time, I think it will be a fair deduction that he must have gotten it from something that was stated there on that occasion.

The PRESIDENT. I think the question as to whether anything was said with reference to this, would be a proper question.

Mr. CLOUGH. I propose to draw the inference, and I think it would be a legitimate investigation that he must have been influenced by what the judge said. I propose to ask him if he didn't understand that it was about Mr. Harwood and others, that the judge was speaking about; and if that would be a fair argument—a legitimate argument—that it must have been that the judge referred to this man.

The WITNESS. I say the probability is that I did; I don't say that I have forgotten.

Mr. DAVIS. He may have got this from the turmoil and confusion of a great many different conversations.

The PRESIDENT. I don't think it can do any harm in admitting the question, provided it is followed up by others.

Q. You understood that Mr. Harwood was one of the parties?

A. I don't think I had any such impression; it was not from anything I heard on that occasion.

Q. You are positive about that?

A. I think so—yes.

Q. You are sure you were there during the time that Judge Page made this statement?

A. That I have detailed?

Q. Yes sir.

A. O, yes; I heard it, or I certainly would not have said it.

Q. Was there not a good deal of talk about this matter around town of what Judge Page said on this occasion?

A. I don't recollect about that; there has been a good deal of talk about it in Austin—about this difficulty.

Q. Didn't the Stimson contempt case raise a good deal of excitement?

A. There was a good deal of interest taken in it there—not excitement.

Q. And the conduct of Judge Page on that occasion was the subject of a great deal of talk in Austin?

A. I think it was the subject of a good deal of talk on the part of some persons.

Q. What Judge Page said and did on this occasion was canvassed over considerably,

A. Not to my knowledge.

Q. You heard it talked of frequently?

A. Yes sir.

Q. Now, may you not have got your impression from what was said afterwards, and not from what you heard there yourself?

A. If you will allow me to explain how I got my impression—

Q. I understood you to say from the time of your being there; are you positive you were present at the time you state.

A. Yes sir.

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Mr. DAVIS. Q. You wanted to make an explanation a moment ago?

A. In answer to the question as to how I got that impression, I say that the judge was referred to as a conspirator.

The PRESIDENT. Go on and explain it.

A. I knew Mr. Harwood and others there, had a controversy with Judge Page; that there was a controversy going on with Judge Page, and when this remark of the judge was made, I have no distinct recollection about it, but I presume that the thought occurred to me at the time, in connection with these names—I don't know positive, but I presume that is true.

Mr. DAVIS. Q. If you had no information of these events from outside, could you have gotten anything from Judge Page's remarks, what he meant?

A. I think not; I will state that I am not at home much—I am not mixing in anything at Austin, because I am away the most of the time.

B. W. LOVELL, SWORN,

And examined on behalf of the respondent, testified:

Mr. DAVIS. Q. Where do you live?

A. I live at Austin, Mower county, Minnesota.

Q. How long have you lived there?

A. Ten years, continuously.

Q. I have been informed you have been of the legal profession, have you not, formerly?

A. Yes sir.

Q. Were you present in Judge Page's court at Chambers at any time during the prosecution of this Stimson contempt business?

A. I was.

Q. Was it in the afternoon or evening you were there?

A. I cannot say exactly.

Q. What is your impression?

A. My impression is, it was in the afternoon.

Q. Did you hear Judge Page on that occasion say anything about going to Preston, or going off to hold court?

A. I don't recollect.

Q. Who was there at that time, Mr. Lovell?

A. My recollection is that Mr. Morgan was there, Judge Page, Mr. Stimson, Judge Cameron, Sheriff Hall, and, I think, Mr. Baird.

Q. A number of witnesses have testified here as to some remarks that were made by Judge Page on that occasion, when he coupled the names of Messrs. Harwood, French and Ingmundson with the Younger Brothers, while you were there; do you know anything about that?

A. I do not.

Q. Did you hear Judge Page mention the Younger Brothers at that time?

A. I think I do.

Q. Now, just state to the conrt here what he said in that connection?

A. I cannot give you the exact language of what was said.

Q. Was it a general remark?

A. My recollection, however, is this, that after Mr. Stimson's examination was closed he spoke to him, in the form of a lecture or some remarks, and, if I recollect right, he attributed to him that all the blame that he had in the matter was being caught in bad company—doing somebody else's work, I am not sure that he said "dirty work." I think

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he went on and made some remarks, and in that connection connected it with the Younger Brothers; and, as I understood him to say, had a tendency to make them fit associates for the Younger Brothers.

CROSS-EXAMINATION.

Mr. CLOUGH. Q. You say you were only in in the afternoon?
A. I say I am not certain when it was; I went in, in obedience to an order from the court.
Q. You were subpœnaed there?
A. I suppose so.
Q. And you went there and gave your evidence?
A. I did sir.
Q. Do you remember what time of day it was when you went in there?
A. I cannot say.
Q. Was it forenoon or afternoon?
A. I should say it was in the afternoon?
Q. Were you there more than once?
A. No sir.
Q. You gave your evidence, and staid until the close of business?
A. I did not stay a minute after I gave my evidence. I got up and left; Stimson was being examined when I went in.
Q. Then you gave your evidence?
A. Yes sir.
Q. And those remarks that you said were made?
A. Was after Mr. Stimson was examined.
Q. Before you gave your evidence?
A. Yes sir.
Q. Then you got right up and left?
A. I think so.

A. J. HUNT, SWORN,

And examined in behalf of respondent, testified:
Mr. DAVIS. Where do you reside?
A. I reside at Brownsdale, Mower county.
Q. What is your business?
A. Law.
Q. How long have you been a member of the bar?
A. Something over one year; I was admitted in the spring term, 1877.
Q. Were you in attendance upon the district court of Mower county at the time that Mr. Greenman was put in to take charge of a case?
A. Yes sir, I was.
Q. That fixes the time; now go on and state, first, what was going on when you went into the court at that time?
A. Well, I could not state exactly as to that matter. I recollect that there had been—I think I was in at the call of the calendar. I recollect that there was some difficulty on the part, or at least some tardiness of the attorneys, in taking up their cases; so much, so that the judge remarked, that it would facilitate the business of the court, if the attorneys were present.
Q. Was there a civil case called there that evening?
A. I think there had been.

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Q. Was it progressing to some extent?
A. I think so.
Q. Go on and state all that you recollect in regard to what took place between the respondent, Lafayette French and Mr. Greenman, after that case was called?
A. My recollection is, that after that civil case had been called, that the criminal calendar was taken up, and that a criminal case was called, and that Mr. French was not present to take charge of the case on the part of the State. It is my impression that the judge inquired for Mr. French, still I would not be positive about that matter; but at any rate he was not in the room, and the judge appointed Mr. Greenman to take charge of the case.
Q. Until when?
A. Until Mr. French's return.
Q. What stage of that criminal case was it that Judge Page directed Mr. Greenman to take charge?
A. I think it was at the commencement.
Q. Was there a juryman in the box?
A. I am not positive.
Q. Was there a jury being impaneled?
A. I think there was.
Q. Did Mr. French come in?
A. Not for some time after.
Q. What was the stage of the case when Mr. French came in?
A. Mr. Greenman arose, and signified—
Q. What was the state of the case when Mr. French came in?
A. I could not testify as to that; Mr. Greenman arose and signified to him that he would like to have him come forward; Mr. French came in and they had a very short conversation.
Q. Who took the case then?
A. Mr. French.
Q. Who tried it?
A. Mr. French.
Q. What did you hear Judge Page say in conversation in regard to punishing Mr. French for contempt?
A. I heard nothing.
Q. Before Mr. French's absence was discovered, does your memory serve you as to anything that took place in regard to Mr. French talking loudly or otherwise, to some witnesses?
A. No sir, I don't recollect that.
Q. Mr. Hall has testified in regard to what the respondent testified on that occasion as follows:
He says, "Mr. Sheriff, you tell Mr. French if he wants to talk to those witnesses to go out of the court room."
Q. State whether you heard anything of that kind?
A. I did not.
Q. Was anything of that kind said?
A. I don't think there was.
Q. Mr. Hall further testifies:
"The call was made, and Mr. French was absent, and says I, I will go and call him;" Judge Page says, No, let Mr. Greenman take charge of the case;"
Q. What was the fact in regard to that conversation taking place?

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A. I don't recollect as to that conversation; I recollect of the Judge calling Mr. Greenman and directing him to take charge of the case.

Q. He states that "When Mr. French came back the respondent said to him that if he absented himself again that he would consider it contempt."

Q. How does your memory serve you as to that?

A. I don't think the judge made such remark; I heard nothing.

CROSS EXAMINATION.

Mr. CLOUGH. Q. What were you doing on that occason?

A. Well sir, I don't know as I had any special business these; I was in attendance.

Q. What means have you for recollecting that you were there at all?

A. I recollect the case that has been mentioned here; I recollect the case also that has been mentioned in connection with the case as transpiring between Mr. Sargent and the town of Sargent; I recollect that I was present.

Q. Was this in the morning or the afternoon of the day when the criminal case was called?

A. I could not state.

Q. Were you there all the time?

A. I could not state.

Q. Don't recollect whether you were there on anything particular or not?

A. No sir, I don't recollect that.

Q. Or that you went there for anything?

A. Only that I was in the habit of going into court and watching the proceedings.

Q. Did you understand that this case was the first one on the calendar at that time?

A. I did not.

Q. You say that the case that preceded it was the case of Sargent with the town of Sargent?

A. That is my impression.

Q. Was that civil case called while you were there?

A. I recollect something about that.

Q. How many cases did you hear tried that day?

A. I could not say; I recollect while I was there at that time or some subsequent day, I think the same term—

Q. I am talking about this day?

A. I could not be positive.

Q. Do you know whether you heard any other case except this?

A. I do not.

Q. Was the case of Sargent against the town of Sargent on trial when you were there?

A. I would not be positive.

Q. Who were the witnesses in that case?

A, I could not say about that.

Q. You don't remember?

A. No sir.

Q. How long did the case of Sargent against the town of Sargent last?

A. I have no recollection—no distinct recollection.

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Q. Was that the first time of the trial of Sargent against the town of Sargent?
A. I don't recollect.
Q. Did you hear the counsel argue the case?
A. I don't recollect.
Q. Did you see Lafayette French in court at all that day?
A. Yes, sir; I saw him there at that time he took charge of the criminal case.
Q. Before that?
A. I do not recollect.
Q. You may have seen him?
A. I presume I may.
Q. Do you remember any occurrence that took place in court that day?
A. I presume not.
Q. Most of them you have forgotten?
A. I presume very likely since they were called up.
Q. When did you first see Mr. Greenman in there?
A. I don't recollect seeing Mr. Greenman at all; the time when he took charge of the case.
Q. You didn't see him come into court?
A. No sir.
Mr. DAVIS Q. You were a student at law at this time?
A. Yes, sir; I was at that time.
Q. You were accustomed to go into court to see what was being done?
A. Yes sir.
Q. In whose office were you a student at that time?
A. In no office at that time.
Q. Reading by yourself?
A. Yes sir.
Mr. CLOUGH. Q. What term of court was this?
A. I could not be positive in regard to that matter; it was some two or three years ago.
Mr. DAVIS. Q. We offer the record of the proceedings of the board of county commmissioners, January 7th, 1876, pages 256 and 257, with the following entries:
"Ten o'clock A. M. The bill of Thomas Riley for deputy sheriff's fees, $35.20, summary witnesses in the case of State versus Benson, for riotous and disorderly conduct, was on motion laid over for the present."
"One o'clock P. M. On motion the bill of Thomas Riley for sheriff's fees in the case of the State vs. Benson was rejected."
Mr. CLOUGH. We have no objections.
Mr. DAVIS. May it please the court, with the exception of a letter which Mr. Losey inadvertantly took to LaCrosse, and which he will have with him when he returns on Monday, this is all the testimony which we think we ought to be compelled to adduce.
There still remains the undetermined question as to our status under the fifth of the original articles of impeachment, and the third specification of the paper filed by the managers, under the permission of the Senate, after this investigation began. These matters relate to the riot at Austin, connected not only with a letter which the respondent is alleged to have sent from Preston to George Baird, but also with George Baird's examination under the third specification, wherein he stated

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transactions between himself and the respondent, from which it will be attempted to infer malice against Mr. Baird.

Now, the fifth article is briefly this:

That the respondent, with the intent to humiliate and annoy George Baird, sent him a certain letter from Preston. The letter is set out. There is no allegation whatever in that article that that letter was ever published to the world by the respondent, and for aught that appears, was a private communication between the parties; and, if it ever was shown that humiliation resulted from it to George Baird, it was from his own act in publishing it to the world.

I hardly imagine, may it please the Senate, that it will be seriously argued that a letter sent through the mail, by a person in an official station to another, of itself proves anything; it resting entirely with Baird whether it should ever reach the public gaze. In answer to that article, we have stated fully and at length, the causes which led the respondent to send that letter; that there was a riot progressing in the city of Austin; that great danger to life and property was apprehended; that meetings had been held in private houses to devise means for protection, and that the streets had been guarded by patrols; that Baird had participated in thees meetings; that in the absence of the respondent the danger to his family was such, that he was telegraphed to. The examination of Mr. Baird, under the third specification, and his cross-examination also, has unavoidably presented an issue of fact, upon which my learned friends say we are entitled to offer no testimony whatever.

The Senate will remember, that I asked George Baird about the riot; about its magnitude; about the meetings that were held in the houses of private citizens to protect themselves from public danger. I asked him whether the mayor of the city had not ordered him to arrest certain rioters, and he said no. Now, may it please the Senate, our position is, that that specification should be quashed—withdrawn from our attention, and that we should be released of all responsibility under it, or else that we should be allowed, for the purpose of disproving the allegation of malice and intent to humiliate, and want of probable cause, which are alleged in the fifth article, to prove by witnesses we have here, that the state of facts which existed at that time when the respondent is alleged to have written this letter from Preston, is precisely what is set up in our answer. We renew our motion to quash the fifth article and third specification.

Mr. CLOUGH. Mr. President and gentlemen of the Senate: When the motion was originally made to quash this article, the managers were heard and expressed their views fully. The question was submitted as stated to the Senate, and after careful consideration was denied.

I don't know that the managers on this occasion wish to say anything more than they said then, in their arguments upon the merits of the question, and to cite the decision of this court, sustaining them in their argument. The deliberate decision after long arguments of this question, and long debate, ought to be a good authority to govern this court and its proceedings.

Now, in respect to the admission of evidence, which the counsel desires, our theory is, as a legal proposition, that the evidence is inadmissible. The managers think that no riotous proceedings on a Saturday night could be any excuse for a barn yard brawl on a Sunday morning, and particularly it could be no excuse for the judge to sit down in his official capacity twenty miles away from the scene of action, and

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weeks after that action had occurred, or days after, at all events, and in cold blood, pen and send to an officer a brow-beating communication as has been set up here, and has been admitted.

Now, that is our theory as to the law—that what happened ot that riot is immaterial. At the same time we withdraw our objection so far as we are concerned, to the introduction of evidence as to what occurred on that whisky riot; leaving it to the Senate, as we have done in several instances, to determine for itself as to whether it wants to hear evidence on that point. We interpose no objection to that evidence now, provided that, in our turn, we shall be permitted to introduce evidence to rebut and contradict whatever evidence may be introduced on the part of the respondent. If the Senate permits the respondent to go into the question as to what occurred that evening, the managers will desire to introduce rebutting evidence, so far as they may be advised will be necessary, in order to show what then occurred.

So that is our position, that the motion to quash has already been argued and settled by this court, and that the admission of evidence is a matter for the Senate to determine for itself, in its introduction; and the managers care nothing about it, except to have an equal privilege to rebut, if the matter is allowed to be gone into.

Mr. DAVIS. It is altogether under the sense of professional obligation that I have assumed the position that I have in making this motion to quash. We all owe a duty to the public here, and unless it is perfectly clear that the matters now under discussion here in their present state immaterial will become material in argument, I surely think I can do no better thing, in my capacity, than to make such a motion as will enable the Senate, if it can conscientiously do so, to save the time which necessarily will be consumed in this investigation. My learned friend adverts to the precedent which this Senate claims to have set.

We made our motion, it is true, at one time to the tenth article alone. It might not be permitted to us to enter upon that question because the Senate rejected that article; but now the third specification is here, and is linked by Baird's testimony with the facts set up in the fifth article, and we can get no answer from counsel—I mean no specific answer as to whether they seriously intend to insist upon the fifth article, when we have put in the general plea of not guilty to every allegation contained in the fifth article. I do say, Senators, that we are entitled either to this investigation as to the riot and all that took place there, or we are entitled to have it said that our time and the time of the public shall not longer be consumed upon that issue; we have our witnesses here; the counsel does not exaggerate the length of time which the theory of the investigation of this question will make necessary.

If there is anything in these articles or in the evidence that has been adduced under the specification, which causes the mind of any Senator to pause for a moment in serious deliberation, upon the question of this respondent's guilt, then I say, Senators, if there is the slightest danger of a failure of justice to this respondent, then it is his inherent right to go into testimony on that count. Now, I maintain that the fifth article is insufficient in itself, and charges no offense whatever. It says that the respondent, with the intent to humiliate the sheriff, sent him a letter. It does not charge that the respondent ever published it to the world. The only way in which it ever came to the gaze of mankind was through the act of the person who claims to have been injured. The third

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specification was shrewdly introduced for the purpose of allowing the managers to put in evidence as to that; and while linking it in fact with the fifth article say, because it is not, the fifth article is unsustained by proof on their part, that, therefore, we shall introduce no evidence upon either. We do not propose, without vigorous protest, to be impaled upon either horn of such a dilemma. Such tactics are not worthy of the dignity of this proceeding. Taking the position which I have in the utmost good faith, I ask the dispassionate judgment of the Senate, upon the situation in which the tactics of the managers have placed the respondent and his counsel.

Mr. Manager HINDS. Q. I hardly understand in what position this motion of the counsel places this matter before the Senate. The managers have already understood this question as to the quashing of the fifth article had been disposed of—finally disposed of, as to its merits?

Now, if this is merely a motion for leave to open that argument, the question as to the merits is not yet before the Senate, and it would seem to me that it would be proper first to determine that question, whether the motion which was previously made and decided. shall be again heard; whether that matter shall be reopened—if it is to be reopened and presented, and to be argued again before the Senate. There are other considerations which we should like to present to, the Senate if it is not to be reopened at all. If the position of the Senate is final upon that question, why then it is not necessary, it strikes me, for the managers to ask to be heard any further in regard to this matter. I would like, speaking for myself only, to have the question determined, whether the matter is to be subject to further argument; that is, whether the motion is to be determined at all. If entertained I would like to be heard upon it.

The PRESIDENT. What action will the Senate take upon it?

Mr. Manager GILMAN. I would like to inquire of the counsel if this motion to quash article five, also includes specification three?

Mr. DAVIS. Distinctly.

Mr. Manager GILMAN. I didn't understand the motion, when it was made by them, that that was alluded to knowingly. I was about to remark that while I have nothing to say about the merits of article five, that being sufficiently argued, that it occurs to me that specification three of article ten need not necessarily be considered iu connection with a motion to strike out article five. These substitutes to article ten, some seven or eight in number, specify different acts of wrong doing on the part of the respondent, and it occurs to me that specification three might properly stand by itself, the same as those other specifications, and filed independent of the article, which, even if it is considered proper by the Senate that that article be struck out, I merely mention this, so that if the case should come up for the consideration of the Senate, that they may consider that as a standing proposition. It seems to me perfectly proper that in case they should conclude that article five ought to be stricken out, there is no occasion necessarily, from that even that specification three should be treated in the same manner.

Mr. DAVIS. The learned manager departs from the grounds of forensic practice into the region of parliamentary chicane. He wishes the question decided. I have heard that before. Taking these articles separately by themselves as they stand written as charges, his position is

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right; but when you take those articles and link them together by the tie of evidence which would be introduced under specification three, he is in error, because the evidence under specification three does go into this riot business; and if specification three is allowed to stand we are as much entitled to go into what caused this interview between George Baird and the respondent that Sunday morning as if both articles were under investigation and proved together.

Mr. Manager MEAD. I would like to ask of Gov. Davis if that specification has no bearing on charge ten?

Mr. DAVIS. I supposed that article died in giving birth to this litter of specifications.

Senator NELSON. I move that we retire to consult upon this matter.

Mr. Gilfillan C. D. offered the following:

Ordered, That all testimony given under article 5, and specification 3 of article 10, be stricken out.

Mr. Nelson offered the following as a substitute:

Ordered, that the motion be overruled.

The question being taken on the order of Mr. Nelson, without prejudice to the right to a vote on Mr. Gilfillan's order,

The order of Mr. Nelson was agreed to.

Mr. Gilfillan C. D. renewed the offer of the order relative to striking out the testimony under article 5, and specification 3 of article 10, and the question being taken on Mr. Gilfillan's order,

And the roll being called, there were yeas 7, and nays 18, as follows:

Those who voted in the affirmative were—

Messrs. Armstrong, Clement, Doran, Gilfillan C. D., Rice, Waite and Waldron.

Those who voted in the negative were—

Messrs. Ahrens, Bailey, Clough, Deuel, Edwards, Finseth, Gilfillan John B., Goodrich, Hall, Hersey, Lienau, Morehouse, Morrison, Nelson, Page, Remore, Shaleen and Swanstrom.

So the order was not adopted.

Mr. Doran offered the following, which was adopted:

Ordered, That no evidence be received under article 5, nor under specification 3 of article 10, except the testimony of the respondent, in case he shall desire to give it, as to the occurrences of the Sunday morning testified to by Mr. Baird and his son.

Mr. Bailey moved that when the Senate adjourn, it do adjourn until 3 o'clock P. M. on Monday.

Mr. Swanstrom moved to amend, that when the Senate adjourn it do adjourn until 2:30 P. M. to-day.

Mr. Doran moved that the Senate adjourn, which was lost.

SHERMAN PAGE RECALLED

in his own behalf, testified:

Mr. DAVIS. Judge Page, you testified the other day as follows:

"I know George Baird; been acquainted with him for several years; in fact, I think ever since I became resident of Mower county."

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Now I ask you to state what you said to George Baird on that occasion, in the month of June, 1874, and state briefly the facts to which you then referred in that conversation, giving them as briefly as necessary to a complete explanation of what you said.

Mr. CLOUGH. Wait a moment; I don't know as I understood the order, or else I don't understand the question. I understood the order was, that the respondent should be permitted to testify as to the conversation between him and Mr. Baird; did I understand that it related to what had occurred prior to that time between them?

The PRESIDENT. The desire of the Senate seems to be that no testimony should be given with reference to anything that occurred previous to this, that is the whiskey riots.

Mr. CLOUGH. Well, I understand the question to go back and cover the whiskey riots.

Mr. DAVIS. I will change the question:

Geo. BAIRD testified on his direct examination as follows:

"He says to me why didn't you obey my orders last night, and make arrests? I told him that I did, there was no occasion to make arrests; that there was no riot."

What transaction did that language of George Baird's that "there was no riot," refer to?

Mr. CLOUGH. We admit it belonged to the whisky riot.

Mr. DAVIS. We don't ask any admissions.

Mr. CLOUGH. I supposed there was no dispute on that point.

The Witness. Do you ask the question?

Mr. DAVIS. I ask the question.

A. I don't know; Mr. Baird did not use the language; but the language expressed there [in the journal] undoubtedly refers to a transaction in the city of Austin, which occurred there the night previous to the time referred to in that statement.

Mr. DAVIS. Now, I ask the respondent with a view to explain and rebut George Baird's testimony, to state briefly what that occurrence was, which was referred to by the words, "there was no riot," in Geo. Baird's testimony.

Mr. CLOUGH. It seems to me that this is a very clear attempt on the part of the counsel to overrule the order which the Senate has passed. Now, all that George Baird attempted to state there, upon the page which has been mentioned, was merely what occurred between Judge Page and himself at that time. He is detailing the conversation, he says to me, "Why didn't you obey my orders last night, to make arrests?" Now, George Baird is not giving his opinion in his evidence on what occurred the night before, but is only giving his statement of what was said at the time. Now, George Baird did not really say there was no riot the night before, but only swears that he told Judge Page that there was no occasion to make arrests, because there was none. "He says, don't you tell me that there was no riot again; he says, there was a riot under our statute." Now, Mr. Baird confined himself exclusively to what was said by Judge Page and himself on that occasion, and he was not pressed beyond that point, so far as my recollection

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serves me; I did not hear George Baird's testimony, but I think I am correct upon that point.

