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Foreword

By Hon. Peter W. Rodino, Jr., Chairman, Committee on the Judiciary

The resolution of fundamental issues of public debate is always enhanced when wide segments of the American public become concerned and informed.

In recent months, the Committee on the Judiciary has daily received numerous requests for information regarding the constitutional and procedural bases for the impeachment of civil officers of the United States. For that reason, and to promote familiarity with a critical area of American law, I am pleased to transmit this document as a committee print.

It is my hope that these materials, some of them previously scattered in select libraries and in some cases out of print for more than a century, will now be more readily accessible to Members of Congress and to a larger segment of the American community.

October 9, 1973.

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Provisions of the United States Constitution Regarding the Matter of Impeachment

The following provisions of the United States Constitution apply specifically to impeachment:

Article I; Section 2, clause 5

"The House of Representatives . . . shall have the sole Power of Impeachment."

Article I; Section 3, clauses 6 and 7

"The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be in Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two thirds of the Members present.

"Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law."

Article II; Section 2, clause 1

"The President . . . shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in cases of Impeachment."

Article II; Section 4

"The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

Debate on the Question: "Shall the Executive Be Removable on Impeachments?" (From the Journal of James Madison, Records of the Federal Convention, Friday, July 20, 1787)*

"*to be removable on impeachment and conviction (for) malpractice or neglect of duty*". See Resol: 9:

Mr. Pinkney & Mr. Govr. Morris moved to strike out this part of the Resolution. Mr. P. observed. he (ought not to) be impeachable whilst in office

Mr. Davie. If he be not impeachable whilst in office, he will spare no efforts or means whatever to get himself re-elected. He considered this as an essential security for the good behaviour of the Executive.[1]

Mr. Wilson concurred in the necessity of making the Executive impeachable whilst in office.

Mr. Govr. Morris. He can do no criminal act without Coadjutors who may be punished. In case he should be re-elected, that will be sufficient proof of his innocence. Besides who is to impeach? Is the impeachment to suspend his functions. If it is not the mischief will go on. If it is the impeachment will be nearly equivalent to a displacement, and will render the Executive dependent on those who are to impeach.

Col. Mason. No point is of more importance than that the right of impeachment should be continued. Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice? When great crimes were committed he was for punishing the principal as well as the Coadjutors. There had been much debate & difficulty as to the mode of chusing the Executive. He approved of that which had been adopted at first, namely of referring the appointment to the Natl. Legislature. One objection agst. Electors was the danger of their being corrupted by the Candidates: & this furnished a peculiar reason in favor of impeachments whilst in office. Shall the man who has practised corruption & by that means procured his appointment in the first instance, be suffered to escape punishment, by repeating his guilt?

Docr. Franklin was for retaining the clause as favorable to the executive. History furnishes one example only of a first Magistrate being formally brought to public Justice. Every body cried out agst this as unconstitutional. What was the practice before this in cases where the chief Magistrate rendered himself obnoxious? Why recourse

*From the records of the Federal Convention, Friday, July 20, 1787; reprinted with permission of Yale University Press, Vol. 2, Farrand, *The Records of the Federal Convention of 1787*.

[1] Crossed out: "To punish him when".

was had to assassination in wch. he was not only deprived of his life but of the opportunity of vindicating his character. It wd. be the best way therefore to provide in the Constitution for the regular punishment of the Executive when his misconduct should deserve it, and for his honorable acquittal when he should be unjustly accused.

Mr. Govr Morris admits corruption & some few other offences to be such as ought to be impeachable; but thought the cases ought to be enumerated & defined:

Mr. (Madison)—thought it indispensable that some provision should be made for defending the Community agst the incapacity, negligence or perfidy of the chief Magistrate. The limitation of the period of his service, was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of peculation or oppression. He might betray his trust to foreign powers. The case of the Executive Magistracy was very distinguishable, from that of the Legislative or of any other public body, holding offices of limited duration. It could not be presumed that all or even a majority of the members of an Assembly would either lose their capacity for discharging, or be bribed to betray, their trust. Besides the restraints of their personal integrity & honor, the difficulty of acting in concert for purposes of corruption was a security to the public. And if one or a few members only should be seduced, the soundness of the remaining members, would maintain the integrity and fidelity of the body. In the case of the Executive Magistracy which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic.

Mr. Pinkney did not see the necessity of impeachments. He was sure they ought not to issue from the Legislature who would in that case hold them as a rod over the Executive and by that means effectually destroy his independence. His revisionary power in particular would be rendered altogether insignificant.

Mr. Gerry urged the necessity of impeachments. A good magistrate will not fear them. A bad one ought to be kept in fear of them. He hoped the maximum would never be adopted here that the chief Magistrate could do (no) wrong.

Mr. King expressed his apprehensions that an extreme caution in favor of liberty might enervate the Government we were forming. He wished the House to recur to the primitive axiom that the three great departments of Govts. should be separate & independent: that the Executive & Judiciary should be so as well as the Legislative: that the Executive should be so equally with the Judiciary. Would this be the case if the Executive should be impeachable? It had been said that the Judiciary would be impeachable. But it should have been remembered at the same time that the Judiciary hold their places[2] not for a limited time, but during good behaviour. It is necessary therefore that a forum should be established for trying misbehaviour. Was the Executive to hold his place during good behaviour?[3]—The Executive was to hold his place for a limited term like the members of the Legislature; Like them particularly the Senate whose members would continue in appointmt the same term of 6 years. he would periodically

[2] Crossed out: "for life".
[3] Crossed out: "He wished this were the case. But it was not."

be tried for his behaviour by his electors, who would continue or discontinue him in trust according to the manner in which he had discharged it. Like them therefore, he ought to be subject to no intermediate trial, by impeachment. He ought not to be impeachable unless he hold his office during good behavior, a tenure which would be most agreeable to him; provided an independent and effectual forum could be devised; But under no circumstances ought he to be impeachable by the Legislature. This would be destructive of his independence and of the principles of the Constitution. He relied on the vigor of the Executive as a great security for the public liberties.

Mr. Randolph. The propriety of impeachments was a favorite principle with him; Guilt wherever found ought to be punished. The Executive will have great opportunitys of abusing his power; particularly in time of war when the military force, and in some respects the public money will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults & insurrections. He is aware of the necessity of proceeding with a cautious hand, and of excluding as much as possible the influence of the Legislature from the business. He suggested for consideration an idea which had fallen (from Col Hamilton) of composing a forum out of the Judges belonging to the States: and even of requiring some preliminary inquest whether just grounds of impeachment existed.

Doctr. Franklin mentioned the case of the Prince of Orange during the late war. An agreement was made between France & Holland; by which their two fleets were to unite at a certain time & place. The Du(t)ch fleet did not appear. Every body began to wonder at it. At length it was suspected that the Statholder was at the bottom of the matter. This suspicion prevailed more & more. Yet as he could not be impeached and no regular examination took place, he remained in his office, and strengtheing his own party, as the party opposed to him became formidable, he gave birth to the most violent animosities & contentions. Had he been impeachable, a regular & peaceable inquiry would have taken place and he would if guilty have been duly punished, if innocent restored to the confidence of the public.

Mr. King remarked that the case of the Statholder was not applicable. He held his place for life, and was not periodically elected. In the former case impeachments are proper to secure good behaviour. In the latter they are unnecessary; the periodical responsibility [4] to the electors [5] being an equivalent security.

Mr Wilson observed that if the idea were to be pursued, the Senators who are to hold their places during the same term with the Executive. ought to be subject to impeachment & removal.

Mr. Pinkney apprehended that some gentlemen reasoned on a supposition that the Executive was to have powers which would not be committed to him: (He presumed) that his powers would be so circumscribed as to render impeachments unnecessary.

Mr. Govr. Morris,'s opinion had been changed by the arguments used in the discussion. He was now sensible of the necessity of impeachments, if the Executive was to continue for any time in office. Our Executive was not like a Magistrate having a life interest, much less like one having an hereditary interest in his office. He may be bribed by

[4] Crossed out "trial".
[5] Crossed out "rendering them unnecessary".

a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard agst it by displacing him. One would think the King of England well secured agst bribery. He has as it were a fee simple in the whole Kingdom. Yet Charles II was bribed by Louis XIV. The Executive ought therefore to be impeachable for treachery; Corrupting his electors, and incapacity were other causes of impeachment. For the latter he should be punished not as a man, but as an officer, and punished only by degradation from his office. This Magistrate is not the King but the prime-Minister. The people are the King. When we make him amenable to Justice however we should take care to provide some mode that will not make him dependent on the Legislature.

(It was moved & 2ded. to postpone the question of impeachments which was negatived. Mas. & S. Carolina only being ay.)[6]

On ye. Question, Shall the Executive be removeable on impeachments?

Mas. no. Ct. ay. N.J. ay. Pa. ay. Del. ay. Md. ay. Va. ay. N.C. ay. S.C. no. Geo-ay- [Ayes—8; noes—2.]

[6] Taken from *Journal*.

Debate in the First Congress, 1789, on the Establishment of Executive Departments and the Power of Removal From Office

EXECUTIVE DEPARTMENTS

On motion of Mr. BOUDINOT, the House resolved itself into a Committee of the Whole House on the state of the Union, Mr. TRUMBULL in the Chair.

Mr. BOUDINOT.—I rise, Mr. Chairman, with diffidence, to introduce a subject to the consideration of the committee, which I had hopes would have been brought forward by an abler hand; the pressing necessity of it must alone be my excuse. The great Executive departments which were in existence under the late Confederation, are now at an end; at least so far as not to be able to conduct the business of the United States. If we take up the present Constitution, we shall find it contemplates departments of an Executive nature in aid of the President: it then remains for us to carry this intention into effect, which I take it will be best done by settling principles for organizing them in this place, and afterwards appoint a select committee to bring in a bill for the same. I need say little to convince gentlemen of the necessity which presses us into a pursuit of this measure. They know that our national debt is considerable; the interest on our foreign loans, and the instalments due, amount to two millions of dollars. This arrearage, together with the domestic debt, is of great magnitude, and it will be attended with the most dreadful consequences to let these affairs run into confusion and ruin, for want of proper regulations to keep them in order.

I shall move the committee, therefore, to come to some such resolution as this: That an office be established for the management of the finances of the United States, at the head of which shall be an officer to be denominated the Secretary of Finance. I am not tenacious of the style, perhaps some other may be proper, but the object I have in view is to establish the department; after which we may go on to narrate the duties of the officer, and accommodate the name to the acts he is to perform. The departments under the late Constitution are not to be models for us to form ours upon, by reason of the essential change which has taken place in the Government, and the new distribution of Legislative, Executive, and Judicial powers.

If gentlemen then agree with me so far, I shall proceed to restrain the Secretary of Finance, and all persons under him, from being concerned in trade or commerce, and make it his duty to superintend the treasury and the finances of the United States, examine the public debts and engagements, inspect the collection and expenditure of the revenue, and to form and digest plans for its improvement. There may be other duties which gentlemen may add, as I do not pretent to have perfectly enumerated them all. After this point is settled, we may then

go to the consideration of the War Department and the Department of Foreign Affairs; but, for the present, I would wish to confine ourselves to the Department of Finance.

Mr. BENSON wished the committee to consider what he judged to be a previous question, namely, how many departments there should be established? He approved of the division mentioned by the gentlemen; but would, with his leave, move that there be established in aid of the Chief Magistrate, three Executive departments, to be severally denominated the Department of Foreign Affairs, Treasury, and War. After determining this question, if it was a proper division, the Committee might proceed to enumerate the duties which should be attached to each.

Mr. BOUDINOT was not tenacious of the form he had thrown his motion into, it was the substance he contended for; he had therefore no objection to the gentleman's motion. While he was up, he would correct a mistake into which he had fallen; it respected the arrearage of the interest and instalments of the foreign debt. He had learned from good authority, since he sat down, that there was nothing due on this account, but that it was completely paid up to the present year; but this did not do away the necessity of the present motion.

Mr. BLAND objected to the last motion as too indefinite, and feared the committee would precipitate the business, if they did not order the motions to lie on the table until to-morrow, or rather rise and refer it to be digested by a select committee.

Mr. WHITE wished gentlemen had been more particular in bringing this question forward, and had pointed out the nature and extent of the powers proposed to be given, so that his mind might be able to embrace the whole subject.

Mr. BOUDINOT said, he could apologize for not bringing the business on in another way. It seemed to be a settled point in the House that a Committee of the Whole was the proper place for determining principles before they were sent elsewhere; he had therefore adopted that mode on the present occasion, though his own judgment would incline him to pursue that last mentioned by the gentleman from Virginia, (Mr. BLAND.) He conceived the necessity of having such an office was indisputable; the Government could not be carried on without it; but there may be a question with respect to the mode in which the business of the office shall be conducted; there may also be a question respecting the constitution of it, but none with respect to the establishment of either of the three departments he had mentioned.

Mr. PARTRIDGE wished the committee to attend to one object at a time. If they had determined upon the propriety of the Department of Finance, they could go on to the next, and so on until they had decided upon all they conceived necessary; for his part, he could not see any reason for determining there should be three or five great departments; or what was the object of such a question, unless it was to decide the whole business at once.

Mr. BENSON said, his motion was founded upon the Constitutional division of these powers; the Constitution contemplated them, because it gave the President the right of requiring the opinion of the principal officer in each of the Executive departments, upon any subject relating to the duties of their respective offices. If gentlemen were inclined to waive the determination for the present, he had no

objection; it was certainly a subject of great importance, and required time for consideration.

Mr. VINING thought the gentleman should have added another department, viz: the Home Department. The territorial possessions of the United States, and the domestic affairs, would be objects of the greatest magnitude, and he suspected would render it essentially requisite to establish such a one.

Mr. BOUDINOT wished to confine the question to the Department of Finance.

A motion was made by Mr. BLAND for the committee's rising.

Mr. MADISON hoped they would not rise until the principles were settled. He thought it much better to determine the outlines of all business in a Committee of the Whole. He was satisfied it would be found, on experience, to shorten their deliberations. If the gentlemen who had offered motions to the committee would withdraw them, he would offer one, which he judged likely to embrace the intentions of both gentlemen.

Mr. BENSON withdrew his motion, and Mr. MADISON moved, that it is the opinion of this committee, that there shall be established an Executive Department, to be denominated the Department of Foreign Affairs, at the head of which there shall be an officer, to be called the Secretary to the Department of Foreign Affairs, who shall be appointed by the President, by and with the advice and consent of the Senate; and to be removable by the President.

That there shall be a Treasury Department, &c.

That there shall be a War Department, &c.

Mr. VINING seconded the motion, and offered to amend it, by adding the Domestic Department, *mutatis mutandis*. He said this department, in his opinion, was of absolute necessity, more requisite than either of the other three, except the Department of Finance; the present and increasing duties of such a department will oblige them to make the establishment.

Mr. LIVERMORE was not prepared to decide on the question even as now brought forward, nor did he see a reason why the Department of Foreign Affairs was placed at the head of the list. He thought the Treasury Department of more importance, and consequently deserved the precedence.

As to the Domestic Department just mentioned by the gentleman from Delaware, he thought its duties might be blended with the others, and thereby save the United States the expense of one grand department. If the gentleman, therefore, would wait to see what were the duties assigned to them severally, he would be able to judge respecting his motion with greater propriety.

Mr. VINING withdrew his motion for the present.

And the committee agreed to the establishment of the Department of Foreign Affairs, and placing at the head thereof an officer to be called the Secretary of Foreign Affairs; but when they came to the mode of appointing the officer—

Mr. SMITH (of South Carolina) moved to strike out the words "who shall be appointed by the President, by and with the advice and consent of the Senate." He conceived the words to be unnecessary; besides, it looked as if they were conferring power, which was not the case, for the Constitution had expressly given the power of appoint-

ment in the words there used. He also objected to the subsequent part of this paragraph, because it declared the President alone to have the power of removal.

Mr. PAGE saw no impropriety in passing an act to carry into execution the views of the Constitution, and therefore had no objection to repeat those words in the resolution. He thought if the committee stopped there, they would be under no difficulty respecting the propriety of their measure, but if they went further, they might meet with considerable embarrassment.

Mr. MADISON remarked, that as there was a discretionary power in the Legislature to give the privilege to the President alone of appointing inferior officers, there could be no injury in declaring in the resolution the Constitutional mode of appointing the heads of departments; however, if gentlemen were uneasy, he would not object to strike it out.

Mr. LEE thought this officer was an inferior officer; the President was the great and responsible officer of the Government; this was only to aid him in performing his Executive duties; hence he conceived the power of appointing to be in the gift of the Legislature, and therefore the words were proper.

Mr. SMITH (of South Carolina.)—This officer is at the head of a department, and one of those who are to advise the President; the inferior officers mentioned in the Constitution are clerks and other subordinate persons. The words are only a repetition of the words in the Constitution, and are consequently superfluous.

The question was taken on striking out those words and carried in the affirmative.

The committee proceeded to the discussion of the power of the President to remove this officer.

Mr. SMITH said he had doubts whether the officer could be removed by the President. He apprehended he could only be removed by an impeachment before the Senate, and that, being once in office, he must remain there until convicted upon impeachment. He wished gentlemen would consider this point well before they decided it.

Mr. MADISON did not concur with the gentleman in his interpertation of the Constitution. What, said he, would be the consequence of such construction? It would in effect establish every officer of the Government on the firm tenure of good behaviour; not the heads of Departments only, but all the inferior officers of those Departments, would hold their offices during good behaviour, and that to be judged of by one branch of the Legislature only on the impeachment of the other. If the Constitution means this by its declarations to be the case, we must submit; but I should lament it as a fatal error interwoven in the system, and one that would ultimately prove its destruction. I think the inference would not arise from a fair construction of the words of that instrument.

It is very possible that an officer who may not incur the displeasure of the President, may be guilty of actions that ought to forfeit his place. The power of this House may reach him by the means of an impeachment, and he may be removed even against the will of the President; so that the declaration in the Constitution was intended as a supplemental security for the good behaviour of the public officers. It is possible the case I have stated may happen. Indeed, it may, perhaps, on some occasion, be found necessary to impeach the President himself;

surely, therefore, it may happen to a subordinate officer, whose bad actions may be connived at or overlooked by the President. Hence the people have an additional security in this Constitutional provision.

I think it absolutely necessary that the President should have the power of removing from office; it will make him, in a peculiar manner, responsible for their conduct, and subject him to impeachment himself, if he suffers them to perpetrate with impunity high crimes or misdemeanors against the United States, or neglects to superintend their conduct, so as to check their excesses. On the Constituionality of the declaration I have no manner of doubt.

Mr. Benson.—If we refer to the Constitution for light on this subject, it will appear evident that the objection is not well founded. The objection is this: that an officer ought not to be removed but by impeachment; then every officer is appointed during good behaviour. Now, the Constitution expressly declares, that the Judges, both of the Supreme and Inferior Courts, shall hold their offices during good behaviour. If it is declared, that they are told their offices by this particular tenure, it follows that the other officers of the Government should hold them only at pleasure. He thought this an important question, and one in which they were obliged to take the Constitution by construction. For although it detailed the mode of appointing to office, it was not explicit as to the supersedure: this clause, therefore, would be a mere declaration of the Legislative construction on this point. He thought the importance and necessity of making the declaration, that the Chief Magistrate might supersede any civil officer was evident, and he should therefore vote in favor of the clause as it stood.

Mr. Vining said there were no negative words in the Constitution to preclude the President from the exercise of this power; but there was a strong presumption that he was invested with it: because it was declared, that all Executive power should be vested in him, except in cases where it is otherwise qualified; as, for example, he could not fully exercise his Executive power in making treaties, unless with the advice and consent of the Senate—the same in appointing to office.

He viewed the power of removal, by impeachment, as a supplementary security to the people against the continuance of improper persons in office; but it did not consist with the nature of things, that this should be the only mode of removal; it was attended with circumstances that would render it insufficient to secure the public safety, which was a primary object in every Government. Witness a transatlantic instance of its incompetency—he meant the famous case of Mr. Hastings. With what difficulty was that prosecution carried on! What a length of time did it take to determine! What is to be done while the impeachment is depending? For, according to the ideas of the gentleman from South Carolina, (Mr. Smith,) he cannot be removed but on conviction. If he cannot be removed, I should suppose he cannot be suspended; and what security have the people against the machinations of a bad man in office? He had no doubt but the Constitution gave this power to the President; but, if doubts were entertained, he thought it prudent to make a Legislative declaration of the sentiments of Congress on this point. He was therefore in favor of the clause.

Mr. Bland thought the power given by the Constitution to the Senate, respecting the appointment to office, would be rendered almost

nugatory if the President had the power of removal. If the first nomination of the President should be disapproved by the Senate, and the second agreed to, he had nothing to do but wait the adjournment of Congress, and then fill the vacancy with his favorite; who, by thus getting into the possession of the office, would have a considerable chance of permanency in it. He thought it consistent with the nature of things, that the power which appointed should remove; and would not object to a declaration in the resolution, if the words were added, that the President shall remove from office, by and with the advice and consent of the Senate. He agreed that the removal by impeachment was a supplementary aid favorable to the people; but he was clearly of opinion, that the same power that appointed had, or ought to have, the power of removal.

Mr. JACKSON wished the motion had been referred to a sub-committee to digest: it seemed to him they were building the house before the plan was drawn. He wished to see the system reduced to writing, that he might leisurely judge of the necessity and propriety of each office and its particular duties.

With respect to the question before the House, he was of opinion that if the House had the power of removal by the Constitution, they could not give it out of their hands; because every power recognised by the Constitution must remain where it was placed by that instrument. But the words in the Constitution declare, in positive terms, that all civil officers shall be removed from office on impeachment for, and conviction of, high crimes and misdemeanors; and however long it may take to decide, in this way it must be done. He did not think the case of Mr. Hastings ought to be brought forward as a precedent for conducting such business in the United States. He believed whenever an impeachment was brought before the Senate, they would proceed with all imaginable speed to its termination. He should, in case of impeachment, be willing to go so far as to give the power of suspension to the President, and he thought this all the security which the public safety required; it would prevent the party from doing further mischief. He agreed with the gentleman in the general principle, that the body who appointed ought to have the power of removal, as the body which enacts laws can repeal them; but if the power is deposited in any particular department by the Constitution, it is out of the power of the House to alter it.

Mr. MADISON did not conceive it was a proper construction of the Constitution to say that there was no other mode of removing from office than that by impeachment; he believed this, as applied to the Judges, might be the case; but he could never imagine it extended in the manner which gentlemen contended for. He believed they would not assert, that any part of the Constitution declared that the only way to remove should be by impeachment; the contrary might be inferred, because Congress may establish offices by law; therefore, most certainly, it is in the discretion of the Legislature to say upon what terms the office shall be held, either during good behaviour or during pleasure. Under this construction, the principles of the Constitution would be reconcilable in every part; but under that of the gentleman from South Carolina, it would be incongruous and faulty. He wondered how the gentleman from Georgia (Mr. JACKSON) would

reconcile his principles so far as to permit the President to suspend the officer. He begged his colleague (Mr. BLAND) to consider the inconvenience his doctrine would occasion, by keeping the Senate constantly sitting, in order to give their assent to the removal of an officer; they might see there would be a constant probability of the Senate being called upon to exercise this power, consequently they could not be a moment absent. Now, he did not believe the Constitution imposed any such duty upon them; why, then, said he, shall we enjoin it, especially at such an expense of the public treasure?

Mr. BOUDINOT would by no means infringe the Constitution by any act of his; for if he thought this motion would lead the committee beyond the powers assigned to the Legislature, he would give it a decided negative; but, on an impartial examination of that instrument, he could not see the least foundation for such an objection; however, he was glad the question had come forward, because he wished to give a Legislative construction to this part of the Constitution.

The gentlemen who denied the power of the President to remove from office, founded their opinion upon the fourth section of the second article of the Constitution, where it is declared, that all officers shall be removed from office on impeachment for, and conviction of, treason or bribery. If their construction is admissible, and no officer whatever is to be removed in any other way than by impeachment, we shall be in a deplorable situation indeed. Consider the extent of the United States, and the difficult of conducting a prosecution against an officer, who, with the witnesses, resides a thousand miles from the seat of Government. But suppose the officer should, by sickness, or some other accident, be rendered incapable of performing the functions of the office, must he be continued? And yet it is to be apprehended, that such a disability would not furnish any good ground for impeachment; it could not be laid as treason or bribery, nor perhaps as a high crime or misdemeanor. Would gentlemen narrow the operation of the Constitution in this manner, and render it impossible to be executed?

When the committee come to consider the clause respecting the removal by impeachment, they will find it is intended as a punishment for a crime, and not intended as the ordinary means of re-arranging the Departments. We find in the clause in the Constitution subsequent to the one just mentioned, that the Judges are declared to hold their offices during good behavior; but if this is the tenure by which all offices are to be held, where is the necessity of this explicit declaration in favor of the Judges? Now, if any thing is to be drawn by construction from this part of the Constitution, it is that the Judges alone are to hold their offices during good behaviour; but all other officers during pleasure, unless otherwise provided in the Constitution. He was certain, from the nature of things, that it was not the intention of the Constitution to prevent the President from removing an officer who was found to be wholly unfit or incapable of doing his duty.

Mr. WHITE thought no office under the Government was to be held during pleasure, except those which are to be constituted by law; but all the heads of departments are to be appointed by the President, by and with the advice and consent of the Senate. He conceived that, in all cases, the party who appointed ought to judge of the removal, except in those cases which by the Constitution are expected, and in those cases impeachment and conviction are the only mode by which

they can be removed. Although this committee may consider of the expediency of the present measure, yet the Senate would check, or correct, an improper decision; and he would ask the supporters of this part of the resolution, whether they expected the Senate would part with a power which they might think the Constitution vested in them? He had doubts respecting the authority of the House to decide this question, and was very tenacious of doing any thing that would look like an encroachment on the privileges of the other branch of the Legislature.

Mr. THATCHER asked, why the Judges were particularly mentioned in the Constitution as holding their offices during good behaviour, if it was not supposed that, without this express declaration in their favor, they in common with all other officers not immediately chosen by the State Legislatures and the people, would hold them during pleasure? The clause respecting impeachments was particularly calculated for removing unworthy officers of the other description. Holding this construction of the Constitution to be right, he was in favor of the clause as it stood.

Mr. JACKSON acknowledged the Judges held their offices during good behavior, and he believed the Legislature had the power of determining the time an office should continue, but did not think they could give to the Prsident alone the power of removing those who were appointed with the concurrence of the Senate.

Mr. SMITH admitted that Congress had a right to say that an office should be held a limited time, or for one year; but if no precise period was fixed, he conceived the officer's appointment to be during good behavior, and that the person could not be removed by the President. The Constitution expresses the precise time for which the President of the United States shall be chosen; if no precise time had been fixed, he should conceive the tenure to be during good behaviour. Now, on the same principle, he apprehended, if the Legislature did not fix a precise time for the Secretary of Foreign Affairs to hold his office, he would keep it during good behaviour; all that could be done in case of misbehaviour would be, to suspend the officer until after trial and conviction, when he would be removed. A gentleman has asked, what must be done if an incumbent is found unfit for his office? He would answer, the person must remain there. What must be done if a member of this House is found unfit to perform the business of his constituents? Certainly he must and will continue on this floor. You cannot remove him unless guilty of some crime. He did not hold the opinion mentioned by some gentlemen, that the power who appoints can remove, because there were several cases where those who appoint have not the power of removal. In some of the State Governments, the chief Executive Magistrate appoints to office, but cannot remove. So, under this Constitution, neither the people nor the Legislature can remove the members of the Senate or House of Representatives; nor can the Electors remove the President or Vice President, both of whom they appoint to those offices. He apprehended the power which the Constitution gave to Congress of establishing certain offices by law, would enable them to limit the tenure of the office; but if Congress declined the exercise of this power, the officers appointed would continue in their station during good behaviour.

Mr. Lawrence apprehended the words of the resolution limited the tenure of the office in the manner which the honorable gentleman last up seemed to admit to be proper. To be sure, it did not denominate the period by years or days, but it nevertheless fixed a precise period for its existence, viz. during the pleasure of the President. The Constitution had certainly intended that Congress should define the tenure of office, or it would never have declared the Judges should continue during good behaviour. This Constitutional provision in their favor, was to render them independent of the Legislature, which it was not supposed would be the case if nothing on this head had been declared. It is the only thing which prevents us from making them dependent upon the will of the President for their continuance in office, or from ordaining that their commission shall expire at the end of a certain term of years.

He conceived, as the Constitution was silent with respect to the time the Secretary of Foreign Affairs should remain in office, that it therefore depended upon the will of the Legislature to say how the department should be constituted and established by law, and the conditions upon which he shall enjoy the office. We can say he shall hold it for three years from his appointment, or during good behaviour; and we may declare unfitness and incapacity causes of removal, and make the President alone judge of this case. We may authorize the President to remove him for any cause he thinks proper. It is in our power to make such declaration; but at the same time the Constitution provides, that the President shall not have it in his power to hold a person in office who has been guilty of crimes or misdemeanors against the Government; the power of removal in such cases is in the Legislature, by impeachment. The only question which remained, he considered to be, could the Legislature safely trust the President with this power? The question of right he conceived to be indisputable; it was merely a question of expediency. Gentlemen admit that we have a right to limit the duration of the office. What is authorizing the removal by the President but limiting it? and if we conceive this the best method of limiting it, why shall it be objected to as unconstitutional? If it increases the responsibility of the President, and certainly it does this, why should the Legislature hesitate in obtaining the highest security for the public interest and safety?

Mr. Sylvester thought the Constitution ought to have a liberal construction, and therefore was of opinion that the clause relative to the removal by impeachment was intended as a check upon the President, as already mentioned by some gentlemen, and to secure to the people, by means of their representatives, a Constitutional mode of obtaining justice against speculators and defaulters in office, who might be protected by the persons appointing them. He apprehended the doctrine held out by the gentleman from South Carolina would involve the Government in great difficulties, if not in ruin, and he did not see it was a necessary construction of the Constitution. Why, then, should the House search for a meaning, to make the Constitution inconsistent with itself, when a more rational one is at hand? He, however, inclined at present to the sentiments of the gentleman from Virginia, (Mr. Bland,) who thought the Senate ought to be joined with the President in the removal, as they were joined by the Constitution in the appointment to office.

Mr. GOODHUE was decidely against combining the Senate in this business. He wished to make the President as responsible as possible for the conduct of the officers who were to execute the duties of his own branch of the Government. If the removal and appointment were placed in the hands of a numerous body, the responsibility would be lessened. He admitted there was a propriety in allowing the Senate to advise the President in the choice of officers; this the Constitution had ordained for wise purposes; but there could be no real advantage arising from the concurrence of the Senate to the removal, but great disadvantages. It might beget faction and party, which would prevent the Senate from paying proper attention to the public business. Upon the whole, he concluded the community would be served by the best men when the Senate concurred with the President in the appointment; but if any oversight was committed, it could best be corrected by the superintending agent. It was the peculiar duty of the President to watch over the executive officers; but of what avail would be his inspection, unless he had a power to correct the abuses he might discover.

Mr. MADISON.—I look upon every Constitutional question, whatever its nature may be, as of great importance. I look upon the present to be doubly so, because its nature is of the highest moment to the well-being of the Government. I have listened with attention to the objections which have been stated, and to the replies that have been made, and I think the investigation of the meaning of the Constitution has supported the doctrine I brought forward. If you consult the expediency, it will be greatly against the doctrine advanced by gentlemen on the other side of the question. See to what inconsistency gentlemen drive themselves by their construction of the Constitution. The gentleman from South Carolina, (Mr. SMITH,) in order to bring to conviction and punishment an offender in any of the principal offices, must have recourse to a breach of the common law, and yet he may there be found guilty, and maintain his office, because he is fixed by the Constitution. It has been said, we may guard against the inconveniency of that construction, by limiting the duration of the office to a term of years; but, during that term, there is no way of getting rid of a bad officer but by impeachment. During the time this is depending, the person may continue to commit those crimes for which he is impeached, because if his construction of the Constitution is right the President can have no more power to suspend than he has to remove.

What fell from one of my colleagues (Mr. Bland) appears to have more weight than any thing hitherto suggested. The Constitution, at the first view, may seem to favor his opinion; but that must be the case only at the first view; for, if we examine it, we shall find his construction incompatible with the spirit and principles contained in that instrument.

It is said, that it comports with the nature of things, that those who appoint should have the power of removal; but I cannot conceive that this sentiment is warranted by the Constitution; I believe it would be found very inconvenient in practice. It is one of the most prominent features of the Constitution, a principle that pervades the whole system, that there should be the highest possible degree of responsibility in all the Executive officers thereof; any thing, therefore, which tends to lessen this responsibility, is contrary to its spirit and intention, and

unless it is saddled upon us expressly by the letter of that work, I shall oppose the admission of it into any act of the Legislature. Now, if the heads of the Executive departments are subjected to removal by the President alone, we have in him security for the good behaviour of the officer. If he does not conform to the judgment of the President in doing the executive duties of his office, he can be displaced. This makes him responsible to the great Executive power, and makes the President responsible to the public for the conduct of the person he has nominated and appointed to aid him in the administration of his department. But if the President shall join in a collusion with this officer, and continue a bad man in office, the case of impeachment will reach the culprit, and drag him forth to punishment. But if you take the other construction, and say he shall not be displaced but by and with the advice and consent of the Senate, the President is no longer answerable for the conduct of the officer; all will depend upon the Senate. You here destroy a real responsibility without obtaining even the shadow; for no gentleman will pretend to say the responsibility of the Senate can be of such a nature as to afford substantial security. But why, it may be asked, was the Senate joined with the President in appointing to office, if they have no responsibility? I answer, merely for the sake of advising, being supposed, from their nature, better acquainted with the character of the candidates than an individual; yet even here the President is held to the responsibility—he nominates, and, with their consent, appoints. No person can be forced upon him as an assistant by any other branch of the Government.

There is another objection to this construction, which I consider of some weight, and shall therefore mention to the committee. Perhaps there was no argument urged with more success, or more plausibly grounded against the Constitution, under which we are now deliberating, than that founded on the mingling of the Executive and Legislative branches of the Government in one body. It has been objected, that the Senate have too much of the Executive power even, by having a control over the President in the appointment to office. Now, shall we extend this connexion between the Legislative and Executive departments, which will strengthen the objection, and diminish the responsibility we have in the head of the Executive? I cannot but believe, if gentlemen weigh well these considerations, they will think it safe and expedient to adopt the clause.

Mr. Gerry.—The Constitution provides for the appointment of the public officers in this manner: The President shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. Now, if there be no other clause respecting the appointment, I shall be glad to see how the heads of departments are to be removed by the President alone. What clause is it that the President gives his power in express terms? I believe there is none such. If there is a power of removal, besides that by impeachment, it must vest somewhere. It must vest in the President, or in the President and Senate, or in the President, Senate, and House of Representatives. Now there is no clause which expressly vests in the President. I believe no gentleman

contends it is in this House, because that would be that mingling of the Executive and Legislative powers gentlemen deprecate. I presume, then, gentlemen will grant, that if there is such a power, it vests with the President, by and with the advice and consent of the Senate, who are the body that appoints. I think we ought to be cautious how we step in between the President and the Senate, to abridge the power of the one, or increase the other. If the power of removal vests where I suppose, we, by this declaration, undertake to transfer it to the President alone.

It has been mentioned, that it is proper to give this power to the President, in order to make him more fully responsible for this office. I am for supporting the President to the utmost of my power, and making him as responsible as possible. I would therefore vest every gift of office, in the power of the Legislature, in the President alone; but I cannot think we ought to attempt to give him authority to remove from office, in cases where the Constitution has placed it in other hands.

Mr. Livermore considered this as a Constitutional question, and was of opinion, that the same power which appointed an officer, had the right of removal also, unless it was restrained by an express declaration to the contrary. As the President, by and with the advice and consent of the Senate, is empowered to appoint ambassadors, certainly they have a right to remove them and appoint others. In the case of the judges, they must be appointed for life, or during good behaviour. He had no idea, that it could ever enter into the heart of any man living, that all officers appointed under the Constitution were to have a perpetuity in office. The judges themselves would not have had this right, if had not been expressly given by the Constitution, but would be removable in like manner with ambassadors, other public ministers, and consuls. He took it, therefore, in the present case, that the President and the Senate would have the power of removing the Secretary of Foreign Affairs. The only question, therefore, which appears to be before the committee is, whether we shall give this power to the President alone? And with that he thought they had nothing to do. He supposed, if the clause was left out, the President and the Senate would proceed, as directed by the Constitution, to appoint the officer; and hereafter, if they judged it necessary, would remove him; but if they neglected to do so, when it was necessary, by reason of his misdemeanors, this House would impeach him, and so get rid of him on conviction.

Mr. Bland.—It seems to be agreed on all hands, that there does exist a power of removal; the contrary doctrine would be a solecism in Government. If an officer embezzles the public money, or neglects or refuses to do the duties of his appointment, can it be supposed there is no way of getting rid of such a person? He was certain it was essentially necessary such a power should be lodged somewhere, or it would be impossible to carry the Government into execution. Their inquiries were therefore reduced to this point: Does it reside, agreeably to the Constitution, in the President, or in the President and the Senate? The Constitution declares, that the President and the Senate shall appoint, and it naturally follows, that the power which appoints shall remove also. What would be the consequence of the removal by the President alone, he had already mentioned, and need not repeat. A new President might, by turning out the great officers, bring about a change of the

ministry, and throw the affairs of the Union into disorder: would not this, in fact, make the President a monarch, and give him absolute power over all the great departments of Government? It signifies nothing that the Senate have a check over the appointment, because he can remove, and tire out the good disposition of the Senate.

His colleague had objected to the removal in this way, because the Senate would be kept constantly sitting. He did not think this objection of any weight, because the Constitution made some other things their duty, which would require them to be pretty constantly sitting. He alluded to the part they were called upon to perform in making treaties; this, therefore, would be a trifling objection.

Mr. Benson thought it was not absolutely necessary to make any provision on this head, because the power was given to the President by the Constitution; but as the argument had been pretty well gone into, he would add no more at present, than just to remark an error the gentleman last up had fallen into. He had supposed the President to have the powers of a monarch, that he could introduce and keep a favorite in office in despite of every other branch of the Government: the Senate was an effectual check to a system of favoritism, and it lay in the power of the House to correct any abuse arising from such a system, if it unhappily was fallen into.

Mr. Bland insisted that the check of the Senate was not sufficient, if the power of removal was taken from them. Indeed, he was satisfied, from the privilege the President had of nominating and filling up vacancies *pro tempore*, he would become absolute, if he alone had the power of removal. He was therefore against this part of the motion, both on principle and policy. He therefore moved to add to the words of the motion, "by and with advice and consent of the Senate," so that the power of removal might be declared to be in the same body as the Constitution placed the appointment.

Mr. Clymer said, the power of removal was an Executive power, and as such belonged to the President alone, by the express words of the Constitution: "the Executive power shall be vested in a President of the United States of America." The Senate were not an Executive body; they were a Legislative one. It was true, in some instances, they held a qualified check over the Executive power, but that was in consequence of an express declaration in the Constitution; without such declaration, they would not have been called upon for advice and consent in the case of appointment. Why, then, shall we extend their power to control the removal which is naturally in the Executive, unless it is likewise expressly declared in the Constitution?

The question on adding the words "by and with the advice and consent of the Senate," as moved by Mr. Bland, was put and lost.

Mr. White. It has been said, that the Senate are not an Executive body. I grant that they are not an Executive body when they are sitting for Legislative purposes; but they are an Executive body when performing their Executive functions as required in the Constitution.

Every question respecting treaties or public officers must go through their hands. Why shall we make the President responsible for what goes through other hands? He is not solely responsible, agreeably to the Constitution, for the conduct of the officers he nominates, and the Senate appoints; why then talk of obtaining a greater degree of responsibility than is known to the Constitution?

We are told, that we ought to keep the Legislative and Executive departments distinct; if we were forming a constitution, the observation would be worthy of due consideration, and he would agree to the principles; but the Constitution is formed, and the powers blended; the wished-for separation is therefore impracticable.

Mr. VINING remarked, that the argument of the gentleman from Pennsylvania (Mr. CLYMER) was too well founded to be overturned by the critical distinction made by the gentleman last up, and was sufficient to convince gentlemen, if they would consider it well, that the Constitution vested the power of removal in the President alone. He begged the committee to consider the monstrous effect it would produce if the Legislature went on to mingle the Legislative and Executive powers. He would place it in one other point of view, and then have done with the subject. It is well known, that the Senate are to decide upon an impeachment made by this House. Now, can they be impartial judges when they have already given judgment in the case? Suppose the President communicates his suspicions to the Senate respecting the malfeasance of a public officer, and they, from factious or party views, or, indeed, for want of full information, refuse their consent to the removal; can they be the equal and unbiased judicature which the Constitution contemplates them to be? He thought they could not.

Mr. PAGE requested the committee to delay the decision of this question, because he did not wish gentlemen to commit themselves, without having fully reflected upon the subject. It had presented itself to his mind, as one of the most momentous questions that could arise, in which the rights of the People, the energy of Government, and the liberty of posterity were staked. He begged them not to cast the die, on which the fate of millions was hazarded, until they had maturely considered the subject. He felt a degree of security in the check the Senate had over the President, in appointing to office; but he should not think himself safe, if the power of removal was in the President alone.

The question was now taken, and carried by a considerable majority, in favor of declaring the power of removal to be in the President.

Procedure of the Congress in Matters Relating to Impeachment (From Jefferson's Manual of Parliamentary Practice and Rules of the House of Representatives)

SEC. LIII.—IMPEACHMENT.

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§ 601. Jurisdiction of Lords and Commons as to impeachments.

These are the provisions of the Constitution of the United States on the subject of impeachments. The following is a sketch of some of the principles and practices of England on the same subject:

Jurisdiction. The Lords can not impeach any to themselves, nor join in the accusation, because they are the judges. *Seld Judic. in Parl.*, *12*, *63*. Nor can they proceed against a commoner but on complaint of the Commons. *Ib.*, *84*. The Lords may not, by the law, try a commoner for a capital offense, on the information of the King or a private person, because the accused is entitled to a trial by his peers generally; but on accusation by the House of Commons, they may proceed against the delinquent, of whatsoever degree, and whatsoever be the nature of the offense; for there they do not assume to themselves trial at common law. The Commons are then instead of a jury, and the judgment is given on their demand, which is instead of a verdict. So the Lords do only judge, but not try the delinquent. *Ib.*, *6*, *7*. But Wooddeson denies that a commoner can now be charged capitally before the Lords, even by the Commons; and cites Fitzharris's case, 1681, impeached of high treason, where the Lords remitted the prosecution to the inferior court. *8 Grey's Deb.*, *325–7; 2 Wooddeson*, *576*, *601; 3 Seld.*, *1604*, *1610*, *1618*, *1619*, *1641; 4 Blackst.*, *25; 9 Seld.*, *1656; 73 Seld.*, *1604–18*.

§ 602. Parliamentary law as to accusation in impeachment.

Accusation. The Commons, as the grand inquest of the nation, becomes suitors for penal justice. *2 Wood.*, *597; 6 Grey*, *356*. The general course is to pass a resolution containing a criminal charge against the supposed delinquent, and then to direct some member to impeach him by oral accusation, at the bar of the House of Lords, in the name of the Commons. The persons signifies that the articles will be exhibited, and desires that the delinquent may be sequestered from his seat, or be committed, or that the peers will take order for his appearance. *Sachev. Trial*, *325; 2 Wood.*, *602*, *605; Lords' Journ.*, *3 June*, *1701; 1 Wms.*, *616; 6 Grey*, *324*.

§ 603. Inception of impeachment proceedings in the House.

In the House of Representatives there are various methods of setting an impeachment in motion: by charges made on the floor on the responsibility of a Member or Delegate (II, 1303; III, 2342, 2400, 2469; VI 525, 526, 528, 535, 536); by charges preferred by a memorial, which is usually referred to a committee for examination (III, 2364, 2491, 2494, 2496, 2499, 2515; VI, 552);

or by a resolution dropped in the hopper by a Member and referred to a committee (April 15, 1970, p. 11941–2); by a message from the President (III, 2294, 2319; VI, 498); by charges transmitted from the legislature of a State (III, 2469) or Territory (III 2487) or from a grand jury (III, 2488); or from facts developed and reported by an investigating committee of the House (III, 2399, 2444).

§ 604. A proposition to impeach a question of privilege.

A direct proposition to impeach is a question of high privilege in the House and at once supersedes business otherwise in order under the rules governing the order of business (III, 2045–2048; VI, 468, 469). It may not even be superseded by an election case, which is also a matter of high privilege (III, 2581). It does not lose its privilege from the fact that a similar proposition has been made at a previous time during the same session of Congress (III, 2408), previous action of the House not affecting it (III, 2053). So, also, propositions relating to an impeachment already made are privileged (III, 2400, 2402, 2410), such as resolutions providing for selection of managers of an impeachment (VI 517), proposing abatement of impeachment proceedings (VI, 514); but a resolution simply proposing an investigation, even though impeachment may be a possible consequence, is not privileged (III, 2050, 2546; VI, 463). But where a resolution of investigation positively proposes impeachment or suggests that end, it has been admitted as of privilege (III, 2051, 2052, 2401, 2402).

§ 605. Investigation of impeachment charges.

The impeachment having been made on the floor by a Member (III, 2342, 2400; VI, 525, 526, 528, 535, 536), or charges suggesting impeachment having been made by memorial (III, 2495, 2516; 2520, VI, 552), or even appearing through common fame (III, 2385, 2506), the House has at times ordered an investigation at once. At other times it has refrained from ordering invesitgation until the charges had been examined by a committee (III, 2364, 2488, 2491, 2492, 2494, 2504, 2513).

§ 606. Procedure of committee in investigating.

The House has always examined the charges by its own committee before it has voted to impeach (III, 2294, 2487, 2501). This committee has sometimes been a select committee (III, 2342, 2487, 2494), sometimes a standing committee (III, 2400, 2409). In some instances the committee has made its inquiry ex parte (III, 2319, 2343, 2366, 2385, 2403, 2496, 2511); but in the later practice the sentiment of committees has been in favor of permitting the accused to explain, present witnesses, cross-examine (III, 2445, 2471, 2518), and be represented by counsel (III, 2470, 2501, 2511, 2516).

§ 607. Impeachment carried to the Senate.

Its committee on investigation having reported, the House may vote the impeachment (III, 2367, 2412), and, after having notified the Senate by message (III, 2413, 2446), may direct the impeachment to be presented at the bar of the Senate by a single Member (III, 2294), or by two (III, 2319, 2343, 2367), or even five Members (III, 2445). These Members in one notable case represented the majority party alone, but ordinarily include representation of the minority party (III, 2445, 2472, 2505). The chairman of the committee impeaches at the bar of the Senate by oral accusation (III, 2413, 2446, 2473), and requests that the Senate take order as to appearance; but in only one case has the parliamentary law as to sequestration and committal been followed (III, 2118, 2296), later inquiry resulting in the conclusion that the Senate had no power to take into custody the body of the accused (III, 2324, 2367). Having delivered the impeachment the committee return to the House and report verbally (III, 2413, 2446; VI, 501).

§ 608. The writ of summons for appearance of respondent.

Process. If the party do not appear, proclamations are to be issued, giving him a day to appear. On their return they are strictly examined. If any error be found in them, a new proclamation issues, giving a short day. If he appear not, his goods may be arrested, and they may proceed. *Seld. Jud., 98, 99.*

The managers for the House of Representatives attend in the Senate after the articles have been exhibited and demand that process issue for the attend-

ance of respondent (III, 2451, 2478), after which they return and report verbally to the House (III, 2423, 2451; VI, 501). The Senate thereupon issue a writ of summons, fixing the day of return (III, 2423, 2451); and in a case wherein the respondent did not appear by person or attorney the Senate published a proclamation for him to apear (III, 2393). But the respondent's goods were not attached.

§ 609. Exhibition and form of articles.

Articles. The accusation (articles) of the Commons is substituted in place of an indictment. Thus, by the usage of Parliament, in impeachment for writing or speaking, the particular words need not be specified. *Sach. Tr., 325; 2 Wood., 602, 605; Lords' Journ., 3 June, 1701; 1 Wms., 616.*

The House cf Representatives exhibits its articles after the impeachment has been carried to the bar of the Senate. The managers, who are elected by the House (III, 2300, 2345, 2417, 2448) or appointed by the Speaker (III, 2388, 2475), carry the articles in obedience to a resolution of the House (III, 2417, 2419, 2448) to the bar of the Senate (III, 2420, 2449, 2476), the House having previously informed the Senate (III, 2419, 2448) and received a message informing them of the readiness of the latter body to receive the articles (III, 2078, 2325, 2345). Having exhibited the articles the managers return and report verbally to the House (III, 2449, 2476). The articles in the Belknap impeachment were held sufficient, although attacked for not describing the respondent as one subject to impeachment (III, 2123)). These articles are signed by the Speaker and attested by the Clerk (III, 2302, 2449), and in form approved by the practice of the House (III, 2420, 2449, 2476).

§ 610. Parliamentary law as to appearance of respondent.

Appearance. If he appear and the case be capital, he answers in custody; though not if the accusation be general. He is not to be committed but on special accusations. If it be for a misdemeanor only, he answers, a lord in his place, a commoner at the bar, and not in custody, unless, on the answer, the Lords find cause to commit him, till he finds sureties to attend, and lest he should fly. *Seld. Jud., 98, 99.* A copy of the articles is given him, and a day fixed for his answer. *T. Ray.; 1 Rushw., 268; Fost., 232; 1 Clar. Hist. of the Reb., 379.* On a misdemeanor, his appearance may be in person, or he may answer in writing, or by attorney. *Seld. Jud., 100.* The general rule on accusation for a misdemeanor is, that in such a state of liberty or restraint as the party is when the Commons complain of him, in such he is to answer. *Ib., 101.* If previously committed by the commons, he answers as a prisoner. But this may be called in some sort judicium parium suorum. *Ib.* In misdemeanors the party has a right to counsel by the common law, but not in capital cases. *Seld. Jud., 102, 105.*

§ 611. Requirements of the Senate as to appearance of respondent.

This paragraph of the parliamentary law is largely obsolete so far as the practice of the House of Representatives and the Senate are concerned. The accused may appear in person or by attorney (III, 2127, 2349, 2424), or he may not appear at all (III, 2307, 2333, 2393). In case he does not appear the House does not ask that he be compelled to appear (III, 2308), but the trial proceeds as on a plea of "not guilty." It has been decided that the Senate has no power to take into custody the body of the accused (III, 2324, 2367). The writ of summons to the accused recites the articles and notifies him to appear at a fixed time and place and file his answer (III, 2127). In all cases respondent may appear by counsel (III, 2129), and in one trial, when a petition set forth that respondent was insane, the counsel of his son was admitted to be heard and present evidence in support of the petition, but not to make argument (III, 2333).

§ 612. Answer of respondent.

Answer. The answer need not observe great strictness of form. He may plead guilty as to part, and defend as to the residue; or, saving all

exceptions, deny the whole or give a particular answer to each article separately. *1 Rush., 274; 2 Rush., 1374; 12 Parl. Hist., 442; 3 Lords' Journ., 13 Nov., 1643; 2 Wood., 607.* But he cannot plead a pardon in bar to the impeachment. *2 Wood., 615; 2 St. Tr., 735.*

In the proceedings following the impeachment of President Andrew Johnson, the answer of the President took up the articles one by one, denying some of the charges, admitting others but denying that they set forth impeachable offenses, and excepting to the sufficiency of others (III, 2428). The form of this answer was commented on during preparation of the replication in the House (III, 2431). Blount and Belknap demurred to the charges on the ground that they were not civil officers within the meaning of the Constitution (III, 2310, 2453), and Swayne also raised questions as to the jurisdiction of the Senate (III, 2481). The answer is part of the pleadings, and exhibits in the nature of evidence may not properly be attached thereto (III, 2124).

§ 613. Other pleadings.

Replication, rejoinder, &c. There may be a replication, rejoinder, &c. *Sel. Jud., 114; 8 Grey's Deb., 233; Sach. Tr., 15; Journ. H. of Commons, 6 March, 1640–1.*

A replication is always filed, and in one instance the pleadings proceeded to a rejoinder, surrejoinder, and similiter (III, 2455). A respondent has also filed a protest instead of pleading on the merits (III, 2461), but there was objection to this and the Senate barely permitted it. In another case respondent interposed a plea as to jurisdiction of offenses charged in certain articles, but declined to admit that it was a demurrer with the admissions pertinent thereto (III, 2125, 2431). In the Belknap trial the House was sustained in averring in pleadings as to jurisdiction matters not averred in the articles (III, 2123). The right of the House to allege in the replication matters not touched in the articles has been discussed (III, 2457).

§ 614. Examination of witnesses.

Witnesses. The practice is to swear the witnesses in open House, and then examine them there; or a committee may be named, who shall examine them in committee, either on interrogatories agreed on in the House, or such as the committee in their discretion shall demand. *Seld. Jud., 120, 123.*

In trials before the Senate witnesses have always been examined in open Senate, and never by a committee, although such procedure has been once suggested (III, 2217).

§ 615. Relation of jury trial to impeachment.

Jury. In the case of Alice Pierce, *1 R., 2*, a jury was impaneled for her trial before a committee. *Seld. Jud., 123.* But this was on a complaint, not on impeachment by the Commons. *Seld. Jud., 163.* It must also have been for a misdemeanor only, as the Lords spiritual sat in the case, which they do on misdemeanors, but not in capital cases. *Id., 148.* The judgment was a forfeiture of all her lands and goods. *Id., 188.* This, Selden says, is the only jury he finds recorded in Parliament for misdemeanors; but he makes no doubt, if the delinquent doth put himself on the trial of his country, a jury ought to be impaneled, and he adds that it is not so on impeachment by the Commons, for they are in loco proprio, and there no jury ought to be impaneled. *Id., 124.* The Ld. Berkeley, *6 E., 3*, was arraigned for the murder of L. 2, on an information on the part of the King, and not on impeachment of the Commons; for then they had been patria sua. He waived his peerage, and was tried by a jury of Gloucestershire and Warwickshire. *Id., 126.* In *1 H., 7*, the Commons protest that they are not to be considered as parties to any judgment given, or hereafter to be given in Parliament. *Id., 133.* They have been generally and more justly considered, as is

before stated, as the grand jury; for the conceit of Selden is certainly not accurate, that they are the patria sua of the accused, and that the Lords do only judge, but not try. It is undeniable that they do try; for they examine witnesses as to the facts, and acquit or condemn, according to their own belief of them. And Lord Hale says, "the peers are judges of law as well as of fact;" *2 Hale, P. C., 275;* consequently of fact as well as of law.

No jury trial is possible as part of an impeachment trial under the Constitution (III, 2313).

§ 616. Attendance of the Commons.

Presence of Commons. The Commons are to be present at the examination of witnesses. *Seld. Jud.. 124.* Indeed, they are to attend throughout, either as a committee of the whole House, or otherwise, at discretion, appoint managers to conduct the proofs. *Rushw. of Straff., 37; Com. Journ., 4 Feb., 1709–10; 2 Wood., 614.* And judgment is not given till they demand it. *Seld. Jud., 124.* But they are not to be present on impeachment when the Lords consider of the answer or proofs and determine of their judgment. Their presence, however, is necessary at the answer and judgment in case capital *Id., 58, 158,* as well as not capital; *162.* * * *.

§ 617. Attendance of the House of Representatives.

The House of Representatives has consulted its own inclination and convenience about attending its managers at an impeachment. It did not attend at all in the trials of Blount, Swayne, and Archbald (III, 2318, 2483); and after attending at the answer of Belknap, decided that it would be represented for the remainder of the trial by its managers alone (III, 2453). At the trial of the President the House, in Committee of the Whole, attended throughout the trial (III, 2427), but this is exceptional. In the Peck trial the House discussed the subject (III, 2377) and reconsidered its decision to attend the trial daily (III, 2028). While the Senate is deliberating the House does not attend (III, 2435); but when the Senate votes on the charges, as at the other open proceedings of the trial, it may attend (III, 2338, 2383, 2440). While it has frequently attended in Committee of the Whole, it may attend as a House (III, 2338).

§ 618. Voting on the articles in an impeachment trial.

* * * The Lords debate the judgment among themselves. Then the vote is first taken on the question of guilty or not guilty; and if they convict, the question, or particular sentence, is out of that which seemeth to be most generally agreed on. *Seld. Jud., 167; 2 Wood., 612.*

The question in judgment in an impeachment trial has occasioned contention in the Senate (III, 2339, 2340), and in the trial of the President the form was left to the Chief Justice (III, 2438, 2439). In the Belknap trial there was much deliberation over this subject (III, 2466). In the Chase trial the Senate modified its former rule as to form of final question (III, 2363). The yeas and nays are taken on each article separately (III, 2098, 2339), but in the trial of the President the Senate, by order, voted on the articles in an order differing from the numerical order (III, 2440), adjourned after voting on one article (III, 2441), and adjourned without day after voting on three of the eleven articles (III, 2443). After a conviction the Senate votes on the punishment (III, 2339, 2397).

§ 619. Judgment in impeachments.

Judgement. Judgments in Parliament, for death, have been strictly guided per legem terræ, which they can not alter; and not at all according to their discretion. They can neither omit any part of the legal judgment nor add to it. Their sentence must be secundum non ultra legem. *Seld. Jud., 168, 171.* This trial, though it varies in external ceremony, yet differs not in essentials from criminal prosecuctions before inferior courts. The same rules of evidence, the same legal notions of

crimes and punishments, prevailed; for impeachments are not framed to alter the law, but to carry it into more effectual execution against too powerful delinquents. The judgment, therefore, is to be such as is warranted by legal principles or precedents. *6 Sta. Tr., 14; 2 Wood., 611.* The Chancellor gives judgments in misdemeanors; the Lord High Steward formerly in cases of life and death. *Seld. Jud., 180.* But now the Steward is deemed not necessary. *Fost., 144; 2 Wood., 613.* In misdemeanors the greatest corporal punishment hath been imprisonment. *Seld. Jud., 184.* The King's assent is necessary to capital judgments (but *2 Wood., 614*, contra), but not in misdemeanors. *Seld. Jud., 136.*

The Constitution of the United States (Art. I, sec. 3, par. 7) limits the judgment to removal and disqualification.

§ 620. Impeachment not interrupted by adjournments.

Continuance. An impeachment is not discontinued by the dissolution of Parliament, but may be resumed by the new Parliament. *T. Ray 383; 4 Com. Journ., 23 Dec., 1790; Lord's Jour., May 15, 1791; 2 Wood., 618.*

In Congress impeachment proceedings are not discontinued by a recess (III, 2299, 2304, 2344, 2375, 2407, 2505); and the Pickering impeachment was presented in the Senate on the last day of the Seventh Congress (III, 2320); and at the beginning of the Eighth Congress the proceedings went on from that point (III, 2321. But an impeachment may proceed only when Congress is in session (III, 2006, 2462).

Impeachable Offenses: Extracts From Hinds' and Cannon's Precedents of the House of Representatives

(A) Hinds' Precedents of the House of Representatives, Extracts From Volume 3, Chapter LXIII

2008. Reference to discussions as to what are impeachable offenses.—In the course of the arguments during the impeachment trial of Andrew Johnson, President of the United States, the question, "What are impeachable offenses?" was discussed at length and learnedly. Mr. Manager Benjamin F. Butler, of Massachusetts, argued [1] learnedly in favor of this definition:

> We define therefore an impeachable high crime or misdemeanor to be one in its nature or consequences subversive of some fundamental or essential principle of government or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of duty, by an act committed or omitted, or, without violating a positive law, by the abuse of discretionary powers from improper motives or for any improper purpose.

Mr. Butler also appended to his argument [2] an exhaustive brief on the "law of impeachable crimes and misdemeanors," prepared by Mr. William Lawrence, of Ohio.[3] This view was also supported by Mr. Manager John A. Logan, of Illinois.[4] Of the Senators who filed written opinions, Mr. Charles Sumner, of Massachusetts, argued at length that political offenses were impeachable offenses.[5] So also argued Mr. Richard Yates, of Illinois.[6]

Mr. Benjamin R. Curtis, of Massachusetts, of counsel for the President, argued, on the other hand, that impeachable offenses could only be offenses against the laws of the United States.[7] Mr. Thomas A. R. Nelson, of Tennessee, also of President's counsel, argued in the same line,[8] and Mr. William M. Evarts, of New York, also of counsel for the President, argued at length against the definition given by Mr. Manager Butler.[9] Of the Senators who filed written opinions on the case, this view was sustained by Mr. Garrett Davis, of Kentucky.[10]

2009. Argument that the phrase "high crimes and misdemeanors" is a "term of art," of fixed meaning in English parliamentary law, and

[1] Second session Fortieth Congress, Globe, Supplement, p. 29.
[2] Pages 41–50.
[3] Globe, p. 1559.
[4] Pages 252–254.
[5] Pages 464–466.
[6] Page 487.
[7] Page 134.
[8] Pages 293, 294.
[9] Pages 343, 344.
[10] Pages 439, 440.

transplanted to the Constitution in unchangeable significance.—On February 22, 1905,[11] in the Senate sitting for the impeachment trial of Judge Charles Swayne, Messrs. Anthony Higgins and John M. Thurston, of counsel for the respondent, offered a brief in support of their plea of jurisdiction as to the first seven articles. This brief, which was signed by them as counsel, but which, as they said, had been prepared by another, covered many questions relating to impeachments, the following being among them:

I. WHAT ARE IMPEACHABLE "HIGH CRIMES AND MISDEMEANORS," AS DEFINED IN ARTICLE II, SECTION 4, OF THE CONSTITUTION OF THE UNITED STATES?

By a strange coincidence, the death of parliamentary impeachment, as a living and working organ of the English constitution, synchronizes with its birth in American constitutions, State and Federal. Leaving out of view the comparatively unimportant impeachment of Lord Melville (1805), really the last of that long series of accusations by the Commons and trials by the Lords, which began in the fiftieth year of the reign of Edward III (1376), was the case of Warren Hastings, who was impeached in the very year in which the Federal Convention of 1787 met at Philadelphia. Before that famous prosecution, with its failure and disappointment, drew to a close, the English people resolved that the ancient and cumbrous machinery of parliamentary impeachment was no longer adapted to the wants of a modern and progressive society. But before this ancient method of trial thus passed into desuetude in the land of its birth it was embodied, in a modified form, first in the several State constitutions and finally in the Constitution of the United States.

Article II, section 4, of the Federal Constitution, provides that "the President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." Article I, section 2, provides that "the House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment." Article I, section 3, provides that "the Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the Members present. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted, shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law." Article III, section 2, provides that "the trial of all crimes, except in cases of impeachment, shall be by jury."

[11] Third session Fifty-eighth Congress, Record, pp. 3026–3028.

II. PROVISIONS BORROWED FROM THE ENGLISH CONSTITUTION

Mr. Bayard said in his argument in Blount's trial (Wharton's St. Tr., 264): "On this subject, the Convention proceeded in the same manner it is manifest they did in many other cases. They considered the object of their legislation as a known thing, having a previous definite existence. Thus existing, their work was solely to mold it into a suitable shape. They have given it to us, not as a thing of their creation, but merely of their modification. And therefore I shall insist that it remains as at common law, with the variance only of the positive provisions of the Constitution. * * * That law was familiar to all those who framed the Constitution. Its institutions furnished the principles of jurisprudence in most of the States. It was the only common language intelligible to the members of the Convention."

A recent writer of note, speaking on the same subject, has said: "If we examine the clauses of the Constitution, we perceive at once that the phraseology is applied to a method of procedure already existing. 'Impeachment' is not defined, but is used precisely as 'felony,' 'larceny,' 'burglary,' 'grand jury,' 'real actions,' or any other legal term used so long as to have acquired an accepted meaning, might be. The Constitution takes impeachment as an established procedure, and lodges the jurisdiction in a particular court, declaring how and by whom the process shall be put in motion, and how far it shall be carried. They have given to us a thing not of their creation, but of their modification. To ascertain, then, what this established procedure was, what were, at the time of the Constitutional Convention, impeachable offenses, we must look to England, where the legal notion contained in the clauses quoted had their origin." (American Law Review, vol. 16, p. 800. Article by G. Willett Van Nest.) Madison, in No. 65 of the Federalist, said: "The model from which the idea of the institution has been borrowed pointed out the course to the Convention. In Great Britain it is the province of the House of Commons to prefer the impeachment and of the House of Lords to decide upon it. Several of the State constitutions have followed the example."

III. HIGH CRIMES AND MISDEMEANORS AS DEFINED IN ENGLISH PARLIAMENTARY LAW

The English Parliament as a whole has always been considered and styled "The high court of Parliament," which is governed by a single body of law peculiarly its own. As Sir Thomas Erskine May (Parl. Prac., pp. 71 and 72) has well expressed it: "Each house, as a constituent part of Parliament, exercises its own privileges independently of the other. They are enjoyed, however, not by a separate right peculiar to each, but solely by virtue of the law and custom of Parliament." In the words of Lord Coke (4 Inst., 15), "As every court of justice hath laws and customs for its direction—

some the civil and canon, some the common law, others their own peculiar laws and customs—so the high court of Parliament hath also its own peculiar law, called the lex et consuetudo parliamenti." Blackstone (Bk. I, 163) in commenting upon the statement of Coke, that the law of Parliament, unknown to many and known by a few, should be sought by all, observes that, "It is much better to be learned out of the rolls of Parliament and other records and by precedents and continual experience than can be expressed by any one man." Chitty, in commenting upon the statement of Blackstone, has said:

"The law of Parliament is part of the general law of the land, and must be discovered and construed like all other laws. The members of the respective houses of Parliament are in most instances the judges of that law; and, like the judges of the realm, when they are deciding upon past laws, they are under the most sacred obligation to inquire and decide what the law actually is, and not what, in their will and pleasure, or even in their reason and wisdom, it ought to be. When they are declaring what is the law of Parliament, their character is totally different from that with which, as legislators, they are invested when they are framing new laws; and they ought never to forget the admonition of that great and patriotic chief justice, Lord Holt, viz, 'that the authority of the Parliament is from the law, and as it is circumscribed by law, so it may be exceeded; and if they do exceed those legal bounds and authority their acts are wrongful, and can not be justified any more than the acts of private men.' (1 Salk, 505.)" Chitty's Blackstone, vol. 1, p. 119, note 21.) It has always been conceded that the phrase "other high crimes and misdemeanors," embodied in Article II, section 4, of the Constitution of the United States, must be construed in the light of the definitions fixing its meaning in the parliamentary law of England as that law existed in 1787. The construction then given to the phrase in question was incorporated into our Federal Constitution as a part of the phrase itself, which is unintelligible and meaningless without such construction. The following elementary principles (as stated by Hon. William Lawrence, in the brief prepared by him for use in the trial of Andrew Johnson, Vol. I, pp. 125, 136), seem upon that occasion, to have passed unchallenged:

"As these words are copied by our Constitution from the British constitutional and parliamentary law, they are, so far as applicable to our institutions and condition, to be interpreted not by English municipal law but by the lex parliamentaria. * * * Whatever 'crimes and misdemeanors' were the subject of impeachment in England prior to the adoption of our Constitution, and as understood by its framers, are therefore subjects of impeachment before the Senate of the United States, subject only to the limitations of the Constitution. * * * 'Treason, bribery, and other high crimes and misdemeanors' are, of course, impeachable. Treason and bribery are specifically named, but 'other high crimes and misde-

meanors' are just as fully comprehended as though each was specified. The Senate is made the sole judge of what they are. There is no revising court. The Senate determines in the light of parliamentary law. Congress can not define or limit by law that which the Constitution defines in two cases by enumeration and in others by classification, and of which the Senate is sole judge. * * * Now, when the Constitution says that all civil officers shall be removable on impeachment for high crimes and misdemeanors, and the Senate shall have the sole power of trial, the jurisdiction is conferred and its scope is defined by common parliamentary law."

While the Senate sitting as a court of impeachment is the sole and final judge of what impeachable "high crimes and misdemeanors" are, no arbitrary discretion so to determine is vested. The power of the court simply extends to the construction of the phrase in question as defined in English constitutional and parliamentary law as it existed in 1787. That is made plain by Story in his Commentary on the Constitution, section 797, when he says: "Resort then must be had either to parliamentary practice, and the common law, in order to ascertain what high crimes and misdemeanors; or the whole subject must be left to the arbitrary discretion of the Senate for the time being. The latter is so incompatible with the genius of our institutions that no lawyer or statesman would be inclined to countenance so absolute a despotism of opinion and practice, which might make that a crime at one time or in one person which would be deemed innocent at another time or in another person. The only safe guide in such cases must be the common law."

IV. A RULE OF CONSTITUTIONAL CONSTRUCTION AS DEFINED BY THE SUPREME COURT OF THE UNITED STATES.

The fundamental principles of English constitutional law were first reproduced in the constitutions of the several States. In the light of the construction put upon them there, they were embodied, so far as applicable and desirable, in the Constitution of the United States. Thus the Federal Supreme Court was called upon at an early day to interpret the immemorial formulas or "terms of art" through which the cardinal principles of English constitutional law were incorporated in our governmental systems, State and Federal. The uniform rule for construing such formulas or "terms of art" adopted at the outset has been continued in force until the present time. When, in the trial of Aaron Burr, Chief Justice Marshall was called upon to construe Article III, section 3, of the Constitution, which provides that "treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort," he said, "What is the natural import of the words 'levying war?' and who may be said to levy it? * * * The term is not for the first time applied to treason by the Constitution of the United States. It is a technical term. It is used

in a very old statute of that country whose language is our language and whose laws form the substratum of our laws. It is scarcely conceivable that the term was not employed by the framers of our Constitution in the sense which had been affixed to it by those from whom we borrowed it. So far as the meaning of any terms, particularly terms of art, is completely ascertained, those by whom they are employed must be considered as employing them in that ascertained meaning, unless the contrary be proved by the context. It is therefore reasonable to suppose, unless it be incompatible with other expressions of the Constitution, that the term 'levying war' is used in that instrument in the same sense in which it was understood in England and in this country to have been used in the statute of twenty-fifth of Edward III, from which it was borrowed." (Burr's Trial, vol. 2, pp. 401, 402.)

When in the case of Murray *v.* The Hoboken Land Co. (184 How., 272) it became necessary for the Supreme Court to construe the formula "due process of law," as embodied in the fifth amendment, Mr. Justice Curtis, speaking for the court, said: "The words 'due process of law' were undoubtedly intended to convey the same meaning as the words 'by the law of the land' in Magna Charta, Lord Coke, in his commentary on those words (2 Inst., 50), says they mean due process of law. The constitutions which had been adopted by the several States before the formation of the Federal Constitution, following the language of the Great Charter more closely, generally contained the words 'but by the judgment of his peers, or the law of the land.' The ordinance of Congress of July 13, 1787, for the government of the territory of the United States northwest of the river Ohio, used the words."

When in the case of Davidson *v.* New Orleans (96 U.S., 97) it became necessary to again construe the same formula—"due process of law," as embodied in the fourteenth amendment—Mr. Justice Miller, speaking for the court, said: "The prohibition against depriving the citizen or subject of his life, liberty, or property without due process of law is not new in the constitutional history of the English race. It is not new in the constitutional history of this country, and it was not new in the Constitution of the United States when it became a part of the fourteenth amendment, in the year 1866. The equivalent of the phrase 'due process of law,' according to Lord Coke, is found in the words 'law of the land,' in the Great Charter, in connection with the writ of habeas corpus, the trial by jury, and other guarantees of the rights of the subject against the oppression of the Crown." In Smith *v.* Alabama (124 U.S., 465) it was held that "the interpretation of the Constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history," a statement affirmed by the adoption in the United States *v.* Wong Kim Ark (169 U.S. 649).