Mr. DAVIS. The minutes are probably conclusive.

Mr. CLOUGH. On the next page I am reminded. [Reading.] "Mr. DAVIS. I don't want the riot gone into."

Mr. CLOUGH. It appears very clear, so far as the examination in chief is concerned, that Mr. Baird did nothing except to say what he and Judge Page said on that occasion.

Mr. DAVIS. The resolution of Senator Doran reads as follows:

"Ordered, That no evidence be received under article five, nor under specification three of article ten, except the testimony of the respondent in case he shall desire to give it as to the occurrences of Sunday morning, testified to by Mr. Baird and his son."

Now, in the consideration of this resolution, (I wish to treat it and to treat it fairly in this matter) my learned friend, and I occupy positions, it seems, diametrically opposed. I understand him to say, that the only matter that I can elicit from this respondent upon the stand, is to state whether he did or did not say those words to Mr. Baird.

The construction that I put upon it is—upon the testimony of the respondent in case he should desire to give it, as to the occurrences of the Sunday morning, testified to by Mr. Baird and his son, is this, that if I find in the testimony of Mr. Baird, that Mr. Baird referred to a riot as being talked about then by him and Judge Page, and the testimony of Mr. Baird don't give any explanation as to what that riot was, and the Senate cannot, of couse, judicially know it, that I am entitled to rebut the testimony of Mr. Baird on that point, or to explain or qualify it, and to place the Senate exactly in the position of the parties as they stood in the yard there and had that talk. For what is the golden rule of proof, Senators, in matters undergoing any judicial investigation? Nothing is more frequently laid down than that the most crucial test which can be put to a transaction of that kind, is to be placed as nearly as possible in the situation of the parties themselves, and find out what they were talking about so as to view it from their standpoint.

Mr. CLOUGH. Mr. President: If the object is to understand what they were talking about, that has already been answered and admitted. They were talking about the occurrence which took place the night before, and what was commonly called "the whisky riots." That is undoubtedly true. Now I think the language of that order is very clear, that the respondent is confined as to what occurred between himself and Mr. Baird, on that occasion.

The PRESIDENT. The resolution may not be entirely clear; but the chair is entirely clear as to what the Senate designed, and that is that the Senate certainly determined that no evidence should be received except upon the occurrences that actually transpired there that morning.

Mr. DAVIS. If that is the understanding, I do not desire to urge the matter further.

The PRESIDENT. I may say this: that after the resolution was passed the question was further discussed, so that an understanding might be arrived at.

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Mr. DAVIS. Nothing can be farther from my intention, to strive with the Senate when I understand its ruling.

[To the Witness.]

Judge Page, with the instructions that have been received, upon the reading of that resolution, will you proceed to state what took place between you and Mr. Baird upon the occasion to which he testified there?

A. On Sunday morning, the next Sunday after the 30th day of May, 1874, I was passing along the street west of Mr. Baird's premises, in the city of Austin. And I accidentally met him in the street; which spoke first with reference to the occurrence of the night previous, I cannot state, or which spoke first at all, but a conversation occurred between us something in substance like this; I think, after the usual salutations, I asked him what the reason was that he did not obey the orders of the mayor and other officers, that was given him the night previous, and he did not give me a very direct or positive answer with reference to it, but he stated that he could not, or that he did not know exactly how to do it, or something of that kind.

I then went on to say to him that I thought there was a good deal of danger from the occurrences of that night, and a great deal of excitement, and I considered it his duty to obey the orders of the officers, and particularly the mayor, under such circumstances, and he did not raise any objection to that; he admitted really and substantially that that was his duty, but he complained that the persons who were with him, or on whom he called to assist him to enforce the law and preserve the peace, were not willing to aid him, and he had a good deal of difficulty. Some conversation followed with reference to the matter of discharging his duties in a case of that kind, and he said he ought to have some organized assistance in the matter. A conversation occurred between us with reference to the condition of the public mind at that time in the place, in the excitement that prevailed, and he agreed with me that it was a time when there was a good deal of excitement and apprehended danger, and he felt as though he ought to have some assistance in the matter. My recollection now is, at that time, there was some conversation with reference to the method of securing assistance and organizing for the purpose of protection. He assented to the proposition that it was necessary that something should be done to protect the citizens of the place, property, etc. I think, though I am not positive, that at that time there was some conversation with reference to the citizens getting together for the purpose of devising ways to protect the public; I'm not positive as to that, this conversation occurred in a casual manner, and I was no more excited on my part than I am talking now, nor on his part so far as I have observed,

I was not aware that until after that occurrence that it was claimed by Mr. Baird there was any excitement at all, and I was not aware that he took any exceptions whatever to anything that was said. I think, during that conversation, further, that I informed Mr. Baird that I expected to leave the next morning to hold a term of court at Preston, and that I felt some apprehension as to what might be done; and my recollection is that I told him that my family was alone, and that I should be away and be compelled to leave them alone; and at any rate we talked generally with regard to the dangers that he apprehended, and I apprehended also. We agreed as to that matter fully. I made no threats whatever to Mr. Baird, not at all; it did not occur to me; I was talking

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to him in a very friendly way. I was a personal friend of his at the time. He was an officer in whom I felt a great deal of interest, because he had assumed the duties of his office under peculiar circumstances, and I felt an interest that he discharged them faithfully and fully, and the conversation was in a friendly manner.

Q. Judge Page, did that conversation, whatever it was, interrupt the friendly relations that had theretofore subsisted between you?

A. Not to my knowledge, so far as—not at all, so far as his demeanor is concerned. We met the same day in the evening.

Q. Now you recollect where young Baird located himself, in his testimony?

A. I do.

Q. How far was that from where you and this elder Baird had this talk?

A. It was across a block; my recollection is that those blocks are 270 feet in length; I won't be positive as to the exact number of feet, but that is my recollection.

Q. As to your tone of voice?

A. My tone of voice was my usual tone of voice in conversation. My tone of voice was not louder than it is now, and probably not so loud.

Q. Mr. Baird testifies that you said "why didn't you obey my orders last night and make arrests. I told him I thought there was no occasion to make arrests; that there was no riot, and he says don't you tell me that 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, it was not because you were 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've 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 upon 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."

He also testified that you shook your fists. Now, Judge Page, I want the facts in regard to these objectionable statements?

A. There was no such conversation as that stated between us. There might have been some words used, but no such expressions used, at all, as are used there; there was nothing violent about anything that occurred there at all, and no such statement that I proposed to fine him, or would fine him; or threats of any description.

Q. About shaking your fist?

A. Nothing of the kind at all, occurred.

Q. You and George Baird are near neighbors?

A. We live, perhaps, 20 roks apart.

Q. Any interruption between your relations of your families, if such relations had theretofore existed?

A. Not at all, at that time, nor for a long time afterwards.

Q. What estrangement resulted—can you say, along afterwards?

A. Yes sir; not at that time, whatever—I had frequent conversations after that with Mr. Baird often about this matter; we were perfectly friendly, and my feelings towards him were friendly at that time.

Senator GILFILLAN, J. B. I would like to enquire if this was the order of the Senate?

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The PRESIDENT. Hardly.

Mr. DAVIS. I would like to put this question, if it is within the sense of the Senate, Mr. Baird testified on his examination that the mayor did not give him any order the night before. I would like to ask this witness if he ordered him to make arrests the night before.

Mr. CLOUGH. I object to that.

Mr. DAVIS. I supposed you would.

Mr. CLOUGH. As not being within the order.

Mr. DAVIS. Can't we contradict a witness on part of the State?

The PRESIDENT. Would that be a contradiction, even if Judge Page heard him make the order?

Mr. DAVIS. Mr. Baird says he made no such order.

The PRESIDENT. He might not have heard it; I will submit the question to the Senate if you desire.

Mr. DAVIS. No, I don't desire it.

The witness [to the President]:

Mr. PRESIDENT, I desire to ask a single question with your permission, relating to this matter, I desire to know if the construction of the Senate upon the 5th article and the position is this; that the question of my guilt or innocence as to that article, is to be determined by this Senate without any hearing on my part?

The PRESIDENT. I understand the ruling to be that the fifth article is to remain upon the pleadings *alone*; that no evidence is to be received.

The WITNESS. The respondent is not to be heard at all with reference to that article?

The PRESIDENT. So I understand.

CROSS-EXAMINATION.

Mr. CLOUGH. Q. What day of the month was this you had the conversation with Mr. Baird?

A. I stated it was on Sabbath next succeeding the thirtieth day of May.

Q. You found Mr. Baird that morning near his barn?

A. I met him in the street, Mr. Clough, not very far from his barn.

Q. Were you seeking Mr. Baird?

A. I was not, sir.

Q. Where were you going on that occasion?

A. I was taking a walk along the street.

Q Going to any place in particular?

A. Not that I recollect, I might have been, however.

Q. You were a great deal excited that morning, weren't you?

A. I was not at all excited, any more than I am now, Mr. Clough.

Q. You were not moved by anything which had occurred previously.

A. Not moved.

Q. Not excited by anything that occurred previously?

A. I have stated that I was not excited.

Q. You don't remember which commenced the conversation first.

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A. I can't remember who used the first words. There was a salutation as neighbors ordinarily make in meeting each other.

Q. You left town on that day, did you?

A. I left town on the next day, Monday, to go to Preston to hold a term of court.

Q. You are sure that you did not get to talking loud with Mr. Baird on that occasion?

A. I don't say that I didn't talk loud; I ordinarily talk loud. The degrees of loudness are, perhaps, a matter of judgment.

Q. You are sure you did not get excited at all, on that occasion?

A. I have stated that I was not excited.

Q. Did you say anything about his inefficiency, on that occasion?

A. Not in those words.

Q. Well, did you refer to the subject of his inefficiency?

A. I referred to his not obeying the orders of the mayor.

Q. Did you refer to him as being inefficient?

A. I did not use those words.

Q. Did you refer to the subject of his being inefficient?

A. Not specially.

Q. Was it mentioned at all?

A. Not as a direct topic, no sir.

Q. I am asking you whether it was mentioned directly or indirectly? [No answer.]

Q. I ask you if the subject of Mr. Baird's inefficiency as an officer was mentioned at all?

A. I say not as a subject.

Q. Was it mentioned *at all?*

A. Not in that form, no sir; it was not mentioned as a topic unless it came in indirectly, and was inferred from something else that was said.

Q. I am not asking you how it came in. I want to know if it was mentioned at all?

A. I am answering your question.

Q. Do you refuse to give any other answer, than what you have given now?

A. No sir, I will give you as many answers as you want.

Q. Now sir, I desire an answer to that directly; was it mentioned directly or indirectly; in any way?

A. It might have been inferentially.

Q. Was the subject of Mr. Baird wanting in capacity as an officer, mentioned?

A. No sir.

Q. Not at all.

A. Not at all unless he mentioned it; I don't think that he did.

Q. Was the subject of Mr Baird being punished in any way, for what he had done, mentioned at all?

A. Not at all, no sir.

Q. Did you mention any order on that occasion, which you had given yourself?

A. Did I mention any?

Q. Yes sir?

A. Possibly I might have said that I spoke to him on the night before. Yes, sir; I think that I did.

Q. You talked also about an order that you had given him the night before?

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A. Talked with reference to what was said the night before, and the direction that I gave him at one time; yes sir.

Q. Did you tell him, on that occasion, that he had neglected or refused to obey that order which you had given him the night before?

A. I might have told him that he did not obey it, or execute it. The fact that he did not was talked about.

Q. You did not warm up on that occasion at all, when you were talking to Mr. Baird.

A. I have no recollection that I was any warmer when I got through than I was when I commenced.

Senator DORAN. Mr. President, I think the Senate has hardly done the respondent justice. I think the respondent ought to have the privilege of an explanation. I see on pages 3, 4 and 5, of June 5th, that there was a long cross-examination gone into on this matter.

Mr. CLOUGH. I don't think we can be bound down by anything Governor Davis has said himself. The managers, on their examination-in-chief, did not ask Mr. Baird anything about the occurrences of the night before.

Mr. DAVIS. I refer you to page 2, June 5.

Mr. CLOUGH. If Gov. Davis has brought in matters here, he did it on his own responsibility; it was none of our examination of Mr. Baird. We studiously avoided going into the question of the whisky riot. If Gov. Davis took upon himself the responsibility of going into a matter which we had not gone into, he can't by that reason make a ground for himself upon which to introduce further evidence. That, I think, is a law well understood.

Mr. DAVIS. Mr. President and gentlemen of the Senate: If I dared stake my conduct at this moment on my personal convictions of what the sentiments of Senators are upon this article and this specification and this procedure, I would invite, with entire confidence, a vote of the Senate upon the question of guilt or innocence at this moment. But I am too feelingly persuaded of the sense of responsibility that rests upon me in this matter, that I dare not trust myself here as I am willing ordinarily to trust myself in matters of this kind—matters of less importance—for never in the course of my professional life do I expect to be interested again with a matter of this magnitude.

Upon page two, Mr. Baird was permitted, by the managers, to go into an examination which referred to a riot. I asked a question, based upon what Mr. Baird had stated, without interruption or dissent, to which the managers objected, as not cross-examination. I made some remarks there which counsel out of all precedent cited against me; but the President said the question would be admitted, and I proceeded, and I put Geo. Baird on the record here, and I challenge you now, and in after years, to refer to it, testifying that he did certain things bearing upon that conversation, and comprehended the "riot," used by him without objection by the managers. George Baird swore that he was not ordered by the mayor, the night before, to disperse that mob. And now, Senators, perhaps, properly, I feel nothing but the feeling of entire respect for the ruling of the Senate, and confidence in its wisdom; but now we are told that it will not, under the order, be proper for us to contradict Mr. Baird upon testimony which was incidental to his examination. It may be right; it may be the rule which prevails in crim-

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inal prosecutions where a man is put on trial for all that is dear in life under his plea of not guilty, to say that he cannot explain, that he cannot contradict even a witness for the prosecution; that like the laws of the Medes and Persians, what George Baird has said here shall remain unalterable, uncontradicted, and unimpeached; is a proceeding I never heard of in any other court of justice; a proceeding which I venture to say, a ruling which I venture to say is inherent with the very spirit of injustice itself. I am as reluctant to take the time of the Senate as anybody else on this article.

Senator GILFILLAN J. B. In the question I asked a moment ago, I meant no disrespect to the counsel or the witness, or respondent; but I saw we were drifting away so that the door was being opened for the admission of this whole matter. I fully appreciate the feelings of the counsel, and if there is any Senator that feels that justice has not been done as fully as they desire, we can resume consideration of the same in secret session.

Mr. DAVIS. If I was curt to the honorable Senator, I beg his pardon; I know that I was trespassing on what might be a construction of the rule, and yet, the defendant was on the stand, and I felt warranted in going just as far as the Senate would let me, without interruption.

Senator GILFILLAN J. B. I fully appreciate the feelings of the counsel.

Senator RICE. I move we take a recess to 2:30 P. M.

The PRESIDENT. It is moved that the Senate take a recess till half pass two.

Mr. DAVIS. With this proceeding on this question our case is rested, with the exception of two or three items of documentary evidence, and two or three witnesses.

Senator GILFILLAN J. B. Before the recess, I should like to raise the suggestion that, perhaps we had better ascertain before adjourning, whether the managers will proceed at this time, after the counsel rest, and also whether they had not better retire at once, and we dispose of this question, so that the managers may be advised, or the respondent, what the final action is.

The PRESIDENT. Will the Senator withdrawn his motion?

Senator RICE. Yes.

On motion the Senate went into secret session.

Senator Goodrish offered the following:

Ordered, That so much of the testimony of George Baird, as referred to the so-called whisky riots, be striken out.

Which was adopted.

On motion the Senate adjourned to 2:30 P. M.

AFTERNOON SESSION.

The PRESIDENT. I would state to the counsel that the court adopted an order in secret session to strike out so much of the testimony of Geo. Baird as referred to the whiskey riots.

Mr. DAVIS. That is, direct and cross.

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The PRESIDENT. Yes sir.

Senator NELSON. That relates, I believe to all that was brought out.

Mr. CLOUGH. That explains what I wanted to inquire about. It hadn't occurred to me that there was anything in the examination in chief that referred to the riot.

The PRESIDENT. The resolution makes no distinction, it covers all the testimony.

W. L. HENDERSON, SWORN.

And examined in behalf of respondent testified.

Mr. DAVIS. Q. Where do you reside Mr. Henderson?

A. Leroy, Mower county, this State.

Q. What is your business?

A. Grain buyer and banker.

Q. You are not the Mr. Henderson that Mr. Clough and I agreed this morning was absent in the east?

A. No sir.

Q. That is your brother?

A. Yes sir, that is my brother.

Q. Do you produce certain checks drawn by your bank?

A. I have some of them.

The witness here handed certain checks to Mr. Davis.

Q. Are these checks upon your bank?

A. Yes sir.

Q. Have they been honored at your bank?

A. Yes sir.

Q. Paid?

A. Yes sir.

Mr. DAVIS. I offer in testimony check of August 9th; it reads.

"No. 74. Le Roy, Mower county, August 9, 1878; Le Roy bank one day after date pay to Sever O. Quam (not transferrable) $100. I. Ingmundson, county treasurer. Endorsed, Sever O. Quam."

Mr. DAVIS. I offer now this check, it reads:

"No. 83. Le Roy, Mower county, October, 1875; Le Roy bank, one day after date, without grace, pay to S. O. Quam (not transferable) $42.50. I. Ingmundson, county treasurer. Endorsed, S. O. Quam."

The third check:

"No. 85. Le Roy, Mower county, October 6, 1875; Le Roy bank, one day after date, without grace, pay to S. O. Quam (not transferrable) $70. I. Ingmundson, county treasurer. Endorsed."

Q. Were these paid out of the funds to Ingmundson's credit, as county treasurer?

A. Yes sir.

CROSS-EXAMINATION.

Mr. CLOUGH. Q. Mr. Henderson, what kind of a bank is this?

A. Private bank.

Q. You are the president or cashier, which, or both?

A. I am the manager in the absence of my brother, who has been in New York for some time—three years. I am not the cashier.

Q. You have also clerks at your bank?

A. Yes.

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Q. Whose business is it to pay checks?
A. The cashier's.
Q. More than one person?
A. We have had more than one person; but not at one time. There is but one person in charge of it.
Q. Is there never more than one person around the bank at one time that pays checks?
A. Yes sir.
Q. At the date of these checks in August, 1875, or October, 1875, how many persons were authorized to pay checks?
A. I think, possibly, two.
Q. Who were they?
A. One was W. P. Potter, a young man who is there now, and I think James A. Henderson, my nephew.
Q. Is he the clerk that is out of the State?
A. No sir.
Q. Did you ever, yourself, pay checks?
A. I may whenever there is currency to pay them.
Q. Do you remember if you have paid either of these checks?
A. I do not.
Q. What evidence have you that they were paid, except simply that you have possession of the checks?
A. We have an entry in the books.
Q. But you, yourself, knew nothing of the payment of them?
A. No sir.
Q. You don't know who presented them to the bank for payment?
A. No sir.
Q. Who furnished these blanks for Ingmundson?
A. We did.
Q. Is this signature I. Ingmundson, county treasurer, in his own handwriting?
A. Yes sir.
Q. You are acquainted with his handwriting?
A. Yes sir.
Q. What is the meaning of the words, "not transferable," that is on there?
A. When the checks were originally framed, we were using them in the wheat business; those checks were intended in the grain business, and we had trouble with them, and in order to insure their proper payment at the bank, we made them in that way.
Q. This was to insure payment to the party in whose favor they were drawn?
A. Yes sir.
Q. What was your practice in payment?
A. It required the signature of the party by whom the check was drawn, endorsed on the back.
Q. Did you require the person to whose name it was drawn to present that check himself?
A. We did not made that an invariable practice, no sir.
Q. Did you know Sever O'Quamm?
A. Not to my recollection. I don't know as I have ever seen him.

Mr. DAVIS. I see we have spelled the name of that distinguised individual wrong all the way, here.

Mr. CLOUGH. I have noticed that it is spelled 2 or 3 ways here.

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Q. Do you know that these indorsements are in the handwriting of O'Quam?
A. No sir, I do not.
Q. Do you know who presented this at your bank for payment?
A. I do not.
Q. Mr. O'Quam did for all you know, himself?
A. He may have done so.
Q. How is it that you have retained those checks so long; are you not in the habit of surrendering the checks after payment?
A. Not always; we have got a number of checks that have never been called for.
Q. Have you any record in your bank which would indicate when those were paid, and to whom?
A. We have a record showing as to when they were paid, as to the party to whom they were paid, that won't show.
Q. Is there anything in those checks themselves to show when they were paid, and to whom they were paid?
A. I think not.

D. B. COLEMAN RECALLED,

On behalf of the respondent, testified:

Mr. DAVIS. I show the witness these 3 checks and ask him which, if any, he received from Sever O'Quam.

The WITNESS. I would like to use my glasses.
A. The one dated August 9, for $100, is the check that I presented to the bank.
Q. Is that the check you referred to the other day?
A. That is the check I referred to; those other checks I know nothing in regard to, except from my memory; they agree with the stubs shown me by Mr. Ingmundson.
Q. Whose endorsement is that upon the back?
A. That is Sever O'Quam's, the then treasurer of the town of Clayton.
Q. Upon what ground do you make this statement?
A. Seeing him write them. I requested him to do that in order that I might draw the money.
Q. You started to state in regard to those other two checks, that they corresponded to the stubs shown you by Mr. Ingmundson. State whether or not that is the reason of Mr. Ingmundson speaking to you of advances made to Sever O'Quam on account of this Clayton order?
A. Yes sir.

CROSS-EXAMINATION.

Mr. CLOUGH. Q Where were you when Sever O'Quam brought to you this $100 check?
A. I was at his house.
Q. And he wrote his name on it at that time.
A. Yes sir.
Q. How long after that did you take those checks to the bank and get payment?
A. The same day.
Q. That would be August the 10th, 1875?

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A. The same day that I received it.

Q. You testified in your examination that it was the day after you got the check.

A. That is my memory of the transaction just now.

Q. What time of the day was it you were at O'Quam's house?

A. Immediately after breakfast I should say. Probably, as I was then boarding, that I was at his house at 1 o'clock, or between 8 or 9.

Q. How far does he live from this bank?

A. About ten miles.

Q. You started and went over to the bank?

A. Yes sir.

Q. What time was it that you presented this for payment?

A. My impression is that it was before twelve.

Q. Can you recollect now the appearance of the gentleman who paid the money to you on this check?

A. I cannot sir; my impression is that it was a young man, a man something over twenty would be my impression.

Mr. Manager MEAD, Q. Did you deliver that order to Mr. O'Quam before you were fully paid?

A. I did not sir.

Mr. DAVIS. Mr. President, with the reservation of the right to put in a document now in the possession of Mr. Losey, when he returns, and possibly some records which may perhaps come to hand Monday, I have the honor to state that this is the respondent's case.

LAFAYETTE FRENCH

Being recalled in rebuttal, on behalf of the prosecution, testified:

Mr. CLOUGH. I will say in this rebuttal that it probably will not be convenient to exhaust the witness in calling him once, but I will try to get through with the witness as fast as I can.

Q. I will call your attention first in order of time to the occasion in 1875, when Mr. Kinsman was called upon to try a criminal case.

A. Mr. Greenman, you mean?

Q. Yes, you heard the testimony of Mr. Greenman on that point?

A. I did.

Q. You also heard the testimony of Mr. R. A. Murray?

A. I did.

Q. Won't you just turn to it and see when that case was heard?

The witness was handed court journal of Mower county, and turned to page 293.

Q. I will ask you if the criminal case had been called before you left the room on that occasion?

Mr. DAVIS. I object to that question.

Mr. CLOUGH. Why?

Mr. DAVIS. I will state that it is not proper rebuttal. Mr. French was on the stand, others were on the stand and went into a full history of that transaction, the order of time, what took place. The succession of events were either all gone into, or all might have been, on the part of the prosecution; they recited their testimony upon that supposition, professing themselves entirely satisfied with it as it stood; we were required in our own rebuttal to do no more than to meet what

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they have stated, and we have put into testimony as to what took place then, the order of events, what was on trial.

Now, may it please the Senate,it is not competent under the guise of rebuttal to introduce evidence cumulative to that which was introduced on the direct examination. or which might have been introduced; and in glancing over the record of what we have put in testimony here, it strikes me that the range of the rebuttal, in respect to other matters is very limited. The prosecution started out and attempted to prove that the respondent, for the purpose of humiliating and disgracing Mr. Lafayette French in his absence from the court, placed another attorney in his position to try a criminal case. The Senate has heard their testimony upon that point; it has covered the entire ground. Mr. French on his direct examination, professedly stated all that was done there, and we have attempted to meet it. Now to say that they can come in —this is a small matter in itself, I am speaking of the principle—to say that they can come in under the guise of testimony which ought have been put in in the first place, transcends the very rule which has obtained for the protection of the rights of parties.

But he may say it is for the rebutting of Mr. Greenman. That is not the question. Mr. French has testified and Mr. Greenman has testified, and while such testimony as this may have the effect of rebutting Mr. Greenman, the fact that it is rebutting here is not alone sufficient, it has no bearing and is cumulative, and certainly is incompetent, even if offered under the pretense and guise of rebuttal, otherwise when would the practice of introducing testimony end in justice. We might call Mr. Greenman to rebut what Mr. French has said, and so on without limit and without end.

Mr. CLOUGH. I think I am somewhat acquainted with the laws in regard to rebuttal. and I think I shall conform to them strictly. I shall try to do so, and in what rebutting evidence we offer here we shall attempt as far as possible to avoid going into anything the witness has gone into before.

Now, we seek upon this point to keep ourselves strictly in the line of rebutting evidence, and I think we shall do so, and this evidence will be addressed strictly to this point of rebuttal.

Now, the witness, Mr. Murray, as the Senate will remember, came upon the stand and testified that the criminal case in question had been called and one or two jurors had been impanelled.

The witness. Three.

Mr. CLOUGH. Three had been called at all events, and Mr. French was there during this process of calling and impanelling these three jurors, and then he suddenly left the room. Now, we could not anticipate that Murray, or any other witness, was going to come forward and swear to that particular evidence when we had Mr. French here in chief, but the defense have brought that forward to combat what was said of our theory, at all events, as to what occurred there. Now, it is strictly in rebuttal for us to call witnesses to show that this evidence, as given to the Senate, is not true as a matter of fact, and that is all we desire to do. We don't desire to rebut the testimony which has been introduced except to explain our theory, and place the facts in their proper light before the court.

Mr. DAVIS. The learned counsel desires to go into a history of what

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took place at that time, and I think that is cumulative. He should have gone into it before.

The PRESIDENT. Inasmuch as the manager seeks to controvert the testimony of Mr. Murray, I think it is competent testimony.

Q. You heard the evidence of Mr. Murray on that point?

A. I did, and also as to the judge speaking to him three times.

Mr. DAVIS. Mr. French, don't volunteer any testimony.

Mr. Clough. I will ask you to state if that criminal case had been called before you left the court room?

A. It had not.

Q. I will ask you if any jurors had been called, in this matter before you left the court room?

A. No sir.

Q. Do you remember the evidence of Mr. Murray, that a criminal case was taken up, and disposed of in the forenoon, is that true?

A. It is not.

Q. When was it taken up?

A. It was taken up about three o'clock or half-past three in the afternoon, and a jury impanneled, and one or two witness called, and the case adjourned until the evening session, at which time the case was disposed of.

Q. And it was not before the court in the forenoon at all?

A. No sir; there were two civil cases and at least one disposed of after dinner before the case was called.

Q. I will call your attention as to what Judge Page said to you?

Mr. DAVIS. I object to that; Mr. French as before testified on the stand all that Judge Page said to him, he has gone through with that subject; the proof under the specification was that Judge Page used objectionable language towards him, Mr. French has stated it. Mr. Murry has contradicted it. Now to bring this matter up, is not proper under the ordinary rules of evidence.

Mr. CLOUGH. It seems to me the learned counsel has forgotten the evidence of Mr. Murray. His evidence was not to any conversation that we claim had ever taken place, consequently Mr. French could not have been interrogated about it.

The PRESIDENT. Let the witness answer the question.

A. No such conversation in regard to that jury occurred. Something in regard—

Mr. DAVIS. Wait a moment. Don't volunteer.

Senator NELSON. We have had so many volunteer statements of other witnesses that there is no use in objecting to that, especially on the other side.

The Witness. In justice to myself I think I should like to make a statement.

Mr. CLOUGH. Q. You heard the evidence of Mr. Greenman?

A. I did, yes sir.

Q. Do you remember what case immediately preceded; that is, the title of the case that immediately preceded this criminal case?

A. I do, yes sir.

Q. What case was it?

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A. It was the case that I stated, on my direct examination before I had ever referred to the records or my memorandum—the case of Sargent against the town of Sargent, in which case Mr. Greenman appeared as attorney for the town of Sargent, and tried the case.

Mr. CLOUGH. Now, I offer this in evidence for the purpose of rebutting Mr. Greenman.

Mr. DAVIS. The witness has already testified on that point.

Mr. CLOUGH. If I am compelled upon every occasion to state the pertinency of the particular question, I am willing to do so.

The learned counsel has entirely misapprehended the purposes of this question. The Senate will remember that Mr. Greenman testified very confidently as to what occurred in court; one knows that is a matter of consequence, is the failing of his memory on that question; and if we can show by the records and this evidence, that the facts were different from what Mr. Greenman said they were, that certainly is legitimate evidence as going to attack Mr. Greenman's evidence as regards his recollection. Mr. Greenman testified very confidently as to what was said between Judge Page and Mr. French, but he could not remember immediately before this criminal case was called, that he, himself, tried a civil suit; he could not remember anything about that.

Now, it is a fact, and we propose to show it by Mr. Freach, and by the record, that immediately preceding this criminal case, Mr. Greenman was attorney in a civil case after the jury was impaneled; and it dismissed. If those were the facts; and those have all gone from Mr. Greenman's memory, certainly this evidence which we desire to introduce is proper rebutting testimony.

Mr. DAVIS. I will ask the learned counsel if Mr. Greenman didn't state that he didn't remember?

Mr. CLOUGH. Yes sir.

Mr. DAVIS. Then what is the use of going into this?

Mr. CLOUGH. We have a right to go into this, he stated furthermore that he was not the attorney on that case, or that he tried that case.

Mr. CLOUGH. Now I offer in evidence that record.

Mr. DAVIS. [After examining record.] Go on.

Mr. CLOUGH. I will read this entry [the case of H. M. Sargeant vs. the town of Sargeant having been reached in its order, came on for trial, and the following jury was drawn, but not sworn; jury fee was not paid." Then follows a list of the jurors. Counsel for plaintiff moved for judgment on the pleadings. Motion argued by counsel and submitted, which motion was granted and proceedings of town supervisors reversed, and judgemnt ordered in favor of plaintiff for costs, and jury excused.

We also offer in evidence the entry at the top of page 294, which I will also show to the witness.

Mr. DAVIS. Is not there an intervening entry?

Mr. CLOUGH. Yes, of the jury coming into court with a verdict, also on page 293. "The jury in the case of S. W. Sherman vs. Milwaukee & St. Paul R. R. Co., was brought into court and called; all being present, the foreman presented the following verdict:

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Mr. CLOUGH. Then follows the verdict.

To Mr. Davis: I Don't wan't the verdict; do you?

Mr. DAVIS. No sir.

Mr. CLOUGH. At the top of page 92.

"The State of Minnesota vs. Hans Halverson having been reached in its order on the calendar, came on for trial. The defendant, Hans Halverson, was brought into court by the sheriff, and the following jury drawn by the clerk, and duly sworn." Then follows the names of the jury; then follows the names of the witnesses who were sworn—the interpreter, etc: then, after the entry as stated, after an interpreter was sworn, the following is the entry: "Court here adjourned until 7 P. M., and Hans Halverson was taken in charge by the sheriff."

Then there are further entries to the effect at the evening session:

"At the convening of court at 7 P. M., Hans Halverson was brought into court by the sheriff, and called to the witness stand for cross examination, I Ingmundson acting as interpreter."

"Wm. Woodson was then sworn on the part of the defendant."

"John Manson was then sworn on the part of the defendant."

"The evidence being closed, the counsel went to the jury with arguments in summing up the case."

"The jury was then duly charged by the court, and F. W. Allen sworn as officer of said jury, and jury retired in charge of officer. Court adjourned until March 11th, 1875, 9 A. M."

Senator NELSON. Who were the attorneys in that civil case?

Mr. CLOUGH. I now offer that in evidence; the following is the entry:

"H. N. Sargent vs. The town of Clayton, attorney for plaintiff, E. Wheeler; attorney for defendant, Greenman and Abbey, and under the head of remarks "reversed."

Q. I ask you if Mr. Abbey was a practising attorney?

A. I never knew him to try a case in the district court while I have been there; he summed up a case one evening.

Senator NELSON. Is that Mr. Greenman the same Greenman that testified?

A. That J. N. Greenman—he was also an attorney in the suit in which the jury came in and rendered a verdict; he tried the case with General Cole; it was a case against a railroad company; General Cole represented the railroad company.

Senator WAITE. Was his attention called to that last suit?

Mr. CLOUGH. Not to the Milwaukee and St. Paul Railroad company; it was to the other; I was not aware of that myself, the record does not show he was the attorney.

Senator WAITE. Mr. French states he was attorney.

The Witness. I think the calendar will show it.

Mr. CLOUGH. In the matter of Thomas Riley against the commissioners of Mower county, we would like to have the county records first, to introduce a matter of rebutting evidence; it was here this morning.

Mr. DAVIS. I read from it this morning.

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Mr. CLOUGH. In order to save the time of the Senate, I will offer it at some future time, in order to proceed as fast as possible with the evidence.

Q. I will ask you if you heard Mr. Elder's testimony before Judge Page upon the trial suit of Thomas Riley against the county commissioners of Mower county.

A. Yes sir, I did.

Q. Do you remember what Mr. Elder said on that occasion about the time when the conversation between himself and Judge Page occurred with reference to the court being in session; you recollect what he testified before Judge Page on that point?

A. I think I do, still I would not swear positively with reference to that matter. I understood Mr. Elder to say on the cross-examination, that this remark and this conversation between Judge Page and himself took place—

Mr. DAVIS. Mr. French, I shall object every time that you volunteer any testimony.

Mr. CLOUGH. All the witnesses have testified in the same way on both sides.

The WITNESS. I understood Mr. Elder to state that this conversa- between Judge Page and himself took place either before court opened in the morning, or just after it adjourned at noon, but I won't say which; I may be mistaken in regard to what he said, but that is my recollection of it.

Q. You were present at the January term of 1876?

A. I was.

Q. Were you present as county attorney?

A. I was.

Q. Did you assist in the prosecution in the case of the State of Minnesota against Jaynes?

A. I did.

Q. Were you present there from the commencement of court until the conclusion?

A. Yes sir.

Q. Through the first day?

A. Yes sir.

Q. Did you see Mr. Allen there acting as deputy?

Mr. DAVIS. Wait a moment.

Mr. CLOUGH. That has not been gone into at all.

Mr. DAVIS. Why, yes it has; is not that the time when Mr. Mandeville has claimed to have served? You asked Allen and Mandeville when they both served, and they testified at the commencement of the term?

Mr. CLOUGH. I was not aware of it, I would like to be shown the place.

Mr. DAVIS. It is the journal of May 29th, I think.

Mr. CLOUGH. While they are looking for that, I will ask you another question; if you remember of F. W. Allen being summoned there as a juror?

A. I do, yes sir.

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Q. Do you remember on what day of the term that was?
A. On the second day of the term.
Q. He was called as a juror, was he?
A. He was.
Q. Took the jury box?
A. Yes sir.
Q. Do you remember a challenge being interposed to him?
A. I do.
Q. What became of that challenge?
A. He was excused.

Mr. CLOUGH. I now offer in evidence from the minutes of the January term of court, 1876.

Mr. DAVIS. In regard to Allen being a juror?

Mr. CLOUGH. Yes sir.

Mr. DAVIS. Now it seems to me you cross-examined Mr. Allen on that point and he stated it was so; that he was produced as a juror we do not deny.

Mr. CLOUGH. We wish to fortify it.

The PRESIDENT. I don't think it is necessary to introduce that.

Mr. CLOUGH. I want to fix the date to a certainty.

Mr. DAVIS. Well, we will admit that fact.

Mr. CLOUGH. Do you know anything about the appointment of Mr. Allen at that term as a general deputy?
A. No sir.

Mr. CLOUGH (to Mr. Davis). Have you come across that other matter yet?

Mr. DAVIS. Yes sir, on page 48 of the proceedings of May 29th.

Mr. Davis then read the following: "Q. Just answer my question? (The question was, 'Who else, if any one, was on service?')
"A. Mr. F. W. Allen.
"Q. When did his services commence?
"A. On Wednesday, some time between 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."

Mr. CLOUGH. To the witness. Have you had any conversation with Mandeville as to what occurred, or rather with Mr. Allen as to what occurred between Judge Page and Mr. Mandeville, when Mandeville applied for his pay—for an order for his pay, after the conclusion of the January term, 1877, and who was present at that conversation?
A. W. H. Crandall; my father; that is to say, not the conversation with Mandeville; it was with Allen.
Q. You may relate that conversation; state who was present, where it was and what was said?
A. Mr. Allen was in our office; this was perhaps two months after court adjourned, or four weeks or such a matter. Mr. Mandeville complained to me about this matter, and told me what occurred.

Mr. DAVIS. Never mind what Mandeville told you.
The Witness. Very well. I asked Allen if Judge Page made any such statement to Mandeville. I asked him if Judge Page said to him at

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that time this: "Mandeville, what political dirty work have you done for Hall that he appointed you court deputy; is it because you live in that large house down there, or because you have done some other work for him." I asked Mr. Allen if he made such a remark.

Q. That is, if Judge Page made such a remark?

A. He said that Judge Page said he didn't say "dirty work," that he didn't use that; but that he asked him if it was because he "lived in that big house," or he had done some political work for him.

Q. Whereabouts was that in Austin?

A. In our office.

Q. About when?

A. About four weeks, possible six. It may have been two months after adjournment of court—January term of 1876.

Q. Coming back to the case of Mr. Riley, there has been evidence here as to what occurred between yourself and judge Page, when Mr. Baird's bill came up?

A. Yes sir.

Q. I believe in your examination in chief, you were not inquired of concerning that matter?

A. No sir, not what transpired in Janurary session.

Q. I will ask you to state what occurred at the January session of the court when Baird's bill came up?

Mr. DAVIS. I object, Mr. President, and for this reason, and I will try to state the relation of the testimony upon which Mr. French is expected to bear accurately: Mr. French, if I recollect correctly, on his direct examination, located the controversy that he had with Mr. Page, at a time when the Riley bill was under consideration; he testified that when the Riley bill was under consideration that Judge Page and he exchanged mutual opinion as to each other's corruption, in the presence of the county commissioners, and that they were called to order; and that that was when the Riley bill was under consideration.

It is in connection with the Riley charge and specification. Now, we have produced, to rebut that witness, two witnesses, the county commissioner who testified that that evening which Mr. French has transposed into the Riley transaction, took place before Riley's bill ever had any existence; so far as the county commissioners were concerned, and although a transaction of that kind did occur between the respondent and Mr. French, it was a certain bill in which Mr. Baird was interested, some months before the Riley bill ever came before the attention of the county commissioners. Now, if that testimony is true, this falls. For the purpose of strengthening this case against the respondent, Mr. French has taken the transactions of another time and place not charged aginst this respondent and embodied it in a conversation that took place when the Riley bill was under consideration. Now, it it is attempted by the witness after hearing that testimony to transpose the exidence again and to account for the two conversations. I do not think, may it please the Senate that that is competent.

Mr. CLOUGH. It seems that as plain a proposition as this ought not to be the occasion of any discussion at all.

Mr. French was called upon the stand; he was interrogated, and our other witnesses were interrogated in the same way as to what occurred.

Judge Page was upon the board of county commissioners, and Mr. Thomas Riley's bill was up; the occasion was located by Mr. French

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at the March session of the board of 1875. We have never interrogated Mr. French, or have never interrogated any of our witnesses as to any occurrences that took place before the board prior to that time. The respondent comes in and seeks to overcome the force of our evidence by not showing what took placeat a previous time, upon anoccasion when the bill of Thomas Riley was before the board of county commissioners, and he attempted to make the Senate believe that Mr. French was mistaken in what he says occurred in March, by trying to show that something similar occurred in January before. Now, we never having gone into what occurred in January before, have a right to rebut the evidence in regard to what occurred in the January before, and show that no such thing occurred at that time. By that means, leaving our original testimony to stand in full force.

It seems to me that this evidence is legitimate as rebutting evidence, and is proper.

Mr. DAVIS. That line of argument would let in all evidence of the prosecution under the guise of rebuttal.

The question was submitted to the Senate, and they desided that it be admitted.

Q. You may state what occurred, who were present, &c.?

A. At the January session in regard to Mr. Baird's bill?

Q. Yes.

A. Mr. Baird's bill was handed me by the commissioners to look over and correct, if it needed correction—it was a large bill; I received the bill some time in the forenoon; I examined the bill and corrected it; the corrections are in my own hand that I made; it was handed back to the commissioners—the bill was allowed. Afterwards, at an evening session of the same day, that bill came up. Judge Page was present on that occasion as he has stated, and others have stated, and he checked certain items in regard to stationery; Mr. Baird had purchased some stationery.

Q. Where is that bill?

A. I don't know whether it is here or not, but the items in regard to stationery—some stationery which Mr. Baird had purchased for his office, was checked out, and one or two other items for bringing up a prisoner in court, on the order of the judge; those items were stricken out. I thought at this time they were stricken out properly.

Q. Did you so express yourself?

A. I did yes, sir; Mr. Baird took an appeal; at that time Judge Page had some words with E. M. Morton, the jailor, and certainly Judge Page is mistaken in regard to that.

Q. You had no difficulty in regard to that?

A. I demonstrated beyond a certainty that it was in March instead of January.

Q. Had you any difficulty with Judge Page of any kind before the board of county commissions, prior to March, 1875?

A. No sir, our relations had been only friendly.

Q. Up to that time?

A. Yes sir.

Q. Ever since you had been in Austin?

A. Yes sir.

Q. How long has that been?

A. It was the first time I became acquainted, and from that time our relations were of a very friendly character.

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Q. Do you remember when the preliminary examination in the case of the State of Minnesota against Jaynes occurred?
A. I do, yes sir.
Q. That occurred before Judge Page?
A. It did.
Q. At whose request?
A. It appeared that the examination was held at my request, and at the request of George E. Wilbur, and Chas. Wilber and Mrs. Wilber.
Q. At that time had you any difficulty with Judge Page?
A. No sir.
Q. When did this occur?
A. I went to Judge Page's house on Sunday; it is either the 22d or 23d day of February.
Q. 1875?
A. Yes sir, I have not refreshed my recollection by looking at the records, but it was on that Sunday in February.

Mr. DAVIS. What is the object of that?

Mr. CLOUGH. It is to rebut your evidence.

[Mr. Clough to witness.]
About how long after you waited on Judge Page did the examination actually occur?
Q. The examination occurred Monday morning—the next morning.
Q. How long did it last?
A. It lasted that day.
Q. At this time you say that you had no difficulty whatever?
A. No sir, Judge Page and I were good friends so far as I knew.
Q. Was that Jaynes case before the court at the March term following?
A. Yes sir, it was; it was tried at that term.
Q. I will ask you if the Jaynes case was before the term of court before you and Judge Page had the words in 1875?
A. It was; there was a motion to continue the case.
Q. I will ask you how you remember that?
A. I recollect it from a suit that occurred. Mr. Wheeler made a motion to continue that case, or for a change in venue; he asked it, and when I rose to reply to Mr. Wheeler, Judge Page said to me that he didn't care to hear argument; I didn't know what he meant at first, and he requested me to be seated, but I noticed that he felt riled toward me at that time.

Mr. DAVIS. I object to that testimony; I don't see its competency.

Mr. CLOUGH. I think it is clearly competent.

Mr. DAVIS. What does it contradict in regard to these charges in these specifications?

Mr. CLOUGH. I think I have explained two or three times the whole theory of this testimony.

Mr. DAVIS. Now, may it please the Senate, the question of Judge Page's difficulty with Mr. French is not in issue here; Mr. French is at present under examination as to when the altercation took place between him and the respondent before the board of county commission-

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ers. Now, my friend gets in his explanation of the date and shows that after that Judge Page showed himself unfriendly, and as he was going on to state, proposes to put in a lot of this testimony under the guise of rebuttal in the Wilbur case, which is not in here at all; I don't think it is competent.

Mr. CLOUGH. I hate to be under the difficulty to have it to explain, step by step, the relation which the evidence I offer here bears upon the issue as rebutting evidence; but it seems that I am compelled to do so, and that we are to have an argument.

Now, Judge Page has attempted in his evidence to show that the difficulty between Mr. French and himself occurred in January; I call Mr. French here to show that it did not occur at that time; that it did not occur until a subsequent time; and I ask Mr. French now to state the matters and circumstances which occurred, which enable him to state for a certainty that they did not commence prior to a particular time which we have fixed in our examination in chief. This matter was not gone into in the examination in chief—the occasion and period of time when, according to Judge Page, the relations between the parties had been broken off.

The PRESIDENT. Well, I think I have decided, and the court has decided two or three times that that class of questions may be asked; that they are competent, for the purpose indicated by the counsel.

Q. (To the witness.) I will ask you if the Wilber case was not before the court frequently during the March term, 1875?

A. It was, yes sir.

Mr. CLOUGH. I will offer in evidence certain extracts from the record of the March term of court, 1875, in order to substantiate the evidence of the witness to show that case was up from time to time during that term.

Mr. DAVIS. I will admit it.

Mr. CLOUGH. And a motion for a continuance was made, as the witness states. I have no doubt that the counsel would take my statement.

Mr. DAVIS. Certainly.

Mr. CLOUGH. On the first day of March, of the term 1875, the defendant came into court, and he interposed a challenge to certain grand jurors, and those challenges were argued from day to day for two or three days; then in a short time after that, within a day or two afterwards, the grand jury found an indictment after it had been impannelled, and the defendant was arraigned in court, and took twenty-four hours to plead; then he plead; then about the same time that day or the next he made a motion to continue the case, so that it appears—

Mr. DAVIS. Was it denied or granted?

Mr. CLOUGH. It was denied, as I recollect.

[To the witness.]

Is that correct? the motion in the Jaynes case was denied, was it?

A. It was denied.

Mr. CLOUGH. And it finally went to trial after taking four days for trial?

Mr. DAVIS. It is admitted that the record show those facts.

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Q. The Baird bill, which was up before the board of county commissioners in January, 1875, became the subject of a suit between Mr. Baird and the county, didn't it?

A. It was pending at the March term of court, 1875; it was on the calendar at that time for trial.

Q. You answered that the bill was up in June?

A. Yes, I testified on my cross-examination before.

Mr. DAVIS. Is there a quorum present?

The PRESIDENT. The clerk will call the roll and ascertain.

The SECRETARY. There are twenty members present.

The PRESIDENT. There is not a quorum present answering to their names.

Mr. DORAN. I move a call of the Senate.

The PRESIDENT. The Sergeant-at-Arms will report the absentees.

Mr. DAVIS. I withdraw my inquiry if it will be of any service.

On motion, the Senate adjourned.

Attest:

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

TWENTY-EIGHTH DAY.