V. IMMEMORIAL FORMULAS TRANSPLANTED FROM THE ENGLISH CONSTITUTION, UNCHANGEABLE BY SUBSEQUENT CONGRESSIONAL LEGISLATION

The foregoing authorities put the fact beyond all question that the immemorial formulas or "terms of art" transferred from the English constitution to our own were adopted, not as isolated or abstract phrases, but as epitomes or digests of the great principles which they embodied. That is to say, the term "levying war" carried with it the identical meaning given it as a part of the statute of Edward III; the term "due process of law," the identical meaning given to it as a part of Magna Charta; the term "high crimes and misdemeanors," the identical meaning given it as a part of the law of the High Court of Parliament. Or, in other words, when such formulas were embedded in the Constitution of 1787, their historical meaning and construction went along with them as completely as if such meaning and construction had been written out at length upon the face of the instrument itself. If that be true, the conclusion is self-evident that no subsequent Congressional legislation can change in any way, by addition or subtraction, the definitions embodied in such formulas at the time of their adoption. If the contrary were true, Congress could any day give to the term "levying war" or "due process of law" a definition, conveying ideas of which the fathers never dreamed. Or if the term "high crimes and misdemeanors" could be subjected to a new Congressional definition, acts which were such in 1887 could be relieved of all criminality, and new acts not then criminal could be added to the list of impeachable offenses. So obvious is that fact that Congress can not legislate at all on the subject that Mr. Lawrence, whose brief has been heretofore quoted, frankly admitted, while striving to give to the powers of Congress the widest possible construction, that "Congress can not define or limit by law that which the Constitution defines into two cases by enumeration, and in others by classification, and of which the Senate is sole judge."

The last phrase is specially suggestive of the fact that if Congress could, by subsequent legislation, "define or limit by law that which the Constitution defines," the Senate sitting as a court of impeachment could be entirely deprived by such legislation of the power to determine what were impeachable high crimes and misdemeanors as defined by the fathers in 1787. In other words, if Congress can add to or subtract from the constitutional definition in any particular, it can destroy it altogether. In the great case of Marbury *v.* Madison (1 Cranch, 137) the first in which an act of Congress was ever declared unconstitutional, the question of questions was this: Does the fact that the Constitution itself has defined the original jurisdiction of the Supreme Court prohibit Congress from enlarging such original jurisdiction by subsequent legislation? The solemn answer was that the attempt of Congress to do so was void. Why? Because the dividing line between

the original and appellate jurisdiction having been drawn by the Constitution itself, it is immovable by legislation. In the words of the great Chief Justice: "If Congress remains at liberty to give this court appellate jurisdiction where the Constitution has declared their jurisdiction shall be original, and original jurisdiction where the Constitution has declared it shall be appellate, the distribution of jurisdiction made in the Constitution is form without substance." Thus it follows that any act of Congress which attempts to change the constitutional definition of impeachable high crimes and misdemeanors, by adding to the list some offense unknown to the parliamentary law of England as it existed in 1787, is simply void and of no effect.

2010. Argument of Mr. John M. Thurston, counsel, that judges may be impeached only for judicial misconduct occurring in the actual administration of justice in connection with the court.

Argument that an impeachment trial is a criminal proceeding.

On February 25, 1905,[12] in the Senate, sitting for the impeachment of Judge Charles Swayne, Mr. John M. Thurston, of counsel for the respondent, in final argument, said:

In the printed brief originally filed in behalf of the respondent a demonstration, based upon the authorities, was made, to the effect that no clear light is to be derived as to the meaning of the phrase "other high crimes and misdemeanors," so far as that phrase relates to the impeachment of English and American judges, except from the English and American judicial impeachment cases in which it has been applied to that subject. Instead of attempting to meet that reasonable and obvious contention upon its merits, the managers have evaded it by propounding a series of generalities, based upon principles drawn, in the main, from political impeachments which throw no real light upon the subject. In the course of that evasion the following remarkable statement has been made:

Said the managers in their brief:

"For the first time in impeachment trials in this or any other country the claim is made that a judge can be impeached only for acts done in his official capacity."

The fact that that statement does not fully relate the history of impeachment cases will appear by consideration of those cases. After the impeachments for bribery, pure and simple, of English judges are put aside, but two judicial impeachments remain in the entire history of the English people—that is, the impeachment of judges.

Judges, like all others, can be impeached for treason not committed upon the bench or in judicial affairs. They can be impeached for bribery by the strict terms of the Constitution, bribery committed anywhere, without regard to whether they were sitting upon the bench at the time. But as to other causes of impeachment I challenge the honorable managers to show me any case in history, English or American, where

[12] Third session Fifty-eighth Congress, Record, pp. 3365, 3366.

a judge has been impeached for any other crime or high misdemeanor except one alleged to have been committed in connection with his exercise of judicial authority. In saying that, I do not refer to some impeachment cases that have happened in States and under State constitutions, for many of the constitutions of the several States have provisions largely at variance with those of the Constitution of the United States upon this subject.

But four judicial impeachments have taken place under the Constitution of the United States. It was admitted by the House of Commons in England and by the House of Representatives in the United States by the form of the articles they presented in these judicial impeachment cases that, excepting treason or bribery, neither an English nor a Federal judge could be impeached except for judicial misconduct occurring in the actual administration of justice in connection with his court, either between private individuals or between the Government and the citizen.

The statement of the honorable managers in their brief—

"For the first time in impeachment trials in this or any other country the claim is made that a judge can be impeached only for acts done in his official capacity"—is contradicted by the judicial history of every case of impeachment of a judge in Great Britain and the United States.

Mr. Manager Olmsted was greatly mistaken when he said in his argument:

"One year later, the Senate having convicted John Pickering, Federal judge in a New Hampshire district, upon a charge of drunkenness"—

The article exhibited against John Pickering charged him with drunkenness upon the bench, and was limited to that charge, for the framers of that impeachment well knew that the drunkenness of the judge was no ground for impeachment under the Constitution of the United States unless he carried that drunkenness upon the bench.

The articles against Pickering read:

"Being then judge of the district court in and for the district of New Hampshire, did appear on the bench of the said court for the purpose of administering justice in a state of total intoxication, produced by the free and intemperate use of inebriating liquors, and did then and there frequently in a most profane and indecent manner"—

That is, on the bench, while administering justice—

"invoke the name of the Supreme Being, etc."

It was perfectly understood by every constitutional lawyer then, as it should be understood now, that the personal misconduct of an English judge off the bench has never furnished the ground for impeachment, and for the well-understood reason that under the English constitution, as it has been called, they provided for two methods of removing judges from the bench—one by impeachment for high crimes and misdemeanors and the other upon address to the sovereign by both houses of Parliament.

When we came to frame our Constitution we adopted from the English constitution the term "treason, bribery, and other high crimes and misdemeanors." The question was mooted in that convention as to whether or not we should also embody in our Constitution the English provision for the removal of Federal judges by address of the two Houses of Congress to the President. Understanding perfectly well, as the debates will show, that impeachment would only lie for a crime or offense committed in connection with the judicial office and the administration of justice, they rejected the proposed clause providing for removal by address. The framers of our Constitution did this because they were tenacious of the stability of the tenure of office of our Federal judges, and were fearful that if they enlarged the impeachment provision some of the States, by reason of local prejudice, might proceed criminally against them, and upon conviction of crime base articles of impeachment thereon.

Mr. President, I state here and now that the contention made by one of the honorable managers that a judge can be impeached under the Constitution of the United States for a crime committed as an individual against a State law has no foundation in any case that has ever been known of on the earth, was not thought of as possible by the framers of our Constitution, and is not the law to-day. It would leave a Federal judge at the mercy of a local condition, inimical as it might be to the Federal Constitution.

The case of Humphreys has been cited as a case where a Federal judge was impeached for other than judicial misconduct. Yes, Humphreys was impeached for treason. Any judge can be impeached for treason or for bribery, no matter where or how committed; but the only charge in his impeachment other than treason was the charge of judicial misconduct as the judge of the court, in the court, and acting in the administration of justice.

Mr. President, that the framers of our Constitution well knew the limitations they were imposing upon the right of impeachment is further attested by the fact that in the original draft of that great document the language was "for treason, bribery, or maladministration," and the word "maladministration" has crept into some of the constitutions of our several States. Upon the consideration of that question on the floor of the convention it was moved to strike out "maladministration" and insert "other high crimes and misdemeanors," and for the very reason that the term "maladministration" was a loose term that might mean, under the decisions of the Senate in the future, much or little; that it might cover impeachments at one period of time by one party in power that it would not cover at another period of time with another party in power. They struck it out because it was too large a term, too loose a term, and they inserted in its place those definite words, "high crimes and misdemeanors," taken from the English constitution with parliamentary construction already attached.

We took that provision from the English constitution and with it we took the interpretation that was placed upon it by the lex parliamenti, the law of Parliament, established by the adjudications in the great tribunal. That provision meant then what it meant in England at the time. Mr. President, that provision meant then what it has meant ever since. It meant then what it always must mean. From the debates in that convention it does appear that those words were adopted with that construction upon them because it was claimed that it would be unwise to permit even the Congress of the United States, by ever making something a crime that was not then a crime, to enlarge the operation of that impeachment provision of the Constitution, or to repeal some of those things which then constituted crimes and thereby prevent the impeachment of those who committed them.

Sir, that provision of the Constitution was embodied in that great instrument with a meaning that can never be changed by the Congress of the United States. It was embodied there with a meaning which will remain the same to the end of time. It furnishes the limitation with which the power of Congress can be exercised in impeachment cases.

I insist that for the first time in this case is it even suggested by constitutional lawyers that that term permits the impeachment of a judge simply because he has been tried and convicted in a court of a State for a crime against the statutes of a State, or because in his private life he has been impure or improvident, or because of any other shortcomings or failures exhibited in his career except those which relate to the administration of justice in the court over which he presides.

Mr. President, before proceeding to discuss the articles and the evidence, I call your attention to the fact that this is a criminal proceeding, and the respondent is charged with a crime. That question was settled by the Senate some days since upon the vote taken on the question of the admissibility of evidence. It is certain that this proposition is true, because the last portion of section 2 of article 3 of the Constitution of United States provides that "trial of all crimes except in cases of impeachment shall be by jury," and thereby the framers of that great instrument declared that an offense to be impeachable must be a crime, or, what is equivalent to it, a high misdemeanor.

Mr. President, this respondent, being on trial charged with crime, is entitled to every reasonable doubt that may arise upon the evidence in the case. I do not come here to claim that he needs the application of this rule, for I insist that the evidence in this case shows that he is guiltless beyond a reasonable doubt; but I invoke the attention of the Senate to that beneficent rule of law now because it is the outgrowth of the spirit of liberty and justice so strong in the Anglo-Saxon race. It is the common safeguard and heritage of every American citizen. It is the shield of the accused and is a bulwark

for the protection of the liberty and life of every man, woman, and child in the land.

2011. Argument of Mr. Manager Perkins that a judge may be impeached for personal misconduct.—On February 24, 1905,[13] in the Senate, sitting for the impeachment trial of Judge Charles Swayne, Mr. Manager James B. Perkins, of New York, in concluding argument, said in relation to the articles charging nonresidents in the district:

The argument made in behalf of the respondent is this: That a judge, under the precedent of the English courts, can not be impeached for any act except one done in the course of his duty as a judge, but an omission of duty as an individual.

Mr. President, this can best be answered by an illustration of what is the logical and necessary result of the argument on the other side, that a judge of the United States court can not be impeached by the Senate of the United States unless for some strictly judicial act. Let us suppose that a judge commits a crime; that he forges a note; that he embezzles money. He is indicted and tried and convicted in the State courts of these crimes and sentenced to bear the punishment. Then it is sought to remove him from office by impeachment. The judge having committed these crimes is impeached. He employs my learned friends on the other side, and they claim before the Senate then, as they claim now, that the Senate has no power to impeach a judge except for acts done as a judge. They say, and say justly, that when this judge forged a note, or embezzled money, he was not acting as a judge, but as an individual. And if the argument be just, we have this extraordinary conclusion: A judge can not be removed except by impeachment. The judge, for the crime committed in his private capacity, is serving his term in State's prison. As he marches to perform hard labor, he will once a month receive the consolation of opening the envelope containing the check which will be monthly sent to him to pay him his salary as a judge of the United States court. Such a result shows the absurdity of the position.

The English cases are cited, but in England, apart from the remedy by impeachment, a judge can be removed for any cause deemed sufficient by a bill of attainder. That is unknown in this country. Bills of attainder were not put in our Constitution, and the remedy by impeachment by the Senate is the sole remedy by which a judge can be removed.

But a word more. What offense is Judge Swayne charged with? It is that he did not reside within his district. The law could not say that Judge Swayne as an individual should reside in the northern district of Florida or anywhere else, but the law says that when he is a judge he, because he is a judge, shall reside within his district; and when he failed so to do he omitted a judicial requirement made of him just as much as if he had sold justice or made unrighteous decisions.

I shall say no more on that point, but come at once to what is the important, the great question in this case—not whether

[13] Third session Fifty-eighth Congress, Record, p. 3246.

the offense is impeachable, but whether the offense was committed. It has already been suggested that a judge of the United States court is the one officer in the land who holds his office by a life tenure. He can not be removed by the people. He can not be removed by the President. Nothing but the act of God or the vote of the Senate can remove a man who holds the office of United States judge. His dignity is great; his responsibility is correspondingly great. The people who complain, the people who lack confidence in their judges, can look to the Senate and can look here alone for relief. If they can not get it here they can not get it anywhere.

2012. Argument of Mr. Anthony Higgins, counsel, that impeachable offenses by a judge are confined to acts done on the bench in discharge of his duties.—On February 24, 1905,[14] in the Senate, sitting for the impeachment trial of Judge Charles Swayne, Mr. Anthony Higgins, of counsel for the respondent, said in final argument:

Mr. President, I conceive it is of no slight interest or importance to the Senate that of the four learned managers who have now taken part in the presentation of the prosecution of this case three of them have devoted as much time as they have to the question whether the offenses charged in the first seven articles constitute impeachable offenses—the alleged offense or crime of the respondent of making a false claim, or obtaining money by false pretenses; of using a car belonging to a railroad company, contrary to good morals, and, third, in not obeying the statute to reside in his district. All three have united in presenting the argument of ab inconvenienti—one which seldom weighs much with courts, and one which, it seems to us, after the conclusive discussion of the subject in the argument which it has been our privilege to present to the Senate on the constitutional question, is not left in the case really for discussion. That argument shows beyond peradventure that the framers of the Constitution in leaving out of the Constitution any provision for the removal of an official subject to impeachment by address did it purposely and with a view of giving stability to those who hold the offices, and especially the judges.

"Mr. Dickinson," says Elliott in his Debates on the Constitution, "moved, as an amendment to Article XI, section 2, after the words 'good behavior,' the words '*Provided*, That they may be removed by the Executive on the application by the Senate and House of Representatives.' "

This was in respect of the judges.

Mr. Gerry seconded the motion. Mr. Gouverneur Morris thought it a contradiction in terms to say that the judges should hold their offices during good behavior and yet be removable without a trial. Besides, it was fundamentally wrong to subject judges to so arbitrary an authority.

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[14] Third session Fifty-eighth Congress, Record, pp. 3258–3259.

"Mr. Randolph opposed the motion as weakening too much the independence of the judges.

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"Delaware alone voted for Mr. Dickinson's motion."

Says Judge Lawrence in a paper on this subject, which he filed in the Johnson impeachment case:

"Impeachment was deemed sufficiently comprehensive to cover every proper case for removal.

* * * * * * *

"The first proposition was to use the words 'to be removable on impeachment and conviction for malpractice and neglect of duty.' It was agreed that these expressions were too general. They were therefore stricken out."

* * * * * * *

Mr. Mason said:

"Treason, as defined in the Constitution, will not reach many great and dangerous offenses. Hastings is not guilty of treason. Attempts to subvert the Constitution may not be treason as above defined."

He moved to insert after "bribery" the words "or maladministration."

Mr. Madison replied:

"So vague a term will be equivalent to a tenure during the pleasure of the Senate."

Mr. Mason withdraw "maladministration" and substituted "other high crimes and misdemeanors against the State."

Mr. President, there are in the State of Pennsylvania, Delaware, South Carolina, Alabama, Arkansas, Florida, Illinois, Kentucky, Louisiana, and Texas provisions substantially the same as those contained in the constitutions of Pennsylvania and of Delaware. The constitution of the State of Pennsylvania of 1790 provides:

"ARTICLE V.

"SEC. 2. The judges of the supreme court and of the several courts of common pleas shall hold their offices during good behavior. But for any reasonable cause, which shall not be sufficient ground of impeachment, the governor may remove any of them on the address of two-thirds of each branch of the legislature."

The clause of the constitution of Delaware is similar. The Pennsylvania constitution as amended in 1838 provides:

"SEC. 3. The governor and all other civil officers under this Commonwealth shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall not extend farther than to removal from office and disqualification to hold any office of honor, trust, or profit under the Commonwealth. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law." (Page 1561.)

So that there are in those constitutions the direct provision that power of removal by address is given as punishment for cases which by the very words of the constitution are said not to be the subject of impeachment.

An examination of the constitutions of the several States will show that there are not more than two or three State constitutions which do not contain the power of removal by address. That power was placed in the English constitution by a great and famous historic statute—the Act of Settlement—passed early in the reign of William and Mary, or of Anne, at the time when the present dynasty of the British throne was placed upon the authority of an act of Parliament. Then it was that the provision was placed in the statute that judges should be removable by address for causes that were not the subject of impeachment. Therefore, in the face of this state of the constitutional law and of the terms and provisions of the Constitution, where is there room for an argument that that construction shall not hold because there is no other way of getting rid of judges but by impeachment?

Now, but one word more on this, and that is in respect to the case that was cited by the learned manager, Mr. Olmsted, of an impeachment in Massachusetts. I call attention to the fact that the constitution of Massachusetts of 1780 makes provision for the impeachment of judges broader than the other States, or at least most of them.

"ART. VIII. The Senate shall be a court with full authority to hear and determine all impeachments made by the house of representatives against any officer or officers of the Commonwealth for misconduct and maladministration in their offices."

So in Massachusetts the judge who took illegal fees upon the ministerial side of his probate court was clearly impeachable under the provision of the Massachusetts constitution, which extended to ministerial functions.

2013. Argument from review of English impeachments that the phrase "high crimes and misdemeanors," as applied to judicial conduct, must mean only acts of the judge while sitting on the bench.

History of removal by address in England and the States as bearing on the nature of impeachable offenses on the part of a judge.

On February 22, 1905,[15] in the Senate sitting for the impeachment trial of Judge Charles Swayne, Messrs. Anthony Higgins and John M. Thurston, of counsel for the respondent, offered a brief in support of their plea of jurisdiction as to the first seven articles. This brief, which was signed by them as counsel, but which, as they said, had been prepared by another, covered many questions relating to impeachments, the following being among them:

The only pertinent definitions of the term "high crimes and misdemeanors," as contained in Article II, section 4, of the Federal Constitution, must be drawn (1) from the law of Parliament as it existed in 1787; (2) from the contempo-

[15] Third session Fifty-eighth Congress, Record, pp. 3028–3031.

raneous expositions of that law embodied in the constitutions of the several States. In order to present anything like an adequate statement of the English law of impeachment as it existed at the time in question, some account must be given of the process of growth through which it had passed prior to that time. The history of that growth is divided into two epochs, easily distinguishable from each other. The first begins with the proceedings against the Lords Latimer and Neville, which took place in the Good Parliament in the fiftieth of Edward III (1376). These proceedings are regarded by the constitutional historians as the earliest instances of a trial by lords upon a definite accusation made by the Commons. (Hallam, M. A., Vol. III, p. 56; Stubbs, Const. Hist., Vol. II, p. 431.) Not until early in the reign of Edward III was Parliament definitely and finally divided into two houses that deliberated apart; not until near the close of that reign did the Commons, as the grand jury of the whole realm, attempt to present persons accused of grave offenses against the State to the Lords for trial. At the outset, the new method of accusation was rivaled by what were known as " appeals," which have been thus defined: "It was the regular course for private persons, even persons who were not members of Parliament, to bring accusations of a criminal nature in Parliament, upon which proceedings were had." (Stephen, Hist. of the Criminal Law of England, Vol. I, 151.)

The results of the private warfare thus instituted were so inconvenient that "appeals" were finally abolished by the statute of I Hen. 4, c. 14. Thus left without a rival, proceedings by impeachment were occasionally employed during the reigns of Richard II, Henry IV, Henry V, and Henry VI. In the reign last named Lord Stanley was impeached in 1459 for not sending his troops to the battle of Bloreheath. That trial terminates the first epoch in the history of the law of impeachment in England. It was not again employed during the period that divides 1459 from 1621, an interval of one hundred and sixty-two years. The primary cause for the suspension is to be found in the fact that during that interval it was that the decline in the prestige and influence of Parliament was such that the directing power in the state passed to the King in council, the judicial aspect of which was known as "the star chamber." There it was that the great state trials took place during the reign of Edward IV and during the following reigns of the princes of the house of Tudor. Such impeachment trials as did take place during the first or formative epoch are not as distinctly defined as those that occurred during the later period, and have now only an antiquarian interest.

VIII. IMPEACHMENTS IN ENGLAND: SECOND EPOCH.

With the revival of the powers of Parliament in the reign of James I, impeachment was resumed as a weapon of constitu-

tional warfare. From that time its modern history, with which this discussion is concerned, really begins. The first impeachment case to occur during the second epoch was that of Sir Giles Mompesson in 1621, the last that of Lord Melville in 1805. Including the first and last the total is 54. [Here follows the list.]

An examination of the foregoing list reveals the fact that many of the impeachments in question were directed against private individuals, it having always been the law of England that all subjects, as well out of office as in office, might be thus accused and tried. A good illustration may be found in the notable case of Doctor Sacheverell, rector of St. Savior's, Southwark, who was impeached by the Commons and convicted by the Lords for having preached two sermons inculcating the doctrine of unlimited passive obedience. (State Trials, XV, p. 1.) As that branch of the law of impeachment which authorized the accusation of private individuals out of office was never reproduced in this country, cases of that class may be dismissed from consideration. By far the greater number of the remaining cases are what are known as "political impeachments," whereby one party in the State would attempt to crush its adversaries in office by impeaching them for high treason, which generally involved commitment to the Tower.

As illustrations, reference may be made to the case of Portland, Halifax, and Somers, three Whig peers impeached of high treason by a Tory House of Commons for their share in promoting the Spanish partition treaties in 1700; and to that of Oxford, Bolingbroke, and Ormond, Tory ministers impeached by the triumphant Whigs in the Commons for their share in negotiating the peace of Utrecht in 1713. (State Trials, Vol. XIV, p. 233. Parl. Hist., Vol. VII, p. 105.) A well-known English writer has described the latter as "the last instance of purely political impeachment." (Taswell-Langmead, English Const. Hist., p. 549, note.) Cases of that class shed but a dim light upon the definition of the term "high crimes and misdemeanors" as applied to those offenses for which English judges have been punished for misbehavior in office. No clear or authoritative definitions of the term in question can be found, as applied to that subject, outside of what are known as judicial impeachments as contradistinguished from political. As the purely judicial impeachment cases which have occurred in England are very few in number, their results may be stated within narrow limits.

The earliest of the accusations which have been made against English judges have been for the crime of bribery, the crime for which Lord Bacon was impeached by the Commons in 1621. The charges against Bacon particularly set forth instances of judicial corruption by the acceptance of bribes, and in his "confession and submission" he said: "I do plainly and ingeniously confess that I am guilty of corruption, and do renounce all defense." (State Trials, Vol. 11, 106.) Such cases, though rare, had occurred before Bacon's

time. In the words of Sir J. F. Stephen, Coke "gives two instances in which judges were punished for taking bribes, namely, Sir. William Thorpe, in 1351, who took sums amounting in all to £90 for not awarding an exigent against five persons at Lincoln assizes, and certain commissioners (probably special commissioners) of oyer and terminer, who were fined 1,000 marks each for taking a bribe of £4. I have elsewhere referred to the impeachment of the Chancellor Michael de la Pole, by Cavendish, the fishmonger, for taking a bribe of £40, 3 yards of scarlet cloth, and a quantity of fish, in the time of Richard II. * * *

"Lord Macclesfield was also impeached and removed from his office for bribery in 1725." (Hist. of the Crim. Law of Eng., Vol. III, pp. 251–52, citing as to the case of Lord Macclesfield Sixteen State Trials, p. 767.) That case was the last judicial impeachment in England. It is not, therefore, strange that bribery, as a distinct and substance offense, should have been named, side by side with treason, as an impeachable crime, in the Constitution of the United States. After the bribery cases of Lord Chancellor Bacon and Lord Chancellor Macclesfield have been subtracted from the foregoing list, but two judicial impeachments remain in the entire history of the English people. Only in those two cases have the Commons impeached and the Lords tried English judges upon charges of judicial misconduct other than bribery.

IX. IMPEACHMENT OF SIR ROBERT BERKLEY AND OTHER JUDGES

In 1635 Charles I announced his attention to extend the exaction of ship money to the inland counties. When the writs of that year were resisted, the judges gave answers in favor of the prerogative. When in 1636 another set of ship writs were issued, Hampden made a test case by refusing to pay the assessment on his lands at Great Missenden, and the issue thus raised was argued in November and December, 1637, before a full bench. The contention made in favor of the Crown was sustained by seven of the judges—Finch, chief justice of the common pleas; Bramston, chief justice of the king's bench; Berkley, one of the justices of that court; Crawley, one of the judges of the common pleas; Davenport, lord chief baron of the exchequer; Weston and Trevor, barons of that court. When the day of reckoning came, Finch fled to Holland, and the remaining six were impeached by the Commons for their judgments rendered in favor of the royal contention, the charges being delivered to the Lords July 6, 1641. As Berkley's opinion in favor of the legality of ship money was the most emphatic, he was made the special object of attack in articles which charged him not only with the ship-money opinion, but with other acts of judicial misconduct on the bench. The nature of the accusations against him can be best explained by extracts from the articles themselves, which open with the general statement "that the said Sir Robert Berkley, then being one of the justices of the said

court of king's bench, hath traitorously and wickedly endeavored to subvert the fundamental laws and established government of the realm of England, and instead thereof to introduce an arbitrary and tyrannical government against law, which he hath declared, by traitorous and wicked words, opinions, judgments, practices, and actions appearing in the several articles ensuing."

The following are a fair sample of the special charges: "4. That he, the said Robert Berkley, then being one of the justices of the king's bench, and having taken an oath for the due administration of justice, according to the laws and statutes of the realm, to His Majesty's liege people, on or about the last of December subscribed an opinion, in haec verba: 'I am of opinion, that where the benefit doth more particularly redound to the good of the ports,' etc. * * * 6. That he the said Sir Robert Berkley, then being one of the justices of the court of king's bench, and duly sworn as aforesaid, did on——deliver his opinion in the exchequer chamber against John Hampden, esq., in the case of ship money. * * * 7. That he, the said Sir Robert Berkley, then being one of the justices of the court of king's bench, and one of the justices of the assize for the county of York, did, at the assizes held at York in Lent, 1636, deliver his charge to the grand jury, 'that it was a lawful and inseparable flower of the Crown for the King to command, not only the maritime counties, but also those that were inland, to find ships for the defense of the kingdom.' * * * 8. The said Sir. R. Berkley then being one of the justices of the court of king's bench, in Trinity term last, then sitting on the bench in said court, upon debate of the said case between the said chambers and Sir E. Bromfield, said openly in the court, 'that there was a rule of law, and a rule of government'; and that 'many things which might not be done by the rule of law might be done by the rule of government'; and would not suffer the point of legality of ship money to be argued by chambers' counsel. * * * 9. The said Sir R. Berkley, then and there sitting on the bench, did revile and threaten the grand jury returned to serve at the said session, for presenting the removal of the communion table in All Saints Church in Hertford aforesaid. * * * 11. He, the said Sir R. Berkley, being one of the justices of the said court of king's bench, and sitting in said court, deferred to grant a prohibition to the said Court-Christian in said cause, although the counsel did move in the said court many several times and several times for a prohibition." (State Trials, vol. 3, pp. 1283–1291.) The impeachment against Berkley ended in his paying a fine of £10,000.

X. IMPEACHMENT OF SIR WILLIAM SCROGGS, CHIEF JUSTICE OF THE KING'S BENCH

In the reign of Charles II, Sir William Scroggs, chief justice of the king's bench, was impeached of high crimes and misdemeanors, the nature of which may be best explained by

the following extracts from the articles themselves. The general accusation is "that the said William Scroggs, then being chief justice of the court of king's bench, hath traitorously and wickedly endeavored to subvert the fundamental laws, and the established religion and government of this Kingdom of England; and instead thereof to introduce popery and arbitrary and tyrannical government against law; which he has declared by divers traitorous and wicked words, opinions, judgments, practices, and actions." Chief among the special charges are the following: II. "That he, the said Sir William Scroggs, in Trinity term last, being then chief justice of the said court, and having taken an oath duly to administer justice according to the laws and statutes of this realm, in pursuance of his said traitorous purposes, did, together with the rest of the justices of the said court, several days before the end of said term, in an arbitrary manner, discharge the grand jury which then served for the hundred of Oswaldston, in the county of Middlesex, before they had made their presentments, etc. * * * III. That, whereas one Henry Carr had, for some time before, published every week a certain book, entitled 'The Weekly Pacquet of Advice from Rome, or The History of Popery,' wherein the superstitions and cheats of the Church of Rome were from time to time exposed, he, the said Sir William Scroggs, then chief justice of the court of king's bench, together with the other judges of the said court, before any legal conviction of the said Carr, of any crime did in the said Trinity term, in a most illegal and arbitrary manner, make and cause to be entered a certain rule of that court against the printing of said book, in hæc verba. * * * IV. That the said Sir William Scroggs, since he was made chief justice of the king's bench, hath, together with the other judges of the said court, most notoriously departed from all rules of justice and equality in the imposition of fines upon persons convicted of misdemeanors in said court." The result was that the chief justice was removed from office and given a pension for life. (State Trials, Vol. VIII, pp. 195, 216.)

XI. PROCEEDING AGAINST LORD CHIEF JUSTICE KEELING

Intervening between the case of Berkley and other judges (1640) and that of Sir William Scroggs (1680) are proceedings by the Commons against Lord Chief Justice Keeling, which occurred in 1667, notable for the reason that they clearly illustrate what kind of judicial acts were considered as impeachable high crimes and misdemeanors at that time. "A copy of Judge Keeling's case, taken out of the Parliament Journal, December 11, 1667: 'The House resumed the hearing of the rest of the report touching the matter of restraint upon juries; and that upon the examination of divers witnesses, in several causes of restraints put upon juries, by the Lord Chief Justice Keeling; whereupon the committee made their resolutions, which are as follows: 1. That the proceedings of

the Lord Chief Justice, in the cases now reported, are innovations in the trial of men for their lives and liberties; and that he hath used an arbitrary and illegal power, which is of dangerous consequence to the lives and liberties of the people of England, and tends to the introducing of an arbitrary government. 2. That in the place of judicature, the Lord Chief Justice hath undervalued, vilified, and condemned Magna Carta, the great preserver of our lives, freedom, and property. 3. That he be brought to trial, in order to condign punishment in such manner as the House shall judge most fit and requisite.' " (State Trials, vol. 6, p. 991, seq.)

"On the 16th of October, 1667, the House being informed 'that there have been some innovations of late in trials of men for their lives and deaths, and in some particular cases restraints have been put upon juries in the inquiries,' this matter is referred to a committee. On the 18th of November this committee are empowered to receive information against the Lord Chief Justice Keeling for any other misdemeanors besides those concerning juries. And on the 11th of December, 1667, the committee report several resolutions against the Lord Chief Justice Keeling of illegal and arbitrary proceedings in his office. The chief justice desiring to be heard, he is admitted on the 13th of December and heard in his defense to the matters charged against him, and being withdrawn, the House resolve 'that they will proceed no further in the matter against him.' " (4 Hatsel Prec., pp. 123–4, cited in Chase's Trial, Vol. II, p. 461.)

XII. REMOVAL BY ADDRESS PROVIDED BY THE ACT OF SETTLEMENT

By the foregoing analysis of the only English precedents to which we can look for expositions of the meaning of the phrase "high crimes and misdemeanors," as applied to the conduct of English judges, the fact is put beyond all question that the only judicial acts which the House of Commons ever regarded as failing within that category are such acts as a judge performs while sitting upon the bench, administering the laws of the realm, either between private persons or between the Crown and the subject. In the case of Mr. Justice Berkley the gravamen of the charge was that he rendered a judgment in the matter of ship money in conflict with what his triers considered the law of the realm to be. In the case of Chief Justice Scroggs the gravamen of the charge was that he arbitrarily discharged grand juries; that in a libel case he rendered an illegal judgment, and that he imposed unjust fines upon those convicted of misdemeanors. In the proceedings against Chief Justice Keeling the gravamen of the charge was that he had put "restraint" upon juries by fining them for their verdicts. "Wagstaff and others of a jury were fined an hundred marks a piece by Lord Chief Justice Keeling." (4 Hatsell Prec., p. 124, note.) Excepting bribery there is no case in the parliamentary law of England which gives color to the idea that the personal misconduct of a

judge, in matters outside of his administration of the law in a court of justice, was ever considered or charged to constitute a high crime and misdemeanor. When the question is asked, By what means is the personal misconduct of an English judge, not amounting to a high crime and misdemeanor, punished? the answer is easy.

Prior to the passage in 1701 of the famous Act of Settlement (12 and 13 Will. III, C. 2) neither the tenure nor the compensation of English judges rested upon a firm or definite foundation. Hallam (Const. Hist., Vol III, p. 194) tells us that "it had been the practice of the Stuarts, especially in the last years of their dynasty, to dismiss judges, without seeking any other pretense, who showed any disposition to thwart government in political prosecutions." As the hasty and imperfect Bill of Rights had failed to provide a remedy for that condition of things, it became necessary for the authors of the Act of Settlement, "the complement of the Revolution itself and the Bill of Rights," to provide that English judges should hold office during good behavior (quandiu se bene gesserint), and that they should receive ascertained and established salaries. But while the judges were being thus entrenced in their offices, the fact was not forgotten that the remedy by impeachment extended only to high crimes and misdemeanors which did not embrace personal misconduct. Therefore a method of removal was provided by address, which was intended to embrace all misconduct not included in the term "high crimes and misdemeanors."

In the light of that statement it will be easier to understand the full purport of that section of the Act of Settlement which provides "that after the said limitations shall take effect as aforesaid, judges' commissions be made quandiu se bene gesserint, and their salaries ascertained and established; but upon the address of both Houses of Parliament it may be lawful to remove them." Thus, for seventy-five years prior to the severance of the political tie which bound the English colonies in America to the parent State, the twofold method for the removal of English judges was clearly defined and perfectly understood on both sides of the Atlantic. The twofold method embraced (1) the removal by impeachment for all acts constituting "high crimes and misdemeanors," a term then clearly defined in English parliamentary law; (2) the removal by address for all lesser acts of personal misconduct not embraced within that term. That such was the general and accepted view on this side of the Atlantic in 1776 of the English parliamentary law on impeachment and address will be put beyond all question by the following references to the several State constitutions in which that law reappeared.

XIII. IMPEACHMENT AND ADDRESS AS DEFINED IN THE CONSTITUTION OF THE SEVERAL STATES

On May 10, 1776, the Continental Congress recommended to the several conventions and assemblies of the colonies the

establishment of independent governments "for the maintenance of internal peace and the defense of their lives, liberties, and properties." (Charters and Constitutions, vol. 1, p. 3.) Before the end of the year in which that recommendation was made the greater part of the colonies had adopted written constitutions, in which were restated, in a dogmatic form, all of the vital principles of the English constitutional system. Illustrations of the adoption of the English plan for the removal of judges by impeachment and address may be drawn from the following State constitutions: The constitution of Pennsylvania of 1776, Article V, section 2, provides that "the judges of the supreme court and of the several courts of common pleas shall hold their offices during good behavior. But for any reasonable cause, which shall not be sufficient ground for impeachment, the governor may remove any of them, on the address of two-thirds of each branch of the legislature."

The constitution of Delaware of 1792, Article VI, section 2, provides that "the chancellor and the judges of the supreme court of common pleas shall hold their offices during good behavior; but for any reasonable cause, which shall not be sufficient ground for impeachment, the governor may in his discretion, remove any of them on the address of two-thirds of all the members of each branch of the legislature." The constitution of South Carolina of 1868, Article VII, section 4, provides that "for any willful neglect of duty or other reasonable cause, which shall not be sufficient ground of impeachment, the governor shall remove any executive or judicial officer on the address of two-thirds of each house of the general assembly." Here are explicit and dogmatic statements of the settled rule of English parliamentary law that judges may be removed by impeachment for grave offenses of judicial misconduct, and by address for lesser offenses of personal misconduct. As this distinction was so well known, many of the State constitutions simply presuppose it without stating it in express terms. The constitution of Massachusetts of 1780, Chapter III, article 1, after providing for removal by impeachment, declares that "all judicial officers duly appointed, Commissioned, and sworn shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this constitution: Provided, nevertheless, the governor, with consent of the council, may remove them upon the address of both houses of the legislature."

The constitution of Georgia of 1798, Article III, section 1, provides that "the judges of the superior court shall be elected for the term of three years, removable by the governor on the address of two-thirds of both houses for that purpose, or by impeachment and conviction thereon." The constitution of New Hampshire of 1784, Article I, part 2, provides that "all judicial officers, duly appointed, commissioned, and sworn, shall hold their offices during good behavior, excepting those concerning whom there is a different provision made in this constitution: Provided, nevertheless, the presi-

dent, with the consent of council, may remove them upon the address of both houses of the legislature." The constitution of Connecticut of 1818, Article V, section 3, provides that "the judges of the supreme court and of the superior court shall hold their offices during good behavior; but may be removed by impeachment, and the governor shall also remove them on the address of two-thirds of the members of each house of the general assembly." It is said that the constitution of New York of 1777 was the model from which the impeachment clauses of the Constitution of the United States were copied. (6 Am Law Reg., N.S., 277.)

The New York constitution of that date expressly limited impeachment to persons in office, and omitted removal by address. Such an omission was, however, exceptional. The rule was to introduce into the State constitutions both processes of removal by impeachment and address. And if it were not for fear of wearying the court by reiteration, the list of instances could be greatly lengthened in which both methods were introduced into later State constitutions not here mentioned, together with the recognized distinction between impeachable offenses and the lesser acts of misconduct justifying only removal by address, expressed in the words "not sufficient ground of impeachment." (See Appendix.)

2014. Argument that Congress might not by law make nonresidence a high misdemeanor in a judge.

Discussion of the intent of a judge as a primary condition needed to justify impeachment.

On February 22, 1905,[16] in the Senate sitting for the impeachment trial of Judge Charles Swayne, Messrs. Anthony Higgins and John M. Thurston, of counsel for the respondent, offered a brief in support of their plea of jurisdiction as to the first seven articles. This brief, which was signed by them as counsel, but which, as they said, had been prepared by another, covered many questions relating to impeachments, the following being among them:

First. That the definition of the term "high crimes and misdemeanors," as employed in Article II, section 4, of the Constitution, must be drawn from the parliamentary law of England as it existed in 1787, construed in the light of the contemporaneous expositions of that law embodied in the provisions of the constitutions of the several States as to impeachment and address.

Second. That the definition of that term, as thus fixed at the time of the adoption of the Federal Constitution is organic and unchangeable by subsequent Congressional legislation: that no act not an impeachable offense when the Constitution was adopted can be made so by a subsequent act of Congress.

Third. That the "high crimes and misdemeanors" for which English judges were impeachable in 1787 can only be clearly ascertained from an examination of what are known as the

[16] Third session Fifty-eighth Congress, Record, pp. 3033–3034.

English judicial impeachment cases, as contradistinguished from the political.

Fourth. That English judges have never been impeached except for bribery, or for judicial misconduct occurring in the actual administration of justice in court, either between private individuals or between the Crown and the subject.

Fifth. That since the act of settlement (1701), when the tenure and compensation of English judges was first fixed on a definite basis, such judges have been removable for judicial misconduct not amounting to an impeachable high crime and misdemeanor, by address.

Sixth. That the plain distinction between the acts for which a judge may be impeached and the acts for which he may be removed by address was clearly recognized and defined in the constitutions of many of the States.

Seventh. That after careful consideration and debate the Federal Convention of 1787, with only one dissenting vote, rejected the proposition to embody the removal of Federal judges by address in the Constitution of the United States "as weakening too much the independence of the judges." After rejecting the more ample provisions upon the subject of impeachment embodied in some of the State constitutions, it was resolved that Federal judges should only be removed by impeachment for and conviction of "high crimes and misdemeanors" in the limited sense in which that phrase was defined in the parliamentary law of England as it existed in 1787.

Eighth. That in no one of the four judicial impeachments which have taken place since the adoption of our Federal Constitution has the House of Representatives ever attempted to impeach a Federal judge for "high crimes and misdemeanors," except in those cases in which he would have been impeachable under the English parliamentary precedents. That is to say, the proceedings against Justice Berkley and other judges (1640), the proceedings against Chief Justice Keeling (1667), the proceedings against Chief Justice Scroggs (1680), the proceedings against Judge Pickering (1803), the proceedings against Judge Chase (1804), the proceedings against Judge Peck (1830), the proceedings against Judge Humphreys (1862), so far as they relate to judicial misconduct, rest upon a single proposition, which is this: In English and American parliamentary and constitutional law the judicial misconduct which rises to the dignity of a high crime and misdemeanor must consist of judicial acts, performed with an evil or wicked intent, by a judge while administering justice in a court, either between private persons or between a private person and the government of the State. All personnel misconduct of a judge occurring during his tenure of office and not coming within that category must be classed among the offenses for which a judge may be removed by address, a method of removal which the framers of our Federal Constitution refused to embody therein.

When the allegations contained in articles 1, 2, and 3, presented against this respondent, are examined, it appears that they set forth in three forms an identical charge, which is in substance that the respondent, in settling his accounts with certain United States marshals under a certain act of Congress providing for the reasonable expenses for travel and attendance of a district judge, when lawfully directed to hold court outside of his district, exacted and received in payment for such expenses from the said marshals sums in excess of the amounts contemplated in said act. It is charged that such acts constitute "a high crime, to wit, the crime of obtaining money from the United States by a false pretense, and a high misdeameanor in office." The short answer to such a charge is that no such offense was ever thought of or defined in the parliamentary law of England as a high crime and misdeameanor in 1787, or at any other time; that it bears no relation whatever to the acts known in English parliamentary law as an impeachable offense. If it be true, as alleged, that the respondent was guilty in making such settlements of "obtaining money from the United States by a false pretense," then the remedy is by indictment by a grand jury and a trial by a petit jury, as in the case of any other citizen of the country. The Constitution expressly provides, Article I, section 3, that persons subject to impeachment "shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law." While it is quite possible to understand how such personal misconduct upon the part of a judge, entirely disconnected with the conduct of judicial business on the bench, might subject him to removal by address in a State which had adopted that plan of removal for nonimpeachable offenses, it is hard to conceive how any effort of the imagination could reach the conclusion that such an act constitutes an impeachable high crime and misdemeanor as defined in English parliamentary law.

The same comments are applicable to the charges made in articles 4 and 5 as to the use by the respondent of a certain car belonging to a certain railroad, "the said railroad company being at the time in the possession of a receiver appointed by said Charles Swayne, judge as aforesaid, on the petition of creditors." Even if it could be established that the circumstances attending such a transaction would warrant removal by address, no advance would be made toward the conclusion that such acts constitute an impeachable high crime and misdemeanor as defined in English parliamentary law, because the further allegation that "the said Charles Swayne, acting as judge, allowed the credit claimed by the said receiver for and on account of the said expenditure as part of the necessary expenses of operating said road" falls far short of the English and American rule as to the evil or wicked intent which must accompany a judgment or opinion delivered on the bench in order to render it impeachable. Nothing is better settled than the fact that a judge is not impeachable even for a judgment, order, or opinion rendered contrary to law unless

it is alleged and proved that it was rendered with an evil, wicked, or malicious intent. Justice Berkley was impeached not simply because he decided in favor of ship money, but because he "traitorously and wickedly endeavored to subvert the fundamental laws" of the realm thereby. Chief Justice Scroggs was impeached not simply for imposing "fines upon persons convicted of misdemeanors in said court," but because he imposed them "for the further accomplishing of his said traitorous and wicked purposes."

Justice Chase was impeached because he, "with intent to oppress and procure the conviction of the said Callender, did overrule the objection of John Bassett, one of the jury;" "that, with intent to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material witness on behalf of the aforesaid Callender, was not permitted by the said Samuel Chase to be given in." Judge Peck was impeached not because he punished Lawless for contempt, but because he did so "with intention wrongfully and unjustly to oppress, imprison, and otherwise injure the said Luke Edward Lawless under color of law, * * * under the color and pretense aforesaid and with the intent aforesaid, in the said court then and there did unjustly, oppressively, and arbitrarily order and adjudge, etc. If further illustrations of the necessity for averments as to the wicked and malicious intent with which a judicial act must be performed need be given, they may be drawn from articles 8, 9, 10, 11, and 12, presented against this respondent, in which impeachable offenses are properly charged under the rule which the Constitution prescribes—that is to say, the rule of English parliamentary law. It is charged in one article that the said Charles Swayne "did maliciously and unlawfully adjudge guilty of contempt of court and impose a fine of $100 upon and commit to prison for a period of ten days E. T. Davis, an attorney at law, for an alleged contempt of the circuit court of the United States;" and in another that he "did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of $100 upon and commit to prison for a period of ten days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States."

With the plain and settled rule thus recognized clearly in view, the draftsmen of articles 4 and 5 have not only failed to charge that the respondent "allowed the credit claimed by said receiver for and on account of the said expenditure," etc., "maliciously and unlawfully," but, what is more to the point, they have failed to charge that he did so "knowingly." There is no reason to suppose, in the absence of such an allegation, that a judge, approving the mass of accounts presented to the court by a receiver of a railroad, would have personal knowledge of every trivial item which such accounts contain. The presumption is clearly to the contrary. In articles 4 and 5 there is no charge either that the respondent ever "knowingly" passed upon the items of expense in question or

that he approved them "maliciously and unlawfully." In the absence of such allegations articles 4 and 5 fall to the ground.

The charge of nonresidence contained in article 6 presupposes the validity of section 551, Revised Statutes of the United States, which provides that "a district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor." If the foregoing argument proves anything, it is the fact that when the phrase "high crimes and misdemeanors" was embodied in the Federal Constitution in 1787 it drew along with it, as an integral parliamentary law at that time. The phrase, coupled with part of it, the definition which fixed its meaning in English the definitions of it, thus became organic and unchangeable by subsequent Congressional legislation, just as the definition of the original and appellate jurisdiction of the Supreme Court became organic and unchangeable. The convention pointedly refused to make impeachable offenses an uncertain or changeable quantity. "The first proposition was to use the words 'to be removable on impeachment and conviction for malpractice and neglect of duty.' It was agreed that these expressions were too general. They were therefore stricken out. * * * Colonel Mason said: 'Treason, as defined in the Constitution, will not reach many great and dangerous offenses. Hastings is not guilty of treason. Attempts to subvert the Constitution may not be treason as above defined.' He moved to insert after 'bribery' the words 'or maladministration.' Madison: 'So vague a term will be equivalent to a tenure during the pleasure of the Senate.' Mason withdrew 'maladministration' and substituted 'other high crimes and misdemeanors against the State.'" (American Law Review, vol. 16, p. 804.)

The fathers knew exactly the limitations of the phrase adopted, and they repelled the idea that it was ever to be enlarged or diminished. If nonresidence of a judge in his district could be added by Congress to the list of impeachable offenses, that list could be thus indefinitely extended; or, by the same authority, every impeachable offense as understood in 1787 could be abolished. If it is admitted that Congress can change the organic definition, either by addition or subtraction, it follows as clearly as a mathematical demonstration that the scheme of impeachment provided in the Constitution can be entirely remodeled by legislation. The validity of the section in question, making nonresidence a high misdemeanor, can not be supported by serious argument. Even if it could be, the fact can not be lost sight of that its plain provision is that "every such judge shall reside in the district for which he is appointed." It will not be disputed that Judge Swayne was so residing in the district for which he was appointed at the time that subsequent legislation excluded the place of his residence from such district. Certainly nothing more can be put forward by those who assert the validity of

section 551 than the contention that it was respondent's duty to remove, within a reasonable time, from the district for which he was appointed into the new one for which he was not appointed. It follows, therefore, that the accusation now made amounts to nothing more than the charge that respondent did not act with sufficient alacrity; that he did not remove his residence into the new district with sufficient promptness. How could such laches possibly constitute an impeachable high crime and misdemeanor?

2015. Argument that an impeachable offense is any misbehavior that shows disqualification to hold and exercise the office, whether moral, intellectual or physical.

Answer to the argument that a judge may be impeached only for acts done in his official capacity.

Answer to the argument that Congress might not make nonresidence a high misdemeanor.

By permission, before the final arguments in the Swayne trial, the managers filed a brief on the respondent's plea to jurisdiction.

On February 23, 1905,[17] in the Senate sitting for the impeachment trial of Judge Charles Swayne, Manager Henry W. Palmer, of Pennsylvania, filed, by permission the following brief:

A BRIEF OF AUTHORITIES ON THE LAWS OF IMPEACHMENT

The purpose of this brief is to show—

First. That the framers of the Constitution intended that the House of Representatives should have the right to impeach and the Senate the power to try a judicial officer for any misbehavior that showed disqualification to hold and exercise the office, whether moral, intellectual, or physical.

The provisions of the Constitution relating to the subject of impeachment are as follows:

"The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment. (Art. I, sec. 2.)

"Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law. (Art. II, sec. 1.)

"The President * * * shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. (Art. II, sec. 2.)

"The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, and other high crimes and misdemeanors. (Art. II, sec. 4.)

"The trial of all crimes, except in cases of impeachment, shall be by jury." (Art. 3, sec. 2.)

[17] Third session Fifty-eighth Congress, Record, pp. 3179–3181.

The convention that framed the Constitution did not define words, but used them in the sense in which they were understood at that time.

The convention did not invent the remedy by impeachment, but adopted a well-known and frequently used method of getting rid of objectionable public officers, modifying it to suit the conditions of a new country.

In England all the King's subjects were liable to impeachment for any offense against the sovereign or the law. Floyd was impeached for speaking lightly of the Elector Palatine and sentenced to ride on horseback for two successive days through certain public streets with his face to the horse's tail, with the tail in his hands; to stand each day two hours in pillory; to be pelted by the mob, then to be branded with the letter "K" and be imprisoned for life in the Tower. The character and extent of the punishment was in the discretion of the House of Lords.

The Constitution modified the remedy by confining it to the President, Vice-President, and all civil officers, and the punishment to removal from office and disqualification to hold office in future.

That it was not intended as a punishment of crime clearly appears when we read that a party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.

Said Mr. Bayard, in Blount's trial:

"Impeachment is a proceeding of a purely political nature. It is not so much designed to punish the offender as to secure the State. It touches neither his person nor his property, but simply divests him of his political capacity." (Wharton's State Trials, 263.)

Subject to these modifications and adopting the recognized rule, the Constitution should be construed so as to be equal to every occasion which might call for its exercise and adequate to accomplish the purposes of its framers. Impeachment remains here as it was recognized in England at and prior to the adoption of the Constitution.

These limitations were imposed in view of the abuses of the power of impeachment in English history.

These abuses were not guarded against in our Constitution by limiting, defining, or reducing impeachable crimes, since the same necessity existed here as in England for the remedy of impeachment, but by other safeguards thrown around it in that instrument. It will be observed that the sole power of impeachment is conferred on the House and the sole power of trial on the Senate by Article I, sections 2 and 3. These are the only jurisdictional clauses, and they do not limit impeachment to crimes and misdemeanors. Nor is it elsewhere so limited. Section 4 of Article II makes it imperative when the President, Vice-President, and all civil officers are convicted of treason, bribery, or other high crimes and misdemeanors that they shall be removed from office. There may be cases appropriate for the exercise of the power of impeachment where no crime or misdemeanor has been committed.

Whatever crimes and misdemeanors were the subjects of impeachment in England prior to the adoption of our Constitution, and as understood by its framers, are, therefore, subjects of impeachment before the Senate of the United States, subject only to the limitations of the Constitution.

"The framers of our Constitution, looking to the impeachment trials in England, and to the writers on parliamentary and common law, and to the constitutions and usages of our own States, saw that no act of Parliament or of any State legislature ever undertook to define an impeachable crime. They saw that the whole system of crimes, as defined in acts of Parliament and as recognized at common law, was prescribed for and adapted to the ordinary courts." (2 Hale, Pl. Crown, ch. 20, p. 150; 6 Howell State Trials, 313, note.)

They saw that the high court of impeachment took jurisdiction of cases where no indictable crime had been committed, in many instances, and there was then, as there yet are, two parellel modes of reaching some, but not all offenders—one by impeachment, the other by indictment.

With these landmarks to guide them, our fathers adopted a Constitution under which official malfeasance and nonfeasance, and, in some cases, misfeasance, may be the subject of impeachment, although not made criminal by act of Congress, or so recognized by the common law of England, or of any State of the Union. They adopted impeachment as a means of removing men from office whose misconduct imperils the public safety and renders them unfit to occupy official position. All American text writers support this view.[18]

"Congress have unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any official misconduct; and the rules of proceeding and the rules of evidence, as well as the principles of decision, have been uniformly regulated by the known doctrines of the common law and parliamentary usage. In the few cases of impeachment which have hitherto been tried no one of the charges has rested upon any statutable misdemeanors. It seems, then, to be the settled doctrine of the high court of impeachment that, though the common law can not be a foundation of a jurisdiction not given by the Constitution or laws, that jurisdiction, when given, attaches, and is to be exercised according to the rules of the common law, and that what are and what are not high crimes and misdemeanors is to be ascertained by a recurrence to that great basis of American jurisprudence. The reasoning by whch the power of the House of Representatives to punish for contempts (which are breaches of privileges and offenses not defined by any positive laws) has been upheld by the Supreme Court stands upon similar grounds: for if the House had no jurisdiction to punish for contempts until the acts had been previously defined and ascertained by positive law it is clear that the process of arrest would be illegal.

[18] Story on the Constitution, p. 583.

"In examining the parliamentary history of impeachments it will be found that many offenses not easily definable by law, and many of a purely political character, have been deemed high crimes and misdemeanors worthy of this extraordinary remedy. Thus lord chancellors, and judges, and other magistrates have not only been impeached for bribery and acting grossly contrary to the duties of their offices, but for misleading their sovereign by unconstitutional opinions, and for attempts to subvert the fundamental laws and introduce arbitrary power. So where a lord chancellor has been thought to have put the great seal to an ignominious treaty, a lord admiral to have neglected the safeguard of the sea, an ambassador to have betrayed his trust, a privy councilor to have propounded or supported pernicious and dishonorable measures, or a confidential adviser of his sovereign to have obtained exorbitant grants or incompatible employments—these have been all deemed impeachable offenses. Some of these offenses, indeed, for which persons were impeached in the early ages of British jurisprudence would now seem harsh and severe; but perhaps they were rendered necessary by existing corruptions, and the importance of suppressing a spirit of favoritism and court intrigue.

"Thus persons have been impeached for giving bad counsel to the King, advising a prejudicial peace, enticing the King to act against the advice of Parliament, purchasing offices, giving medicine to the King without advice of physicians, preventing other persons from giving counsel to the King except in their presence, and procuring exorbitant personal grants from the King. But others, again, were founded in the most salutary public justice, such as impeachments for malversations and neglects in office, for encouraging pirates, for official oppression, extortions, and deceits, and especially for putting good magistrates out of office and advancing bad. One can not but be struck, in this light enumeration, with the utter unfitness of the common tribunals of justice to take cognizance of such offenses, and with the entire propriety of confiding the jurisdiction over them to a tribunal capable of understanding and reforming and scrutinizing the policy of the state, and of sufficient dignity to maintain the independence and reputation of worthy public officers.[19]

"The other point is one of more difficulty. In the argument upon Blount's impeachment it was pressed with great earnestness, while there is not a syllable in the Constitution which confines impeachments to official acts, and it is against the plainest dictates of common sense that such restraint should be imposed upon it. Suppose a judge should countenance or aid insurgents in a meditated conspiracy or insurrection against the Government. This is not a judicial act, and yet it ought certainly to be impeachable. He may be called upon to try the very persons whom he has aided. Suppose a judge or other officer to receive a bribe not connected with his judicial office, could he be entitled to any public con-

[19] Story on the Constitution, p. 587.

fidence? Would not these reasons for his removal be just as strong as if it were a case of an official bribe? The argument on the other side was that the power of impeachment was strictly confined to civil officers of the United States, and this necessarily implied that it must be limited to malconduct in office." [20]

"In the United States.—The Constitution of the United States provides that the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdeameanors. If impeachment in England be regarded merely as a mode of trial for the punishment of common-law or statutory crimes, and if the Constitution has adopted it only as a mode of procedure, leaving the crimes to which it is to be applied to be settled by the general rules of criminal law, then, as it is well settled that in regard to the National Government there are no common-law crimes, it would seem necessarily to follow that impeachment can be instituted only for crimes specifically named in the Constitution or for offenses declared to be crimes by Federal statute. This view has been maintained by very emient authority. But the cases of impeachment that have been brought under the Constitution would seem to give to the remedy a much wider scope than the above rule would indicate.

"In each of the only two cases of impeachment tried by the Senate in which a conviction resulted the defendant was found guilty of offenses not indictable either at common law or under any Federal statute, and in almost every case brought offenses were charged in the articles of impeachment which were not indictable under any Federal statute, and in several cases they were such as constituted neither a statutory nor a common-law crime. The impeachability of the offenses charged in the articles was, in most of the cases, not denied. In one case, however, counsel for the defendant insisted that impeachment would not lie for any but an indictable offense, but after exhaustive argument on both sides this defense was practically abandoned. The cases, then, seem to establish that impeachment is not a mere mode of procedure for the punishment of indictable crimes; that the phrase 'high crimes and misdemeanors' is to be taken, not in its common-law but in its broader parliamentary sense, and is to be interpreted in the light of parliamentary usage; that in this sense it includes not only crimes for which an indictment may be brought, but grave political offenses, corruptions, maladministration, or neglect of duty involving moral turpitude, arbitrary and oppressive conduct, and even gross improprieties, by judges and high officers of state, although such offenses be not of a character to render the offender liable to an indictment either at common law or under any statute. Additional weight is added to this interpretation of the Consti-

[20] American and English Encyclopedia of Law, Vol. XV, p. 1066.

tution by the opinions of eminent writers on constitutional and parliamentary law and by the fact that some of the most distinguished members of the convention that framed it have thus interpreted it." [21]

"Impeachments" are thus introduced as a known definite term, and we must have recourse to the common law of England for the definition of them."

In England the practice of impeachments by the House of Commons before the House of Lords has existed from very ancient times. Its foundation is that a subject intrusted with the administration of public affairs may sometimes infringe the rights of the people and be guilty of such crimes as the ordinary magistrates either dare not or can not punish. Of these, the representatives of the people, or House of Commons, can not judge, because they and their constituents are the persons injured, and can therefore only accuse. But the ordinary tribunals would naturally be swayed by the authority of so powerful an accuser. That branch of the legislature which represents the people, therefore, brings the charge before the other branch, which consists of the nobility, who are said not to have the same interests or the same passions as the popular assembly.

"The delegation of important trusts, affecting the higher interests of society, is always from various causes liable to abuse. The fondness frequently felt for the inordinate extension of power, the influence of party and of prejudice, the seductions of foreign states, or the basest appetite for illegitimate emoluments are sometimes productive of what are not inaptly termed political offenses, which it would be difficult to take cognizance of in the ordinary course of judicial proceedings." [22]

"The purpose of impeachment, in modern times, is the prosecution and punishment of high crimes and misdemeanors, chiefly of an official or political character, which are either beyond the reach of the law, or which no other authority in the State but the supreme legislative power is competent to prosecute, and, by the law of Parliament, all persons, whether peers or commoners, may be impeached for any crimes or offenses whatever." [23]

"What is an impeachable offense? This is a preliminary question which demands attention. It must be decided before the court can rightly understand what it is they have to try. The Constitution of the United States declares the tenure of the judicial office to be 'during good behavior.' Official misbehavior, therefore, in a judge is a forfeiture of his office. But when we say this we have advanced only a small distance. Another question meets us. What is misbehavior in office? In answer to this question and without pretending to furnish a definition, I freely admit we are bound to prove that the respondent has violated the Constitution or some

[21] Rawle on the Constitution, p. 210.
[22] Cushing's Law and Practice of Legislative Assemblies, p. 980, par. 2539.
[23] Trial of Judge Peck, p. 427. Mr. Buchanan's argument.

known law of the land. This, I think, was the principle fairly to be deduced from all the arguments on the trial of Judge Chase, and from the votes of the Senate in the articles of impeachment against him, in opposition to the principle for which his counsel in the first instance strenuously contended, that in order to render an offense impeachable it must be indictable. But this violation of law may consist in the abuse as well as in the usurpation of authority.

"The abuse of a power which has been given may be as criminal as the usurpation of a power which has not been granted. Can there be any doubt of this? Suppose a man to be indicted for an assault and battery. He is tried and found guilty, and the judge, without any circumstances of peculiar aggravation having been shown, fines him a thousand dollars and commits him to prison for one year. Now, although the judge may possess the power to fine and imprison for this offense, at his discretion, would not this punishment be such an abuse of judicial discretion and afford such evidence of the tyrannical and arbitrary exercises of power as would justify the House of Representatives in voting an impeachment? But why need I fancy cases? Can fancy imagine a stronger case than is now, in point of fact, before us? A member of the bar is brought before a court of the United States guilty, if you please, of having published a libel on the judge—a libel, however, perfectly decorous in its terms and imputing no criminal intention, and so difficult of construction that though the counsel of the respondent have labored for hours to prove it to be a libel still that question remains doubtful. If in this case the judge has degraded the author by imprisonment and deprived him of the means of earning bread for himself and his family by suspending him from the practice of his profession for eighteen months, would not this be a cruel and oppressive abuse of authority, even admitting the power to punish in such a case to be possessed by the judge?

"A gross abuse of granted power and an usurpation of power not granted are offenses equally worthy of and liable to impeachment. If, therefore, the gentleman could establish, on the firmest foundation, that the power to punish libels as contempts may be legally exercised by all the courts of the United States, still he would not have proceeded far toward the acquittal of his client.

"It has been contended that even supposing the judge to have transcended his power and violated the law, yet he can not be convicted unless the Senate should believe he did the act with a criminal intention. It has been said that crime consists in two things, a fact and an intention; and in support of this proposition the legal maxim has been quoted that 'actus non fit reum, nisi mens rea.' This may be true as a general proposition, and yet it may have but a slight bearing upon the present case.

"I admit that if the charge against a judge be merely an illegal decision on a question of property in a civil case, his

error ought to be gross and palpable, indeed, to justify the interference of a criminal intention and to convict him upon an impeachment. And yet one case of this character has occurred in our history. Judge Pickering was tried and condemned upon all the four articles exhibited against him, although the three first contained no other charge than that of making decisions contrary to law in a cause involving a mere question of property, and then refusing to grant the party injured an appeal from his decision, to which he was entitled.

"And yet am I to be told that if a judge shall do an act which is in itself criminal; if he shall, in an arbitrary and oppressive manner and without the authority of law, imprison a citizen of this country and thus consign him to infamy, you are not to infer his intention from the act?" [24]

"It is necessary to a right understanding of the impeachment to ascertain and define what offenses constitute judicial misdemeanors. A judicial misdemeanor consists, in my opinion, in doing an illegal act colore officii with bad motives, or in doing an act within the competency of the court or judge in some cases, but unwarranted in a particular case from the facts existing in that case, with bad motives. To illustrate the last proposition: The eighth article of the amendments of the Constitution forbids the requirement of excessive bail, the imposition of excessive fines, or the infliction of cruel or unusual punishment. If a judge should disregard these provisions, and from bad motives violate them, his offense would consist, not in the want of power, but in the manner of his executing an authority intrusted to him and for exceeding a just and lawful discretion." [25]

"By the third article of the Constitution of the United States it is declared that the judges of the supreme and inferior courts shall hold their office during good behavior.

"I maintain the proposition that any official act committed or omitted by the judge, which is a violation of the condition upon which he holds office, is an impeachable offense under the Constitution.

"The word misdemeanor, used in its parliamentary sense as applied to offenses, means maladministration, misconduct not necessarily indictable, not only in England, but in the United States.

"In the Senate, July 8, 1797, it was resolved that William Blount, esq., one of the Senators of the United States, having been guilty of a high misdemeanor, entirely inconsistent with his public trust and duty as a Senator, be, and he hereby is, expelled from the Senate of the United States.' (Wharton's State Trials, 202.)

"He was not guilty of an indictable crime. (Story on the Constitution, sec. 799, note.)

"The offense charged, Judge Story remarks, was not defined by any statute of the United States. It was an attempt to seduce a United States Indian interpreter from his duty,

[24] Judge Spencer's argument, p. 290.
[25] Mr. Wickliffe's argument, p. 308.

and to alienate the affections and conduct of the Indians from the public officers residing among them."

Blackstone says: "The fourth species of offense more immediately against the King and Government are entitled 'misprisions and contempts.' Misprisions are, in the acceptance of our law, generally understood to be all such high offenses as are under the degree of capital, but nearly bordering thereon. * * * Misprisions which are merely positive are generally denominated contempts or high misdemeanors, of which the first and principal is maladministration of such high offices as are in public trust and employment. This is usually punished by the method of parliamentary impeachment." (Vol. 4, p. 121. See Prescott's trial, Mass., 1821, pp. 79–80, 109, 117–120, 172–180, 191.)

On Chase's trial the defense conceded that to misbehave or to disdemean is precisely the same. (2 Chase's Trial, 145.)

The Constitution declares that judges, both of the Supreme and inferior courts, shall hold their commissions during good behavior. This tenure of office was introduced into the English law to enable a removal to be made for misbehavior. (Chase's Trial, 357.)

At common law, an ordinary violation of a public statute, even by one not an officer, though the statute in terms provides no punishment, is an indictable misdemeanor. (Bishop, Constitutional Law, 3d ed., 187, 535.)

The term "misdemeanor" covers every act of misbehavior in a popular sense. Misdemeanor in office and misbehavior in office mean the same things. (7 Dame Abgt., 365.) Misbehavior, therefore, which is a mere negative of good behavior, is an express limitation of the office of a judge.

We may therefore conclude that the House has the right to impeach and the Senate the power to try a judicial officer for any misbehavior or misconduct which evidences his unfitness for the bench, without reference to its indictable quality. All history, all precedent, and all text writers agree upon this proposition. The direful consequences attendant upon any other theory are manifest.

For this first time in impeachment trials in this or any other country the claim is made that a judge can be impeached only for acts done in his official capacity.

If that position is well taken, a judge might be a common drunkard, an open frequenter of disreputable resorts; he might be a common thief, an embezzler of trust funds, a gambler, even a murderer. If he could manage to keep out of jail and attend to his judicial duties, the remedy by impeachment would not reach him. To state the proposition, is to argue it.

Removal of a judge for misbehavior or lack of good behavior is impossible unless it can be done through the impeaching power. Otherwise the people are powerless to rid themselves of the most unworthy, disgraceful, and unfit official.

But the exigencies of this case do not demand even a discussion of the proposition that a judge can be impeached only for acts done in his official capacity.

The claim is in the nature of a demurrer to the first seven articles. It admits the truth of the averments contained in them. It admits that the respondent, as judge of the district court he held at Waco, Tex., that as judge he knowingly made a false certificate; that as judge he receipted for and received money to which he was not entitled as reimbursement for expenses incurred as judge which he never did incur. All these acts were done in his official capacity. If he had not been a judge, he could not have held the court, incurred any expense, or receipted for or received any money. The stamp of his official character is on every act. His official position enabled him to do what he did do; without it he could not have violated the law.

In the case of the use of the property of the bankrupt corporation, which was in his hands for preservation, it was because he was judge that he had the opportunity to use the property. It was to bring him to hold court that the car was sent. An officer of his court sent it. He had the right and it was his duty to approve the account covering the expenses of the trip. If he had not been a judge, he could not have used the property of the railroad company. The article charges that Charles Swayne, judge, appropriated the property to his own use without making compensation under a claim of right, viz, that what he did was done in his official capacity.

The articles that charge him with violating the residence law assert that he did it while exercising his office of judge. The act is directed against judges; a private person can not violate it. The act commands a judge to reside in his district—that is, the official must live there; it is to be his official residence, so that he will be where he is wanted to perform his official duty. The violation of the law is the violation of an official duty, which the law imposes on him in his official character. All this the demurrer confesses, and yet the argument is made that for a violation of the act a judge is not impeachable, because it is not an official act.

But the proposition is seriously advanced that no act of Congress can create an impeachable offense or make a crime or misdemeanor the subject of impeachment for which impeachment would not lie in England before the adoption of the Constitution.

Impeachable offenses were not defined in the English law by act of Parliament or otherwise; any offense was impeachable that Parliament chose to so consider. Therefore when Congress makes that a crime or misdemeanor which was not so denominated at the time of the adoption of the Constitution it does not follow that the acts made crimes were not the subject of impeachment before the adoption of the Constitution.

For example, suppose no English law condemned the making of false certificates by a judge for the purpose of obtaining money from the Treasury. Can it be said that if an Eng-

lish judge had been guilty of such an offense that he would not have been subject to impeachment? If so, then neither can it be said that Congress created new impeachable offenses when the act was passed pertaining to false certificates.

The power to impeach for misbehavior of civil officials is vested in the House and the power to try in the Senate as fully as it was exercised by the English Parliament before 1787. That power covered every offense from high treason to slander against a ruler. Subject only to the limitation that the remedy by impeachment is confined to civil officers—for high crimes and misdemeanors—the power was conferred and may be exercised as fully now as then.

We have seen that according to the law of Parliament misdemeanor and misbehavior of public officers are synonymous terms. Another proposition advanced by counsel for respondent is that no judge was ever impeached in England for a misbehavior not committed in the discharge of his judicial functions. This is believed to be an error; judges were impeached for giving extrajudicial opinions. But suppose the fact to be as stated, the conclusion would not follow that because no English judge ever so misbehaved himself outside of his official duties as to make him a subject of impeachment that therefore he could not have been impeached if he had so misbehaved.

But however interesting discussion of such question may be it is quite unimportant in this case. All the charges against this respondent grow out of the official acts. Nothing that he did of which complaint is made could have been done by a private person, or by anyone who did not hold a judicial office. Because the respondent was a judge he had the right to make a certificate upon which to draw money from the Treasury: because he was a judge a private car was sent to bring him from Guyencourt to hold court at Jacksonville; because he was a judge the law imposed upon him the duty of living in a certain district; because he violated the law in all these cases in his official capacity he is charged.

The conclusion is therefore not to be resisted that even if the contention of the respondent's counsel is correct a judge can be impeached for nothing but official misconduct, these offenses are within the rule, and of them this court has jurisdiction.

2016. Argument of Mr. Manager Clayton that a judge may be impeached for misbehavior not necessarily connected with his judicial functions.—On February 24, 1905,[26] the Senate sitting for the impeachment trial of Judge Charles Swayne. Mr. Manager Henry D. Clayton, of Alabama, said in final argument:

Mr. President, I desire to call attention to the fact that repeatedly in impeachment trials before the Senate it has been asserted that civil officers can not be impeached except for the commission of indictable offenses, but it was never before this time seriously contended that a judge can not be impeached

[26] Third session Fifty-eighth Congress, Record, pp. 3249–3250.

except for wrongful conduct committed strictly in the performance of an act purely judicial.

Therefore in this case we are brought to a consideration of what is an impeachable offense. The Constitution denounces impeachable offenses under the terms of "treason, bribery, and other high crimes and misdemeanors." "Other high crimes and misdemeanors" are general terms, and for their import and meaning reference may be had to English jurisprudence and parliamentary law, to the provisions of the constitutions of the several States relating to impeachments in existence prior to and at the time of the adoption of the Federal Constitution, and to the interpretation put upon the words in the debates in and by the action of the United States in impeachment cases which have heretofore been tried.

In the present case the House of Representatives has charged this judge with crimes and misdemeanors, and also contends that he has forfeited his tenure of office because he has not conformed to the good behavior required by Article III, section 1, upon which his right to hold office is predicated. The judge is entitled to hold his office during good behavior, but not otherwise. The provision of the Constitution conversely stated would be that he shall not hold office after having been guilty of misbehavior. If I understand the contention of the counsel for the respondent here, they insist that high crimes and crimes and misdemeanors and the words "the judges both of the Supreme and inferior courts shall hold their offices during good behavior" are limited or restricted to such acts as may be committed by a judge in his purely judicial capacity. In other words, however serious the crime, the misdemeanor or misbehavior of the judge may be, if it can be said to be extrajudicial he can not be impeached. To illustrate this contention, the judge may have committed murder or burglary and be confined under a sentence in a pentitentiary for any period of time, however long, but because he has not committed the murder or burglary in his capacity as judge he can not be impeached. That contention, carried out logically, might lead to the very defeat of the performance of the function confided to the judicial branch of the Government.

In the History of the Construction of the United States, by George Ticknor Curis, in volume 2, page 260, is found this language:

"The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office. Such a cause may be found in the fact that, either in the discharge of his office or aside from its functions, he has violated a law or committed what is technically denominated a crime. But a cause for removal from office may exist when no offense against positive law has been committed, as when the individual has from immorality or imbecility or maladministration become unfit to exercise the office."

In the Commentaries on the Constitution of the United States, by Roger Foster, volume 1, page 569, this statement is made:

"The object of the grant of the power of impeachment was to free the Commonwealth from the danger caused by the retention of an unworthy public servant."

Again, on page 586, this statement:

"The Constitution provides that the judges, both of the Supreme and inferior courts, shall hold their office during good behavior."

"This necessarily implies that they may be removed in case of bad behavior. But no means, except impeachment, is provided for their removal, and judicial misconduct is not indictable by either a statute of the United States or the common law."

Again, on page 591, this statement:

"An impeachable offense may consist of treason, bribery, or a breach of official duty by malfeasance or misfeasance, including conduct such as * * * an abuse or reckless exercise of a discretionary power."

In Rawle on The Constitution, page 201, in speaking of the court of impeachment, it is said:

"The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust."

In Story on The Constitution (5th edition), section 796, it said:

"Is the silence of the statute book to be deemed conclusive in favor of the party until Congress have made a legislative declaration and enumeration of the offenses which shall be deemed high crimes and misdemeanors? If so, then, as has been truly remarked (citing Rawle on The Constitution), the power of impeachment, except as to the two expressed cases, is a complete nullity and the party is wholly dispunishable, however enormous may be his corruption or criminality. It will not be sufficient to say that, in the cases where any offense is punished by any statute of the United States, it may and ought to be deemed an impeachable offense. It is not every offense that by the Constitution is so impeachable. It must not only be an offense, but a high crime and misdemeanor."

The further answer to this contention may be that it is repugnant to the Constitution, which especially provides for the impeachment of a civil officer for high crimes and misdemeanors, and especially provides that the judge shall hold his office during good behavior.

Again, it is repugnant to the spirit and genius of our institutions; and if it were correct, it would be to throw around the judge, as a civil officer, a protection not afforded any other precedents in impeachment trials before the Senate, to the precedents in impeachment trials in the different States that had similar provisions in their constitutions and had

had impeachment trials before the adoption of the Federal Constitution.

Any civil officer can be impeached. The President of the United States can be impeached. The removal from office can be had in respect to any officer under the Government, and it would be anomaly to say that in a free representative government the people are deprived of the power and the right to remove from office an unworthy officer. If it be true that a judge can not be impeached except for what he may have done strictly in his capacity as judge, then this extraordinary protection is afforded to him: He is put upon a pedestal by himself; he is raised above the military, because they can be tried and gotten rid of; he is raised above the Executive, for he can be tried by impeachment and removed from office; he is raised above the members of the Senate and the Members of the House of Representatives, for they may be expelled upon a two-thirds vote of the members of their respective bodies. I say it would be anomaly. So far as the power of getting rid of an unworthy official is concerned, if that contention be correct it would be a hiatus in the power of government.

Did the fathers intend that it should ever come to pass that an unworthy officer, although a judge, guilty of murder or burglary or any other disgraceful crime which brings his high position into disrepute, can wrap a mantle of protection around him and say, "Although I am guilty of an infamous crime, I did not commit it in my judicial capacity, and therefore, convicted felon though I am, I can continue to be judge and to draw the emoluments of that high office?" I do not believe that this contention has ever been made in any of the cases heretofore presented to the Senate.

In Judge Pickering's case it will be remembered that he was accused of drunkenness. He was also accused of releasing a ship which had been libeled without requiring bond. It might be argued that he did not get drunk in his official capacity; and yet the Senate in that case did impeach him and remove him from office, and that was one of the charges.

In the case of Judge Humphreys, the other judge who was convicted and removed from office, the charge was that he had made secession speeches and that he had acted as a judge of a Confederate court. Certainly he did not make secession speeches in his capacity as a judge of the United States court; it was not done in the trial of any cause before him. He did that in his individual capacity, and yet the Senate did vote to convict him, and did remove him from office, because, among other things, he had made these speeches and had held and exercised the office of a Confederate judge during the civil war.

I have here Foster on the Constitution. I will not tax the patience of the Senate by reading it; but, availing myself of the privilege heretofore referred to, I shall ask to have inserted in the Record that portion of the text which I have marked.

The extract referred to is as follows:

"The only difficulty arises in the construction of the term, 'other high crimes and misdemeanors.' As to this, four theories have been proposed: That, except treason or bribery, no offense is impeachable which is not declared by a statute of the United States to be a crime subject to indictment. That no offense is impeachable which is not subject to indictment by such a statute or by the common law. That all offenses are impeachable which were so by that branch of the common law known as the 'law of Parliament.' And that the House and Senate have the discretionary power to remove and stigmatize by perpetual disqualification an officer subject to impeachment for any cause that to them seems fit. The position that, except treason or bribery, no offense is impeachable which is not indictable by law was maintained by the counsel for the respondents on the trials of Chase and Johnson. * * *

"The first two theories are impracticable in their operation, inconsistent with other language of the Constitution, and overruled by precedents. If no crime, save treason and bribery, not forbidden by a statute of the United States, will support an impeachment, then almost every kind of official corruption or oppression must go unpunished. Suppose the Chief Justice of the United States were convicted in a State court of a felony or misdemeanor, must he remain in office unimpeached and hold court in a State prison?

"The term 'high crimes and misdemeanors' has no significance in the common law concerning crimes subject to indictment. It can be found only in the law of Parliament, and is the technical term which was used by the Commons at the bar of the Lords for centuries before the existence of the United States.

"The Constitution provides that—

" 'The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior.'

"This necessarily implies that they may be removed in case of bad behavior. But no means except impeachment is provided for their removal, and judicial misconduct is not indictable by either a statute of the United States or the common law.

"In 1803 Pickering, a district judge of the United States, was convicted on impeachment for his official action in surrendering to the claimant, without requiring the statutory bond, a vessel libeled by the United States, for refusing to allow an appeal from this order, and for drunkenness and profane language on the bench.

"None of these offenses was indictable by the common law or by statute.

"Humphreys, a district judge of the United States, was convicted on impeachment, not only for treason, but also for refusing to hold court, for holding office under the Confederate States, and for imprisoning citizens for expressing their sympathy with the Union. The managers of the House of

Representatives who opened the case admitted that none of these offenses except the treason was indictable.

"Some advocates have gone so far as to maintain by a misapplication of a term of the common law that the proceedings on an impeachment are not a trial, but a so-called 'inquest of office,' and that the House and Senate may thus remove an officer for any reason that they approve. That Congress has the power to do so may be admitted. For it is not likely that any court would hold void collaterally a judgment on an impeachment where the Senate had jurisdiction over the person of the condemned. And undoubtedly a court of impeachment has the jurisdiction to determine what constitutes an impeachable offense. But the judgments of the Senate of the United States in the cases of Chase and Peck, as well as those of the State senates in the different cases which have been before them, have established the rule that no officer should be impeached for any act that does not have at least the characteristics of a crime. And public opinion must be irremediably debauched by party spirit before it will sanction any other course.

"Impeachable offenses are those which were the subject of impeachment by the practice in Parliament before the Declaration of Independence, except in so far as that practice is repugnant to the language of the Constitution and the spirit of American institutions. An examination of the English precedents will show that, although private citizens as well as public officers have been impeached, no article has been presented or sustained which did not charge either misconduct in office or some offense which was injurious to the welfare of the State at large.

"In this class of cases, which rests so much in the discretion of the Senate, the writer would be rash who were to attempt to prescribe the limits of its jurisdiction in this respect.

"An impeachable offense may consist of treason, bribery, or a breach of official duty by malfeasance or misfeasance, including conduct such as drunkenness, when habitual or in the performance of official duties, gross indecency, and profanity, obscenity, or other language used in the discharge of an official function which tends to bring the office into disrepute, or an abuse or reckless exercise of a discretionary power, as well as a breach or omission of an official duty imposed by statute or common law; or a public speech when off duty which encourages insurrection. It does not consist in an error in judgment made in good faith in the decision of a doubtful question of law, except, perhaps, in the violation of the Constitution."

2017. Review of impeachments in Congress to show that judges have been impeached only for acts of judgment performed on the bench, as contradistinguished from personal acts performed while in office.—On February 22, 1905,[27] in the Senate sitting for the impeachment trial of Judge Charles Swayne, Messrs. Anthony Higgins and

[27] Third session Fifty-eighth Congress, Record, pp. 3032, 3033.

John M. Thurston, of counsel for the respondent, offered a brief in support of their plea of jurisdiction as to the first seven articles. This brief, which was signed by them as counsel, but which, as they said, had been prepared by another, covered many questions relating to impeachments, the following being among them:

> Seven impeachment trials have taken place under the machinery provided for that purpose by the Constitution of the United States: That of William Blount (1798), that of John Pickering (1803), that of Samuel Chase (1804), that of James H. Peck (1830), that of West H. Humphreys (1862), that of Andrew Johnson (1868), and that of William W. Belknap (1876). Three of the foregoing were political impeachments and four judicial, as those terms are related in English parliamentary law. The articles presented by the House of Representatives against the four judges—Pickering, Chase, Peck, and Humphreys—illustrate in the most emphatic manner possible that the popular branch of Congress has heretofore always perfectly understood the meaning of the term "high crimes and misdemeanors," as applied to the misconduct for which a judge may be impeached. When placed side by side with the English precedents on that subject heretofore examined they agree in every particular. The House of Representatives, in the only four cases of the kind ever tried, limited its accusations, with the greatest strictness, to the acts of judgment performed by the judges on the bench, as contradistinguished from personal acts performed by the judge while in office, which might have been the ground of removal by address.

Turning first to the case against John Pickering, judge of the district court of New Hampshire, for practical illustrations, we find that judge charged with misconduct while adjudicating a certain admiralty case pending in said district court: "Yet the said John Pickering, being then judge of the said district court, and then in court sitting, with intent to defeat the just claims of the United States, did refuse to hear the testimony of the said witnesses so as aforesaid produced in behalf of the United States, and without hearing the said testimony so adduced in behalf of the United States in the trial of said cause did order and decree the ship *Eliza*, with her furniture, tackle, and apparel, to be restored to the said Eliphalett Ladd, the claimant, contrary to his trust and duty as judge of the said district court, in violation of the laws of the United States and to the manifest injury of their revenue." (Art. II.) Again (Art. III), when an appeal was prayed in open court in behalf of the United States, the charge is that "the said John Pickering, judge of the said district court, disregarding the authority of the laws, and wickedly meaning and intending to injure the revenues of the United States, and thereby to impair their public credit, did absolutely and positively refuse to allow the said appeal as prayed for."

And again (Art. IV), after the statement was made that said Pickering was "a man of loose morals and intemperate habits," he was thus accused: "On the eleventh and twelfth days of November, in the year one thousand eight hundred and two, being then judge of the district

court in and for the district of New Hampshire, did appear upon the bench of said court, for the purpose of administering justice, in a state of total intoxication, produced by the free and intemperate use of inebriating liquors, and did then and there frequently, in a most profane and indecent manner, invoke the name of the Supreme Being, to the evil example of all good citizens of the United States, and was then and there guilty of other high misdemeanors, disgraceful to his own character as a judge and degrading to the honor and dignity of the United States." It should be specially noted here that no pretense was made that "loose morals and intemperate habits" or profanity constituted a high crime and misdemeanor. Upon the contrary, the accusation was strictly limited to acts done "upon the bench of the said court" while "administering justice in a state of total intoxication." There was no attempt in Pickering's case to claim that personal misconduct, which might have been the ground of removal by address, was an impeachable offense.

The articles of impeachment presented against Judge Samuel Chase contain equally pointed illustrations. In Article I he is charged with delivering an opinion in writing on the question of law, on the construction of which the defense of the accused materially depended, tending to prejudice the minds of the jury against the said John Fries, the prisoner, before the counsel had been heard in his defense; in Article II The charge is that "the said Samuel Chase, with intent to oppress and procure the conviction of the said Callender, did overrule the objection of John Bassett, one of the jury, who wished to be excused from serving on said trial;" in Article III the charge is that on the trial the judge refused to permit a witness to testify; in Article IV the charge is of various acts of judicial misconduct during a trial; and in the remaining articles the charges are of various acts of judicial misconduct on the bench in charging and refusing to discharge grand juries.

The accusation against Judge James H. Peck was contained in a single article, based upon the judicial conduct of the judge while sitting upon the bench in a case of contempt against Luke E. Lawless, who had published a newspaper article criticising a judgment rendered by Judge Peck in a case in which Lawless was plaintiff's counsel. The gravamen of the charge was this: "The said James H. Peck, judge as aforesaid, did afterwards, on the same day, under the color and pretenses aforesaid, and with intent aforesaid, in the said court, then and there unjustly, oppressively, and arbitrarily order and adjudge that the said Luke Edward Lawless, for the cause aforesaid, should be committed to prison for the period of twenty-four hours, and that he should be suspended from practicing as an attorney or counsellor at law in the said district court for the period of eighteen calendar months from that day; and did then and there further cause the said unjust and oppressive sentence to be carried into execution."

The impeachment of Judge West H. Humphreys was begun and concluded during the civil war. He was tried and

condemned in his absence and without a hearing. While such an anomalous proceeding can have but little weight as a precedent, what it does contain of matter relevant to a judicial impeachment supports the contention made herein. The first charge contained in the articles presented against Judge Humphreys was that he was guilty of treason, in that he "then being district judge of the United States, as aforesaid, did then and there, to wit, within said State, unlawfully and in conjunction with other persons, organize armed rebellion against the United States and levy war against them." When the allegations incident to the accusation of treason are subtracted from the articles, all that remains is a charge of judicial misconduct upon the part of Judge Humphreys while sitting in a court of the Confederate States.

The words of the accusation are that the said Humphreys "did unlawfully act as judge of an illegally constituted tribunal within said State, called the district court of the Confederate States of America, and as judge of said tribunal last named, said West H. Humphreys, with the intent aforesaid, then and there assumed and exercised powers unlawful and unjust, to wit, in causing one Perez Dickinson, a citizen of said State, to be unlawfully arrested and brought before him, as judge of said alleged court of said Confederate States of America, and required him to swear allegiance to the pretended government of said Confederate States of America; * * * In decreeing within said State, and as judge of said illegal tribunal, the confiscation to the use of said Confederate State of America of property of citizens of the United States, and especially of property of one Andrew Johnson and one John Catron." Thus in this anomalous proceeding, carried on amid the passions of a great civil war, the idea was not for one moment lost sight of that the misconduct upon the part of a judge, which constitutes an impeachable high crime and misdemeanor, must occur while he is actually presiding in a judicial tribunal and abusing its powers.

2018. Review of the deliberation of the Constitutional Convention as bearing on the use of the words "high crimes and misdemeanors."—On February 22, 1905,[28] in the Senate sitting for the impeachment trial of Judge Charles Swayne, Messrs. Anthony Higgins and John M. Thurston, of counsel for the respondent, offered a brief in support of their plea of jurisdiction as to the first seven articles. This brief which was signed by them as counsel but which as they said had been prepared by another, covered many questions relating to impeachment, the following being among them.

After reviewing the accepted meaning of the words "high crimes and misdemeanors," as used in England and the colonies, the argument proceeds:

Before the Federal Convention of 1787 met the original States constitutions had been in operation for at least ten years. As a general rule the framers looked to that source of light when the adoption of a principle of English constitutional law was concerned.

[28] Third session Fifty-eighth Congress, Record, pp. 3031, 3032.

The questions that constantly arose were: In what form has such a principle reappeared in the several States? Is its operation an effect satisfactory therein? Such examples were sometimes taken, however, not as guides but as warnings. It did not always follow that a principle adapted to the wants of a single State was to be ingrafted without modification upon the constitution of a Federal State. The debates touching the adoption of impeachment and address pointedly illustrate that fact, as the Convention resolved to adopt the one without the other. The record is specially clear and direct upon that point. In the Madison papers (pp. 481–482) the following appears:

"Article XI being taken up, Doctor Johnson suggested that the judicial power ought to extend to equity as well as law, and moved to insert the words 'both in law and equity' after the words 'United States' in the first line of the first section."

Mr. Read objected to vesting these powers in the same court.

On the question, New Hampshire, Connecticut, Virginia, South Carolina, Georgia, aye—6; Delaware, Maryland, no—2; Massachusetts, New Jersey, North Carolina, absent.

On the question to agree to Article XI, section 1, as amended, the States were the same as on the preceding question.

Mr. Dickinson moved, as an amendment to Article XI, section 2, after the words "good behavior," the words "Provided that they may be removed by the Executive on the application by the Senate and House of Representatives." (The words of the act of settlement are, "but upon the address of both Houses of Parliament it may be lawful to remove them.") Mr. Gerry seconded the motion. Mr. Gouverneur Morris thought it a contradiction, in terms, to say the judges should hold their offices during good behavior, and yet be removable without a trial. Besides, it was fundamentally wrong to subject judges to so arbitrary an authority.

Mr. Sherman saw no contradiction or impropriety if this were made a port of the constitutional legislation of the judiciary establishment. He observed that a like provision was contained in the British statutes.

Mr. Rutledge. If the Supreme Court is to judge between the United States and particular States, this alone is an insuperable objetcion to the motion.

Mr. Wilson considers such a provision in the British Government as less dangerous than here; the House of Lords and House of Commons being less likely to concur on the same occasions. Chief Justice Holt, he remarked, had successively offended, by his independent conduct, both Houses of Parliament. Had this happened at the same time, he would have been ousted. The judges would be in a bad situation if made to depend on any gust of faction which might prevail in the two branches of our Government. Mr. Randolph opposed the motion as weakening too much the independence of the judges.

Mr. Dickinson was not apprehensive that the legislature, composed of different branches, constructed on such different principles, would improperly unite for the purpose of displacing a judge.

On the question for agreeing to Mr. Dickinson's motion, it was negatived.

Connecticut, aye; all the other States present, no.

Thus the proposition to ingraft upon our Federal Constitution that provision of the act of settlement, specially referred to in the debate by Mr. Sherman, was rejected with only one dissenting voice. When, at another time, Mr. Dickinson attempted to provide that the President should be removed by address, his proposal was rejected by the same majority. As Mr. William Lawrence (Impeachment of Andrew Johnson, Vol. I, p. 135) has stated it: "Removal on the address of both Houses of Parliament is provided for in the act of settlement (3 Hallam, 262). In the convention which framed our Constitution, June 2, 1787, Mr. John Dickinson, of Delaware, moved 'that the Executive be made removable by the National Legislature on the request of a majority of the legislatures of individual States.' Delaware alone voted for this and it was rejected. Impeachment was deemed sufficiently comprehensive to cover every proper case for removal." The last sentence states the essence of the whole matter. The Convention resolved that neither the executive nor judicial officers of the United States should be removed from office except "on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

As a well-known authority has expressed it: "The first proposition was to use the words, 'to be removable on impeachment and conviction of malpractice and neglect of duty.' It was agreed that these expressions were too general. They were therefore stricken out. It was voted that the clause should be simply 'removable on impeachment.' The debate shows that the Members did not wish the Senate to be able to remove a civil officer whenever he acted in a way detrimental to the public service, for such a power was expressly refused. (Citing Madison Papers, p. 481, heretofore quoted.) A general debate took place on a clause in one draft which made the President triable only for treason and bribery. It was urged that the jurisdiction was too limited. The following are extracts from the debate which ensued: Colonel Mason said: 'Treason, as defined in the Constitution, will not reach many great and dangerous offenses. Hastings is not guilty of treason. Attempts to subvert the Constitution may not be treason as above defined.' He moved to insert after 'bribery' the words 'or maladministration.' Madison: 'So vague a term will be equivalent to a tenure during the pleasure of the Senate.' Mason withdrew 'maladministration' and substituted 'other high crimes and misdemeanors against the State.' In the final draft the words 'against the State' were omitted, doubtless as surplusage, and the expressions finally adopted, 'crimes' and 'misdemeanors,' were words which had

a well-defined signification in the courts of England and in her colonies as meaning criminal offenses at common (parliamentary) law." (American Law Review, vol. 16, p. 804, article on "Impeachable offenses under the Constitution of the United States.") The term "common" instead of "parliamentary" law is carelessly used in that excellent statement, as it often is elsewhere. After quoting Rawle on Constitution (200, Lawrence (Johnson's Imp., Vol. I, p. 125)) remarks: "This author says in reference to impeachments, 'we must have recourse to the common law of England for the definition of them;' that is, to the common parliamentary law. (3 Wheaton, 610; 1 Wood and Minot, 448.)"

2019. Abandonment of the theory that impeachment may be only for indictable offenses.

Discussion of the theory that an impeachable offense is one in its nature or consequence subversive of some fundamental or essential principle of government or highly prejudicial to the public interest.

On February 22, 1905,[29] in the Senate sitting for the impeachment trial of Judge Charles Swayne, Messrs. Anthony Higgins and John M. Thurston, of counsel for the respondent, offered a brief in support to their plea of jurisdiction as to the first seven of the articles. This brief, which was signed by them as counsel, but which, as they said, had been prepared by another, covered many questions relating to impeachments, the following being among them:

When sitting as a high court impeachment the Senate is the sole and final judge of the meaning of the phrase "high crimes and misdemeanors." It has been well said that "'Treason, bribery, and other high crimes and misdemeanors' are of course impeachable. Treason and bribery are specifically named. But 'other high crimes and misdemeanors' are just as fully comprehended as though each was specified. The Senate is made the sole judge of what they are. There is no revising court. The Senate determines in the light of parliamentary law. Congress can not define or limit by law that which the Constitution defines in two cases by enumeration and in others by classification, and of which the Senate is sole judge." (Lawrence, Johnson's Imp., Vol. I, p. 136.) And yet the Senate sitting as a court of impeachment has in no one of the seven cases tried before it ever attempted to define the momentous phrase in question, and probably never will. When a new case arises nothing can be learned except what may be gleaned from the individual utterances of Senators, and from the arguments of counsel made in preceding cases, too often under the temptation to bend the precedents to the necessities of the particular occasion. One good result has, however, been the outcome of such discussion, and that is the elimination of two propositions which have perished through their own inherent weakness. On the one hand, a grotesque attempt has been made to narrow unreasonably the jurisdiction of the Senate sitting as a court of impeachment by the claim that the power of impeachment is limited to offenses

[29] Third session, Fifty-eighth Congress, Record, pp. 3084, 3085.

positively defined by the statutes of the United States as impeachable crimes and misdemeanors.

Apart from its other infirmities, this contention loses sight of the fact that Congress has no power whatever to define a high crime and misdemeanor. On the other hand, an equally untenable attempt has been made to widen unreasonably the jurisdiction of the Senate sitting as a court of impeachment by the claim that, under the general principles of right, it can declare that an impeachable high crime or misdemeanor is one in its nature or consequence subversive of some fundamental or essential principle of government or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of duty, by an act committed or omitted, or, without violating a positive law, by the abuse of discretionary powers for improper motives or for an improper purpose. This expansive and nebulous definition embodies an attempt to clothe the Senate sitting as a court with such a jurisdiction as it would have possessed had the Federal Convention seen fit to extend impeachment "to malpractice and neglected of duty," or to "maladministration," a proposition rejected with a single dissent because, as Madison expressed it, "So vague a term will be equivalent to a tenure during the pleasure of the Senate."

Even that school which gives the widest possible interpretation to the Federal Constitution will hardly be willing to go so far, even under the general-welfare clause, as to write into the Constitution phrases and meanings which the framers expressly rejected, in order to accomplish what may be considered by some a convenient end. Certainly that school which still respects the canons of strict construction can not listen to such an argument. Between the two extremes, those who have made a careful study of the subject find no difficulty in reaching the obvious conclusion that the term "high crimes nad misdemeanors" embraces simply those offenses impeachable under the parliamentary law of England in 1787, subject to such modifications as that law suffered in the process of reproduction. When the objection is made that the phrase thus construed covers too narrow an area, the answer is that it was the expressly declared purpose of the framers so to restrict it within narrow limits perfectly understood at the time. In the first place, the proposition to adopt removal by address was rejected with only one dissent; in the second, the proposal to adopt such a comprehensive term as "maladministration" was rejected and the limited phrase in question substituted. The declaration was clearly made at the time that there must be no undue weakening of the independence of the Federal judiciary. The necessity for such a precaution was soon justified by events.

A leading authority upon the subject tells us that upon the destruction of the Federalist party on the election of Jefferson "An assault upon the judiciary, State and Federal, was made all along the lines. In some States, as New Hampshire, old courts were abolished and new ones, with similar juris-

diction, created for the sole purpose of obtaining new judges. In Pennsylvania an abnoxious Federal judge was removed from the common pleas by impeachment; and an impeachment of all the Federal judges of the highest court was made, but failed through the uprising of the entire bar, irrespective of party lines, in defense of their official chiefs. A similar attack was made upon the Federal judiciary." (Foster on the Constitution, Vol. I, p. 531.) With the possibility of such an assault impending it is not strange that the makers of our Federal Constitution should have confined the power of removing judges by impeachment within the well-known limits which the English constitution had defined.

2020. Mr. Manager Olmsted's argument that impeachment is not restricted to offenses indictable under Federal law and that judges may be impeached for breaches of "good behavior."

Discussion of English and American precedents as bearing on the meaning of the phrase "high crimes and misdemeanors."

On February 23, 1905,[30] in the Senate sitting for the impeachment trial of Judge Charles Swayne, Mr. Manager Marlin E. Olmsted, of Pennsylvania, in final argument, said:

Although it would seem that the question must now be considered settled, nevertheless in nearly every impeachment trial the question is raised as to the character of and offenses for which impeachment will lie. In times past men of great learning and authority have contended that no officer can be impeached except for indictable offenses, and that as there are no common-law offenses against the United States, it follows that there can be no impeachment except for an offense expressly declared and made indictable by act of Congress. This view of the matter fades away in the bright light of reason and precedent.

Such a construction would render the constitutional provision practically a nullity. Congress has defined and made indictable by statute comparatively few offenses. It would be impossible in any statute to define or describe all the various ways in which a judge or other civil officer might so notably and conspicuously misbehave himself as to justify and require his removal. Even murder is not defined in any act of Congress. When it so appears, reference to some other source must be had to ascertain the meaning of the term. Murder is not made indictable by any act of Congress, nor has any Federal court jurisdiction of that crime unless committed upon the high seas.

Suppose a judge to commit murder upon the dry land within the confines of a State. That would not be a high crime or misdemeanor within the provision of any act of Congress. Could it successfully be maintained that it was not a high crime and misdemeanor within the meaning of Article II, section 4, of the Constitution, or that it was not such a breach of good behavior as would justify removal from

[30] Third session Fifty-eighth Congress, Record, pp. 3182–3184.

office? If that be the proper construction, then it is possible to imagine that as the respondent transacted official business at and dated his communications from "United States district court, northern district of Florida, judge's chambers, Guyencourt, Del.," so a more violent and vicious man might conduct business at "Judge's chambers, State penitentiary," and still be free from all danger of impeachment or removal from the judicial office.

I have shown, Mr. President, that men have formerly argued that only indictable offenses are subjects for impeachment; that as there were no common-law offenses against the United States there can be no impeachment except for crimes declared and defined by act of Congress. But now, in the 48-page brief served upon us last evening, bearing the names of the honorable counsel for respondent, but the authorship of which they distinctly disavowed—and I now know the reason why—we find the astounding doctrine that no man can be impeached for any offense declared by Congress. Therefore no officer can be impeached, no matter what he does, unless we can find that in England some judge had been impeached for the same specific offence prior to the adoption of our Constitution, which borrowed something from the mother country in this matter.

Now, we admit, Mr. President, that the term "impeachment" is imported from the English law, and so is the constitutional phrase "high crimes and misdemeanors" used in relation thereto. They are both without definition, either in the Constitution or in any act of Congress. Where, then, shall their definition and construction be found? Our Supreme Court has declared that—

"Where English statutes—such, for instance, as the statute of frauds and the statute of limitations—have been adopted into our legislation, the known and settled construction of those statutes by courts of law has been considered as silently incorporated into the acts or has been received with all the weight of authority." (Pennock *v.* Dialogue, 2 Peters, 2–18.)

That was a unanimous decision in which Chief Justice John Marshall participated and concurred, and the opinion was written by Mr. Justice Story.

To the same effect is the case of United States *v.* Jones (3 Wash. C. C. R., 209), and many other authorities that might be cited.

We may therefore look to the law of England for the meaning of the term "impeachment" and of the phrase "high crimes and misdemeanors," as used in connection therewith—not so much to the statute law, nor to the common law, as generally understood, but to the common parliamentary law of England, as found in the precedents and reports of impeachment cases.

The Senate has always been governed in impeachment cases by the lex et consuetudo parliamenti. It requires but a brief investigation to show that according to the English parliamentary practice in vogue at and prior to the adoption of

the Constitution, the greatest possible variety of offenses, not indictable, were nevertheless held proper causes for impeachment.

In II Wooddeson's Law Lectures, an acknowledged authority, the learned author, in his lecture upon "Parliamentary Impeachment," says (p. 596):

"It is certain that magistrates and officers intrusted with the administration of public affairs may abuse their delegated powers to the extensive detriment of the community and at the same time in a manner not properly cognizable before the ordinary tribunals. The influence of such delinquents and the nature of such offenses may not unsuitably engage the authority of the highest court and the wisdom of the sagest assembly. The Commons, therefore, as the grand inquest of the nation, become suitors for penal justice, and they can not consistently, either with their own dignity or with safety to the accused, sue elsewhere but to those who share with them in the legislature.

"On this policy is founded the origin of impeachments, which began soon after the constitution assumed its present form."

And again (p. 601):

"Such kind of misdeeds, however, as peculiarly injure the commonwealth by the abuse of high offices of trust, are most proper, and have been the most usual grounds for this kind of prosecution. Thus, if a lord chancellor be guilty of bribery, or of acting grossly contrary to the duty of his office; if the judges mislead their sovereign by unconstitutional opinions; if any other magistrate attempt to subvert the fundamental laws or introduce arbitrary power, these have been deemed cases adapted to parliamentary inquiry and decision. So where a lord chancellor has been thought to have put the seal to an ignominous treaty, a lord admiral to neglect the safeguard of the sea, an ambassador to betray his trust, a privy counselor to propound or support pernicious and dishonorable measures, or a confidential adviser of his sovereign to obtain exorbitant grants or incompatible employments, these imputations have properly occasioned impeachments, because it is apparent how little the ordinary tribunals are calculated to take cognizance of such offenses or to investigate and reform the general policy of the state."

In several cases English judges were impeached for giving extrajudicial opinions and misinterpreting the law. (4 Hatsell, 76.)

Such is the undoubted parliamentary law of England, from which our process and practice of impeachment and the very term itself are derived. That it has been adopted and followed here is equally certain.

Judge Curtis, in his History of the Constitution (pp. 260–261), says:

"The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for remov-

ing a public officer from office. * * * Such a cause may be found in the fact that either in the discharge of his office or aside from its functions he has violated a law or committed what is technically denominated a crime, but a cause for removal from office may exist where no offense against positive law is committed, as where the individual has from immorality, imbecility, or maladministration become unfit to exercise the office."

And Judge Story says, in section 799 of his work on the Constitution:

"Congress has unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any official misconduct. * * * In the few cases of impeachment which have hitherto been tried no one of the charges has rested upon any statutable misdemeanor." (1 Story on Con., sec. 799.)

Such writers as Cooley and Wharton and Rawle maintain the same position and support it not only by reason, but by authority and precedent. For a very able discussion of this subject I refer to the brief of Mr. Lawrence, adopted by the managers and published among the proceedings in the impeachment of Andrew Johnson and also in 6 American Law Register, new series, page 641.

Every impeachment case ever presented to the United States Senate has been founded upon articles, some or all of which charged offenses not indictable; and Judge West, of Tennessee, as well as Judge Pickering, were convicted and removed for offenses not subject to indictment under either State or Federal laws.

We agree with respondent's brief, the authorship of which his counsel disavow, that the general character of offenses impeachable may be studied to advantage by a consideration of the English precedent, but I can never agree that in order to convict an American judge we must first show that some English judge has been convicted of the same specific offense.

No English judge has been impeached for murder, or perjury, or forgery, or larceny; and yet they were undoubtedly impeachable offenses in England as they are here today. They, or any of them, would certainly constitute a breach of that "good behavior" during which Federal judges hold their commissions. Surely an offense which would have been impeachable without a statute is none the less so because Congress has declared it a misdemeanor. Taking money out of the Treasury on a false certificate would have been impeachable in England before our Constitution. It is none the less so here, statute or not statute.

JURISDICTION OF FIRST ARTICLES

Respondent denies that the offenses charged in the first seven articles are proper subjects of impeachment on the ground, as we understand it, that they were committed by him in his private and not in his official capacity; or, in other

words, that the articles do not charge misbehaviors or misdemeanors in office. We labor under the impression that the respondent is "in office," and that any misdemeanor committed by him, either in his private or official capacity, since he accepted the President's commission was a disdemeanor "in office." He may have been out of his court room and out of his district, but he has never been out of office.

The Constitution and his commission each defines his term as "during good behavior," and provides for his removal from office for "treason, bribery, and other high crimes and misdemeanors," meaning thereby misbehavior, for misbehavior is misdemeanor, and misdemeanor is misbehavior. There is no limitation to offenses actually committed upon the bench, nor to those committed while in the performance of any judicial or official function, or in any way under color of office.

The Century Dictionary gives this definition:

"During good behavior: As long as one remains blameless in the discharge of one's duties or the conduct of one's life; as, an office held during good behavior."

Judge Curtis, in his History of the Constitution (pp. 260–261), says:

"The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether causes exists for removing a public officer from office. * * * Such a cause may be found in the fact that either in the discharge of his office or aside from its functions he has violated a law or committed what is technically denominated a crime, but a cause for removal from office may exist where no offense against positive law is committed, as where the individual has from immorality, imbecility, or maladministration become unfit to exercise the office."

Such is manifestly the intention of the Constitution. That instrument says "during good behavior." It does not, as some of the State constitutions do, add the words "in office." It says "high crimes and misdemeanors," but it does not add "in office." In the brief of respondent's honorable counsel the authorship of which they disavow, they tell us, and it is entirely true, that at one stage of its formation the provision read "misdemeanors against the State." But as the words "against the State" were stricken out they argue that it must be construed as if they had been left in.

JUDGE HUMPHREY'S CASE

Mr. President, there are plenty of authorities, both English and American, that in order to be the subject of impeachment it is not necessary that an offense shall be committed even under color of office, and just here I take issue in the most emphatic manner with the statements of that 48-page brief as to the causes for which convictions have been had in impeachment. It is full of historical inaccuracies. It declares,

for instance, that Judge West H. Humphreys, of Tennessee, was convicted only for offenses committed in his judicial capacity.

I say that he was convicted upon each one of the seven articles, only one of which—the fifth—had any relation at all to his duties as a Federal judge. The very first article charged him with advocating secession. Where? Upon the bench? No. In the court room? No. In a written opinion? No; but in a public speech in the city of Nashville. Five other of those counts were of the same character. How could a judge commit that offense upon the bench? He did not speak as a judge, but as a citizen at a public meeting.

Mr. President, Andrew Johnson came within one vote of being impeached upon the eleventh article in his case, a portion of which I will read:

"That said Andrew Johnson, President of the United States, unmindful of the high duties of his office, and of his oath of office, and in disregard of the Constitution and laws of the United States, did, heretofore, to wit, on the 18th day of August, A.D. 1866, at the city of Washington and the District of Columbia, by public speech, declare and affirm, in substance, that the Thirty-ninth Congress of the United States was not a Congress of the United States."

Upon that article the vote against him was 35 to 10. A change of one vote would have expelled him from the Presidency.

"Treason against the United States shall consist only of levying war against them or adhering to their enemies, giving them aid and comfort."

It would hardly be possible for a judge, sitting upon the bench, or in any other way except entirely aside from any function of his office, to be guilty of this offense. But suppose that, disassociating himself as far as possible from his judicial position, he should in his individual capacity participate in "levying war against them or in adhering to their enemies, giving them aid and comfort."

That would surely be treason, as constitutionally defined, and yet, upon the argument of the honorable counsel for respondent, he could not be impeached and removed from office for that offense. Think of that. A traitor to his country, sitting securely upon the bench, secure from removal by any power on earth, for in no way can he be removed except by the Senate, upon impeachment by the House of Representatives. A Federal judge, upon that reasoning, might commit murder upon the public highway, or be convicted of housebreaking, or forgery, or perjury, or in any other way bring into contempt his high office, and yet we are told that if the offense be not committed upon the bench, nor in the court room, nor in any way relating to his judicial duties, he can not be impeached and removed.

It is hardly necessary to prolong this branch of the discussion, in view of the fact that the question has already been determined by the Senate itself.

BLOUNT'S CASE

In 1797 William Blount was expelled from the Senate for attempting to seduce a United States Indian interpreter from his duty and to alienate the affections and conduct of the Indians from the public officers residing among them. That was not a statutory offense, nor committed in the Senate Chamber, nor in the exercise or omission of any Senatorial function, nor under color of office; but the Senate, nevertheless, resolved that he "having been guilty of a high misdemeanor entirely inconsistent with his public trust and duty as a Senator, be, and he is hereby, expelled from the United States Senate."

That was not upon an impeachment proceeding, but the principle involved was precisely the same, and later it was sustained in the impeachment case of Judge Humphreys, as I have shown.

THE ARTICLES DO CHARGE OFFENSES HAVING STRICT RELATION TO HIS OFFICIAL OFFICE

It is difficult in any event to see any force in respondent's plea to the jurisdiction. The offenses charged in the first seven as well as in all the other articles do relate entirely to his judicial office and not to his private conduct.

2021. Argument of Mr. Manager De Armond that Congress may make nonresidence of a judge in a high misdemeanor.

Argument that a judge may be impeached for misbehavior generally.

On February 25, 1905,[21] in the Senate, sitting for the impeachment trial of Judge Charles Swayne, Mr. Manager David A. De Armond, of Missouri, in final argument, said:

Thirty days before Judge Swayne was born the Congress of the United States enacted a law, now embodied in section 551, Revised Statutes, requiring a district judge to reside in his district. The question of the enactment of such a law arose years earlier. The discussion was participated in by makers of the Constitution as well as by contemporaries of those illustrious men. In the body which passed the law were those who had gathered in the spirit of the Constitution, not merely from the lips of those who had made it, but through participation in the making of it. The law was passed in the full belief, unchallenged by anybody, that the power rested in the Congress to pass such a law, and it was declared that a violation or disregard of that law should constitute a high misdemeanor, employing the very language of the Constitution itself.

And yet we find, thanks to the facile pen of some modern essayist whose product is embodied in the record in this case, some unknown great man, that it is impossible for Congress to add to or take from the category of "high crimes and misdemeanors" as embodied in the Constitution in the clause relating to impeachments.

[21] Third session Fifty-eighth Congress, Record, pp. 3376, 3377.

Those who lived in that early day, those who participated in the discussions that led up to that early legislation, and those who enacted that law did not think just as this modern writer and essayist does think. This graceful writer, but, as he has demonstrated, evidently poor lawyer, confesses that he can not define, and he says nobody can define, just what was meant by "high crimes and misdemeanors," but he insists that there was such a fixed, settled, immovable, unchangeable, ever-enduring meaning and limitation attached to and embodied in it that nothing can be added to it or taken from it; and yet he does not know what it is; he does not tell us, and he says nobody else can tell, what it is.

The doctrine, aside from this authority which the respondent's counsel quoted with so much approval and indorsed so fully the doctrine of other essayists and other commentators upon the Constitution, the doctrine of men whose names have gone into our history as illustrating it in its best phases and as demonstrating the greatest capacity and the highest achievements of the human mind, was and is that Congress could add to what might be embraced in the term, and that the Senate of the United States, on the trial of an impeachment, was made by the Constitution itself, and ever must be, the final authorized judge of the meaning.

Suppose that this Republic were to endure, as all of us most sincerely hope it will, for centuries and multiplied centuries, and suppose that a thousand years hence, or five thousand years hence, after agencies and forces undreamed of to-day, as those playing important parts in the drama of to-day were undreamed of a short time ago, were brought into requisition, and out of their use and development new and strange conditions, unthought of and unthinkable to-day, should arise, and that the Congress, in its enlightened wisdom, should conclude to declare this, that, or the other thing arising out of the development of these new conditions high crimes and misdemeanors. These wise commentators of the school of this essayist and their successors, if they are to have succession in a more enlightened age of the world and of the country, would say: "You can not impeach for that. You must go back into the English parliamentary law for the chart of your powers. At the adoption of the Constitution you were confined within the Englishman's definition of high crimes and misdemeanors, and confined to his catalogue of them; but what his definition was or is and what was or is embraced within his catalogue we do not know, and nobody knows. Those who framed the Constitution meant to deny and did deny to the Congress all power whatsoever to declare anything a high crime or misdemeanor which was not such when the Constitution was made."

Then if you or your successors should modestly say to these gentlemen, "Pray tell us, then, what are the things for which an impeachment will lie? What is comprehended within the term 'high crimes and misdemeanors?' What, within the meaning of the Constitution, made by those short-sighted

men so long, long ago in their graves, is embodied in these words?" They would answer then, I suppose, as this wise commentator of to-day answers, "I do not know; nobody ever has said, and nobody will ever be able to say."

Drifting back to English history, counsel claim to have discovered—and it is a discovery of something which does not exist, I think; but I pass that by—that no judge in English history ever was impeached or tried on impeachment except for an offense committed in the actual discharge of the duties of a judge, sitting on the bench itself. Well now, if that were true, what does it prove? It proves nothing—absolutely nothing.

Reflect upon it for a moment. Suppose all these trials had been with reference to some particular offense. It would be just as logical to contend that for no other offense committed upon the bench in the discharge of judicial duty would impeachment lie. How many cases must there be before this is settled? They say there have been but few, and that is true. How many are necessary to fix it that there can not be a trial by impeachment for any other offense? There again they can not answer.

The truth of the matter is that this question of impeachment and the right and power to impeach, and the things for which people could be impeached in Great Britain, shifted and changed with the shifting and changing judgment and legislation of the times. At one time it was supposed to be legitimate and proper, and the supposed power was exercised, to impeach and convict and remove from office and imprison for the advocacy of religious views and the propagation of religious doctrines which, at another time, where held to be the correct views and the sound doctrines relating to the subject of religion in that great realm. So it has been and so it is and so it will be.

These gentlemen ignore entirely the question as to good conduct—"during good behavior." They say that the provision for removing judges by address is not embodied in the Constitution. What do they say then? They say there is no way of removing them except in a few cases to which, they say, the constitutional provision respecting impeachment implies.

As was said by Mr. Morris, when that matter was under discussion in the Constitutional Convention, the judges ought not to be removed on the ground of lacking in good behavior except upon a trial. What trial is provided? The kind of trial you have here now. The trial before the Senate of the United States, on impeachment by the House of Representatives. There has been embodied in that one method all the power that resides in the Government in all its branches—all the power of the people of this vast country, this great and mighty Republic—to remove from office an offending civil officer. And precisely the same provision that applies to the judges applies to all other civil officers.

The gentlemen discriminate respecting the judges. Where do they get the ground for the discrimination? It is not in the Constitution. There is nothing in the Constitution suggesting that a judge can be removed from office only for offending on the bench, and that as to other civil officers they may be removed for offenses off duty, or not so narrowly official.

The learned counsel for the respondent who closed the case on the other side seemed to take lightly the suggestion of Mr. Manager Palmer in the brief which he filed, and of my other colleagues who argued this case, that according to the commentators upon the Constitution, according to the spirit of the Constitution, according to the just principles of law governing impeachment, it is within the power of the House of Representatives to vote impeachment, and it is within the just and constitutional powers of the Senate to convict, for conduct in a judge off the bench and away even from his judicial transactions. The logical conclusion from the contention of respondent's counsel is that no matter how vile any civil officer of the Government may be, no matter how great the sum total of the individual items of his offending, so long as the offending is not on the bench or in the active technical conduct of his office the whole power of the Government is too weak, the arm of the House of Representatives too short, and the judgment of the Senate too puny to reach the offender and protect the public from the vile contamination of his continued presence in office. We do not take that view of the matter.

(B) Cannon's Precedents of the House of Representatives, Extracts From Volume 6—Chapter CXCIII

454. Discussion by English and American authorities of the general nature of impeachment.

On January 3, 1913,[1] in the Senate sitting for the trial of the impeachment of Judge Robert W. Archbald, Mr. Manager Henry D. Clayton, of Alabama, submitted on behalf of the House of Representatives, a brief from which the following is an excerpt:

THE GENERAL NATURE OF IMPEACHMENTS

The fundamental law of impeachment was stated by Richard Wooddeson, an eminent English authority, in his Law Lectures delivered at Oxford in 1777, as follows (pp. 499 and 501, 1842 ed.):

"It is certain that magistrates and officers intrusted with the administration of public affairs may abuse their delegated powers to the extensive detriment of the community and at the same time in a manner not properly cognizable before the ordinary tribunals. The influence of such delinquents and the nature of such offenses may not unsuitably engage the authority of the highest court and the wisdom of the sagest assembly. The Commons, therefore, as the grand inquest of the nation, became suitors for penal justics, and they can not consistently, either with their own dignity or with safety to the accused, sue elsewhere but to those who share with them in the legislature.

"On this policy is founded the origin of impeachments, which began soon after the constitution assumed its present form.

* * * * * * *

"Such kind of misdeeds, however, as peculiarly injure the commonwealth by the abuse of high offices of trust, are most proper—and have been the most usual—grounds for this kind of prosecution."

Referring to the function of impeachments, Rawle, in his work on the Constitution (p. 211), says:

"The delegation of important trusts affecting the higher interests of society is always from various causes liable to abuse. The fondness frequently felt for the inordinate extension of power, the influence of party and of prejudice, the seductions of foreign states, or the baser appetite for illegiti-

[1] Third session Sixty-second Congress, record of trial, p. 1051.

mate emoluments are sometimes productions of what are not unaptly termed 'political offenses' (Federalist, No. 65), which it would be difficult to take cognizance of in the ordinary course of judicial proceeding.

"The involutions and varieties of vice are too many and too artful to be anticipated by positive law."

In Story on the Constitution (vol. 1, 5th ed., p. 584) the parliamentary history of impeachments is briefly stated as follows:

"800. In examining the parliamentary history of impeachments it will be found that many offenses not easily definable by law, and many of a purely political character, have been deemed high crimes and misdemeanors worthy of this extraordinary remedy. Thus, lord chancellors and judges and other magistrates have not only been impeached for bribery, and acting grossly contrary to the duties of their office, but for misleading their sovereign by unconstitutional opinions and for attempts to subvert the fundamental laws and introduce arbitrary power. So where a lord chancellor has been thought to have put the great seal to an ignominious treaty, a lord admiral to have neglected the safeguard of the sea, an ambassador to have betrayed his trust, a privy councilor to have propounded or supported pernicious and dishonorable measures, or a confidential adviser of his sovereign to have obtained exorbitant grants or incompatible employments—these have been all deemed impeachable offenses. Some of the offenses, indeed, for which persons were impeached in the early ages of British jurisprudence, would now seem harsh and severe; but perhaps they were rendered necessary by existing corruptions, and the importance of suppressing a spirit of favoritism and court intrigue. Thus persons have been impeached for giving bad counsel to the King, advising a prejudicial peace, enticing the King to act against the advice of Parliament, purchasing offices, giving medicine to the King without advice of physicians, preventing other persons from giving counsel to the King except in their presence, and procuring exorbitant personal grants from the King. But others, again, were founded in the most salutary public justice, such as impeachments for malversations and neglects in office, for encouraging pirates, for official oppression, extortions, and deceits, and especially for putting good magistrates out of office and advancing bad. One can not but be struck, in this slight enumeration, with the utter unfitness of the common tribunals of justice to take cognizance of such offenses, and with the entire propriety of confiding the jurisdiction over them to a tribunal capable of understanding and reforming and scrutinizing the polity of the State, and of sufficient dignity to maintain the independence and reputation of worthy public officers."

455. Discussion as to what are impeachable offenses.

Argument as to whether impeachment is restricted to offenses which are indictable, or at least of a criminal nature.

On January 8, 1913,[1] in the Senate sitting for the impeachment trial of Judge Robert W. Archbald, Mr. Manager John A. Sterling, of Illinois, said in final argument:

Mr. President, the record which has been made proves the charges set forth in the articles of impeachment constitute impeachable offenses. It is plain from the statement made by counsel for respondent, and from the brief which was filed that they rely for acquittal on the single proposition that these offenses do not constitute impeachable offenses for the reason that, as they claim, they do not constitute indictable offenses.

In their brief, counsel for the respondent lay down, as the first proposition, that no offense is impeachable unless it is indictable; and, as a second proposition, and the only other proposition that they submit, is that, if the offense in order to be impeachable need not be indictable, it must at least be of a criminal nature.

As to the first proposition, the contention of counsel for the respondent is not sustained either by the language of the Constitution, by the decisions of the Senate in former impeachment cases, by the decisions of other tribunals in this country which have tried impeachment cases, or by the decisions of the English Parliament; nor is that contention sustained, so far as I have been able to read the authorities and the law writers on constitutional law, by a single American writer. The language of the Constitution so far as it relates to the trial of this case is this:

"The Senate shall have the sole power to try all impeachments.

* * * * * * *

"Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

* * * * * * *

"All civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

* * * * * * *

"The judges * * * shall hold their offices during good behavior."

I have stated all the language of the Constitution with which the Senate has to deal in determining the case now before it. I ask the Senate to consider that nowhere in that language is there any limitation as to the nature or extent of the crimes,

[1] Third session Sixty-second Congress, Record, p. 1209.

misdemeanors, and misbehaviors in office. The Constitution does not undertake to define those terms with reference to the jurisdiction of the Senate in removing public officers for the violation of those provisions of that instrument, nor does it limit the time as to the commission of these offenses. It does not provide that the offenses shall be committed during the service from which it is sought to remove him, nor does it limit Congress as to when it may proceed to impeach and try an offending servant. Under the plain language of the Constitution the House of Representatives has the power to impeach, and the Senate has the power to try and convict for offenses of the character described in the Constitution, let them have been committed at any time during the term of office from which the respondent is sought to be removed, during his service in some other office, or during some other term, or for offenses committed before he became an officer of the United States and while he was a private citizen.

If the Constitution puts no limitation on the House of Representatives or the Senate as to what constitutes these crimes, misdemeanors, and misbehaviors, where shall we go to find the limitations? There is no law, statutory nor common law, which puts limitations on or makes definitions for the crimes, misdemeanors, and misbehaviors which subject to impeachment and conviction.

It will not be maintained either by the managers or by the counsel for the respondent that precedents bind, and yet we may well consider them, because they are so uniform on the question as to what constitutes impeachable offenses. The decisions of the Senate of the United States, of the various State tribunals which have jurisdiction over impeachment cases, and of the Parliament of England all agree that an offense, in order to be impeachable, need not be indictable either at common law or under any statute.

I desire to read briefly from some of the law writers of this country, giving their conclusions as to what constitute impeachable offenses, after they had reviewed and considered cases that have been tried in the Senate and in other forums where impeachment cases have been tried.

After reading from Tucker on the Constitution, page 416, Cooley's Principles of Constitutional Law, page 178, and volume 15 of the American and English Encyclopedia of Law, paragraph 2, page 1066, Mr. Sterling concluded:

And so, Mr. President, I say, that outside of the language of the Constitution which I quoted there is no law which binds the Senate in this case today except that law which is prescribed by their own conscience, and on that, and on that alone, must depend the result of this trial. Each Senator must fix his own standard; and the result of this trial depends upon whether or not these offenses we have charged against Judge Archbald come within the law laid down by the conscience of each Senator for himself.

On January 9, 1913,[1] Mr. Alexander Simpson, of counsel for respondent, quoting the last statement in this address, said:

> Sirs, if that be so, I want to know what has become of the Constitution in this case? Of what use was it to write into the Constitution that a man shall be impeached only for "treason, bribery, or other high crimes and misdemeanors" if there is no law to govern you, and if you may, out of your own consciences, evolve the thought that you will dismiss this respondent from the public service simply because you wish to get rid of him? You need no proof of "treason, bribery, or other high crimes and misdemeanors" to discharge him if that is the position you are to take in this case, for those words, under such circumstances, are unnecessary and meaningless.
>
> I submit that that is not and can not be the true legal position. It must be precisely the reverse of that. You must find somewhere, whether it is under the "good behavior" clause of the Constitution, or whether it is under the article relating to impeachments themselves, that upon which you can lay your finger and say this this respondent has violated that thing, or you must under your oaths of office say that he shall go free.
>
> And that is the position which Mr. Manager Sterling, speaking for the managers, asks you to take here. He asks you not to look to the law of the land for that which shall govern the rights of the parties here; but he asks you, out of your own conscience, whether your conscience agrees with mine or his or anybody's, to evolve a law which shall apply to this case and which when this case is over shall cease ever thereafter to be the law. In this, as in everything else, the Constitution is only a frame of government. It remains for the Congress to vivify many of its provisions. It remains for Congress to write on the statute books what shall constitute "high crimes and misdemeanors," and there are already in the Revised Statutes many provisions upon that point.

On January 9, 1913,[2] Mr. A. S. Worthington, of counsel on behalf of the respondent, also referred to the position taken by Mr. Sterling in this address and said:

> It has been insisted here by the managers on the part of the House of Representatives that the question of Judge Archbald's guilt or innocence is to be determined by what you individually consider to be an offense which justifies his removal from office; not that he has been brought here charged with anything of that kind, but having brought him here charged with certain specific offenses for which he and his counsel have prepared themselves and have summoned their witnesses he is now to be disgraced and forever branded as a criminal because you may find that he is not fit to be a judge.
>
> I might humbly suggest that if there is ever to be presented to this great body the question whether or not you have the right to impeach an officer of the United States and remove

[1] Record, p. 1269.
[2] Record, page 1282.

him from his office because you think that on general principles he is not fit to hold his office, there might be presented an article of impeachment which would charge that that was the case and that he and his counsel might be prepared to meet it. But instead of that we have him charged with a certain number of specific acts, and when he comes here to meet those and the evidence is closed and the verdict is about to be reached, then we are told for the first time that you individually—each for himself—are to decide whether upon what you have heard here in evidence you think that on general principles he ought to be ejected from his office.

The Constitution of the United States says that civil officers of the United States may be impeached for treason, bribery, or other high crimes and misdemeanors.

If this were the first time that that sentence was heard by the Members of this body, I should like to know whether there is one of you to whose mind it would ever have occurred for a moment that it meant anything except an offense punishable in a court of justice. I do not like the word "indictability," because a great many crimes are punished by information and not upon indictment. When I use that term I mean it in the sense of punishment in any way in a criminal court.

Now, my friend Mr. Manager Sterling when he read certain provisions of the Constitution at the outset of his argument said those were all that were necessary to be considered in this matter.

The sixth amendment says:

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Where is the man in this United States of America who would suggest that Judge Archbald could be required to answer without being informed of what is the accusation against him? Where is the man who would suggest that it is not necessary to confront him with the witnesses against him? Where is the man who would say he is not entitled to have subpoenas issued to bring his witnesses here to testify for him? Where is the person who will say that you could turn his counsel out of this Chamber and say he has to defend himself? Why? Because it is a criminal prosecution, and if it be not a criminal prosecution, then it is nothing known to the laws of this land.

On this subject Mr. Manager Edwin Yates Webb, of North Carolina, said by way of rebuttal.[1]

Mr. President, the respondent's counsel in his brief devotes 26 pages to a discussion of this proposition:

[1] Record, p. 1215.

"Impeachment lies only for offenses which are properly the subject of a prosecution by indictment or information in a criminal court."

In those 26 pages of argument most of the quotations are from counsel who have appeared for respondents in various impeachment trials. I do not remember just at present a single noted constitutional authority that counsel quotes to maintain that proposition.

I wish to quote authority in opposition to this position.

Mr. Webb here quoted from Wooddeson (p. 355); Rawle, on the Constitution; Story, on the Constitution; Tucker, on the Constitution; Christian, Fourth Blackstone, footnote, p. 5, Lewis's ed.; Cooley's Principles of Constitutional Law, p. 178; Constitutional History of the United States, George Ticknor Curtis, vol. 1, pp. 481–482; Watson, on the Constitution, vol. 2, p. 1034; Wharton's State Trials, 263; Story, on the Constitution, page 583; and American and English Encyclopedia of Law, vol. 15, p. 1066.

One can not but be struck in this slight enumeration with the utter unfitness of the common tribunals of justice to take cognizance of such offenses and with the entire propriety of confiding jurisdiction over them to a tribunal capable of understanding and reforming and scrutinizing the policy of the State and of sufficient dignity to maintain the independence and reputation of worthy public officers.

The cases, then, seem to establish that impeachment is not a mere mode of procedure for the punishment of indictable crimes; that the phrase of "high crimes and misdemeanors" is to be taken not in its common-law but in its broader parliamentary sense, and is to be interpreted in the light of parliamentary usage; that in this sense it includes not only crimes for which an indictment may be brought, but grave political offenses, corruptions, maladministration, or neglect of duty involving moral turpitude, arbitrary and oppressive conduct, and even gross improprieties by judges and high officers of State, although such offenses be not of a character to render the offender liable to an indictment either at common law or under any statute.

456. Argument that a civil officer of the United States may be impeached for an unindictable offense.

Discussion of the nature of impeachable offenses in minority views submitted in the Daugherty case.

On January 25, 1923,[1] Mr. R. Y. Thomas, Jr., of Kentucky, from the Committee on the Judiciary, submitted the following minority views to accompany the report of that committee on the investigation into the conduct of Attorney General Harry M. Daugherty:

It was strongly intimated if not directly contended by several members of the committee that the Attorney General could not be impeached except for an indictable offense. I think this view is absolutely incorrect. Impeachment is an ex-

[1] Fourth session Sixty-seventh Congress, House, Report No. 1372.

traordinary remedy born in the parliamentary procedure of England, and the principles which govern it have long been enveloped in clouds of uncertainty. The practice of impeachment began in the reign of Edward the Third of England, and statutes for prosecutions for offenses of this character were first enacted in the reign of Henry the Fourth.

By usage of the English Parliament so far back that the memory of man runneth not to the contrary, offenses were impeachable which were not indictable or punishable as crimes at common law. Therefore, the phrase "high crimes and misdemeanors" must be as broad and extended as the offense against which the process of impeachment affords protection. Every case of impeachment must stand alone, and while certain general principles control the judgment and conscience, the Senate alone must determine the issue.

In my opinion, the conclusion is irresistible that an impeachment proceeding by a committee of the House is only an inquiry into the charges like a grand jury investigation, and an official can be impeached for high crimes and misdemeanors which are not indictable offenses. If there ever was any doubt of this, that question has been entirely set at rest in the impeachment proceedings in 1912 against Robert W. Archbald, United States circuit judge. None of the articles exhibited against Judge Archbald, on which he was impeached, charged an indictable offense, or even a violation of positive law.

457. Summary of deductions drawn from judgments of the Senate in impeachment trials.

The Archbald case removed from the domain of controversy the proposition that judges are only impeachable for the commission of crimes or misdemeanors against the laws of general application.

On January 13, 1914,[2] on motion of Mr. Elihu Root, of New York, a monograph by Wrisley Brown, of counsel on behalf of the managers in the impeachment trial of Judge Robert W. Archbald, was printed as a public document. The following is an excerpt:

The impeachments that have failed of conviction are of little value as precedents because of their close intermixture of fact and law, which makes it practically impossible to determine whether the evidence was considered insufficient to support the allegation of the articles, or whether the acts alleged were adjudged insufficient in law to constitute impeachable offenses. The action of the House of Representatives in adopting articles of impeachment in these cases has little legal significance, and the deductions which have been drawn from them are too conjectural to carry much pursuasive force. Neither of the successful impeachments prior to the case of Judge Archbald was defended, and they are not entitled to great weight as authorities. In the case of Judge Pickering, the first three articles charged violations of statutory law, although such violations were not indictable. Article

[2] Second session Sixty-third Congress, Senate Document No. 358, p. 16.

four charged open and notorious drunkenness and public blasphemy, which would probably have been punishable as misdemeanors at common law. In the case of Judge Humphreys, articles three and four charged treason against the United States. The offense charged in articles one and two probably amounted to treason, inasmuch as the ordinance of secession of South Carolina had been passed prior to the alleged secessionary speeches of the respondent, and the offenses charged in articles five to seven, inclusive, savored strongly of treason. But, it will be observed, none of the articles exhibited against Judge Archbald charged an indictable offense, or even a violation of positive law. Indeed, most of the specific acts proved in evidence were not intrinsically wrong, and would have been blameless if committed by a private citizen. The case rested on the alleged attempt of the respondent to commercialize his potentiality as a judge, but the facts would not have been sufficient to support a prosecution for bribery. Therefore, the judgment of the Senate in this case has forever removed from the domain of controversy the proposition that the judges are only impeachable for the commission of crimes or misdemeanors against the laws of general application. The case is constructive, and it will go down in the annals of the Congress as a great landmark of the law.

458. Argument as to whether a judge may be impeached for offenses committed in prior judicial capacity.

On January 8, 1913,[1] in the Senate sitting for the impeachment trial of Judge Robert W. Archbald, Mr. Manager Edwin Yates Webb, of North Carolina, said in final argument:

There is no merit in the argument that this respondent can not be impeached at present for acts committed by him while he was district judge. It is true that he is now a circuit judge, but it is also true that immediately before he became a circuit judge he was a district judge. He never ceased to be a judge or civil officer of the United States.

This question was raised in the impeachment trial of Judge D. M. Furches, in North Carolina, in 1901. There the respondent was impeached while he was chief justice of North Carolina for acts committed while he was an associate justice, two distinct and separate offices, but his defense did not avail. Both the authorities and reason compelled the repudiation of such a defense, and, to use the language of Judge William R. Allen, now of the supreme court of our State, then one of the managers in the Furches impeachment trial—

"The purpose of impeachment is to remove an officer whose conduct is a menace to the public interest, and it would be strange indeed if he could escape punishment by being elevated to a higher official position. If such a defense could be sustained one could by resignation avoid an investigation into his conduct by a court of impeachment, and if he was of the same political faith as the head of the executive depart-

[1] Third session Sixty-second Congress, Record, p. 1218.

ment and in sympathy with it, he could be transferred from one office to another and thus avoid impeachment altogether. The effect of such defense would be to practically destroy the power of impeachment, and at any rate it would be greatly impaired. We believe that the authorities are practically unanimous in sustaining our contention that the change of office does not affect the power of impeachment. He is now exercising the same powers that he exercised when he was an associate justice. He is performing the same duties; he is practically filling the same office."

Mr. Foster, on this subject, says:

"The power of impeachment is granted for the public protection in order to not only remove but perpetually disqualify for office a person who has shown himself dangerous to the Commonwealth by his official acts. The object of this salutary constitutional provision would be defeated could a person by resignation from office obtain immunity from impeachment. State senates have sustained articles of impeachment for offenses committed at previous and immediately preceding terms of the same or a similar office."

Is it not true that Judge Archbald now holds a similar office to that which he held in 1908? He is now a circuit judge, and the powers and duties of district and circuit judges are almost identical. State *v.* Hill, Thirty-seventh Nebraska Reports.

We have, then, five precedents—one by the Senate of the United States, one by the senate of New York, one by the senate of North Carolina, one by the State of Wisconsin, and another by the court of impeachment of Nebraska, indorsed by the Supreme Court of Nebraska, and by Foster in his work on the Constitution.

We therefore confidently maintain that the respondent in this trial is now impeachable for acts which he committed while district judge of the middle district of Pennsylvania.

I shall not go into the discussion of the origin of impeachment trials, but will just quote this excerpt from one constitutional writer. Mr. Foster, in his splendid work on the Constitution, says:

"Impeachment trials are a survival of the earliest kinds of jurisprudence, when all cases were tried before an assembly of the citizens of the tribe or State. Later, ordinary cases, both civil and criminal, were assigned to courts created for that purpose, but matters of great public importance were still reserved for a decision of the whole body of citizens or subsequently of the council of elders, heads of families, or holders of fiefs."

This arrangement could be preserved in earlier times when population was sparse and business intercourse small and human affairs were not intricate; but as civilization became more complex, and the division of labor in administering judicial affairs became more urgent, the right to decide and pass upon various questions was allotted to different officers, and so to-day we have a judicial system in which all judicial power is

lodged, but distributed to different courts, but in all this evolution and distribution of judicial power there is one great right which the people have always reserved unto themselves, and that is the right to supervise the conduct of public officials and, through their representatives, to remove such officials from office for misconduct or misbehavior, and so, Senators, you sit to-day, theoretically at least, as the court of 90,000,000 people who have commanded us through the popular branch of Congress to bring this respondent before you to inquire into his conduct, and ascertain if the condition on which he was appointed to the high office which he now holds has not been broken by him.

Quoting Foster again:

"What, it may be asked, is the true spirit of the institution itself? Is it not designed as a method of national inquest into the conduct of public men?"

This right to inquire into the conduct of public officials has been reserved to the people themselves, and this great Senate is the tribunal in which such questions must be tried, and necessarily and properly the powers of this court are "broad, strong, and elastic, so that all misconduct may be investigated and the public service purified." The fathers of the Constitution realized the importance of reserving unto the people the right to remove an unworthy or unsatisfactory official, and they were indeed wise in not attempting to define or limit the powers of the court of impeachment, but left that power so plenary that no misconduct on the part of a public official might escape its just punishment.

In reply, Mr. Alexander Simpson, jr., counsel for respondent, in his concluding argument on January 9[1] said:

The first question which arises is whether or not the Senate can now consider an article of impeachment which relates to acts done while Judge Archbald was a district judge before his appointment to and confirmation as a judge of the Commerce Court. The managers in their brief say this in referring to this question:

"In this respect the case here presented seems to be unique in the annals of impeachment proceedings under our Constitution."

And they say further in that regard that they can justify the articles of impeachment, notwithstanding the change of office, because the two offices are substantially the same within the contemplation of the constitutional provisions relating to impeachments.

That argument necessarily concedes the points decided in the Blount case and considered and voted upon in the Belknap case, that he who is out of office can no longer be impeached. It necessarily also concedes that the constitutional provision has for its primary purpose the removal of the delinquent from the particular office in which he is said to have done a wrong. That is the necessary conclusion from the provision of Article I, section 3, of the Constitution, which provides what

[1] Record, p. 1278.

shall be the penalty in case of impeachment. It is considered also by Judge Story in his work on the Constitution, and if the argument which was presented by Judge Story is sound it must necessarily follow that the similarity of the two offices is not and can not be of any moment whatsoever. Can it be said that if a civil officer, say in the Cabinet of the President, is transferred from one portfolio to the other and continues steadily in office, that he may be impeached while holding the second office for that which was done in the first, and yet if he passes from the Cabinet to the Senate or into private life he can not be impeached at all? There is no logic or sound reasoning in any such proposition as that, nor is it in accord with any well-settled principles. In the provision which the managers quote in their brief from Mr. Foster he says this in regard to that:

"It includes such action by an officer when acting as a member ex officio of a board of commissioners; and such action in the same or a similar office at an immediately preceding term."

Now, I want to know why limit it to the immediately preceding term if the similarity of the office is the test in determining whether the impeachment will lie or not. Of course, that can not be sound; and the only reason why Foster wrote in his commentaries the "immediately preceding term" was because he felt that the line must be drawn somewhere. He knew that in certain of the State courts, under the language of their constitutions, it had been held that in a succeeding term of the same office there might be an impeachment for that which occurred in the immediately preceding term. But it remained for the managers to evolve the doctrine that it was to be a substantially similar office which was the test in determining the matter.

I submit that the proper test is the one to which I have already adverted. It is that the office, during the incumbency of which the acts were done of which complaint was made, shall be the determinative factor in deciding whether or not impeachment shall lie for the offense charged. If that is not so, there is no logical conclusion from the position which one of the managers assumed, that so long as the man is in public office whether the office is substantially similar or no, or whether there is a continuity of term or no—so long as he is in public office he may be impeached for anything which he has ever done in the past, because, as it was claimed, the purpose of the constitutional provision is to put out of office all those who by their past lives have shown that they are unfit to occupy it. That position would be a logical one; but there can not be a case found to sustain it; and all the authorities decide precisely the reverse.

On January 3, 1913,[1] Messrs. R. W. Archbald, jr., M. J. Martin, Alexander Simpson, jr., and A. S. Worthington, of counsel for the respondent, offered a brief covering various phases of the case, from which the following extract relates to this question:

[1] Record of trial, p. 1067.

III

The last six articles of impeachment in this case must fail, if for no other reason, because they relate to a time when the respondent held the office of district judge of the United States. He may not be impeached for alleged offenses committed prior to January 31, 1911, when he ceased to be district judge by appointment to a different office.

Articles VII, VIII, IX, X, XI, and XII, and Article XIII in part, charge offenses alleged to have been committed by the respondent before he was appointed to his present position as circuit judge and assigned to duty on the Commerce Court. He was a district judge of the United States from March, 1901, until the 31st day of January, 1911.

No useful information on this subject can be obtained from the English precedents, because in England a private citizen could be impeached as well as officers of the Government.

In this country there have been two attempts to impeach persons who had ceased to be officers for acts done by them while they were officers. One of these cases was that of William Blount in 1798; the other that of William W. Belknap in 1876.

In Blount's case when he was called upon to answer the articles he filed a plea which set up in substance these two defenses: (1) That a Senator is not impeachable, and (2) that he had ceased to be a Senator. (3 Hinds' Precedents, 663.)

This double plea was sustained by the Senate by a vote of 14 to 11. (3 Hinds' Precedents, 679.)

There is nothing in the record of the case to enable us to determine whether all the 14 Senators who voted to sustain the plea did so because they held that a Senator is not impeachable, or because Blount was out of office at the time. And, of course, it may be that some voted to sustain the plea on one of those grounds and some on the other.