ST. PAUL, MONDAY, JUNE 17, 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, Clement, Deuel, Donnelly, Edwards, Finseth, Gilfillan John B., Goodrich, Hall, Henry, Hersey, Lienau, McClure, McHench, Morrison, Nelson, Page, Remore, Rice, Shaleen, Swanstrom, 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. J. P. West and Hon. Henry Hinds, 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.

LAYFAYETTE FRENCH.

A witness in rebuttal on behalf of the prosecution, resumed the stand:

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Mr. CLOUGH. I hand a paper to the witness which has been introduced in evidence on the part of cross examination of Mr. Felch, I think it was, and I ask the witness if that bill was presented by Thomas Riley at the June session of the board of county commissioners of Mower county, in the year 1875.

Q. Examine it and see if you remember?

The Witness. [After examining paper.] Yes sir, it was.

The witness is shown the other bill which was introduced in the same way, and asked if that was the bill which was presented at the January session of the board in 1876.

The witness. [After examining paper.] It is.

Q. I will will ask you now as to the proceedings against Mr. Stimson for contempt, and as to whether you saw Mr. Stephens present while you were there; do you remember Mr. Stimson the witness who was sworn?

A. I do not.

Q. Mr. LOVELL? Did you see him present?

A. When I was recalled in the afternoon, I saw Mr. Lovell coming down out of the office just as I was going across the public square.

Q. The same gentleman that was on the witness stand here?

A. Yes; that was in the afternoon when he was called the second time.

Q. About what time in the afternoon was that?

A. I should judge it was five or half-past five.

Q. Was Lyman Baird present in that room at any time when you were there?

A. No sir.

Mr. CLOUGH. That is all I think of this witness at the present; we may possibly desire to recall him.

CROSS-EXAMINATION.

By Judge PAGE. Q. Mr. French, were you present at the meeting of the board of county commissioners in March, 1875?

A. I was.

Q. All of the time?

A. No sir.

Q. What portion of the time were you present?

A. I was before the board in the morning sometime, and in the evening.

Q. How long was the board in session at that time?

A. Three days I think

Q. What day did the board commence on?

A. On the day the court convened.

Q. What day of the month was that?

A. March 2nd.

Q. What day did the board adjourn?

A. If they were in session three days, it would be March 5th; it was either March 5th or March 6th.

Q. Was a bill of George Baird referred to in the testimony under consideration at that term, that session?

A. I think it was talked over incidentally with myself and one or two of the commissioners.

Q. You have examined the records?

A. Yes sir, it was not before the board for their action at all.

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Q. Was it acted on at that term?
A. No sir.
Q. Was there any record of any proceedings of the board of county commissioners with reference to the bill of George Baird?
A. At that session; no sir.
Q. It was not under consideration at that time?
A No sir.
Q. It was not under consideration at all?
A. No sir, except as I have stated.
Q. Was the bill of Thomas Riley's under consideration for serving subpœnas?
A. It was.
Q. Do you know where that bill is now?
A. I don't; I have mislaid it somewhere.
Q. Did you have it in your possession?
A. I did.
Q. At what time?
A. About six weeks ago,
Q. What did you do with it?
A. I put it among my papers for the purpose of bringing it here, because there was some dispute with reference to that matter last winter.
Q. Have you made search for it?
A. I have. I can't find it.
Q. How did it come into your possession?
A. I took it from Mr. Allen, the auditor's clerk or deputy.
Q. Do you know how it came into his possession?
A. It was there with other bills.
Q. Was there any record proceedings of the board of county commissioners in the March term of 1875, with reference to the bill of Thomas Riley for serving subpœnas?
A. There is the same as there is in the June session.
Q. What was the amount of that bill?
A. In the neighborhood of $40.
Q. Forty-three dollars and some cents?
A. It was not quite as large as that.
Q. Would you be able to identify it by the amount in the bill? If it was not forty-three dollars and some cents, what amount was it?
A. It was in the neighborhood of forty dollars.
Q. Over or under?
A. I think it was over.
Q. You are confident that there is an entry in the records of the presentation of a bill of that character?
A. No, I don't think there is.
Q. Will you examine the records and see?
A. There is a record here of a bill—
Q. I don't ask you as to any other bill?
A. In order for me to explain and give an explanation, the record is not true; it shows another bill the same as it does in June.

Mr. CLOUGH. I will ask you fully on that hereafter.
The witness. There is no record here showing that there is a bill by Thomas Riley presented for those services.
Judge PAGE. Q. That is all; I simply wish to ascertain, when you state that there was a record, what do you mean?
A. I mean the same as I said; there was a record in June.

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Q. Same kind of a bill?
A. Yes sir; for certain services on those bills—
Q. Never mind; read the record, if you have it there in your possession?
A. The proceedings to that part of the bill to which I now refer, on page 219—I would not state positively that this is the bill.
Q. Never mind; read the record you refer to.
A. "Thomas Riley, deputy sheriff, fees $20.75."
Q. That is the record you refer to as a record of that bill?
A. Not of that particular bill, but that was the record of a bill which was attached to this bill.
Q. Do I understand you to state that this record is not correct?
A. You understand me to say that this record don't show that this bill for serving subpœnas in the Benson and Biesicker cases was presented here, but it shows the bill that was presented in connection.
Q. I wish to know if there was any record of that bill?
A. No sir.
Q. What was the amount of that bill; can you state from your recollection?
A. I cannot; it is in the neighborhood ot 40 dollars.
Q. Was that bill allowed at that session?
A. It was not.
Q. Was that the session of the board of county commissioners at which you and the respondent in this case, had some controversy?
A. It is.
Q. If it was, was it while the Riley bill, so called, was under consideration?
A. It was while the Riley bill—
Q. Answer my question.
A. I don't know what you mean by the word "consideration."
Q. While it was being considered by the board of county commissioners?
A. Yes, while it was being discussed.
Q. You gave testimony before the House judiciary committee, last winter?
A. I did.
Q. Did you not state before the committee that the controversy referred to, was at the time the Baird bill was under consideration?
A. At the time the Baird bill—?
Q. Yes sir.
A No sir, I don't think that I did.
Q. Do you state now that you didn't testify before the House judiciary committee last winter, that the time of this controversy was the time when the bill of George Baird was under consideration, by the county commissioners?
A. I want to understand you; do you mean, did I testify before the judiciary committee that at that time—
Q. I will put the question so that you will not misunderstand it: Do you state now, that you did not testify before the House judiciary committee, last winter, that the controversy between the respondent and yourself, in this case, and which has been referred to in the testimony in this case, occurred when the Baird bill, so called, was under consideration by the board of county commissioners?
A. I didn't so testify; I testified—

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Q. Never mind. Did you not testify that that was in January—that occurrence—controversy was in January, 1875?

A. Not in that language, no sir.

Q. Did you not testify that it was in January or March, 1875?

A. Not in that language; I can tell you what I did testify to.

Q. Did you not testify that at that time, the time of the occurrence, that Mr. Baird prepared a bill for services and it was under consideration by the board of county commissioners?

A. Not the language that you state; I will tell you just what I did testify.

Q. Did you not fix by your testimony at that time, before the House judiciary committee, the time of this controversy between yourself and the respondent as the time when the bill of Geo. Baird was under consideration by the board of county commissioners?

A. I did, yes sir.

Q. Have you examined the records with reference to the other bills which have been presented to you in your direct examination. I [to Mr. Clough] would like to see those bills, if you have them handy.

The witness. I have examined the records.

Q. Is there any action of the board of county commissioners with reference to this bill or either of them?

A. There is.

Q. It is customary for a record to be kept of the action of the board of county commissioners with reference to bills of this character, is it not?

A. It is, yes sir.

Q. You stated, as I understood you, that Mr. Greenman was the attorney in the case of Sargeant against the town of Sargeant, which case was tried at the term of court which you refer to, when Mr. Greenman was appointed to attend to a certain case which has been referred to in the testimony?

A. I did so testify.

Q. Were you present at that term of court constantly on that day—I will not fix it—when that case was tried; were you present in court?

A. I was present in court.

Q. What term of court was that?

A. Not during the whole term; March term, 1875.

Q. On which day of the term was that case tried?

A. March 8th or 9th, I should say; I cannot fix the exact day, but it is not far from the 8th of March.

Q. Were you present in court when the trial took place?

A. No sir; there was no trial about it.

Q. Were you present in court when the matter was brought up—the case came up for consideration?

A. Yes sir, I was.

Q. Do you state that Mr. Greenman acted as attorney in that case?

A. I do so, yes sir.

Q. At that time?

A. I do, yes sir.

Q. What did Mr. Greenman do?

A. Mr. Greenman assisted in impanneling a jury, and a motion was made by Mr. Wheeler to dismiss the case, and they were arguing that motion.

Q. Do you state that Mr. Greenman argued the motion?

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A. I don't know; Mr. Wheeler was—
Q. What did Mr. Greenman do?
A. I left the court room about that time.
Q. Then you don't know what Mr. Greenman did?
A. I know that he appeared and he assisted in impannelling the jury.
Q What did he say?
A. Not anything, any more than—
Q. What did he say; what act of his did he do?
A. He appeared.
Q. What did he say when he appeared; what do you mean?
A. I mean that when the case was called, that he and Mr. Wheeler went on and impannelled the jury.
Q. Did he answer in the case?
A. I don't recollect.
Q. Did he say anything in the case?
A. I knew that he appeared and took part in the case.
Q. I am asking you what he stated—he was present in body, but I ask you what he said, if anything?
A. I wasn't there to hear all that he said.
Q. What did he do, if anything, in that case?
A. Why, I have just stated to you he assisted in impannelling the ury.
Q. What specific act did he do?
A. Why, I cannot tell you.
Q. Oh! that is, you don't know. You stated that you was not present when Mr. Stimson was present—the hearing of Mr. Stimson's case.
A. No sir.
Q. You didn't see Mr. Stimson at all?
A. No sir.
Q. Did you see Lyman Baird there.
A. I did not.
Q. He wasn't present when you was there?
A. No sir.
Q. You say that you saw Mr. Lovell there?
A. Not in the court room; I saw him coming out of the office, or at least, I supposed so; he was at the head of the stairs.
Q. What time of the day was that?
A. Along in the afternoon, I suppose about 5 o'clock.
Q. Did you give testimony after that?
A. I did, yes sir.
Q. (Handing a paper to the witness.) I present an affidavit which purports to have been signed by Thomas Riley; is not that in your handwriting?
A. It is, yes sir.
Q. Did you write it?
A. Yes sir.
Q. Did you compose it—the affidavit?
A. He gave me the facts and I wrote them as he gave them to me.
Q. Was he present when this was written?
A. I don't think he was.
Q. How did he give you the facts; did he give an oral statement previous to this time, you embodied it in this affidavit?
A. He did, yes sir.

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Q. And you embodied the fact in accordance with the statement which he gave you?
A. I did, yes sir.
Q. This affidavit purports to narrate what occurred before the county commissioners of Mower county at the time Mr. Riley's bill was under consideration, and at the time when you state that the respondent appeared before the board at the second time, and some conversation occurred? Does it not—the affidavit?
A. I don't recollect; I will read it over.
Q. You don't recollect as to that?
A. No sir.
Q. I will ask you now; I understood you to state in your direct examination; I will ask you if Mr. Riley was present on that occasion before the board of county commissioners?
A. In March.
Q. At the time I referred to, that is the second time that you have testified to when Mr. Kinsman, and Mr. Hall, and Mr. Felch, and Mr. Richards, and Mr. Grant, and Mr. French, as you have stated, were present?
A. Yes sir, Riley was there before dinner.
Q. Was he there when the respondent was there?
A. I don't know, I don't remember.
Q. Did you not state on your direct examination that he was not there?
A. I stated that he wern't there when you was there.
Q. That was what I asked you.
A. Yes sir.
Q. What do you state now?
A. I don't think he was when you were there.
Q. At the time you drew this affidavit you knew it was not true, did you not?
A. No sir.
Q. Didn't you know it as well as you know it now?
A. Not particularly, I have refreshed my recollection.
Q. This purports to have been made on the 8th of August, 1877, and sworn to before Mr. Crandall, a notary public, were you not as cognizant of the facts then as you are now?
A. Yes sir, I presume I was; that is not my affidavit though.
Q. But you wrote it—made it up from a statement of Thomas Riley?
A. Certainly, but he gave me the facts.
Q. But you knew the facts were not true when you wrote it out; that is you knew Mr. Riley was not before the board of county commissioners?
A. No sir, I did not know it; if Mr. Riley should state now that he was there, I could not state that he was not; I cannot swear positively.
Q. I have understood you to state, Mr. French, that you have taken no special interest in these proceedings?
A. I have not so stated.
Q. Do you state that you have taken special interest in these proceedings?
A. Yes sir, I have.
Q. Are you an attorney in this case?
A. I am not.
Q. Have you been employed as an attorney?

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A. No sir.
Q. Not at all?
A. No sir.
Q. You have not been employed as counsel?
A. No sir.
Q. And you have not been employed at all?
A. No sir.
Q. What you have done you have done voluntarily?
A. Yes sir.
Q. Your interest in the matter is to such an extent that you volunteered a good deal of time?
A. Yes sir.
Q. You appear here in place of the managers, and propound questions as an attorney voluntarily?
A. I appear here to assist them to get at the facts.
Q. At whose request?
A. At my own request.
Q. You requested of the managers to appear here, and take part in these proceedings?
A. Yes, and at the request of Mr. Clough.
Q. That is the capacity in which you are here?
A. Yes sir, Mr. Clough has spoken to me.
Mr. CLOUGH. With reference to the Thomas Riley bill being presented before the board of 1876; do you now desire to make an explanation?
A. I desire to state what I testified to before the judiciary committee.
Q. Then answer that question?
A. I cannot answer it better than by making my explanation.
Q. Then make your explanation?
A. Before the judiciary committee there were two matters under consideration; Mr. Baird's bill, and Mr. Riley's bill. In giving my evidence in regard to the respondent appearing before the board, and objecting to both of these bills, I spoke of objecting at one time, but stated that it was either in January or March—I should say it was in January; were it not for one fact, that court was in session, and that I knew the court was not in session in January, 1875. That is the evidence that I gave before the judiciary committee.
Q. I am calling your attention to another time, that is, in January 1876?
A. Mr. Riley was there—he was there before the board; but I don't think he was there when Judge Page was there.
Q. Do you pretend that your recollection is positive on that point either one way or the other?
A. No sir, I do not; I am simply stating what I think; I would not swear that any man was there except as I stated.
Q. Have you any recollection what time in the day it was when the Baird bill came before the board, and Judge Page was present; was it in the day time, or evening?
A. In the evening.
Q. Have you any recollection of what persons were present then?
A. I cannot state all of them; I recollect some being there; I recollect Judge Page being there, and a Mr. Grant, Johnson French, Judg

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Felch, and Mr. Richards, R. O. Hall, Mr. Martin, and I recollect Mr. Riley being there.

Q. While Judge Page was present?

A. Yes sir.

Q. There might have been others that you don't remember?

A. Yes sir.

Q. I understood you to say that, when the Riley bill came up, in March, 1875, or at all events, at the March 1875 session of the board, and in that session of the court, that the Baird bill was before the district court?

A. It was pending in court, but that bill was talked of by the commissioners and myself; that is, there were certain portions of the bill, that had to be stricken out, and that the county would allow, and they did allow him about one-half that he sued; but I don't think that this bill was before the board at that session, at all.

Q. Then his bill was not entirely disputed in the county, only certain items?

A. Yes sir.

Q. And other items were always admitted by the county as just obligations against the county?

A. Yes sir.

Q. Now you are about to make an explanation, as I understand in reference to this bill of Thomas Riley, that was presented in March. You may make that explanation now.

A. I will explain to the Senate how that is. Mr. Clough will you be kind enough to let me see the number of that bill?

[The witness examines a paper handed to nim by Mr. Clough and also a book which he had in his possession.]

The witness. Now, the explanation I desire to make is this about the record that is signed. On page 230, at the June session the record reads like this:

"On motion, the following bills were allowed: Thomas Riley, deputy sheriff's fees, $30.18."

Now, that bill is a bill of some sixty and odd dollars, but all that portion with reference to serving those subpœnas in the Benson case is stricken out here; you see is checked off and the balance of the bill allowed, as though it was one bill.

Q. Nothing said about the disallowance of the balance?

A. That is where the record is imperfect, and it is so with the record in March, but in January that bill is presented separate, it is not presented with any other bill, the record is with reference to this one bill, and the record so shows; I will show the Senators how it is.

Q. Yes turn to the record and read tho extract.

A. Now, on page 256, at the January session, January 7th, 1876, "The bill of Thomas Riley for deputy sheriff fees, $35.30, in summoning witnesses in the case of the State against Benson, for riotous and disorderly conduct, was, on motion, laid over for the present;" "on motion" on page 257, "the bill of Thomas Riley for deputy sheriff fees, for State against Benson, which was laid over on the forenoon was rejected." That record is perfect, because that is the only bill but where it was presented at the other times, it was presented in connection with other bills, and the record simply shows that so much was disallowed.

Q. State whether in March, 1875, this bill, for serving subpœnas came in alone, or in connection with any other bill?

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A. In connection with another bill, and the bill is torn off from another bill; I have shown it to C. C. Kinsman, and, I think, to Mr. Riley.

Q. You say you got it of the deputy auditor?

A. I did, of Mr. Allen.

Q. For the purpose of presenting it here?

A. I did, yes sir; there was some dispute last winter about it.

Q. Is there any other explanation which you wish to make?

A. There is not anything, except my testimony before the judiciary committee.

Q. You have mentioned that.

A. Yes sir; I didn't state there that the bill didn't come up in January; that it was either in January or March. I should think it was in January, were it not that the court was not in session.

Q. Have you ever examined the record?

A. I did not then; I afterwards went home and came back and then stated it.

Judge Page. Was not a term of court held in January, 1876, and were not the commissioners in session in January, 1876, at the same time?

A. No sir; I think not.

Q. At what day of the session of the court in 1875, was the Riley bill presented?

A. 1875?

Q. Yes sir?

A. I think it was on the fourth day.

Q. Who made up that bill, and in whose hand writing was it?

A. In Allen Giffin's hand writing, sworn before John Brophy, notary public.

Q. How do you account for the fact that there is no record of the bill—and no bill?

A. The same as I would if there were no record of the bill in June, were it not that we had the bill, that is, in connection with another bill. The June allowance of the bill, and don't see that any other portion of it is rejected; just the same as it does in June, 1875.

Q. You are aware that the bill hadn't accrued?

A. I was aware that the subpœnas were served on the 7th day of March.

Q. You state that the bill was presented?

A. I stated that the bill was presented for the services.

Q. Can you state that the bill was not presented at the first day of the session?

A. I don't think it was.

Q. Why do you know—what enables you to recollect that it was presented on the third day of the term?

A. From a circumstance that I have given here and other circumstances.

Q. Do you state that it was not on the fourth day?

A. No sir, I do not.

Q. You have no distinct recollection as to when it was presented?

A. I know it was stated—

Q. Answer the question.

A. I have this recollection—

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Q. Have you any distinct recollection as to the definite time it was presented? answer the question.

A. I have this recollection—

Q. Answer the question whether you have any distinct recollection as to the time, not the hour or day; are you willing to testify as to the day?

A. I am not, in regard to the day.

Q. You may explain again.

A. I am willing to testify that it was either the 4th or 5th, and how I know that is from the circumstance that I thought the next morning —I never have examined the records with reference to that matter, but you can very easily tell, if you will look and see, when the motion for a continuance of the State against Jaynes was made; it was the day before.

Q. Did he insist upon the bill which was presented in March, or did he withdraw it?

A. The bill was torn off; my recollection now is that this bill of Riley's was torn off from the other, and the other bill was presented and then given to the auditor because it was shown; it was torn off of some other bill when I found it; there was the filing on the back of it.

Q. To show that it was before the board?

A. Yes sir.

P. T. M'INTYRE RECALLED,

In rebuttal on behalf of the prosecution, testified:

Mr. Manager CAMPBELL. I wish to present here a paper that I should have presented long ago, but I had mislaid it; I have shown it to Gov. Davis, and he is satisfied to let it go in; it comes in with Mr. Hall's testimony, I think, in regard to the surrender by Mr. Stimson of his bail.

Mr. CLOUGH With the permission of the Senate I will withdraw Mr. McIntyre and put Mr. Hillman on the stand.

GEROGE N. HLLMAN, SWORN,

And examined in rebuttal on behalf of the prosecution, testified.

Mr. Manager CAMPBELL. Before Mr. Hillman testifies let the clerk read the paper I have offered.

The Secretary of the Senate read the paper as follows:

"District Court, Mower County, State of Minnesota, Tenth Judicia- District. The State of Minnesota against D. S. B. Mollison. To R. O. Hall, Sheriff of the said Mower County: Please take notice that we, the undersigned bail of the said D. S. B. Mollison, defendant in said action, hereby surrender him, the said Mollison, into your custody as sheriff of said county, and keeper of the common jail therein, and we hereby refuse to be longer bail for his appearance at any term of court in said county.

Dated Sept. 19th, 1877.

IRA JONES,
GEORGE SUTTON,
J. B. YATES."

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Mr. CLOUGH: [To the Witness.] Q. You may state whether you attended the sessions of the judiciary committee of the House of Representatives of this State, last winter, as stenographer at the time it inquired into the matter of this impeachment?

A. I did.

Q. I will ask you if you took in short hand, at that time, the evidence of Mr. H. E. Tanner, county commissioner of Mower county?

A. I did.

Q. I will ask if you have that evidence you then took in your possession, with you?

A. I have.

Q. I will ask you to read the evidence which he then gave, relating to the Riley bill, and as to the time when it was presented before the board?

Mr. DAVIS. Is there a foundation laid in regard to that?

Mr. CLOUGH. Yes sir, I interrogated Mr. Tanner in his evidence as to that, unfortunately, Mr. Tanner's evidence is not printed, and I cannot point to the exact point, or I would do so.

[To the witness.] The part of the evidence in relation to the Riley's bill, or anything that pertains to Mr. Riley's bill, I will ask you to read.

The witness read as follows:

"HIRAM E. TANNER SWORN,

"And examined on behalf of respondent, testified:

"Q. Were you one of the members of the board of county commissioners in January, 1875?

"A. Yes sir.

"Q. Do you remember of being present as a member of the board at that session in January, 1875?

"A. I do.

"Q. Who was present besides yourself?

"A. All of the members of the board.

"Q. Who were they?

"A. Mr. Felch, Mr. French, myself, Mr. Richards and Mr. Grant.

"Q. State whether or not the Riley bill or Baird bill were up for consideration before the board, at that session?

"A. The Baird bill was; I don't think the Riley bill was.

"Q. You may state what transpired with reference to the Baird bill?"

Mr. CLOUGH. I don't care what he said in reference to the Baird bill; I want to know about the Riley bill.

Mr. DAVIS. We object to the counsel cutting off the stenographer.

Mr. CLOUGH. I didn't suppose you wanted it. (To the witness.) Go on.

The witness (continuing.) "A. We had taken objections to the Baird bill. The commissioners had themselves, and Mr. French, as county attorney, had checked off considerably many items, reducing the bill down—well, I could not tell you the number of dollars exactly, but considerable, somewhere between fifty and seventy dollars. We had passed the bill, I think, in the fore part of the day, and Mr. Grant, I think,—we were not satisfied with the bill altogether among ourselves,

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and I think Mr. Grant said: 'I will go and see Judge Page if he will tell us anything about the bill.' 'Mr. Grant,' said he, 'I will go privately and ask him about the bill anyhow.' So he went and asked Judge Page about it—I don't know whether he did or not; I merely know what he said. Mr. Page came then in the evening—that same day, I think; it was after we had been in session some time in the evening.

"Mr. French was there amongst the rest of us. Mr. Williams was there, I think, and acting as our clerk, and there was something said. I don't know who introduced the matter of this bill of Baird's. I don't know how the Judge's attention was called to it, but I am quite sure that Mr. Williams was requested to read the bill over, and he did so; and as he read over certain items, says: 'I don't think that would be a legal charge against the county,' etc., etc. And as he read over, the clerk—or chairman, I could not say positively which—checked these items, and the next day we reconsidered the matter and struck these items out.

"Q. When Judge Page came there what did he say about his speaking as a citizen or tax payer?