It will be seen that the managers in that case actually contended that in the United States, as in England, private persons may be impeached as well as officers. It is not thought necessary to consider that question, because that contention has never been made since it was made by the managers in Blount's case. Mr. Ingersoll, of counsel for Blount, said in the course of the argument that he would not contend that an officer might escape an impending impeachment by resigning his office for that purpose.

This admission of Mr. Ingersoll's gave great comfort to the managers and some embarrassment to the counsel for the respondent in Belknap's case. In that case the respondent filed a plea in which he averred:

"That this honorable court ought not to have or take further cognizance of the said articles of impeachment * * * because he says that before and at the time when the said House of Representatives ordered and directed that he, the

said Belknap, should be impeached at the bar of the Senate, and at the time when the said articles of impeachment were exhibited and presented against him * * * he, the said Belknap, was not, nor hath he since been, nor is he now, an officer of the United States; but at the said times was, ever since hath been, and now is, a private citizen of the United States and of the State of Iowa. (3 Hinds' Precedents, 919.)"

To this plea the managers for the House of Representatives filed a replication, in which they set up: (1) That at the time the acts charged in the articles of impeachment were committed, Belknap was Secretary of War; and (2) that Belknap had resigned to escape impeachment, after he had learned that the House of Representatives, by its proper committee, had completed its investigation into his official conduct, and was considering the report it should make to the House upon the same. There were further pleadings, but those above stated set forth sufficiently what the issues were. (3 Hinds' Precedents, 921.)

After much discussion the Senate determined to hear first the question of the sufficiency of the replication. After a long debate, it was decided, by a vote of 37 to 29, that Belknap was amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation before he was impeached. (3 Hinds' Precedents, 964.)

Belknap was called upon to plead to the merits, but declined to do so on the ground, as set forth on the record by his counsel, that, as less than two-thirds of the Senate had sustained the jurisdiction, the respondent was entitled to be discharged, without further proceedings. (3 Hinds' Precedents, 936–937.)

The Senate, however, went on and took evidence in the case, with the result that Belknap was acquitted. The vote on the several articles ranged from 35 to 37 for conviction. On each article 25 voted not guilty. Most of those who voted not guilty stated they did so because they believed the court was without jurisdiction, for the reason that the respondent had ceased to be a civil officer of the United States at the time he was impeached by the House of Representatives.

Hence, in Belknap's case, as in Blount's case, it will be seen that the final vote does not indicate that any of the Senators who voted "guilty" did so on the ground that one who has been a civil officer remains liable to impeachment as long as he lives, for acts done during the time he held the office. The evidence in the case showed that Belknap was advised at 10 o'clock of the morning of the day that he resigned, that the Judiciary Committee of the House was about to report a resolution recommending his impeachment. He hurried to the President, tendered his resignation, and had it accepted, a few hours only before the Judiciary Committee did present to the House the resolution recommending his impeachment. There was much controversy in the discussion of the case before the Senate by the managers and counsel, respectively, as to whether Belknap

was an officer when the resolution of impeachment was presented to the House, on the theory that the law takes no notice of fractions of a day. But, aside from this, it was strenuously contended by the managers that even if the general rule be that an officer ceases to be subject to impeachment when he leaves the office, there should be an exception to that rule when the officer resigns for the very purpose of escaping impeachment.

It is impossible to determine what proportion of the Senators who voted against Belknap at the conclusion of the trial did so on the ground that he could not escape impeachment by resigning for that purpose, even if he would not be subject to impeachment had he not vacated the office in that way and for that purpose. In other words, the case is not a precedent for the proposition that one whose term of office has expired remains subject to impeachment during the whole of his life for acts done while he held the office.

When Manager Hoar was making his argument a Member of the Senate interrupted him and propounded the following question:

"There are no doubt several Members of the Senate who have been in past years civil officers of the United States. Are they liable to impeachment for an alleged act of guilt done in office?"

The manager did not flinch at this question, but said, as he was evidently required to say or abandon his contention: "The logic of my argument brings us to that result."

It will be seen that the contention which was made on behalf of the House in Belknap's case, and which we understand is maintained by the managers in the case at bar, is far-reaching. The present President of the United States at one time held the office of Solicitor General; at another time he was circuit judge of the United States; at another time he was governor of the Philippine Islands; at another time he was Secretary of War. Is it possible that he can now be the subject of impeachment for any act committed by him at the time he held either one of those offices? If so, he may be removed from his present office as President of the United States by a majority of the House and two-thirds of the Senate for alleged offenses charged to have been committed while he held any one of the other positions above mentioned.

And so of any other public man who has ever held office under the United States.

It would seem that a contention which leads to such absurd results can not be sustained.

459. On January 9, 1913,[1] in the Senate sitting for the Archbald impeachment trial, Mr. Manager George W. Norris, of Nebraska, said in concluding argument:

The authorities are practically unanimous that a public official can be impeached for official misconduct occurring while he held a prior office if the duties of that office and the one he holds at the time of the impeachment are practically the same, or are of the same nature. The Senate must bear in

[1] Third session Sixty-second Congress, Record, p. 1265.

mind, as stated by all of the authorities, that the principal object of impeachment proceedings is to get rid of an unworthy public official. In the State of New York it was held in the Barnard case that the respondent could be impeached and removed from office during his second term for acts committed during his first term. And in the State of Wisconsin the court held the same way in the impeachment of Judge Hubbell. To the same effect was the decision in Nebraska upon the impeachment trial of Governor Butler. On this point the respondent relies upon the case of the State *v.* Hill (37 Nebr., p. 80).

In that case the State treasurer of Nebraska was impeached after he had completed his term and retired to private life. The articles of impeachment were not passed on by the legislature—in fact, were not even introduced in the legislature—until after the respondent had served his full term, and the court there held that impeachment did not lie, but it expressly approved the judgment of the New York court in the Judge Barnard case, the judgment of the Wisconsin court in the Judge Hubbell case, and the prior judgment of the Nebraska court in the Butler case.

460. Argument that an impeachable offense is any misbehavior or maladministration which has demonstrated unfitness to continue in office.

On January 9, 1913,[2] in the Senate, sitting for the impeachment trial of Judge Robert W. Archbald, Mr. Manager Paul Howland, of Ohio, in final argument said:

The managers contend that the power to impeach is properly invoked to remove a Federal judge whenever, by reason of misbehavior, misconduct, malconduct, or maladministration, the judge has demonstrated his unfitness to continue in office; that misbehavior on the part of a Federal judge is a violation of the Constitution, which is the supreme law of the land, and a violation also of his oath of office taken in compliance with the requirements of the statute law. If the Senate should adopt this view of the law, then the only question to be passed on by the Senate would be whether the acts alleged and proven constitute such misbehavior as to render the respondent unfit to continue in office.

The learned counsel for the respondent, by insisting that only indictable offenses are impeachable, would seem to be placing himself in the position of holding that the object of impeachment was punishment to the individual. This conception of the object of impeachment is entirely erroneous, and whatever injury may result to the individual is purely incidental and not one of the objects of impeachment in any sense. An impeachment proceeding is the exercise of a power which the people delegated to their representatives to protect them

[2] Third session Sixty-second Congress, Record, p. 1259.

from injury at the hands of their own servants and to purify the public service. The sole object of impeachment is to relieve the people in the future, either from the improper discharge of official functions or from the discharge of official functions by an improper person. This view of impeachment is clearly demonstrated by the judgment which the Constitution authorizes in case of conviction and which shall extend no further than removal from office and disqualification to hold or enjoy any office of honor, trust, or profit under the Government of the United States, leaving the punishment of the individual for any crime he may have committed to the criminal court. (See Art. I, sec. 3, par. 7, Constitution of the United States.)

As bearing upon the question of law raised by the demurrer of the respondent I wish to call attention to two provisions of the Federal Constitution. Section 4, Article II, provides:

"The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors"—

To which I shall hereafter refer as the removal section, and section 1, Article III, the second sentence thereof, which provides that—

"The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior"—

To which I shall hereafter refer as the judicial-tenure section.

It will be noted that the removal section immediately precedes the judicial-tenure section. The limitation of the judicial tenure to good behavior is the only limitation of that character to be found in the Federal Constitution upon the tenure of any of the civil officers of the Government. I therefore contend that it was the plain intention of the framers of the Constitution that, in so far as the Federal judges were concerned, the removal section was not intended to be antagonistic in its terms to the judicial-tenure section, immediately following it, and that the judicial-tenure section, which provides that the judicial term shall be during good behavior, was not intended to be antagonistic to the removal section, which immediately precedes it. These two sections must be construed together, and when so construed the judicial-tenure section is of necessity either an addition to the enumerated offenses in the removal section or a definition of the term "high crimes and misdemeanors," when applied to the judiciary, as including misbehavior. To say that the judicial tenure shall be limited to good behavior in one section of the Federal Constitution and then contend that the section of the Constitution immediately preceding that has destroyed its force and effect and has left the Federal Government without any machinery to pass upon the question of the forfeiture of the judicial tenure, or to take jurisdiction of acts which constitute misbehavior but are not criminal, is to treat the words "during good behavior" as

surplusage. Such an interpretation violates all rules of construction.

What is the legal status of the judicial tenure and what determines that status? There are some considerations on which to base the claim that the legal status of the judicial tenure should be determined by the same principles that are applicable to a contract of hiring. The parties to the contract are the people of the United States and the candidate for a Federal judgeship. When he has been nominated by the President and confirmed by the Senate the commission tendered or delivered to him is an offer on the part of the people of the United States to the candidate whereby they agree to enter into a contract on certain terms and conditions with the candidate and offer to pay him a fixed sum of money for the performance of certain services for them in accordance with the terms of the offer. No obligation on the part of the Government has yet attached; the candidate need not accept the offer; he is not compelled to qualify; that is a voluntary act on his part. (See Marberry *v.* Madison, 1 Cranch, 137.)

Section 257 of the judicial code provides that the Federal judges shall take a certain prescribed oath before they proceed to perform the duties of their respective offices.

The acceptance of the offer on the part of the candidate is evidenced by his oath, and when the oath is taken the contract of hiring becomes valid and binding on the parties to the same in accordance with the terms and conditions of the contract.

In this case the contracts between the United States and the respondent are evidenced by the various commissions and the various oaths accepting the same.

Under this state of facts, if we were not dealing with the Government as one of the parties to the contract, under constitutional limitations, the contract could be abrogated for breach of condition if necessary and the rights of the parties determined in the courts of law.

If it should be objected that the legal status of the judicial tenure must be placed on a higher ground than an ordinary contract right by reason of the solemnities necessary to create the status and by reason of the important and sacred functions of government with which the judge is charged, we perhaps would be justified in saying that a fiduciary relation of the highest and most sacred character known to the law is created by the commission of appointment and the oath of acceptance of a Federal judge. Under this conception of the status of the judicial tenure the judge is acting as a trustee. The subject matter of the trust is the judicial power of the United States, and the beneficiaries of the trust are the people thereof. Given this status in a court of equity, the trustee, under well-known and well-recognized principles of equitable jurisprudence, can always be removed on application of the beneficiary and a showing that the trustee is not performing his duties as such trustee in such a manner as to satisfy the conscience of the

chancellor that he is acting for the best interest of the beneficiary. Realizing, however, the manifest impropriety of leaving the question of forefeiting the judicial tenure to the judges, the framers of the Constitution wisely provided a different forum, viz, the Congress, to raise and try the question of the forfeiture. We have now seen that whether we apply principles of law or equity to the status created by the appointment of the Federal judge there would be a forum to adjudicate the rights of the parties, and reasoning by analogy we are driven to the conclusion that the framers of the Constitution were not unmindful of the importance of the subject with which they were dealing, and intended to and did provide a forum before which the people of the United States could bring their judges and on proper showing of misbehavior, which demonstrates the unfitness of the judge to continue in office, work a forfeiture of the judicial tenure.

461. Summary of State trials of impeachments with reference to their holdings on the question of whether acts of a judge must be indictable to be impeachable.

On January 9, 1913,[1] in the Senate, sitting for the Archbald impeachment trial, Mr. Manager Paul Howland, of Ohio, filed as part of his final argument a record of impeachment trials in various States, with particular reference to their holdings on the question as to whether an offense in order to be impeachable must be indictable. The summary appears in full in the Congressional Record of that date.

462. Discussion of the meaning in English parliamentary law and in the constitution, of the phrase "high crimes and misdemeanors" as applied to judicial conduct.

Arguments as to whether acts of maladministration which are not indictable are subject to impeachment.

On January 9, 1913,[2] in the Senate, sitting for the trial of the impeachment of Judge Robert W. Archbald, Mr. Manager Paul Howland, of Ohio, in final argument said:

In the removal section of the Constitution we find the words "high crimes and misdemeanors." These words are used in the same sense that had attached to them for centuries in the impeachment trials of England. They were used as part of the well-recognized terminology of the law of Parliament as distinguished from the common law. We must bear in mind that these terms are used in a section of the Constitution which is plainly intended to protect the State against its own servants.

The two enumerated offenses of treason and bribery are offenses peculiarly against the state as distinguished from offenses against the individual. In construing a clause of this character in the Constitution, where the whole object is to protect and preserve the Government, such a construction should be placed upon the language used as will best accomplish the results desired. To insist that the technical definition

[1] Third session Sixty-second Congress, Record, p. 1261.
[2] Third session Sixty-second Congress, Record, p. 1260.

of the criminal law should be applied in construing the meaning of the term "high crimes and misdemeanors" is to insist on the narrowest possible construction, and loses sight of the object and purpose of this clause in the Constitution. To insist that it is impossible to impeach a judge unless he has committed some indictable offense is to say that the people of this country are powerless to remove a Federal judge so long as he is able to keep out of jail. While no criminal is fit to exercise the judicial function, it does not follow that all other persons are fit to be judges. Such a construction is absolutely repulsive to reason and ought not to be and is not a correct interpretation of the term "high crimes and misdemeanors."

Attention is often called to the discussion that took place in the Constitutional Convention between Colonel Mason and Mr. Madison in which Mr. Madison suggested that the term "maladministration" was too vague and the phrase "high crimes and misdemeanors" was adopted. Attention was called to that by the distinguished counsel for the respondent in his opening statement.

On the strength of this passage in Madison's papers it is contended that Mr. Madison did not construe the phrase "high crimes and misdemeanors" as including maladministration. (3 Madison's Papers, 1528.)

We find, however, that Mr. Madison in a speech in Congress on the 16th day of June, 1789, on the bill to establish a department of foreign affairs, in discussing the possibility of abuse of power by the Executive, said:

"Perhaps the great danger of abuse in the Executive's power lies in the improper continuance of bad men in office. But the power we contend for will not enable him to do this, for if an unworthy man be continued in office by an unworthy President the House of Representatives can at any time impeach him and the Senate can remove him, whether the President chooses or not." (4 Elliot's Debates, 375.)

This language clearly demonstrates that Mr. Madison believed that acts of maladministration which were not indicatable were impeachable.

Nowhere in the English law of impeachment or in the Constitution of the United States or any of the States do we find any definition of impeachable offenses. The language of the Federal Constitution attempts no definition of impeachable offenses, and the general term "high crimes and misdemeanors" is not and was not intended to be a definition.

Under the State constitutions we sometimes find the added terms "mal and corrupt conduct," "corruption in office," and "maladministration"—all general terms, without attempting any technical definition. The reason for this is perfectly obvious, and is that the subject matter is not capable of technical definition. Who is wise enough to anticipate every manifestation of fraud that would give a chancellor jurisdiction and write it into a statute? It is the effect of acts under the circumstances of each particular case that confers jurisdiction. So it is with impeachment. No one can tell in advance in what

way or from what source the danger may arise which demands the exercise of this power. The power of impeachment is recognized and authorized in every one of our constitutions, Federal and State, but the circumstances which warrant the exercise of that power are not defined and the necessity for its exercise is in the first instance left to the discretion of the House of Representatives. It is an indefinite and broad power incident to sovereignty, and its exercise in this country is demanded whenever the agents of sovereignty have acted in such a manner as to destroy their efficiency in the discharge of their duties to the sovereign. The existence of this power is necessary to the permanence of the State, and the exercise of the power is necessary whenever and however the welfare of the State may be threatened by its civil officers.

Mr. Alexander Simpson, counsel for respondent, took issue with this argument, saying.[1]

It was claimed by Mr. Manager Howland to-day, that the words "high crimes and misdemeanors" as used in this provision of the Constitution were taken bodily out of the English practice, the English parliamentary law, as they said. That is unquestionably true. It is not true that in all the impeachments in England they used the words "high crimes and misdemeanors," but those words are used in a number of their impeachments. This being so, you must either accept the constructions placed upon those words in the lex parliamentii, or you must decline to accept that construction. If you decline to accept it, of course that branch of the argument falls by the wayside at once. But if you accept it, then the question arises which of the English precedents are you going to accept, in view of the fact that some hold that an impeachable offense need not be an indictable one, and others held a precisely antagonistic view. Are you going back to the days when a man was impeached simply because he happened to have been put in office by those who have themselves just been turned out? If that is the view you are going to accept then perhaps every four years in this country there will be a wholesale slaughter. But if you are going to accept the best precedents which appear upon the English reports, and especially those down near to the time when the Constitution of the United States was adopted, then those best precedents show that, except for an indictable offense, no impeachment would lie under the laws of England.

But what are you going to do if the matter is to be considered solely under the language of the Constitution itself? The word "misdemeanors" in that clause must be taken either in the technical sense or in the proper sense. If that word is taken in the technical sense everybody knows that a misdemeanor taken technically is a crime pure and simple. If it is taken in the popular sense, then, notwithstanding what some text writers have said, I venture the assertion that if you go

[1] Record, p. 1270.

out into the cars or on the streets or in your homes and ask the people you meet what is meant by the words "treason, bribery, or other high crimes and misdemeanors," you will not find one in a thousand but will say that every one of those words imports a crime. If that is so, then necessarily, when you come to construe those words after this trial is over, you will necessarily have to reach the conclusion that these charges must be indictable or they can not be impeachable.

463. On January 9, 1914,[2] in the Senate, sitting for the Archbald impeachment trial, Mr. Manager John W. Davis, of West Virgina, said in final argument:

The issue narrows itself down to the meaning of the phrase "high crimes and misdemeanors" occurring in Article II, section 4, of the Constitution; and the respondent now renews the oft-repeated contention that this language can be used only with reference to offenses which, either by common law or by some express statute, are indictable as crimes. Every canon of construction which can be applied to this clause of the Constitution negatives the position which counsel for the respondent assume. Test it by the context, by contemporary interpretation, by precedent, by the weight of authority, and by that reason which is the life of every law, and the answer is always the same.

In the first place, when we read this clause of the Constitution, as we are required to do in the light of the context of the instrument, we are confronted at once by the clause fixing the tenure of judges of the Federal courts during good behavior; and if it be difficult, as counsel for respondent assert, to enlarge the phrase "high crimes and misdemeanors" so as to embrace acts not indictable as crimes, it is certainly far more difficult to restrict "good behavior" to the narrow limits fixed by the criminal law. To say that a judge need take as the guide of his conduct only the statutes and the common law with reference to crimes, and that so long as he remains within their narrow confines he is safe in his position, is to overlook the larger part of the duties of his office and of the restraints and obligations which it imposes upon him. We insist that the prohibitions contained in the criminal law by no means exhaust the judicial decalogue. Usurpation of power, the entering and enforcement of orders beyond his jurisdiction, disregard or disobedience of the rulings of superior tribunals, unblushing and notorious partiality and favoritism, indolence and neglect, all are violations of his official oath, yet none may be indictable. Personal vices, such as intemperance may incapacitate him without exposing him to criminal punishment. And it is easily possible to go further and imagine such indecencies in dress, in personal habits, in manner and bearing on the bench; such incivility, rudeness, and insolence toward counsel, litigants, or witnesses; such willingness to use his office to serve his personal ends as to be within reach of no branch of the criminal law, yet calculated

[2] Third session Sixty-second Congress, Record, p. 1266.

with absolute certainty to bring the court into public obloquy and contempt and to seriously affect the administration of justice. Can it be possible that one who has so demonstrated his utter unfitness has not also furnished ample warrant for his impeachment and removal in the public interest?

Stated in its simplest terms, the proposition of counsel is to change the language of the Constitution so that instead of reading that—

"the judges both of the Supreme and inferior courts shall hold their offices during good behavior"—it will read that—
"the judges both of the Supreme and inferior courts shall hold their offices so long as they are guilty of no indictable crime."

If the latter were the true meaning, is it conceivable that the careful and exact stylists by whom the Constitution was composed would have used an ambiguous term to express it?

But counsel ask: What shall be done with that clause which provides that in case of impeachment—

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

This, they insist, is a definition by implication, and signifies that the scope of impeachment and indictment is one and the same, although the mode of trial and the penalty to be inflicted may differ. We submit, on the contrary, that this clause instead of being a declaration that impeachment and indictment occupy the same field, is a recognition of the fact that the field which they occupy may or may not be identical; and, recognizing this fact, it declares merely that when the field of impeachment and the field of indictment overlap there shall be no conflict between them, but that the same offense may be proceeded against in either forum or in both.

The light drawn from contemporary speeches and writings confirms the position for which we contend. It is true, as counsel will point out, that in the Constitution Convention when the word "maladministration" was proposed it was objected to by Mr. Madison as too vague, and the words "high crimes and misdemeanors" were inserted instead; but it is also true that on the 16th day of June, 1789, when debating in the House of Representatives the propriety of giving to the President the right to remove an officer, he said:

"The danger, then, consists merely in this: The President can displace from office a man whose merits require that he should be continued in it. What will be the motives which the President can feel for such abuse of his power and the restraints that operate to prevent it? In the first place he will be impeachable by this House before the Senate for such an act of maladministration; for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust."

Mr. Davis then cited numerous authorities and said:

It can be safely said that nothing was further from the minds of the men who framed the Constitution than the construction here contended for by respondent's counsel.

Again we may look to the precedents only to find that the word "misdemeanor" has always been treated as having a meaning of its own in parliamentary law, and that one impeachment proceeding after another has been based upon offenses not within the law of crimes. I do not repeat the many authorities for this statement which my colleagues have cited. This body, of course, being a law unto itself, is bound by no precedents save those of its own making, and even as to them no doubt has the power which any other court enjoys to overrule a previous decision if convinced of its error.

After citing authorities, Mr. Davis continued:

But, without stopping to multiply precedents further, we next call attention to the long list of eminent authorities and commentators on the Constitution who uphold the construction for which we contend—Story, Curtis, Cooley, Tucker, Watson, Foster—all these and many more have been cited in the course of this discussion. Speaking as a lawyer, it must be said that the weight of authority in our favor is overwhelming.

Last of all we resort to the highest of all canons for the construction of constitutions and statutes alike, viz, "The reason of the thing." It is true that the framers of the Constitution intended to create an independent judiciary, but they never contemplated a judiciary which should be totally irresponsible. Regarding public office as a public trust, they found it necessary to lodge somewhere the power to determine whether that trust had or had not been abused. In the appointment of judges they required that the judgment of the President with reference to individual fitness should be concurred in by the Senate, and quite naturally they gave to the body which had approved the appointment the power to withdraw that approval and dismiss the officer when he had shown himself faithless to his trust. In requiring first of all a majority of the House of Representatives in order to prefer articles of impeachment and then two-thirds of the Members of the Senate present to convict they hedged the power about with all the safeguards necessary to protect the upright official and yet leave it sufficient play to preserve the public welfare. Experience has shown how more than adequate the machinery so provided has been to prevent hasty or intemperate action. Indeed, it would seem that if the fathers erred it was in making too slow and difficult the process of removing the unfaithful and unfit. I hope—indeed, I believe—that this high court will never sanction any construction of the Constitution which will render it practically impotent for the purposes of its creation.

But in the brief filed by counsel for the respondent it is suggested that if an impeachable offense need not be criminal in fact it must still be criminal in its nature. It will at once be clear that it is a definition which does not define, and that the phrase "criminal in its nature" has no more certainty to commend it than has "good behavior." Recognizing this to be true, counsel go on to say, in the attempt to define their own language, that—

"For the same reason, even if the misdemeanors for which impeachment will lie are not necessarily indictable offenses, yet they must be of such a character as might properly be made criminal."

We are not called on to agree with their position as so stated, but have no great cause to fear it.

We understand a crime or misdemeanor to be, in the language of Blackstone:

"An act committed or omitted in violation of a public law either forbidding or commanding it."

If the phrase "criminal in nature" means those things which might be made crimes by legislative prohibition, every act here charged against this respondent comes within the description. Certainly Congress could by express criminal statute forbid a Federal judge to accept gifts of money from members of his bar, to communicate in private either orally or by letter with counsel in reference to cases pending for decision, to request financial favors from parties litigant before him, and as to the Commerce Court might well forbid the members of that court to engage in the business of hunting bargains from railroad companies engaged in interstate commerce. And certainly if such things are not already misdemeanors or misconduct or misbehavior, a statute to forbid them can not come too soon.

464. Discussion of the question of impeachability of a judge for offenses not subject to prosecution by indictment or information in a criminal court.

Argument that impeachment is not restricted to offenses indictable under Federal law, and that judges may be impeached for breaches of "good behavior."

On January 9, 1913,[1] in the Senate, sitting for the impeachment trial of Judge Robert W. Archbald, Mr. Manager George W. Norris, of Nebraska, in the final argument said:

It is strenuously argued by attorneys for respondent that an impeachment lies only for offenses which are criminal in their nature, and which could legally be the subject of prosecution by indictment.

The Constitution provides (Art. I, sec. 2) that the House of Representatives shall have the sole power of impeachment, and in section 3 of the same article it is provided that the Senate shall have the sole power to try all impeachments. It is undisputed, and, indeed, has never been questioned, that

[1] Third session Sixty-second Congress, Record, p. 1264.

to remove a United States judge from office two things are essential: First, he must be impeached by the House of Representatives, and, second, he must be tried and convicted by the Senate upon the articles of impeachment presented by the House. There is no other way provided by the Constitution of the United States for the removal from office of a judge. In the consideration of this subject, I shall draw a distinction between a judge of the United States court and all other civil officers of the United States. I shall demonstrate from the Constitution itself that a judge of the United States court can properly be impeached, convicted, and removed from office for any act from treason down to conduct that tends to bring the judiciary into disgrace, disrespect, or disrepute. Section 4 of Article II of the Constitution reads as follows:

"The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

It will be noted that this provision of the Constitution applies to all civil officers of the United States alike. It is undisputed that it includes judges, and were there no other provision of the Constitution applying particularly to the conduct or the tenure of office of judges, then there would be no distinction between the impeachment and trial of judges and any other civil officer, including the President and Vice President. But section 1, Article III, so far as the same is applicable to this case, provides: "The judges, both of the Supreme Court and inferior courts, shall hold their offices during good behavior." This provision of the Constitution, it will be observed, applies only and exclusively to judges. It has no relation to any other civil officer of the Government, and if we are not to nullify it entirely, we will find that it bears a very important part in the consideration of the particular branch of the case under discussion. I desire the Senate to continually bear in mind and to faithfully observe at all times during the consideration of this subject that in the construction of any legal document or instrument the court will so construe it as to give life and vitality to every part of the instrument, if it can reasonably and logically do so. It is our duty to construe these two provisions of the Constitution together and, if possible, to give equal vitality and life to them both.

Most of the civil officers provided for by the Constitution have a definite fixed term, but the judges hold office during good behavior. Much of the contention arises over what is meant in section 4, Article II, by the word "misdemeanor." It is contended by the respondent that this word is intended only to apply to such offenses as are indictable and punishable under the criminal law, and that a judge can not be impeached and removed from office unless his offense, whatever it may be called, is at least of so high a degree as to make it criminal and indictable. This construction, if adhered to, absolutely

nullifies that provision of section 1, Article III, above quoted which provides that judges shall hold their offices during good behavior. If judges can hold their offices only during good behavior, then it necessarily and logically follows that they can not hold their offices when they have been convicted of any behavior that is not good. If good behavior is an essential to holding the office, then misbehavior is a sufficient reason for removal from office. And, if, therefore, we give full life and vitality to both of these provisions of the Constitution, we must hold that the lack of good behavior, or misbehavior, mentioned in section 1, Article III, is synonymous with the word "misdemeanor" in section 4, Article II, in all cases where the offense is less in magnitude than in indictable one.

This view of these provisions of the Constitution has been sustained by practically all of the leading law writers upon the subject. It has also been sustained by the Senate in the trial of prior impeachment cases that have taken place. (John Randolph Tucker, Commentaries on the Constitution, vol. 1, sec. 200; George Ticknor Curtis, Constitutional History of the United States, p. 481; Watson, on the Constitution, vol. 2, p. 1034.) These citations showed that the Senate has in the past found officials guilty where the crime charged was not an indictable offense.

But suppose, for the sake of argument, it be admitted that misdemeanors" as used in section 4, Article II, was intended by the framers of the Constitution to exclude all offenses that were not indictabe under the law, it would still not necessarily follow that judges could not be impeached and removed from office for misdemeanors of so low a grade that they were not indictable. This section simply provides that all the civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors. If in any other provision of the Constitution additional reasons for impeachment are given of some of these specified officers, or additional reasons are given why some of them should cease to hold office, then under such provision such specified officers could be tried, impeached, and removed, even though the offense of which they might be guilty was not included in any of those enumerated in section 4, Article II.

While I believe the construction placed on "misdemeanors" by the respondent is wrong, yet they have not made a defense to the various charges of misbehavior in office, even if we accept their construction of the law that misdemeanors in this section means only indictable offenses. If for instance, the President was expressly excluded from the officers named in this section, then I concede there would be no way under the Constitution for him to be impeached, tried, and removed from office, because there is no other provision of the Constitution that provides for any offense on the part of the President or limits his tenure of office, excepting the expiration of his regular term. But if judges were expressly elminated from

this section, and it read, "all civil officers of the United States except judges, etc.," it would not follow that they could not be impeached, convicted of misbehavior, and removed from office, because section 1, Article III, expressly provides that they shall only hold their offices during good behavior. In other words, our forefathers in framing the Constitution have wisely seen fit to provide for a requisite of holding office on the part of a judge that does not apply to other civil officers. The reason for this is apparent. The President, Vice President, and other civil officers, except judges, hold their positions for a definite, fixed term, and any misbehavior in office on the part of any of them can be rectified by the people or the appointing power when the term of office expires. But the judge has no such tenure of office. He is placed beyond the power of the people or the appointing power and is, therefore, subject only to removal for misbehavior. Since he can not be removed unless he be impeached by the House of Representatives, tried and convicted by the Senate, it must necessarily follow that misbehavior in office is an impeachable offense.

Any authority that has been cited by the respondent which shows or tends to show that a President, Vice President, or other civil officer other than a judge can not be impeached except the offense is at least of the grade of a misdemeanor that is indictable, does not apply to the impeachment or trial of a United States judge. To hold that an officer whose tenure of office is definite and fixed and who will necessarily go out of office within the course of a year or two, should not be impeached and removed from office for a misbehavior that does not reach in magnitude an indicatable offense, is entirely different from holding that an officer whose term of office ordinarily lasts for life should not be so impeached and removed. And our forefathers evidently had this distinction in mind when they applied exclusively to judges that provision of the Constitution which provides that judges shall hold their offices during good behavior.

If I am not right in my construction of the Constitution, then the Congress and the country are absolutely helpless in any attempt to get relief from a judge who drags the judicial ermine down into disgrace, but is careful in doing so not to commit any criminal offense. If I am not right in my construction, then that provision of the Constitution which says that judges shall hold office during good behavior is absolutely nullified, and as far as the good behavior part of it is concerned it has no vitality, no life, no effect. The judge who secretly arranges with attorneys on one side of a case to make a private argument—who not only makes such arrangement, but who initiates it—is guilty of a misbehavior. Every lawyer knows this; every Senator will admit it. Are we helpless in the premises simply because such an act is not indictable under the law? The judge who is continually asking favors of litigants in his court, if he is careful can not be convicted of any crime, but he is guilty of a

misbehavior. No one will dispute it. He is perverting the ends of justice. He is bringing the judiciary into disgrace and into disrepute. Carried to its logical conclusion, such conduct would soon mean that our judicial system would fall. It could not survive. Are we helpless? Must we say that, although the Constitution says the judge shall only hold his office during good behavior, the House of Representatives and the Senate are unable to apply those provisions of the Constitution which provide for impeachment, trial, and removal? If our forefathers meant anything when they provided in the Constitution that the judges should hold their offices during good behavior, they certainly intended that when the judge misbehaved he should be removed from office. Such a construction of the Constitution will not violate any principle of law, but, on the other hand, it will give full effect to a constitutional provision that would otherwise be meaningless and a dead letter. Our forefathers wisely, I think, refrained in the Constitution from giving any definition to "crimes and misdemeanors," and likewise refrained from defining what would be an abuse or a violation of "good behavior." Misbehavior, the opposite of good behavior, and I think the proper appellation of any conduct that is not good behavior, implies innumerable offenses of greater or less magnitude.

As to what is misbehavior in office must be determined in the first place by the House of Representatives when they adopt the articles of impeachment. It must be redetermined by the Senate when, after listening to the evidence, they pass judgment upon the case. I think all will agree that any conduct on the part of a judge which brings the office he holds into disgrace or disrepute, or which results or has a tendency to result in the denial of absolute justice to all persons engaged in litigation in his court, is a misbehavior. Certainly such conduct is not good behavior, and the Constitution provides that he shall only hold office during good behavior. Therefore it follows that in the absence of good behavior on the part of the judge he should be removed from office. It is undoubtedly true that the House of Representatives, in passing upon articles of impeachment, and the Senate upon the trial of the offense charged in such articles, where only misbehaving in office was shown, would take into consideration in reaching their conclusions not only the magnitude of such misbehaviors but the frequency of their occurrence. Where the evidence shows that a judge is continually misbehaving by engaging in conduct and practices that bring his office into disrespect and disrepute, the House and the Senate can not avoid their duty or their responsibility by saying that each distinct offense is in itself of small magnitude and not indictable.

465. Discussion of the clause "during good behavior" in relation to tenure of judicial offices, and effect by implication of misbehavior upon such tenure.

On January 8, 1913,[1] in the Senate, sitting for the impeachment trial of Judge Robert W. Archbald, Mr. Manager Edwin Yates Webb, of North Carolina, in final argument said:

> If the Constitution, Article III, section 1, means anything, then we want to bring it before the Senate to-day and ask Senators to say what it does mean when it provides that judges of the Supreme Court and inferior courts shall hold their offices "during good behavior."
>
> The provision in Article II of the Constitution, section 4, Mr. President, refers to impeachment of the President, Vice President, and other civil officers for treason, bribery, or other high crimes and misdemeanors; but later on in that same great instrument, after Article II had been adopted, the constitutional fathers say the judges of the United States shall hold their offices "during good behavior."
>
> It has been pointed out by many constitutional writers, and you yourselves see, that the people have no way of getting rid of a judge who has violated this provision by misbehavior except it is done by this great body. What does "during good behavior" mean?
>
> The Century Dictionary says:
>
> "During good behavior: As long as one remains blameless in the discharge of one's duties or the conduct of one's life; as, an office held during good behavior."
>
> Mr. Foster in his work on the Constitution (p. 586) makes this statement:
>
> "The Constitution provides that 'the judges, both of the Supreme and inferior courts, shall hold offices during good behavior.'"
>
> This necessarily implies that they can be removed in case of bad behavior; but no means except impeachment is provided for their removal, and judicial misconduct is not indictable by either a statute of the United States or the common law.
>
> Says Elliott in his Debates on the Constitution:
>
> "Mr. Dickinson moved as an amendment to Article XI, section 2, after the words 'good behavior,' the words: '*Provided*, That they may be removed by the Executive on the application of the Senate and the House of Representatives.'"
>
> This in respect to the judges. Mr. Gerry seconded the motion. Mr. Gouverneur Morris thought it a contradiction in terms to say that the judges should hold their offices during good behavior and yet be removable without a trial. Besides, it was fundamentally wrong to subject judges to so arbitrary an authority.
>
> But, mark you, the object then was to remove for bad behavior, but to give them a trial, as the Senate is doing in this particular case.
>
> Judge Lawrence, in the Johnson impeachment case (p. 643), says:
>
> "Impeachment was deemed sufficiently comprehensive to cover every proper case for removal."

[1] Third session Sixty-second Congress, Record, p. 1217.

In Watson on the Constitution the proposition is stated as follows (vol. 2, pp. 1036–1037):

"What will those who advocate the doctrine that impeachment will not lie except for an offense punishable by statute do with the constitutional provision relative to judges, which says: 'Judges, both of the Supreme and inferior courts, shall hold their offices during good behavior'? This means that as long as they behave themselves their tenure of office is fixed and they can not be disturbed. But suppose they cease to behave themselves? When the Constitution says 'a judge shall hold his office during good behavior' it means that he shall not hold it when it ceases to be good."

I suppose the argument in the Federalist, Mr. President, had as much to do with the adoption of the Constitution of the United States as any other authority. I quote:

"The principle of this objection would condemn a practice, which is to be seen in all the State governments—if not in all the governments with which we are acquainted—I mean that of rendering those who hold offices during pleasure dependent on the pleasure of those who appoint them." (Federalist, p. 306.)

And that is yourselves, Senators, for the President nominates judges and you appoint them.

"According to the plan of the convention, all the judges who may be appointed by the United States are to hold their offices during good behavior; which is conformable to the most approved State constitutions." (Federalist, p. 355.)

"Upon the whole, there can be no room to doubt that the convention acted wisely in copying from the models of those constitutions which have established good behavior as the tenure of judicial offices in point of duration, and that so far from being blamable on this account their plan would have been inexcusably defective if it had wanted this most important feature of good government." (Federalist, p. 361; Publius.)

Mr. President, after counsel for the respondent has discussed in 26 pages of his brief the proposition that the respondent is not impeachable unless he is indictable, he then makes this concession: That if it is not necessary to prove indictable offenses against the judge it is necessary, at least, to prove some offense of a criminal nature.

Mr. President, after all crime is nothing but misconduct. The only thing that is made criminal in this country is some form of misconduct.

Before proceeding to argue the facts in the case, I maintain that any judge of a high court who will dicker and traffic with litigants in his court while their cases are pending ought to be indictable, because such conduct is criminal in its nature, and the reason it has not been made indictable long ago is because the people of the United States have never thought it necessary to surround the judiciary with such a statute.

In reply to this argument, Mr. Alexander Simpson, counsel for respondent, said:[1]

Now, I want to know what good behavior means. This is the provision:

"The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office."

If you take that whole clause and consider it, either historically or grammatically, you will find that the words "good behavior" relate to good behavior in office. The compensation which is to be paid is for service in the office. The good behavior which is the tenure is to be good behavior in the office. But, say the managers, it is not good behavior in office which is the test at all, and you may impeach and remove a man even though he has behaved perfectly well in his office. Personally I agree with that; I am not challenging that position, but it answers their proposition now being considered that good behavior in office is the tenure by which the respondent holds, and for a breach of that he may be removed from office without considering the impeachment clause of the Constitution.

I do not think that the good-behavior clause has anything whatever to do with the impeachment. Everybody knows how the good-behavior clause came into being. In the ancient days the judges, like all other civil officers, held their positions at the pleasure of the King. Then the barons wrested from the King his power of dismissal and required that there should a good-behavior tenure rather than a tenure at the pleasure of the King, subject at that time only to the power of impeachment. And then, a little later—I think it was in 1701, after the Revolution—there was added the removal power; so that, upon address, judges might be removed the same as upon impeachment, without a trial. Those are the circumstances under which the good-behavior tenure came into existence.

But what does "good behavior" mean if you are going to take that alone into consideration? A man ill behaves if he speaks unduly cross to his wife and children. May he be removed from office because of that? If he is the happy owner of an automobile he may violate the speed laws and be hailed before some magistrate and fined. Is he to be removed from office because of that? No one would answer "yes" to either of those questions, and hence you must get down to something definite, something upon which you can lay your finger and say, "There is the definite thing which this man should have known, and as he should have known it and has chosen to violate it he must pay the penalty of his violation." That definite thing can be ascertained only by reference to the clause which says that he may be impeached for "treason, bribery, or other high crimes and misdemeanors." In the

[1] Record, p. 1270.

ordinary sense of the term one can understand how a man can be of perfectly good behavior in everything else and still be guilty of treason, but does anybody doubt but that he could be removed from office if he was guilty of treason? In truth, you have to go back from the good-behavior clause to the impeachment clause to find out what are the causes for an impeachment. It is the impeachment clause which is the controlling clause and not the good-behavior clause at all.

The argument that grows out of the claim that a violation of the good-behavior clause is sufficient justification for an impeachment is as clearly reasoning in a circle as anybody can well imagine. Concede that good behavior is the tenure, still you can not remove a man from office, under the Constitution, unless he is guilty of "treason, bribery, or other high crimes and misdemeanors," and hence the determinative factor as to whether or not a judge was of good behavior is whether or not he was guilty of "treason, bribery, or other high crimes and misdemeanors."

On January 3, 1913,[1] Mr. Manager Henry D. Clayton, of Alabama, presented a brief on behalf of the House of Representatives, covering this question, among others, as follows:

THE TENURE OF FEDERAL JUDGES LIMITED TO "DURING GOOD BEHAVIOR"

The provision in Article III, section 1, of our Constitution that "the judges, both of the Supreme and inferior courts, shall hold their offices during good behavior," which was also borrowed from the English laws, must be considered in pari materia with Article IV, section 2, providing that all civil officers of the United States shall be removed from office upon "impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors."

Good behavior is thus made the essential condition on which the tenure to the judicial office rests, and any act committed or omitted by the incumbent in violation of this condition necessarily works a forfeiture of the office. The Constitution provides no method whereby a civil officer of the United States can be removed from office save by impeachment. It follows, therefore, that the framers of our Constitution must have intended that Federal judges, who are civil officers, should be removable from office by impeachment for misbehavior, which is the antithesis of good behavior. Otherwise the constitutional provision limiting the tenure of the judicial office to "during good behavior" would be entirely without force and effect.

466. Review of impeachments in Congress showing the nature of charges upon which impeachments have been brought and judgments of the Senate thereon.

[1] Record, of trial, p. 1051.

On January 3, 1913,[2] in the Senate, sitting for the impeachment trial of Judge Robert W. Archbald, Mr. Manager Henry D. Clayton, of Alabama, filed, on behalf of the House of Representatives, a brief, in which the following appears:

IMPEACHMENT TRIALS IN THE UNITED STATES SENATE

A concise statement of the general character of the several impeachment trials which have been heretofore conducted by the Senate of the United States:

IMPEACHMENT OF WILLIAM BLOUNT

William Blount, a Senator from Tennessee, was impeached in 1797, on a charge of conspiracy to create, promote, and set on foot within the jurisdiction of the United States, and to conduct and carry on from thence, a hostile military expedition against the territories and dominions of Spain in Florida and Louisiana for the purpose of wrestling such territories from Spain and conquering the same for Great Britain, with which Spain was at war; conspiring to incite the Creek and Cherokee Nations of Indians to commence hostilities against the subjects of Spain in violation of the then existing treaty between the United States and Spain, and conspiring to alienate the confidence of these Indian tribes from the principal agent of the United States appointed by the President, in accordance with law, to reside among the tribes; conspiring to seduce the official interpreter appointed by the United States to reside among the said Indian tribes from the duty and trust of his appointment, and conspiring to impair the confidence of the Cherokee Nation in the United States and create discontent among the Indians relative to the ascertainment of the boundary line of the United States and the Cherokee Nation under treaty provisions.

Shortly after Blount had been impeached by the House he was expelled by the Senate, and he was thereafter acquitted of the impeachment on the ground that he was not a civil officer of the United States.

IMPEACHMENT OF JOHN PICKERING

John Pickering, judge of the United States District Court for the District of New Hampshire, was impeached in 1803, on the ground that he had disobeyed the law in the course of proceedings brought by the United States to condemn a ship with its cargo for a violation of the customs laws, in that the judge delivered the ship to the claimant after its attachment by the marshall without requiring a bond, in accordance with the requirements of law; that in such proceedings he had

[2] Third session Sixty-second Congress, Record of trial, p. 1051.

refused to hear the testimony offered in behalf of the United States; that he had refused to grant an appeal by the Government from his arbitrary decree to the circuit court; and that he had attempted to perform his official functions while in a state of intoxication. The respondent did not appear to answer the articles exhibited against him, but his son presented a petition, alleging the insanity of his father and praying an opportunity to adduce evidence in that behalf. Evidence was admitted and considered by the Senate in support of this petition. The facts alleged in the articles of impeachment were proved to the satisfaction of the Senate, and the respondent was convicted on each of the articles against him and removed from office.

IMPEACHMENT OF SAMUEL CHASE

In 1804 the House impeached Samuel Chase, a justice of the United States Supreme Court, on the ground that he had been guilty of certain misconduct to the prejudice of the defendants in the trials of John Fries for treason and James Thompson Callender for breach of the sedition laws; that he had improperly attempted to induce a grand jury in Delaware to find an indictment against the editor of a newspaper for breach of the sedition laws; and for addressing an intemperate and inflammatory harangue to a jury in the State of Maryland.

On a party vote, the respondent was acquitted as to all of the articles exhibited against him.

IMPEACHMENT OF JAMES H. PECK

In 1830 James H. Peck, judge of the United States District Court for the District of Missouri, was impeached on the ground that he had grossly abused his power as a judge in sentencing an attorney to 24 hours imprisonment and suspension from the bar of his court for 18 calendar months for writing and publishing a moderate criticism of one of Judge Peck's decisions in a case in which this attorney had appeared in behalf of the plaintiff, with the result that the attorney was practically prevented from further participation in the case. The respondent was acquitted by the Senate on all of the articles presented against him on the ground that he was justified in assuming that he was legally clothed with the power that he had exercised, and that the element of malice had not been established.

IMPEACHMENT OF WEST H. HUMPHREYS

In 1862 West H. Humphreys, judge of the United States District Court for the District of Tennessee, was impeached for making a public speech declaring the right of secession and inciting revolt and rebellion against the Government of the United States; with the support and advocacy of the ordinance of secession; with aiding in the organization of an armed rebellion against the United States; with conspiring to oppose the authority of the Government of the United States

by force; with refusing to hold his court or perform its functions; and with unlawfully acting as judge of the Confederate district court in causing arrests, imprisonments, and confiscations. The respondent made no appearance, and the trial proceeded in his absence. The respondent was convicted on all the charges, with the exception of the unlawful arrests and confiscations, and was removed and disqualified from holding office.

IMPEACHMENT OF ANDREW JOHNSON

Andrew Johnson, President of the United States, was impeached in 1868 on 11 articles charging the attempted removal of E. M. Stanton, the Secretary of War, in violation of the so-called tenure-of-office act; in attempting to induce a general of the Army to violate the provisions of an act of Congress; and of attempting to bring into contempt and reproach the Congress of the United States by intemperate and inflammatory speeches. The respondent was acquitted on each of the charges by a margin of one vote.

IMPEACHMENT OF WILLIAM W. BELKNAP

In 1876 William W. Belknap, Secretary of War, was impeached on five articles, charging that he had accepted a portion of the profits of an Army post tradership from a post trader whom he had appointed while he held the War portfolio. A few hours before the House formally adopted the articles of impeachment against him, Belknap resigned as Secretary of War and the President accepted his resignation. His counsel interposed a plea to the jurisdiction in the Senate on the ground that the respondent was not a civil officer of the United States at the time of his impeachment. This plea was overruled by a majority of less than two-thirds and the trial proceeded. The respondent was ultimately acquitted by the votes of the Senators who had originally voted in favor of the plea to the jurisdiction.

IMPEACHMENT OF CHARLES SWAYNE

In 1904 Charles Swayne, judge of the United States District Court for the Northern District of Florida, was impeached on 12 articles, charging that he had rendered false claims against the Government in his expense accounts; that he had appropriated to his own use, without making compensation to the owner, a certain railroad car belonging to a railroad company then in the possession of a receiver appointed by the respondent, and that he had allowed the credit claimed by the receiver for and on account of the expenditure incident to the improper use of this car as a part of the necessary expenses of operating the road; that he had resided outside of his district in violation of a statute of the United States; and that he had maliciously adjudged certain parties to be in contempt of court and imposed excessive fines and prison sentences therefor without just cause or warrant of law.

A trial was had and the respondent was ultimately acquitted.

Articles of Impeachment Voted by the House of Representatives

ARTICLES OF IMPEACHMENT VOTED BY THE HOUSE

Impeachment of Senator William Blount

WEDNESDAY, FEBRUARY 7, 1798.

A message from the House of Representatives, by Mr. Condy, their Clerk:

Mr. President: The House of Representatives have resolved that articles agreed by the House to be exhibited in the name of themselves and of all the people of the United States against William Blount, in maintenance of their impeachment against him for high crimes and misdemeanors, be carried to the Senate by the managers, Messrs. Sitgreaves, Bayard, Harper, Gordon, Pinckney, Dana, Sewall, Hosmer, Dennis, Evans, and Imlay, appointed to conduct the said impeachment. And he withdrew.

On motion,

Resolved, That the Senate will at twelve o'clock this day be ready to receive articles of impeachment against William Blount, late a Senator of the United States from the state of Tennessee, to be presented by the managers appointed by the House of Representatives.

Ordered, That the Secretary acquaint the House of Representatives therewith.

A message was announced from the House of Representatives, by the abovementioned managers, who, being introduced, Mr. Sitgreaves, their chairman, addressed the Senate as follows:

Mr. Vice President: The House of Representatives having agreed upon articles, in maintenance of their impeachment against William Blount, for high crimes and misdemeanors, and having appointed on their part managers of the said impeachment, the managers have now the honor to attend the Senate, for the purpose of exhibiting the said articles.

The Vice President then ordered the sergeant-at-arms to proclaim silence, after which he notified the managers that the Senate were ready to hear the articles of impeachment. Whereupon,

The chairman of the managers read the articles of impeachment, and they were received from him at the bar by the sergeant-at-arms, and laid on the table.

The Vice President then informed the managers, that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives. And they withdrew.

The Secretary then read the articles of impeachment in the words following:

Articles exhibited by the House of Representatives of the United States, in the name of themselves, and of all the people of the United States, against William Blount, in maintenance of their impeachment against him for high crimes and misdemeanors.

ARTICLE 1. That, whereas the United States, in the months of February, March, April, May, and June, in the year of our Lord one thousand seven hundred and ninety seven, and for many years then past, were at peace with his Catholic Majesty, the king of Spain; and whereas, during the months aforesaid, his said Catholic Majesty and the king of Great Britain were at war with each other; yet the said William Blount, on or about the months aforesaid, then being a Senator of the United States, and well knowing the premises, but disregarding the duties and obligations of his high station, and designing and intending to disturb the peace and tranquillity of the United States, and to violate and infringe the neutrality thereof, did conspire, and contrive to create, promote, and set on foot, within the jurisdiction and territory of the United States, and to conduct and carry on, from thence, a military hostile expedition against the territories and dominions of his said Catholic Majesty in the Floridas and Louisiana, or a part thereof, for the purpose of wresting the same from his Catholic Majesty, and of conquering the same for the king of Great Britain, with whom his said Catholic Majesty was then at war as aforesaid, contrary to the duty of his trust and station as a Senator of the United States, in violation of the obligation of neutrality, and against the laws of the United States, and the peace and interests thereof.

ARTICLE 2. That, whereas, on the twenty-seventh day of October, in the year of our Lord one thousand seven hundred and ninety-five, a treaty of friendship, limits, and navigation, had been made and concluded between the United States and his Catholic Majesty, by the fifth article whereof it is stipulated and agreed, "that the two high contracting parties shall, by all the means in their power, maintain peace and harmony among the several Indian nations who inhabit the country adjacent to the lines and rivers, which, by the preceding articles, form the boundaries of the two Floridas. And the better to obtain this effect, both parties oblige themselves expressly to restrain by force all hostilities on the part of the Indian nations living within their boundary; so that Spain will not suffer her Indians to attack the citizens of the United States, nor the Indians inhabiting their territory; nor will the United States permit these last mentioned Indians to commence hostilities against the subjects of his Catholic Majesty or his Indians, in any manner whatever:" Yet, the said William Blount, on or about the months of February, March, April, May, and June, in the year of our Lord one thousand seven hundred and ninety-seven, then being a Senator of the United States, and well knowing the premises, and that the United States were then at peace with his said Catholic Majesty, and that his Catholic Majesty was at war with the king of Great Britain, but disregarding the duties of his high station, and the stipulations of the said treaty, and the obligations of neutrality, did conspire and contrive to excite the Creek and Cherokee nations of Indians, then inhabiting within the territorial boundary of the United States, to commence hostilities against the subjects and possessions of his Catholic majesty, in the Floridas and Louisiana, for the purpose of reducing the same to the dominion of the King of Great Britain, with whom his Catholic majesty was then at war as aforesaid: contrary to the duty of his trust and station as a Senator of the United States, in violation of the said treaty of friendship, limits, and navigation, and of the obligations of neutrality, and against the laws of the United States, and the peace and interests thereof.

ARTICLE 3. That, whereas, by the ordinances and acts of Congress for regulating trade and intercourse with the Indian tribes, and for preserving peace on the frontiers, it has been made lawful for the President of the United States, in order to secure the continuance of the friendship of the said Indian tribes, to appoint such persons, from time to time, as temporary agents, to reside among the Indians, as he shall think fit; and whereas, in pursuance of the said authority, the President of the United States, on or about the eighth day of September, in the year of our Lord one thousand seven hundred and ninety-six, did appoint Benjamin Hawkins to be principal temporary agent for Indian affairs, within the Indian nations south of the river Ohio, and north of the territorial line of

the United States; and whereas the said Benjamin Hawkins accepted the said appointment, and on the twenty-first day of April, in the year of our Lord one thousand seven hundred and ninety-seven, and for a long time before and afterwards, did exercise the functions, powers, and duties attached to the same, yet the said William Blount, on or about the said twenty-first day of April, in the year of our Lord one thousand seven hundred and ninety-seven, then being a Senator of the United States, and well knowing the premises, did, in the prosecution of his criminal designs and of his conspiracies aforesaid, and the more effectually to accomplish his intention of exciting the Creek and Cherokee nations of Indians to commence hostilities against the subjects of his Catholic majesty, further conspire and contrive to alienate and divert the confidence of the said Indian tribes or nations from the said Benjamin Hawkins, the principal temporary agent aforesaid, and to diminish, impair, and destroy the influence of the said Benjamin Hawkins with the said Indian tribes, and their friendly intercourse and understanding with him, contrary to the duty of his trust and station as a Senator of the United States, and against the ordinances and laws of the United States, and the peace and interests thereof.

ARTICLE 4. That, whereas, by the ordinances and acts of Congress aforesaid, it is made lawful for the President of the United States to establish trading houses at such places and posts on the western and southern frontiers, or in the Indian country, as he shall judge most convenient, for the purpose of carrying on a liberal trade with the several Indian nations within the limits of the United States, and to appoint an agent at each trading house established as aforesaid, with such clerks and assistants as may be necessary for the execution of the said acts: And whereas, by a treaty, made and concluded on the second day of July, in the year of our Lord one thousand seven hundred and ninety-one, between the United States and the Cherokee nation of Indians, inhabiting within the limits of the United States, it is stipulated and agreed, that "the United States will send such, and so many, persons to reside in said nation, as they may judge proper, not exceeding four, who shall qualify themselves to act as interpreters." And whereas the President of the United States, as well in pursuance of the authorities in this article mentioned, as of the acts of Congress referred to in the third article, did appoint James Carey to be interpreter for the United States to the said Cherokee nation of Indians, and assistant at the public trading house established at the Tellico blockhouse, in the state of Tennessee: And whereas the said James Carey did accept the said appointments, and on the twenty-first day of April, in the year of our Lord one thousand seven hundred and ninety-seven, and for a long time before and afterwards, did exercise the functions and duties attached to the same; yet, the said William Blount, on or about the said twenty-first day of April, in the year last aforesaid, then being a Senator of the United States, and well knowing the premises, did, in prosecution of his criminal designs, and in furtherance of his conspiracies aforesaid, conspire and contrive to seduce the said James Carey from the duty and trust of his said appointments, and to engage the said James Carey to assist in the promotion and execution of his said criminal intentions and conspiracies aforesaid, contrary to the duty of his trust and station as a Senator of the United States, and against the laws and treaties of the United States, and the peace and interests thereof.

ARTICLE 5. That whereas certain tribes or nations of Indians inhabit within the territorial limits of the United States, between whom, or many of them, and the settlements of the United States, certain boundary lines have, by successive treaties, been stipulated and agreed upon, to separate the lands and possessions of the said Indians from the lands and possessions of the United States, and the citizens hereof: And whereas, particularly, by the treaty in the last article mentioned to have been made with the Cherokee nation, on the second day of July, in the year of our Lord one thousand seven hundred and ninety-one, the boundary line between the United States and the said Cherokee nation was agreed and defined; and it was further stipulated that the same should be ascertained and marked plainly by three persons appointed on the part of the United States, and three Cherokees on the part of their nation. And whereas, by another treaty made with the said Cherokee nation, on the twenty-sixth day of June, in the year of our Lord one thousand seven hundred and ninety-four, the said hereinbefore recited treaty, of the second day of July, in the year of our Lord one thousand seven hundred and ninety-one, was confirmed and established; and it was mutually agreed that the said boundary line should be actually ascertained and marked in the manner prescribed by the said last mentioned treaty. And whereas in pursuanse of the said treaties, commissioners

were duly nominated and appointed, on the part of the United States, to ascertain and mark the said boundary line; yet the said William Blount, on or about the twenty-first day of April, in the year of our Lord one thousand seven hundred and ninety-seven, then being a Senator of the United States, and well knowing the premises, in further prosecution of his said criminal designs, and of his conspiracies aforesaid, and the more effectually to accomplish his intention of exciting the said Indians to commence hostilities against the subjects of his Catholic majesty, did further conspire and contrive to diminish and impair the confidence of the said Cherokee nation in the government of the United States, and to create and foment discontents and disaffection among the said Indians towards the government of the United States in relation to the ascertainment and marking of the said boundary line, contrary to the duty of his trust and station as a Senator of the United States, and against the peace and interests thereof.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any further articles, or other accusation, or impeachment, against the said William Blount, and also of replyng to his answers, which he shall make unto the said articles, or any of them and of offering proof to all and every the aforesaid articles, and to all and every other articles of impeachment, or accusation which shall be exhibited by them, as the case shall require, do demand that the said William Blount may be put to answer the said crimes and misdemeanors, and that such proceedings, examinations, trials, and judgments, may be thereupon had and given as are agreeable to law and justice.

Signed by order and in behalf of the House.

JONATHAN DAYTON, *Speaker.*

Attest, JONATHAN W. CONDY, *Clerk.*

The managers on the part of the House of Representatives, Messrs. Nicholson, Early, Rodney, Eustis, John Randolph, jr., Samuel L. Mitchill, George W. Campbell, Blackledge, Boyle, Joseph Clay, and Newton, were admitted; and Mr. Nicholson, the chairman, announced that they were the managers instructed by the House of Representatives to exhibit certain articles of impeachment against John Pickering, district judge of the district of New Hampshire.

They were requested by the President to take seats assigned them within the bar.

The Sergeant-at-Arms was directed to make proclamation, in the words following:

Oyes! Oyes! Oyes! All persons are commanded to keep silence on pain of imprisonment while the grand inquest of the nation is exhibiting to the Senate of the United States, sitting as a court of impeachments, articles of impeachment against John Pickering, judge of the district court of the district of New Hampshire.

The managers then rose, and Mr. Nicholson, their chairman, read the articles, as follows:

Articles Exhibited by the House of Representatives of the United States, in the Name of Themselves and of All the People of the United States, Against John Pickering, Judge of the District Court of the District of New Hampshire, in Maintenance and Support of Their Impeachment Against Him for High Crimes and Misdemeanors

ARTICLE 1. That whereas George Wentworth, surveyor of the district of New Hampshire, did, in the port of Portsmouth, in the said district, on waters that are navigable from the sea by vessels of more than 10 tons burden, on the 15th day of October, in the year 1802, seize the ship called the *Eliza*, of about 285 tons burden, whereof William Ladd was late master, together with her furniture, tackle, and apparel, alleging that there had been unladen from on board of said ship, contrary to law, sundry goods, wares, and merchandise, of foreign growth and manufacture, of the value of $400 and upwards, and did likewise seize on land within the said district, on the 7th day of October, in the year 1802, two cables of the value of $250, part of the said goods which were alleged to have been unladen from on board the said ship as aforesaid, contrary to law; and whereas Thomas Chadbourn, a deputy marshal of the said district of New Hampshire, did, on the 16th day of October, in the year 1802, by virtue of an order of the said John Pickering, judge of the district court of the said district of New Hampshire, arrest and detain in custody for trial before the said John Pickering, judge of the said district court, the said ship, called the *Eliza*, with her furniture, tackle, and apparel, and also the two cables aforesaid;

And whereas by an act of Congress, passed on the 2d day of March, in the year 1789, is is among other things provided that "upon the prayer of any claimant to the court that any ship or vessel, goods, wares, or merchandise so seized and prosecuted, or any part thereof, should be delivered to such claimant, it shall be lawful for the court to appoint three proper persons to appraise such ship or vessel, goods, wares, or merchandise, who shall be sworn in open court, for the faithful discharge of their duty; and such appraisement shall be made at the expense of the party on whose prayer it is granted; and on the return of such appraisement, if the claimant shall, with one or more sureties to be approved of by the court, execute a bond in the usual form to the United States for the payment of a sum equal to the sum of which the ship or vessel, goods, wares, or merchandise so prayed to be delivered and appraised and moreover produce a

certificate from the collector of the district wherein such trial is had and of the naval officer thereof, if any there be, that the duties on the goods, wares, and merchandise, or tonnage duty on the ship or vessel so claimed have been paid or secured in like manner as if the goods, wares, or merchandise, ship or vessel, had been legally entered, the court shall, by rule, order such ship or vessel, goods, wares, or merchandise, to be delivered to the said claimant;" yet the said John Pickering, judge of the said district court of the said district of New Hampshire, the said act of Congress not regarding but with intent to evade the same did order the said ship called the *Eliza*, with her furniture, tackle, and apparel, and the said two cables, to be delivered to a certain Eliphalet Ladd, who claimed the same, without his, the said Eliphalet Ladd, producing any certificate from the collector and naval officer of the said district that the tonnage duty on the said ship or the duties on the said cables had been paid or secured, contrary to his trust and duty as judge of the said district court, against the law of the United States and to the manifest injury of their revenue.

ART. 2. That whereas, at a special district court of the United States, begun and held at Portsmouth on the 11th day of November, in the year 1802, by John Pickering, judge of said court, the United States, by Joseph Whipple, the collector of said district, having libeled, propounded, and given the said judge to understand and be informed that the said ship *Eliza*, with her furniture, tackle, and apparel, had been seized as aforesaid, because there had been unladen therefrom, contrary to law, 2 cables and 100 pieces of check, of the value of $400, and having prayed in their said libel that the said ship, with her furniture, tackle, and apparel might by the said court be adjudged to be forfeited to the United States and be disposed of according to law; and a certain Eliphalet Ladd, by his proctor and attorney, having come into the said court, and having claimed the said ship *Eliza*, with her tackle, furniture, and apparel, and having denied that the said 2 cables and the said 100 pieces of check had been unladen from the said ship contrary to law, and having prayed the said court that the said ship, with her furniture, tackle, and apparel, might be restored to him, the said Eliphalet Ladd, the said John Pickering, judge of the said district court, did proceed to the hearing and trial of the said cause thus pending between the United States on the one part, claiming the said ship *Eliza* with her furniture, tackle, and apparel, as forfeited by law, and the said Eliphalet Ladd on the other part, claiming the said ship *Eliza*, with her furniture, tackle, and apparel, in his own proper right; and whereas John S. Sherburne, attorney for the United States in and for the said district of New Hampshire, did appear in the said district, as his special duty it was by law, to prosecute the said cause in behalf of the United States, and did produce sundry witnesses to prove the facts charged by the United States in the libel filed by the collector as aforesaid in the said court, and to show that the said ship *Eliza*, with her tackle, furniture, and apparel, was justly forfeited to the United States, and did pray the said court that the said witnesses might be sworn in behalf of the United States, yet the said John Pickering, being then judge of the said district court, and then in court sitting, with intent to defeat the just claims of the United States, did refuse to hear the testimony of the said witnesses so as aforesaid, produced in behalf of the United States, and without hearing the said testimony so adduced in behalf of the United States in the trial of the said cause did order and decree the said ship *Eliza*, with her furniture, tackle, and apparel, to be restored to the said Eliphalet Ladd, the claimant, contrary to his trust and duty as judge of the said district court, in violation of the laws of the United States and to the manifest injury of the revenue.

ART. 3. That whereas it is provided by an act of Congress, passed on the 24th day of September, in the year 1789, "that from all final decrees of the district court in cases of admiralty and maritime jurisdiction, where the matter in dispute exceeds the sum or value of $300 exclusive of costs, an appeal shall be allowed to the next circuit court to be held in such district;" and whereas on the 12th day of November, in the year 1802, at the trial of the aforesaid cause between the United States on the one part, claiming the said ship *Eliza*, with her furniture, tackle, and apparel, as forfeited for the cause aforesaid and the said Eliphalet Ladd on the other part, claiming the said ship *Eliza*, with her furniture tackle, and apparel, in his own proper right, the said John Pickering, judge of the said district of New Hampshire, did decree that the said ship *Eliza*, with her tackle, and apparel, in his own proper right, the said John Pickering, judge of claimant; and whereas the said John S. Sherburne, attorney for the United States in and for the said district of New Hampshire, and prosecuting the said cause for and on the part of the United States, on the said 12th day of November, in

the year 1802, did, in the name and behalf of the United States, claim an appeal from said decree of the district court to the next circuit court to be held in the said district of New Hampshire, and did pray the said district court to allow the said appeal, in conformity to the provisions of the act of Congress last aforesaid, yet the said John Pickering, judge of the said district court, disregarding the authority of the laws and wickedly meaning and intending to injure the revenues of the United States and thereby to impair their public credit, did absolutely and positively refuse to allow the said appeal as prayed for and claimed by the said John S. Sherburne in behalf of the United States, contrary to his trust and duty of judge of the district court, against the laws of the United States, to the great injury of the public revenue, and in violation of the solemn oath which he had taken to administer equal and impartial justice.

ART. 4. That whereas for the due, faithful, and impartial administration of justice, temperance and sobriety are essential qualities in the character of a judge, yet the said John Pickering, being a man of loose morals and intemperate habits, on the 11th and 12th days of November, in the year 1802, being then judge of the district court in and for the district of New Hampshire, did appear on the bench of the said court for the administration of justice in a state of total intoxication, produced by the free and intemperate use of intoxicating liquors; and did then and there frequently, in a most profane and indecent manner, invoke the name of the Supreme Being, to the evil example of all the good citizens of the United States; and was then and there guilty of other high misdemeanors, disgraceful to his own character as a judge and degrading to the honor of the United States.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles or other accusation or impeachment against the said John Pickering; and also of replying to his or any answers which he shall make to the said articles, or any of them; and of offering proof to all and every other articles, impeachment, or accusation which shall be exhibited by them as the case shall require, do demand that the said John Pickering may be put to answer the said high crimes and misdemeanors; and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

Signed by order and in behalf of the House.

NATHANIEL MACON, *Speaker*.
JOHN BECKLEY, *Clerk*.

He then delivered the articles at the table; whereupon,

The President notified the managers that the Senate would take proper order on the subject of the impeachment, of which due notice should be given to the House of Representatives, and they withdrew.

The court adjourned to 12 o'clock to-morrow.

In the House,[1] on the same day, Mr. Nicholson, from the managers appointed on the part of this House to conduct the impeachment against John Pickering, judge of the district court of the United States for the district of New Hampshire, reported that the managers did this day carry to the Senate the articles of impeachment agreed to by this House on the 30th ultimo, and the said managers were informed by the Senate that their House would take proper measures relative to the said impeachment, of which this House should be duly notified.

In the Pickering case the rules were reported directly to the court of impeachment and agreed to therein.

Form of summons prescribed to command appearances of respondent in the Pickering impeachment.

Form of precept prescribed by the Senate to be indorsed on the writ of summons to Judge Pickering.

[1] House Journal, p. 515; Annals, p. 802.

In the Pickering case the Senate provided for issuing subpoenas of a specified form on application of managers or of respondent or his counsel.

In the Pickering impeachment the subpoenas were directed to the marshal of the district wherein the witness resided.

The forms of summons and subpoena in the Pickering case were communicated to the House and entered on its Journal.

Form of direction to the marshal for service of subpoenas in the Pickering trial.

The managers were requested by the President to take seats assigned them within the bar, and the Sergeant-at-Arms was directed to make proclamation in the words following:

Oyes! Oyes! Oyes!

All persons are commanded to keep silence, etc. [In words as prescribed by the resolution.]

After the proclamation the managers rose, and Mr. Randolph, their chairman, read the articles of impeachment, as follows:

Articles exhibited by the House of Representatives of the United States, in the name of themselves and of all the people of the United States, against Samuel Chase, one of the associate justices of the Supreme Court of the United States, in maintenance and support of their impeachment against him for high crimes and misdemeanors.

ART. 1. That unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them, "faithfully and impartially, and without respect to persons," the said Samuel Chase, on the trial of John Fries, charged with treason, before the circuit court of the United States, held for the district of Pennsylvania, in the city of Philadelphia, during the months of April and May, one thousand eight hundred, whereat the said Samuel Chase presided, did, in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust, viz:

1. In delivering an opinion in writing, on the question of law, on the construction of which the defense of the accused materially depended, tending to prejudice the minds of the jury against the case of the said John Fries, the prisoner, before counsel had been heard in his defense;

2. In restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defense of their client;

3. In debarring the prisoner from his constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give.

In consequence of which irregular conduct of the said Samuel Chase, as dangerous to our liberties as it is novel to our laws and usages, and said John Fries was deprived of the right, secured to him by the eighth article amendatory of the Constitution, was condemned to death without having been heard by counsel, in his defense, to the disgrace of the character of the American bench, in manifest violation of law and justice, and in open contempt of the right of juries, on which utlimately rest the liberty and safety of the American people.

ART. 2. That, prompted by a similar spirit of persecution and injustice, at a circuit court of the United States, held at Richmond, in the month of May, 1800, for the district of Virginia, whereat the said Samuel Chase presided, and before which a certain James Callender was arraigned for a libel on John Adams, then President of the United States, the said Samuel Chase, with intent to oppress and procure the conviction of the said Callender, did overrule the objection of John Basset, one of the jury, who wished to be excused from serving on the trial, because he had made up his mind as to the publication from which the words, charged to be libelous in the indictment, were extracted; and the said Basset was accordingly sworn, and did serve on the said jury, by whose verdict the prisoner was subsequently convicted.

ART. 3. That with intent to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material witness on behalf of the aforesaid Callender, was not permitted by the said Samuel Chase to be given in, on pretense that the said witness could not prove the truth of the whole of one of the charges contained in the indictment, although the said charge embraced more than one fact.

ART. 4. That the conduct of the said Samuel Chase was marked, during the whole course of the said trial, by manifest injustice, partiality, and intemperance, viz:

1. In compelling the prisoner's counsel to reduce to writing, and submit to the inspection of the court, for their admission or rejection, all questions which the said counsel meant to propound to the above-named John Taylor, the witness.

2. In refusing to postpone the trial, although an affidavit was regularly filed stating the absence of material witnesses on behalf of the accused; and although it was manifest that, with the utmost diligence, the attendance of such witnesses could not have been procured at that term.

3. In the use of unusual, rude, and contemptuous expressions toward the prisoner's counsel; and in falsely insinuating that they wished to excite the public fears and indignation, and to produce that insubordination to law to which the conduct of the judge did at the same time manifestly tend.

4. In repeated and vexatious interruptions of the said counsel, on the part of the said judge, which at length induced them to abandon their cause and their client, who was thereupon convicted and condemned to fine and imprisonment.

5. In an indecent solicitude, manifested by the said Samuel Chase, for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice.

ART. 5. And whereas it is provided by the act of Congress passed on the 24th day of September, 1786, entitled "An act to establish the judicial courts of the United States," that for any crime or offense against the United States the offender may be arrested, imprisoned, or bailed, agreeably to the usual mode of process in the State where such offender may be found; and whereas it is provided by the laws of Virginia that upon presentment by any grand jury of an offense not capital the court shall order the clerk to issue a summons against the person or persons offending to appear and answer such presentment at the next court; yet the said Samuel Chase did, at the court aforesaid, award a capias against the body of the said James Thompson Callender, indicted for an offense not capital, whereupon the said Callender was arrested and committed to close custody, contrary to law in that case made and provided.

ART. 6. And whereas it is provided by the thirty-fourth section of the aforesaid act, entitled "An act to establish the judicial courts of the United States," that the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as the rules of decision in trials at common law in the courts of the United States in cases where they apply; and whereas by the laws of Virginia it is provided that in cases not capital the offender shall not be held to answer any presentment of a grand jury until the court next succeeding that during which such presentment shall have been made, yet the said Samuel Chase, with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the court aforesaid, rule and adjudge the said Callender to trial during the term at which he, the said Callender, was presented and indicted, contrary to law in that case made and provided.

ART. 7. That at a circuit court of the United States for the district of Delaware, held at Newcastle, in the month of June 1800, whereas the said Samuel Chase presided, the said Samuel Chase, disregarding the duties of his office, did descend from the dignity of a judge and stoop to the level of an informer by refusing to discharge the grand jury, although entreated by several of the said jury so to do; and after the said grand jury had regularly declared through their foreman that they had found no bills of indictment, nor had any presentment to make, by observing to the said grand jury that he, the said Samuel Chase, understood "that a highly seditious temper had manifested itself in the State of Delaware among a certain class of people, particularly in Newcastle County, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order, that the name of this printer was"—but checking himself, as if sensible of the indecorum which he was committing, added "that it might be assuming too much to mention the name of this person, but it becomes your

duty, gentlemen, to inquire diligently into this matter," or words to that effect; and that with intention to procure the prosecution of the printer in question the said Samuel Chase did, moreover, authoritatively enjoin on the district attorney of the United States the necessity of procuring a file of the papers to which he alluded (and which were understood to be those published under the title of "Mirror of the Times and General Advertiser"), and, by a strict examination of them, to find some passage which might furnish the groundwork of a prosecution against the printer of the said paper, thereby degrading his high judicial functions and tending to impair the public confidence in and respect for the tribunals of justice so essential to the general welfare.

ART. 8. And whereas mutual respect and confidence between the Government of the United States and those of the individual States, and between the people and those governments, respectively, are highly conducive to that public harmony without which there can be no public happiness, yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at a circuit court for the district of Maryland, held at Baltimore in the month of May, 1803, pervert his official right and duty to address the grand jury then and there assembled on the matters coming within the province of the said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury and of the good people of Maryland against their State government and constitution, a conduct highly censurable in any, but peculiarly indecent and unbecoming in a judge of the Supreme Court of the United States; and, moreover, that the said Samuel Chase then and there, under pretense of exercising his judicial right to address the said grand jury, as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury and of the good people of Maryland against the Government of the United States by delivering opinions which, even if the judicial authority were competent to their expression on a suitable occasion and in a proper manner, were at that time, and as delivered by him, highly indecent, extrajudicial, and tending to prostitute the high judicial character with which he was invested to the low purpose of an electioneering partisan.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any further articles, or other accusation or impeachment against the said Samuel Chase, and also of replying to his answers which he shall make until the said articles, or any of them, and of offering proof to all and every aforesaid articles, and to all and every other articles, impeachment, or accusation, which shall be exhibited by them as the case shall require, do demand that the said Samuel Chase may be put to answer the said crimes and misdemeanors, and that such proceedings, examinations, trials, and judgments may be thereupon bad and given as are agreeable to law and justice.

After the reading of the article[1] the President notified the managers that the Senate would take proper order on the subject of the impeachment, of which due notice should be given to the House of Representatives.

The managers delivered the articles of impeachment at the table and withdrew.

Thereupon the high court of impeachment adjourned.

The managers having returned to the House, Mr. Randolph, their chairman, reported[2] that they did this day carry to the Senate the articles if impeachment agreed to by this House on the 4th instant, and that the said managers were informed by the Senate that their House would take proper measures relative to the said impeachment, of which this House should be duly notified.

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[1] The articles are not given in the Senate Journal (p. 510) on the day of their presentation, so the signatures of the Speaker and Clerk do not appear.

[2] House Journal, p. 47.

Having laid the article impeaching Judge Peck on the Senate table, the managers returned and reported verbally to the House.

The article of impeachment against Judge Peck having been presented, the Senate ordered a writ of summons to issue, and informed the House thereof.

After which the managers rose, and Mr. Buchanan, their chairman, read the following article, which appears in full in the journal of the impeachment:

Article Exhibited by the House of Representatives of the United States, in the name of themselves, and of all the people of the United States, against James H. Peck, Judge of the District Court of the United States for the district of Missouri, in maintenance and support of their impeachment against him for high misdemeanors in office.

ARTICLE.

That the said James H. Peck, judge of the district court of the United States for the district of Missouri, at a term of the said court, holden at St. Louis, in the State of Missouri, on the 4th Monday in December, 1825, did, under and by virtue of the power and authority vested in the said court, by the act of the Congress of the United States, entitled "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims," approved on the 26th day of May, 1824, render a final decree of the said court in favor of the United States, and against the validity of the claim of the petitioners, in a certain matter or cause depending in the said court, under the said act, and before that time prosecuted in the said court, before the said judge, by Julie Soulard, widow of Antoine Soulard, and James G. Soulard, Henry G. Soulard, Eliza Soulard, and Benjamin A. Soulard, children and heirs at law of said Antoine Soulard, petitioners against the United States, praying for the confirmation of their claim, under the said act, to certain lands situated in the said State of Missouri; and the said court did, thereafter, on the 3t0h day of December, in said year, adjourn to sit again on the third Monday in April, 1826.

And the said petitioners did, and at the December term of the said court, holden by and before the said James H. Peck, judge as aforesaid, in due form of law, under the said act, appeal against the United States from the judgment and decree so made and entered in the said matter, to the Supreme Court of the United States; of which appeal, so made and taken in the said district court, the said James H. Peck, judge of the said court, had then and there full notice. And the said James H. Peck, after the said matter or cause had so been duly appealed to the Supreme Court of the United States and on or about the 30th day of March, 1826, did cause to be published, in a certain public newspaper, printed at the city of St. Louis, called "The Missouri Republican," a certain communication, prepared by the said James H. Peck, purporting to be the opinion of the said James H. Peck, as judge of the said court, in the matter or cause aforesaid, and purporting to set forth the reasons of the said James H. Peck, as such judge, for the said decree; and that Luke Edward Lawless, a citizen of the United States, and an attorney and counsellor at law in the said district court, and who had been of counsel for the petitioners in the said court, in the matter aforesaid, did, thereafter, and on or about the 8th day of April, 1826, cause to be published in a certain other newspaper, printed at the city of St. Louis, called "The Missouri Advocate and St. Louis Enquirer," a certain article signed "A Citizen," and purporting to contain an exposition of certain errors of doctrine and fact alleged to be contained in the opinion of the said James H. Peck, as before that time so published, which

publication by the said Luke Edward Lawless was to the effect following, viz:

"*To the Editor:*

"SIR: I have read, with the attention which the subject deserves, the opinion of Judge Peck on the claim of the widow and heirs of Antoine Soulard, published in the Republican of the 30th ultimo. I observe that, although the judge has thought proper to decide against the claim, he leaves the grounds of his decree open for further discussion.

"Availing myself, therefore, of this permission, and considering the opinion so published to be a fair subject of examination to every citizen who feels himself interested in, or aggrieved by, its operation, I beg leave to point the attention of the public to some of the principal errors which I think I have discovered in it. In doing so, I shall confine myself to little more than an enumeration of those errors, without entering into any demonstration or developed reasoning on the subject. This would require more space than a newspaper allows, and, besides, is not, as regards most of the points, absolutely necessary.

"Judge Peck, in this opinion, seems to me to have erred in the following assumptions, as well of fact as of doctrine:

"1. That, by the ordinance of 1754, a subdelegate was prohibited from making a grant in consideration of services rendered or to be rendered.

"2. That a subdelegate in Louisiana was not a subdelegate, as contemplated by the said ordinance.

"3. That O'Reily's regulations, made in February, 1770, can be considered as demonstrative of the extent of the granting power of either the governor-general or the subdelegates, under the royal order of August, 1790.

"4. That the royal order of August, 1770 (as recited or referred to in the preamble to the regulations of Morales, of July, 1799), related exclusively to the governor-general.

"5. That the word 'mercedes,' in the ordinance of 1754, which, in the Spanish language, means 'gifts,' can be narrowed, by anything in that ordinance, or in any other law, to the idea of a grant to an Indian, or a reward to an informer, and much less to a mere sale for money.

"6. That O'Reily's regulations were in their terms applicable, or ever were in fact applied to, or published in, upper Louisiana.

"7. That the regulations of O'Reily have any bearing on the grant to Antoine Soulard, or that such a grant was contemplated by them.

"8. That the limitations to a square league of grants to new settlers in Opelousas, Attakapas, and Natchitoches (in eighth article of O'Reily's regulations) prohibits a larger grant in upper Louisiana.

"9. That the regulations of the governor-general, Gayoso, dated 9th September, 1797, entitled 'Instructions to be observed for the admission of new settlers,' prohibit, in future, a grant for services, or have the effect of annulling that to Antoine Soulard, which was made in 1796, and not located or surveyed until February, 1804.

"10. That the complete titles made by Gayoso are not to be referred to as affording the construction made by Gayoso himself, of his own regulations.

"11. That, although the regulations of Morales were not promulgated as law in upper Louisiana, the grantee in the principal case was bound by them, inasmuch as he had notice, or must be presumed, 'from the official station which he held,' to have had notice, of their terms.

"12. That the regulations of Morales 'exclude all belief that any law existed under which a confirmation of the title in question could have been claimed.'

"13. That the complete titles (produced to the court) made by the governor-general, or the intendant-general, though based on incomplete titles, not conformable to the regulations of O'Reily, Gayoso, or Morales, afford no inference in favor of the power of the lieutenant-governor, from whom these incomplete titles emanated, and must be considered as anomalous exercises of power in favor of individual grantees.

"14. That the language of Morales himself, in the complete titles issued by him, on concessions made by the lieutenant-governor of upper Louisiana, anterior to the date of his regulations, ought not to be referred to as furnishing the construction which he, Morales, put on his own regulations.

"15. That the uniform practice of the subdelegates, or lieutenant-governor of upper Louisiana, from the first establishment of that province to the 10th March, 1804, is to be disregarded as proof of law, usage, or custom therein.

"16. That the historical fact that nineteen-twentieths of the titles to lands in upper Louisiana were not only incomplete but not conformable to the regulations of O'Reily, Gayoso, or Morales at the date of the cession to the United States, affords no inference in favor of the general legality of those titles.

"17. That the fact that incomplete concessions, whether floating or located, were, previous to the cession, treated and considered by the Government and population of Louisiana as property, salable, transferable, and the subject of inheritance and distribution ab intestato, furnishes no inference in favor of those titles, or to their claim to the protection of the treaty of cession, or of the law of nations.

"18. That the laws of Congress heretofore passed in favor of incomplete titles furnish no argument or protecting principle in favor of those titles of a precisely similar character, which remain unconfirmed.

"In addition to the above, a number of other errors, consequential on those indicated, might be stated. The judge's doctrine as to the forfeiture which he contends is inflicted by Morales's regulations, seems to me to be peculiarly pregnant with grievous consequences. I shall, however, not tire the reader with any further enumeration, and shall detain him only to observe, by way of conclusion, that the judge's recollection of the argument of the counsel for the petitioner, as delivered at the bar, differs materially from what I can remember, who also heard it. In justice to the counsel I beg to observe that all that I have now submitted to the public has been suggested by that argument as spoken, and by the printed report of it, which is even now before me.

"A CITIZEN."

And the said James H. Peck, judge as aforesaid, unmindful of the solemn duties of his station, and that he held the same, by the Constitution of the United States, during good behavior only, with intention wrongfully and unjustly to oppress, imprison, and otherwise injure the said Luke Edward Lawless, under color of law, did, thereafter, at a term of the said district court of the United States for the district of Missouri, begun and held at the city of St. Louis, in the State of Missouri, on the 3d Monday in April, 1826, arbitrarily, oppressively, and unjustly, and under the further color and pretense that the said Luke Edward Lawless was answerable to the said court for the said publication signed "A Citizen," as for a contempt thereof, institute, in the said court, before him, the said James H. Peck, judge as aforesaid, certain proceedings against the said Luke Edward Lawless, in a summary way, by attachment issued for that purpose by the order of the said James H. Peck, as such judge, against the person of the said Luke Edward Lawless, touching the said pretended contempt, under and by virtue of which said attachment the said Luke Edward Lawless was, on the 21st day of April, 1826, arrested, imprisoned, and brought into the said court, before the said judge, in the custody of the marshal of the said State; and the said James H. Peck, judge as aforesaid, did, afterwards, on the same day, under the color and pretenses aforesaid, and with the intent aforesaid, in the said court, then and there, unjustly, oppressively, and arbitrarily, order and adjudge that the said Luke Edward Lawless, for the cause aforesaid, should be committed to prison for the period of twenty-four hours, and that he should be suspended from practicing as an attorney or counsellor at law in the said district court for the period of eighteen calendar months from that day, and did then and there further cause the said unjust and oppressive sentence to be carried into execution; and the said Luke Edward Lawless was, under color of the said sentence, and by the order of the said James H. Peck, judge as aforesaid, thereupon suspended from practicing as such attorney or counsellor in the said court for the period aforesaid, and immediately committed to the common prison in the said city of St. Louis, to the great disparagement of public justice, the abuse of judicial authority, and to the subversion of the liberties of the people of the United States.

And the House of Representatives by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any further articles, or other accusations of impeachment, against the said James H. Peck, and also of replying to his answers which he shall make unto the article herein preferred against him, and of offering proof to the same, and every part thereof, and to all and every other articles, accusation, or impeachment, which shall be exhibited by them as the case shall require, do demand that the said James H. Peck may be

put to answer the misdemeanor herein charged against him, and that such proceedings, examinations, trials, and judgments, may be thereupon had and given, and may be agreeable to law and justice.

A. STEVENSON,
Speaker of the House of Representatives, United States.

Attest:
M. ST. CLAIR CLARKE,
Clerk, House of Representatives, United States.

This message was duly delivered in the House, and presently four of the managers appointed by the House of Representatives, namely, Mr. Bingham, Mr. Pendleton, Mr. Train, and Mr. Dunlap (Mr. Hickman not being present), appeared below the bar.

Mr. Bingham advanced and said:

Mr. President, myself and associates are managers appointed by the House of Representatives, and instructed in their name to appear at the bar of the Senate, and present articles of impeachment against West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee, for high crimes and misdemeanors.

The VICE-PRESIDENT. The managers on the part of the House of Representatives will please be seated, at seats prepared for them within the bar of the Senate.

The managers were conducted to the seats prepared for them in the area between the Secretary's desk and the seats of the Senators.

The VICE-PRESIDENT. The Sergeant-at-Arms of the Senate will now make the usual proclamation,

The Sergeant-at-Arms, GEORGE T. BROWN, Esq. Oyez! oyez! oyez! All persons are commanded to keep silence on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States articles of impeachment against West H. Humphreys, judge of the district court of the United States for the districts of Tennessee.

Mr. Bingham (all the managers standing) read the articles of impeachment, as follows:

Articles exhibited by the House of Representatives of the United States in the name of themselves and of all the people of the United States against West H. Humphreys, judge of the district court of the United States for the several districts of the State of Tennessee, in maintenance and support of their impeachment against him for high crimes and misdemeanors.

ARTICLE 1. That, regardless of his duties as a citizen of the United States, and unmindful of the duties of his said office, and in violation of the sacred obligation of his official oath "to administer justice without respect to persons," "and faithfully and impartially discharge all of the duties incumbent upon him as judge of the district court of the United States for the several districts of the State of Tennessee agreeable to the Constitution and laws of the United States," the said West H. Humphreys, on the 29th day of December, A.D. 1860, in the city of Nashville, in said State, the said West H. Humphreys then being a citizen of the United States, and owing allegiance thereto, and then and there being judge of the district court of the United States for the several districts of said State, at a public meeting, on the day and year aforesaid, held in said city of Nashville, and in the hearing of divers persons then there present, did endeavor by public speech to incite revolt and rebellion within said State against the Constitution and Government of the United States, and did then and there publicly declare that it was the right of the people of said State, by an ordinance of secession, to absolve themselves from all allegiance to the Government of the United States, the Constitution and laws thereof.

ART. 2. That, in further disregard of his duties as a citizen of the United States, and unmindful of the solemn obligations of his office as judge of the district court of the United States for the several districts of the State of Tennessee, and that he held his said office, by the Constitution of the United States, during good behavior only, with intent to abuse the high trust reposed in him

as such judge, and to subvert the lawful authority and Government of the United States within said State, the said West H. Humphreys, then being judge of the district court of the United States, as aforesaid, to wit, in the year of our Lord 1861, in said State of Tennessee, did, together with other evil-minded persons within said State, openly and unlawfully support, advocate, and agree to an act commonly called an ordinance of secession, declaring the State of Tennessee independent of the Government of the United States, and no longer within the jurisdiction thereof.

ART. 3. That in the years of our Lord 1861 and 1862, within the United States, and in said State of Tennessee, the said West H. Humphreys, then owing allegiance to the United States of America, and then being district judge of the United States, as aforesaid, did then and there, to wit: within said State, unlawfully, and in conjunction with other persons, organize armed rebellion against the United States and levy war against them.

ART. 4. That on the 1st day of August, A.D. 1861, and on divers other days since that time, within said State of Tennessee, the said West H. Humphreys, then being judge on the district court of the United States, as aforesaid, and J. C. Ramsay, and Jefferson Davis, and others, did unlawfully conspire together "to oppose by force the authority of the Government of the United States," contrary to his duty as such judge and to the laws of the United States.

ART. 5. That said West H. Humphreys, with intent to prevent the due administration of the laws of the United States within said State of Tennessee, and to aid and abet the overthrow of "the authority of the Government of the United States" within said State, has, in gross disregard of his duty as judge of the district court of the United States, as aforesaid, and in violation of the laws of the United States, neglected and refused to hold the district court of the United Sates, as by law he was required to do, within the several districts of the State of Tennessee, ever since the 1st day of July, A.D. 1861.

ART. 6. That the said West H. Humphreys, in the year of our Lord 1861, within the State of Tennessee, and with intent to subvert the authority of the Government of the United States, to hinder and delay the due execution of the laws of the United States, and to oppress and injure citizens of the United States, did unlawfully act as judge of an illegally constituted tribunal within said State, called the district court of the Confederate States of America, and as judge of said tribunal last named said West H. Humphreys, with the intent aforesaid, then and there assumed and exercised powers unlawful and unjust, to wit, in causing one Perez Dickinson, a citizen of said State, to be unlawfully arrested and brought before him, as judge of said alleged court of said Confederate States of America, and required him to swear allegiance to the pretended government of said Confederate States of America; and upon the refusal of said Dickinson so to do, the said Humphreys, as judge of said illegal tribunal, did unlawfully, and with the intent to oppress said Dickinson, require and receive of him a bond, conditioned that while he should remain within said State he would keep the peace, and as such judge of said illegal tribunal, and without authority of law, said Humphreys there and then decreed that said Dickinson should leave said State.

2. In decreeing within said State, and as judge of said illegal tribunal, the confiscation to the use of said Confederate States of America of property of citizens of the United States, and especially of property of one Andrew Johnson and one John Catron.

3. In causing, as judge of said illegal tribunal, to be unlawfully arrested and imprisoned within said State citizens of the United States because of their fidelity to their obligations as citizens of the United States, and because of their rejection of, and their resistance to, the unjust and assumed authority of said Confederate States of America.

ART. 7. That said West H. Humphreys, judge of the district court of the United States as aforesaid, assuming to act as judge of said tribunal known as the district court of the Confederate States of America, did, in the year of our Lord 1861, without lawful authority, and with intent to injure one William G. Brownlow, a citizen of the United States, cause said Brownlow to be unlawfully arrested and imprisoned within said State in violation of the rights of said Brownlow as a citizen of the United States, and of the duties of said Humphreys as a district judge of the United States.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles, or other accusation or impeachment against the said West H. Humphreys, and also of replying

to his answers which he shall make unto the articles herein preferred against him, and of offering proof to the same and every part thereof, and to all and every other article, accusation, or impeachment which shall be exhibited by them as the case shall require, do demand that the said West H. Humphreys may be put to answer the high crimes and misdemeanors herein charged against him, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

GALUSHA A. GROW,
Speaker House of Representatives.

Attest:
EMERSON ETHERIDGE
Clerk House of Representatives.

IMPEACHMENT OF SECRETARY WILLIAM W. BELKNAP

On April 4,[1] in the House, the Secretary of the Senate delivered this message:

I am directed to inform the House that the Senate is ready to receive the managers appointed by the House of Representatives to carry to the Senate articles of impeachment against William W. Belknap, Secretary of War.

Soon after the receipt of this message Mr. Manager Lord, rising to a question of privilege,[2] asked if it was the wish of the House to accompany the managers in the presentation of the articles of impeachment. It was recalled that in the cases of Judge Humphreys and President Johnson the House had accompanied the managers; but, on the other hand, it was pointed out that the message of the Senate referred only to the managers. No proposition that the House attend was made and the matter dropped.

Soon after, in the Senate,[3] the managers of the impeachment on the part of the House of Representatives appeared at the bar (at 1 o'clock and 25 minutes p. m.) and their presence was announced by the Sergeant-at-Arms.

The PRESIDENT pro tempore. The managers on the part of the House of Representatives are admitted and the Sergeant-at-Arms will conduct them to seats provided for them within the bar of the Senate.

The managers were thereupon escorted by the Sergeant-at-Arms of the Senate to the seats assigned to them in the area in front of the Chair.

Mr. Manager LORD. Mr. President, the managers on the part of the House of Representatives are ready to exhibit on the part of the House articles of impeachment against William W. Belknap, late Secretary of War.

The PRESIDENT pro tempore. The Sergeant-at-Arms will make proclamation.

The SERGEANT-AT-ARMS. Hear ye, hear ye, hear ye. All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against William W. Belknap, late Secretary of War.

Mr. Manager Lord rose and read the articles of impeachment,[4] as follows:

Articles exhibited by the House of Representatives of the United States of America in the names of themselves and of all the people of the United States of America, against William W. Belknap, late Secretary of War, in maintenance and support of their impeachment against him for high crimes and misdemeanors while in said office.

ARTICLE I.

That William W. Belknap, while he was in office as Secretary of War of the United States of America, to wit, on the 8th day of October, 1870, had the power and authority, under the laws of the United States, as Secretary of War, as afore-

[1] House Journal, p. 743; Record, p. 2182.
[2] Record, p. 2184.
[3] Senate Journal, pp. 383–390; Record, pp. 2178–2180.
[4] These articles appear in full in the Senate Journal.

said, to appoint a person to maintain a trading establishment at Fort Sill, a military post of the United States; that said Belknap, as Secretary of War, as aforesaid, on the day and year aforesaid, promised to appoint one Caleb P. Marsh to maintain said trading establishment at said military post; that thereafter, to wit, on the day and year aforesaid, the said Caleb P. Marsh and one John S. Evans entered into an agreement in writing substantially as follows, to wit:

Articles of agreement made and entered into this 8th day of October, A. D. 1870, by and between John S. Evans, of Fort Sill, Indian Territory, United States of America, of the first part, and Caleb P. Marsh, of No. 51 West Thirty-fifth street, of the city, county, and State of New York, of the second part, witnesseth, namely:

"Whereas the said Caleb P. Marsh has received from Gen. William W. Belknap, Secretary of War of the United States, the appointment of posttrader at Fort Sill, aforesaid; and whereas the name of said John S. Evans is to be filled into the commission of appointment of said posttrader at Fort Sill, aforesaid, by permission and at the instance and request of said Caleb P. Marsh and for the purpose of carrying out the terms of this agreement; and whereas said John S. Evans is to hold said position of posttrader, as aforesaid, solely as the appointee of said Caleb P. Marsh and for the purposes hereinafter stated:

"Now, therefore, said John S. Evans, in consideration of said appointment and the sum of $1 to him in hand paid by said Caleb P. Marsh, the receipt of which is hereby acknowledged, hereby covenants and agrees to pay to said Caleb P. Marsh the sum of $12,000 annually, payable quarterly in advance, in the city of New York, aforesaid; said sum to be so payable during the first year of this agreement absolutely and under all circumstances, anything hereinafter contained to the contrary notwithstanding; and thereafter said sum shall be so payable, unless increased or reduced in amount, in accordance with the subsequent provisions of this agreement.

"In consideration of the premises, it is mutually agreed between the parties aforesaid as follows, namely:

"First. This agreement is made on the basis of seven cavalry companies of the United States Army, which are now stationed at Fort Sill aforesaid.

"Second. If at the end of the first year of this agreement the forces of the United States Army stationed at Fort Sill, aforesaid, shall be increased or diminished not to exceed one hundred men, then this agreement shall remain in full force and unchanged for the next year. If, however, the said forces shall be increased or diminished beyond the number of one hundred men, then the amount to be paid under this agreement by said John S. Evans to said Caleb P. Marsh shall be increased or reduced in accordance therewith and in proper proportion thereto. The above rule laid down for the continuation of this agreement at the close of the first year thereof shall be applied at the close of each succeeding year so long as this agreement shall remain in force and effect.

"Third. This agreement shall remain in force and effect so long as said Caleb P. Marsh shall hold or control, directly or indirectly, the appointment and position of posttrader at Fort Sill, aforesaid.

"Fourth. This agreement shall take effect from the date and day the Secretary of war, aforesaid, shall sign the commission of posttrader at Fort Sill, aforesaid, said commission to be issued to said John S. Evans at the instance and request of said Caleb P. Marsh and solely for the purpose of carrying out the provisions of this agreement.

"Fifth. Exception is hereby made in regard to the first quarterly payment under this agreement, it being agreed and understood that the same may be paid at any time within the next thirty days after the said Secretary of War shall sign the aforesaid commission of posttrader at Fort Sill.

"Sixth. Said Caleb P. Marsh is at all times, at the request of said John E. Evans, to use any proper influence he may have with said Secretary of War for the protection of said John S. Evans while in the discharge of his legitimate duties in the conduct of the business as posttrader at Fort Sill, aforesaid.

"Seventh. Said John S. Evans is to conduct the said business of posttrader at Fort Sill, aforesaid, solely on his own responsibility and in his own name, it being expressly agreed and understood that said Caleb P. Marsh shall assume no liability in the premises whatever.

"Eighth. And it is expressly understood and agreed that the stipulations and convenants aforesaid are to apply to and bind the heirs, executors, and administrators of the respective parties.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

"JOHN S. EVANS, [SEAL.]
"C. P. MARSH, [SEAL.]

"Signed, sealed, and delivered in presence of—
"E. T. BARTLETT."

That thereafter, to wit, on the 10th day of October, 1870, said Belknap, as Secretary of War, aforesaid, did, at the instance and request of said Marsh, at the city of Washington, in the District of Columbia, appoint said John S. Evans to maintain said trading establishment at Fort Sill, the military post aforesaid, and in consideration of said appointment of said Evans, so made by him as Secretary of War, as aforesaid, the said Belknap did, on or about the 2d day of November, 1870, unlawfully and corruptly receive from said Caleb P. Marsh the sum of $1,500, and that at divers times thereafter, to wit, on or about the 17th of January, 1871, and at or about the end of each three months during the term of one whole year, the said William W. Belknap, while still in office as Secretary of War, as aforesaid, did unlawfully receive from said Caleb P. Marsh like sums of $1,500, in consideration of the appointment of the said John S. Evans by him, the said Belknap, as Secretary of War, as aforesaid, and in consideration of his permitting said Evans to continue to maintain the said trading establishment at said military post during that time; whereby the said William W. Belknap, who was then Secretary of War, as aforesaid, was guilty of high crimes and misdemeanors in office.

ARTICLE II.

That said William W. Belknap, while he was in office as Secretary of War of the United States of America, did, at the city of Washington, in the District of Columbia, on the 4th day of November, 1873, willfully, corruptly, and unlawfully take and receive from one Caleb P. Marsh the sum of $1,500, in consideration that he would continue to permit one John S. Evans to maintain a trading establishment at Fort Sill, a military post of the United States, which said establishment said Belknap, as Secretary of War, as aforesaid, was authorized by law to permit to be maintained at said military post, and which the said Evans had been before that time appointed by said Belknap to maintain; and that said Belknap, as Secretary of War, as aforesaid, for said consideration, did corruptly permit the said Evans to continue to maintain the said trading establishment at said military post. And so the said Belknap was thereby guilty, while he was Secretary of War, of a high misdemeanor in his said office.

ARTICLE III.

That said William W. Belknap was Secretary of War of the United States of America before and during the month of October, 1870, and continued in office as such Secretary of War until the 2d day of March, 1876; that as Secretary of War as aforesaid said Belknap had authority, under the laws of the United States, to appoint a person to maintain a trading establishment at Fort Sill, a military post of the United States, not in the vicinity of any city or town; that on the 10th day of October, 1870, said Belknap, as Secretary of War as aforesaid, did, at the city of Washington, in the District of Columbia, appoint one John S. Evans to maintain said trading establishment at said military post; and that said John S. Evans, by virtue of said appointment, has since, till the 2d day of March, 1876, maintained a trading establishment at said military post, and that said Evans, on the 8th day of October, 1870, before he was so appointed to maintain said trading establishment as aforesaid, and in order to procure said appointment and to be continued therein, agreed with one Caleb P. Marsh that, in consideration that said Belknap would appoint him, the said Evans, to maintain said trading establishment at said military post, at the instance and request of said Marsh, he, the said Evans, would pay to him a large sum of money, quarterly, in advance, from the date of his said appointment by said Belknap, to wit, $12,000 during the year immediately following the 10th day of October, 1870, and other large sums of money, quarterly, during each year that he, the said Evans, should be permitted by said Belknap to maintain said trading establishment at said post; that said Evans did pay to said Marsh said sum of money quarterly during each year after his said appointment, until the month of December, 1875, when the last of said payments was made; that said Marsh, upon the receipt of each of said payments, paid one-half thereof to him, the said

Belknap. Yet the said Belknap, well knowing these facts, and having the power to remove said Evans from said position at any time, and to appoint some other person to maintain said trading establishment, but criminally disregarding his duty as Secretary of War, and basely prostituting his high office to his lust for private gain, did unlawfully and corruptly continue said Evans in said position and permit him to maintain said establishment at said military post during all of said time, to the great injury and damage of the officers and soldiers of the Army of the United States stationed at said post, as well as of emigrants, freighters, and other citizens of the United States, against public policy, and to the great disgrace and detriment of the public service.

Whereby the said William W. Belknap was, as Secretary of War as aforesaid, guilty of high crimes and misdemeanors in office.

ARTICLE IV.

That said William W. Belknap, while he was in office and acting as Secretary of War of the United States of America, did, on the 10th day of October, 1870, in the exercise of the power and authority vested in him as Secretary of War as aforesaid by law, appoint one John S. Evans to maintain a trading establishment at Fort Sill, a military post of the United States, and he, the said Belknap, did receive, from one Caleb P. Marsh, large sums of money for and in consideration of his having so appointed said John S. Evans to maintain said trading establishment at said military post, and for continuing him therein, whereby he has been guilty of high crimes and misdemeanors in his said office.

Specification 1.—On or about the 2d day of November, 1870, said William W. Belknap, while Secretary of War as aforesaid, did receive from Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and for continuing him therein.

Specification 2.—On or about the 17th day of January, 1871, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and for continuing him therein.

Specification 3.—On or about the 18th day of April, 1871, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 4.—On or about the 25th day of July, 1871, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 5.—On or about the 10th day of November, 1871, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 6.—On or about the 15th day of January, 1872 the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 7.—On or about the 18th day of June, 1872, the said William W. Belknap, while Secretary of War as afsoresaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 8.—On or about the 22d day of November, 1872, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 9.—On or about the 28th day of April, 1873, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh, $1,000, in consideration of his having appointed said John S. Evans to

maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 10.—On or about the 16th day of June, 1873, the said William W. Balknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,700, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 11.—On or about the 4th day of November, 1873, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 12.—On or about the 22d day of January, 1874, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 13.—On or about the 10th day of April, 1874, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 14.—On or about the 9th day of October, 1874, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 15.—On or about the 24th day of May, 1875, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 16.—On or about the 17th day of November, 1875, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 17.—On or about the 15th day of January, 1876, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $750, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

ARTICLE V.

That one John S. Evans was, on the 10th day of October, in the year of 1870, appointed by the said Belknap to maintain a trading establishment at Fort Sill, a military post on the frontier, not in the vicinity of any city or town, and said Belknap did, from that day continuously to the 2d day of March, 1876, permit said Evans to maintain the same; and said Belknap was induced to make said appointment by the influence and request of one Caleb P. Marsh; and said Evans paid to said Marsh, in consideration of such influence and request and in consideration that he should thereby induce said Belknap to make said appointment, divers large sums of money at various times, amounting to about $12,000 a year from the date of said appointment to the 25th day of March, 1872, and to about $6,000 a year thereafter until the 2d day of March, 1876, all which said Belknap well knew; yet said Belknap did, in consideration that he would permit said Evans to continue to maintain said trading establishment and in order that said payments might continue and be made by said Evans to said Marsh as aforesaid, corruptly receive from said Marsh, either to his, the said Belknap's, own use or to be paid over to the wife of said Belknap, divers large sums of money at various times, namely: The sum of $1,500 on or about the 2d day of November, 1870; the sum of $1,500 on or about the 17th day of January, 1871; the sum of $1,500 on or about the 18th day of April, 1871,; the sum of $1,500 on or about the 25th day of July, 1871; the sum of $1,500 on or about the 10th day of November, 1871; the sum of $1,500 on or about the 15th day of January, 1872; the sum of $1,500 on or about the 13th day of June, 1872; the sum of $1,500 on or about

the 22d day of November, 1872; the sum of $1,000 on or about the 28th day of April, 1873; the sum of $1,700 on or about the 16th day of June, 1873; the sum of $1,500 on or about the 4th day of November, 1873; the sum of $1,500 on or about the 22d day of January, 1873; the sum of $1,500 on or about the 10th day of April, 1874; the sum of $1,500 on or about the 9th day of October, 1874; the sum of $1,500 on or about the 24th day of May, 1875; the sum of $1,500 on or about the 17th day of November, 1875; the sum of $750 on or about the 15th day of January, 1876; all of which acts and doings were while the said Belknap was Secretary of War of the United States as aforesaid, and were a high misdemeanor in said office.

And the House of Representatives by protestation, saying to themselves the liberty of exhibiting at any time hereafter any further articles of accusation or impeachment against the said William W. Belknap, late Secretary of War of the United States, and also of replying to his answers which he shall make unto the articles herein preferred against him, and of offering proof to the same and every part thereof, and to all and every other article, accusation, or impeachment which shall be exhibited by them, as the case shall require, do demand that the said William W. Belknap may be put to answer the high crimes and misdemeanors in office herein charged against him, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

MICHAEL C. KERR,
Speaker of the House of Representatives.

Attest:
GEO. M. ADAMS,
Clerk of the House of Representatives.

The PRESIDENT pro tempore. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms (D. M. Ransdell) made proclamation as follows:

Hear ye, hear ye, hear ye, All persons will keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against Charles Swayne, judge of the district court of the United States for the northern district of Florida.

Mr. Manager PALMER. Mr. President.

The PRESIDENT pro tempore. Mr. Manager.

Mr. Manager PALMER. The managers on the part of the House of Representatives are ready to exhibit articles of impeachment against Charles Swayne, district judge of the United States in and for the northern district of Florida, as directed by the House, in the words and figures following:[1]

Articles exhibited by the House of Representatives of the United States of America, in the name of themselves and of all the people of the United States of America, against Charles Swayne, a judge of the United States, in and for the northern district of Florida, in maintenance and support of their impeachment against him for high crimes and misdemeanor in office.

ARTICLE 1. That the said Charles Swayne, at Waco, in the State of Texas, on the 20th day of April, 1897, being then and there a United States district judge in and for the northern district of Florida, did then and there, as said judge, make and present to R. M. Love, then and there being the United States marshal in and for the northern district of Texas, a false claim against the Government of the United States in the sum of $230, then and there knowing said claim to be false, and for the purpose of obtaining payment of said false claim, did then and there as said judge, make and use a certain false certificate then and there knowing said certificate to be false, said certificate being in the words and figures following:

"UNITED STATES OF AMERICA, *Northern District of Texas, ss:*

"I, Charles Swayne, district judge of the United States for the northern district of Florida, do hereby certify that I was directed to and held court at the city of Waco, in the northern district of Texas, twenty-three days, commencing on the 20th day of April, 1897; also, that the time engaged in holding said court, and in going to and returning from the same, was twenty-three days, and that my reasonable expenses for travel and attendance amounted to the sum of two hundred and thirty dollars and ——— cents, which sum is justly due me for such attendance and travel.

"CHAS. SWAYNE, *Judge.*

"WACO, *May 15, 1897.*

"Received of R. M. Love, United States marshal for the northern district of Texas, the sum of 230 dollars and no cents in full payment of the above account.

"230.

"CHAS. SWAYNE."

when in truth and in fact, as the said Charles Swayne then and there well knew, there was then and there justly due the said Swayne from the Government of the United States and from said United States marshal a far less sum,

[1] The articles were enrolled on parchment, following the practice of the early trials. In the later trials of Johnson and Belknap the articles had been engrossed on ordinary white paper.

whereby he has been guilty of a high crime and misdemeanor in his said office.

ART. 2. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office as judge, as aforesaid, the said Charles Swayne was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not to exceed $10 per diem, to be paid upon his certificate by the United States marshal for the district in which the court was held, and was forbidden by law to receive compensation for such services. That the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel and attendance were $10 per diem while holding court at Tyler, Tex., twenty-four days commencing December 3, 1900, and seven days going to and returning from said Tyler, Tex., and received therefor from the Treasury of the United States, by the hand of John Grant, the United States marshal for the eastern district of Texas, the sum of $310, when the reasonable expenses incurred and paid by the said Charles Swayne for travel and attendance did not amount to the sum of $10 per diem.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, the crime of obtaining money from the United States by a false pretense, and of a high misdemeanor in office.

ART. 3. That the said Charles Swayne having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office of judge as aforesaid was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not to exceed $10 per diem, to be paid upon his certificate by the United States marshal of the district in which the court was held, and was forbidden by law to receive any compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel in going to and coming from and attendance were $10 per diem while holding court at Tyler, Tex., thirty-five days from January 12, 1903, and six days going to and returning from said Tyler, Tex., and received therefor from the Treasury of the United States, by the hand of A. J. Houston, the United States marshal for the eastern district of Texas, the sum of $410, when the reasonable expenses of the said Charles Swayne incurred and paid by him during said period were much less than said sum.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, obtaining money from the United States by a false pretense, and of a high misdemeanor in office.

ART. 4. That the said Charles Swayne having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office as judge as aforesaid heretofore, to wit, A.D. 1893, did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car, belonging to the Jacksonville, Tampa and Key West Railroad Company, for the purpose of transporting himself, his family, and friends from Guyencourt, in the State of Delaware, to Jacksonville, Fla., the said railroad company being at the time in the possession of a receiver appointed by said Charles Swayne, judge as aforesaid, on the petition of creditors.

The said car was supplied with provisions by the said receiver, which were consumed by said Swayne and his friends, and was provided with a conductor or porter at the cost and expense of said railroad company, and with transportation over connecting lines. The expenses of the trip were paid by the said receiver out of the funds of the said Jacksonville, Tampa and Key West Railroad Company, and the said Charles Swayne, acting as judge, allowed the credit claimed by the said receiver for and on account of the said expenditure as a part of the necessary expenses of operating said road. The said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner, and under a claim of right, for the reason that the same was in the hands of a receiver appointed by him.

Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 5. That the said Charles Swayne was duly appointed, commissioned, and confirmed as judge of the United States in and for the northern district of Florida,

and entered upon the duties of said office, and while in the exercise of his office as aforesaid heretofore, to wit, A.D. 1898, did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa and Key West Railroad Company for the purpose of transporting himself, his family, and friends from Jacksonville, Fla., to California, said railroad company being at the time in the possession of a receiver appointed by the said Charles Swayne, judge as aforesaid, on the petition of creditors.

The car was supplied with some provisions by the said receiver, which were consumed by the said Swayne and his friends, and it was provided with a porter at the cost and expense of the railroad company and also with transportation over connecting lines. The wages of said porter and the cost of said provisions were paid by the said receiver out of the funds of the Jacksonville, Tampa and Key West Railroad Company, and the said Charles Swayne, acting as judge as aforesaid, allowed the credits claimed by the said receiver for and on account of the said expenditures as a part of the necessary expenses of operating the said railroad. The said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner under a claim of right, alleging that the same was in the hands of a receiver appointed by him and he therefore had a right to use the same.

Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of high misdemeanor in office.

ART. 6. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district of Florida on the 1st day of April, A. D. 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, A. D. 1890, took the oath of office and assumed the duties of his appointment, and established his residence at the city of St. Augustine, in the State of Florida, which was at that time within the said northern district. That subsequently, by an act of Congress approved the 23d of July, A. D. 1894, the boundaries of the said northern district of Florida were changed, and the city of St. Augustine and contiguous territory were transferred to the southern district of Florida; whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida and to comply with the five hundred and fifty-first section of the Revised Statutes of the United States, which provides that—

"A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor."

Nevertheless the said Charles Swayne, judge as aforesaid, did not acquire a residence, and did not, within the intent and meaning of said act, reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day of October, A. D. 1900, a period of about six years.

Wherefore, the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law and was and is guilty of a high misdemeanor in office.

ART. 7. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district of Florida on the 1st day of April, A.D. 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, A.D. 1890, took the oath of office and assumed the duties of his appointment, and established his residence at the city of St. Augustine, in the State of Florida, which was at that time within the said northern district. That subsequently, by an act of Congress of the United States approved the 23d day of July, A.D. 1894, the boundaries of the said northern district of Florida were changed, and the city of St. Augustine, with the contiguous territory, was transferred to the southern district of Florida, whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida, as defined by said act of Congress, and to comply with section 551 of the Revised Statutes of the United States, which provides that—

"A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor."

Nevertheless, the said Charles Swayne, judge as aforesaid, totally disregarding his duty as aforesaid, did not acquire a residence, and within the intent and

meaning of said act did not reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A.D. 1894, to the 1st day of January, A.D. 1903, a period of about nine years.

Wherefore the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law, and was and is guilty of a high misdemeanor in office.

ART. 8. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge, as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the 12th day of November, A.D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of $100 upon and commit to prison for a period of ten days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 9. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States heretofore, to wit, on the 12th day of November, A.D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of a contempt of court and impose a fine of $100 upon and commit to prison for a period of ten days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the Uinted States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 10. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States heretofore, to wit, on the 12th day of November, A.D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of $100 upon and commit to prison for a period of ten days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 11. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a circuit judge of the United States heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of contempt of court and impose a fine of $100 upon and commit to prison for a period of ten days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office as judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 12. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office of judge heretofore, to wit, on the 9th day of December, A. D. 1902, at Pensacola, in the county of Escambia, in the State of Florida, did unlawfully and knowingly adjudge guilty of contempt and did commit to prison for the period of sixty days one W. C. O'Neal, for an alleged contempt of the district court of the United States for the northern district of Florida.

Wherefore the said Charles Swayne, judge aforesaid, misbehaved himself in his office of judge, as aforesaid, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

And the House of Representatives by protestation, saying to themselves the liberty of exhibiting at any time hereafter any further articles of accustation or impeachment against the said Charles Swayne, judge of the United States court for the northern district of Florida, and also of replying to his answers which he shall make unto the articles herein preferred against him, and of offering proof to the same and every part thereof, and to all and every other article or accusation or impeachment which shall be exhibited by them as the case shall require, do demand that the said Charles Swayne may be put to answer the high crimes and misdemeanors in office herein charged against him, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

J. G. CANNON,
Speaker of the House of Representatives.

Attest:
A. MCDOWELL, *Clerk.*

The Sergeant-at-Arms proclaimed:

Hear ye, hear ye, hear ye. All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against Andrew Johnson, President of the United States.

The managers then rose and remained standing, with the exception of Mr. Stevens, who was physically unable to do so, while Mr. Manager Bingham read the articles of impeachment, as follows:

Articles exhibited by the House of Representatives of the United States, in the name of themselves and all the people of the United States, against Andrew Johnson, President of the United States, in maintenance and support of their impeachment against him for high crimes and misdemeanors in office.

ARTICLE I.

That said Andrew Johnson, President of the United States, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, unmindful of the high duties of his office, of his oath of office, and of the requirement of the Constitution that he should take care that the laws be faithfully executed, did unlawfully, and in violation of the Constitution and laws of the United States, issue an order in writing for the removal of Edwin M. Stanton from the office of Secretary for the Department of War, said Edwin M. Stanton having been theretofore duly appointed and commissioned, by and with the advice and consent of the Senate of the United States, as such Secretary, and said Andrew Johnson, President of the United States, on the 12th day of August, in the year of our Lord 1867, and during the recess of said Senate, having suspended by his order Edwin M. Stanton from said office, and within twenty days after the first day of the next meeting of said Senate—that is to say, on the 12th day of December, in the year last aforesaid—having reported to said Senate such suspension, with the evidence and reasons for his action in the case and the name of the person designated to perform the duties of such office temporarily until the next meeting of the Senate, and said Senate thereafterwards, on the 13th day of January, in the year of our Lord 1868, having duly considered the evidence and reasons reported by said Andrew Johnson for said suspension, and having refused to concur in said suspension, whereby and by force of the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, said Edwin M. Stanton did forthwith resume the functions of his office, whereof the said Andrew Johnson had then and there due notice, and said Edwin M. Stanton, by reason of the premises, on said 21st day of February, being lawfully entitled to hold said office of Secretary for the Department of War, which said order for the removal of said Edwin M. Stanton is, in substance, as follows, that is to say:

"EXECUTIVE MANSION,
"*Washington, D.C., February 21, 1868.*

"SIR: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States you are hereby removed from office as Secretary for the Department of War, and your functions as such will terminate upon receipt of this communication.

"You will transfer to Brevet Maj. Gen. Lorenzo Thomas, Adjutant-General of the Army, who has this day been authorized and empowered to act as Secretary of War ad interim, all records, books, papers, and other public property now in your custody and charge.

"Respectfully, yours,

ANDREW JOHNSON.

"Hon. EDWIN M. STANTON, *Washington, D.C.*"

Which order was unlawfully issued with intent then and there to violate the act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867; and with the further intent, contrary to the provisions of said act, in violation thereof, and contrary to the provisions of the Constitution of the United States, and without the advice and consent of the Senate of the United States, the said Senate then and there being in session, to remove said Edwin M. Stanton from the office of Secretary for the Department of War, the said Edwin M. Stanton being then and there Secretary of War, and being then and there in the due and lawful execution and discharge of the duties of said office, whereby said Andrew Johnson, President of the United States, did then and there commit, and was guilty of a high misdemeanor in office.

ARTICLE II.

That on said 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, said Andrew Johnson, President of the United States, unmindful of the high duties of his office, of his oath of office, and in violation of the Constitution of the United States, and contrary to the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, without the advice and consent of the Senate of the United States, said Senate then and there being in session, and without authority of law, did, with intent to violate the Constitution of the United States and the act aforesaid, issue and deliver to one Lorenzo Thomas a letter of authority, in substance as follows, that is to say:

"EXECUTIVE MANSION,
"*Washington, D.C., February 21, 1868.*

"SIR: Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War ad interim, and will immediately enter upon the discharge of the duties pertaining to that office.

"Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

"Respectfully, yours,

ANDREW JOHNSON.

"To Brevet Maj. Gen. LORENZO THOMAS,
"*Adjutant-General United States Army, Washington, D.C.*"

Then and there being no vacancy in said office of Secretary for the Department of War, whereby said Andrew Johnson, President of the United States, did then and there commit, and was guilty of a high misdemeanor in office.

ARTICLE III.

That said Andrew Johnson, President of the United States, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, did commit and was guilty of a high misdemeanor in office in this, that, without authority of law, while the Senate of the United States was then and there in session, he did appoint one Lorenzo Thomas to be Secretary for the Department of War ad interim, without the advice and consent of the Senate and with intent to violate the Constitution of the United States, no vacancy having happened in said office of Secretary for the Department of War during the recess of the Senate, and no vacancy existing in said office at the time, and which said appointment, so made by said Andrew Johnson, of said Lorenzo Thomas, is in substance as follows, that is to say:

"EXECUTIVE MANSION,
"*Washington, D.C., February 21, 1868.*

"SIR: Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War ad interim, and will immediately enter upon the discharge of the duties pertaining to that office.

"Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

"Respectfully, yours, ANDREW JOHNSON.

"To Brevet Maj. Gen. LORENZO THOMAS,
"*Adjutant-General United States Army, Washington, D.C.*"

ARTICLE IV.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, in violation of the Constitution and laws of the United States, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, with intent, by intimidation and threats, unlawfully to hinder and prevent Edwin M. Stanton, then and there the Secretary for the Department of War, duly appointed under the laws of the United States, from holding said office of Secretary for the Department of War, contrary to and in violation of the Constitution of the United States and of the provisions of an act entitled "An act to define and punish certain conspiracies," approved July 31, 1861, whereby said Andrew Johnson, President of the United States, did then and there commit, and was guilty of a high crime in office.

ARTICLE V.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the 21st day of February, in the year of our Lord 1868, and on divers other days and times in said year, before the 2d day of March, A. D. 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, to prevent and hinder the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, and in pursuance of said conspiracy did unlawfully attempt to prevent Edwin M. Stanton, then and there being Secretary for the Department of War, duly appointed and commissioned under the laws of the United States, from holding said office, whereby the said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ARTICLE VI.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, by force to seize, take, and possess the property of the United States in the Department of War, and then and there in the custody and charge of Edwin M. Stanton, Secretary for said Department, contrary to the provisions of an act entitled "An act to define and punish certain conspiracies," approved July 31, 1861, and with intent to violate and disregard an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, whereby said Andrew Johnson, President of the United States, did then and there commit a high crime in office.

ARTICLE VII.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas with intent unlawfully to seize, take, and possess the property of the United States in the Department of War, in the custody and charge of Edwin M. Stanton, Secretary for said Department, with intent to violate and disregard the act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, whereby said Andrew Johnson, President of the United States, did then and there commit a high misdemeanor in office.

ARTICLE VIII.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, with intent unlawfully to control the disbursements of the moneys appropriated for the military service and for the Department of War, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully and contrary to the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, and in violation of the Constitution of the United States, and without the advice and consent of the Senate of the United States, and while the Senate was then and there in session, there being no vacancy in

the office of Secretary for the Department of War, with intent to violate and disregard the act aforesaid, then and there issue and deliver to one Lorenzo Thomas a letter of authority in writing, in substance as follows, that is to say:

"EXECUTIVE MANSION,
"*Washington, D. C., February 21, 1868.*

"SIR: Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War ad interim, and will immediately enter upon the discharge of the duties pertaining to that office.

"Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

"Respectfully yours,

ANDREW JOHNSON.

"Brevet Maj. Gen. LORENZO THOMAS,
"*Adjutant-General United States Army, Washington, D. C.*

whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ARTICLE IX.

That said Andrew Johnson, President of the United States, on the 22d day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, in disregard of the Constitution and the laws of the United States, duly enacted, as Commander in Chief of the Army of the United States, did bring before him then and there William H. Emory, a major-general by brevet in the Army of the United States, actually in command of the Department of Washington and the military forces thereof, and did then and there, as such Commander in Chief, declare to and instruct said Emory that part of a law of the United States, passed March 2, 1867, entitled "An act making appropriations for the support of the Army for the year ending June 30, 1868, and for other purposes," especially the second section thereof, which provides, among other things, that "all orders and instructions relating to military operations issued by the President or Secretary of War shall be issued through the General of the Army, and, in case of his inability, through the next in rank," was unconstitutional and in contravention of the commission of said Emory, and which said provision of law had been theretofore duly and legally promulgated by general order for the government and direction of the Army of the United States, as the said Andrew Johnson then and there well knew, with intent thereby to induce said Emory, in his official capacity as commander of the Department of Washington, to violate the provisions of said act, and to take and receive, act upon, and obey such orders as he, the said Andrew Johnson, might make and give, and which should not be issued through the General of the Army of the United States, according to the provisions of said act, and with the further intent thereby to enable him, the said Andrew Johnson, to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, and to unlawfully prevent Edwin M. Stanton, then being Secretary for the Department of War, from holding said office and discharging the duties thereof, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ARTICLE X.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and the dignity and proprieties thereof, and of the harmony and courtesies which ought to exist and be maintained between the executive and legislative branches of the Government of the United States, designing and intending to set aside the rightful authority and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt, and reproach the Congress of the United States and the several branches thereof, to impair and destroy the regard and respect of all the good people of the United States for the Congress and legislative power thereof (which all officers of the Government ought inviolably to preserve and maintain), and to excite the odium and resentment of all the good people of the United States against Congress and the laws by it duly and constitutionally enacted; and in pursuance of his said design and intent, openly and publicly, and before divers assemblages of the citizens of the United

States convened in divers parts thereof to meet and receive said Andrew Johnson as the Chief Magistrate of the United States, did, on the 18th day of August, in the year of our Lord 1866, and on divers other days and times, as well before as afterwards, make and deliver with a loud voice certain intemperate, inflammatory, and scandalous harangues, and did therein utter loud threats and bitter menaces as well against Congress as the laws of the United States duly enacted thereby, amid the cries, jeers, and laughter of the multitudes then assembled and within hearing, which are set forth in the several specifications hereinafter written, in substances and effect, that is to say:

Specification first.—In this, that at Washington, in the District of Columbia, in the Executive Mansion, to a committee of citizens who called upon the President of the United States, speaking of and concerning the Congress of the United States, said Andrew Johnson, President of the United States, heretofore, to wit, on the 18th day of August, in the year of our Lord 1866, did in a loud voice, declare in substance and effect, among other things, that is to say:

"So far as the executive department of the Government is concerned, the effort has been made to restore the Union, to heal the breach, to pour oil into the wounds which were consequent upon the struggle, and (to speak in common phrase) to prepare, as the learned and wise physician would, a plaster healing in character and coextensive with the wound. We thought, and we think, that we had partially succeeded; but as the work progresses, as reconstruction seemed to be taking place and the country was becoming reunited, we found a disturbing and marring element opposing us. In alluding to that element, I shall go no further than your convention and the distinguished gentleman who has delivered to me the report of its proceedings. I shall make no reference to it that I do not believe the time and the occasion justify.

"We have witnessed in one department of the Government every endeavor to prevent the restoration of peace, harmony, and union. We have seen hanging upon the verge of the Government, as it were, a body called, or which assumes to be, the Congress of the United States, while in fact it is a Congress of only a part of the States. We have seen this Congress pretend to be for the Union when its every step and act tended to perpetuate disunion and make a disruption of the States inevitable. * * * We have seen Congress gradually encroach step by step upon constitutional rights and violate, day after day and month after month, fundamental principles of the Government. We have seen a Congress that seemed to forget that there was a limit to the sphere and scope of legislation. We have seen a Congress in a minority assume to exercise power which, allowed to be consummated, would result in despotism or monarchy itself."

Specification second.—In this, that at Cleveland, in the State of Ohio, heretofore, to wit, on the 3d day of September, in the year of our Lord 1866, before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States did, in a loud voice, declare in substance and effect among other things, that is to say:

"I will tell you what I did do. I called upon your Congress that is trying to break up the Government.

* * * * * * *

"In conclusion, beside that, Congress had taken much pains to poison their constituents against him. But what had Congress done? Have they done anything to restore the union of these States? No; on the contrary, they had done everything to prevent it; and because he stood now where he did when the rebellion commenced he had been denounced as a traitor. Who had run greater risks or made greater sacrifices than himself? But Congress, factious and domineering, had undertaken to poison the minds of the American people."

Specification third.—In this, that at St. Louis, in the State of Missouri, heretofore, to wit, on the 8th day of September, in the year of our Lord 1866, before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States, did, in a loud voice, declare, in substance and effect, among other things, that is to say:

"Go on. Perhaps if you had a word or two on the subject of New Orleans you might understand more about it than you do. And if you will go back—if you will go back and ascertain the cause of the riot at New Orleans, perhaps you will not be so prompt in calling out 'New Orleans.' If you will take up the riot at New Orleans and trace it back to its source or its immediate cause, you will find out who was responsible for the blood that was shed there. If you will take up the riot at New Orleans and trace it back to the Radical Congress, you will find

that the riot at New Orleans was substantially planned. If you will take up the proceedings in their caucuses, you will understand that they there knew that a convention was to be called which was extinct by its power having expired; that it was said that the intention was that a new government was to be organized, and on the organization of that government the intention was to enfranchise one portion of the population, called the colored population, who had just been emancipated, and at the same time disfranchise white men. When you design to talk about New Orleans you ought to understand what you are talking about. When you read the speeches that were made, and take up the facts on the Friday and Saturday before that convention sat, you will there find that speeches were made incendiary in their character, exciting that portion of the population, the black population, to arm themselves and prepare for the shedding of blood. You will also find that that convention did assemble in violation of law, and the intention of that convention was to supersede the reorganized authorities in the State government of Louisiana, which had been recognized by the Government of the United States; and every man engaged in that rebellion in that convention, with the intention of superseding and upturning the civil government which had been recognized by the Government of the United States. I say that he was a traitor to the Constitution of the United States, and hence you find that another rebellion was commenced having its origin in the Radical Congress. * * *

"So much for the New Orleans riot. And there was the cause and the origin of the blood that was shed; and every drop of blood that was shed is upon their skirts, and they are responsible for it. I could test this thing a little closer, but will not do it here to-night. But when you talk about the causes and consequences that resulted from proceedings of that kind, perhaps as I have been introduced here and you have provoked questions of this kind, though it does not provoke me, I will tell you a few wholesome things that have been done by this Radical Congress in connection with New Orleans and the extension of the elective franchise.

"I know that I have been traduced and abused. I know it has come in advance of me here, as elsewhere, that I have attempted to exercise an arbitrary power in resisting laws that were intended to be forced upon the Government; that I had exercised that power; that I had abandoned the party that elected me, and that I was a traitor because I exercised the veto power in attempting and did arrest for a time a bill that was called a 'Freedman's Bureau' bill; yes, that I was a traitor. And I have been traduced, I have been slandered, I have been maligned, I have been called Judas Iscariot, and all that. Now, my countrymen here to-night, it is very easy to indulge in epithets; it is easy to call a man a Judas and cry out traitor; but when he is called upon to give arguments and facts he is very often found wanting. Judas Iscariot—Judas. There was a Judas, and he was one of the twelve apostles. Oh, yes; the twelve apostles had a Christ. The twelve apostles had a Christ, and he never could have had a Judas unless he had had twelve apostles. If I have played the Judas, who has been my Christ that I have played the Judas with? Was it Thad. Stevens? Was it Wendell Phillips? Was it Charles Sumner? These are the men that stop and compare themselves with the Saviour; and everybody that differs with them in opinion, and to try and stay and arrest the diabolical and nefarious policy, is to be denounced as a Judas.

* * * * * * *

"Well, let me say to you, if you will stand by me in this action; if you will stand by me in trying to give the people a fair chance, soldiers and citizens, to participate in these offices, God being willing, I will kick them out. I will kick them out just as fast as I can.

"Let me say to you, in concluding, that what I have said I intended to say. I was not provoked into this, and I care not for their menaces, the taunts, and the jeers, I care not for threats. I do not intend to be bullied by my enemies nor overawed by my friends. But, God willing, with your help I will veto their measures whenever any of them come to me."

Which said utterances, declarations, threats, and harangues, highly consurable in any, are peculiarly indecent and unbecoming in the Chief Magistrate of the United States, by means whereof said Andrew Johnson has brought the high office of the President of the United States into contempt, ridicule, and disgrace, to the great scandal of all good citizens, whereby said Andrew Johnson, President of the United States, did commit, and was then and there guilty of, a high misdemeanor in office.

ARTICLE XI

That said Andrew Johnson, President of the United States, unmindful of the high duties of the office and of his oath of office, and in disregard of the Constitution and laws of the United States, did heretofore, to wit, on the 18th day of August, 1866, at the city of Washington, and the District of Columbia, by public speech, declare and affirm, in substance, that the Thirty-ninth Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same; but, on the contrary, was a Congress of only part of the States, thereby denying and intending to deny that the legislation of said Congress was valid or obligatory upon him, the said Andrew Johnson, except in so far as he saw fit to approve the same, and also thereby denying and intending to deny the power of the said Thirty-ninth Congress to propose amendments to the Constitution of the United States; and, in pursuance of said declaration, the said Andrew Johnson, President of the United States, afterwards, to wit, on the 21st day of February, 1868, at the city of Washington, in the District of Columbia, did unlawfully and in disregard of the requirements of the Constitution, that he should take care that the laws be faithfully executed, attempt to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, by unlawfully devising and contriving, and attempting to devise and contrive, means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of the office of Secretary for the Department of War, notwithstanding the refusal of the Senate to concur in the suspension theretofore made by said Andrew Johnson, of said Edwin M. Stanton from said office of Secretary for the Department of War, and also by further unlawfully devising and contriving, and attempting to devise and contrive, means then and there to prevent the execution of an act entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1868, and for other purposes," approved March 2, 1867, and also to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States," passed March 2, 1867; whereby the said Andrew Johnson, President of the United States, did then, to wit, on the 21st day of February, 1868, at the city of Washington, commit and was guilty of a high misdemeanor in office.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles or other accusation or impeachment against the said Andrew Johnson, President of the United States, and also of replying to his answers which he shall make unto the article herein preferred against him, and of offering proof to the same and every part thereof, and to all and every other article, accusation, or impeachment which shall be exhibited by them, as the case shall require, do demand that the said Andrew Johnson may be put to answer the high crimes and misdemeanors in office herein charged against him, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

SCHUYLER COLFAX,
Speaker of the House of Representatives.

Attest:
EDWARD MCPHERSON,
Clerk of the House of Representatives.

Mr. Bingham having concluded the reading of the articles of impeachment, the President pro tempore informed the managers that the Senate would take proper order on the subject of the impeachment, of which due notice would be given to the House of Representatives.

The managers, by their chairman, Mr. Bingham, then delivered the articles of impeachment at the table of the Secretary, and withdrew, accompanied by the Members of the House of Representatives.

The Committee of the Whole, having returned to the Hall of the House, rose and the Speaker resumed the chair, whereupon Mr. Henry L. Dawes, of Massachusetts, the chairman, reported:

Mr. Speaker: The House in the Committee of the Whole, by order of the House, have accompanied their managers to the Senate while they presented, in

the name of the House of Representatives and of all the people of the United States, articles of impeachment agreed upon by the House against Andrew Johnson, President of the United States. The President of the Senate announced that the Senate would take order in the premises, of which due notice would be given to the House of Representatives.

Resolution providing for introduction of the Chief Justice and the organization of the Senate for the trial of President Johnson.

The Senate ordered a copy of its rules for the trial of President Johnson to be sent to the House.

The notice to the Chief Justice to meet the Senate for the trial of President Johnson was delivered by a committee of three Senators, who were his escort also.

In the Senate, on the same day, Mr. Howard moved the adoption of the following:

Resolved, That at 1 o'clock to-morrow afternoon the Senate will proceed to consider the impeachment of Andrew Johnson, President of the United States, at which time the oath or affirmation required by the rules of the Senate sitting for the trial of an impeachment shall be administered by the Chief.

Impeachment of Judge George W. English*

On the 2d day of November, 1921, the said George W. English, as judge in the said eastern district of Illinois, designated the Union Trust Co., of East St. Louis, a Government depository of bankruptcy funds; afterwards, about the 1st of April, 1924, said George W. English, as judge, with the knowledge and consent of Charles B. Thomas, as referee in bankruptcy, entered into an agreement with the Union Trust Co. in consideration that said Union Trust Co. would employ Farris English (the son of Judge English) in the bank at a salary of $200 per month, he, the said George W. English, would become, with Charles B. Thomas, depositors in said bank, and that George W. English and Charles B. Thomas would cause to be removed from the Drovers National Bank of East St. Louis the bankruptcy funds deposited there and deposit the same in the said Union Trust Co, and that the Union Trust Co. would pay said Farris English a salary of $200 per month and a sum equal to 3 per cent on monthly balances on bankruptcy funds in addition to his salary and as a part of this agreement said funds should not be withdrawn and deposited in another Government depository while said English was employed.

Farris English was employed by the Union Trust Co. and remained in its employ for 14 months, during which time he received his salary of $200 per month and $2,700 as interest on bankruptcy funds, and the funds in the Drovers National Bank were withdrawn from it and deposited in the Union Trust Co.

On the 4th day of April, 1924, the said George W. English, acting as judge as aforesaid, designated the Merchants State Bank of Centralia, Ill., to be a Government depository of bankruptcy funds, the said George W. English and Charles B. Thomas being then and there depositors and stockholders in said bank. While the said George W. English was a director and said Charles B. Thomas a depositor, and while both were stockholders in the said bank of Centralia, and while said bank was a depository of Government funds deposited by said George W. English, he, George W. English, borrowed from the said bank, without security and at a rate of interest below the customary rate, the sum of $17,200; and the said Charles B. Thomas borrowed from said bank, without security and at a rate of interest below the customary rate, the sum of $20,000; said sums were excessive loans and were obtained by reason of the control of said George W. English and Charles B. Thomas over court funds in designating what disposition should be made of them and into what depository they should be placed.

On or about the 4th day of April, 1925, in concert with the officers and directors of said bank, said Charles B. Thomas and said George W. English, with said directors of said bank, obtained loans which in the aggregate exceeded the total capital stock and surplus of said bank, without security and at a low rate of interest, which facts were concealed from the public and from the public authorities.

*From the Congressional Record (House), Mar. 25, 1926 (6283–87).

THE LAW

CONSTITUTIONAL PROVISIONS RELATING TO JUDICIAL IMPEACHMENTS

The provisions of the Constitution of the United States bearing upon the impeachment of judges are as follows:

"The House of Representatives shall choose their Speaker and other officers and shall have the sole power of impeachment. (Art. I, sec. 2.)

"Judgement in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law. (Art. I, sec. 3.)

"The President * * * shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. (Art. II, sec. 2.)

"The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors. (Art. II, sec. 4.)

"The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." (Art. III, sec. 1.)

The case of Robert W. Archbald, who was convicted by the Senate and removed from office in 1912 (S. Doc. 1140, 62d Cong. 2d sess.), furnishes the latest case and precedent so far as any case may be a precedent upon the subject of impeachment of judges. Each case of impeachment must necessarily stand upon its own facts. It can not, therefore, become a precedent or be on all fours with every other case.

In the present case we are relieved from the consideration of the debated legal proposition whether or not a man may be impeached after the term of his office has expired or he has resigned. Other cases indicate that a judge may be impeached if he is still continuing in the same office although under a different commission and election. In the Archbald case it was held that he could not be impeached upon the ground of things done while he was a district judge, his term having ended in that court. In the case of George W. English, however, all of the acts complained of having been performed by him in his judicial capacity and in the exercise of his official functions and within his term of service.

Although frequently debated and the negative advocated by some high authorities, it is now, we believe, considered that impeachment is not confined alone to acts which are forbidden by the Constitution or Federal statutes. The better sustained and modern view is that the provision for impeachment in the Constitution applies not only to high crimes and misdemeanors as those words were understood at common law but also acts which are not defined as criminal and made subject to indictment, but also to those which affect the public welfare. Thus an official may be impeached for offenses of a political character and for gross betrayal of public interests. Also for abuses or betrayal of trusts, for inexcusable negligence of duty, for the tyrannical abuse of power, or as one writer puts it, for a "breach of official duty by malfeasance or misfeasance, including conduct such as drunkeness, when habitual, or in the performance of official duties, gross indecency, profanity, obscenity, or other language used in the discharge of an official function, which tends to bring the office into disrepute, or for an abuse or reckless exercise of discretionary power as well as the breach of an official duty imposed by statute or common law." No judge may be impeached for a wrong decision.

A Federal judge is entitled to hold office under the Constitution during good behavior, and this provision should be considered along with article 4, section 2, providing that all civil officers of the United States shall be removed from office upon impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors. Good behavior is the essential condition on which the tenure to judicial office rests, and any act committed or omitted by the incumbent in violation of this condition necessarily works a forfeiture of the office.

A civil officer may have behaved in public so as to bring disgrace upon himself and shame upon the country and he would continue to do this until his name became a public stench and yet might not be subject to indictment under any law of the United States, but he certainly could be impeached. Otherwise the public would in this and kindred cases be beyond the protection intended by the Constitution. When the Constitution says a judge shall hold office during good behavior it means that he shall not hold it when his behavior ceases to be good behavior.

The conduct of Judge George W. English has been of such a character that one must regard it as reprehensible and tending to bring shame and reproach upon the administration of justice and destroy the confidence of the public in our courts if it be allowed to go unrebuked.

The Federal judiciary has been marked by the services of men of high character and integrity, men of independence and incorruptibility, men who have not used their office for the promotion of their private interests or those of their friends. No one reading the record in this case can conclude that this man has lived up to the standards of our judiciary, nor is be the personification of integrity, high honor, and uprightness, as the evidence presents the picture of the manner in which he discharged the high duties and exercised the powers of his great office.

RECOMMENDATION

Your committee reports herewith the accompanying resolution and articles of impeachment against Judge George W. English, and recommends that they be adopted by the House and that they be presented to the Senate with a demand for the conviction and removal from office of said George W. English, United States district judge for the eastern district of Illinois.

RESOLUTION

Resolved, That George W. English, United States district judge for the eastern district of Illinois, be impeached of misdemeanors in office; and that the evidence heretofore taken by the special committee of the House of Representatives under House Joint Resolution 347, sustains five articles of impeachment, which are hereinafter set out; and that said articles be, and they are hereby, adopted by the House of Representatives, and that the same shall be exhibited to the Senate in the following words and figures, to wit:

Articles of impeachment of the House of Representatives of the United States of America in the name of themselves and of all of the people of the United States of America against George W. English, who was appointed, duly qualified, and commissioned to serve during good behavior in office, as United States District Judge for the Eastern District of Illinois, on May 3, 1918

ARTICLE I

That the said George W. English, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and while acting as the district judge for the eastern district of Illinois, did on divers and various occasions so abuse the powers of his high office that he is hereby charged with tyranny and oppression, whereby he has brought the administration of justice in said district in the court of which he is judge into disrepute, and by his tyrannous and oppressive course of conduct is guilty of misbehavior falling under the constitutional provision as ground for impeachment and removal from office.