"A. When the question was broached to him or first mentioned, he says: 'Gentlemen, I don't come before this board as an officer at all;' he says: 'As an officer I have nothing to do with your proceedings, one way or the other, under the circumstances. I merely come as a tax-payer and as a citizen. I can't give you any advice or counsel in any other shape or respect in regard to that matter.' Well there were some words there between him and Mr. French; his telling that such and such charges that was in the Baird bill was not legal, brought on a controversy between himself and the attorney, Mr. French.

"Q. Did Mr. French tell him that he was corrupt?

"A. He did in the course of that conversation.

"Q. Well, when this statement was made to the judge, was it understood that the board was in session, or was it a sort of a recess?

"A. Well, Judge Page didn't consider that they were in session, because he apologized to the board afterwards, and said that he didn't know that they were in session. I don't know what evidence he could have to show that they were, because in fact we were doing no business, and eating apples and talking around the room.

"Q. How did his attention become called to the fact that the board was in session?

"A. The chairman called them to order; called French and Mr. Page to order; not the board.

"Q. So all this talk of Judge Page's about the bill was previous to that time, was it?

"A. He didn't say anything at all about the bill after this; he left in a few minutes after that because he said he had been trespassing on our time.

"Q. Didn't he tell Mr. French that he hadn't any manners?

"A. I think Mr. French told him before that, that he was corrupt, and he told Mr. French—I think he said he hoped to see the day that Mr. French would regret what he had said—would learn that he had never been called by any body else corrupt before, and he hoped Mr. French would be convinced that he was not corrupt or didn't mean to act so. I think that Mr. French called him corrupt before he made this remark about manners

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"Q. Now, go on, until the fall session of the board or after the March term of court, when the Riley bill came up; were you there at that time?

"A. Yes sir."

Mr. DAVIS. That is all we care for.

Mr. CLOUGH. We havn't got what I asked him about.

Mr. DAVIS. Well Mr. Hillman, commence on that topic again; you were interrupted, and I want to know what it was.

The witness continues reading from the report.

"Q. Now, go on until the fall session of the board or after the March term of court; when the Riley bill came up, were you there at that time?

"A. Yes sir.

"Q. You may state what you know with reference to that matter?

"A. The Riley bill was something we had passed upon again, and that we had taken Mr. French's advice on it; I think this was in September or August; Mr. Page was in the room and talked about that bill too; but I don't know by what means Judge Page come there.

"Q. Did he make any remark before he expressed his opinion about the capacity in which he came there—whether he came there as an officer or as a tax-payer?

"A. Mr. Page was before the board a number of times—I was a member of that board a little over five years; at the time Judge Page was before the board, and talked about various things a number of times; I don't remember that it was more than three or four times; that was before he was appointed judge; before he was elected judge he was before the board frequently; after he was elected I don't remember that he was before the board to say anything in regard to bills more than three or four times at the most, and invariably he said to us that he didn't come as an officer; but merely as a tax-payer and a citizen; when he remonstrated against anything that was done by the commissioners, it was always in that way; that he said I think at the time of the Riley bill.

"Q. What was there about than Riley bill?

"A. I could not explain to you the whole matter, but there was a bill for subpœnaing witnesses brought by Riley, presented to the board, for subpœnaing a good many witnesses. Mr. French said we ought to allow him something.

"Q. Which French?

"A. Lafayette French, the county attorney at that time—because, he said, Mr Riley took the subpœnas in good faith, and he was an officer and should not suffer for what others had done; that we should allow him $3 a day for what he had done; I think they called it three days that he had been out serving subpœnas; we did pass the bill to that effect."

The witness. I think that is all concerning that particular point.

Mr. CLOUGH. Is that all there is of it?

A. Yes sir.

Mr. DAVIS. Mr. Clough, will you allow us to make him our witness as bearing upon the cross-examination of Mr. French, as to what Mr. French stated occurred before the board at the time of the difficulty be-

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tween himself and Judge Page. This is for the purpose of saving time.

Mr. CLOUGH. We have no objection to that at all; we have no objection to your calling him whenever you want to.

Mr. DAVIS. Er. Hillman, we will make you our witness, and the stenographer will note the fact; you turn to your minutes and find when the controversy was between Mr. French and Judge Page, whether in reference to the Baird bill or anything else.

The witness. I have it.

Mr. DAVIS. Go on.

[The witness, reading.]

"Q. Now, I will ask you if you were present as county attorney before the board of county commissioners, upon an occasion when Sheriff Baird and Thomas Rily presented certain bills before the county commissioners?

"A. I was.

"Q. Do you remember about when that was?

"A. I was present when Sheriff Baird presented a bill, I think it was at the January session of the board of commissioners in 1875; it was either January or March, that year; Mr. Baird presented a bill for services as sheriff; I don't remember the different items; Mr. Riley presented a bill as deputy sheriff for serving subpœnas in the case of the State against Beisicker and Bensen and Walsh—the riot cases—serving subpœnas on behalf of the defendants.

"Q. You may state, perhaps you did state, if you were present as county attorney, advising the board of county commissioners?

"A. I was.

"Q. Do you know whether Judge Page appeared before the board of county commissioners in connection with those bills?

"A. He did.

"Q. Now, you may state what took place in reference to those bills—state as near as you can remember, what was said by Judge Page and by yourself and by the county commissioners in reference to those bills on that occasion.

"A. I don't recollect all that was said, what I remember was this; that Judge Page came before the board, and after looking at Baird's bill stated that there was certain items there in the bill that were illegal; that is, that the county commissioners oughtn't to allow them, and wasn't a proper charge, and claimed that all of Mr. Riley's bill was illegal; he gave his reasons at the time to the board why they should disallow the bill of Mr. Baird's, and also the bill of Mr. Riley's. Mr. Baird's bill was disallowed in part; Mr. Riley's in full for the whole of it.

"Q. That is at that sitting of the board?

"A. Yes; I was of the opinion at that time that the bill of Mr. Riley's should be allowed, and Mr. Page insisted that it should not be allowed, that it was illegal, and he made the remark that Mr. Riley had acted corruptly in the matter, and either said in so many words, or insinuated that, by my advising the board to allow the bill that I acted corruptly in regard to the matter; at that time he was very angry, apparently, and made me angry when he said that, and we had a quarrel there in the auditor's office; I don't suppose that would be interesting or very important."

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Mr. CLOUGH. There is a good deal more on that subject, as Mr. French was re-called.

The Witness. I told you in answer to your first question that that was all there was of Mr. Tanner's testimony upon the point to which your inquiry was directed. I see on the cross-examination that there is something more that might tend to corroborate his testimony in that particular.

Mr. CLOUGH. There was more in the cross-examination?

A. Yes sir, on the same point.

[The witness here resumed his testimony for the prosecution, and read from the cross-examination of Mr. Tanner.]

" Q. Do you remember distinctly what month it was when the Riley bill first came up? was it not in March, 1875?

"A. I don't think it was; I am quite positive that it was not.

"Q. How many times did theRiley bill come before the board before it was finally disposed of?

"A. I have no recollection of its coming up but once at this one session.

"Q. And it was not up after, that you remember?

"A. No sir."

Mr. CLOUGH. That is all.

Mr. CLOUGH. I offer in evidence the record of the board of county commissioners in connection with the testimony before the judiciary committee, of Mr. Tanner—page 251 of the Record of the Board of County Commissioners—to show that Tanner, in January, 1876, was not a member of the board of county commissioners.

Mr. DAVIS. Is it pretended he was?

Mr. CLOUGH. I don't remember how that is.

Mr. DAVIS. Put it in, Mr. Clough, there is no objection.

Mr. Clough. [Reading.]

"Austin, Mower County, Minnesota, Tuesday, January 4th, A. D. 1876, two o'clock P. M.

"Pursuant to law, the board of county commissioners met in petit jury room, in this city, on Tuesday, January 4th, 1876, the full board being present; consisting of Messrs. C. J. Felch, Wm. Richards, James Grant, A. J. French and F. W. Kimball."

Mr. DAVIS. I wan't to offer page 248, of the October session of that year, to show that Mr. Tanner was a member in 1875.

Mr. CLOUGH. Oh, certainly we admit that.

Mr. DAVIS. It is admitted that Mr. Tanner went out of office December 3d, 1875.

Mr. CLOUGH. Yes sir, Dec. 3d, 1875. I would like to ask Mr. French one question. Mr. French when the bill of Thomas Riley was up before the board of county commissioners in June, 1875; Judge Page was not present, was he, while that bill was under consideration?

A. No.

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P. T. M'INTYRE RECALLED,

On behalf of the prosecution in rebuttal, testified:

Mr. CLOUGH. You testified that you were county auditor, of the county of Mower?

A. I am at present, sir.

Q. Have been for some time.

A. Have been since the first day of March, 1875.

Q. I will ask you if that bill [handing witness paper, dated June, '75,] has been in your possession, as county auditor, and if so, since when?

A. I think it was sometime in 1876, this bill was first filed with me.

Q. Do you remember who handed it to you? I will ask you to look at this bill?

[Witness looks at bill.]

A. That was filed in our office June, 1875.

Q. The other was filed in January, 1876?

A. Yes sir.

Q. I will ask you if these have been in your possession as county auditor, until recently?

A. Yes sir.

Q. Until this trial commenced?

A. Yes sir.

Q. You handed them over to me for the purpose of introducing them in evidence?

A. Yes.

CROSS-EXAMINATION.

Mr. DAVIS. You offer this, don't you, Mr. Clough?

Mr. CLOUGH. They were offered several days ago, but they were not identified before, they were offered as a part of the cross examination of the witness; your witness.

Mr. DAVIS. [To the witness.] Do you produce those bills as being in your possession, or have they been out of your possession?

A. No sir, they have been in my possession until I produced them here in court.

THOMAS RILEY RECALLED,

On behalf of the prosecution in rebuttal, testified:

Mr. CLOUGH. I call Mr. Riley for the purpose of correcting what appears to be an error in printing or otherwise, appearing in the journal of May 28th, 1878, on page 47, at the bottom of the page.

Q. When did you first present your bill to the board of county commissioners of Mower county, for serving subpænas in the cases of the State of Minnesota against Benson and others?

A. In March, 1875.

Q. You also presented one in June, 1875?

A. I did.

Q. And one of January, 1876?

A. Yes sir.

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CROSS-EXAMINATION.

Mr. DAVIS. Q. Mr. Riley, I call your attention to the following questions and answers, on page 47, of the printed record of May 28th, when you were a witness:

"Q. Do you remember what your fees were?
"A. Yes sir.
"Q. State.
"A. $43.60.
"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. Is that correct or not?
A. March is the first time I presented it.
Q. Is that answer correct or not?
A. I think not.
[Reading from journal.]
"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 in the same year.
"Q. 1875?
"A. I think it was."
Q. Is that correct?
A. Yes sir.
[Hands witness affidavit.]
Q. Is that your signature?
A. Yes sir.
Q. Have you seen it lately?
A. I have not since I signed it.
Q. See if you swore to it?
[Examines paper.]
A. Yes sir.

Mr. CLOUGH. Gov. Davis, I will make an order to show by the record of the board of county commissioners of the June session of June, 1875, that Messrs. Tanner. Phelps and Felch were present.

Question by Senator HENRY: I wish to ask the witness what were his relations to Judge Page previous to the presentation of these bills, and the service of these subpœnas; friendly or unfriendly?

A. My relations were always friendly, sir.

Q. By Senator HENRY. Previous to the presentation of these bills that are now in dispute?

A. Yes sir.

Mr. CLOUGH. Do you mean by that to say that your feelings towards Judge Page were friendly, or that his feelings towards you were friendly?

A. Well, I mean to say that my feelings towards him were friendly.
Q. How were his feelings towards you?
A. Well, his feelings towards me appeared to be not altogether good.

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Q. His feelings towards you appeared to be hostile?
A. Yes sir.
Mr. DAVIS. Had you ever had any trouble with Judge Page before your bills came up?
A. I did sir.
Q. Was that the time of the crusades?
A. Yes sir. (Laughter.)
Mr. CLOUGH. You and he had a collision on that occasion, did you? (Laughter.)
A. We did. (Laughter.)

R. O. HALL RECALLED

on behalf of the prosecution in rebuttal, testified:
Mr. CLOUGH. Mr. Hall, you have been sworn before, I will ask you if you were present at a session of the board of county commissioners of Mower county, in January, 1875, when the bill of George Baird came up?
A. Yes, I think I was.
Q. Was it in the day time or in the evening?
A. In the evening.
Q. That was the session of the board of county commissioners when you qualified as sheriff?
A. Yes sir.
Q. Do you remember who else was present?
A. Mr. Riley, Mr. Martin, Mr. French, Judge Page and the county commissioners; there might have been others.
Q. I will ask you if you heard Judge Page at that time opposing Mr. Baird's bill?
A. I did sir.
Q. I will ask you if you heard any angry words pass between Judge Page and Mr. French, on that occasion, over Mr. Baird's bill?
A. There was considerable talk.
Q. Some talk between them?
A. Yes.
Q. Mr. Martin you say, was present also?
A. Yes sir.
Q. Were you there when Thomas Riley's bill came up in March, 1876?
A. I don't think I was; this time I referred to was in the auditor's room. I was before the commissioners when his bill came up; I think that was both times the same day.

CROSS-EXAMINATION.

Mr. DAVIS. Q. Was the Riley bill up in Janurary, 1875, at the time the Baird bill was up?
A. Well, as I have stated, I don't remember of the Baird bill ever coming up but once, when I was present.
Q. This was in January, 1875, wasn't it?
A. I think it was; it was in the auditor's room at any rate.
Q. That was at the beginning of your term?
A. Yes.
Q. Was the Riley bill up on that same occasion?
A. It was not while I was there present; I did not hear about it.

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Q. Now, you identify that occasion by some reference to your commencement of office?

A. I have something by which I identify that fact perfectly.

Q. Do you idcntify it by the fact of the commencement of your term of office?

A. I do.

Q. There was a controversy on that occasion, when the Baird bill was up, between Mr. French and the respondent?

A. Yes sir.

Q. Do you remember of hearing either charge the other with corruption at that time?

A. I don't know that I did directly, at that time.

Q. Was that the basis of a controversy between them—were they eating apples there at that time with the county commissioners?

A. Of course there was a controversy and—

Q. Now, can you identify the occasion by the fact that the commissioners were ating apples at the time?

A. No sir; I don't remember anything about any apples.

Q. Don't you recollect Judge Page making an apology?

A. I do not; I went out before all through.

Q. Now, was there anything said between Judge Page and Lafayette French, as to corruption?

A. I think there was on account of that bill—

Mr. DAVIS. That is all.

C. C. KINSMAN, RECALLED,

On behalf of the prosecution, in rebuttal, testified:

Mr. CLOUGH. Q. I will ask you if you were present at the January session, 1876, of the term of court that tried Jaynes?

A. I think I was; I am not positive.

Q. I will ask you if you were not one of the triers on that occasion?

A. I was one of the triers on one occasion, and I don't know but I was twice; I am not positive about that. At the last trial of Jaynes I was one of the triers, I think.

Q. Do you remember of Mr. Allen, who testified here as a witness on the stand, being called on that occasion as a juror?

A. I think I do; I have some recollection of his being one; yes sir.

Q. Prior to the time he was called as a juror, did you see him performing any duties about the court room as court deputy?

A. I don't recollect as I did.

Q. Who did you see performing duties of court deputy before that time?

A. I can't say; I saw Mr. Mandeville performing duties during the term, but I can't say at what time in the term.

Q. I will ask you if you had any conversation with Judge Page prior to the commencement of the proceedings for contempt against Mr. Stimson, in 1877, in which the subject of the time when the alleged petition which constituted the alleged contempt, had been circulated by Mr. Stimson?

A. I did.

Q. You may state what took place between yourself and Judge Page on that occasion?

A. I think it was some time the last part of May I was in Judge Page's office, and we had a conversation about the arresting of Mr.

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Stimson for circulating a petition requesting him to resign, and he showed me a copy of the petition at that time, and the question was discussed about the authority of the Judge to arrest Mr. Stimson at that time, the circulation of the petition having been in vacation, and not in court time.

Q. State this loud so we can all hear it?

A. The question of authority to arrest Mr. Stimson for contempt—it being a question—the question whether it was a contempt of court or not, it being circulated while court was not in session—and we had some discussion and examined the law, and we differed in regard to our opinions of it being contempt at the time.

Q. Did he state that it had been circulated while the court was not in session?

Mr. DAVIS. Now, Mr. Clough, that is not a square manner of examining a witness.

Mr. CLOUGH. Q. Well, did he say anything on that point about when it was circulated?

A. That point was discussed, and was admitted there.

Mr. DAVIS. Never mind what was admitted there; let us have what was said?

A. Well, I can't tell all that was said.

Mr. CLOUGH. Tell all you can remember?

A. It was discussed upon the theory—whether it was contempt or not; it not having been circulated while the court was in session, that is what we discussed.

Q. It not having been circulated while the court was in session, you and Judge Page discussed whether it was contempt or not?

A. Yes sir; we examined the statutes, and I don't know but some other books; but I don't know certain.

Q. Did Judge Page claim on that occasion, that the alleged petition had been circulated while the court was in session?

A. He did not.

Mr. DAVIS. Wait a moment; I don't know what difficulty you have with this witness, but it seems to me—

Mr. CLOUGH. No difficulty, at all.

Mr. DAVIS. Then, Mr. President, I insist that he shall ask the witness what he said.

The PRESIDENT. I think that the proper course of examination.

Mr. CLOUGH. I did, I am pursuing the same course of conduct that has been pursued by the respondent's counsel, with every witness that they have examined here.

Mr. DAVIS. I don't know whether you have or not, I object to the question.

The witness. I would answer that question, that my understanding was—

Mr. DAVIS. I object to that, it is what Judge Page said, and not what your understanding was.

Mr. CLOUGH. State what he said in substance upon that subject?

A. I was going to say that it was not circulated during court time; at the time court was in session, whether he used those words or not,

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that it was not circulated, I could not say; that was the understanding I had from the conversation.

Q. I will ask you if you had a conversation with him after the proceedings had been commenced, upon the same subject, or a conversation in which that subject came up as a topic.

A. I had two conversations with him afterwards, after the proceedings commenced, before the final discharge of Mr. Stimson. The first one I think, was nothing said in relation to this matter; the next conversation I will relate if you desire to hear it.

Mr. CLOUGH. Yes sir; if you please.

A. I asked Judge Page in relation to his punishing Mr. Stimson. That was after he had had the first examination and the case had been continued, and I don't know but after the second occasion. It was a short time before he was discharged; I don't recollect exactly how long before, but a very short time, and in that conversation I asked something about the punishment of Mr. Stimson, and he said that he had some doubt about his right to punish him, and he should examine the matter carefully, and if he found that he had not he should discharge him; that is the substance of the conversation.

Q. I will ask you if you were present at the March term of court, 1875, on the occasion when Mr. Greenman was appointed to take charge of a criminal case in the absence of the county attorney, Mr. French?

A. I can't tell what term it was; I am not able to say. I was present at the time when Mr. Greenman was requested, or appointed to take charge, or do something in a criminal case. Mr. French was absent.

Q. Temporarily absent or did he come back before the case was over?

A. He came back very shortly after, I recollect. I don't recollect anything about the case—anything about it at all. I recollect his coming in very shortly after he was inquired for.

Q. Do you remember the condition of the case when Mr. French went out; that is, had the case been called, and one or more jurors called to their seat in the jury box, before Mr. French went out?

A. I couldn't say, I don't remember how that was; I remember but very little about the case.

CROSS-EXAMINATION.

Mr. DAVIS. Mr. Kinsman, were you examined before the bar committee?

A. I was.

Q. Was this Stimson matter under consideration?

A. I don't recollect.

Q. Were you examined in regard to the Stimson contempt matter?

A. I don't recollect whether I was or not.

Q. Were you examined before the judiciary committee of the House of Representatives?

A. No sir.

Q. You were examined here the other day, were you not, on this Stimson contempt matter?

A Yes sir.

Q. When did you first disclose to any person this new state of facts that you have testified to here to-day?

A. In regard to that conversation?

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Q. Yes, that conversation as to the vacation?
A. I can't tell when I did.
Q. Did you do it before, within the last three or four days?
A. I have talked about it before the last three or four days.
Q. When did you disclose it to anybody connected with this prosecution. that you were in possession of that piece of testimony?
A. What do you mean by the connection?
Q. This talk that you claim to have had with Judge Page?
A. Who do you mean by connected with this prosecution?
Q. I mean the Managers, or any promoter of it?
A. I can't tell you when I did.
Q. Did you do it until within the last three or four days?
A. I could not say; I might have done within the last year.
Q. Have you not done it for the first time, so far as you recollect, within the last three or four days?
A. I think—I don't recollect of any other time of talking with them about it.
Q. Did you hear Judge Page answer the other day in response to Mr. Clough, and answering with reluctance that you sometimes stipulated away your cases, as he thought?
A. I did; I heard him answer.
Q. Did you hear Judge Page object to answering?
A. I heard what he said.
Q. You heard what he said?
A. Yes sir.
Q. Did you after that testimony was given have a conversation with Mr. Greenman and Mr. Wheeler on these capitol steps, in regard to the case?
A. I presume so.
Q. Well, didn't you, as a matter of fact?
A. I don't know whether it was after or before.
Q. Did you have a conversation with them on the capitol steps since this investigation began?
A. I presume likely I did; I have talked with them.
Q. Did you not state in the presence of two of those gentlemen that heretofore you had not cared anything about this matter, but now you was going to swear to everything you knew about it?
A. No sir, I did not.
Q. You said nothing of that kind?
A. I never said that to no man.
Q. In the presence of Mr. Wheeler and J. M. Greenman?
A. I never said it.
Q. On the steps of this capitol building?
A. No sir; to no man.
Q. Were you examined in the Stimson contempt case, before Judge Page?
A. I think I was.
Q. Were you questioned by Mr. Cameron?
A. I think I was.
Q. Did this fact come out in that inquiry in that proceeding?
A. I think not.
Q. Were you asked?
A. No sir.
Q. You did not answer?

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A. No sir.

Q. And this is the first time you have ever given public voice to that statement?

A. Yes sir, I think so.

Mr. DAVIS. That is all.

Mr. Manager CAMPBELL. Q. State whether you did not mention this fact prior to Judge Page being examined here on that question?

A. I can't say; I might have said, as I stated before—I might have told the managers early in the spring—I might, and I might not, I can't tell whether I did or not. I know I have told other persons of it; but persons connected with this trial, I can't say whether I have or not.

Q. Did you not disclose the fact to the managers when they were in Austin?

A. That is what I can't say; I might have done it, or might not—I presume very likely I did; but I can't say—I wouldn't swear I did.

Senator DEUEL. I would like to inquire of witness if I understand him correctly, that is, that he told other persons before he told the managers?

A. I have, yes sir, very frequently.

Mr. Manager GILMAN. What have you told the managers as to your disposition to state all you knew derogatory to Judge Page in relation to this matter?

Mr. DAVIS. I object to that question; it is too general.

Mr. Manager GILMAN. I will state, Mr. President, that the gentleman himself, has introduced the subject as to what he has told the managers, and what has not been told them. I wish to draw out from him certain remarks he has made, as to what he purposed not to tell.

The PRESIDENT. I think that is hardly material to the case.

JAMES GRANT, RE-CALLED,

on behalf of the prosecution in rebuttal, testified:

Mr. CLOUGH. Q. Mr. Grant, you were a member of the board of county commissioners of Mower county in January, 1875, were you not?

A. Yes sir.

Q. You remember of the occasion when Mr. George Baird's bill came up in January, 1875?

A. I remember when it was up; I don't remember whether it was up in January, 1875, or not, but I think it was.

Q. He had a bill up when he went out of office, didn't he?

A. Yes sir.

Q. Do you remember of Judge Page being before the board opposing any items of that bill?

A. He was there at that time, at the time that the Baird bill was before us.

Q. Was Mr. French there too?

A. Yes sir.

Q. Who else do you remember of being present?

A. I think Mr. J. P. Williams, who was county auditor at that time, and I think that Sheriff Hall was there, but I would not be positive. I think he and Mr. Martin were there and the balance of the board.