In that the said George W. English, on the 20th day of May, 1922, at a session of court held before him as judge aforesaid, did willfully, tyrannically, oppressively, and unlawfully suspend and disbar one Thomas M. Webb, of East St. Louis, a member of the bar of the United States District Court for the Eastern District of Illinois, without charges having been preferred against him, without any prior notice to him, and without permitting him, the said Thomas M. Webb, to be heard in his own defense, and without due process of law; and also,

In that the said George W. English, judge as aforesaid, on the 15th day of August, 1922, in a court then and there holden by him, the said George W. English, judge as aforesaid, did willfully, tyranically, oppressively, and unlawfully suspend and disbar one Charles A. Karch, of East St. Louis, a member of the bar of the United States District Court for the Eastern District of Illinois with-

out charges having been preferred against him, without any prior notice to him, and without permitting him, the said Charles A. Karch, to be heard in his own defense, and without due process of law; and also in that the said George W. English, judge as aforesaid, restored the said Karch to membership of the bar in said district, but willfully, tyranically, oppressively, and unlawfully deprived the said Charles A. Karch of the right to practice in said court or try any case before him, the said George W. English, while sitting or holding court in said eastern district of Illinois; and also,

In that the said George W. English, judge as aforesaid, on the 1st day of August, 1922, unlawfully and deceitfully issued a summons from the said district court of the United States, and had the same served by the marshal of said district, summoning the State sheriffs and State attorneys then and there in the said eastern district of Illinois, being duly elected and qualified officials of the sovereign State of Illinois, and the mayor of the city of Wamac, also a duly elected and qualified municipal officer of said State of Illinois, residing in said district, to appear before him in an imaginary case of "the United States against one Gourley and one Daggett," when in truth and fact no such case was then and there pending in said court, and in placing the said State officials and mayor of Wamac in the jury box, and when they came into court, in answer to said summons, then and there in a loud, angry voice, using improper, profane, and indecent language, denounced said officials without any lawful or just cause or reason, and without naming any act of misconduct or offense committed by the said officials and without permitting said officials or any of them to be heard, and without having any lawful authority or control over said officials, and then and there did unlawfully, improperly, oppressively, and tyrannically threaten to remove said State officials from their said offices, and when addressing them used obscene and profane language, and thereupon then and there dismissed said officials from his said court and denied them any explanation or hearing; and also,

In that the said George W. English, judge aforesaid, on the 8th day of May, 1922, in the trial of the case of the United States against Hall, then and there pending before said George W. English, as judge, the said George W. English, judge as aforesaid, from the bench and in open court, did willfully, unlawfully, tyrannically, and oppressively, and intending thereby to coerce the minds of the jurymen in the said court in the performance of their duty as jurors, stated in open court and in the presence of said jurors, parties and counsel in said case, that if he told them (thereby then and there meaning said jurymen) that a man was guilty and they did not find him guilty that he would send them to jail; and also,

In that the said George W. English, judge aforesaid, on the 15th day of August, 1922, willfully, unlawfully, tyranically, and oppressively did summon Michael L. Munie, of East St. Louis, a member of the editorial staff of the East St. Louis Journal, a newspaper published in said East St. Louis, and Samuel A. O'Neal, a reporter of the St. Louis Post-Dispatch, a newspaper published at St. Louis, in the State of Missouri, and when said Munie and the said O'Neal appeared before him did willfully, unlawfully, tyrannically, and oppressively, and with angry and abusive language attempt to coerce and did threaten them as members of the press from truthfully publishing the facts in relation to the disbarment of Charles A. Karch by said George W. English, judge as aforesaid, and then and there used the power of his office tyrannically, in violation of the freedom of the press guaranteed by the Constitution, to suppress the publication of the facts about the official conduct of said George W. English, judge aforesaid, and did then and there forbid the said Munie and the said O'Neal to publish any facts whatsoever in relation to said disbarment under threats of imprisonment; and also,

In that the said George W. English, judge aforesaid, on the 15th day of August, 1922, at East St. Louis, in the State of Illinois, did unlawfully summon before him one Joseph Maguire, being then and there the editor and publisher of the Carbondale Free Press, a newspaper published in Carbondale, in said eastern district of Illinois, and then and there, on the appearance before him of said Joseph Maguire in open court, did violently threaten said Joseph Maguire with imprisonment for having printed in his said paper a lawful editorial from the columns of the St. Louis Post-Dispatch, a newspaper published at St. Louis, in the State of Missouri, and in a very angry and improper manner did threaten said Maguire with imprisonment for having also printed some lawful handbills—said handbills having no allusion to said judge or to his conduct of the said court—and then and there did threaten this member of the press with imprisonment.

Wherefore the said George W. English was and is guilty of a course of conduct tyrannous and oppressive and is guilty of misbehavior in office as such judge, and was and is guilty of a misdemeanor in office.

ARTICLE II

That George W. English, judge as aforesaid, was guilty of a course of improper and unlawful conduct as said judge, filled with partiality and favoritism, resulting in the creation of a combination to control and manage in collusion with Charles B. Thomas, referee in bankruptcy, in and for the eastern district of Illinois for their own interests and profit and that of the relatives and friends of said George W. English, judge as aforesaid, and of Charles B. Thomas, referee, the bankruptcy affairs of the eastern district of Illinois.

In that said George W. English, judge as aforesaid, corruptly did appoint and continue to appoint said Charles B. Thomas, of East St. Louis, in said State of Illinois, a member of the bar of the district court of the United States in and for said district, as sole referee in bankruptcy in said district with all of the advantages and preferments of said appointment, notwithstanding he then and there well knew that said eastern district was a great commercial district of 45 counties nearly 300 miles long, with a large volume of business in bankruptcy, and that the said volume of business would necessarily take all the time and attention of any appointee as referee in bankruptcy to perform properly the work and duties of said office, and well knew at the time of said appointments that said Charles B. Thomas was practicing in all the courts, both civil and criminal, in said eastern district of Illinois, he, the said Charles B. Thomas, through said appointment as sole referee in bankruptcy and the favors in connection therewith extended to him by said George W. English, judge aforesaid, built up a large and lucrative practice; and that notwithstanding the size of the eastern district of Illinois, the volume of bankruptcy business therein, and the large practice of said Thomas, referee aforesaid, did then and there give said referee in bankruptcy enlarged duties and authority by unlawfully changing and amending the rules of bankruptcy for said eastern district for the sole benefit of said George W. English, judge aforesaid, and the said Charles B. Thomas, sole referee aforesaid, as follows:

"It is hereby further ordered that the following rule be, and the same is hereby, made and adopted as a rule of this court in bankruptcy, to be effective in all cases from and after this date, namely:

"All matters of application for the appointment of a receiver, or the marshal to take charge of the property of the bankrupt or alleged bankrupt, made after the filing of the petition, and prior to its being dismissed or to the trustee being qualified, shall be and are hereby referred to the referee in bankruptcy for his consideration and action; and the clerk will enter such order of reference as of course in each case; and the referees of this court heretofore or hereafter appointed are hereby authorized and empowered to appoint receivers, or the marshal upon application of parties in interest, in case the referee shall find same is absolutely necessary for the preservation of the estate, to take charge of the property of the bankrupt; and to exercise all jurisdiction over and in respect to the actions and proceedings of the receiver or marshal which the court by law may exercise. After adjudication, where the referee deems it necessary for the production of the state, he may make such appointment on his own motion.

"And it is hereby further ordered that all special rules and general orders heretofore entered or adopted be, and they are hereby, set aside and annulled in so far as they in any way conflict with the provisions of the above rule and general order.

"For the purpose of transacting the business of the court of bankruptcy, it is ordered that the referee [meaning then and there said Charles B. Thomas] be and he is hereby, authorized and directed to procure and maintain suitable offices for the transaction of said business, and to suitably furnish and equip same for said purpose; that the referee be, and he is hereby, further authorized and directed to employ such clerks, stenographers, and court reporters or any other asistance which he finds and deems necessary for the proper management of said court and offices and the administration of bankrupt estates; to install telephones; to procure and keep on hand needed stationery; and generally to provide all such other and further office equipment proper to transact business of the referee; and

"It is further ordered that in the event that the charges for referee's expenses authorized by any and all of the rules of this court to be charged against the estates administered before the referee do not amount to a total to pay the expenses which the referee has incurred or for which he may have paid or obligated himself to pay the referee be, and he is hereby, authorized and directed to make a charge against the bankrupt estates administered before him, in as equitable pro rata share as the nature and circumstances will permit, sufficient in amount to meet the deficit existing by reason of the referee's receipts from expenses or charges authorized by this and other rules being less than the total expenses incurred by the referee."

Said amendments of the rules of court were then and there made with the intent to favor and prefer said Charles B. Thomas and did thereby give said Charles B. Thomas the power and opportunity to appoint his friends and members of his family and the family of said George W. English, judge aforesaid, to receiverships and to use said office of referee as aforesaid for the improper personal and financial benefit of said George W. English, judge aforesaid, and said Charles B. Thomas, referee aforesaid, and the friends and families of both.

The said Thomas, in pursuance of said unlawful combination and by authority of said rule and order aforesaid, and with the full knowledge and approval of said George W. English, judge aforesaid, did rent and furnish a large and expensive suite of rooms and offices in said East St. Louis near the said judge's chamber, in the Federal building in said East St. Louis, occupied by said George W. English, judge aforesaid, at the expense and cost of the United States and of estates in bankruptcy by virtue of said rule and order;

And the said Charles B. Thomas then and there, with the full knowledge and consent of said George W. English, judge aforesaid, did wrongfully and unlawfully create and organize a large and expensive office force supported by and paid for out of the funds and assets of estates in bankruptcy as aforesaid, and then and there did hire and provide a large number of clerks, stenographers, and secretaries, at the cost and expense of the United States and the funds and assets of the estates in bankruptcy, as aforesaid;

And the said Charles B. Thomas did then and there hire and place in said offices, with the knowledge and approval of the said George W. English, judge aforesaid, one George W. English, jr., the son of the aforesaid Judge English, at a large compensation, salary, and fees, paid out of the funds and assets of the estates in bankruptcy, in and under the charge and control of said Thomas, referee aforesaid;

And the said Charles B. Thomas, referee aforesaid, did further confer upon said George W. English, jr., appointments as trustee and receiver and appointments as attorney for trustees and receivers in estates in bankruptcy;

And said Referee Charles B. Thomas then and there, with the knowledge, consent, and assistance of the said George W. English, judge aforesaid, did hire and place in the said office and make a part of said organization one M. H. Thomas, son of said Charles B. Thomas; and one D. S. Leadbetter, son-in-law of said Charles B. Thomas; and one C. P. Wideman, son-in-law of said Charles B. Thomas;

And the said Charles B. Thomas, referee aforesaid, did then and there wrongfully and unlawfully pay to all of the persons last aforesaid large salaries, fees, and commissions, and did likewise confer upon said persons appointments as trustees, receivers, and masters in estates in bankruptcy with the full knowledge, consent, and approval of said George W. English, judge aforesaid;

And said George W. English, judge aforesaid, in order further to carry out and make effective said improper and unlawful organization, did appoint one Herman P. Frizzell, United States commissioner in and for said eastern district of Illinois, and said commissioner did occupy free of charge the said offices of Charles B. Thomas, referee aforesaid, and did receive from said Charles B. Thomas, as said referee, large and valuable fees, commissions, salaries, appointments as trustee, receiver, and master in estates in bankruptcy with the knowledge and consent of the said George W. English, judge aforesaid;

And the said George W. English, judge aforesaid, did further allow and permit the said Charles B. Thomas, referee aforesaid, to appear as attorney and counsel before said Commissioner Frizzell in divers and sundry criminal cases; and then and there, further to carry out and make effective the said unlawful and improper combination, the said George W. English, judge aforesaid, with full knowledge of the premises, did improperly and unlawfully consent and approve the appointment by the said referee, Charles B. Thomas, of one Oscar Hooker, of said

East St. Louis, as chief clerk in said offices of said referee, and thereby the said Hooker did receive from said Charles B. Thomas, referee aforesaid, large and valuable fees, salaries, appointments as trustee, receiver, and master, and as attorney for trustees and receivers in bankruptcy estates;

And further the said George W. English, judge aforesaid, did improperly allow and permit said Hooker, as the agent of a bonding company, to furnish surety bonds for said George W. English, jr., the son of George W. English, judge aforesaid, and also surety bonds for said Herman P. Frizzell, said United States commissioner, and surety bonds for said M. H. Thomas, son of said Charles B. Thomas, as aforesaid, and surety bonds for D. L. Leadbetter and said C. P. Wideman, sons-in-law of said Charles B. Thomas, in all matters of trusteeships and receiverships to which they were appointed by said Charles B. Thomas, referee aforesaid—the said Oscar Hooker, George W. English, jr., D. S. Leadbetter, C. P. Wideman, and Herman P. Frizzell being then and there without property or credit;

And, then and there, further to carry out and make effective said unlawful and improper combination, the said George W. English, judge as aforesaid, with full knowledge of the premises, did improperly and unlawfully allow said Charles B. Thomas, referee as aforesaid, to organize and incorporate from his office force and employees a corporation known as the Government Sales Corporation, organized and incorporated November 27, 1922, for the object and purpose of furnishing appraisers in bankruptcy estates and auctioneers in the sale and disposal of assets of estates in bankruptcy, the said Government Sales Corporation being then and there made up and composed, organized, and formed of incorporators and directors from the families and friends of said George W. English, judge aforesaid, and said Charles B. Thomas, referee aforesaid, and from said office force of said Thomas, referee aforesaid;

The said George W. English, judge aforesaid, well knowing the facts and premises, then and there did willfully, improperly, and unlawfully take advantage of his said official position as judge aforesaid, and did aid and assist said Charles B. Thomas, referee, aforesaid, in the establishment, maintenance, and operation of said unlawful and improper organization as above set forth, for the purpose of obtaining improper and unlawful personal gains and profits for the said George W. English, judge aforesaid, and his family and friends;

Wherefore, the said George W. English was and is guilty of a course of conduct as aforesaid constituting misbehavior as such judge and was and is guilty of a misdemeanor in office.

ARTICLE III

That George W. English, judge aforesaid, was guilty of misbehavior in office is that he corruptly extended partiality and favoritism in diverse other matters hereinafter set forth to Charles B. Thomas, said sole referee in bankruptcy in the said eastern district of Illinois, and by his conduct and partiality as judge brought the administration of justice into discredit and disrepute, degraded the dignity of the court, and destroyed the confidence of the public in its integrity;

In that in the matter of the case of East St. Louis & Suburban Co. et al. *v.* Alton, Granite & St. Louis Traction Co., pending before George W. English, judge as aforesaid, upon the petition for appointment of receivers for said Alton, Granite & St. Louis Traction Co., the said George W. English, judge as aforesaid, did improperly and unlawfully refuse to appoint the temporary receivers suggested by counsel for the parties in interest in said case unless said Charles B. Thomas was appointed attorney for the receivers; that by reason of the condition imposed by George W. English, judge aforesaid, the counsel for the parties in interest in said case did agree to the appointment of said Charles B. Thomas as counsel for said temporary receivers at a salary stipulated by said Charles B. Thomas of $200 a month; and thereupon the said George W. English, as judge, improperly, corruptly, and unlawfully appointed said Charles B. Thomas as attorney for the temporary receivers and approved of the payment of said salary by an order entered in said case as of August 11, 1920; and that subsequently, to wit, on January 20, 1921, George W. English, judge aforesaid, did issue an order making the temporary receivers permanent and that the said Charles B. Thomas, as attorney and counsel for the receivers, be paid the sum of $350 per month and that the further sum of $500 per month additional be paid to said Charles B. Thomas, for his services and responsibilities in assisting the receivers in the control and management of said receivership properties, making a total salary of $850 per month, and that said salary should be retroactive from October 1, 1920;

that the services of said Charles B. Thomas, both as attorney for the receivers and for assisting in the management of the receivership properties, were not required or necessary, and thereby an additional burden upon the receivership properties was imposed which said George W. English, judge aforesaid, well knew; that this salary of $850 per month was continued to be paid to said Charles B. Thomas for a long period of time, to wit, from October 1, 1920, to January 1, 1925, making the total amount received under said order by said Charles R. Thomas $43,350; that the said appointment of said Charles B. Thomas was made by George W. English, judge aforesaid, with the intent wrongfully and unlawfully to prefer and show partiality and favoritism to said Charles B. Thomas, to whom George W. English, judge aforesaid, was under obligations, financial and otherwise; and also

In that in the case of Handelsman against Chicago Fuel Co. pending before him, George W. English, judge as aforesaid, did improperly and unlawfully appoint said Charles B. Thomas as one of the receivers in said case and then and there did improperly order, direct, and fix the compensation and salary of said Charles B. Thomas as said receiver at the rate of $1,000 per month; and did then and there improperly and unlawfully appoint said Herman P. Frizzell, United States commissioner for said eastern district of Illinois and chief clerk in the office of said Thomas as referee in bankruptcy, to be attorney for the said receiver, Charles B. Thomas, and then and there did improperly fix the salary and fees of said Frizzell as said attorney at the rate of $200 per month; that all said acts of said English as judge aforesaid were done with the unlawful and improper intent unlawfully to favor and prefer said Thomas and benefit the said organization.

In that on the 15th day of August, 1924, at a session of court then holden by George W. English, judge as aforesaid, in the matter of Gideon N. Heuffman et al. against Hawkins Mortgage Co. in bankruptcy, did improperly and unlawfully allow and permit said Charles B. Thomas, referee as aforesaid, to appear and conduct said case as attorney and counselor at law in behalf of Morton S. Hawkins, one of the bankrupts in said case, in violation of the statute of the United States that forbids a referee to practice as an attorney or counselor at law in any bankruptcy proceedings, and afterwards, to wit, on the 27th day of August, 1924, George W. English, judge as aforesaid, did again improperly and unlawfully allow and permit said Charles B. Thomas, referee as aforesaid, to appear before him and practice as an attorney in behalf of said bankrupt, Morton S. Hawkins; that said unlawful acts were willfully permitted in order to favor said Charles B. Thomas in obtaining from said Morton S. Hawkins a fee for his services of $2,500, which was then and there paid to said Charles B. Thomas by said Morton S. Hawkins, all with the full knowledge and consent of George W. English, judge as aforesaid; and, also.

In that on the 18th day of May, 1922, after conviction by a jury of one F. J. Skye, in a case before George W. English, judge as aforesaid, involving the crime of selling and possessing intoxicating liquors, the said George W. English, as judge, did impose a sentence upon said F. J. Skye of imprisonment in jail for four months and the payment of a fine of $500; that on the trial the said F. J. Skye was represented by one Charles A. Karch; that after such conviction and sentence said Charles A. Karch took an appeal to the United States Circuit Court of Appeals for the Seventh Circuit in behalf of his client and filed an appeal bond in due course; that subsequently to the appeal said F. J. Skye discharged said Charles A. Karch as attorney and retained Charles B. Thomas, referee aforesaid; that on July 5, 1922, said F. J. Skye, by his attorney, said Charles B. Thomas, abandoned his appeal to the circuit court of appeals and filed a motion for a stay of the sentence of imprisonment, which motion, after hearing, George W. English, judge as aforesaid, did allow and did stay the sentence of imprisonment until December 31, 1922; and on June 7, 1923, George W. English, judge as aforesaid, did order said jail sentence vacated and said stay of execution and commitment to jail of said F. J. Skye made permanent, relieving said F. J. Skye from imprisonment and only obligating him to pay a fine of $500; that said F. J. Skye paid to said Charles B. Thomas $2,500 as a fee in said case; that said vacation of the jail sentence and the permanent stay of execution and commitment was granted by George W. English, judge as aforesaid, without the presence of said Charles B. Thomas in court and without any investigation of the affidavits filed in support thereof, and was done willfully, improperly, unlawfully, and with intent to prefer and show favoritism to said Thomas, to whom said George W. English, judge as aforesaid, was under obligations, financial and otherwise; and, also,

In that in the case of Hamilton *v.* Egyptian Coal Mining Co., George W. English, judge as aforesaid, did arbitrarily and unlawfully and without notice remove from office the duly appointed receiver in said case, and with intent improperly to prefer and favor Charles B. Thomas, aforesaid, did then and there appoint the said Charles B. Thomas in place of the removed receiver; that this removal of the receiver was made on July 11, 1924, with the intent to prefer unlawfully the said Charles B. Thomas, to whom the said George W. English, judge aforesaid, was under great obligations, financial and otherwise; and, also,

In that on or about March, 1924, at a hearing before George W. English, judge aforesaid, in the case of Wallace *v.* Shedd Coal Co., George W. English, judge aforesaid, did appoint Charles B. Thomas as an attorney for the receiver (one F. D. Barnard), when in truth and in fact no attorney for said receiver was needed, and afterwards, to wit, on or about August, 1924, said George W. English, judge as aforesaid, did arbitrarily and improperly remove from office said F. B. Barnard as such receiver and then and there did improperly appoint as receiver in place of said Barnard said Charles B. Thomas; that the removal of said receiver and the appointment of said Charles B. Thomas was made with the intent to corruptly prefer said Charles B. Thomas, to whom said George W. English was under great obligations, financial and otherwise; and, also,

In that on or about the 27th day of June, 1924, at a hearing held by him, George W. English, judge as aforesaid, in the case of Ritchey et al. *v.* Southern Gem Coal Corporations, George W. English, judge as aforesaid, did then and there improperly appoint Charles B. Thomas, aforesaid, one of the receivers in said case and then and there unlawfully did order and decree that said Charles B. Thomas, as said receiver, should have as his salary the excessive and exorbitant sum of $1,000 per month; that said act of George W. English, judge aforesaid, in the appointment of said Charles B. Thomas as receiver aforesaid and in the fixing of said exorbitant salary was all done by George W. English, judge as aforesaid, with intent to prefer unlawfully said Charles B. Thomas, to whom said George W. English was under great obligations, financial and otherwise; and, also,

In that on or about the 24th day of October, 1921, at East St. Louis, in the State of Illinois, George W. English, judge as aforesaid, wrongfully, improperly, and unlawfully did accept and receive from said Charles B. Thomas, sole receiver in bankruptcy aforesaid, the sum of $1,435 which was applied toward the purchase price of an automobile that had been purchased by George W. English, judge as aforesaid; that said sum of money was improperly and unlawfully accepted and received by the said George W. English from the said Charles B. Thomas as a return or in recognition of the favoritism and partiality extended by George P. English, judge as aforesaid, to Charles B. Thomas, aforesaid; and, also,

In that George W. English, judge as aforesaid, at a term of court held by said judge for the eastern district of Illinois in the case of the Southern Gem Coal Corporation in receivership, did receive and approve the report of Charles B. Thomas, as one of the receivers in said case, for the first six months of said receivership; that in said report to George W. English, judge as aforesaid, said Charles B. Thomas stated that he had during those six months spent all of his time in Chicago looking after the interest of said Southern Gem Coal Corporation in receivership; and then and there George W. English, judge as aforesaid, did receive and approve said report; that with full knowledge that said referee, Charles B. Thomas, was neglecting his duties as referee in bankruptcy in his office at East St. Louis in spending six months of his time 290 miles away from his office at East St. Louis, George W. English, judge as aforesaid, did then and there, despite this knowledge and these facts, approve said negligence on the part of said Charles B. Thomas and said neglect of duty without criticism or rebuke by then and there reappointing him for another term.

Wherefore the said George W. English was and is guilty of misbehavior as such judge and was and is guilty of a misdemeanor in office.

ARTICLE IV

That George W. English, while serving as judge as aforesaid, in the District Court of the United States for the Eastern District of Illinois, did in conjunction with Charles B. Thomas, sole referee in bankruptcy aforesaid, corruptly and improperly handle and control the deposit of bankruptcy and other funds under his control in said court, by depositing, transferring, and using said funds for

the pecuniary benefit of himself and said Charles B. Thomas, sole referee in bankruptcy, thus prostituting his official power and influence for the purpose of securing benefits to himself and to his family and to the said Charles B. Thomas and his family;

In that George W. English, judge as aforesaid, on or about December, 1918, did designate the First State Bank of Coulterville, in the State of Illinois, to be the sole United States depository of bankruptcy funds within said district; that said bank was situated a great distance from East St. Louis, the office and place of business of Charles B. Thomas, said referee in bankruptcy; and that then and there one J. E. Carlton, a brother-in-law of George W. English, judge aforesaid, was a large stockholder and director and cashier of said bank; and that George W. English, judge as aforesaid, was a depositor, stockholder, and director in said bank; that said improper act of George W. English, judge as aforesaid, in designating said bank, tended to scandalize the court in the administration of its bankruptcy business; and also,

In that on or about July, 1919, George W. English, judge as aforesaid, at a hearing then had before him, in the case of Sanders *v.* Southern Traction Co., in which certain assets had been sold for the sum of $400,000, did willfully and unlawfully order and decree that of said sum of $400,000 the sum of, to wit, $100,000 should be deposited in the Merchants State Bank of Centralia, Ill., a United States depository of bankruptcy funds, said deposit to draw no interest; that said deposit was made in said bank as ordered, and that George W. English, judge as aforesaid, was then and there a depositor, stockholder, and director in said bank; that said order and deposit of funds was made for the benefit of himself, George W. English, judge as aforesaid, and for his personal gain and profit and for the benefit of his family and friends, to the great scandal of the said office of judge aforesaid, and all tending to bring the administration of justice in said court into distrust and contempt; and, also,

In that George W. English, judge aforesaid, on or about October 1, 1922, and Charles B. Thomas, sole referee in bankruptcy aforesaid, did make and enter into the following improper and unlawful agreement with the officers of the Drovers National Bank of East St. Louis, to wit, that in consideration that said bank would employ one Farris English, son of said George W. English, as cashier in said bank at a salary of $1,500 per year, that George W. English, judge as aforesaid, and Charles B. Thomas, referee aforesaid, would make and designate said bank as a Government depository of bankruptcy funds without interest thereon, and that funds from estates in bankruptcy and receiverships should thereafter largely be sent to and deposited in said bank, and that George W. English, judge as aforesaid, and Charles B. Thomas, sole referee as aforesaid, and said Farris English would become depositors in said bank and then and there would purchase shares of stock therein, as follows:

George W. English, judge as aforesaid, 10 shares; said Farris English, 10 shares; and said Charles B. Thomas, 50 shares, at $80 per share; that in pursuance of said agreement said Farris English was hired as cashier at said salary of $1,500 per year and entered upon this employment; that George W. English, judge as aforesaid, in pursuance of said agreement, did designate said bank to be a Government depository of bankruptcy funds, and said George W. English and said Farris English and said Charles B. Thomas, in pursuance of said agreement, did become depositors in said bank, and the said George W. English, judge as aforesaid, the said Charles B. Thomas, referee as aforesaid, did make 17 transfers of bankruptcy funds from the Union Trust Co. of East St. Louis and cause the same to be deposited in said Drovers National Bank, without interest, to the aggregate amount of $100,000, and then and there George W. English, judge as aforesaid, did receive and pay for his said 10 shares of stock and also for the stock of his son, said Farris English; that the said improper acts were done and performed by George W. English, judge as aforesaid, with the wrongful and unlawful intent to use the influence of his said office as judge for the personal gain and profit of himself, said George W. English, and for the unlawful and improper and personal gain of the family and friends of the said George W. English; and, also,

In that George W. English, judge as aforesaid, on or about the 1st day of April, 1924, with the knowledge and consent of Charles B. Thomas, referee in bankruptcy aforesaid, did make and enter into the following improper and unlawful agreement with said Union Trust Co., a Government depository of bankruptcy funds, to wit, that if said Union Trust Co. would then and there employ one Farris English, the son of George W. English, judge aforesaid, at a salary of $200

per month, he, said George W. English, judge aforesaid, with said Charles B. Thomas, would become depositors in said Union Trust Co., and that he, the said George W. English, and said Charles B. Thomas would cause to be removed from the Drovers National Bank of East St. Louis the bankruptcy funds deposited there and would deposit the same in said Union Trust Co. and that said Union Trust Co. should pay to said Farris English, in addition to his said salary of $200 per month, interest on said bankruptcy funds from time to time on deposit in said Union Trust Co. at the rate of 3 per cent on monthly balances, and for this consideration George W. English, judge as aforesaid, further did agree with said Union Trust Co. that while said agreement continued said funds should not be withdrawn and deposited in any other Government depository, and thereupon said Farris English was employed by said Union Trust Co. under said agreement and remained in the services of said company for 14 months and drew out of said company during this said period, in addition to his salary of $200 per month, the sum of $2,700 as interest on bankruptcy funds; that the bankruptcy funds were withdrawn from said Drovers National Bank and deposited in the said Union Trust Co. under said agreement; that George W. English, judge as aforesaid, and Charles B. Thomas, referee in bankruptcy aforesaid, did then and there become depositors in said Union Trust Co., the said George W. English did then and there use his influence as judge for the unlawful and improper personal gain and profit to himself, family, and friends; and, also,

In that George W. English, judge as aforesaid, did improperly designate the Merchants State Bank, of Centralia, Ill., to be a Government depository of bankruptcy funds, in which bank he, the said George W. English, and he, the said Charles B. Thomas, were then and there depositors and stockholders and George W. English was then and there a director; and, also,

In that George W. English, judge as aforesaid, on divers days and times prior to the 7th day of April, 1925, and while George W. English, judge as aforesaid, and Charles B. Thomas, referee in bankruptcy aforesaid, were each depositors and stockholders and George W. English, a director of said Merchants State Bank of Centralia, Ill., and while said bank was a Government depository of bankruptcy funds, did borrow from said bank without security, at a rate of interest below the customary rate, sums of money from time to time amounting in the aggregate to $17,200, and that during said time prior to the 7th day of April, 1925, Charles B. Thomas, said referee in bankruptcy did borrow from said bank without security and at a rate of interest below the customary rate, sums of money to the total of $20,000; that said sums were loaned and said loans were renewed from time to time, and carried by said bank to the said George W. English and said Charles B. Thomas, by reason of the use of the official influence of George W. English, judge as aforesaid, and Charles B. Thomas, sole referee in bankruptcy aforesaid, and by reason of said bank having been made and continued as a United States depository for bankruptcy and other funds without interest; that said George W. English, judge as aforesaid, and Charles B. Thomas, sole referee in bankruptcy aforesaid, acting in concert with officers and directors of said Merchants State Bank of Centralia, Ill., did borrow with said directors sums of money in the total equal to all of the surplus, assets, and capital of said bank and at a low rate of interest and without security.

Wherefore the said George W. English was and is guilty of a course of conduct constituting misbehavior as such judge and that said George W. English was and is guilty of a misdemeanor in office.

ARTICLE V

That George W. English, on the 3d day of May, 1918, was duly appointed United States district judge for the eastern district of Illinois, and has held such office to the present day.

That during the time in which said George W. English has acted as such United States district judge, he, the said George W. English, at divers times and places, has repeatedly, in his judicial capacity, treated members of the bar, in a manner coarse, indecent, arbitrary, and tyrannical, and has so conducted himself in court and from the bench as to oppress and hinder members of the bar in the faithful discharge of their sworn duties to their clients, and to deprive such clients of their right to appear and be protected in their liberty and property by counsel, and in the above and other ways has conducted himself in a manner unbecoming the high position which he holds and thereby did bring the administration of justice in his said court into contempt and disgrace, to the great scandal and reproach of the said court.

That said George W. English, as judge aforesaid, during his said term of office, at divers times and places, while acting as such judge, did disregard the authority of the laws, and, wickedly meaning and intending so to do, did refuse to allow parties lawfully in said court the benefit of trial by jury, contrary to his said trust and duty as judge of said district court, against the laws of the United States, and in violation of the solemn oath which he had taken to administer equal and impartial justice.

That the said George W. English, as judge aforesaid, during his said term of office, at divers times and places, when acting as such judge, did so conduct himself in his said court, in making decisions and orders in actions pending in his said court and before him as said judge, as to excite fear and distrust and to inspire a widespread belief, in and beyond said eastern district of Illinois that causes were not decided in said court according to their merits but were decided with partiality and with prejudice and favoritism to certain individuals, particularly to one Charles B. Thomas, referee in bankruptcy for said eastern district.

That the said George W. English, as judge aforesaid, during his said term of office, at divers times and places, while acting as said judge, did improperly and unlawfully intent to favor and prefer Charles B. Thomas, his referee in bankruptcy for said eastern district, and to make for said Thomas large and improper gains and profits, continually and habitually prefer said Thomas in his appointments, rulings, and decrees.

That said George W. English, as judge aforesaid, during his said term of office, at divers times and places while acting as said judge, from the bench and in open court, did interfere with and usurp the authority and power and privileges of the sovereign State of Illinois, and usurp the rights and powers of said State over its State officials, and set at naught the constitutional rights of said sovereign State of Illinois, to the great prejudice and scandal of the cause of justice and of his said court and the rights of the people to have and receive due process of law.

That said George W. English, as judge aforesaid, during his said term of office, at divers times and places, did, while acting as said judge, unlawfully and improperly attempt to secure the approval, cooperation, and assistance of his associate upon the bench in said eastern district of Illinois, Judge Walter C. Lindley, by suggesting to said Walter C. Lindley, judge as aforesaid, that he appoint George W. English, jr., son of said George W. English, judge as aforesaid, to receiverships and other appointments in the said district court for said eastern district of Illinois, in consideration that said George W. English, judge as aforesaid, would appoint to like positions in his said court a cousin of said Judge Walter C. Lindley, and thereby unlawfully and improperly avoid the law in such case made and provided; all to the disgrace and prejudice of the administration of justice in the court of George W. English, judge as aforesaid.

That said George W. English, as judge aforesaid, during his said term of office, at divers times and places, did, while serving as said judge, seek from a large railroad corporation, to wit, the Missouri Pacific Railroad Co., which had large trackage, in said eastern district of Illinois, the appointment of his son, George W. English, jr., as attorney for said railroad.

All to the scandal and disrepute of said court and the administration of justice therein.

Wherefore, the said George W. English was and is guilty of misbehavior as such judge and of a misdemeanor in office.

IMPEACHMENT OF JUDGE ROBERT W. ARCHBALD*

In 1862 West H. Humphreys, United States district judge for the district of Tennessee, was impeached on several specifications, one of which was based on his action in making a speech at a public meeting, while off the bench, inciting revolt and rebellion against the Constitution and Government of the United States. The evidence clearly showed that he was in no wise acting in a judicial capacity, yet he was convicted on this charge.

A number of the impeachments of judges of the several States of the Union have been predicated on various acts of debauchery entirely separate from the performance of their official duties.

Any conduct on the part of a judge which reflects on his integrity as a man or his fitness to perform the judicial functions should be sufficient to sustain his impeachment. It would be both absurd and monstrous to hold that an impeachable offense must needs be committed in an official capacity. If such an atrocious doctrine should receive the sanction of the congressional authority, there is no limit to the variety and the viciousness of the offenses which a Federal judge might commit with perfect immunity from effective impeachment.

IMPEACHMENT FOR OFFENSES COMMITTED IN ANOTHER JUDICIAL OFFICE

Certain of the proposed articles of impeachment against Judge Archbald are based on offenses committed while he held the office of United States district judge for the middle district of Pennsylvania, whereas he now holds the office of circuit judge of the United States for the third judicial circuit, and is assigned to serve for a period of four years in the Commerce Court. In this respect the case here presented seems to be unique in the annals of impeachment proceedings under our Constitution.

By virtue of the provisions of section 609 of the Revised Statutes, which were then in force, Judge Archbald, while holding the office of United States district judge, was duly clothed with authority to sit or preside in the United States circuit court, and he was actually presiding over such circuit court at Scranton, Pa., during the time that some or all of the offenses charged in these articles were committed.

Since his elevation to a circuit judgeship the United States circuit courts have been abolished by the act of March 3, 19711 (36 Stat., 1087), entitled "An act to codify, revise, and amend the laws relating to the judiciary," but the provisions relative to the interchangeability of district and circut judges remain substantially the same. Section 18 of this act provides that—

> Whenever, in the judgment of the senior circuit judge of the circuit in which the district lies, or of the circuit justice assigned to such circuit, or of the Chief Justice, the public interest shall require, the said judge or associate justice or

* From Congressional Record (House) July 8, 1912 (8705–08)

Chief Justice shall designate and appoint any circuit judge of the circuit to hold said district court.

Thus it appears that Judge Archbald now holds a civil office, within the meaning of the Constitution, of the same judicial nature as the office held by him at the time of the commission of the offenses charged in the said articles, and that, under the existing law, he may be called upon at any time to perform precisely the same functions that he performed as United States district judge.

In State *v.* Hill (37 Nebr., 80) the Legislature of Nebraska had impeached certain ex-officers of the State for offenses alleged to have been committed during their respective terms of office. The Supreme Court of Nebraska held that inasmuch as they had ceased to be civil officers of the State they were not subject to impeachment. In the course of the decision the court said (pp. 88–89):

Judge Barnard was impeached in the State of New York during his second term for acts committed in his previous term of office. His plea that he was not liable to impeachment for offenses occurring in the first term was overruled. Precisely the same question was raised in the impeachment proceedings against Judge Hubbel, of Wisconsin, and on the trial of Gov. Butler, of this State, and in each of which the ruling was the same as in the Barnard case. There was good reason for overruling the plea to the jurisdiction in the three cases just mentioned. Each respondent was a civil officer at the time he was impeached and had been such uninterruptedly since the alleged misdemeanors in office were committed. The fact that the offense occurred in the previous term was immaterial. The object of impeachment is to remove a corrupt or unworthy officer. If his term has expired and he is no longer in office, that object is attained and the reason for his impeachment no longer exists. But if the offender is still an officer, he is amenable to impeachment, although the acts charged were committed in his previous term of the same office.

In the cases discussed there was a constructive breach in the tenure of the offices held by the defendants between the time of the commission of the offenses charged and the adoption of the articles of impeachment. Even though the offices held by the defendants at the time of their impeachment had not been the same offices which they held at the time of the commission of the alleged offenses, it might well have been decided, on principle, that impeachment would lie if in fact the prescribed functions of such offices were of the same general nature and susceptible to the same malversations and abuse.

It is indeed anomalous if this Congress is powerless to remove a corrupt or unfit Federal judge from office because his corruption or misdemeanor, however vicious or reprehensible, may have occurred during his tenure in some other judicial office under the Government of the United States prior to his appointment to the particular office from which he is sought to be ousted by impeachment, although he may have held a Federal judgeship continuously from the time of the commission of his offenses. Surely the House of Representatives will not recognize nor the Senate apply such a narrow and technical construction of the constitutional provisions relating to impeachments.

Conclusion.

Judges "shall hold their offices during good behavior." Thus says the Constitution. The framers of that instrument were desirous of having an independent and incorruptible judiciary, but they never intended to provide that any judge should hold his office upon non-

forfeitable life tenure. Those who formulated the organic law sought to protect the people against the malfeasance and misfeasance of unjust and corrupt judges. Therefore they wisely limited the tenure of office to "during good behavior" and provided the remedy for misbehavior to be forfeiture of office and the removal therefrom by impeachment.

The conduct of this judge has been exceedingly reprehensible and in marked contrast with the high sense of judicial ethics and probity that generally characterizes the Federal judiciary. Be it said to the credit of the wisdom of our fathers and in behalf of our American institutions that the judges have, as a rule, deported themselves in such manner as to merit and keep the confidence of the people. The public respect for the judicial branch of our Government has almost amounted to reverence. This confidence has been deserved, and let us hope that it will continue to be deserved, to the end that an upright and independent judiciary may be maintained for the perpetuation of our government of law.

A judge should be the personification of integrity, of honor, and of uprightness in his daily work and conversation. He should hold his exalted office and the administration of justice above the sordid desire to accumulate wealth by trading or trafficking with actual or probable litigants in his court. He should be free and unaffected by any bias born of avarice and unhampered by pecuniary or other improper obligations.

Your committee is of opinion that Judge Archbald's sense of moral responsibility has become deadened. He has prostituted his high office for personal profit. He has attempted by various transactions to commercialize his potentiality as judge. He has shown an overweening desire to make gainful bargains with parties having cases before him or likely to have cases before him. To accomplish this purpose he has not hesitated to use his official power and influence. He has degraded his high office and has destroyed the confidence of the public in his judicial integrity. He has forfeited the condition upon which he holds his commission and should be removed from office by impeachment.

Recommendation.

Your committee reports herewith the accompanying resolution and articles of impeachment against Judge Robert W. Archbald, and recommends that they be adopted by the House and that they be presented to the Senate with a demand for the conviction and removal from office of said Robert W. Archbald, United States circuit judge designated as a member of the Commerce Court:

House Resolution 622.

Resolved, That Robert W. Archbald, additional circuit judge of the United States from the third judicial, appointed pursuant to the act of June 18, 1910 (U.S. Stat. L., vol. 36, 540), and having duly qualified and having been duly commissioned and designated on the 31st day of January, 1911, to serve for four years in the Commerce Court, be impeached for misbehavior and for high crimes and misdemeanors; and that the evidence heretofore taken by the Committee on the Judiciary under House resolution 524 sustains 13 articles of impeachment which are hereinafter set out; and that said articles be, and they are hereby, adopted by the House of Representatives, and that the same shall be exhibited to the Senate in the following words and figures, to wit:

Articles of impeachment of the House of Representatives of the United States of America in the name of themselves and of all of the people of the United States of America against Robert W. Archbald, additional circuit judge of the United States from the third judicial circuit, appointed pursuant to the act of June 18, 1910 (U.S. Stat. L., vol. 36, 540), and having duly qualified and having been duly commissioned and designated on the 31st day of January, 1911, to serve for four years in the Commerce Court:

ARTICLE 1.

That the said Robert W. Archbald, at Scranton, in the State of Pennsylvania, being a United States circuit judge, and having been duly designated as one of the judges of the United States Commerce Court, and being then and there a judge of the said court, on March 31, 1911, entered into an agreement with one Edward J. Williams whereby the said Robert W. Archbald and the said Edward J. Williams agreed to become partners in the purchase of a certain culm dump, commonly known as the Katydid culm dump, near Moosic, Pa., owned by the Hillside Coal & Iron Co., a corporation, and one John M. Robertson, for the purpose of disposing of said property at a profit. That pursuant to said agreement, and in furtherance thereof, the said Robert W. Archbald, on the 31st day of March, 1911, and at divers other times and at different places, did undertake, by correspondence, by personal conferences, and otherwise, to induce and influence, and did induce and influence, the officers of the said Hillside Coal & Iron Co. and of the Erie Railroad Co., a corporation, which owned all of the stock of said coal company, to enter into an agreement with the said Robert W. Archbald and the said Edward J. Williams to sell the interest of the said Hillside Coal & Iron Co. in the Katydid culm dump for a consideration of $4,500. That during the period covering the several negotiations and transactions leading up to the aforesaid agreement the said Robert W. Archbald was a judge of the United States Commerce Court, duly designated and acting as such judge; and at the time aforesaid and during the time the aforesaid negotiations were in progress the said Erie Railroad Co. was a common carrier engaged in interstate commerce and was a party litigant in certain suits, to wit, the Baltimore & Ohio Railroad Co., et al. *v.* The Interstate Commerce Commission, No. 38, and the Baltimore & Ohio Railroad Co. et al. *v.* The Interstate Commerce Commission, No. 39, then pending in the United States Commerce Court; and the said Robert W. Archbald, judge as aforesaid, well knowing these facts, willfully, unlawfully, and corruptly took advantage of his official position as such judge to induce and influence the officials of the said Erie Railroad Co. and the said Hillside Coal & Iron Co., a subsidiary corporation thereof, to enter into a contract with him and the said Edward J. Williams, as aforesaid, for profit to themselves, and that the said Robert W. Archbald, then and there, through the influence exerted by reason of his position as such judge, willfully, unlawfully, and corruptly did induce the officers of said Erie Railroad Co. and of the said Hillside Coal & Iron Co. to enter into said contract for the consideration aforesaid.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior as such judge and of a high crime and misdemeanor in office.

ARTICLE 2.

That the said Robert W. Archbald, on the 1st day of August, 1911, was a United States circuit judge, and, having been duly designated as one of the judges of the United States Commerce Court, was then and there a judge of said court.

That at the time aforesaid the Marian Coal Co., a corporation, was the owner of a certain culm bank at Taylor, Pa., and was then and there engaged in the business of washing and shipping coal; that prior to that time the said Marian Coal Co. had filed before the Interstate Commerce Commission a complaint against the Delaware, Lackawanna & Western Railroad Co. and five other railroad companies as defendants, charging said defendants with discrimination in rates and with excessive charges for the transportation of coal shipped by the said Marian Coal Co. over their respective lines of road; that all of the said defendant companies were common carriers engaged in interstate commerce. That the decision of the said case by the Interstate Commerce Commission at the instance of either party thereto was subject to review, under the law, by the United States Commerce Court; that one Christopher G. Boland and one William P. Boland were then the principal stockholders of the said Marian Coal Co. and

controlled the operation of the same, and they, the said Christopher G. Boland and the said William P. Boland, employed one George M. Watson as an attorney to settle the case then pending as aforesaid in the Interstate Commerce Commission and to sell to the Delaware, Lackawanna & Western Railroad Co. two-thirds of the stock of the said Marian Coal Co.; and at the time aforesaid there was pending in the United States Commerce Court a certain suit entitled the Baltimore & Ohio Railroad Co. et al. *v.* The Interstate Commerce Commission, No. 38, to which suit the said Delaware, Lackawanna & Western Railroad Co. was a party litigant.

That the said Robert W. Archbald, being judge as aforesaid and well knowing these facts, did, then and there, engage, for a consideration, to assist the said George M. Watson to settle the aforesaid case then pending before the Interstate Commerce Commission and to sell to the said Delaware. Lackawanna & Western Railroad Co. the said two-thirds of the stock of the said Marian Coal Co., and in pursuance of said engagement the said Robert W. Archbald, on or about the 10th day of August, 1911, and at divers other times and at different places, did undertake, by correspondence, by personal conferences, and otherwise, to induce and influence the officers of the Delaware, Lackawanna & Western Railroad Co. to enter into an agreement with the said George M. Watson for the settlement of the aforesaid case and the sale of said stock of the Marian Coal Co.; and the said Robert W. Archbald thereby willfully, unlawfully, and corruptly did use his influence as such judge in the attempt to settle said case and to sell said stock of the said Marian Coal Co. to the Delaware, Lackawanna & Western Railroad Co.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior as such judge and of a high crime and misdemeanor in office.

ARTICLE 3.

That the said Robert Archbald, being a United States circuit judge and a judge of the United States Commerce Court, on or about October 1, 1911, did secure from the Lehigh Valley Coal Co., a corporation, which coal company was then and there owned by the Lehigh Valley Railroad Co., a common carrier engaged in interstate commerce, and which railroad company was at that time a party litigant in certain suits then pending in the United States Commerce Court, to wit, The Baltimore & Ohio Railroad Co. et al. *v.* Interstate Commerce Commission et al., No. 38. and The Lehigh Valley Railroad Co. *v.* Interstate Commerce Commission et al., No. 49, all of which was well known to said Robert W. Archbald, an agreement which permitted said Robert W. Archbald and his associates to lease a culm dump, known as Packer No. 3, near Shenandoah, in the State of Pennsylvania, which said culm dump contained a large amount of coal, to wit, 472,670 tons, and which said culm dump the said Robert W. Archbald and his associates agreed to operate and to ship the product of the same exclusively over the lines of the Lehigh Valley Railroad Co.; and that the said Robert W. Archbald unlawfully and corruptly did use his official position and influence as such judge to secure from the said coal company the said agreement.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior as such judge and of a misdemeanor in such office.

ARTICLE 4.

That the said Robert W. Archbald, while holding the office of United States circuit judge and being a member of the United States Commerce Court, was and is guilty of gross and improper conduct, and was and is guilty of a misdemeanor as said circuit judge and as a member of said Commerce Court in manner and form as follows, to wit: Prior to and on the 4th day of April, 1911, there was pending in said United States Commerce Court the suit of Louisville and Nashville Railroad Co. *v.* The Interstate Commerce Commission. Said suit was argued and submitted to said United States Commerce Court on the 4th day of April, 1911; that afterwards, to wit, on the 22d day of August, 1911, while said suit was still pending in said court, and before the same had been decided, the said Robert W. Archbald, as a member of said United States Commerce Court, secretly, wrongfully, and unlawfully did write a letter to the attorney for the said Louisville & Nashville Railroad Co. requesting said attorney to see one of the witnesses who had testified in said suit on behalf of said company and to get his explanation and interpretation of certain testimony that the said witness had given in said suit, and communicate the same to the said Robert W. Archbald, which request

was compiled with by said attorney; that afterwards, to wit, on the 10th day of January, 1912, while said suit was still pending, and before the same had been decided by said court, the said Robert W. Archbald, as judge of said court, secretly, wrongfully, and unlawfully again did write to the said attorney that other members of said United States Commerce Court has discovered evidence on file in said suit detrimental to the said railroad company and contrary to the statements and contentions made by the said attorney, and the said Robert W. Archbald, judge of said United States Commerce Court as aforesaid, in said letter requested the said attorney to make to him, the said Robert W. Archbald, an explanation and an answer thereto; and he, the said Robert W. Archbald, as a member of said United States Commerce Court aforesaid, did then and there request and solicit the said attorney for the said railroad company to make and deliver to the said Robert W. Archbald a further argument in support of the contentions of the said attorney so representing the said railroad company, which request was complied with by said attorney, all of which on the part of said Robert W. Archbald was done secretly, wrongfully, and unlawfully, and which was without the knowledge or consent of the said Interstate Commerce Commission or its attorneys.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior in office, and was and is guilty of a misdemeanor.

ARTICLE 5.

That in the year 1904 one Frederick Warnke, of Scranton, Pa., purchased a two-thirds interest in a lease on certain coal lands owned by the Philadelphia & Reading Coal & Iron Co., located near Lorberry Junction, in said State, and put up a number of improvements thereon and operated a culm dump located on said property for several years thereafter; that operations were carried on at a loss; that said Frederick Warnke thereupon applied to the Philadelphia & Reading Coal & Iron Co. for the mining maps of the said land covered by the said lease, and was informed that the lease under which he claimed had been forfeited two years before it was assigned to him, and his application for said maps was therefore denied; that said Frederick Warnke then made a proposition to George F. Baer, president of the Philadelphia & Reading Railroad Co. and president of the Philadelphia & Reading Coal & Iron Co., to relinquish any claim that he might have in this property under the said lease, provided that the Philadelphia & Reading Coal & Iron Co. would give him an operating lease on what was known as the Lincoln culm bank located near Lorberry; that said George F. Baer referred said proposition to one W. J. Richards, vice president and general manager of the Philadelphia & Reading Coal & Iron Co., for consideration and action; that the general policy of the said coal company being adverse to the lease of any of its culm banks, the said George F. Baer and the said W. J. Richards declined to make the lease, and the said Frederick Warnke was so advised; that the said Frederick Warnke then made several attempts, through his attorneys and friends, to have the said George F. Baer and the said W. J. Richards reconsider their decision in the premises, but without avail; that on or about November 1, 1911, the said Frederick Warnke called upon Robert A. Archbald, who was then and now is a United States circuit judge, having been duly designated as one of the judges of the United States Commerce Court, and asked him, the said Robert W. Archbald, to intercede in his behalf with the said W. J. Richards; that on November 24, 1911, the said Robert W. Archbald, judge as aforesaid, pursuant to said request, did write a letter to the said W. J. Richards requesting an appointment with the said W. J. Richards; that several days thereafter the said Robert W. Archbald called at the office of the said W. J. Richards to intercede for the said Frederick Warnke; that the said W. J. Richards then and there informed the said Robert W. Archbald that the decision which he had given to the said Warnke must be considered as final, and the said Archbald so informed the said Warnke; that the entire capital stock of the Philadelphia & Reading Coal & Iron Co. is owned by the Reading Co., which also owns the entire capital stock of the Philadelphia & Reading Railroad Co., which last-named company is a common carrier engaged in interstate commerce.

That the said Robert W. Archbald, judge as aforesaid, well knowing all of the aforesaid facts, did wrongfully attempt to use his influence as such judge to aid and assist the said Frederick Warnke to secure an operating lease of the said Lincoln culm dump owned by the Philadelphia & Reading Coal & Iron Co., as aforesaid, which lease the officials of the said Philadelphia & Reading Coal &

Iron Co. had theretofore refused to grant, which said fact was also well known to the said Robert W. Archbald.

That the said Robert W. Archbald, judge as aforesaid, shortly after the conclusion of his attempted negotiations with the officers of the Philadelphia & Reading Railroad Co. and of the Philadelphia & Reading Coal & Iron Co. aforesaid in behalf of the said Frederick Warnke, and on or about the 31st day of March, 1912, willfully, unlawfully, and corruptly did accept as a gift, reward, or present from the said Frederick Warnke, tendered in consideration of favors shown him by said judge in his efforts to secure a settlement and agreement with the said railroad company and the said coal company, and for other favors shown by said judge to the said Frederick Warnke, a certain promissory note for $500 executed by the firm of Warnke & Co., of which the said Frederick Warnke was a member.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior as a judge and high crimes and misdemeanor in office.

ARTICLE 6.

That the said Robert W. Archbald, being a United States circuit judge and a judge of the United States Commerce Court, on or about the 1st day of December, 1911, did unlawfully, improperly, and corruptly attempt to use his influence as such judge with the Lehigh Valley Coal Co. and the Lehigh Valley Railway Co. to induce the officers of said companies to purchase a certain interest in a tract of coal land containing 800 acres, which interest at said time belonged to certain persons known as the Everhardt heirs.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior in office, and was and is guilty of a misdemeanor.

ARTICLE 7.

That during the months of October and November, A.D. 1908, there was pending in the United States district court, in the city of Scranton, State of Pennsylvania, over which court Robert W. Archbald was then presiding as the duly appointed judge thereof, a suit or action at law wherein the Old Plymouth Coal Co. was plaintiff and the Equitable Fire & Marine Insurance Co. was defendant. That the said coal company was principally owned and entirely controlled by one W. W. Rissinger, which fact was well known to said Robert W. Archbald; that on or about November 1, 1908, and while said suit was pending, the said Robert W. Archbald and the said W. W. Rissinger wrongfully and corruptly agreed together to purchase stock in a gold-mining scheme in Honduras, Central America, for the purpose of speculation and profit; that in order to secure the money with which to purchase said stock the said Rissinger executed his promissory note in the sum of $2,500, payable to Robert W. Archbald and Sophia J. Hutchison, which said note was indorsed then and there by the said Robert W. Archbald for the purpose of having same discounted for cash; that one of the attorneys for said Rissinger in the trial of said suit was one John T. Lenahan; that on the 23d day of November, 1908, said suit came on for trial before said Robert W. Archbald, judge presiding, and a jury, and after the plaintiff's evidence was presented the defendant insurance company demurred to the sufficiency of such evidence and moved for a nonsuit, and after extended argument by attorneys for both plaintiff and defendant the said Robert W. Archbald ruled against the defendant and in favor of the plaintiff, and thereupon the defendant proceeded to introduce evidence, before the conclusion of which the jury was dismissed and a consent judgment rendered in favor of the plaintiff for $2,500, to be discharged upon the payment of $2,129.63 if paid within 15 days from November 23, 1908, and on the same day judgments were entered in a number of other like suits against different insurance companies, which resulted in the recovery of about $28,000 by the Old Plymouth Coal Co.; that before the expiration of said 15 days the said Rissinger, with the knowledge and consent of said Robert W. Archbald, presented said note to the said John T. Lenahan for discount, which was refused and which was later discounted by a bank and has never been paid.

All of which acts on the part of the said Robert W. Archbald were improper, unbecoming, and constituted misbehavior in his said office as judge and render him guilty of a misdemeanor.

ARTICLE 8.

That during the summer and fall of the year 1909 there was pending in the United States district court for the middle district of Pennsylvania, in the

city of Scranton, over which court the said Robert W. Archbald was then and there presiding as the duly appointed judge thereof, a civil action wherein the Marian Coal Co. was defendant, which action involved a large sum of money, and which defendant coal company was principally owned and controlled by one Christopher G. Boland and one William P. Boland, all of which was well known to said Robert W. Archbald; and while said suit was so pending the said Robert W. Archbald drew a note for $500, payable to himself, and which note was signed by one John Henry Jones and indorsed by the said Robert W. Archbald, and then and there during the pendency of said suit as aforesaid the said Robert W. Archbald wrongfully agreed and consented that the said note should be presented to the said Christopher G. Boland and the said William P. Boland, or one of them, for the purpose of having the said note discounted, corruptly intending that his name on said note would coerce and induce the said Christopher G. Boland and the said William P. Boland, or one of them to discount the same because of the said Robert W. Archbald's position as judge, and because the said Bolands were at that time litigants in his said court.

Wherefore the said Robert W. Archbald was and is guilty of gross misconduct in his office as judge, and was and is guilty of a misdemeanor in his said office as judge.

ARTICLE 9.

That the said Robert W. Archbald, of the city of Scranton and State of Pennsylvania, on or about November 1, 1909, being then and there a United States district judge in and for the middle district of Pennsylvania, in the city of Scranton and State aforesaid, did draw a note in his own proper handwriting, payable to himself, in the sum of $500, which said note was signed by one John Henry Jones, which said note the said Robert W. Archbald indorsed for the purpose of securing the sum of $500, and the said Robert W. Archbald, well knowing that his indorsement would not secure money in the usual commercial channels, then and there wrongfully did permit the said John Henry Jones to present said note for discount, at his law office, to one C. H. Von Storch, attorney at law and practitioner in said district court, which said Von Storch, a short time prior thereto, was a party defendant in a suit in the said district court presided over by said Robert W. Archbald, which said suit was decided in favor of the said Von Storch upon a ruling by the said Robert W. Archbald; and when the said note was presented to the said Von Storch for discount, as aforesaid, the said Robert W. Archbald wrongfully and improperly used his influence as such judge to induce the said Von Storch to discount same; that the said note was then and there discounted by the said Von Storch, and the same has never been paid, but is still due and owing.

Wherefore the said Robert W. Archbald was and is guilty of gross misconduct in his said office, and was and is guilty of a misdemeanor in his said office as judge.

ARTICLE 10.

That the said Robert W. Archbald, while holding the office of United States district judge, in and for the middle district of the State of Pennsylvania, on or about the 1st day of May, 1910, wrongfully and unlawfully did accept and receive a large sum of money, the exact amount of which is unknown to the House of Representatives, from one Henry W. Cannon; that said money so given by the said Henry W. Cannon and so unlawfully and wrongfully received and accepted by the said Robert W. Archbald, judge as aforesaid, was for the purpose of defraying the expenses of a pleasure trip of the said Robert W. Archbald to Europe; that the said Henry W. Cannon, at the time of the giving of said money and the receipt thereof by the said Robert W. Archbald, was a stockholder and officer in various and divers interstate railway corporations, to wit: A director in the Great Northern Railway, a director in the Lake Erie & Western Railroad Co., and a director in the Fort Wayne, Cincinnati & Louisville Railroad Co.; that the said Henry W. Cannon was president and chairman of the board of directors of the Pacific Coast Co., a corporation which owned the entire capital stock of the Columbus & Puget Sound Railroad Co., the Pacific Coast Railway Co., the Pacific Coast Steamship Co., and various other corporations engaged in the mining of coal and in the development of agricultural and timber land in various parts of the United States; that the acceptance by the said Robert W. Archbald, while holding said office of United States district judge, of said favors from an officer

and official of the said corporations, any of which in the due course of business was liable to be interested in litigation pending in the said court over which he presided as such judge, was improper and had a tendency to and did bring his said office of district judge into disrepute.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior in office, and was and is guilty of a misdemeanor.

ARTICLE 11.

That the said Robert W. Archbald, while holding the office of United States district judge in and for the middle district of the State of Pennsylvania, did, on or about the 1st day of May, 1910, wrongfully and unlawfully accept and receive a sum of money in excess of $500, which sum of money was contributed and given to the said Robert W. Archbald by various attorneys who were practitioners in the said court presided over by the said Robert W. Archbald; that said money was raised by subscription and solicitation from said attorneys by two of the officers of said court, to wit, Edward R. W. Searle, clerk of said court, and J. B. Woodward, jury commissioner of said court, both the said Edward R. W. Searle and the said J. B. Woodward having been appointed to the said positions by the said Robert W. Archbald, judge aforesaid.

Wherefore said Robert W. Archbald was and is guilty of misbehavior in office, and was and is guilty of a misdemeanor.

ARTICLE 12.

That on the 9th day of April, 1901, and for a long time prior thereto, one J. B. Woodward was a general attorney for the Lehigh Valley Railroad Co., a corporation and common carrier doing a general railroad business; that on said day the said Robert W. Archbald, being then and there a United States district judge in and for the middle district of Pennsylvania, and while acting as such judge, did appoint the said J. B. Woodward as a jury commissioner in and for said judicial district, and the said J. B. Woodward, by virtue of said appointment and with the continued consent and approval of the said Robert W. Archbald, held such office and performed all the duties pertaining thereto during all the time that the said Robert W. Archbald held said office of United States district judge, and that during all of said time the said J. B. Woodward continued to act as a general attorney for the said Lehigh Valley Railroad Co.; all of which was at all times well known to the said Robert W. Archbald.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior in office, and was and is guilty of a misdemeanor.

ARTICLE 13.

That Robert W. Archbald, on the 29th day of March, 1901, was duly appointed United States district judge for the middle district of Pennsylvania and held such office until the 31st day of January, 1911, on which last-named date he was duly appointed a United States circuit judge and designated as a judge of the United States Commerce Court.

That during the time in which the said Robert W. Archbald has acted as such United States district judge and judge of the United States Commerce Court he, the said Robert W. Archbald, at divers times and places, has sought wrongfully to obtain credit from and through certain persons who were interested in the result of suits then pending and suits that had been pending in the court over which he presided as judge of the district court, and in suits pending in the United States Commerce Court, of which the said Robert W. Archbald is a member.

That the said Robert W. Archbald, being United States circuit judge and being then and there a judge of the United States Commerce Court, at Scranton, in the State of Pennsylvania, on the 31st day of March, 1911, and at divers other times and places, did undertake to carry on a general business for speculation and profit in the purchase and sale of culm dumps, coal lands, and other coal properties, and for a valuable consideration to compromise litigation pending before the Interstate Commerce Commission, and in the furtherance of his efforts to compromise such litigation and of his speculations in coal properties, willfully, unlawfully, and corruptly did use his influence as a judge of the said United States Commerce Court to induce the officers of the Erie Railroad Co., the Delaware, Lackawanna & Western Railroad Co., the Lackawanna & Wyoming Valley Railroad Co., and

other railroad companies engaged in interstate commerce, respectively, to enter into various and divers contracts and agreements in which he was then and there financially interested with divers persons, to wit, Edward J. Williams, John Henry Jones,, Thomas H. Jones, George M. Watson, and others, without disclosing his said interest therein on the face of the contract, but which interest was well known to the officers and agents of said railroad companies.

That the said Robert W. Archbald did not invest any money or other thing of value in consideration of any interest acquired or sought to be acquired by him in securing or in attempting to secure such contracts or agreements or properties as aforesaid, but used his influence as such judge with the contracting parties thereto, and received an interest in said contracts, agreements, and properties in consideration of such influence in aiding and assisting in securing same.

That the said several railroad companies were and are engaged in interstate commerce, and at the time of the execution of the several contracts and agreements aforesaid and of entering into negotiations looking to such agreements had divers suits pending in the United States Commerce Court, and that the conduct and efforts of the said Robert W. Archbald in endeavoring to secure and in securing such contracts and agreements from said railroad companies was continuous and persistent from the said 31st day of March, 1911, to about the 15th day or April, 1912.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior as such judge and of misdemeanors in office.

Mr. CLAYTON. Mr. Speaker, I beg to say, for the benefit of the Members of the House, that a thousand copies of this report, with the accompanying resolution, have been printed by the committee, so that any Member of the House desiring to have a copy of this report, with the accompanying resolution, may have the same by applying to the Committee on the Judiciary at its rooms in the House Office Building.

Impeachment of Judge Harold Louderback

A decision holding that a motion relating to a question of the Senate sitting as a court of impeachment is not debatable.

The Senate having been informed, on February 28,[1] by message, of the action [2] of the House of Representatives, transmitted to the House on the same day [3] a message announcing its readiness to receive the managers appointed by the House for the purpose of exhibiting the articles of impeachment.

On March 3,[4] the managers on the part of the House appeared before the Senate and were received with the formalities customarily observed on such occasions.

Mr. Manager Sumners read the resolution [5] agreed to by the House appointing its managers, and yielded to Mr. Manager Browning, who read the articles of impeachment, as follows:

ARTICLES OF IMPEACHMENT AGAINST HAROLD LOUDERBACK

Congress of the United States of America,
In the House of Representatives,
February 24, 1933.

Resolution

Resolved, That Harold Louderback, who is a United States district judge of the northern district of California, be impeached of misdemeanors in office; and that the evidence heretofore taken by the special committee of the House of Representatives under House Resolution 239, sustains five articles of impeachment, which are hereinafter set out; and that the said articles be, and they are hereby adopted by the House of Representatives, and that the same shall be exhibited to the Senate in the following words and figures, to wit:

Articles of impeachment of the House of Representatives of the United States of America in the name of themselves and of all of the people of the United States of America against Harold Louderback, who was appointed, duly qualified, and commissioned to serve during good behavior in office, as United States district judge for the northern district of California, on April 17, 1928.

Article I

That the said Harold Louderback, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned and while acting as a district judge for the northern district of California did on diverse and various occasions so abuse the power of his high office, that he is hereby charged with tyranny and oppression, favoritism and conspiracy, whereby he has brought the administration of justice in said district in the court of which he is a judge into disrepute, and by his conduct

[1] H. Res. 403, Record, p. 5178.
[2] Record, p. 5193.
[3] Record, p. 5195.
[4] Record, p. 5473.
[5] H. Res. 402, Record, p. 5177.

is guilty of misbehavior, falling under the constitutional provision as ground for impeachment and removal from office.

In that the said Harold Louderback on or about the 13th day of March, 1930, at his chambers and in his capacity as judge aforesaid, did willfully, tyrannically, and oppressively discharge on Addison G. Strong, whom he had on the 11th day of March, 1930, appointed as equity receiver in the matter of Olmstead against Russell-Colvin Co. after having attempted to force and coerce the said Strong to appoint one Douglas Short as attorney for the receiver in said case.

In that the said Harold Louderback improperly did attempt to cause the said Addison G. Strong to appoint the said Douglas Short as attorney for the receiver by promises of allowance of large fees and by threats of reduced fees did he refuse to appoint said Douglas Short.

In that the said Harold Louderback improperly did use his office and power of district judge in his own personal interest by causing the appointment of the said Douglas Short as attorney for the receiver, at the instance, suggestion, or demand of one Sam Leake, to whom the said Harold Louderback was under personal obligation, the said Sam Leake having entered into a certain arrangement and conspiracy with the said Harold Louderback to provide him, the said Harold Louderback, with a room at the Fairmont Hotel in the city of San Francisco, Calif., and made arrangements for registering said room in his, Sam Leake's name and paying all bills therefor in cash under an arrangement with the said Harold Louderback, to be reimbursed in full or in part in order that the said Harold Louderback might continue to actually reside in the city and county of San Francisco after having improperly and unlawfully established a fictitious residence in Contra Costa County for the sole purpose of improperly removing for trial to said Contra Costa County a cause of action which the said Harold Louderback expected to be filed against him; and that the said Douglas Short did receive large and exorbitant fees for his services as attorney for the receiver in said action, and the said Sam Leake did receive certain fees, gratuities, and loans directly or indirectly from the said Douglas Short amounting approximately to $1,200.

In that the said Harold Louderback entered into a conspiracy with the said Sam Leake to violate the provisions of the California Political Code in establishing a residence in the county of Contra Costa when the said Harold Louderback in fact did not reside in said county and could not have established a residence without the concealment of his actual residence in the county of San Francisco, covered and concealed by means of the said conspiracy with the said Sam Leake, all in violation of the law of the State of California.

In that the said Harold Louderback, in order to give color to his fictitious residence in the county of Contra Costa, all for the purpose of preparing and falsely creating proof necessary to establish himself as a resident of Contra Costa County in anticipation of an action he expected to be brought against him, for the sole purpose of meeting the requirements of the Code of Civil Procedure of the State of California providing that all causes of action must be tried in the county in which the defendant resides at the commencing of the action, did in accordance with the conspiracy entered into with the said Sam Leake unlawfully register as a voter in said Contra Costa County, when in law and in fact he did not reside in said county and could not so register, and that the said acts of Harold Louderback constitute a felony defined by section 42 of the Penal Code of California.

Wherefore the said Harold Louderback was and is guilty of a course of conduct improper, oppressive, and unlawful and is guilty of misbehavior in office as such judge and was and is guilty of a misdemeanor in office.

Article II

That Harold Louderback, judge as aforesaid, was guilty of a course of improper and unlawful conduct as a judge, filled with partiality and favoritism in improperly granting excessive, exorbitant, and unreasonable allowances as disbursements to one Marshall Woodward and to one Samuel Shortridge, jr., as receiver and attorney, respectively, in the matter of the Lumbermen's Reciprocal Association.

And in that the said Harold Louderback, judge as aforesaid, having improperly acquired jurisdiction of the case of the Lumbermen's Reciprocal Association contrary to the law of the United States and the rules of the court did, on or about the 29th day of July, 1930, appoint one Marshall Woodward and one

Samuel Shortridge, jr., receiver and attorney, respectively, in said case, and after an appeal was taken from the order and other acts of the judge in said case to the United States Circuit Court of Appeals for the Ninth Circuit and the said order and acts of the said Harold Louderback having been reversed by said United States Circuit Court of Appeals and the mandate of said circuit court of appeals directed the court to cause the said receiver to turn over all of the assets of said association in his possession as receiver to the commissioner of insurance of the State of California, the said Harold Louderback unlawfully, improperly, and oppressively did sign and enter an order so directing the receiver to turn over said property to said State commissioner of insurance but improperly and unlawfully made such order conditional that the said State commissioner of insurance and any other party in interest would not take a Holding Co. case when as a matter of fact and law and under conditions then existing no receiver should have been appointed, but the said Harold Louderback did accept a petition verified on information and belief by an attorney in the case and without notice to the said Prudential Holding Co. did so appoint Guy H. Gilbert the receiver and the firm of Dinkelspiel and Dinkelspiel attorneys for the receiver; that the said Harold Louderback in an attempt to benefit and enrich the said Guy H. Gilbert and his attorneys, Dinkelspiel and Dinkelspiel, failed to give his fair, impartial, and judicial consideration to the application of the said Prudential Holding Co. for a dismissal of the petition and a discharge of the receiver, although the said Prudential Holding Co. was in law entitled to such dismissal of the petition and discharge of the receiver; that during the pendency of the application for the dismissal of the petition and for the discharge of the receiver a petition in bankruptcy was filed against the said Prudential Holding Co. based entirely and solely on an allegation that a receiver in equity had been appointed for the said Prudential Holding Co., and the said Harold Louderback then and there willfully, improperly, and unlawfully, sitting in a part of the court to which he had not been assigned at the time, took jurisdiction of the case in bankruptcy and though knowing the facts in the case and of the application then pending before him for the dismissal of the petition and the discharge of the equity receiver, granted the petition in bankruptcy and did on the 2d day of October, 1930, appoint the same Guy H. Gilbert receiver in bankruptcy and the said Dinkelspiel and Dinkelspiel attorneys for the receiver, knowing all of the time that the said Prudential Holding Co. was entitled as a matter of law to have the said petition in equity dismissed; in that through the oppressive, deliberate, and willful action of the said Harold Louderback acting in his capacity as a judge and misusing the powers of his judicial office for the sole purpose of benefiting and enriching said Guy H. Gilbert and Dinkelspiel and Dinkelspiel, did cause the said Prudential Holding Co. to be put to unnecessary delay, expense, and labor and did deprive them of a fair, impartial, and judicial consideration of their rights and the protection of their property, to which they were entitled.

Wherefore the said Harold Louderback was, and is, guilty of a course of conduct constituting misbehavior as said judge and that said Harold Louderback was, and is, guilty of a misdemeanor in office.

[Articles III and IV are not available.]

ARTICLE V

That Harold Louderback, on the 17th day of April, 1928, was duly appointed United States district judge for the northern district of California, and has held such office to the present day.

That the said Harold Louderback as judge aforesaid, during his said term of office, at diverse times and places when acting as such judge, did so conduct himself in his said court and in his capacity as judge in making decisions and orders in actions pending in his said court and before him as said judge, and in the method of appointing receivers and attorneys for receivers, in appointing incompetent receivers, and in displaying a high degree of indifference to the litigants in equity receiverships, as to excite fear and distrust and to inspire a widespread belief in and beyond said northern district of California that causes were not decided in said court according to their merits, but were decided with partiality and with prejudice and favoritism to certain individuals, particularly to receivers and attorneys for receivers by him so appointed, all of which is prejudicial to the dignity of the judiciary.

All to the scandal and disrepute of said court and the administration of justice therein.

Wherefore the said Harold Louderback was, and is, guilty of misbehavior as such judge and of a misdemeanor in office.

[SEAL.] JNO. N. GARNER.
Speaker of the House of Representatives.

Attest: SOUTH TRIMBLE, *Clerk.*

Mr. Manager Sumners then entered a reservation of the right to exhibit at any time thereafter any further articles of accusation or impeachment, and made formal announcement that the managers on the part of the House of Representatives—

do now demand that the Senate take order for the appearance of said Harold Louderback to answer said impeachment, and do now demand his impeachment, conviction, and removal from office.

Impeachment of Judge Halsted L. Ritter

[H. Res. 422, 74th Cong. 2d sess.]

Congress of the United States of America,
In the House of Representatives,
March 2, 1936.

Resolved, That Halsted L. Ritter, who is a United States district judge for the southern district of Florida, be impeached for misbehavior, and for high crimes and misdemeanors; and that the evidence heretofore taken by the subcommittee of the Committee on the Judiciary of the House of Representatives under H. Res. 163 of the Seventy-third Congress sustains articles of impeachment, which are hereinafter set out; and that the said articles be, and they are hereby, adopted by the House of Representatives, and that the same shall be exhibited to the Senate in the following words and figures, to wit:

Articles of impeachment of the House of Representatives of the United States of America in the name of themselves and of all of the people of the United States of America against Halsted L. Ritter, who was appointed, duly qualified, and commissioned to serve, during good behavior in office, as United States district judge for the southern district of Florida, on February 15, 1929.

ARTICLE I

That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and while acting as a United States district judge for the southern district of Florida, was and is guilty of misbehavior and of a high crime and misdemeanor in office in manner and form as follows, to wit: On or about October 11, 1929, A. L. Rankin (who had been a law partner of said judge immediately before said judge's appointment as judge), as solicitor for the plaintiff, filed in the court of the said Judge Ritter a certain foreclosure suit and receivership proceeding, the same being styled "Bert E. Holland and others against Whitehall Building and Operating Company and others" (Number 678–M–Eq.). On or about May 15, 1930, the said Judge Ritter allowed the said Rankin an advance of $2,500 on his fee for his services in said case. On or about July 2, 1930, the said Judge Ritter by letter requested another judge of the United States district court for the southern district of Florida, to wit, Honorable Alexander Akerman, to fix and determine the total allowance for the said Rankin for his services in said case for the reason as stated by Judge Ritter in said letter, that the said Rankin had formerly been the law partner of the said Judge Ritter, and he did not feel that he should pass upon the total allowance made said Rankin in that case and that if Judge

Akerman would fix the allowance it would relieve the writer, Judge Ritter, from any embarrassment if thereafter any question should arise as to his, Judge Ritter's, favoring said Rankin with an exorbitant fee.

Thereafterward, notwithstanding the said Judge Akerman, in compliance with Judge Ritter's request, allowed the said Rankin a fee of $15,000 for his services in said case, from which sum the said $2,500 theretofore allowed the said Rankin by Judge Ritter as an advance on his fee was deducted, the said Judge Ritter, well knowing that at his request compensation had been fixed by Judge Akerman for the said Rankin's services in said case, and notwithstanding the restraint of propriety expressed in his said letter to Judge Akerman, and ignoring the danger of embarrassment mentioned in said letter, did fix an additional and exorbitant fee for the said Rankin in said case. On or about December 24, 1930, when the final decree in said case was signed, the said Judge Ritter allowed the said Rankin, additional to the total allowance of $15,000 theretofore allowed by Judge Akerman, a fee of $75,000 for his services in said case, out of which allowance the said Judge Ritter directly profited. On the same day, December 24, 1930, the receiver in said case paid the said Rankin, as part of his said additional fee, the sum of $25,000, and the said Rankin on the same day privately paid and delivered to the said Judge Ritter the sum of $2,500 in cash; $2,000 of said $2,500 was deposited in bank by Judge Ritter on, to wit, December 29, 1930, the remaining $500 being kept by Judge Ritter and not deposited in bank until, to wit, July 10, 1931. Between the time of such initial payment on said additional fee and April 6, 1931, the said receiver paid said Rankin thereon $5,000. On or about April 6, 1931, the said Rankin received the balance of the said additional fee allowed him by Judge Ritter, said balance amounting to $45,000. Shortly thereafter, on or about April 14, 1931, the said Rankin paid and delivered to the said Judge Ritter, privately, in cash, an additional sum of $2,000. The said Judge Halsted L. Ritter corruptly and unlawfully accepted and received for his own use and benefit from the said A. L. Rankin the aforesaid sums of money, amounting to $4,500.

Wherefore, the said Judge Halsted L. Ritter was and is guilty of misbehavior and was and is guilty of a high crime and misdemeanor.

ARTICLE II

That the said Halsted L. Ritter, while holding the office of United States district judge for the southern district of Florida, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and while acting as a United States district judge for the southern district of Florida, was and is guilty of misbehavior and of high crimes and misdemeanors in office in manner and form as follows, to wit:

On the 15th day of February 1929 the said Halsted L. Ritter, having been appointed as United States district judge for the southern district of Florida, was duly qualified and commissioned to serve as such during good behavior in office. Immediately prior thereto and for several years the said Halsted L. Ritter had practiced law in said district in partnership with one A. L. Rankin, which partnership was

dissolved upon the appointment of said Ritter as said United States district judge.

On the 18th day of July 1928 one Walter S. Richardson was elected trustee in bankruptcy of the Whitehall Building and Operating Company, which company had been adjudicated in said district as a bankrupt, and as such trustee took charge of the assets of said Whitehall Building and Operating Company, which consisted of a hotel property located in Palm Beach in said district. That the said Richardson as such trustee operated said hotel property from the time of his said appointment until its sales on the 3d of January 1929, under the foreclosure of a third mortgage thereon. On the 1st of November and the 13th of December 1929, the said Judge Ritter made orders in said bankruptcy proceedings allowing the said Walter S. Richardson as trustee the sum of $16,500 as compensation for his services as trustee. That before the discharge of said Walter S. Richardson as such trustee, said Richardson, together with said A. L. Rankin, one Ernest Metcalf, one Martin Sweeney, and the said Halsted L. Ritter, entered into an arrangement to secure permission of the holder or holders of at least $50,000 of first-mortgage bonds on said hotel property for the purpose of filing a bill to foreclose the first mortgage on said premises in the court of said Halsted L. Ritter, by which means the said Richardson, Rankin, Metcalf, Sweeney, and Ritter were to continue said property in litigation before said Ritter. On the 30th day of August 1929, the said Walter S. Richardson, in furtherance of said arrangement and understanding, wrote a letter to the said Martin Sweeney, in New York, suggesting the desirability of contacting as many first-mortgage bondholders as possible in order that their cooperation might be secured, directing special attention to Mr. Bert E. Holland, an attorney, whose address was in the Tremont Building in Boston, and who, as cotrustee, was the holder of $50,000 of first-mortgage bonds, the amount of bonds required to institute the contemplated proceedings in Judge Ritter's court.

On October 3, 1929, the said Bert E. Holland, being solicited by the said Sweeney, requested the said Rankin and Metcalf to prepare a complaint to file in said Judge Ritter's court for foreclosure of said first mortgage and the appointment of a receiver. At this time Judge Ritter was holding court in Brooklyn, New York, and the said Rankin and Richardson went from West Palm Beach, Florida, to Brooklyn, New York, and called upon said Judge Ritter a short time previous to filing the bill for foreclosure and appointment of a receiver of said hotel property.

On October 10, 1929, and before the filing of said bill for foreclosure and receiver, the said Holland withdrew his authority to said Rankin and Metcalf to file said bill and notified the said Rankin not to file the said bill. Notwithstanding the said instructions to said Rankin not to file said bill, said Rankin, on the 11th day of October 1929, filed said bill with the clerk of the United States District Court for the Southern District of Florida but with the specific request to said clerk to lock up the said bill as soon as it was filed and hold until Judge Ritter's return so that there would be no newspaper publicity before the matter was heard by Judge Ritter for the appointment of

a receiver, which request on the part of the said Rankin was complied with by the said clerk.

On October 16, 1929, the said Holland telegraphed to the said Rankin, referring to his previous wire requesting him to refrain from filing the bill and insisting that the matter remain in its then status until further instruction was given; and on October 17, 1929, the said Rankin wired to Holland that he would not make an application on his behalf for the appointment of a receiver. On October 28, 1929, a hearing on the complaint and petition for receivership was heard before Judge Halsted L. Ritter at Miami, at which hearing the said Bert E. Holland appeared in person before said Judge Ritter and advised the judge that he wished to withdraw the suit and asked for dismissal of the bill of complaint on the ground that the bill was filed without his authority.

But the said Judge Ritter, fully advised of the facts and circumstances hereinbefore recited, wrongfully and oppressively exercised the powers of his office to carry into execution said plan and agreement theretofore arrived at, and refused to grant the request of the said Holland and made effective the champertous undertaking of the said Richardson and Rankin and appointed the said Richardson receiver of the said hotel property, notwithstanding that objection was made to Judge Ritter that said Richardson had been active in fomenting this litigation and was not a proper person to act as receiver.

On October 15, 1929, said Rankin made oath to each of the bills for intervenors which were filed the next day.

On October 16, 1929, bills for intervention in said foreclosure suit were filed by said Rankin and Metcalf in the names of holders of approximately $5,000 of said first-mortgage bonds, which intervenors did not possess the said requisite $50,000 in bonds required by said first mortgage to bring foreclosure proceedings on the part of the bondholders.

The said Rankin and Metcalf appeared as attorneys for complainants and intervenors, and in response to a suggestion of the said Judge Ritter, the said Metcalf withdrew as attorney for complainants and intervenors and said Judge Ritter thereupon appointed said Metcalf as attorney for the said Richardson, the receiver.

And in the further carrying out of said arrangement and understanding, the said Richardson employed the said Martin Sweeney and one Bemis, together with Ed Sweeney, as managers of said property, for which they were paid the sum of $60,000 for the management of said hotel for the two seasons the property remained in the custody of said Richardson as receiver.

On or about the 15th day of May 1930 the said Judge Ritter allowed the said Rankin an advance on his fee of $2,500 for his services in said case.

On or about July 2, 1930, the said Judge Ritter requested Judge Alexander Akerman, also a judge of the United States District Court for the Southern District of Florida, to fix the total allowance for the said Rankin for his services in said case, said request and the reasons therefor being set fort hin a letter by the said Judge Ritter, in words and figures as follows, to wit:

July 2, 1930.

Hon. Alexander Akerman,
United States District Judge, Tampa, Fla.

My dear Judge:

In the case of Holland et al. v. Whitehall Building & Operating Co. (No. 678–M–Eq.), pending in my division, my former law partner, Judge A. L. Rankin, of West Palm Beach, has filed a petition for an order allowing compensation for his services on behalf of the plaintiff.

I do not feel that I should pass, under the circumstances, upon the total allowance to be made Judge Rankin in this matter. I did issue an order, which Judge Rankin will exhibit to you, approving an advance of $2,500 on his claim, which was approved by all attorneys.

You will appreciate my position in the matter, and I request you to pass upon the total allowance which should be made Judge Rankin in the premises as an accommodation to me. This will relieve me from any embarrassment hereafter if the question should arise as to my favoring Judge Rankin in this matter by an exorbitant allowance.

Appreciating very much your kindness in this matter, I am,
Yours sincerely,

Halsted L. Ritter.

In compliance with said request the said Judge Akerman allowed the said Rankin $12,500 in addition to the $2,500 theretofore allowed by Judge Ritter, making a total of $15,000 as the fee of the said Rankin in the said case.

But notwithstanding the said request on the part of said Ritter and the compliance by the said Judge Akerman and the reasons for the making of said request by said Judge Ritter of Judge Akerman, the said Judge Ritter, on the 24th day of December 1930, allowed the said Rankin an additional fee of $75,000.

And on the same date when the receiver in said case paid to the said Rankin as a part of said additional fee the sum of $25,000, said Rankin privately paid and delivered to said Judge Ritter out of the said $25,000 the sum of $2,500 in cash, $2,000 of which the said Judge Ritter deposited in a bank and $500 of which was put in a tin box and not deposited until the 10th day of July 1931, when it was deposited in a bank with an additional sum of $600.

On or about the 6th day of April 1931, the said Rankin received as a part of the $75,000 additional fee the sum of $45,000, and shortly thereafter, on or before the 14th day of April 1931, the said Rankin paid and delivered to said judge Ritter, privately and in cash, out of said $45,000 the sum of $2,000.

The said Judge Halsted L. Ritter corruptly and unlawfully accepted and received for his own use and benefit from the said Rankin the aforesaid sums of $2,500 in cash and $2,000 in cash, amounting in all to $4,500.

Of the total allowance made to said A. L. Rankin in said foreclosure suit, amounting in all to $90,000, the following sums were paid out by said Rankin with the knowledge and consent of said Judge Ritter, to wit: to said Walter S. Richardson, the sum of $5,000; to said Metcalf, the sum of $10,000; to Shutts and Bowen, also attor-

neys for the receiver, the sum of $25,000; and to said Halsted L. Ritter, the sum of $4,500.

In addition to the said sum of $5,000 received by the said Richardson as aforesaid, said Ritter by order in said proceedings allowed said Richardson a fee of $30,000 for services as such receiver.

The said fees allowed by said Judge Ritter to A. L. Rankin (who had been a law partner of said judge immediately before said judge's appointment as judge) as solicitor for the plaintiff in said case were excessive and unwarranted, and said judge profited personally thereby in that out of the money so allowed said solicitor he received personally privately, and in cash $4,500 for his own use and benefit.

While the Whitehall Hotel was being operated in receivership under said proceeding pending in said court (and in which proceeding the receiver in charge of said hotel by appointment of said Judge was allowed large compensation by said judge) the said judge stayed at said hotel from time to time without cost to himself and received free rooms, free meals, and free valet service, and, with the knowledge and consent of said judge, members of his family, including his wife, his son, Thurston Ritter, his daughter, Mrs. M. R. Walker, his secretary, Mrs. Lloyd C. Hooks, and her husband, Lloyd C. Hooks, each likewise on various occasions stayed at said hotel without cost to themselves or to said judge, and received free rooms, and some or all of them received from said hotel free meals and free valet service; all of which expenses were borne by the said receivership to the loss and damage of the creditors whose interests were involved therein.

The said judge willfully failed and neglected to perform his duty to conserve the assets of the Whitehall Building and Operating Company in receivership in his court, but to the contrary, permitted waste and dissipation of its assets, to the loss and damage of the creditors of said corporation, and was a party to the waste and dissipation of such assets while under the control of his said court, and personally profited thereby, in the manner and form hereinabove specifically set out.

Wherefore, the said Judge Halsted L. Ritter was and is guilty of misbehavior, and was and is guilty of a high crime and misdemeanor in office.

ARTICLE III

That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and while acting as a United States district judge for the southern district of Florida, was and is guilty of a high crime and misdemeanor in office in manner and form as follows, to wit:

That the said Halsted L. Ritter, while such judge, was guilty of a violation of section 258 of the Judicial Code of the United States of America (U.S.C., Annotated, title 28, sec. 373) making it unlawful for any judge appointed under the authority of the United States to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law, in that after the employment of the law firm of Ritter and Rankin (which, at the time of the appointment of Halsted L. Ritter to be judge of the United States

District Court for the Southern District of Florida, was composed of Halsted L. Ritter and A. L. Rankin) in the case of Trust Company of Georgia and Robert G. Stephens, trustees, against Brazilian Court Building Corporation, and others, numbered 5704, in the Circuit Court of the Fifteenth Judicial Circuit of Florida, and after the final decree had been entered in said cause, and after the fee of $4,000 which had been agreed upon at the outset of said employment had been fully paid to the firm of Ritter and Rankin, and after Halsted L. Ritter had on, to wit, February 15, 1929, become judge of the United States District Court for the Southern District of Florida, Judge Ritter on, to wit, March 11, 1929, wrote a letter to Charles A. Brodek, of counsel for Mulford Realty Corporation, (the client which his former law firm had been representing in said litigation), stating that there had been much extra and unanticipated work in the case, that he was then a Federal judge; that his partner, A. L. Rankin, would carry through further proceedings in the case, but that he, Judge Ritter, would be consulted about the matter until the case was all closed up; and that "this matter is one among very few which I am assuming to continue my interest in until finally closed up"; and stating specifically in said letter:

"I do not know whether any appeal will be taken in the case or not, but if so, we hope to get Mr. Howard Paschal or some other person as receiver who will be amenable to our directions, and the hotel can be operated at a profit, of course, pending the appeal. We shall demand a very heavy supersedeas bond, which I doubt whether D'Esterre can give."

At the time said letter was written by Judge Ritter and said $2,000 received by him, Mulford Realty Corporation held and owned large interests in Florida real estate and citrus groves, and a large amount of securities of the Olympia Improvement Corporation, which was a company orgainized to develop and promote Olympia, Florida, said holdings being within the territorial jurisdiction of the United States District Court, of which Judge Ritter was a judge from February 15, 1929.

Which acts of said judge were calculated to bring his office into disrepute, constitute a violation of section 258 of the Judicial Code of the United States of America (U. S. C., Annotated, title 28, sec. 373), and constitute a high crime and misdemeanor within the meaning and intent of section 4 of article II of the Constitution of the United States.

Wherefore, the said Judge Halsted L. Ritter was and is guilty of a high misdemeanor in office.

ARTICLE IV

That the said Halsted L. Ritter, while holding the office of United States district judge for the southern district of Florida, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and while acting as a United States district judge for the southern district of Florida, was and is guilty of misbehavior and of high crimes and misdemeanors in office in manner and form as follows, to wit:

The said Judge Ritter by his actions and conduct, as an individual and as such judge, has brought his court into scandal and disrepute,

to the prejudice of said court and public confidence in the administration of justice in his said court, and to the prejudice of public respect for and confidence in the Federal judiciary:

1. In fact in the Florida Power Company case (Florida Power and Light Company against City of Miami and others, numbered 1183–M–Eq.) which was a case wherein said judge had granted the complainant power company a temporary injunction restraining the enforcement of an ordinance of the city of Miami, which ordinance prescribed a reduction in the rates for electric current being charged in said city, said judge improperly appointed one Cary T. Hutchinson, who had long been associated with and employed by power and utility interests, special master in chancery in said suit, and refused to revoke his order so appointing said Hutchinson. Thereafter, when criticism of such action had become current in the city of Miami, and within two weeks after a resolution (H. Res. 163, Seventy-third Congress) had been agreed to in the House of Representatives of the Congress of the United States, authorizing and directing the Judiciary Committee thereof to investigate the official conduct of said judge and to make a report concerning said conduct to said House of Representatives, an arrangement was entered into with the city commissioners of the city of Miami or with the city attorney of said city by which the said city commissioners were to pass a resolution expressing faith and confidence in the integrity of said judge, and the said judge recuse himself as judge in said power suit. The said agreement was carried out by the parties thereto, and said judge, after the passage of such resolution, recused himself from sitting as judge in said power suit, thereby bartering his judicial authority in said case for a vote of confidence. Nevertheless, the succeeding judge allowed said Hutchinson as special master in chancery in said case a fee of $5,000, although he performed little, if any, service as such, and in the order making such allowance recitd: "And it appearing to the court that a minimum fee of $5,000 was approved by the court for the said Cary T. Hutchinson, special master in this cause."

2. In that in the Trust Company of Florida cases (Illick against Trust Company of Florida and others, numbered 1043–M–Eq., and Edmunds Committee and others against Marion Mortgage Company and others numbered 1124–M–Eq.) after the State banking department of Florida, through its comptroller, Honorable Ernest Amos, had closed the doors of the Trust Company of Florida and appointed J. H. Therrell liquidator for said Trust Company, and had intervened in the said Illick case, said Judge Ritter wrongfully and erroneously refused to recognize the right of said State authority to administer the affairs of the said trust company, and appointed Julian S. Eaton and Clark D. Stearns as receivers of the property of said trust company. On appeal, the United States Circuit Court of Appeals for the Fifth Circuit reversed the said order or decree of Judge Ritter, and ordered the said property surrendered to the State liquidator. Thereafter, on, to wit, September 12, 1932, there were filed in the United States District Court for the Southern District of Florida the Edmunds Committee case, supra. Marion Mortgage Company was a subsidiary of the Trust Company of Florida. Judge Ritter being absent from his district at the time of the filing of said case, an application for the appointment of receivers therein was presented to another

judge of said district, namely, Honorable Alexander Akerman. Judge Ritter, however, prior to the appointment of such receivers, telegraphed Judge Akerman, requesting him to appoint the aforesaid Eaton and Stearns as receivers in said case, which appointments were made by Judge Akerman. Thereafter, the United States Circuit Court of Appeals for the Fifth Circuit reversed the order of Judge Akerman, appointing said Eaton and Stearns as receivers in said case. In November 1932 J. H. Therrell, as liquidator, filed a bill of complaint in the Circuit Court of Dade County, Florida—a court of the State of Florida—alleging that the various trust properties of the Trust Company of Florida were burdensome to the liquidator to keep, and asking that the court appoint a succeeding trustee. Upon petition for removal of said cause from said State court into the United States District Court for the Southern District of Florida, Judge Ritter took jurisdiction, notwithstanding the previous rulings of the United States Circuit Court of Appeals above referred to, and again appointed the said Eaton and Stearns as the receivers of the said trust properties. In December 1932 the said Therrell surrendered all of the trust properties to said Eaton and Stearns as receivers, together with all records of the Trust Company of Florida pertaining thereto. During the time said Eaton and Stearns, as such receivers, were in control of said trust properties, Judge Ritter wrongfully and improperly approved their accounts without notice or opportunity for objection thereto to be heard. With the knowledge of Judge Ritter, said receivers appointed the sister-in-law of Judge Ritter, namely, Mrs. G. M. Wickard, who had had no previous hotel-management experience, to be manager of the Julia Tuttle Hotel and Apartment Building, one of said trust properties. On, to wit, January 1, 1933, Honorable J. M. Lee succeeded Honorable Ernest Amos as comptroller of the State of Florida and appointed M. A. Smith liquidator in said Trust Company of Florida cases to succeed J. H. Therrell. An appeal was again taken to the United States Circuit Court of Appeals for the Fifth Circuit from the then latest order or decree of Judge Ritter, and again the order or decree of Judge Ritter appealed from was reversed by the said circuit court of appeals, which held that Judge Ritter, or the court in which he presided, had been without jurisdiction in the matter of the appointment of said Eaton and Stearns as receivers. Thereafter, and with the knowledge of the decision of the said circuit court of appeals, Judge Ritter wrongfully and improperly allowed said Eaton and Stearns and their attorneys some $26,000 as fees out of said trust-estate properties, and endeavored to require, as a condition precedent to releasing said trust properties from the control of his court, a promise from counsel for the said State liquidator not to appeal from his order allowing the, said fees to said Eaton and Stearns and their attorneys.

3. In that the said Halsted L. Ritter, while such Federal judge accepted, in addition to $4,500 from his former law partner as alleged in article I hereof, other large fees or gratuities, to wit, $7,500 from J. R. Francis, on or about April 19, 1929, J. R. Francis at this said time having large property interests within the territorial jurisdiction of the court of which Judge Ritter was a judge. On, to wit, the 4th day of April 1929 the said Judge Ritter accepted the sum of $2,000 from said Brodek, Raphael and Eisner, representing Mulford Realty Corporation, through his attorney, Charles A. Brodek, as a

fee or gratuity, at which time the said Mulford Realty Corporation held and owned large interests in Florida real estate and citrus groves, and a large amount of securities of the Olympia Improvement Corporation, which was a company organized to develop and promote Olympia, Florida, said holdings being within the territorial jurisdiction of the United States District Court of which Judge Ritter was a judge from February 15, 1929.

4. By his conduct as detailed in articles I and II hereof.

Wherefore, the said Judge Halsted L. Ritter was and is guilty of misbehavior, and was and is guilty of high crimes and misdemeanors in office.

JOSEPH W. BYRNS,
Speaker of House of Representatives.

Attest:

SOUTH TRIMBLE,
Clerk.

Mr. Manager SUMNERS. Mr. President, the House of Representatives by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles of accusation or impeachment against the said Halsted L. Ritter, district judge of the United States for the southern district of Florida, and also of replying to his answers which he shall make unto the articles preferred against him, and of offering proof to the same and every part thereof, and to all and every other article of accusation or impeachment which shall be exhibited by them as the case shall require, do demand that the said Halsted L. Ritter may be put to answer the misdemeanors in office which have been charged against him in the articles which have been exhibited to the Senate, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

Mr. President, the managers on the part of the House of Representatives, in pursuance of the action of the House of Representatives, by the adoption of the articles of impeachment which have just been read to the Senate, do now demand that the Senate take order for the appearance of the said Halsted L. Ritter to answer said impeachment and do now demand his impeachment, conviction, and removal from office.

The VICE PRESIDENT. The Senate will take proper order, and notify the House of Representatives.

Mr. ASHURST. Mr. President, I move that the senior Senator from Idaho (Mr. Borah), who is the senior Senator in point of service in the Senate, be now designated by the Senate to administer the oath to the presiding officer of the court of impeachment.

The motion was agreed to; and Mr. Borah advanced to the Vice President's desk and administered the oath to Vice President Garner as presiding officer, as follows:

You do solemnly swear that in all things appertaining to the trial of the impeachment of Halsted L. Ritter, United States district judge for the southern district of Florida, now pending, you will do impartial justice according to the Constitution and laws. So help you God.

The amendments to the articles of impeachment are, in full, as follows:

AMENDMENTS TO ARTICLES OF IMPEACHMENT AGAINST HALSTED L. RITTER

[H. Res. 471, 74th Cong., 2d sess.]

CONGRESS OF THE UNITED STATES OF AMERICA,
IN THE HOUSE OF REPRESENTATIVES,
March 30, 1936.

RESOLUTION

Resolved, That the articles of impeachment heretofore adopted by the House of Representatives in and by H. Res. 422, House Calendar number 279 be, and they are hereby, amended as follows:

Article III is amended so as to read as follows:

"ARTICLE III

"That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and, while acting as a United States District judge for the southern district of Florida, was and is guilty of a high crime and misdemeanor in office in manner and form as follows, to wit:

"That the said Halsted L. Ritter, while such judge, was guilty of a violation of section 258 of the Judicial Code of the United States of America (U. S. C., Annotated, title 28, sec. 373) making it unlawful for any judge appointed under the authority of the United States to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law, in that after the employment of the law firm of Ritter and Rankin (which, at the time of the appointment of Halsted L. Ritter to be judge of the United States District Court for the Southern District of Florida, was composed of Halsted L. Ritter and A. L. Rankin) in the case of Trust Company of Georgia and Robert G. Stephens, trustee, against Brazilian Court Building Corporation, and others, numbered 5704, in the Circuit Court of the Fifteenth Judicial Circuit of Florida, and after the fee of $4,000 which had been agreed upon at the outset of said employment had been fully paid to the firm of Ritter and Rankin, and after Halsted L. Ritter had, on, to wit, February 15, 1929, become judge of the United States District Court for the Southern District of Florida, Judge Ritter on, to wit, March 11, 1929, wrote a letter to Charles A. Brodek, of counsel for Mulford Realty Corporation (the client which his former law firm had been representing in said litigation), stating that there had been much extra and unanticipated work in the case, that he was then a Federal Judge; that his partner, A. L. Rankin, would carry through further proceedings in the case, but that he, Judge Ritter, would be consulted about the matter until the case was all closed up; and that 'this matter is one among very few which I am assuming to continue my interest in until finally closed up'; and stating specifically in said letter:

" 'I do not know whether any appeal will be taken in the case or not but, if so, we hope to get Mr. Howard Paschal or some other person as receiver who will be amenable to our directions, and the hotel can be operated at a profit, of course, pending the appeal. We shall demand a very heavy supersedeas bond, which I doubt whether D'Esterre can give'; and further that he was 'of course primarily interested in getting some money in the case', and that he thought '$2,000 more by way of attorneys' fees should be allowed'; and asked that he be communicated with direct about the matter, giving his post-office-box number. On to wit, March 13, 1929, said Brodek replied favorably, and on March 30, 1929, a check of Brodek, Raphael, and Eisner, a law firm of New York City, representing Mulford Realty Corporation, in which Charles A. Brodek, senior member of the firm of Brodek, Raphael and Eisner, was one of the directors, was drawn, payable to the order of 'Honorable Halsted L. Ritter for $2,000 and which was duly endorsed 'Honorable Halsted L. Ritter. H. L. Ritter' and was paid on, to wit, April 4, 1929, and the proceeds thereof were received and appropriated by Judge Ritter to his own individual use and benefit, without advising his said former partner that said $2,000 had been received, without consulting with his former partner thereabout, and without the knowledge or consent of his said former partner, appropriated the entire amount thus solicited and received to the use and benefit of himself, the said Judge Ritter.

"At the time said letter was written by Judge Ritter and said $2,000 received by him, Mulford Realty Corporation held and owned large interests in Florida real

estate and citrus groves, and a large amount of securities of the Olympia Improvement Corporation, which was a company organized to develop and promote Olympia, Florida, said holdings being within the territorial jurisdiction of the United States District Court, of which Judge Ritter was a judge from, to wit, February 15, 1929.

"After writing said letter of March 11, 1929, Judge Ritter further exercised the profession or employment of counsel or attorney, or engaged in the practice of the law, with relation to said case.

"Which acts of said judge were calculated to bring his office into disrepute constitute a violation of section 258 of the Judicial Code of the United States of America (U. S. C., Annotated, title 28, sec. 373), and constitute a high crime and misdemeanor within the meaning and intent of section 4 of article II of the Constitution of the United States.

"Wherefore, the said Judge Halsted L. Ritter was and is guilty of a high misdemeanor in office."

By adding the following articles immediately after article III as amended:

"ARTICLE IV

"That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and, while acting as a United States district judge for the southern district of Florida, was and is guilty of a high crime and misdemeanor in office in manner and form as follows to wit:

"That the said Halsted L. Ritter, while such judge, was guilty of a violation of section 258 of the Judicial Code of the United States of America (U. S. C., Annotated, title 28, sec. 373), making it unlawful for any judge appointed under the authority of the United States to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law, in that Judge Ritter did exercise the profession or employment of counsel or attorney, or engage in the practice of the law, representing J. R. Francis, with relation to the Boca Raton matter and the segregation and saving of the interest of J. R. Francis herein, or in obtaining a deed or deeds to J. R. Francis from the Spanish River Land Company to certain pieces of realty, and in the Edgewater Ocean Beach Development Company matter for which services the said Judge Ritter received from the said J. R. Francis the sum of $7,500.

"Which acts of said judge were calculated to bring his office into disrepute, constitute a violation of the law above recited, and constitute a high crime and misdemeanor within the meaning and intent of section 4 of article II of the Constitution of the United States.

"Wherefore, the said Judge Halsted L. Ritter was and is guilty of a high misdemeanor in office.

"ARTICLE V

"That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and, while acting as a United States district judge for the southern district of Florida, was and is guilty of a high crime and misdemeanor in office in manner and form as follows, to wit:

"That the said Halstead L. Ritter, while such judge, was guilty of violation of section 146 (h) of the Revenue Act of 1928, making it unlawful for any person willfully to attempt in any manner to evade or defend the payment of the income tax levied in and by said Revenue Act of 1928, in that during the year 1929 said Judge Ritter received gross taxable income—over and above his salary as judge—to the amount of some $12,000, yet paid no income tax thereon.

"Among the fees included in said gross taxable income for 1929 were the extra fee of $2,000 collected and received by Judge Ritter in the Brazilian Court case as described in article III, and the fee of $7,500 received by Judge Ritter from J. R. Francis.

"Wherefore the said Judge Halsted L. Ritter was and is guilty of a high misdemeanor in office.

"ARTICLE VI

"That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and, while acting as a United States district judge for the

southern district of Florida, was and is guilty of a high crime and misdemeanor in office in manner and form as follows, to wit:

"That the said Halsted L. Ritter, while such judge, was guilty of violation of section 146 (b) of the Revenue Act of 1928, making it unlawful for any person willfully to attempt in any manner to evade or defeat the payment of the income tax levied in and by said Revenue Act of 1928, in that during the year 1930 the said Judge Ritter received gross taxable income—over and above his salary as judge—to the amount of to wit, $5,300, yet failed to report any part thereof in his income-tax return for the year 1930, and paid no income tax thereon.

"Two thousand five hundred dollars of said gross taxable income for 1930 was that amount of cash paid Judge Ritter by A. L. Rankin on December 24, 1930, as described in article I.

"Wherefore the said Judge Halsted L. Ritter was and is guilty of a high misdemeanor in office."

Original article IV is amended so as to read as follows:

"ARTICLE VII

"That the said Halsted L. Ritter, while holding the office of United States district judge for the southern district of Florida, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and, while acting as a United States district judge for the southern district of Florida, was and is guilty of misbehavior and of high crimes and misdemeanors in office in manner and form as follows, to wit:

"The reasonable and probable consequence of the actions or conduct of Halsted L. Ritter, hereunder specified or indicated in this article, since he became judge of said court, as an individual or as such judge, is to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the Federal judiciary, and to render him until to continue to serve as such judge:

"1. In that in the Florida Power Company case (Florida Power and Light Company against City of Miami and others, numbered 1138-M-Eq.) which was a case wherein said judge had granted the complainant power company a temporary injunction restraining the enforcement of an ordinance of the city of Miami, which ordinance prescribed a reduction in the rates for electric current being charged in said city, said judge improperly appointed one Cary T. Hutchinson, who had long been associated with and employed by power and utility interests, special master in chancery in said suit, and refused to revoke his order so appointing said Hutchinson. Thereafter, when criticism of such action had become current in the city of Miami, and within two weeks after a resolution (H. Res. 163, Seventy-third Congress) had been agreed to in the House of Representatives of the Congress of the United States, authorizing and directing the Judicial Committee thereof to investigate the official conduct of said judge and to make a report concerning said conduct to said House of Representatives an arrangement was entered into with the city commissioners of the city of Miami or with the city attorney of said city by which the said city commissioners were to pass a resolution expressing faith and confidence in the integrity of said judge, and the said judge recuse himself as judge in said power suit. The said agreement was carried out by the parties thereto, and said judge, after the passage of such resolution, recused himself from sitting as judge in said power suit, thereby bartering his judicial authority in said case for a vote of confidence. Nevertheless, the succeeding judge allowed said Hutchinson as special master in chancery in said case a fee of $5,000, although he performed little, if any, service as such, and in the order making such allowance recited: 'And it appearing to the court that a minimum fee of $5,000 was approved by the court for the said Cary T. Hutchinson, special master in this cause.'

"2. In that in the Trust Company of Florida cases (Illick against Trust Company of Florida and others numbered 1043-M-Eq., and Edmunds Committee and others against Marion Mortgage Company and others, numbered 1124-M-Eq.) after the State banking department of Florida, through its comptroller, Honorable Ernest Amos, had closed the doors of the Trust Company of Florida and appointed J. H. Therrell liquidator for said trust company, and had intervened in the said Illick case, said Judge Ritter wrongfully and erroneously refused to recognize the right of said State authority to adminis-

ter the affairs of the said trust company and appointed Julian E. Eaton and Clark D. Stearns as receivers of the property of said trust company. On appeal, the United States Circuit Court of Appeals for the Fifth Circuit reversed the said order or decree of Judge Ritter and ordered the said property surrendered to the State liquidator. Thereafter, on, to wit, September 12, 1932, there was filed in the United States District Court for the Southern District of Florida the Edmunds Committee case, supra. Marion Mortgage Company was a subsidiary of the Trust Company of Florida. Judge Ritter being absent from his district at the time of the filing of said case, an application for the appointment of receivers therein was presented to another judge of said district, namely, Honorable Alexander Akerman. Judge Ritter, however, prior to the appointment of such receivers, telegraphed Judge Akerman, requesting him to appoint the aforesaid Eaton and Stearns as receivers in said case, which appointments were made by Judge Akerman. Thereafter the United States Circuit Court of Appeals for the Fifth Circuit reversed the order of Judge Akerman, appointing said Eaton and Stearns as receivers in said case. In November 1932, J. H. Therrell, as liquidator, filed a bill of complaint in the Circuit Court of Dade County, Florida—a court of the State of Florida—alleging that the various trust properties of the Trust Company of Florida were burdensome to the liquidator to keep, and asking that the court appoint a succeeding trustee. Upon petition for removal of said cause from said State court into the United States District Court for the Southern District of Florida, Judge Ritter took jurisdiction, notwithstanding the previous rulings of the United States Circuit Court of Appeals above referred to, and again appointed the said Eaton and Stearns as the receivers of the said trust properties. In December 1932 the said Therrell surrender all of the trust properties to said Eaton and Stearns as receivers, together with all records of the Trust Company of Florida pertaining thereto. During the time said Eaton and Stearns, as such receivers, were in control of said trust properties, Judge Ritter wrongfully and improperly approved their accounts without notice or opportunity for objection thereto to be heard.

With the knowledge of Judge Ritter, said receivers appointed the sister-in-law of Judge Ritter, namely, Mrs. G. M. Wickard, who had had no previous hotel-management experience, to be manager of the Julia Tuttle Hotel and Apartment Building, one of said trust properties. On, to wit, January 1, 1933, Honorable J. M. Lee succeeded Honorable Ernest Amos as comptroller of the State of Florida and appointed M. A. Smith liquidator in said Trust Company of Florida cases to succeed J. H. Therrell. An appeal was again taken to the United States Circuit Court of Appeals for the Fifth Circuit from the then latest order or decree of Judge Ritter, and again the order or decree of Judge Ritter appealed from was reversed by the said circuit court of appeals which held that the State officer was entitled to the custody of the property involved and that said Eaton and Stearns as receivers were not entitled to such custody. Thereafter, and with the knowledge of the decision of the said circuit court of appeals, Judge Ritter wrongfully and improperly allowed said Eaton and Stearns and their attorneys some $26,000 as fees out of said trust-estate properties and endeavored to require, as a condition precedent to releasing said trust properties from the control of his court, a promise from counsel for the said State liquidator not to appeal from his order allowing the said fees to said Eaton and Stearns and their attorneys.

"3. In that the said Halsted L. Ritter, while such Federal judge, accepted, in addition to $4,500 from his former law partner as alleged in article I hereof other large fees or gratuities, to wit, $7,500 from J. R. Francis, on or about April 19, 1929, J. R. Francis at this said time having large property interests within the territorial jurisdiction of the court of which Judge Ritter was a judge; and on, to wit, the 4th day of April 1929 the said Judge Ritter accepted the sum of $2,000 from Brodek, Raphael and Eisner, representing Mulford Realty Corporation, as its attorneys, through Charles A. Brodeck, senior member of said firm and a director of said corporation, as a fee or gratuity, at which time the said Mulford Realty Corporation held and owned large interests in Florida real estate and citrus groves, and a large amount of securities of the Olympia Improvement Corporation, which was a company organized to develop and promote Olympia, Florida, said holding being within the territorial jurisdiction of the United States District Court of which Judge Ritter was a judge from, to wit, February 15, 1929.

"4. By his conduct as detailed in articles I, II, III, and IV hereof, and by his income-tax evasions as set forth in articles V and VI hereof.

"Wherefore, the said Judge Halsted L. Ritter was and is guilty of misbehavior, and was and is guilty of high crimes and misdemeanors in office."

JOSEPH W. BYRNS,
Speaker of the House of Representatives.

Attest:
[SEAL]

SOUTH TRIMBLE, *Clerk.*

The PRESIDING OFFICER. What is the pleasure of counsel for the respondent with reference to the amendments?

Mr. HOFFMAN. Mr. President, with reference to the amendments, we ask the honorable Senate, sitting as a Court of Impeachment, to grant to us ample time within which to file our response to the amended or new articles. If I may be permitted to do so, I suggest that 48 hours will be ample time. We have no desire to take time that would interfere with the present arrangement for trial on the 6th of April.

The PRESIDING OFFICER. Counsel for the respondent has indicated that 48 hours would be ample time. Is there objection to that?

Mr. Manager SUMNERS. There is no objection on the part of the managers for the House.

The PRESIDING OFFICER. What is the pleasure of the Court? Is there objection?

Mr. ASHURST. Mr. President, am I correct in the understanding that the honorable counsel for the respondent are granted 48 hours within which to reply to all the pleadings?

Mr. HOFFMAN. Just the new articles. We are ready to file pleadings this morning directed to articles I, II, III, and the original article IV, which is now article VII.

Mr. ASHURST. Very well, Mr. President. I am sure there will be no objection to counsel for the respondent being granted 48 hours; and now is the appropriate time for counsel for the respondent to exhibit their reply to the various articles heretofore presented.

The PRESIDING OFFICER. There being no objection, the 48 hours requested will be allowed; and the Court will now hear counsel for the respondent.

Mr. ASHURST. Would the attorney for the respondent object to taking a place on the rostrum? It would facilitate audition very much if there is no objection.

Mr. HOFFMAN. There is no objection, sir.

The PRESIDING OFFICER. There is no objection.

The Impeachment of President Andrew Johnson

(A) Proceedings of the Senate Preliminary to the Trial of Articles of Impeachment of Andrew Johnson, President of the United States.

Tuesday, February 25, 1868.

A message from the House of Representatives, by Mr. McPherson, its Clerk:

Mr. President: The House of Representatives has passed the following resolution:

Resolved, That a committee of two be appointed to go to the Senate, and, at the bar thereof, in the name of the House of Representatives and of all the people of the United States, to impeach Andrew Johnson, President of the United States, of high crimes and misdemeanors in office, and acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same; and that the committee do demand that the Senate take order for the appearance of said Andrew Johnson to answer to said impeachment.

Ordered, That Mr. Thaddeus Stevens and Mr. John A. Bingham be appointed such committee.

The Sergeant at Arms announced a committee from the House of Representatives, Mr. Thaddeus Stevens and Mr. John A. Bingham, who appeared at the bar of the Senate and delivered the following message:

Mr. President: By order of the House of Representatives we appear at the bar of the Senate, and in the name of the House of Representatives, and of all the people of the United States, we do impeach Andrew Johnson, President of the United States, of high crimes and misdemeanors in office; and we do further inform the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him, and make good the same; and in their name we do demand that the Senate take order for the appearance of the said Andrew Johnson to answer to said impeachment.

The President of the Senate pro tempore replied that the Senate would take order in the premises, and the committee withdrew.

Mr. Howard submitted the following resolution; which was considered, by unanimous consent, and agreed to:

Resolved, That the message of the House of Representatives relating to the impeachment of Andrew Johnson, President of the United States, be referred to a select committee of seven, to be appointed by the Chair, to consider the same and report thereon; and

The President pro tempore appointed Mr. Howard, Mr. Trumbull, Mr. Conkling, Mr. Edmunds, Mr. Morton, Mr. Pomeroy, and Mr. Johnson.

WEDNESDAY, FEBRUARY 26, 1868.

Impeachment of Andrew Johnson, President.

Mr. Howard, from the select committee appointed to consider and report upon the message of the House of Representatives in relation to the impeachment of Andrew Johnson, President of the United States, reported the following resolution:

Whereas the House of Representatives on the 25th day of the present month, by two of their Members, Messrs. Thaddeus Stevens and John A. Bingham, at the bar of the Senate impeached Andrew Johnson, President of the United States, of high crimes and misdemeanors in office, and informed the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same, and likewise demanded that the Senate take order for the appearance of said Andrew Johnson to answer to the said impeachment: Therefore,

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

And the committee further recommend to the Senate that the Secretary of the Senate be directed to notify the House of Representatives of the foregoing resolution.

On motion by Mr. Howard,

The Senate proceeded, by unanimous consent, to consider the said resolution; and

The resolution was agreed to.

Ordered, That the Secretary notify the House of Representatives thereof.

FRIDAY, FEBRUARY 28, 1868.

Impeachment of Andrew Johnson, President.

Mr. Howard, from the select committee appointed to consider and report upon the message of the House of Representatives relative to the impeachment of Andrew Johnson, President of the United States, submitted a report (No. 59) prescribing certain rules of proceeding for the Senate when sitting as a high court of impeachment.

Ordered, That the report be printed.

MONDAY, MARCH 2, 1868.

Impeachment of Andrew Johnson, President.

The following are the rules adopted by the Senate for rules of procedure and practice in the Senate when sitting on the trial of impeachments:

Rules of procedure and practice in the Senate when sitting on the trial of impeachments.

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

II. When the managers of an impeachment shall be introduced at the bar of the Senate, and shall signify that they are ready to exhibit articles of impeachment against any person, the presiding officer of the Senate shall direct the Ser-

geant at Arms to make proclamation, who shall, after making proclamation, repeat the following words, viz: "All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against ——— ———;" after which the articles shall be exhibited, and then the presiding officer of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

III. Upon such articles being presented to the Senate, the Senate shall, at 1 o'clock afternoon of the day (Sunday excepted) following such presentation, or sooner if so ordered by the Senate, proceed to the consideration of such articles, and shall continue in session from day to day (Sundays excepted), after the trial shall commence (unless otherwise ordered by the Senate), until final judgment shall be rendered, and so much longer as may, in its judgment, be needful. Before proceeding to the consideration of the articles of impeachment, the presiding officer shall administer the oath hereinafter provided to the members of the Senate then present, and to the other members of the Senate as they shall appear, whose duty it shall be to take the same.

IV. When the President of the United States, or the Vice President of the United States, upon whom the powers and duties of the office of President shall have devolved, shall be impeached, the Chief Justice of the Supreme Court of the United States shall preside; and in a case requiring the said Chief Justice to preside notice shall be given to him by the presiding officer of the Senate of the time and place fixed for the consideration of the articles of impeachment, as aforesaid, with a request to attend; and the said Chief Justice shall preside over the Senate during the consideration of said articles, and upon the trial of the person impeached therein.

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

VI. The Senate shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments, to preserve order, and to punish in a summary way contempts of and disobedience to its authority, orders, mandates, writs, precepts, or judgments, and to make all lawful orders, rules, and regulations, which it may deem essential or conducive to the ends of justice. And the Sergeant at Arms, under the direction of the Senate, may employ such aid and assistance as may be necessary to enforce, execute, and carry into effect the lawful orders, mandates, writs, and precepts of the Senate.

VII. The presiding officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the presiding officer upon the trial shall direct all the forms of proceeding while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. The presiding officer may, in the first instance, submit to the Senate without a division, all questions of evidence and incidental questions; but the same shall, on the demand of one-fifth of the members present, be decided by yeas and nays.

VIII. Upon the presentation of articles of impeachment and the organization of the Senate as hereinbefore provided, a writ of summons shall issue to the accused, reciting said articles, and notifying him to appear before the Senate upon a day and at a place to be fixed by the Senate and named in such writ, and file his answer to said articles of impeachment, and to stand to and abide the orders and judgment of the Senate thereon; which writ shall be served by such officer or person as shall be named in the precept thereof such number of day prior to the day fixed for such appearance as shall be named in such precept, either by the delivery of an attested copy thereof to the person accused, or if that can not conveniently be done, by leaving such copy at the last known place or abode of such person, or at his usual place of business in some conspicuous place therein; or if such service shall be, in the judgment of the Senate, impracticable, notice to the accused to appear shall be given in such other manner, by publication or otherwise, as shall be deemed just; and if the writ aforesaid shall fail of service in the manner aforesaid, the proceedings shall not thereby abate, but further service may be made in such manner as the Senate shall direct. If the accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed therefor as aforesaid, or appearing shall fail to file

his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings.

IX. At 12 o'clock and 30 minutes afternoon of the day appointed for the return of the summons against the person impeached, the legislative and executive business of the Senate shall be suspended, and the Secretary of the Senate shall administer an oath to the returning officer in the form following, viz: "I, ——— ———, do solemnly swear that the return made by me upon the process issued on the ——day of ———, by the Senate of the United States, against ——— ———, is truly made, and that I have performed such service as herein described: so help me God." Which oath shall be entered at large on the records.

X. The person impeached shall then be called to appear and answer the articles of impeachment against him. If he appear, or any person for him, the appearance shall be recorded, stating particularly if by himself, or by agent, or attorney, naming the person appearing, and the capacity in which he appears. If he do not appear, either personally or by agent or attorney, the same shall be recorded.

XI. At 12 o'clock and 30 minutes afternoon of the day appointed for the trial of an impeachment, the legislative and executive business of the Senate shall be suspended, and the Secretary shall give notice to the House of Representatives that the Senate is ready to proceed upon the impeachment of ——— ———, in the Senate Chamber, which Chamber is prepared with accommodations for the reception of the House of Representatives.

XII. The hour of the day at which the Senate shall sit upon the trial of an impeachment shall be (unless otherwise ordered) 12 o'clock m.: and when the hour for such sitting shall arrive the presiding officer of the Senate shall so announce; and thereupon the presiding officer upon such trial shall cause proclamation to be made, and the business of the trial shall proceed. The adjournment of the Senate sitting in said trial shall not operate as an adjournment of the Senate, but on such adjournment the Senate shall resume the consideration of its legislative and executive business.

XIII. The Secretary of the Senate shall record the proceedings in cases of impeachment as in the case of legislative proceedings, and the same shall be reported in the same manner as the legislative proceedings of the Senate.

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

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

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

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

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

XIX. At all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be kept open, unless the Senate shall direct the doors to be closed while deliberating upon its decisions.

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

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

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

XXIII. All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, except when the doors shall be closed for deliberation, and in that case no Member shall speak

more than once on one question, and for not more than 10 minutes on an interlocutory question, and for not more than 15 minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by one-fifth of the Members present.

XXIV. Witnesses shall be sworn in the following form, viz: "You, ——— ———, do swear (or affirm, as the case may be) that the evidence you shall give in the case now depending between the United States and ——— ——— shall be the truth, the whole truth, and nothing but the truth, so help you God." Which oath shall be administered by the Secretary, or any other duly authorized person.

Form of subpoena to be issued on the application of the managers of the impeachment, or of the party impeached, or of his counsel.

To ——— ———, greeting:

You and each of you are hereby commanded to appear before the Senate of the United States, on the ——— day of ———, at the Senate Chamber in the city of Washington, then and there to testify your knowledge in the cause which is before the Senate, in which the House of Representatives have impeached ——— ———.

Fail not.

Witness ——— ———, and Presiding Officer of the Senate, at the city of Washington, this ——— day of ———, in the year of our Lord ———, and of the Independence of the United States the ———.

Form of direction for the service of said subpoena.

The Senate of the United States to ——— ———, greeting:

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

Dated at Washington, this ——— day of ———, in the year of our Lord ———, and of the Independence of the United States the ———.

——— ———,
Secretary of the Senate.

Form of oath to be administered to the Members of the Senate sitting in the trial of impeachment

I solemnly swear (or affirm, as the case may be) that in all things appertaining to the trial of the impeachment of ——— ———, now pending, I will do impartial justice according to the Constitution and laws. So help me, God.

Form of summons to be issued and served upon the person impeached.

THE UNITED STATES OF AMERICA, *ss:*

The Senate of the United States, to ——— ———, greeting:

Whereas the House of Representatives of the United States of America did, on the —— day of ———, exhibit to the Senate articles of impeachment against you, the said ——— ———, in the words following:

[Here insert the articles.]

And demand that you, the said ——— ———, should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials, and judgments might be thereupon had as are agreeable to law and justice:

You, the said ——— ———, are therefore hereby summoned to be and appear before the Senate of the United States of America, at their Chamber in the city of Washington, on the —— day of ———, at 12 o'clock and 30 minutes afternoon, then and there to answer to the said articles of impeachment, and then and there to abide by, obey, and perform such orders, directions, and judgments as the Senate of the United States shall make in the premises according to the Constitution and laws of the United States.

Hereof you are not to fail.

Witness ——— ———, and Presiding Officer of the said Senate, at the city of Washington, this —— day of ———, in the year of our Lord ———, and of the Independence of the United States the ——.

Form of precept to be indorsed on said writ of summons.

THE UNITED STATES OF AMERICA, *ss:*

The Senate of the United States to ——— ———, *greeting:*

You are hereby commanded to deliver to and leave with ——— ———, if conveniently to be found, or if not, to leave at his usual place of abode, or at his usual place of business, in some conspicuous place, a true and attested copy of the within writ of summons, together with a like copy of this precept; and in whichsoever way you perform the service, let it be done at least —— days before the appearance day mentioned in said writ of summons.

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

Witness ——— ———, and Presiding Officer of the Senate, at the city of Washington, this —— day of ———, in the year of our Lord ———, and of the Independence of the United States the ———.

All process shall be served by the Sergeant at Arms of the Senate, unless otherwise ordered by the court.

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

WEDNESDAY, MARCH 4, 1868.

Impeachment of Andrew Johnson, President.

The President pro tempore laid before the Senate the following letter from the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States:

To the Senate of the United States:

Inasmuch as the sole power to try impeachments is vested by the Constitution in the Senate, and it is made the duty of the Chief Justice to preside when the President is on trial, I take the liberty of submitting, very respectfully, some observations in respect to the proper mode of proceeding upon the impeachment which has been preferred by the House of Representatives against the President now in office.

That when the Senate sits for the trial of an impeachment it sits as a court seems unquestionable.

That for the trial of an impeachment of the President this court must be constituted of the members of the Senate, with the Chief Justice presiding, seems equally unquestionable.

The Federalist is regarded as the highest contemporary authority on the construction of the Constitution: and in the sixty-fourth number the functions of the Senate "sitting in their judicial capacity as a court for the trial of impeachments" are examined.

In a paragraph explaining the reasons for not uniting "the Supreme Court with the Senate in the formation of the court of impeachments" it is observed that "to a certain extent the benefits of that union will be obtained from making the Chief Justice of the Supreme Court the president of the court of impeachments, as is proposed by the plan of the convention, while the inconveniences of an entire incorporation of the former into the latter will be substantially avoided. This was, perhaps, the prudent mean."

This authority seems to leave no doubt upon either of the propositions just stated. And the statement of them will serve to introduce the question upon which I think it my duty to state the result of my reflections to the Senate, namely, at what period, in the case of an impeachment of the President, should the court of impeachment be organized under oath as directed by the Constitution?

It will readily suggest itself to anyone who reflects upon the abilities and the learning in the law which distinguish so many Senators, that besides the reason assigned in the Federalist there must have been still another for the provision requiring the Chief Justice to preside in the court of impeachment. Under the Constitution, in case of a vacancy in the office of President the

Vice President succeeds; and it was doubtless thought prudent and befitting that the next in succession should not preside in a proceeding through which a vacancy might be created.

It is not doubted that the Senate, while sitting in its ordinary capacity, must necessarily receive from the House of Representatives some notice of its intention to impeach the President at its bar; but it does seem to me an unwarranted opinion, in view of this constitutional provision, that the organization of the Senate as a court of impeachment, under the Constitution, should precede the actual announcement of the impeachment on the part of the House.

And it may perhaps be thought a still less unwarranted opinion that articles of impeachment should only be presented to a court of impeachment; that no summons or other process should issue except from the organized court, and that rules for the government of the proceedings of such a court should be framed only by the court itself.

I have found myself unable to come to any other conclusions than these, I can assign no reason for requiring the Senate to organize as a court under any other than its ordinary presiding officer for the latter proceedings upon an impeachment of the President which does not seem to me to apply equally to the earlier.

I am informed that the Senate has proceeded upon other views, and it is not my purpose to contest what its superior wisdom may have directed.

All good citizens will fervently pray that no occasion may ever arise when the grave proceedings now in progress will be cited as a precedent, but it is not impossible that such an occasion may come.

Inasmuch, therefore, as the Constitution has charged the Chief Justice with an important function in the trial of an impeachment of the President, it has seemed to me fitting and obligatory, where he is unable to concur in the views of the Senate concerning matters essential to the trial, that his respectful dissent should appear.

S. P. CHASE,
Chief Justice of the United States.

WASHINGTON, *March 4, 1868.*

The letter was read.

Ordered, That it be referred to the select committee appointed to consider and report upon the message of the House of Representatives relative to the impeachment of Andrew Johnson, President of the United States, and that it be printed.

At 1 o'clock p.m. the Sergeant at Arms announced the presence at the door of the Senate Chamber of the managers appointed by the House of Representatives, to wit: Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan and Mr. Thaddeus Stevens, to conduct the impeachment against Andrew Johnson, President of the United States.

The President pro tempore requested the managers to take the seats assigned them within the bar of the Senate.

Mr. Bingham rose and announced, on the part of the managers, that they were ready to exhibit, on the part of the House of Representatives, articles of impeachment against Andrew Johnson, President of the United States.

The President pro tempore then directed the Sergeant at Arms to make proclamation; and

The Sergeant at Arms having made proclamation in the following words:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against Andrew Johnson, President of the United States;

The managers rose, and Mr. Bingham, their chairman, read the following articles:

FORTIETH CONGRESS, SECOND SESSION.

IN THE HOUSE OF REPRESENTATIVES UNITED STATES,
March 2, 1868.

Articles exhibited by the House of Representatives of the United States, in the name of themselves and all the people of the United States, against Andrew Johnson, President of the United States, in maintenance and support of their impeachment against him for high crimes and misdemeanors in office.

ARTICLE 1. That said Andrew Johnson, President of the United States, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, unmindful of the high duties of his office, of his oath of office, and of the requirement of the Constitution that he should take care that the laws be faithfully executed, did unlawfully, and in violation of the Constitution and laws of the United States, issue an order in writing for the removal of Edwin M. Stanton from the office of Secretary for the Department of War, said Edwin M. Stanton having been therefore duly appointed and commissioned, by and with the advice and consent of the Senate of the United States, as such Secretary, and said Andrew Johnson, President of the United States, on the twelfth day of August, in the year of our Lord one thousand eight hundred and sixty-seven, and during the recess of said Senate, having suspended by his order Edwin M. Stanton from said office, and within twenty days after the first day of the next meeting of said Senate, that is to say on the twelfth day of December in the year last aforesaid, having reported to said Senate such suspension, with the evidence and reasons for his action in the case, and the name of the person designated to perform the duties of such office temporarily until the next meeting of the Senate, and said Senate thereafterwards, on the thirteenth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, having duly considered the evidence and reasons reported by said Andrew Johnson for said suspension, and having refused to concur in said suspension, whereby and by force of the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, said Edwin M. Stanton did forthwith resume the functions of his office, whereof the said Andrew Johnson had then and there due notice, and said Edwin M. Stanton, by reason of the premises, on said twenty-first day of February, being lawfully entitled to hold said office of Secretary for the Department of War, which said order for the removal of said Edwin M. Stanton is in substance as follows, that is to say:

EXECUTIVE MANSION,
Washington, D.C., February 21, 1868.

SIR: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States, you are hereby removed from office as Secretary for the Department of War, and your functions as such will terminate upon the receipt of this communication.

You will transfer to Brevet Maj. Gen. Lorenzo Thomas, Adjutant General of the Army, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other public property now in your custody and charge.

Respectfully, yours,

ANDREW JOHNSON.

The Hon. EDWIN M. STANTON, *Washington, D.C.*

Which order was unlawfully issued with intent then and there to violate the act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, and with the further intent, contrary to the provisions of said act, in violation thereof, and contrary to the provisions of the Constitution of the United States, and without the advice and consent of the Senate of the United States, the said Senate then and there being in session, to remove said Edwin M. Stanton from the office of Secretary for the Department of War, the said Edwin M. Stanton being then and there Secretary for the Department of War, and being then and there in the due and lawful execution and discharge of the duties of said office, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ART. II. That on said twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, said Andrew Johnson, President of the United States, unmindful of the high duties of his office, of his oath of office, and in violation of the Constitution of the United States, and contrary to the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, without the advice and consent of the Senate of the United States, said Senate then and there being in session, and without authority of law, did, with intent to violate the Constitution of the United States and the act aforesaid, issue and deliver to one Lorenzo Thomas a letter of authority in substance as follows, that is to say:

EXECUTIVE MANSION,
Washington, D.C., February 21, 1868.

SIR: The Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully, yours,

ANDREW JOHNSON.

To Brevet Maj. Gen. LORENZO THOMAS,
Adjutant General U.S. Army, Washington, D.C.

Then and there being no vacancies in said office of Secretary for the Department of War, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ART. III. That said Andrew Johnson, President of the United States, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did commit and was guilty of a high misdemeanor in office in this, that, without authority of law, while the Senate of the United States was then and there in session, he did appoint one Lorenzo Thomas to be Secretary for the Department of War *ad interim*, without the advice and consent of the Senate, and with intent to violate the Constitution of the United States, no vacancy having happened in said office of Secretary for the Department of War during the recess of the Senate, and no vacancy existing in said office at the time, and which said appointment, so made by said Andrew Johnson, of said Lorenzo Thomas, is in substance as follows, that is to say:

EXECUTIVE MANSION,
Washington, D.C., February 21, 1868.

SIR: The Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully, yours,

ANDREW JOHNSON.

To Brevet Maj.-Gen. Lorenzo Thomas,
Adjutant-General U.S. Army, Washington, D.C.

ART. IV. That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and his oath of office, in violation of the Constitution and laws of the United States, on the twenty-first day of February in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, with intent, by intimidation and threats, unlawfully to hinder and prevent Edwin M. Stanton, then and there the Secretary for the Department of War, duly appointed under the laws of the United States, from holding said office of Secretary for the Department of War, contrary to and in violation of the Constitution of the United States, and of the provisions of an act entitled "An act to define and punish certain conspiracies," approved July thirty-first, eighteen hundred and sixty-one, whereby said Andrew Johnson, President of

the United States, did then and there commit and was guilty of a high crime in office.

ART. V. That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, and on divers other days and times in said year, before the second day of March, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, to prevent and hinder the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty seven, and in pursuance of said conspiracy did unlawfully attempt to prevent Edwin M. Stanton, then and there being Secretary for the Department of War, duly appointed and commissioned under the laws of the United States, from holding said office, whereby the said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ART. VI. That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the twenty-first day of February, in the year of our Lord one thousand eight hundred sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, by force to seize, take, and possess the property of the United States in the Department of War, and then and there in the custody and charge of Edwin M. Stanton, secretary for said department, contrary to the provisions of an act entitled "An act to define and punish certain conspiracies," approved July thirty-one, eighteen hundred and sixty-one, and with intent to violate and disregard an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, whereby said Andrew Johnson, President of the United States, did then and there commit a high crime in office.

ART. VII. That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, with intent unlawfully to seize, take, and possess the property of the United States in the Department of War, in the custody and charge of Edwin M. Stanton, secretary for said department, with intent to violate and disregard the act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, whereby said Andrew Johnson, President of the United States, did then and there commit a high misdemeanor in office.

ART. VIII. That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, with intent unlawfully to control the disbursements of the moneys appropriated for the military service and for the Department of War, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully and contrary to the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, and in violation of the Constitution of the United States, and without the advice and consent of the Senate of the United States, and while the Senate was then and there in session, there being no vacancy in the office of Secretary for the Department of War, and with intent to violate and disregard the act aforesaid, then and there issue and deliver to one Lorenzo Thomas a letter of authority in writing in substance as follows that is to say:

EXECUTIVE MANSION,
Washington, D.C., February 21, 1868.

SIR: The Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War ad interim, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully yours,

ANDREW JOHNSON.

To Brevet Maj. Gen. LORENZO THOMAS,
Adjutant General, U.S. Army, Washington, D.C.

Whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeaner in office.

ART. IX. That said Andrew Johnson, President of the United States, on the twenty-second day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, in disregard of the Constitution and the laws of the United States duly enacted, as commander in chief of the Army of the United States, did bring before himself then and there William H. Emory, a major general by brevet in the Army of the United States, actually in command of the Department of Washington and the military forces thereof, and did then and there, as such commander in chief, declare to and instruct said Emory that part of a law of the United States, passed March second, eighteen hundred and sixty-seven, entitled "An act making appropriations for the support of the Army for the year ending June thirtieth, eighteen hundred and sixty-eight, and for other purposes," especially the second section thereof, which provides, among other things, that "all orders and instructions relating to military operations issued by the President or Secretary of War shall be issued through the General of the Army, and in case of his inability through the next in rank," was unconstitutional, and in contravention of the commission of said Emory, and which said provision of law had been theretofore duly and legally promulgated by general order for the government and direction of the Army of the United States, as the said Andrew Johnson then and there well knew, with intent thereby to induce said Emory, in his official capacity as commander of the Department of Washington, to violate the provisions of said act, and to take and receive, act upon, and obey such orders as he, the said Andrew Johnson, might make and give, and which should not be issued through the General of the Army of the United States, according to the provisions of said act, and with the further intent thereby to enable him, the said Andrew Johnson, to prevent the execution of the act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, and to unlawfully prevent Edwin M. Stanton, then being Secretary for the Department of War, from holding said office and discharging the duties thereof, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles or other accusation or impeachment against the said Andrew Johnson, President of the United States, and also of replying to his answers which he shall make unto the articles herein preferred against him, and of offering proof to the same, and every part thereof, and to all and every other article, accusation, or impeachment which shall be exhibited by them, as the case shall require, no DEMAND that the said Andrew Johnson may be put to answer the high crimes and misdemeanors in office herein charged against him, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

SCHUYLER COLFAX,
Speaker of the House of Representatives.

Attest:
EDWARD MCPHERSON,
Clerk of the House of Representatives.

IN THE HOUSE OF REPRESENTATIVES UNITED STATES,
March 3, 1868.

The following additional articles of impeachment were agreed to, viz:

ART. X. That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and the dignity and proprieties thereof, and of the harmony and courtesies which ought to exist and be maintained between the executive and legislative branches of the Government of the United States, designing and intending to set aside the rightful authority and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt, and reproach the Congress of the United States, and the several branches thereof, to impair and destroy the regard and respect of all the good people of the United

States for the Congress and legislative power thereof (which all officers of the Government ought inviolably to preserve and maintain), and to excite the odium and resentment of all the good people of the United States against Congress and the laws by it duly and constitutionally enacted; and in pursuance of his said design and intent, openly and publicly, and before divers assemblages of the citizens of the United States convened in divers parts thereof to meet and receive Andrew Johnson as the Chief Magistrate of the United States, did, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and sixty-six, and on divers other days and times, as well before as afterward, make and deliver with a loud voice certain intemperate, inflammatory, and scandalous harangues, and did therein utter loud threats and bitter menaces as well against Congress as the laws of the United States duly enacted thereby, amid the cries, jeers, and laughter of the multitude then assembled and in hearing, which are set forth in the several specifications hereinafter written, in substance and effect, that is to say:

Specification first.—In this: that at Washington, in the District of Columbia, in the Executive Mansion, to a committee of citizens who called upon the President of the United States, speaking of and concerning the Congress of the United States, said Andrew Johnson, President of the United States, heretofore, to wit, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and sixty-six, did, in a loud voice, declare in substance and effect, among other things, that is to say:

"So far as the executive department of the Government is concerned the effort has been made to restore the Union, to heal the breach, to pour oil into the wounds which were consequent upon the struggle, and (to speak in common phrase) to prepare, as the learned and wise physician would, a plaster healing in character and coextensive with the wound. We thought, and we think, that we had partially succeeded; but as the work progresses, as the reconstruction seemed to be taking place and the country was becoming reunited, we found a disturbing and marring element opposing us. In alluding to that element I shall go no further than your convention and the distinguished gentleman who delivered to me the report of its proceedings. I shall make no reference to it that I do not believe the time and the occasion justify.

"We have witnessed in one department of the Government every endeavor to prevent the restoration of peace, harmony, and union. We have seen hanging upon the verge of the Government, as it were, a body called, or which assumes to be, the Congress of the United States, while in fact it is a Congress of only a part of the States. We have seen this Congress pretend to be for the Union, when its every step and act tended to perpetuate disunion and made a disruption of the States inevitable. * * * We have seen Congress gradually encroach step by step upon constitutional rights, and violate, day after day and month after month, fundamental principles of the Government. We have seen a Congress that seemed to forget that there was a limit to the sphere and scope of legislation. We have seen a Congress in a minority assume to exercise power which, allowed to be consummated, would result in despotism or monarchy itself."

Specification second.—In this: that at Cleveland, in the State of Ohio, heretofore, to wit, on the third day of September, in the year of our Lord one thousand eight hundred and sixty-six, before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States, did, in a loud voice, declare in substance and effect, among other things, that is to say:

"I will tell you what I did do. I called upon your Congress that is trying to break up the Government.

* * * * * * *

"In conclusion, beside that, Congress had taken much pains to poison their constituents against him. But what had Congress done? Have they done anything to restore the union of these States? No; on the contrary, they have done everything to prevent it; and because he stood now where he did when the rebellion commenced, he had been denounced as a traitor. Who had run greater risks or made greater sacrifices than himself? But Congress, factious and domineering, had undertaken to poison the minds of the American people."

Specification third.—In this: that at St. Louis, in the State of Missouri, heretofore, to wit, on the eighth day of September, in the year of our Lord one thousand eight hundred and sixty-six, before a public assemblage of citizens and

others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States, did, in a loud voice, declare in substance and effect, among other things, that is to say:

"Go on. Perhaps if you had a word or two on the subject of New Orleans you might understand more about it than you do. And if you will go back—if you will go back and ascertain the cause of the riot at New Orleans perhaps you will not be so prompt in calling out 'New Orleans.' If you will take up the riot at New Orleans and trace it back to its source or its immediate cause you will find out who was responsible for the blood that was shed there. If you will take up the riot at New Orleans and trace it back to the radical Congress, you will find that the riot at New Orleans was substantially planned. If you will take up the proceedings in their caucuses you will understand that they there knew that a convention was to be called which was extinct by its power having expired; that it was said that the intention was that a new government was to be organized, and on the organization of that government the intention was to enfranchise one portion of the population, called the colored population, who had just been emancipated, and at the same time disfranchise white men. When you design to talk about New Orleans you ought to understand what you are talking about. When you read the speeches that were made, and take up the facts on the Friday and Saturday before that convention sat, you will there find that speeches were made incendiary in their character, exciting that portion of the population, the black population, to arm themselves and prepare for the shedding of blood. You will also find that that convention did assemble in violation of law, and the intention of that convention was to supersede the reorganized authorities in the State government of Louisiana, which had been recognized by the Government of the United States; and every man engaged in that rebellion in that convention, with the intention of superseding and upturning the civil government which had been recognized by the Government of the United States, I say that he was a traitor to the Constitution of the United States, and hence you find that another rebellion was commenced, having its origin in the radical Congress.

* * * * * * *

"So much for the New Orleans riot. And there was the cause and the origin of the blood that was shed; and every drop of blood that was shed is upon their skirts, and they are responsible for it. I could test this thing a little closer, but will not do it here to-night. But when you talk about the causes and consequences that resulted from proceedings of that kind, perhaps, as I have been introduced here, and you have provoked questions of this kind, though it does not provoke me, I will tell you a few wholesome things that have been done by this radical Congress in connection with New Orleans and the extension of the elective franchise.