Q. Do you remember of Mr. Thomas Riley being there too.

A. I don't know as I do.

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Q. I will ask you if some discussion arose over Mr. Baird's bill, while Judge Page was there?

A. It was argued some; there was nothing more than an argument over it, in regard to some of the items on the bill.

Q. I will ask you if Judge Page and Mr. French had any personal quarrel on that occasion?

A. Not any more than an argument.

Q. A mere argument?

A. That is in regard to some items in the bill.

Q. I will ask you if that was the occasion when Mr. French called Judge Page corrupt; or spoke of his being corrupt?

A. No sir.

Q. That was not the occasion at all?

A. No sir.

Q. What occurred there, between Judge Page and Mr. French on that evening was no more than an argument?

A. That was all.

CROSS EXAMINATION.

Mr. DAVIS. Q. What time are you testifying to, what session, what year?

A. I am talking about January, 1875.

Q. The Baird bill was up, wasn't it?

A. Well, this was the first time the Baird bill was up; I think it was.

Q. Was the Riley bill up then?

A. Well, it might be, I think it was.

Q. What is your best recollection as to whether the Riley bill was up at the same time with the Baird bill?

A. Well, I would not be positive, the arguments that evening were on the Baird bill.

Q. Have you any impression as to whether the Riley bill was up that evening or not?

A. I have not—well, I think it was, but I would not be positive about it.

Q. Did Judge Page come in first, or Mr. French, that evening?

A. My impression is that Judge Page came in after we were seated there, and I think, I would not be certain—Sheriff Hall came in afterwards.

Q. Sheriff Hall was there, was he?

A. Mr. Martin was sitting on the west side.

Q. Sheriff Hall came in, did he?

A. Yes sir.

Q. Was the board formally in session, or were they eating apples?

A. I don't remember; I was thinking at the time we was eating the apples some of the officers came in. Mr. McIntyre came in in March. I think he came in possession of the office in March. I think that was the time we had the apples, but I am not positive.

Q. Do you recollect the chairman calling Mr. French and Judge Page to order at this January, 1875, session?

A. No sir.

Q. Don't recollect any apology being made?

A. Oh! I know when *that* happened. [Laughter.]

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Q. You say there was a debate about the Riley item of the Baird bill.

A. There was no debate, nothing more than an argument as to the items in the bill.

Q. An argument between whom?

A. Judge Page and Mr. French, and all who took part in the conversation, that is, more or less.

Q. Did Mr. French and Judge Page have any conversation then?

A. Oh! no.

Q. They did not?

A. No.

Q. If three other county commissioners and the clerk of the board should, as they have done, testify directly opposite to you on that point would it affect your impressions at all?

A. I don't think it would; I can't tell you where I have got mine.

Mr. DAVIS. That is all.

Mr. CLOUGH. You may now explain what you were going to say.

A. The next morning after this trouble I went up to court, into the court room; the court was in session the next morning, if I am not mistaken; I think I am not, because I was calculating to go home on the 11 o'clock train that day; but I went up into the court room to see Jaynes. I heard a great deal said about the gentleman; I thought I would come in and see him, and there were some remarks made there; and I met Mr. French, and him and I had a few words in regard to the occurrence of the previous evening. That is how I recollect it; I wouldn't recollect anything about it if it wasn't for that.

Q. You fix it by that that the next morning after the quarrel with Judge Page and Mr. French, you went into court and saw Jaynes?

A. Yes sir; and went home that day on the 11 o'clock train.

E. W. MARTIN, SWORN,

And examined on behalf of the prosecution, in rebuttal, testified.

Mr. CLOUGH. Q. Mr. Martin, where do you live?

A. In Austin.

Q. How long have you lived there.

A. About six years and a half—a little over.

Q. I will ask you if you were present at a session of the board of county commissioners, of Mower county, in January, 1875, when George Baird's bill came up?

A. I was.

Q. And when Judge Page was present?

A. Yes sir.

Q. Judge Page was present opposing some of the items of the bill?

A. Yes sir.

Q. I will ask you if you remember who else was present on that occasion.

A. Well, there was the board of county commissioners, Mr. Hall, Thomas Riley and myself. There might have been others in; they kept dropping in and going out all the while.

Q. Judge Page opposed the allowance of some of the items of the bill that evening?

A. Yes sir.

Q. I will ask you if you heard any personal quarrel between Judge Page and Mr. French that evening?

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A. I did not; it was no quarrel.
Q. They discussed some of the items of the bill?
A. Yes sir.
Q. Did you hear Mr. French call Judge Page corrupt?
A. I did not.
Q. Nothing of that kind occurred?
A. No sir.

CROSS-EXAMINATION.

Mr. DAVIS. Q. Were you ever a deputy sheriff of Mr. R. O. Hall?
A. Special—I was jailor for him.
Q. Did you ever hear of a man by the name of Pugh?
A. Yes sir.
Q. Were you indicted and convicted for letting him escape down in Freeborn county?
A. Yes.
Q. Did this respondent sentence you?
A. I don't know whether you would call it sentence or not.
Q He fined you $50, didn't he?
A. Yes sir.
Q. Pugh was accused of forgery?
A. I don't know what he was accused of.
Q. You held him under a warrant, didn't you?
A. I did.
Q. You were indicted for his escape?
A. Yes sir.
Q. Convicted?
A. Yes sir.
Q. Sentenced by this man you are testifying against?
A. Yes sir.

Mr. CLOUGH. Did you pay your fine?
A. Yes sir.

THOMAS RILEY RE-CALLED,

On behalf of the prosecution in rebuttal, testified:

Mr. CLOUGH. Q. I will ask you if you were present at a meeting of the board of county commissioners of Mower county at the January session, 1875, when the bill of George Baird was up?
A. Yes sir.
Q. I will ask you if Judge Page was present?
A. He was.
Q. I will ask you who else was present on that occasion?
A. Mr. Lafayette French, county attorney, R. O. Hall, Mr. Martin and the board of county commissioners.
Q. I will ask you if Judge Page was opposing certain items of Mr. Baird's bill?
A. He was.
Q. What time of day was it?
A. It was in the evening.
Q. State whether any personal quarrel occurred on that occasion between Lafayette French and Judge Page?
A. There was none.

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Q. State whether you heard Mr. French call Judge Page corrupt or allude to him as being corrupt, on that occasion at all?
A. I did not.
Q. Nothing of that kind occurred?
A. No sir.

CROSS-EXAMINATION.

Mr. DAVIS. Q. Were you there all through the session?
A. No sir.
Q. Was Judge Page and Mr. French there when you left?
A. They were not.
Q. Which left before you did?
A. Judge Page.
Q. Was Judge Page there all the while you were there?
A. He was.
Q. There when you went in?
A. Yes sir.
Q. And left before you went out?
A. Yes sir.
Q. What commissioners were there?
A. I don't——
Mr. DAVIS. Oh, come, now, make an effort.
A. I don't recollect any of them except Mr. Grant, Mr. Tanner and Mr. French, I think; I was not acquainted with the board at that time.
Q. How did you come to mention those?
A. I remember because I knew them.
Q. Don't you remember them because their names have been mentioned within the last twenty minutes?
A. No sir.
Mr. CLOUGH. Were you acquainted with the members of the board of county commissioners except these three at that time?
A. I was not.

G. SLIDER SWORN,

And examined on behalf of the prosecution in the rebuttal, testified:
Mr. CLOUGH. Q. Where do you live?
A. In Austin.
Q. How long have you lived there?
A. 15 years.
Q. Do you know F. W. Allen?
A. I do.
Q. I will ask you if you had a talk with him last season about what occurred between Mr. French and Judge Page after the January term, 1876?

Mr. DAVIS. Wait a moment; there has been no foundation laid.

Mr. CLOUGH. You are mistaken.

Mr. DAVIS. Excuse me, there has not, I think, as to contradicting Mr. Allen with this witness; there has been with another witness.

Mr. CLOUGH. My recollection is quite distinct that I called the attention of Mr. Allen to his conversation with Mr. Slider, and also to a conversation with Mr. Hall, and to a conversation with Mr. Crandall and Lafayette French.

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Mr. DAVIS. My recollection is based upon this: That the witness was introduced in contradiction of Mr. Allen Saturday, and that they only laid the foundation for contradiction by one other witness.

The PRESIDENT. I recollect the counsel asking the witness in relation to a conversation in some store; I don't recollect the name.

Mr. CLOUGH. You may state if you had such a conversation?

A. Mr. Allen was in our store.

Q. You did have such a conversation?

A. I did.

Q. You may state what it was?

A. Mr. Allen came in our store, and this was shortly after Mr. Mandeville had been examined.

Q. After Mr. Mandeville had been examined where?

A. Before the judiciary committee, and I asked Mr. Allen, said I, "Is it true?"

Mr. DAVIS. This is a conversation with Mr. Allen had by this witness, since Mr. Allen was examined here.

Mr. CLOUGH. Oh, no.

The Witness. Oh, no, it was before the judiciary committee, I asked Mr. Allen if this was true; whether Judge Page had made a statement to that effect to Mr. Mandeville.

Q. What statement?

A. The question was: What dirty political work have you done for Mr. Hall to appoint you deputy sheriff?

Q. You asked him if this was true?

A. Yes sir; he says it wasn't; he left out the word "dirty."

Q. That is, Judge Page left out the word "dirty"?

A. All the rest was true with the exception he left out the word "dirty."

CROSS EXAMINATION.

Mr. DAVIS You say Mr. Allen said so?

A. Yes sir.

Q. Was that after Mr. Allen's evidence had been given before the committee?

A. No sir.

Q. It was before?

A. It was before.

Q. What is your business?

A. My business is that of a jeweler.

Q. How long have you been in that business?

A. I have been there about fifteen years.

Q. Did you go out of that business for a while?

A. No, I did not; not that I know of.

Q. Did your stock turn up as stolen?

A. It did.

Q. Were you accused of stealing it?

A. Not that I know of.

Q. Where were you born?

A. I was born in Germany.

Q. Are you one of the signers to the petition for the impeachment of Judge Page.

A. I am.

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Q. Did you ever have any difficulty with him?
A. No sir.
Q. You did not?
A. No sir, he was a customer of mine.
Q. Have you paid any money on this impeachment?
A. I paid $25 toward it. Mr. Merrick wanted to bet me about the result but I didn't want to bet. [Laughter.]
Q. Have you offered to bet any?
A. I say Mr. Merrick wanted to bet, but I didn't want to.
Q. You concluded it wouldn't be prudent to bet, didn't you?
A. It might not.
Q. How long ago was that?
A. About a week ago.
Q Whereabouts?
A. In Austin.
Q. Who offered to bet first, you or Mr. Merrick?
A. Possibly that I; I considered him guilty, of course.
Q. You do consider him guilty?
A. Yes sir.
Q. Do you know anything personally about any of the facts contained in the petition?
A. If a man has lived there fifteen years I think he ought to.
Q. Do you know anything about it personally?
A. I say if a man lives fifteen years in Austin that is sufficient.
Q. Do you know anything about what Judge Page has done, personally yourself?
A. Why, certainly.
Q. In regard to these articles?
A. Why, in regard to arresting Mr. Stimson and prosecuting Mr. Ingmundson.
Q. Who else?
A. Well, I could name you a good many.
Q. Within your own personal knowledge?
A. Why, certainly; I have lived there long enough.
Q. You did not testify before the judiciary committee?
A. No sir, I think not.
Q. How much do you say you had "chipped in?"
A. Only $25, that is all.
Q. A very small amount, isn't it?
A. A very small amout.
Q. You would be willing to pay more, wouldn't you?
A. Not as I know of, I think it is sufficient.
Q. Have you been called on for any more?
A. Not yet, sir.
Q. Haven't refused, have you?
A. I probably wouldn't in case it would be necessary.

RE-DIRECT EXAMINATION.

Mr. CLOUGH. There was another point; I will ask you if Mr. Andrew Knox was in your store after the discharge of the grand jury, at the March term of court, 1877, in Mower county?
A. He was; Mr. Knox was in our store.
Q, Who was present?
A. Mr. Doer and Mr. Adams.

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Q. Both of them reside in Austin?
A. Yes sir.
Q. You may state what occurred there, what was said by Mr. Knox?
A. I think I was the first one to speak to Mr. Knox when he came into our store; I asked him whether the grand jury had got through and what the result was. He said that the grand jury had got through, and stated (I will not say the exact or precise language,) but he stated something that the jury had been used very indignantly.
Q. By whom?
A. By the hands of Mr. Page; something to that effect—
Q. Been used very indignantly by Judge Page?
A. Yes sir.
Q. State whether he accused him of being indignant himself?
A. I should consider that he was, he so expressed himself.
Q. Do you know as a matter of fact how long this was after the grand jury had been discharged?
A. This must have been immediately after the grand jury came in.
Q. Talk about it sometime, did he?
A. Probably not over five or ten minutes.

R. O. HALL, RECALLED.

On behalf of the prosecution in rebuttal, testified.

Mr. CLOUGH. Q. I will ask you to state whether on or before the first day of January term of court, 1876, you had any conversation with Judge Page about the appointment of Mr. F. W. Allen, as court deputy for that term of court.

Mr. DAVIS. I assure you that you went into that fully when Mr. Hall was on the stand before.

Mr. CLOUGH. I beg the gentleman's pardon; the only thing that Mr. Allen's appointment was referred to for in that matter was a mere incidental matter.

Mr. DAVIS. I say that when you had Mr. Hall on the stand in the case for the prosecution that you asked him that question.

Mr. CLOUGH. I think you are very much mistaken, I have examined that within the last twenty-four hours.

Mr. DAVIS. I refer to page 56 of May 29th; the question at the bottom of the page: "Q. 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."

Mr. CLOUGH. That is another thing entirely, and it came in merely as an incidental matter. Now, I propose to call the attention of the witness, strictly to a conversation which Judge Page upon his cross examination, said he had, at or before the first day of the term.

Mr. DAVIS. I think it has been covered by that question.

The PRESIDENT. The witness may answer the question.

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

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A. I did not.

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

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

Q. For what purpose?

A. To go out and serve a venire.

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

A. That was the first thing he done whatever.

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

A. Yes sir.

Q. I will ask you to look at this document, (hands witness paper)?

A. That is the appointment; a certified copy of it.

Mr. CLOUGH. I offer this in evidence.

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

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

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

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

State of Minnesota, County of Mower,—ss.

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

F. W. ALLEN.

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

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

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

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

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

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

By HENRY N. WILLSON,
Deputy.

Q. He went into your service then, the second day of the term, and went out to serve this process, when?

A. About four o'clock.

Q. Before this had you had any conversation with Judge Page about Mr. Allen as a special deputy?

A. Not any whatever.

Q. Had Mr. Allen done any service before that time?

A. Not any at all.

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Q. I will ask you if you remember of his being summoned as a juror at that term?

A. It may have been, but I don't remember.

Q. Some mention has been made by Judge Page in his evidence of your summoning jurors at that term of court that were in the immediate neighborhood of Austin, you may state how you came to do that, whether by Judge Page's own advice?

A. I did.

Q. Now state what was said between you and Judge Page on that point?

A. Well, can I go back and explain how I came to do it?

Mr. CLOUGH. Yes sir.

A. Knowing that I would have to call the jury at this case, I prepared myself with a list, and knowing that the case had been tried twice by a jury, and had been talked over a good deal right around in the immediate vicinity, I prepared a list from the remote part of the county, thinking that I would have to go there for jurors; when court called, I suggested to Judge Page my views, and told him what I had done; he told me that it was no kind of use to go to any such expense; said he, you can get them right around here, men coming into Austin, moving in here all the time, you can get them right in Austin. Well, on the suggestion I issued a venire right in Austin, and the result was I got two men.

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

A. Certainly.

Q. Well, you may state how that happened?

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

Q. Who were they?

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

Q. A general deputy?

A. Yes sir.

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

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

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

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

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

A. I am not positive.

Q. Did you during that term of court?

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

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

A. I did.

A. Before he went up to testify before the judiciary committee, he was in my office alone, and I says to him: "Fred., you and Mr. Mandeville were alone when that conversation transpired, and I have his story and I would like to hear yours; did Judge Page use the words that Mandeville

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said he did?" "No" he says, "he didn't exactly, he left out the word 'dirty,'—he didn't put in the word 'dirty;' but he laid back and kind of laughingly said 'what work have you done for Hall, that he should appoint you, or is it because you keep a livery stable?'" That is the words that Fred. Allen stated to me in my office before he went up last winter.

Q. I will ask you if what purported to be a statement of Mr. Mandeville's evidence on the subject, had been published at that time?

A. Yes sir; I think it had.

Q. That is what you were talking about on that occasion?

A. Certainly, I saw it in print.

Q. I call your attention to the matter of your conversation with Judge Page in the store of Mr. Engle. I will ask you if you now remember of anybody else being present at that conversation?

A. Well, I am not positive whether there was or not; but I don't think there was at the close of our conversation.

Q. I will ask you if you had a conversation with Mr. Engle last winter as to what occurred on that occasion in his store?

A. I did.

Q. When was that?

A. After I came up here and testified before the judiciary committee I went home, and as I got off from the cars at Austin I saw Mr. W. W. Engle there with his carriage at the depot; I went and got into his carriage and rode over to the mill with him. I says to him: "Will, do you remember the conversation between me and Judge Page in your store?" He says: "Yes sir, I remember it." "Well, now I've been up to St. Paul, and I have testified thus and so."

Q. Did you tell him what you had testified to?

A. Yes sir, I testified to the same thing I have testified here before the judiciary committee. "Now," said I, "Will, how does that meet your views—your recollection of what transpired? "Well," said he, "that is as I understand it." "Now, I want to know if you remember what the objection was by Judge Page of my appointing Thomas Riley deputy?" "His objection was," said he, "that he wasn't fit for the office, for the position." That is the answer he gave me.

CROSS-EXAMINATION.

Mr. DAVIS. Q. Were you examined before the judiciary committee last winter?

A. I was.

Q. Was Mr. Allen examined before the judiciary committee?

A. I understand he was.

Q. Was Mr. Mandeville?

A. I think he was, I don't know positive.

Q. Did you ever tell this story as to what Allen told you until this day?

A. Repeatedly.

Q. In public under oath?

A. No sir.

Q. Have you ever deposed before this day that Mr. Allen told you that, in regard to the Mandeville conversation with Judge Page?

A. No, I don't think I have.

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Q. If you did not put Mr. Allen on as a juror that day, who did, do you suppose?
A. They didn't anybody, I had him on as a juror.
Q. You put Mr. Allen on as a juror?
A. If he was put on I put him on; I don't remember as he was.
Q. Do you recollect what day of the term it was?
A. If his name appears in the venire I put him on.
Q. Who put his name on the venire—who writes the names of jurors on the venire?
A. Well, I write them.
Q. Then you both wrote his name on the venire and put him on?
A. He was called out of the room if he was called at all.
Q. Of course, bnt you got his name?
A. If his name appears in the venire I put him on.
Q. Who put his name on the venire?
[No answer.]
Q. Who writes the names of jurors on the venire?
A. Well, I write them.
Q. Then you both wrote his name on the venire and put him on, did you?
A. He was called out of the room if he was on at all.
Q. Of course, but you got his name on to a venire afterwards, didn't you?
[No answer.]
A. Did you do it?
A. I presume I did.
Q. What day of the term was it?
A. Well, as I stated, I couldn't say as he was on.
Q. You were putting on most everybody in that neighborhood?
A. Yes sir, I was putting on a good many.
Q. When you came to appoint Mr. Allen as a general deputy, did you find him right there ready to take hold?
A. Yes, the first time I saw him he was sitting right there in the room.
Q. Did you notify the respondent that you had appointed Mr. Allen as a general deputy?
A. No sir.
Mr. CLOUGH. I will show you this venire, and you may see if it is in your handwriting?
A. Yes sir.
Q. By Mr. CLOUGH. Mr. Allen was not special or general deputy when you put him on, was he?
A. No sir.

CROSS-EXAMINATION.

Mr. DAVIS. Q. Didn't you testify before the judiciary committee that you might have had a conversation with Judge Page before the beginning of the term as to appointing Mr. Allen special deputy?
A. I might have testified so, it was some time before I had thought of it.
Q. So, last winter, before the judiciary committee, you testified that it was possible that you might have.
A. I couldn't tell you what I testified.

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Q. Did you not testify before the judiciary committee last winter that yon might have had a talk with Judge Page about appointing Mr. Allen special deputy before the term?

A. I wouldn't say but what I did.

Q. Now you testify you never had any such talk?

A. I refreshed my memory by looking at the records; I know I never did.

Q. What record was there to refresh your memory as to the appointment of special deputy ?

A. That record that I have produced here is one.

Q. Do you say now it is impossible that you ever had such talk with him?

A. I think, after reflection, that it is impossible that I could have had any conversation with him before the term.

Q. What sources of reflection have you that you did not have last winter?

A. Because by reflecting, and then looking at the record to see what I had done.

Q. What record have you got here to show as to what you have done in regard to the appointment of any special deputy?

A. Well, because the record corresponds precisely according to my idea.

Q. What record.

A. Well, the record of appointing him as a special deputy.

Q. Appointing him as special deputy?

A. F. W. Allen, I mean general deputy.

Q. What other sources of information have you got now, that you did not have last winter?

A. Well on any subject, when I reflect on it, my mind is cleared up.

Q. This was in January, 1876, when this transaction took place?

A. Yes sir.

Q. Does your memory brighten as time rolls on?

A. It brightens by reflection.

Q. It does?

A. Yes sir.

Mr. DAVIS. That is all.

JOSEPH ADAMS SWORN,

And examined on behalf of the prosecution, in rebuttal, testified:

Mr. CLOUGH. Q. Where do yo live?

A. I live in Austin.

Q. How long have you lived there?

A. About ten years.

Q. I will ask you if you were in Dorr & Slider's store after the March term of court "1877," or during that time after the discharge of the grand jury when Mr. Knox was in there?

A. I was.

Q Who were present at that time?

A. Mr. Dorr, Mr. Slider and Mr. C. C. Crane, I think; I don't know whether he was in there when the commencement of the conversation was or not.

Q. Mr. Knox was there?

A. Yes sir.

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Q. I will ask you if anything was said while Mr. Knox was there, about Judge Page's treatment of the grand jury at that time; if so state what it was?
A. He said he thought the judge was harsh on the grand jury.
Q. Did he appear to be indignant?
A. He did.
Q. At the way he had been treated?
A. He did.
Q. Can you give the language of Mr. Knox?
A. I don't know that I can exactly.
Q. How long did the conversation last?
A. Oh, a few minutes.
Q. And then Mr. Knox went out?
A. Yes sir.
Q. According to this statement, had he just come from the court room?
A. Yes sir.

CROSS-EXAMINATION.

M. DAVIS. Q. Mr. Adams, did Mr. Knox mention the Ingmundson matter in connection with this conversation at the store?
A. I don't remember that he did.
Q. Did Mr. Knox state whether or not he was the foreman of that grand jury?
A. I don't think that he did; I knew that he was the foreman, I had just came out of court myself, and it was the only time I was in court.
Q. Who started the conversation, Mr. Knox or you, in the store?
A. Well, I don't know but it was myself—I heard the discharge of the jury, a part of it.
Q. You had your own conviction and opinion in regard to it?
A. I did, sir.
Q. Views were interchanged around there, with the bystanders in the store?
A. Yes sir.
Q. Have you given this matter reflection since?
A. No sir.
Q. You were not up here last winter, were you?
A. No sir.
Q. Where was the matter first recalled to your recollection, with the view of your giving your testimony?
A. It wasn't recalled to my notice till since I have come up here, sir, by Mr. C. C. Crane.
Q. Were there other members of the grand jury present on that occasion?
A. I don't think there was.
Q. Was the talk pretty generally indulged in all around, by the few who were there?
A. Yes, the few there was there.
Q. Tell me who were there?
A. Mr. Dorr, Mr. Slider, and I don't know if Mr. Crane was in there at that time or not, but if he was not in, he was in shortly after.
Q. Can you recollect what Mr. Dorr said?
A. Well, he said something about the grand jury being bulldozed.

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Q. Do you recollect what Mr. Slider said?
A. No, not exactly.
Q. That was over two years ago, wasn't it?
A. No sir.

I. INGMUNDSON, RECALLED,

On behalf of the prosecution, in rebuttal, testified.

Mr. CLOUGH. Q. Did you hear the testimony of Harlan W. Page as to a conversation about deposits in banks?

A. Yes sir.

Q. Now, won't you state what occurred on that occasion, and who were there?

A. The chairman of the board of commissioners, Harlan W. Page—

Q. Who was the chairman of the board of commissioners at that time?

A. C. J. Felch.

Q. Go on.

A. Harlan W. Page, W. T. Wilkin, I think Mr. Williams, the county auditor, was in the room, and myself: and, I am not certain, there might have been others present, I don't remember.

Q. Now, state what occurred there?

A. The chairman of the board of commissioners and the bankers had some talk, I don't remember what it was—that is, the language—but it was about bidding upon the county funds, or public funds to be deposited in banks, and there was an understanding among the bankers that they would make no bid under certain circumstances.

And as I understood it there, it was agreed between the chairman of the board and the bankers, that three per cent. on average balances should be paid for such deposits. A question was asked me as to what disposition I would make of the funds providing there were no bids, and I stated that I would do what was fair in the matter. I would deposit about equally in the two banks in Austin, and that I wanted a small balance in the LeRoy bank; it was all the conversation I had with the bankers.

Q. The balance of the conversation was between the bankers and the board of county commissioners?

A. Yes sir.

Q. I will ask you if you carried out that arrangement?

A. Yes sir.

Q. And received interest on all the deposits.

A. Yes sir.

Q. Till the banks stopped paying interest.

A. Yes sir.

Q. Do you remember a conversation that took place, in respect to the moneys of the town of Clayton, at the time when Mr. Warren Dean was present. Do you know Mr. Dean?

A. Yes sir.

Q. How long have you known him?

A. I have no distinct recollection as to the exact time. I think I got acquainted with him in the year 1874.

Q. You have known him for the last four or five years?

A. And it may be that I did not get acquainted with him until 1875, I am not positive on that point.

Q. State, if you can remember, what took place when he was pres-

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ent, if you remember of his being present on any occasion, and who were there at the same time.

A. I would not swear positively, but to the best of my recollection Warren H. Dean was in my office at the time that Mr. Haralson, the then town treasurer of Clayton, came in to draw the March apportionment for the town in 1876; I would not swear positively that he was there at the time, but to the best of my recollection he was there, and the conversation between Mr. Haralson and myself was this: He presented a warrant from the county auditor for the town funds of the town of Clayton. I took the warrant, made out the duplicate, also a statement to the treasurer, and presented them for his signature. He signed them; I then took out the orders that I had filed away, and vouchers against the town, and presented them, and he told me he was instructed by the chairman of the board, not to accept a certain order—

Mr. DAVIS. Wait a moment; are you quite sure that Mr. Dean was there at that time?

A. No sir; I am not positive, but to the best of my recollection he was.

Mr. DAVIS. Well go on.

A. He was instructed by the chairman of the board of supervisors not to accept an order given to D. B. Coleman for $114.52. I stated to them that the order was a proper voucher against the town, and it was my duty, according to law, to surrender that voucher, with the balance, or else we could not have a proper settlement. Mr. Haralson said that he was further instructed to see an attorney, and whatever the attorney said in the matter he would be governed by. Well, I told him "very well, we will go out and see an attorney." I asked him who he preferred? He asked me of the different firms in town; I named over several—E. O. Wheeler, Cameron & Crane, Crandall & French, and D. B. Johnson, and he stated to me that he wanted to go to Mr. Cameron's.

Q. Was Mr. Cameron your attorney at that time?

A. No sir, he had never been at that time. We went to Mr. Cameron and stated the case; Mr. Cameron advised Mr. Haralson to receive the order; that it was a proper voucher against the town.

Mr. DAVIS. Now, hold on a moment; you have got off from where Mr. Dean was present.

Mr. CLOUGH. Now, Mr. Coleman spoke about the conversation with you; did you hear Mr. Coleman's evidence?

A. I either heard it or read it.

Q. You remember of having a conversation with Mr. Coleman about this matter?

A. Yes sir.

Q. You may state what that conversation was?

A. The conversation occurred in the county auditor's office. Mr. Coleman was in there, and I was in there and found him, at least I saw him and went in to see him on purpose, I think. I had received a card from Mr. Haralson a few days before, stating to look out for some orders that was out against the town of Clayton; he had written this card in Norwegian, stating in this language that there was false orders out, and I supposed he meant by that that they were forged, and I asked Mr. Coleman what Mr. Haralson meant, he said he didn't know; said he, all the orders I have is a few orders (naming over some) that he had

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there, and also this one that was drawn to him for $114.52; and says—I said something about having forgotten the circumstances by which I got that order, and said he you got that order from Sever O'Quam; I then told him, said I, "I remember now distinctly when I paid it," and I went into the auditor's office, or to my own office, and got my stubs and looked them over; I have generally paid the apportionments with checks on the different banks, or on one of them, where I have my money deposited; and I looked over the Austin stubs, and I found there was no check there; then I looked at the stubs of the Le Roy bank, and I found two stubs there that conformed with the time that Mr. O'Quam got this money; and I showed him the stubs and told him there was the checks that the order was paid with; and says he, what business had you to pay that money to Mr. O'Quam? "Well," said I, "I couldn't have paid it to you without Sever O'Qaum's order; I never pay any orders on town or district treasurers without an order either verbal or written from the district treasurer."

Q. I will ask you when Mr. Haralson, the town treasurer, came to draw the warrant for the March apportionment of 1876, whether he said anything about your carrying that order over until another settlement?

A. Yes sir.

Q. What was said about that?

A. Well, he asked me—

Mr. DAVIS. I think, Mr. President, this is a little outside of any rebuttal.

Mr. CLOUGH. I was under the impression that some evidence had been given on that point; I may be wrong in my recollection of it.

Q. I will ask if you ever used any expression of this kind; "take off your hats to the old tyrant, or he will have you punished for contempt?"

A. I don't think I ever made use of that expression, I may have said something a good deal worse, but that I didn't.

Q. Did you hear anybody make use of that expression?

A. Yes sir.

Q. Who was it?

A. P. T. McIntyre, the county auditor.

Q. When was that?

A. I am pretty positive that it was during the fall term of court, 1876.

Q. And it was Mr. McIntyre that used that expression instead of yourself?

A. Yes sir.

Q. Do you remember of having an interview in 1876, with Mr. Murray?

A. I remember meeting Mr. Murray, the only time I ever met him was at that time; it was in the Fleck House saloon.

Q. Who were present?

A. Mr. Murray, Mr. Correll, I think of Racine, Mr. E. P. Valkenburg, Mr. C. H. Cotton, and there were quite a number of other gentlemen present, but I remember those.

Q. I will ask you, if on that occasion you refused to shake hands with Mr. Murray when you were introduced to him?

A. No sir, nothing of that kind occurred; on the contrary, I sat

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down and had a very friendly chat with, him as I supposed, at least I felt friendly to him at the time.

Q. You saw no occasion on his part of unfriendliness?

A. No sir, he was telling some stories then, and the only trouble I found with him he was very tedious, and I couldn't see the point to his story.

Q. Mr. CLOUGH. Witness is shown the $100.00 check that was introduced in evidence, and asked if he remembers drawing?

A. Yes sir, that is my check and my signature, and my signature as county treasurer.

Q. That was delivered to Mr. O'Quam about the time it was drawn?

A. It was delivered the very day it was made.

Q. Do you remember the circumstances under which that was delivered?

A. Yes sir.

Q. You may state them?

A. He came and asked me if there was any money collected for the township of Clayton; I told him I would go in to the auditor's office and see; I came back and told him "Yes there was quite an amount of money then on hand." He then stated that there were a number of orders outstanding among the people there, and he had no money wherewith to pay them, and wanted to know if I could pay him a hundred dollars as town treasurer. I told him I could; I then gave him this check, and he gave me his receipt as town treasurer of the town of Clayton.

Q. Anything at that time said about any particular order?

A. No sir.

Q. The Coleman order was not mentioned?

A. No sir.

Q. I will ask you if these checks are the ones that were issued when he wanted the money for the Coleman order?

A. Yes sir; one dated October 2nd and the other October 6th, was drawn for that purpose?

CROSS EXAMINATION.

Mr. DAVIS. Q. What voucher have you for that one hundred dollar check?

A. I have none now, sir.

Q. Did you take Mr. O'Quam's individual receipt for it?

A. I took his receipt as town treasurer of the township of Clayton, at that time.

Q. Now, what become of that receipt?

A. Surrendered it to him when he drew the apportionment—the next time he drew it.

Q. What did you get for those two checks—the $70 and $40 orders?

A. I got the town order on the township of Clayton, drawn to D. B. Coleman or bearer.

RE-DIRECT EXAMINATION.

Mr. CLOUGH. Q. With respect to the retainer of Mr. R. A. Jones as attorney for you, I will ask you if you have refreshed your recollection.

Mr. DAVIS. I object to that.

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Mr. CLOUGH. Do you insist upon your objection?

Mr. DAVIS. Do you insist on your question?

Mr. CLOUGH. I do, unless it is ruled out?

Mr. DAVIS. Well, I shall object. Mr. Jones testified on direct examination that he went to Austin on the special business of Mr. Ingmundson in connection with that grand jury, and that he went because he was sent for. Mr. Ingmundson came on a few days afterwards and testified directly the opposite—that Mr. Jones was never his attorney. This refreshing the recollection of witnesses in the closing gasp of the prosecution, after they have placed themselves diametrically opposed upon the record, contradicting Mr. Jones, or allowing their witness to contradict himself, it seems to me is transgressing one of the most fundamental rules in the examination of witnesses. We are entitled, and shall be entitled in the argument upon that contradiction, and upon the fact of it, to comment; and it never was permissible to bring a witness upon the stand after he had been contradicted, and to contradict another witness, and ask him, under the guise of refreshing his recollection, to contradict himself and patch up a broken down piece of testimony, as is his testimony here.

Mr. CLOUGH. In the first place, if your honor please, the assumptions of the counsel are entirely false; he is mistaken as to what the witness testified. I have no recollection of Mr. Ingmundson testifying that he never employed Mr. Jones; on the contrary, he did employ Mr. Jones. Mr. Ingmundson's recollection of it now is, and has been at all times, that the employment was after the March term, 1877, Mr. Jones recollecting that it was before. That is all of the "patching up" and retraction, or whatever the gentleman sees fit to call it.

He does not testify that he never employed Mr. Jones, and I proposed to ask him and I expected him to testify that he did employ Mr. Jones, but his recollection is, (as it has been always), that the employment was not until after the March term, 1877.

Mr. DAVIS. Mr. Jones testified, on page 6, of May 31st:

"Q. Did you talk with and 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."

Now, Mr. Ingmundson says:

"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, 1877?

"A. Yes sir.

"Q. Was he not your counsel?

"A. No sir.

"Q. That is as true as anything you have testified to?

"A. He never was my counsel; I never spoke to him about being my counsel."

Now, that is the hiatus they want to bridge over.

Mr. CLOUGH. Not at all. If the testimony is taken in that shape, cer-

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tainly I did not understand it so myself at the time it was given. I did not understand the question to be addressed to anything whatever except simply as to whether, during that March term, Mr. Jones was under a retainer of Mr. Ingmundson, and I think the witness so understood when he was interrogated, because he mentioned the fact immediately after his evidence was taken.

Mr. DAVIS. Mr. Jones has testified; he has gone; his testimony is closed; he is not here to contradict, if we chose to put him on, anything Mr. Ingmundson might say. This is rebutting testimony. We have not put in a word on the defense to contradict Mr. Ingmundson or Mr. Jones; they take their own case as they have left it; it is not us they are contradicting here.

The PRESIDENT. I don't understand the counsel to desire to contradict the testimony at all.

Mr. CLOUGH. Not at all.

The PRESIDENT. If not, I can't see any harm in admitting it.

Mr. CLOUGH. It is a mere explanation.

The PRESIDENT. For that purpose, I think it is competent.

[Question repeated.]

The Witness. When the question was put to me before, I understood it only to allude up to and during that March term. I never spoke to Mr. Jones to become my attorney until about the time that that March term closed, then I simply told him that if this case ever came before the court I would employ him; that is to my best knowledge and belief. I have no other recollection.

Q. Do you remember whether Mr. Jones came down there the following term of court?

A. He came down soon after this term of court closed, also, to a referee case, where Lafayette Smith was a party, and then I had sent to Rochester, either a letter by mail or by a friend to Mr. Jones, requesting him to be present when I should have my examination before Judge Page.

Q. Was that after the March term of court closed?

A. I don't remember; I think it was in the latter part of April or forepart of May.

Q. Very shortly after?

A. Yes sir.

CROSS-EXAMINATION.

Mr. DAVIS. Who called your attention to the difference in your testimony and that of Mr. Jones?

A. I read it in the paper first, I think, sir.

Q. Now, sir, Mr Jones testifies in regard to his attendance on the March term, 1877?

A. Yes sir.

[Reading from journal.]

"Q. Were you retained as the attorney of Mr. Ingmundson?

"A. I went there especially for that purpose because I was."

Q. Is that true or untrue?

A. Well, to the best of my knowledge and belief it was not so.

Q. Now, you testified as follows:

"Q. When was it that you sent for Mr. Jones, of Rochester?

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"A. I did not send for him."
Q. Is that true or untrue?
A. It is true up to the time the question is put, and that is the first day of the term of court in March, 1877.
Q. Here, this is the connection. [Reading]:
"Q. Did you know that during the term that your official conduct was under investigation?
"A. Yes sir.
"Q. Did you know before the court began that your conduct would be investigated during the 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. In your examination two or three weeks ago, there was nothing that referred to any prior term of court except this particular term?
A. No prior term of court, sir.
Q. What put it into your head that that question of mine referred to anything except to the March term, 1877?
A. I don't understand that it did, sir.
Q. What does it refer to?
A. It refers to the March term, 1877, and not before that.
Q. You say in your testimony: "Was not Mr. Jones present during the March term, 1877?"
A. Yes sir."
Q. Wasn't he your counsel?
A. No sir; he was not, to the best of my knowledge and belief.
Q. He was not your counsel during the March term, 1877?
A. No sir.
Q. His testimony that he went there for the purpose, because he was, is not so?
A. To the best of my knowledge and belief, no.
Q. Yoru answer here was, "he never was my counsel; I never spoke to him about being my counsel." Is that true?
A. That refers up to the time of this term of court.
Q. What court?
A. 1877 term of court.
Q. But you have just testified he was not your counsel during the 1877 term of court?
A. He was not.

Mr. DAVIS. That is all.

F. W. FRISBY SWORN

And examined, on behalf of the prosecution in rebuttal, testified:
M. CLOUGH. Q. Where do you live?
A. In Le Roy, Mower county.
Q. I will ask you if you were a grand juror at the September term, 1873?
A. I was.

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Q. I will ask you if you remember whether Judge Page charged the grand jury in respect to the law of libel?

Mr. DAVIS. Upon that question we would like to have the sense of the Senate; the inquiry is put under the Mollison article; the charge under that article is of malicious conduct on the part of the respondent towards Mr. Mollison arising out of a certain indictment for libel. In the respondent's answer he sets up that in regard to those proceedings he knew nothing about them, did not instigate them, and I think the first he knew of them was when that indictment was filed in court. Such was the issue when the court opened, malicious conduct by the respondent respecting a libel, and a denjal by the respondent that he incited it or had anything to do with it. Now, when my learned friends came to prove their case, they called Mr. Kimball, who testified, it is true, that Judge Page charged the jury at that term upon the subject of libel, that he recollected it from some special circumstances; and he was the only witness on that point; there they rested. That testimony is on page 45, of Tuesday, May 28th.

Now, under the allegations of the answer, we conceive it very material for us, in order to show that Judge Page did not have anything to do with bringing on this prosecution, to contradict Mr. Kimball, and show that he gave no charge on the subject of libel at all, so we bring in a grand juror, Mr. Spencer, who testified that Judge Page did not so charge the jury at that time; and we also produced the district attorney, Mr. Wheeler, who testified that Judge Page gave no charge upon the question of libel. And this is the way the matter stood; they had put on one man to testify according to his recollection that the respondent had so charged; we had put on two reputable men to prove that there had been no such charge, and to explain how Mr. Kimball got the idea into his head that the respondent had charged in that way, Mr. Wheeler says, that during the progress of the investigation before the grand jury they asked him, as district attorney, something about the law of libel, and he got the books and explained it to them, as district attorneys always do in those cases.

I am instructed that I should be truthful in saying we could have gone on and produced many of the grand jury at that term who would testify as to whether or not Judge Page did charge upon that question of libel, and we would have had it, probably, day after day, as we had in regard to the transactions attending the discharge of the grand jury in the Ingmundson case. But we were content. Now, a witness is produced from Le Roy who was a juror on that term, 1873, and they propose to prove by him, what should have been a part of their original case, that Judge Page charged this jury upon the subject of libel. That is not according to any analogy that I have ever observed in the practice of any court, and its manifest unfairness is very apparent. We are all wearied of this matter; this business is tailing out, so far as the testimony is concerned. My learned friends are professedly on their rebuttal. In all fairness to the respondent, I do not think that this course of investigation should be permitted or prolonged.

Mr. CLOUGH. Mr. President, there are other rules besides rules strictly in reference to the order in which testimony shall be introduced. The order in which testimony shall be introduced is always subject to the discretion of the tribunal before whom it is received; but here is another rule: Whenever a witness is produced. and particularly whenever a party goes on the stand as a witness, it is always admissible to contra-

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dict that witness for the purpose of impeaching him, and the rules in regard to the introduction of testimony are varied, and subject to modification and exception, especially where a party himself has become a witness and has testified to a particular matter, and his attention has been called upon cross-examination to that matter. Now, in this case Judge Page's attention was distinctly called in his cross-examination to this matter as to what he had instructed the grand jury at the September term, 1873. He was distinctly notified, and put upon his guard by that question, or ought to have been, that we designed to impeach his testimony by contradicting him in that particular, and to show, as a matter of fact, that he had done what he denied upon his cross-examination doing.

This is a material matter; there is no question about that what he charged the grand jury on that occasion, and we can contradict him. The rule in regard to the order of testimony must give way before the rule in relation to the impeachment of witnesses, and it does on the trial of almost every case. The evidence upon this point, I apprehend, will not be very lengthy. The learned counsel states that he is instructed that several of the grand jurors would swear that nothing of the kind was said; I am instructed that nearly all of them will testify that it was said, and we have two or three grand jurors on that point; the evidence will be very short; it is impeaching testimony, and under the rules in regard to the impeachment of Judge Page he could not be impeached in advance, nor could any of his witnesses. And it seems to me we should be allowed to introduce this testimony.

Mr. DAVIS. Mr. President, when they have exhausted their case, and we have gone into our defense and the testimony has been put by each party into the scales of justice, being weighed, then my learned friend comes in with something additional as a make-weight on his side. He knew the rules as well as anybody else that such evidence in rebuttal, was not proper, that he might have put it in as a part of his original case, so he takes refuge in the technical cranny of impeachment, and because the testimony is contradictory he claims, therefore, that it can be let in on the ground that it is impeaching testimony.

The way to impeach a witness in regard to contradictory statements, is to ask him, fixing a time and place, if he did not say such and such a thing; but that is collateral when the original question is in issue, whether he ever did use that language; then it is a substantive issue of fact to be proved or disproved. Now, how does that matter present itself? Is there to be any end to this case? Were we not entitled, when they closed up their books in the Mollison case, and said that is all of our testimony, to consider that that was the end of it; we had witnesses here—three jurors—so my client informs me, to testify on that article; they have gone; we have put on Mr. Wheeler, the county attorney and the respondent, to explain all, and now they seek to raise this question again.

The PRESIDENT. At the request of the counsel, the question will be submitted to the Senate.

The question having been submitted to the Senate, the testimony was rejected.

Mr. CLOUGH. I desire to call Mr. Dorr, but the sergeant-at-arms is unable to find him.

Mr. DAVIS. What will he testify, perhaps we can admit it.

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Mr. CLOUGH. He will testify as to what occurred when Mr. Knox was present.

Mr. DAVIS. What do you expect to prove by him?

Mr. CLOUGH. I expect to prove what Mr. Slider swore to.

Mr. DAVIS. No, I can't take Slider, I will take Adams.

I will admit that he will testify to what Adams testified to.

Mr. CLOUGH. You can't stand Slider, eh?

Mr. DAVIS. No, we can't stand Slider. [Laughter.]

MICHAEL TEITER, SWORN,

And examined on behalf of the prosecution on rebuttal, testified:

Mr. CLOUGH. Q. Where do you live?

A. I live in Mower county.

Q. How long have you lived there?

A. I have lived there about ten years.

Q. Do you know Judge Page?

A. Yes sir.

Q. Do you know Mr. W. W. Engle?

A. Yes sir.

Q. Do you know Mr. R. O. Hall, the sheriff?

A. Yes sir.

Q. Do you remember of being in the store of W. W. Engle in the fall of 1875, shortly after the election, when Judge Page, and Mr. Engle and Mr. Hall had a conversation?

A. I remember being in the store then; I think it was in the fall of 1874; it was in the fall of 1874 or 1875.

Q. Was it shortly after the election of Mr. Hall as sheriff?

A. I think it was; I think it was sometime in the fall, I couldn't say exactly what time.

Q. Was it the same fall that Mr. Hall was elected sheriff?

A. I think it was, yes sir.

Q. Did you hear those parties have a conversation about the appointment of Thomas Riley as deputy sheriff?

A. I "heerd" a small conversation in there betwixt them; they were in there when I came in the feed store; I did not hear much of the conversation; I heard some of the conversation; but not a great sight of it.

Q. Did you hear the subject of the appointment of Thomas Riley deputy, spoken of while you were there?

A. When I first came in the store I did not know Mr. Riley; I don't know as I ever heard his name before. When I came in the store I spoke to Mr. Page and Mr. Hall both, and they both spoke to me, and Mr. Page went on and said, said he: "I think there is plenty of reliable"—he used the word "reliable"—"or competent men in Mower county without appointing Mr. Tom Riley deputy sheriff." Them is the words, as nigh as I can recollect.

Q. You went out shortly afterwards?

A. No sir.

Q. What else occurred?

A. Well, Mr. Hall made some reply that Mr. Riley had been either police or constable, and he thought he would make a good officer; that was about all. Mr. Page went out then.

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Q. Did you hear Mr. Engle say anything?

A. All that I heard Mr. Engle say was after Mr. Page went out. I asked—

Mr. DAVIS. Never mind that.

Mr. CLOUGH. Q. Was what Mr. Engle talked to you about what had been said when Judge Page was in there?

A. I don't know as he told me—

Mr. CLOUGH. That is all.

Mr. DAVIS. That is all.

G. M. CAMERON, RECALLED

On behalf of the prosecution in rebuttal, testified.

Mr. CLOUGH. Q. I will ask you if you were present at the term of court, in March, 1875, when Mr. Greenman was appointed in place of Mr. Lafayette French to take charge of a criminal case?

A. Yes, I was there at the time.

Q. I will ask you if you were counsel in that criminal case?

A. I was; I defended the criminal.

Q. I will ask you if Mr. French was in there after the case was called and after one or two jurors were called?

Mr. DAVIS. I object to that under the same argument I made a few moments ago.

Mr. CLOUGH. What is that?

Mr. DAVIS. What took place between the court, Mr. French and Mr. Greenman, was an allegation by you.

Mr. CLOUGH. This point I am inquiring of about now, has been ruled upon and admitted. I am calling his attention to that one particular thing.

Mr. DAVIS. What is that?

Mr. CLOUGH. That is as to whether one or two jurors had been called. I am calling his attention to Mr. Murray's testimony.

Mr. DAVIS. If that is all, there will be no objection.

Mr. CLOUGH. Q. I will ask you if Mr. French was there when the case was called?

A. He was not; at the time that case was called he was not in the room.

Q. Mr. Murray testified that Mr. French was talking with a witness and Judge Page spoke to him and said: "Mr. French, Mr. French, [louder,] Mr. French, [still louder,] did that occur?

A. There was no such language took place there.

CROSS-EXAMINATION.

Mr. DAVIS. Q. Who tried the case immediately preceding tha criminal case?

A. I think Mr. Greenman was one of the counsel; Mr. Cole, I think, tried it on one side.

Q. Didn't you have a hand in that case?

A. No sir.

Q. What were you doing?

A. I was watching the calendar.

Q. Do you recollect of Mr. Murray being there?

A. I don't remember his being there at that time.

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Q. You don't recollect when Mr. Greenman came in, do you?
A. I recollect Mr. Greenman was in the court room at the time the criminal calendar was called.
Q. Do you recollect Mr. Hunt being present?
A. I could not state whether he was or not; I presume he was.
Q. When was this transaction?
A. About two years ago.
Q. When was your attention first attracted to this subject since the time it occurred?
A. I have thought of it different times when the matter was spoken of, of his appointing Mr. Greenman.

Mr. CLOUGH. I wish to show by the records of the county commissioners that at the January session, 1875, there was but one evening session

No objection was made and the record was not formally introduced.

Mr. CLOUGH. Mr. President, as the managers are now advised, and as far as they can recollect, that closes the evidence so far as witnesses are concerned. There are one or two matters of record, which Gov. Davis asks us to postpone. We would not like, however, to say here to-night that we close our evidence. It is possible that we may, upon reflection, think of some other matter which should be introduced. If there is anything else it will be very brief indeed, and it will occupy but little time.

Mr. DAVIS. I do not anticipate, Mr. President, that my learned friends will have much of anything else to offer, and I am prepared to say now that if they close, we shall have nothing more to offer, except the document I spoke of being in the possession of Mr. Losey.

It seems to me important, in our present position, that the testimony should close, in order that we lawyers can be advised that we can go home and sit down, with such time as the Senate will be kind enough to give us to prepare our arguments.

If we come here to-morrow to go into testimony again—of course we know how these matters prolong themselves,—to-morrow will be pretty much occupied.

I don't know what the views of Senators are about a recess in view of the state of the journal. The printer is far behind; the secretary informs me that it will take four days to get it out. The labors of counsel in this matter, especially of counsel for the respondent, have been extremely exacting. My learned friends have had a division of labor, which we on our side could not secure. I therefore, should insist, if it be proper, that the testimony be closed to-night, but at the same time, if, on the opening of court on the adjourned day, any little matter should come up on either side which had been forgotten, I should not be strenuous in objecting to its introduction.

Mr. CLOUGH. We prefer not to declare the evidence formally closed to-night. There may be some matters that we will desire to put in. As I state now, however, we think there is nothing.

Mr. DAVIS. Well, your honor, if there is anything he has forgotten, that he desires to introduce at that time, we shall not object.

Senator NELSON offered the following:

Ordered, That rule No. 31 be, and the same is, hereby amended by striking out the word "two" in the second line of said rule, and inserting in the place thereof the word "three."

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Mr. DAVIS. I desire to be heard upon that order.

Mr. Manager CAMPBELL. We wish to be heard upon that question, and it is pretty late for argument to-night.

Mr. DAVIS. I would like to have the privilege of asking at whose instance Senator Nelson introduces this order; it is not from our side. Has the Senator been requested by any one to have three counsel for the respondent?

Senator NELSON. No.

Senator WAITE. If it is proper, I would like to inquire how much time is necessary for each side to take to argue this question. If they take no more time than two, I have no objection to three; but if it is going to prolong the time 50 per cent. I should be in favor of two. Of course, a reasonable length of time they ought to have.

Mr. DAVIS. We are willing it should go over until to-morrow morning.

Senator NELSON. Mr. President, I desire to say in answer to Gov. Davis's inquiry, that no one has requested me to introduce this order; I do that on my own motion; at the same time, I have received intimations, at least on the part of the managers, that they desire to have there close on that side, but no request has been made to me to introduce this order.

In this connection, Mr. President, I will offer another order. It involves the question of whether we are to take a recess of three or four days, or finish up this week. I offer it now, to the end that the counsel and managers may be heard upon it.

"Ordered, That the final argument, as provided by rule 31, be commenced to-morrow."

THE PRESIDENT. The question is upon the first order presented by Senator Nelson.

SENATOR NELSON. Mr. President, I have offered these in open session, here, to the end that the counsel might be heard; if they don't desire to be heard, then I move that the Senate retire.

MR. MANAGER CAMPBELL. We do wish to be heard upon this, and are ready to present our views upon the matter, now, if necessary.

THE PRESIDENT. Counsel for the respondent suggest that perhaps it would be well enough to adjourn over till morning so that argument can be heard on both sides.

SENATOR ARMSTRONG. In order to allow a little time to consult in regard to the views of members, I move to adjourn.

The motion prevailed.

Attest:

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

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TWENTY-EIGHTH DAY.

ST. PAUL, TUESDAY, June 18, 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, Edgerton, Edwards, Finseth, Gilfillan John B., Goodrich, Hall, Henry, Houlton, Lienau, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Morrison, Nelson, Page, Remore, Rice, Smith, Swanstrom 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. C. A. Gilman, Hon. W. H. Mead, Hon. J. P. West, Hon. Henry Hinds, and Hon. W. H. Feller, entered the Senate Chamber and took the seats assigned them.

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

The Journals of proceedings of the Senate, sitting for the trial of Sherman Page upon articles of impeachment, for Tuesday, June 11, and Wednesday, June 12th, were read, and approved.

MR. PRESIDENT: The resolutions offered by Senator Nelson, and under consideration last evening, are now in order.

Senator NELSON. As I stated last evening, the design in offering the resolutions, was to give both the managers and counsel for respondent opportunity to discuss the matter, and after they had concluded their remarks, that we might retire for consultation.

Mr. DAVIS. Mr. President and gentlemen of the Senate: In regard to the resolution that the arguments in this case shall proceed forthwith, it is manifest that counsel occupy a position of considerable delicacy.

Senator NELSON. If the counsel will allow me, I will introduce the following substitute, which I send to the chair. The resolution was read, and is as follows:

"Ordered, That the final argument as provided for by rule 31, be commenced Thursday morning next, and proceeded with from day to day till closed."

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Mr. DAVIS. Of course, gentlemen of the Senate, frankness of expression is expected from counsel, in regard to the time when the argument shall commence; at the same time, we all peculiarly feel how proper it is that the necessities of the public, and the private affairs of Senators shall be consulted. I will say frankly that, when we take into consideration the fact that the journals of this body are now four days behind, and cannot, by any possibility, be placed in the hands of members and counsel before Saturday of this week, it seems to me that the proposed course in bringing the argument on sooner than will enable counsel to consult testimony, to prepare the argument, and what is still more important, depriving Senators of reading the evidence, looking it over thoroughly, and making up their minds, each for himself, upon what points he desires arguments to be addressed, places counsel at a disadvantage. If the journals were up, it would still be a remarkable task for any person, if it could be performed, (and I speak, perhaps, as well for the managers as I do for myself) to prepare himself between now and next Thursday, to speak upon the subject of some fifteen or sixteen charges.

Furthermore, the counsel for the respondent are in a peculiar position here. We are fewer in numbers than the learned managers. We have been compelled to be here personally, each of us, from day to day, listening to the testimony, partaking in the examinations, direct and cross, and performing, to the best of our ability, the peculiarly exacting and fatiguing duties of our position. Ever since the fifth or sixth day of these proceedings, the learned gentlemen whom it has been said will sum up this case, have been absent from the court room whenever they chose, doubtless engaged in preparing themselves for the performance of their final duties. That opportunity we have not had. Evidence has been put in hurriedly—with great despatch we venture to say, and while we have been engaged here in the distracting duties of preparing our own testimony, and engaging in the cross-examination, the learned gentlemen who are to close this case have, in a great measure, and whenever they chose, been relieved from personal attendance, and our friend Mr. Clough has performed the whole of the duties incident to the prosecution in that respect.

In regard to the question as to how many managers or counsel for the prosecution should sum up this case; my convictions of what is right are very clear.

The Senate, at the beginning of these proceedings laid down a rule for the guidance of counsel in that respect. Under that rule, the manager, Mr. Campbell, opened this case. Under that rule, Mr. Losey opened the defence. The distribution of the duties of the counsel, at that very early stage of the proceedings, was greatly determined by what we knew the fixed rule of this Senate to be upon that subject. Shortly after Mr. Losey had performed the duties which were assigned to him individually, he concluded that his continued connection with the case was practically ended, and he departed from this place, for it was thought that it was safe for him to go home and to attend to engagements pressing him very much there.

The time which I have been able to devote to the preparation of argument—to laying out the grounds of such discussion as I shall make, has also been guided by that rule. I expected that one of the counsel for the prosecution would open this case; that Mr. Lovely and myself should speak after him, and that finally the learned manager, who will

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conclude the arguments, would exhaust what they had to say upon the subject.

But now, it is proposed, after Mr. Campbell has opened the case—after Mr. Losey has opened the defense—after the duties of those gentlemen in this trial have practically terminated, to allow three managers to close this argument on behalf of the prosecution, against the arguments of two of the counsel for the defense. Gentlemen, it strikes me that is not fair. This is a case of very great complexity, both upon the law and the facts, but still of a complexity not so great that two men, who have been selected for their fitness and ability, cannot present before the Senate all that the managers have to say, fully and fairly. If we had supposed that, as the last act in the introduction of testimony, and the determination of the rules of trial of this proceeding, three of the managers were to be allowed to sum up this case on behalf of the prosecution, Mr. Losey, or Mr. Lovely, or myself might have been relieved during these proceedings, perhaps by the engagement of additional counsel, to do what my learned friends have been enabled to do, on account of their numbers.

I do not make these remarks on the ground that we have any fear of a full discussion; that is not the point

If this proposition had been made early in the trial, we should have taken means to place ourselves upon an equality with these gentlemen, in numbers, and it seems to me that to change the entire mode of proceeding, and to advise us at this late day, after we have given some reflection as to how this argument should be put in, such action is inequitable and unfair, imposing unnecessary burdens, and manifestly departing from what was contemplated when the rule of this Senate on this matter was established.

How would it work practically? One of the learned managers will open the case; one on our side will follow; then one of the learned managers again; then one on our side, and then a learned manager close the case.

It seems to me, gentlemen, that this is imposing an obligation upon the counsel for the respondent, that they had no reason to anticipate.

In regard to proceedings of this character, it is well known to the profession, that the advantages of the close in a case of this character, are very great, and so invidious has that advantage appeared in regard to trials of criminals under indictment, that the legislature of this State, in its wisdom, some years ago, enacted that the former rule, which was also in the discretion of the court, should be reversed, and that the defendant should have the close in all criminal proceedings. I venture to say that that rule has been found to work well, and to be in the interests of justice. It has been made, because of the fact that the powers of prosecution, when the State brings those powers to bear upon any person accused, are practically limitless, and in some respects, almost irresistable. It is no small matter, gentlemen of the Senate, for any person to be accused by the public, of which he is a member, whether under an indictment or articles.

The common mind is so constituted, that it requires an effort not to indulge in certain presumptions against a person in that position, and on that question, to equalize as it were, the disadvantages which an accused person lies under in every court of this State, where a person is accused of any offense, he has been told by the statute that it shall be his privilege and right, after all the agencies of attack have spent them-

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selves upon him, to stand up defensively, and have the last word, and gentlemen, I think it is right.

Now, I protest most vigorously against the fairness and justice of placing any person in here, to argue this case, more than the number designated by the rule, after counsel have sat here day after day, after opening the case, after putting in their evidence, and given what time they could to the arrangement of the argument, upon the theory that the close should be as the rule now says it shall. But, if in the wisdom of the Senate, it is thought proper to allow three managers to close this case, inasmuch as but two of us are left here in behalf of the defense, then I ask that we may have the privilege, in analogy to the courts of this State in criminal cases, of closing this argument finally.

Mr. Manager CAMPBELL. In regard to the first proposition here for an adjournment, I am requested, ou the part of the managers, to say that we are now ready to proceed. We do not ask for an adjournment. We prefer there should be no adjournment, but upon this point we are not at all tenacious; we desire, if the Senate shall see fit, to allow the respondent to have his own way.

I think with the learned counsel who has just closed, that we have the advantage in numbers, but not in experience as attorneys. I think that perhaps the manager who is to open this case, and the manager who is to close it, are better prepared now, than the counsel for the respondent, for reasons stated by the counsel on the other side. If our managers are not prepared they ought to be, for they have had very little else to do, and for that reason we are ready, not urging, however, immediate action, and we leave that question entirely in the discretion of the Senate, for we would be perfectly satisfied, upon our part, to grant the request of the respondent's counsel.

In regard to the other resolution. I see no unfairness in it. The resolution is offered in good faith, that three be allowed to speak upon each side. In other words, if the respondent's side is represented by but two counsel, that they be allowed to make three speeches. It is in all precedent, that the managers, in a trial of this nature, have been allowed to speak as many times as they saw proper, and as many of them as chose to do so. We are here representing the State of Minnesota; we are representing the other branch of the legislature, and it is proper on the part of the Senate, to allow them not only as many speeches, but as much time as they may desire. I am satisfied that none of the managers desire to take any advantage of the Senate in this regard. As far as I am concerned, I probably shall not, and do not intend to say a word on this question, but if any of the learned managers, with whom I am associated, desire to be heard upon this, I think it is their right, and their privilege, and not only that, but their duty.

Now we had arranged, under the rules of the Senate, that one of the managers should open, and one of them, close this case. We admit the power, and perhaps the right of this Senate, to make rules for the government of the court, and as to the number that may speak, perhaps to limit them as to time, but we would prefer that it be not done.

At the time we made our argument, we were not certain that we would have counsel furnished us. Other parties interested, feeling a deep interest in the result of this trial, have seen fit to furnish us counsel. That counsel has been connected with us since the beginning of these proceedings, and there is none that understand the case as well as

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he. Knowing that he has studied the law and the evidence, we have not made it our special duty, to study up the *minutia* of this case, as has done the learned counsel who has been associated with us, and he has relieved us from a great many of the burdens of this trial, and I feel as though he ought to be heard; I feel that the Senate would be glad to hear him, and at the same time, it is not right, that managers who were assigned to open and close the case, should be cut off. We are ready, and we are expected to submit to any rule that may be laid down by the Senate, but that is our programme. I think it will not take any more time for three speeches upon our side as well as upon the other side, than it will with two. We are willing to allow the gentlemen on the other side to have the close upon all of our speeches, except the final one, for that is our right; it is the custom in all trials similar to this, to which precedent offers not a single exception.

The learned counsel, who has just closed, says that the rule has been changed as to indictments and trials in this State in criminal causes. It has been changed, gentlemen, but it was a change which I think every one of you regard as for the worse. It may be that it leans towards the criminal; I have no doubt but what it does. You may take the experience of criminal prosecutions throughout the State, and you will find that young and inexperienced attorneys are elected as the prosecuting officers, and that the most able and experienced counsel are generally those who appear in behalf of the defense. I think the change does not bear for the interest of the community, though it may favor the defendant. Through the experience of counsel, and the undue advantage given by the privilege of the closing argument, and the controlling power exercised over jurors by counsel skilled and experienced, the guilty are often cleared, and wrong is done to the community.

I believe that to be the experience of the law that is now existing in this State. I have no complaint to make, because I am more often on the part of the defense than on that of the prosecution. As far as a practicing lawyer is concerned I like it as it is, but I don't think the change is a meritorious one.

We ask no undue advantage in this matter. We wish the respondent to have a fair and full hearing. We ask no advantage; we are desirous that they shall have just as many speeches as they chose, but we do say that they have no right to cut us off, and say we shall be limited simply because now, they have but two counsel.

Mr CLOUGH. There is a matter of evidence, that yet remains to be settled. I will state that I have not seen the printed evidence of Mr. Williams. He was formerly the auditor of Mower county, and my recollection is that he stated that, after he went out of office, and Mr. McIntyre came in, that he remained with the auditor several months or some time.

Senator C. D. GILFILLAN. I think the testimony on that point was, that Mr. Williams remained in the auditor's office but a short time after Mr. McIntyre came in; but a few days.

Mr. CLOUGH. I want that to appear, and I presume that it does appear in Mr. William's evidence, that during the March session of the board in 1875, Williams remained there during that session, and afterwards. If there is any doubt of it, we will call Mr. McIntyre. I appre-

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hend there is no doubt about it. With those exceptions, that closes the only matter that I desire to call attention to.

Senator ARMSTRONG. I would like to have the Honorable Managers and Governor Davis, intimate, if they can consistently, as to the length of time that will necessarily be consumed in the several closing arguments.

Mr. DAVIS. It is difficult for me to answer that question, but I shall endeavor to be brief. I have never been accused of being prolix, but at the same time it must be apparent, that many things are being considered and much to be said. I should dislike very much to hold out views to the Senate, which my sense of duty might afterwards compel me to modify. [To Mr. Clough.] What do you want us to stipulate, Mr. Clough?

Mr. CLOUGH. I want you to agree, that during the session of the board of 1875, Mr. Williams, who had formerly been county auditor, remained as deputy and assistant of Mr. C. W. McIntyre, and was there when the board met.

Mr. DAVIS. When do you want to stipulate that he was deputy auditor.

Mr. CLOUGH. I want to establish the fact.

Mr. DAVIS. We admit that he acted in that capacity part of the time.

Mr. Manager CAMPBELL. Touching the time that will be taken in the arguments, I will state that that is quite a difficult matter to determine, judging from my experience in opening this case. I certainly thought I would be able to complete the opening of this case in two hours and a half, but I am told that I was about six hours in so doing. Judging from precedent, and from the matters of time, I think no person could review the evidence in this case, or make a fair showing here, in less than one day, and I think our side will consume three days in the arguments—a day for each speaker. From what I can see, I presume this same will hold good on the part of the respondent.

Senator C. D. GILFILLAN. I hope this question will not be urged upon the counsel. It is almost impossible for them to foresee, on this question of time.

Senotor ARMSTRONG. I trust the matter will cast no reflection on me, as I have withdrawn the suggestion.

Senator C. D. GILFILLAN. Certainly not, I considered the matter still before the Senate, and was unaware of the fact that the suggestion had been withdrawn.

Mr. Manager GILMAN. I merely rise to state, that while perhaps it will not be agreeable to be limited as to time, that if three speak on behalf of the prosecution, that no more time will be consumed than if but two speeches were made—at least but little more time. It is possible that the work may be so divided that some of the managers will not go over all the questions in the case. At any rate, the remarks will be very much briefer in case three speak than they would be were there but two to present the final arguments.

Senator DORAN. I just rise to inquire if it will be convenient for the managers to proceed this week, giving the next week to Gov. Davis; that is, that the managers take three days of this week, and give three

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days of the next to the respondent; as the arguments will probably take up that much time.

Mr. Manager CAMPBELL. We are ready at any moment.

On motion, the Senate went into secret session.

On motion, the pending resolutions were laid on the table.

Mr. Nelson offered the following:

Ordered, that the Secretary be, and hereby is ordered and required to cause so much of our proceedings as are not printed, to be forthwith printed.

On motion, the resolution was laid on the table.

Mr. Donnelly moved that the resolution fixing the date of commencing the argument be taken up.

Which was agreed to.

Mr. Donnelly moved to strike out Thursday, and insert Monday, June 24th, at 7 o'clock P. M.

The question being taken on the amendment,

And the roll being called, there were yeas 11, and nays 23, as follows:

Those who voted in the affirmative were—

Messrs. Armstrong, Deuel, Donnelly, Doran, Edwards, Gilfillan C. D., Henry, Lienau, McNelly, Morrison and Remore.

Those who voted in the negative were—

Messrs. Ahrens, Bailey, Bonniwell, Clement, Clough, Edgerton, Finseth, Gilfillan John B., Goodrich, Hall, Hersey, Houlton, Macdonald, McHench, Mealey, Morehouse, Nelson, Page, Rice, Smith, Swanstrom, Waite and Waldron.

So the amendment was not adopted.

Mr. Nelson moved that the resolution be amended by striking out Thursday and inserting Wednesday.

And the roll being called, there were yeas 13, and nays 21, as follows:

Those who voted in the affirmative were—

Messrs. Armstrong, Clough, Deuel, Finseth, Gilfillan John B., Hall, Houlton, McNelly, Nelson, Page, Rice, Waite and Waldron.

Those who voted in the negative were—

Messrs. Ahrens, Bailey, Bonniwell, Clement, Donnelly, Doran, Edgerton, Edwards, Gilfillan C. D., Goodrich, Henry, Hersey, Lienau, Macdonald, McClure, Mealey, Morehouse, Morrison, Remore, Smith and Swanstrom.

So the amendment was not adopted.

Mr. Nelson, with consent of the Senate, withdrew the words, "and proceeded with from day to day till closed."

And the question being taken on the resolution as amended, it was adopted without division.

Mr. Nelson moved to take up the resolution in reference to amendment of Rule 31, in reference to the number of speeches on each side.

Mr. Donnelly offered the following amendment:

Ordered, that the final argument on the merits may be made by two persons on each side; provided, however, that additional arguments may be made on either side in writing, delivered to the Secretary and printed in the journal.

The question being taken on the amendment, it was lost.

Mr. Donnelly offered the following amendment.

Ordered, That the closing argument be made by the Respondent's counsel.

The question being taken on the amendment, and the roll being called, there were yeas 13, and nays 21, as follows:

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Those who voted in the affirmative were—

Messrs. Armstrong, Bailey, Clement, Donnelly, Gilfillan C. D., Gilfillan John B., Hall, Houlton, Lienau, McClure, McNelly, Rice, Waite and Waldron.

Those who voted in the negative were—

Messrs. Aherns, Bonniwell, Clough, Deuel, Doran, Edgerton, Edwards, Finseth, Goodrich, Henry, Hersey, Macdonald, McHench, Mealey, Morehouse, Morrison, Nelson, Page, Remore, Smith and Swanstrom.

So the amendment was not adopted.

Mr. Nelson offered the following substitute to the original resolution.

Ordered, That the final argument may be made by three persons on each side, the argument to be opened and closed on the part of House —provided that in case only two persons make the closing argument for the respondent and three on the part of the managers, then two of the managers shall speak before the respondent's counsel are heard.

The question being taken on the substitute, and

The roll being called, there were yeas 23, and nays 11, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Armstrong, Bonniwell, Clough, Deuel, Doran, Edgerton, Edwards, Finseth, Goodrich, Henry, Hersey, Lienau, Macdonald, McHench, Morehouse, Nelson, Page, Remore, Rice, Smith and Swanstrom.

Those who voted in the negative were—

Messrs. Bailey, Clement, Donnelly, Gilfillan C. D., Hall, Houlton, McClure, McNelly, Mealy, Waite and Waldron.

So the substitute was adopted.

Mr. Waite offered the following:

Resolved, That the managers and counsel in behalf of the State be permitted to speak one day each, and that the counsel for respondent be permitted to speak the same number of hours in the aggregate that the managers and counsel for the State may speak, and that the aggregate time allowed each side be limited to two days.

Mr. Rice moved to lay the resolution on the table. Which motion prevailed.

On motion the Senate resumed business in open session.

The PRESIDENT. For the information of the counsel and managers, the clerk will read the order that has been adopted in secret session, covering the argument in this case.

The proceedings of the secret session, were thereupon read.

The PRESIDENT. Do the managers desire to say anything in regard to this matter?

Mr. Manager CAMPBELL. We have nothing, Mr. President.

The PRESIDENT. Anything further from counsel.

Mr. DAVIS. In regard to this Williams matter, I will say that at that meeting in January, there is only one evening session that appears of record. It also shows, (and I wish that manager Campbell will agree with me) that record of the January meeting of the board of county commissioners, does not show any record as to when they had their final adjournment.

Mr. Manager CAMPBELL. Whatever it was, we will agree to it.

Mr. DAVIS. That is the fact, and we will verify it.

On motion the Senate adjourned to Thursday morning at 9½ o'clock.

Adjourned.

Attest:

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

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