"I know that I have been traduced and abused. I know it has come in advance of me here as elsewhere—that I have attempted to exercise an arbitrary power in resisting laws that were intended to be forced upon the Government; that I had exercised that power; that I had abandoned the party that elected me; and that I was a traitor, because I exercised the veto power in attempting and did arrest, for a time, a bill that was called a 'Freedmen's Bureau' bill; yes, that I was a traitor. And I have been traduced, I have been slandered, I have been maligned, I have been called Judas Iscariot and all that. Now, my countrymen, here to-night, it is very easy to indulge in epithets; it is easy to call a man Judas and cry out traitor, but when he is called upon to give arguments and facts he is very often found wanting. Judas Iscariot—Judas. There was a Judas, and he was one of the twelve apostles. O, yes; the twelve apostles had a Christ. The twelve apostles had a Christ, and He never could have had a Judas unless He had twelve apostles. If I have played the Judas, who has been my Christ that I have played the Judas with? Was it Thad. Stevens? Was it Wendell Phillips? Was it Charles Sumner? These are the men that stop and compare themselves with the Savior; and everybody that differs with them in opinion, and to try to stay and arrest their diabolical and nefarious policy, is to be denounced as a Judas."

* * * * * * *

"Well, let me say to you, if you will stand by me in this action, if you will stand by me in trying to give the people a fair chance—soldiers and citizens—to participate in these offices, God being willing, I will kick them out. I will kick them out just as fast as I can.

"Let me say to you, in concluding, that what I have said I intended to say. I was not provoked into this, and I care not for their menaces, the taunts, and the jeers. I care not for threats. I do not intend to be bullied by my enemies nor overawed by my friends. But, God willing, with your help, I will veto their measures whenever any of them come to me."

Which said utterances, declarations, threats, and harangues, highly censurable in any, are peculiarily indecent and unbecoming in the Chief Magistrate of the United States, by means whereof said Andrew Johnson has brought the high office of the President of the United States into contempt, ridicule, and disgrace to the great scandal of all good citizens, whereby said Andrew Johnson, President of the United States, did commit, and was then and there guilty of a high misdemeanor in office.

ART. XI. That said Andrew Johnson, President of the United States, unmindful of the high duties of his office, and of his oath of office, and in disregard of the Constitution and laws of the United States, did, heretofore, to wit, on the 18th day of August, A.D. 1866, at the city of Washington, and the District of Columbia, by public speech, declare and affirm, in substance, that the Thirty-ninth Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same, but, on the contrary, was a Congress of only part of the States, thereby denying, and intending to deny, that the legislation of said Congress was valid or obligatory upon him, the said Andrew Johnson, except so far as he saw fit to approve the same, and also thereby denying, and intending to deny, the power of the said Thirty-ninth Congress to propose amendments to the Constitution of the United States; and, in pursuance of said declaration, the said Andrew Johnson, President of the United States, afterwards, to wit, on the 21st day of February, A.D. 1868, at the city of Washington, in the District of Columbia, did, unlawfully and in disregard of the requirement of the Constitution that he should take care that the laws be faithfully executed, attempt to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, by unlawfully devising and contriving and attempting to devise and contrive, means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of the office of Secretary for the Department of War, notwithstanding the refusal of the Senate to concur in the suspension theretofore made by said Andrew Johnson of said Edwin M. Stanton from said office of Secretary for the Department of War; and also by further unlawfully devising and contriving, and attempting to devise and contrive means, then and there, to prevent the execution of an act entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1868, and for other purposes," approved March 2, 1867, and also to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States," passed March 2, 1867, whereby the said Andrew Johnson, President of the United States, did then, to wit, on the 21st day of February, A.D. 1868, at the city of Washington, commit, and was guilty of, a high misdemeanor in office.

SCHUYLER COLFAX,
Speaker of the House of Representatives.

Attest:
EDWARD MCPHERSON,
Clerk of the House of Representatives.

Mr. Bingham having concluded the reading of the articles of impeachment.

The President pro tempore informed the managers that the Senate would take proper order on the subject of the impeachment, of which due notice would be given to the House of Representatives.

The managers, by their chairman, Mr. Bingham, then delivered the articles of impeachment at the table of the Secretary and withdrew.

Mr. Howard from the select committee appointed to consider and report upon the message of the House of Representatives relative to the impeachment of Andrew Johnson, President of the United States, reported the following resolution and orders:

Resolved, That at 1 o'clock to-morrow afternoon the Senate will proceed to consider the impeachment of Andrew Johnson, President of the United States,

at which time the oath or affirmation required by the rules of the Senate sitting for the trial of an impeachment shall be administered by the Chief Justice of the United States as the presiding officer of the Senate, sitting as aforesaid, to each Member of the Senate; and that the Senate, sitting as aforesaid, will, at the time aforesaid, receive the managers appointed by the House of Representatives.

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

Ordered, That the articles of impeachment exhibited against Andrew Johnson, President of the United States, be printed.

Ordered, That a copy of the rules of procedure and practice in the Senate, when sitting on the trial of impeachments, be communicated by the Secretary to the House of Representatives, and a copy thereof delivered by him to each Member of the House.

The Senate proceeded, by unanimous consent, to consider the said resolutions and orders; and

On motion to agree to the same,

On motion by Mr. Edmunds to amend the resolution by striking out all after the word "Resolved," and inserting,

That the Secretary be directed to inform the House of Representatives that at 1 o'clock to-morrow afternoon the Senate will, pursuant to its standing rule, proceed to the consideration of the articles of impeachment presented by the House of Representatives against Andrew Johnson, President of the United States.

It was determined in the negative; and

The question recurring on the resolution,

It was agreed to.

On the question to agree to the orders reported by the select committee.

They were severally agreed to.

On motion by Mr. Pomeroy,

Ordered, that the notice to the Chief Justice of the United States to meet the Senate in the trial of the case of impeachment, and requesting his attendance as presiding officer, be delivered to him by a committee of three Senators to be appointed by the Chair, who shall wait upon the Chief Justice to the Senate Chamber, and conduct him to the chair.

And the President pro tempore appointed Mr. Pomeroy, Mr. Wilson, and Mr. Buckalew said committee.

TUESDAY, MARCH 10, 1868.

Impeachment of Andrew Johnson, President

The following order in relation to the admission of persons to the galleries of the Senate during the trial of the impeachment of the President was adopted by the Senate:

Ordered, First. That during the trial of the impeachment now pending no persons besides those who now have the privilege of the floor, and clerks of the standing committees of the Senate, shall be admitted to that portion of the Capitol set apart for the use of the Senate and its officers, except upon tickets to be used by the Sergeant at Arms. The number of tickets shall not exceed 1,000. Tickets shall be numbered and dated, and be good only for the day on which they are dated.

Second. The portion of the gallery set apart for the diplomatic corps shall be exclusively appropriated to it, and 40 tickets of admission thereto shall be issued to the Baron Gerolt for the foreign legations.

Third. Four tickets shall be issued to each Senator; 4 tickets each to the Chief Justice of the United States and the Speaker of the House of Representatives;

2 tickets to each Member of the House of Representatives; 2 tickets each to the Associate Justices of the Supreme Court of the United States; 2 tickets each to the chief justice and associate justices of the supreme court of the District of Columbia; 2 tickets to the chief justice and each judge of the Court of Claims; 2 tickets to each Cabinet officer; 2 tickets to the General commanding the Army; 20 tickets to the private secretary of the President of the United States, for the use of the President; and 60 tickets shall be issued by the President pro tempore of the Senate to the reporters of the press. The residue of the tickets to be issued shall be distributed among the Members of the Senate in proportion to the representation of their respective States in the House of Representatives, and the seats now occupied by the Senators shall be reserved for them.

(B) PROCEEDINGS OF THE SENATE SITTING FOR THE TRIAL OF THE IMPEACHMENT OF ANDREW JOHNSON, PRESIDENT OF THE UNITED STATES.

THURSDAY, MARCH 5, 1868.

The United States *v.* Andrew Johnson, President.

The Senate sitting for the trial of Andrew Johnson, President of the United States, upon articles of impeachment exhibited against him by the House of Representatives,

The Chief Justice of the United States entered the Senate Chamber and was conducted to the chair by the committee appointed by the Senate for that purpose.

By direction of the Chief Justice the following oath was administered to him by Mr. Justice Nelson, the senior associate justice of the Supreme Court of the United States:

I do solemnly swear that in all things appertaining to the trial of the impeachment of Andrew Johnson, President of the United States, now pending, I will do impartial justice according to the Constitution and laws. So help me God.

The Chief Justice then took the chair and administered the same oath to the following Senators separately, as their names were called by the Secretary, to wit:

Messrs. Anthony, Bayard, Buckalew, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Davis, Dixon, Drake, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Harlan, Henderson, Hendricks, Howard, Howe, Johnson, McCreery, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Norton, Nye, Patterson of Tennessee, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Trumbull, and Van Winkle.

When the name of Mr. Wade was called Mr. Hendricks rose and submitted to the Senate the question whether Mr. Wade, being the President of the Senate pro tempore, and by law made the successor to the office of President of the United States, in case the articles of impeachment exhibited by the House of Representatives against Andrew Johnson should be sustained, was competent to sit as a member of the court upon the trial of the impeachment of the President of the United States.

After debate,

Mr. Johnson moved that in administering the oath to Senators the name of the Senator from Ohio, Mr. Wade, be omitted in the call until the remaining names on the roll shall have been called.

After further debate,

On motion by Mr. Grimes, at 4.30 o'clock p. m., the Senate, sitting as aforesaid, adjourned to meet at 1 o'clock p.m. tomorrow.

FRIDAY, MARCH 6, 1868.

The United States *v.* Andrew Johnson, President.

At 1 o'clock p. m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair.

The Chief Justice stated that the question before the Senate was the motion submitted yesterday by Mr. Johnson, that in administering the oath to Senators the name of the Senator from Ohio, Mr. Wade, be omitted in the call until the remaining names on the roll shall have been called.

Mr. Howard rose to a question of order, and, being requested by the Chief Justice to reduce his point of order to writing, presented it to the Chair in the following words:

That the objection raised to the administering the oath to Mr. Wade is out of order, and that the motion of the Senator from Maryland to postpone the administering the oath to Mr. Wade until other Senators are sworn in is also out of order under the rules adopted by the Senate on the 2d of March instant, and under the Constitution of the United States.

The Chief Justice submitted the question of order to the decision of the Senate.

Mr. Dixon rose and was proceeding to debate the question of order, when he was called to order by Mr. Drake, on the ground that the question of order should be decided without debate.

The Chief Justice decided that the question of order, having been submitted to the Senate for its decision, was debatable.

While Mr. Dixon was proceeding in his remarks upon the question of order,

Mr. Howard raised a question of order, viz: That it was not in order for the Senator from Connecticut to debate the question, under the 23d rule adopted by the Senate on the 2d instant, which provides that all the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate.

The Chief Justice decided that the 23d rule did not apply while the Senate was in process of organization for the trial of an impeachment, and overruled the question of order raised by Mr. Howard.

From this decision of the Chief Justice Mr. Drake appealed to the Senate; and

On the question, Shall the decision of the Chief Justice stand as the judgment of the Senate?

It was determined in the affirmative, { Yeas 24
Nays 20

On motion of Mr. Ferry,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Buckalew, Corbett, Davis, Dixon, Fressenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Maine, Norton, Patterson of Tennessee, Pomeroy, Ross, Saulsbury, Sherman, Sprague, Van Winkle, Willey, Williams.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Drake, Ferry, Harlan, Howard, Morgan, Morrill of Vermont, Morton, Nye, Stewart, Sumner, Thayer, Tipton, Wilson, Yates.

So the decision of the Chief Justice was sustained.

Mr. Dixon then resumed and having concluded his remarks,

Mr. Hendricks withdrew the objection yesterday raised by him to the administering the oath to Mr. Wade and to his sitting as a member of the court upon the trial of the President of the articles of impeachment exhibited against him.

The Chief Justice then administered the oath to Mr. Wade, and also to the following Senators, separately, to wit: Messrs. Willey, Williams, Wilson, Yates, and Saulsbury.

The Chief Justice then announced that all the Senators present having had the oath administered to them, the Senate was now organized for the trial of Andrew Johnson, President of the United States, upon the articles of impeachment exhibited against him by the House of Representatives, and directed the Sergeant at Arms to make proclamation; and

The Sergeant at Arms then made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence on pain of imprisonment while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Andrew Johnson, President of the United States.

Thereupon,

Mr. Howard submitted the following order for consideration:

Ordered, That the Secretary notify the House of Representatives that the Senate is now organized for the trial of the articles of impeachment against Andrew Johnson, President of the United States, and is ready to receive the managers of impeachment on the part of the House at its bar.

The Chief Justice said: Before submitting that question to the Senate, the Chief Justice thinks it is his duty to submit a question to the Senate relative to the rules of procedure. In the judgment of the Chief Justice, the Senate is now organized as a distinct body from the Senate sitting in its legislative capacity. It performs a distinct function, the members are under a different oath, and the presiding officer is not the President pro tempore of the Senate, but the Chief Justice of the United States. Under these circumstances the Chief Justice conceives that rules adopted by the Senate in its legislative capacity are not the rules for the government of the Senate sitting for the trial of an impeachment, unless they be also adopted by that body. In this judgment of the Chair, if it be erroneous, he desires to be corrected by the judgment of the court, or the Senate sitting for the trial of the impeachment of the President, which in his judgment are synonymous terms; and, therefore, if he be permitted to do so, he will take the sense of the Senate upon this question: Whether the rules adopted on the 2d March shall be considered as the rules of the proceedings in this body? And,

The question being put, Shall the rules of proceeding adopted by the Senate on the 2d of March be the rules of proceeding in the trial of the impeachment?

It was determined in the affirmative.

So it was

Resolved, That the rules adopted by the Senate on the 2d of March, instant, be the rules of procedure and practice in the Senate sitting on the trial of impeachments; which rules are as follows:

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

II. When the managers of an impeachment shall be introduced at the bar of the Senate, and shall signify that they are ready to exhibit articles of impeachment against any person, the presiding officer of the Senate shall direct the Sergeant at Arms to make proclamation, who shall, after making proclamation, repeat the following words, viz: "All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against ——— ———;" after which the articles shall be exhibited, and then the presiding officer of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

III. Upon such articles being presented to the Senate, the Senate shall, at 1 o'clock afternoon of the day (Sunday excepted) following such persentation, or sooner if so ordered by the Senate, proceed to the consideration of such articles, and shall continue in session from day to day (Sundays excepted), after the trial shall commence (unless otherwise ordered by the Senate), until final judgment shall be rendered, and so much longer as may, in its judgment, be needful. Before proceeding to the consideration of the articles of impeachment, the presiding officer shall administer the oath hereinafter provided to the members of the Senate then present, and to the other members of the Senate as they shall appear, whose duty it shall be to take the same.

IV. When the President of the United States, or the Vice President of the United States, upon whom the powers and duties of the office of President shall have devolved, shall be impeached, the Chief Justice of the Supreme Court of the United States shall preside; and in a case requiring the said Chief Justice to preside notice shall be given to him by the presiding officer of the Senate of the time and place fixed for the consideration of the articles of impeachment, as aforesaid, with a request to attend; and the said Chief Justice shall preside over the Senate during the consideration of said articles, and upon the trial of the person impeached therein.

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

V. The Senate shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments, to preserve order, and to punish in a summary way contempts of and disobedience to its authority, orders, mandates, writs, precepts, or judgments, and to make all lawful orders, rules, and regulations, which it may deem essential or conducive to the ends of justice. And the Sergeant at Arms, under the direction of the Senate, may employ such aid and assistance as may be necessary to enforce, execute, and carry into effect the lawful orders, mandates, writs, and precepts of the Senate.

VII. The presiding officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the presiding officer upon the trial shall direct all the forms of proceeding while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. The presiding officer may, in the first instance, submit to the Senate, without a division, all questions of evidence and incidental questions; but the same shall, on the demand of one-fifth of the members present, be decided by yeas and nays.

VIII. Upon the presentation of articles of impeachment and the organization of the Senate as hereinbefore provided, a writ of summons shall issue to the accused, reciting said articles, and notifying him to appear before the Senate upon a day and at a place to be fixed by the Senate and named in such writ, and file his answer to said articles of impeachment, and to stand to and abide

the orders and judgments of the Senate thereon; which writ shall be served by such officer or person as shall be named in the precept thereof, such number of days prior to the day fixed for such appearance as shall be named in such precept, either by the delivery of an attested copy thereof to the person accused, or if that can not conveniently be done, by leaving such copy at the last known place of abode of such person, or at his usual place of business in some conspicuous place therein; or if such service shall be, in the judgment of the Senate, impracticable, notice to the accused to appear shall be given in such other manner, by publication or otherwise, as shall be deemed just; and if the writ aforesaid shall fail of service in the manner aforesaid, the proceedings shall not thereby abate, but further service may be made in such manner as the Senate shall direct. If the accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed therefor as aforesaid, or appearing shall fail to file his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings.

IX. At 12 o'clock and 30 minutes afternoon of the day appointed for the return of the summons against the person impeached, the legislative and executive business of the Senate shall be suspended and the Secretary of the Senate shall administer an oath to the returning officer in the form following, viz: "I, ——— ———, do solemnly swear that the return made by me upon the process issued on the —— day of ———, by the Senate of the United States, against ——— ———, is truly made, and that I have performed such service as therein described. So help me God." Which oath shall be entered at large on the records.

X. The person impeached shall then be called to appear and answer the articles of impeachment against him. If he appear, or any person for him, the appearance shall be recorded, stating particularly if by himself or by agent or attorney, naming the person appearing and the capacity in which he appears. If he do not appear, either personally or by agent or attorney, the same shall be recorded.

XI. At 12 o'clock and 30 minutes afternoon of the day apointed for the trial of an impeachment, the legislative and executive business of the Senate shall be suspended, and the Secretary shall give notice to the House of Representatives that the Senate is ready to proceed upon the impeachment of ——— ———, in the Senate Chamber, which Chamber is prepared with accommodations for the reception of the House of Representatives.

XII. The hour of the day at which the Senate shall sit upon the trial of an impeachment shall be (unless otherwise ordered) at 12 o'clock m.; and when the hour for such sitting shall arrive the presiding officer of the Senate shall so announce; and thereupon the presiding officer upon such trial shall cause proclamation to be made, and the business of the trial shall proceed. The adjournment of the Senate, sitting in said trial, shall not operate as an adjournment of the Senate; but on such adjournment the Senate shall resume the consideration of its legislative and executive business.

XIII. The Secretary of the Senate shall record the procedings in cases of impeachment as in the case of legislative proceedings, and the same shall be reported in the same manner as the legislative procedings of the Senate.

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

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

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

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

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

XIX. At all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be kept open, unless the Senate shall direct the doors to be closed while deliberating upon its decisions.

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

XXI. The case, on each side, shall be opened by one person. The final argument on the merits may be made by two persons on each side (unless otherwise

ordered by the Senate, upon application for that purpose), and the argument shall be opened and closed on the part of the House of Representatives.

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

XXIII. All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, except when the doors shall be closed for deliberation, and in that case no Member shall speak more than once on one question, and for not more than 10 minutes on an interlocutory question, and for not more than 15 minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by one-fifth of the Members present.

XXIV. Witnesses shall be sworn in the following form, viz: "You, ——— ———, do swear (or affirm, as the case may be) that the evidence you shall give in the case now depending between the United States and ——— ——— shall be the truth, the whole truth, and nothing but the truth. So help you God." Which oath shall be administered by the Secretary, or any other duly authorized person.

Form of subpena to be issued on the application of the managers of the impeachment, or of the party impeached, or of his counsel.

To ——— ———, greeting:

You and each of you are hereby commanded to appear before the Senate of the United States, on the —— day of ————, at the Senate Chamber in the city of Washington, then and there to testify your knowledge in the cause which is before the Senate, in which the House of Representatives have impeached ——— ———.

Fail not.

Witness ——— ———, and presiding officer of the Senate, at the city of Washington, this —— day of ———, in the year of our Lord ———, and of the independence of the United States the ———.

Form of direction for the service of said subpena:

The Senate of the United States ——— ———, greeting:

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

Dated at Washington, this —— day of ———, in the year of our Lord ———, and of the independence of the United States the ———.

——— ———,
Secretary of State.

Form of oath to be administered to the Members of the Senate sitting in the trial of impeachments.

I solemnly swear (or affirm, as the case may be), that in all things appearing to the trial of the impeachment of ——— ———, now pending, I will do impartial justice according to the Constitution and laws. So help me God.

Form of summons to be issued and served upon the person impeached.

THE UNITED STATES OF AMERICA, *ss:*

The Senate of the United States to ——— ———, greeting:

Whereas the House of Representatives of the United States of America did, on the ——— day of ———, exhibit to the Senate articles of impeachment against you, the said ——— ———, in the words following:

[Here insert the articles.]

And demand that you, the said ——— ———, should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials, and judgments might be thereupon had as are agreeable to law and justice.

You, the said ——— ———, are therefore hereby summoned to be and appear before the Senate of the United States of America, at their Chamber in the city of Washington, on the ——— day of ———, at twelve o'clock and thirty

minutes afternoon, then and there to answer to the said articles of impeachment, and then and there to abide by, obey, and perform such orders, directions, and judgments as the Senate of the United States shall make in the premises according to the Constitution and laws of the United States.

Hereof you are not to fail.

Witness ——— ——— and Presiding Officer of the said Senate, at the city of Washington, this ——— day of ———, in the year of our Lord ——, and of the independence of the United States the ———.

Form of precept to be indorsed on said writ of summons.

THE UNITED STATES OF AMERICA, *ss:*

The Senate of the United States to ——— ———, greeting:

You are hereby commanded to deliver to and leave with ——— ———, if conveniently to be found, or if not, to leave at his usual place of abode, or at his usual place of business in some conspicuous place, a true and attested copy of the within writ of summons, together with a like copy of this precept; and in whichsoever way you perform the service, let it be done at least ——— days before the appearance day mentioned in said writ of summons.

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

Witness ——— ——— and Presiding Officer of the Senate, at the city of Washington, this ——— day of ———, in the year of our Lord ——, and of the independence of the United States the ———.

All process shall be served by the Sergeant at Arms of the Senate, unless otherwise ordered by the court.

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

The question recurring on the order submitted by Mr. Howard on the question to agree thereto,

It was determined in the affirmative.

Ordered, That the Secretary notify the House of Representatives thereof.

The Sergeant at Arms announced the presence at the door of the Senate Chamber of the managers appointed by the House of Representatives to conduct the trial of the impeachment of Andrew Johnson, President of the United States, to wit: Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, and Mr. Logan (Mr. Thaddeus Stevens, one of said managers, being absent).

The Chief Justice requested the managers to take the seats assigned them within the bar of the Senate.

Mr. Bingham, the chairman of the managers, rose and said: "We are instructed by the House of Representatives, as its managers, to demand that the Senate take process against Andrew Johnson, President of the United States; that he answer at the bar of the Senate the articles of impeachment heretofore preferred by the House of Representatives, through its managers, before the Senate;" which articles are in the words following, to wit:

IN THE HOUSE OF REPRESENTATIVES UNITED STATES,
March 2, 1868.

Articles exhibited by the House of Representatives of the United States, in the name of themselves and the people of the United States, against Andrew Johnson, President of the United States, in maintenance and support of their impeachment against him for high crimes and misdemeanors in office.

ARTICLE I. That said Andrew Johnson, President of the United States, on the twenty-first day of February, in the year of our Lord one thousand eight hun-

dred and sixty-eight, at Washington, in the District of Columbia, unmindful of the high duties of his office, of his oath of office, and of the requirement of the Constitution, that he should take care that the laws be faithfully executed, did unlawfully, and in violation of the Constitution and the laws of the United States, issue an order in writing for the removal of Edwin M. Stanton from the office of Secretary for the Department of War, said Edwin M. Stanton having been theretofore duly appointed and commissioned, by and with the advice and consent of the Senate of the United States, as such Secretary, and said Andrew Johnson, President of the United States, on the twelfth day of August, in the year of our Lord one thousand eight hundred and sixty-seven, and during the recess of said Senate, having suspended by his order Edwin M. Stanton from said office, and within twenty days after the first day of the next meeting of said Senate; that is to say, on the twelfth day of December, in the year last aforesaid, having reported to said Senate such suspension, with the evidence and reasons for his action in the case, and the name of the person designated to perform the duties of such office temporarily until the next meeting of the Senate, and said Senate thereafterwards on the thirteenth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, having duly considered the evidence and reasons reported by said Andrew Johnson for said suspension, and having refused to concur in said suspension, whereby and by force of the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, said Edwin M. Stanton did forthwith resume the functions of his office, whereof the said Andrew Johnson had then and there due notice; and said Edwin M. Stanton, by reason of the premises, on said twenty-first day of February, being lawfully entitled to hold said office of Secretary for the Department of War, which said order for the removal of said Edwin M. Stanton is in substance as follows; that is to say:

EXECUTIVE MANSION,
Washington, D.C., February 21, 1868.

SIR: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States, you are hereby removed from office as Secretary for the Department of War, and your functions as such will terminate upon receipt of this communication.

You will transfer to Brevet Maj. Gen. Lorenzo Thomas, Adjutant General of the Army, who has this day been authorized and empowered to act as Secretary of War ad interim, all records, books, papers, and other public property now in your custody and charge.

Respectfully yours,

ANDREW JOHNSON.

To the Hon. EDWIN M. STANTON, *Washington, D.C.*

Which order was unlawfully issued with intent then and there to violate the act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, and with the further intent, contrary to the provisions of said act, in violation thereof, and contrary to the provisions of the Constitution of the United States, and without the advice and consent of the Senate of the United States, the said Senate then and there being in session, to remove said Edwin M. Stanton from the office of Secretary for the Department of War, the said Edwin M. Stanton being then and there Secretary for the Department of War, and being then and there in the due and lawful execution and discharge of the duties of said office, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ART. II. That on said twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, said Andrew Johnson, President of the United States, unmindful of the high duties of his office, of his oath of office, and in violation of the Constitution of the United States, and contrary to the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, without the advice and consent of the Senate of the United States, said Senate then and there being in session, and without authority of law, did, with intent to violate the Constitution of the United States, the act aforesaid, issue and deliver to one Lorenzo Thomas a letter of authority in substance as follows; that is to say:

EXECUTIVE MANSION,
Washington, D.C., February 21, 1868.

SIR: The Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War ad interim, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully yours,

ANDREW JOHNSON.

To Brevet Maj. Gen. LORENZO THOMAS,
Adjutant General U.S. Army, Washington, D.C.

Then and there being no vacancy in said office of Secretary for the Department of War, whereby said Andrew Johnson, President of the United States, did then and there commit, and was guilty of high misdemeanor in office.

ART. III. That said Andrew Johnson, President of the United States, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did commit and was guilty of a high misdemeanor in office in this, that, without authority of law, while the Senate of the United States was then and there in session, he did appoint one Lorenzo Thomas to be Secretary for the Department of War ad interim, without the advice and consent of the Senate, and with intent to violate the Constitution of the United States, no vacancy having happened in said office of Secretary for the Department of War during the recess of the Senate, and no vacancy existing in said office at the time, and which said appointment, so made by said Andrew Johnson, of said Lorenzo Thomas, is in substance as follows; that is to say:

EXECUTIVE MANSION,
Washington, D.C., February 21, 1868.

SIR: The Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War ad interim, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully yours,

ANDREW JOHNSON.

To Brevet Maj. Gen. LORENZO THOMAS,
Adjutant General, U.S. Army, Washington, D.C.

ART. IV. That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, in violation of the Constitution and laws of the United States, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, with intent, by intimidation and threats, unlawfully to hinder and prevent Edwin M. Stanton, then and there the Secretary for the Department of War, duly appointed under the laws of the United States, from holding said office of Secretary for the Department of War, contrary to and in violation of the Constitution of the United States, and of the provisions of an act entitled, "An act to define and punish certain conspiracies," approved July thirty-first, eighteen hundred and sixty-one, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high crime in office.

ART. V. That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, and on divers other days and times in said year, before the second day of March, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, to prevent and hinder the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, and in pursuance of said conspiracy did unlawfully attempt to prevent Edwin M.

Stanton, then and there being Secretary of the Department of War, duly appointed and commissioned under the laws of the United States, from holding said office, whereby the said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ART. VI. That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, by force to seize, take, and possess the property of the United States in the Department of War, and then and there in the custody and charge of Edwin M. Stanton, Secretary for said Department, contrary to the provisions of an act entitled "An act to define and punish certain conspiracies," approved July thirty-one, eighteen hundred and sixty-one, and with intent to violate and disregard an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, whereby said Andrew Johnson, President of the United States, did then and there commit a high crime in office.

ART. VII. That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas with intent unlawfully to seize, take, and possess the property of the United States in the Department of War, in the custody and charge of Edwin M. Stanton, Secretary for said Department, with intent to violate and disregard the act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, whereby said Andrew Johnson, President of the United States, did then and there commit a high misdemeanor in office.

ART. VIII. That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, with intent unlawfully to control the disbursements of the moneys appropriated for the military service and for the Department of War, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully, and contrary to the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, and in violation of the Constitution of United States, and without the advice and consent of the Senate of the United States, and while the Senate was then and there in session, there being no vacancy in the office of Secretary for the Department of War, and with intent to violate and disregard the act aforesaid, then and there to issue and deliver to one Lorenzo Thomas a letter of authority in writing, in substance as follows, that is to say:

EXECUTIVE MANSION,
Washington, D.C., February 21, 1868.

SIR: The Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War ad interim, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully yours,

ANDREW JOHNSON.

To Brevet Maj. Gen. LORENZO THOMAS,
Adjutant General U.S. Army, Washington, D.C.

Whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ART. IX. That said Andrew Johnson, President of the United States, on the twenty-second day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, in disregard of the Constitution and the laws of the United States duly enacted, as Commander in Chief of the Army of the United States, did bring before himself then and there William H. Emory, a major general by brevet in the Army of the United States, actually in command of the Department of Washington and the military forces thereof, and did then and there, as such Commander in

Chief, declare to and instruct said Emory that part of a law of the United States, passed March second, eighteen hundred and sixty-seven, entitled "An act making appropriations for the support of the Army for the year ending June thirtieth, eighteen hundred and sixty-six, and for other purposes," especially the second section thereof, which provides, among other things, that "all orders and instructions relating to military operations issued by the President or the Secretary of War shall be issued through the General of the Army, and, in case of his inability, through the next in rank," was unconstitutional and in contravention of the commission of said Emory, and which said provision of law had been theretofore duly and legally promulgated by General Order for the government and direction of the Army of the United States, as the said Andrew Johnson then and there well knew, with intent thereby to induce said Emory, in his official capacity as commander of the Department of Washington, to violate the provisions of said act, and to take and receive, act upon, and obey such orders as he, the said Andrew Johnson, might make and give, and which should not be issued through the General of the Army of the United States, according to the provisions of said act, and with the further intent thereby to enable him, the said Andrew Johnson, to prevent the execution of the act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, and to unlawfully prevent Edwin M. Stanton, then being Secretary for the Department of War, from holding said office and discharging the duties thereof, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles or other accusation, or impeachment, against the said Andrew Johnson, President of the United States, and also of replying to his answers which he shall make unto the articles herein preferred against him, and of offering proof to the same, and every part thereof, and to all and every other article, accusation, or impeachment which shall be exhibited by them, as the case shall require, do demand that the said Andrew Johnson may be put to answer the high crimes and misdemeanors in office herein charged against him, and that such proceedings, examinations, trials, and judgments may be thereupon had any given as may be agreeable to law and justice.

SCHUYLER COLFAX,
Speaker of the House of Representatives.

Attest:
EDWARD MCPHERSON,
Clerk of the House of Representatives.

IN THE HOUSE OF REPRESENTATIVES UNITED STATES,
March 3, 1868.

The following additional articles of impeachment were agreed to, viz:

ART. X. That the said Andrew Johnson, President of the United States, unmindful of the high duties of his office and the dignity and proprieties thereof, and of the harmony and courtesies which ought to exist and be maintained between the executive and legislative branches of the Government of the United States, designing and intending to set aside the rightful authority and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt, and reproach the Congress of the United States, and the several branches thereof, to impair and destroy the regard and respect of all the good people of the United States for the Congress and legislative power thereof (which all officers of the Government ought inviolably to preserve and maintain), and to excite the odium and resentment of all the good people of the United States against Congress and the laws by it duly and constitutionally enacted; and in pursuance of his said design and intent, openly and publicly, and before divers assemblages of the citizens of the United States convened in divers parts thereof to meet and receive said Andrew Johnson as the Chief Magistrate of the United States, did, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and sixy-six, and on divers other days and times, as well before as afterward, make and deliver with a loud voice certain intemperate, inflammatory, and scandalous harangues, and did

therein utter loud threats and bitter menaces as well against Congress as the laws of the United States duly enacted thereby, amid the cries, jeers, and laughter of the multitudes then assembled and in hearing, which are set forth in the several specifications hereinafter written, in substance and effect, that is to say:

Specification first.—In this: That at Washington, in the District of Columbia, in the Executive Mansion, to a committee of citizens who called upon the President of the United States, speaking of and concerning the Congress of the United States, said Andrew Johnson, President of the United States, heretofore, to wit, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and sixty-six, did, in a loud voice, declare in substance and effect among other things, that is to say:

"So far as the executive department of the Government is concerned, the effort has been made to restore the Union, to heal the breach, to pour oil into the wounds which were consequent upon the struggle, and (to speak in common phrase) to prepare as the learned and wise physician would, a plaster healing in character and coextensive with the wound. We thought, and we think, that we had partially succeeded; but as the work progresses, as reconstruction seemed to be taking place, and the country was becoming reunited, we found a disturbing and marring element opposing us. In alluding to that element, I shall go no further than your convention and the distinguished gentleman who has delivered to me the report of its proceedings. I shall make no reference to it that I do not believe the time and the occasion justify.

"We have witnessed in one department of the Government every endeavor to prevent the restoration of peace, harmony, and union. We have seen hanging upon the verge of the Government, as it were, a body called, or which assumes to be, the Congress of the United States, while in fact it is a Congress of only a part of the States. We have seen this Congress pretend to be for the Union, when its every step and act tended to perpetuate disunion and make a disruption of the States inevitable. * * * We have seen Congress gradually encroach step by step upon constitutional rights and violate, day after day and month after month, fundamental principles of the Government. We have seen a Congress that seemed to forget that there was a limit to the sphere and scope of legislation. We have seen a Congress in a minority assume to exercise power which, allowed to be consummated, would result in despotism or monarchy itself."

Specification second.—In this: That at Cleveland, in the State of Ohio, heretofore, to wit, on the third day of September, in the year of our Lord one thousand eight hundred and sixty-six, before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States, did, in a loud voice, declare in substance and effect, among other things, that is to say:

"I will tell you what I did do. I called upon your Congress that is trying to break up the Government.

* * * * * * *

"In conclusion, besides that, Congress had taken much pains to poison their constituents against him. But what had Congress done? Have they done anything to restore the union of these States? No; on the contrary, they had done everything to prevent it; and because he stood now where he did when the rebellion commenced, he had been denounced as a traitor. Who had run greater risks or made greater sacrifices than himself? But Congress, factious and domineering, had undertaken to poison the minds of the American people."

Specification third.—In this: That at St. Louis, in the State of Missouri, heretofore, to wit, on the eighth day of September, in the year of our Lord one thousand eight hundred and sixty-six, before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States, did, in a loud voice, declare in substance and effect, among other things, that is to say:

"Go on. Perhaps, if you had a word or two on the subject of New Orleans you might understand more about it than you do. And if you will go back—if you will go back and ascertain the cause of the riot at New Orleans, perhaps you will not be so prompt in calling out "New Orleans." If you will take up the riot at New Orleans and trace it back to its source or its immediate cause, you will find out who was responsible for the blood that was shed there. If you will take up the riot at New Orleans and trace it back to the radical Con-

gress, you will find that the riot at New Orleans was substantially planned. If you will take up the proceedings in their caucuses you will understand that they there knew that a convention was to be called which was extinct by its power having expired; that it was said that the intention was that a new government was to be organized, and on the organization of that government the intention was to enfranchise one portion of the population, called the colored population, who had just been emancipated, and at the same time disfranchise white men. When you design to talk about New Orleans you ought to understand what you are talking about. When you read the speeches that were made, and take up the facts on the Friday and Saturday before that convention sat you will there find that speeches were made incendiary in their character, exciting that portion of the population—the black population—to arm themselves and prepare for the shedding of blood. You will also find that that convention did assemble in violation of law, and the intention of that convention was to supersede the reorganized authorities in the State government of Louisiana, which had been recognized by the Government of the United States; and every man engaged in that rebellion in that convention, with the intention of superseding and upturning the civil government which had been recognized by the Government of the United States, I say that he was a traitor to the Constitution of the United States, and hence you find that another rebellion was commenced, having its origin in the radical Congress."

* * * * * * *

"So much for the New Orleans riot. And there was the cause and the origin of the blood that was shed; and every drop of blood that was shed is upon their skirts, and they are responsibile for it. I could test this thing a little closer, but will not do it here to-night. But when you talk about the causes and consequences that resulted from proceedings of that kind, perhaps, as I have been introduced here, and you have provoked questions of this kind, though it does not provoke me, I will tell you a few wholesome things that have been done by this radical Congress in connection with New Orleans and the extension of the elective franchise.

"I know that I have been traduced and abused. I know it has come in advance of me here as elsewhere—that I have attempted to exercise an arbitrary power in resisting laws that were intended to be forced upon the Government; that I had exercised that power; that I had abandoned the party that elected me; and that I was a traitor, because I exercised the veto power in attempting, and did arrest for a time, a bill that was called a 'Freedman's Bureau' bill; yes, that I was a traitor. And I have been traduced, I have been slandered, I have been maligned, I have been called Judas Iscariot, and all that. Now, my countrymen, here to-night, it is very easy to indulge in epithets; it is easy to call a man Judas and cry out traitor, but when he is called upon to give arguments and facts he is very often found wanting. Judas Iscariot—Judas. There was a Judas, and he was one of the Twelve Apostles. Oh, yes; the Twelve Apostles had a Christ. The Twelve Apostles had a Christ, and he never could have had a Judas unless he had had twelve apostles. If I have played the Judas, who has been my Christ that I have played the Judas with? Was it Thad. Stevens? Was it Wendell Phillips? Was it Charles Sumner? There are the men that stop and compare themselves with the Saviour; and everybody that differs from them in opinion, and to try to stay and arrest their diabolical and nefarious policy, is to be denounced as a Judas."

* * * * * * *

"Well, let me say to you, if you will stand by me in this action, if you will stand by me in trying to give the people a fair chance—soldiers and citizens—to participate in these offices, God being willing, I will kick them out. I will kick them out just as fast as I can.

"Let me say to you, in concluding, that what I have said I intended to say. I was not provoked into this, and I care not for their menaces, the taunts, and the jeers. I care not for threats. I do not intend to be bullied by my enemies nor overawed by my friends. But, God willing, with your help, I will veto their measures whenever any of them come to me."

Which said utterances, declarations, threats, and harangues, highly censurable in any, are peculiarly indecent and unbecoming in the Chief Magistrate of the United States, by means whereof said Andrew Johnson has brought the high

office of the President of the United States into contempt, ridicule, and disgrace, to the great scandal of all good citizens, whereby said Andrew Johnson, President of the United States, did commit, and was then and there guilty of, a high misdemeanor in office.

ART. XI. That the said Andrew Johnson, President of the United States, unmindful of the high duties of his office, and of his oath of office, and in disregard of the Constitution and laws of the United States, did, heretofore, to wit, on the eighteenth day of August, A. D. eighteen hundred and sixty-six, at the city of Washington, and the District of Columbia, by public speech, declare and affirm, in substance, that the Thirty-ninth Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same, but, on the contrary, was a Congress of only part of the States, thereby denying, and intending to deny, that the legislation of said Congress was valid or obligatory upon him, the said Andrew Johnson, except in so far as he saw fit to approve the same, and also thereby denying, and intending to deny, the power of the said Thirty-ninth Congress to propose amendments to the Constitution of the United States; and, in pursuance of said declaration, the said Andrew Johnson, President of the United States, afterwards, to wit, on the twenty-first day of February, A. D. eighteen hundred and sixty-eight, at the city of Washington, in the District of Columbia, did unlawfully and in disregard of the requirement of the Constitution that he should take care that the laws be faithfully executed attempt to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, by unlawfully devising and contriving, and attempting to devise and contrive, means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of the office of Secretary for the Department of War, notwithstanding the refusal of the Senate to concur in the suspension theretofore made by said Andrew Johnson of said Edwin M. Stanton from said office of Secretary for the Department of War; and also by further unlawfully devising and contriving, and attempting to devise and contrive, means then and there to prevent the execution of an act entitled "An act making appropriations for the support of the Army for the fiscal year ending June thirtieth, eighteen hundred and sixty-eight, and for other purposes," approved March second, eighteen hundred and sixty-seven; and also to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States," passed March second, eighteen hundred and sixty-seven, whereby the said Andrew Johnson, President of the United States, did then, to wit, on the twenty-first day of February, A. D. eighteen hundred and sixty-eight, at the city of Washington, commit, and was guilty of, a high misdemeanor in office.

SCHUYLER COLFAX,
Speaker of the House of Representatives.

Attest:
EDWARD MCPHERSON,
Clerk of the House of Representatives.

Thereupon,

Mr. Howard submitted the following order; which was considered, by unanimous consent, and agreed to:

Ordered, That a summons be issued, as required by the rules of procedure and practice in the Senate when sitting in the trial of impeachments, to Andrew Johnson, returnable on Friday, the 13th of March, instant, at 1 o'clock afternoon.

The managers on the part of the House of Representatives then withdrew.

Mr. Anthony submitted the following amendment to the rules of procedure and practice in the Senate when sitting on the trial of impeachments, viz:

Amend rule 7 by striking out the last clause thereof, which is in the following words: "The presiding officer may, in the first instance, submit to the Senate, without a division, all questions of evidence and incidental questions; but the same shall, on demand of one-fifth of the members present, be decided by yeas and nays;" and in lieu thereof inserting:

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

On motion by Mr. Anthony,

Ordered, That the proposed amendment lie on the table.

On motion by Mr. Howard,

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned to Friday, the 13th March, instant, at 1 o'clock afternoon.

FRIDAY, MARCH 13, 1868.

The United States *v.* Andrew Johnson, President.

At 1 o'clock p. m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and,

The Sergeant at Arms having made proclamation,

The Journal of the proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of March 6, was read.

The Chief Justice then administered the oath prescribed by the twenty-fourth rule to each of the following-named Senators, viz: Mr. Edmunds, Mr. Patterson of New Hampshire, and Mr. Vickers.

Mr. Howard submitted the following order; which was considered, by unanimous consent, and agreed to:

Ordered, That the Secretary inform the House of Representatives that the Senate is in its Chamber and ready to proceed on the trial of Andrew Johnson, President of the United States, and that seats are provided for the accommodation of the members.

The managers appointed to conduct the trial of the President upon articles of impeachment exhibited against him by the House of Representatives, to wit: Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens having entered the Senate Chamber and taken the seats assigned them.

The Chief Justice directed the Secretary to read the return of the Sergeant at Arms on the writ of summons directed by the Senate to be issued to Andrew Johnson, President of the United States; and

The Secretary read the return of the Sergeant at Arms, as follows:

The foregoing writ of summons, addressed to Andrew Johnson, President of the United States, and the foregoing precept, addressed to me, were this day duly served upon the said Andrew Johnson, President of the United States, by delivery to and leaving with him true and attested copies of the same at the Executive Mansion, the usual place of abode of the said Andrew Johnson, on Saturday, the 7th day of March instant, at 7 o'clock in the afternoon of that day.

GEORGE T. BROWN,
Sergeant at Arms of the United States Senate.

The Secretary then administered the following oath to the Sergeant at Arms:

I, George T. Brown, Sergeant at Arms of the Senate of the United States, do swear that the return made and subscribed by me upon the process issued on the 7th day of March, A.D. 1868, by the Senate of the United States against Andrew Johnson, President of the United States, is truly made, and that I have performed said service therein described. So help me God.

By direction of the Chief Justice the Sergeant at Arms then made proclamation as follows:

Andrew Johnson, President of the United States! Andrew Johnson, President of the United States! appear and answer the articles of impeachment exhibited against you by the House of Representatives of the United States.

Thereupon,

Mr. Henry Stanbery, Mr. Benjamin R. Curtis, and Mr. Thomas A. R. Nelson appeared at the bar of the Senate as counsel for the President of the United States, and took the seats assigned them on the right of the Chair.

Mr. Conkling submitted the following order; which was considered, by unanimous consent, and agreed to:

Ordered, That the 23d rule respecting proceedings on trial of impeachments be amended by inserting after the word "debate," in the second line of the rule, the words, "subject, however, to the operation of rule seven."

The rule, as thus amended, is as follows:

23. All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, subject, however, to the operation of rule 7, except when the doors shall be closed for deliberation, and in that case no member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by one-fifth of the members present.

The Sergeant at Arms announced at the door of the Senate Chamber the House of Representatives, and

The House of Representatives, as in Committee of the Whole House, preceded by its Chairman, Mr. E. B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The Chief Justice announced that the Senate was now ready to proceed with the trial of the President upon the articles of impeachment exhibited against him by the House of Representatives.

The Chief Justice having informed the counsel of the President that the Senate was ready to receive from them his answer to the writ of summons,

Mr. Stanbery, in behalf of Andrew Johnson, the respondent, read the following paper; which he handed in at the Secretary's desk:

In the matter of the impeachment of Andrew Johnson, President of the United States.

Mr. Chief Justice: I, Andrew Johnson, President of the United States, having been served with a summons to appear before this honorable court, sitting as a court of impeachment, to answer certain articles of impeachment found and presented against me by the honorable the House of Representatives of the United States, do hereby enter my appearance by my counsel, Henry Stanbery, Benjamin R. Curtis, Jeremiah S. Black, William M. Evarts, and Thomas A. R. Nelson, who have my warrant and authority therefor, and who are instructed by me to ask of this honorable court a reasonable time for the preparation of my answer to said articles. After a careful examination of the articles of impeachment and consultation with my counsel I am satisfied that at least forty days will be necessary for the preparation of my answer, and I respectfully ask that it be allowed.

Andrew Johnson.

Mr. Stanbery then submitted a motion that the President be allowed 40 days to prepare and file his answer to the articles of impeachment exhibited against him by the House of Representatives,

After argument by the counsel for the President in favor of the said motion, and by the managers on the part of the House of Representatives against it,

The Chief Justice called the attention of the Senate to the twenty-first rule, which provides "that the case on each side shall be opened by one person," and to the twentieth rule, which provides that "all preliminary or interlocutory questions and all motions shall be argued for not exceeding one hour on each side unless the court shall, by order, extend the time," and stated that he had allowed argument to proceed without attempting to restrict it as to the number of persons on each side, and unless the Senate ordered otherwise he would proceed in that course.

After further argument on the part of the managers,

The Chief Justice stated the question before the Senate to be upon the motion of the counsel for the President to be allowed 40 days to prepare and file his answer to the articles of impeachment exhibited against him by the House of Representatives.

Whereupon,

Mr. Edmunds submitted the following motion for consideration:

Ordered, That the respondent file his answer to the articles of impeachment on or before the 1st of April next, and that the managers of the impeachment file their replication thereto within three days thereafter, and that the matter stand for trial on Monday, April 6, 1868.

Mr. Morton moved that the Senate retire to deliberate and confer in regard to its determination of the question; and,

The question being put,

It was determined in the affirmative; and

The Senate, with the Chief Justice, having retired to their conference chamber, proceeded to consider the motion submitted by Mr. Edmunds; and,

After debate,

On motion by Mr. Drake to amend the motion submitted by Mr. Edmunds by striking out all after the word "ordered," and in lieu thereof inserting, "That the respondent file answer to the articles of impeachment on or before Friday, the twentieth day of March instant,"

It was determined in the affirmative,

Yeas	28
Nays	20

On motion by Mr. Drake,

The ayes and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Drake, Ferry, Harlan, Howard, Howe, Morgan, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Sumner, Thayer, Trumbull, Willey, Williams, Wilson, Yates.

Those who voted in the negative are,

Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Edmunds, Fessenden, Fowler, Frelinghuysen. Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Maine, Norton, Patterson of Tennessee, Saulsbury, Van Winkle, Vickers.

So the amendment of Mr. Drake to the motion of Mr. Edmunds was agreed to.

On the question to agree to the motion of Mr. Edmunds as amended,

After debate,

On motion of Mr. Trumbull that the Senate reconsider its vote agreeing to the amendment proposed by Mr. Drake to the motion of Mr. Edmunds,

It was determined in the affirmative, { Yeas---------- 27
Nays---------- 23

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Cattell, Corbett, Davis, Dixon, Edmunds, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Vermont, Morton, Norton, Patterson of Tennessee, Saulsbury, Sherman, Sprague, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are,

Messrs, Cameron, Chandler, Cole, Conkling, Conness, Drake, Ferry, Harlan, Howard, Howe, Morgan, Morrill of Maine, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Stewart, Sumner, Thayer, Tipton, Williams, Wilson, Yates.

So the Senate reconsidered its vote agreeing to the amendment of Mr. Drake to the motion of Mr. Edmunds; and

The question recurring on the amendment of Mr. Drake,

On motion by Mr. Trumbull to amend the amendment of Mr. Drake, by striking out the words "Friday, the 20th," and inserting the words "Monday, the 23d,"

It was determined in the affirmative; and

On the question to agree to the amendment as amended, on the motion of Mr. Trumbull,

It was determined in the affirmative.

The question again recurring on the motion of Mr. Edmunds, as amended on the motion of Mr. Drake, as amended by Mr. Trumbull, in the following words:

Ordered, That the respondent file answer to the articles of impeachment on or before Monday, the 23d day of March instant.

It was determined in the affirmative.

Thereupon,

The Senate returned to its Chamber; and

The Chief Justice announced to the counsel for the President that their motion to be allowed 40 days to prepare and file answer to the articles of impeachment was denied, and that the Senate had adopted the following order:

Ordered, That the respondent file answer to the articles of impeachment on or before Monday, the 23d day of March instant.

Mr. Bingham, on the part of the managers, submitted the following order for consideration:

Ordered, That upon the filing of a replication by the managers on the part of the House of Representatives, the trial of Andrew Johnson, President of the United States, upon the articles of impeachment exhibited by the House of Representatives, shall proceed forthwith.

After argument on the part of the managers in favor of the said order, and on the part of the counsel for the President against it,

On the question to agree to said order,

It was determined in the negative, { Yeas ---------- 25
Nays ---------- 26

On motion by Mr. Sumner,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Drake, Ferry, Harlan, Howard, Morgan, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Stewart, Sumner, Thayer, Tipton, Williams, Wilson, Yates.

Those who voted in the negative are,

Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Edmunds, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Howe, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Norton, Patterson of Tennessee, Saulsbury, Sherman, Sprague, Trumbull, Van Winkle, Vickers, Willey.

So the order was not agreed to.

Thereupon

Mr. Sherman submitted the following order for consideration:

Ordered, That the trial of the articles of impeachment shall proceed on the 6th day of April next.

After argument by the managers and by the counsel for the President.

On motion by Mr. Conkling to amend the order submitted by Mr. Sherman by striking out all after the word "ordered" and inserting the following:

On the question to agree thereto,

That unless otherwise ordered by the Senate, for cause shown, the trial of the pending impeachment shall proceed immediately after replication shall be filed;

It was determined in the affirmative, { Yeas ---------- 40
Nays ---------- 10

On motion by Mr. Drake.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Drake, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Harlan, Henderson, Howard, Howe, Morgan, Morrill of Maine Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Trumbull, Van Winkle, Willey, Williams, Wilson, Yates.

Those who voted in the negative are,

Messrs. Bayard, Buckalew, Davis, Dixon, Hendricks, Johnson, McCreery, Patterson of Tennessee, Saulsbury, Vickers.

So the amendment was agreed to; and

On the question to agree to the order as amended,

It was determined in the affirmative.

So it was

Ordered, That unless otherwise ordered by the Senate, for cause shown, the trial of the pending impeachment shall proceed immediately after replication shall be filed.

On motion by Mr. Howard,

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned to Monday, the 23d day of March instant, and 1 o'clock p.m.

MONDAY, MARCH 23, 1868.

The United States *v.* Andrew Johnson, President.

At 1 o'clock p.m. the Chief Justice of the United States entered the Senate Chambers and resumed the chair; and,

The Sergeant at Arms having made proclamation,

The Chief Justice administered the oath prescribed by the 24th rule of the Senate, sitting for the trial of impeachments, to Mr. Doolittle.

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence at the door of the Senate Chamber of the House of Representatives, and

The House of Representatives, as in Committee of the Whole House, preceded by its chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats assigned them.

The counsel of the President, to wit, Mr. Stanbery, Mr. Curtis, Mr. Evarts, Mr. Groesbeck, and Mr. Nelson, appeared at the bar of the Senate and took the seats assigned them.

The journal of proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of March 15, was read.

Mr. Davis submitted the following for consideration:

The Constitution having vested the Senate with the sole power to try the articles of impeachment of the President of the United States, preferred by the House of Representatives; and also declared that "the Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof;" and the States of Virginia, North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Arkansas, Louisiana, and Texas, having each by its legislatures chosen two Senators who have been and continue to be excluded by the Senate from their seats, respectively, without any judgment by the Senate against them personally and individually on the points of their elections, returns, and qualifications: It is

Ordered, That a court of impeachment for the trial of the President can not be legally and constitutionally formed while the Senators from the States afore-

said are thus excluded from the Senate, and the case is continued until the Senators from those States are permitted to take their seats in the Senate, subject to all constitutional exceptions to their elections, returns, and qualifications, severally.

On the question to agree to the motion submitted by Mr. Davis,

It was determined in the negative, { Yeas ---------- 2
Nays ---------- 49

On motion of Mr. Davis,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Davis, McCreery.

Those who voted in the negative are,

Messrs. Anthony, Buckalew, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Dixon, Doolittle, Drake, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Harlan, Henderson, Hendricks, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Norton, Nye, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Trumbull, Van Winkle, Vickers, Willey, Williams, Wilson, Yates.

So the motion of Mr. Davis was not agreed to.

The Chief Justice then asked the counsel of the President if they were ready to file answer to the articles of impeachment exhibited against him by the House of Representatives, as required by the order of the Senate of the 13th of March instant.

The counsel of the President replied that they were now ready to make answer.

Thereupon

The answer of the respondent to the articles of impeachment exhibited against him by the House of Representatives was read by his counsel in the following words, to wit:

SENATE OF THE UNITED STATES, SITTING AS A COURT OF IMPEACHMENT FOR THE TRIAL OF ANDREW JOHNSON, PRESIDENT OF THE UNITED STATES

The answer of the said Andrew Johnson, President of the United States, to the articles of impeachment exhibited against him by the House of Representatives of the United States.

ANSWER TO ARTICLE I

For answer to the first article he says: That Edwin M. Stanton was appointed Secretary for the Department of War on the 15th day of January, A.D. 1862, by Abraham Lincoln, then President of the United States, during the first term of his Presidency, and was commissioned according to the Constitution and laws of the United States, to hold the said office during the pleasure of the President; that the office of Secretary for the Department of War was created by an act of the first Congress in its first session, passed on the 7th day of August, A.D. 1789, and in and by that act it was provided and enacted that the said Secretary for the Department of War shall perform and execute such duties as shall, from time to time, be enjoined on and intrusted to him by the President of the United States, agreeably to the Constitution, relative to the subjects within the scope of the said department; and furthermore, that the said Secretary shall conduct the business of the said department in such a manner as the President of the United States shall, from time to time, order and instruct.

And this respondent, further answering, says that by force of the act aforesaid and by reason of his appointment aforesaid the said Stanton became the

principal officer in one of the executive departments of the Government within the true intent and meaning of the second section of the second article of the Constitution of the United States, and according to the true intent and meaning of that provision of the Constitution of the United States; and, in accordance with the settled and uniform practice of each and every President of the United States, the said Stanton then became, and so long as he should continue to hold the said office of Secretary for the Department of War must continue to be, one of the advisers of the President of the United States, as well as the person intrusted to act for and represent the President in matters enjoined upon him or intrusted to him by the President touching the department aforesaid, and for whose conduct in such capacity, subordinate to the President, the President is by the Constitution and laws of the United States made responsible. And this respondent, further answering, says he succeeded to the office of President of the United States upon, and by reason of, the death of Abraham Lincoln, then President of the United States, on the 15th day of April, 1865, and the said Stanton was then holding the said office of Secretary for the Department of War under, and by reason of, the appointment and commission aforesaid; and, not having been removed from the said office by this respondent, the said Stanton continued to hold the same under the appointment and commission aforesaid, at the pleasure of the President, until the time hereinafter particularly mentioned; and at no time received any appointment or commission save as above detailed.

And this respondent, further answering, says that on and prior to the 5th day of August, A. D. 1867, this respondent, the President of the United States, responsible for the conduct of the Secretary for the Department of War, and having the constitutional right to resort to and rely upon the person holding that office for advice concerning the great and difficult public duties enjoined on the President by the Constitution and laws of the United States, became satisfied that he could not allow the said Stanton to continue to hold the office of Secretary for the Department of War without hazard of the public interest; that the relations between the said Stanton and the President no longer permitted the President to resort to him for advice, or to be, in the judgment of the President, safely responsible for his conduct of the affairs of the Department of War, as by law required, in accordance with the orders and instructions of the President; and thereupon, by force of the Constitution and laws of the United States, which devolve on the President the power and the duty to control the conduct of the business of that executive department of the Government, and by reason of the constitutional duty of the President to take care that the laws be faithfully executed, this respondent did necessarily consider and did determine that the said Stanton ought no longer to hold the said office of Secretary for the Department of War. And this respondent, by virtue of the power and authority vested in him as President of the United States, by the Constitution and laws of the United States, to give effect to such his decision and termination, did, on the 5th day of August, A. D. 1867, address to the said Stanton a note, of which the following is a true copy:

"Sir: Public considerations of a high character constrain me to say that your resignation as Secretary of War will be accepted."

To which note the said Stanton made the following reply:

WAR DEPARTMENT,
"*Washington, August 5, 1867.*

SIR: Your note of this day has been received stating that "public considerations of a high character constrain" you "to say that" my "resignation as Secretary of War will be accepted."

In reply I have the honor to say that public considerations of a high character, which alone have induced me to continue at the head of this department, constrain me not to resign the office of Secretary of War before the next meeting of Congress.

Very respectfully, yours,

EDWIN M. STANTON.

This respondent, as President of the United States, was thereon of opinion that, having regard to the necessary official relations and duties of the Secretary for the Department of War to the President of the United States according to the Constitution and laws of the United States, and having regard to the responsibility of the President for the conduct of the said Secretary, and having regard to the permanent executive authority of the office which the respondent holds

under the Constitution and laws of the United States, it was impossible consistently with the public interest to allow the said Stanton to continue to hold the said office of Secretary for the Department of War; and it then became the official duty of the respondent as President of the United States to consider and decide what act or acts should and might lawfully be done by him as President of the United States to cause the said Stanton to surrender the said office.

This respondent was informed and verily believed that it was practically settled by the First Congress of the United States, and had been so considered and uniformly and in great numbers of instances acted on by each Congress and President of the United States, in succession, from President Washington to and including President Lincoln, and from the First Congress to the Thirty-ninth Congress, that the Constitution of the United States conferred on the President, as part of the executive power and as one of the necessary means and instruments of performing the executive duty expressly imposed on him by the Constitution of taking care that the laws be faithfully executed, the power at any and all times of removing from office all executive officers for cause to be judged of by the President alone. This respondent had, in pursuance of the Constitution, required the opinion of each principal officer of the executive departments upon this question of constitutional executive power and duty, and had been advised by each of them, including the said Stanton, Secretary for the Department of War, that under the Constitution of the United States this power was lodged by the Constitution in the President of the United Stats, and that, consequently, it could be lawfully exercised by him and the Congress could not deprive him thereof; and this respondent, in his capacity of President of the United States, and because in that capacity he was both enabled and bound to use his best judgment upon this question, did, in good faith and with an earnest desire to arrive at the truth, come to the conclusion and opinion, and did make the same known to the honorable the Senate of the United States by a message dated on the 2d day of March, 1867 (a true copy whereof is hereunto annexed and marked "A"), that the power last mentitoned was conferred, and the duty of exercising it in fit cases was imposed, on the President by the Constitution of the United States, and that the President could not be deprived of this power or relieved of this duty, nor could the same be vested by law in the President and the Senate jointly, either in part or whole; and this has ever since remained and was the opinion of this respondent at the time when he was forced as aforesaid to consider and decide what act or acts should and might lawfully be done by this respondent, as President of the United States, to cause the said Stanton to surrender the said office.

This respondent was also then aware that by the first section of "An act regulating the tenure of certain civil offices," passed March 2, 1867, by a constitutional majority of both Houses of Congress, it was enacted as follows:

"That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is and shall be entitled to hold such office until a successor shall have been in like manner appointed and duly qualified, except as herein otherwise provided: *Provided*, That the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General, and the Attorney General shall hold their offices, respectively, for and during the term of the President by whom they may have been appointed, and one month thereafter, subject to removal by and with the advice and consent of the Senate."

This respondent was also aware that this act was understood and intended to be an expression of the opinion of the Congress by which that act was passed; that the power to remove executive officers for cause might by law be taken from the President and vested in him and the Senate jointly; and although this respondent had arrived at and still retained the opinion above expressed and verily believed, as he still believes, that the said first section of the last-mentioned act was and is wholly inoperative and void by reason of its conflict with the Constitution of the United States, yet inasmuch as the same had been enacted by the constitutional majority in each of the two Houses of that Congress this respondent considered it to be proper to examine and decide whether the particular case of the said Stanton, on which it was this respondent's duty to act, was within or without the terms of that first section of the act; or, if within it, whether the President had not the power, according to the terms of the act, to remove the said Stanton from the office of Secretary for the Department of

War, and having, in his capacity of President of the United States, so examined and considered, did form the opinion that the case of the said Stanton and his tenure of office were not affected by the first section of the last-named act.

And this respondent, further answering, says that although a case thus existed which, in his judgment as President of the United States, called for the exercise of the executive power to remove the said Stanton from the office of Secretary for the Department of War; and although this respondent was of opinion, as is above shown, that under the Constitution of the United States the power to remove the said Stanton from the said office was vested in the President of the United States; and although this respondent was also of the opinion, as is above shown, that the case of the said Stanton was not affected by the first section of the last-named act; and although each of the said opinions had been formed by this respondent upon an actual case, requiring him, in his capacity of President of the United States, to come to some judgment and determination thereon, yet this respondent, as President of the United States, desired and determined to avoid, if possible, any question of the construction and effect of the said first section of the last-named act and also the broader question of the executive power conferred upon the President of the United States by the Constitution of the United States to remove one of the principal officers of one of the executive departments for cause seeming to him sufficient; and this respondent also desired and determined that if from causes over which he could exert no control it should become absolutely necessary to raise and have, in some way, determined either or both of the last-named questions, it was in accordance with the Constitution of the United States and was required of the President thereby, that questions of so much gravity and importance, upon which the legislative and executive departments of the Government had disagreed, which involved powers considered by all branches of the Government during its entire history down to the year 1867 to have been confided by the Constitution of the United States to the President, and to be necessary for the complete and proper execution of his constitutional duties, should be in some proper way submitted to that judicial department of the Government intrusted by the Constitution with the power and subjected by it to the duty, not only of determining finally the construction and effect of all acts of Congress, but of comparing them with the Constitution of the United States and pronouncing them inoperative when found in conflict with that fundamental law which the people have enacted for the government of all their servants. And to these ends, first, that through the action of the Senate of the United States the absolute duty of the President to substitute some fit person in place of Mr. Stanton as one of his advisers, and as a principal subordinate officer whose official conduct he was responsible for and had lawful right to control, might, if possible, be accomplished without the necessity of raising any one of the questions aforesaid; and, second, if this duty could not be so performed, then that these questions, or such of them as might necessarily arise, should be judicially determined in manner aforesaid, and for no other end or purpose this respondent, as President of the United States, on the 12th day of August, 1867, seven days after the reception of the letter of the said Stanton of the 5th of August, hereinbefore stated, did issue to the said Stanton the order following, namely:

EXECUTIVE MANSION, WASHINGTON, *August 12, 1867.*

SIR: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States, you are hereby suspended from office as Secretary of War, and will cease to exercise any and all functions pertaining to the same.

You will at once transfer to Gen. Ulysses S. Grant, who has this day been authorized and empowered to act as Secretary of War ad interim, all records, books, papers. and other public property now in your custody and charge.

The Hon. EDWIN M. STANTON, *Secretary of War.*

To which said order the said Stanton made the following reply:

WAR DEPARTMENT, WASHINGTON CITY, *August 12, 1867.*

SIR: Your note of this date has been received, informing me that by virtue of the powers vested in you, as President, by the Constitution and laws of the United States, I am suspended from office as Secretary of War, and will cease to exercise any and all functions pertaining to the same; and also directing me at once to transfer to Gen. Ulysses S. Grant, who has this day been authorized and empowered to act as Secretary of War ad interim, all records, books, papers, and other public property now in my custody and charge. Under a sense of public

duty, I am compelled to deny your right, under the Constitution and laws of the United States, without the advice and consent of the Senate, and without legal cause, to suspend me from office as Secretary of War, or the exercise of any or all functions pertaining to the same, or without such advice and consent to compel me to transfer to any person the records, books, papers, and public property in my custody as Secretary. But inasmuch as the General Commanding the Armies of the United States has been appointed ad interim, and has notified me that he has accepted the appointment, I have no alternative but to submit, under protest, to superior force.

To the PRESIDENT.

And this respondent, further answering, says that it is provided in and by the second section of "An act to regulate the tenure of certain civil offices," that the President may suspend an officer from the performance of the duties of the office held by him, for certain causes therein designated, until the next meeting of the Senate and until the case shall be acted on by the Senate; that this respondent, as President of the United States, was advised, and he verily believed and still believes, that the executive power of removal from office confided to him by the Constitution as aforesaid, includes the power of suspension from office at the pleasure of the President, and this respondent, by the order aforesaid, did suspend the said Stanton from office, not until the next meeting of the Senate, or until the Senate should have acted upon the case, but by force of the power and authority vested in him by the Constitution and laws of the United States, indefinitely and at the pleasure of the President, and the order, in form aforesaid, was made known to the Senate of the United States on the 12th day of December, A.D. 1867, as will be more fully hereinafter stated.

And this respondent, further answering, says that in and by the act of February 13, 1795, it was, among other things, provided and enacted that, in case of vacancy in the office of Secretary for the Department of War, it shall be lawful for the President, in case he shall think it necessary, to authorize any person to perform the duties of that office until a successor be appointed or such a vacancy filled, but not exceeding the term of six months; and this respondent, being advised and believing that such law was in full force and not repealed, by an order dated August 12, 1867, did authorize and empower Ulysses S. Grant, General of the Armies of the United States, to act as Secretary for the Department of War ad interim, in the form in which similar authority had theretofore been given, not until the next meeting of the Senate and until the Senate should act on the case, but at the pleasure of the President, subject only to the limitation of six months in the said last-mentioned act contained; and a copy of the last-named order was made known to the Senate of the United States on the 12th day of December, A.D. 1867, as will be hereinafter more fully stated; and in pursuance of the design and intention aforesaid, if it should become necessary, to submit the said questions to a judicial determination, this respondent, at or near the date of the last-mentioned order, did make known such his purpose to obtain a judicial decision of the said questions, or such of them as might be necessary.

And this respondent, further answering, says that in further pursuance of his intention and design, if possible, to perform what he judged to be his imperative duty, to prevent the said Stanton from longer holding the office of Secretary for the Department of War, and at the same time avoiding, if possible, any question respecting the extent of the power of removal from executive office confided to the President by the Constitution of the United States, and any question respecting the construction and effect of the first section of the said "act regulating the tenure of certain civil offices," while he should not, by any act of his, abandon and relinquish either a power which he believed the Constitution had conferred on the President of the United States, to enable him to perform the duties of his office, or a power designedly left to him by the first section of the act of Congress last aforesaid, this respondent did, on the 12th day of December, 1867, transmit to the Senate of the United States a message, a copy whereof is hereunto annexed and marked "B," wherein he made known the orders aforesaid and the reasons which had induced the same, so far as this respondent then considered it material and necessary that the same should be set forth, and reiterated his views concerning the constitutional power of removal vested in the President, and also expressed his views concerning the construction of the said first section of the last-mentioned act, as respected the

power of the President to remove the said Stanton from the said office of Secretary for the Department of War, well hoping that this respondent could thus perform what he then believed, and still believes, to be his inperative duty in reference to the said Stanton, without derogating from the powers which this respondent believed were confided to the President by the Constitution and laws, and without the necessity of raising, judicially, any questions respecting the same.

And this respondent, further answering, says that this hope not having been realized, the President was compelled either to allow the said Stanton to resume the said office and remain therein contrary to the settled convictions of the President, formed as aforesaid, respecting the powers confided to him and the duties required of him by the Constitution of the United States, and contrary to the opinion formed as aforesaid, that the first section of the last-mentioned act did not affect the case of the said Stanton, and contrary to the fixed belief of the President that he could not longer advise with or trust or be responsible for the said Stanton, in the said office of Secretary for the Department of War, or else he was compelled to take such steps as might, in the judgment of the President, be lawful and necessary to raise, for a judicial decision, the questions affecting the lawful right of the said Stanton to resume the said office, or the power of the said Stanton to persist in refusing to quit the said office if he should persist in actually refusing to quit the same; and to this end, and to this end only, this respondent did, on the 21st day of February, 1868, issue the order for the removal of the said Stanton, in the said first article mentioned and set forth, and the order authorizing the said Lorenzo Thomas to act as Secretary of War ad interim, in the said second article set forth.

And this respondent, proceeding to answer specifically each substantial allegation in the said first article, says: He denies that the said Stanton, on the 21st day of February 1868, was lawfully in possession of the said office of Secretary for the Department of War. He denies that the said Stanton, on the day last mentioned, was lawfully entitled to hold the said office against the will of the President of the United States. He denies that the said order for the removal of the said Stanton was unlawfully issued. He denies that the said order was issued with intent to violate the act entitled "An act to regulate the tenure of certain civil offices." He denies that the said order was a violation of the last-mentioned act. He denies that the said order was a violation of the Constitution of the United States, or of any law thereof, or of his oath of office. He denies that the said order was issued with an intent to violate the Constitution of the United States or any law thereof, or this respondent's oath of office; and he respectfully but earnestly insists that not only was it issued by him in the performance of what he believed to be an imperative official duty, but in the performance of what this honorable court will consider was, in point of fact, an imperative official duty. And he denies that any and all substantive matters in the said first article contained, in manner and form as the same are therein stated, and set forth, do, by law, constitute a high misdemeanor in office, within the true intent and meaning of the Constitution of the United States.

Answer to Article II.

And for answer to the second article this respondent says that he admits he did issue and deliver to said Lorenzo Thomas the said writing set forth in said second article, bearing date at Washington, D.C., February 21, 1868, addressed to Bvt. Maj. Gen. Lorenzo Thomas, Adjutant General United States Army, Washington, D.C., and he further admits that the same was so issued without the advice and consent of the Senate of the United States, then in session, but he denies that he thereby violated the Constitution of the United States or any law thereof, or that he did thereby intend to violate the Constitution of the United States or the provisions of any act of Congress; and this respondent refers to his answer to said first article for a full statement of the purposes and intentions with which said order was issued, and adopts the same as part of his answer to this article; and he further denies that there was then and there no vacancy in the said office of Secretary for the Department of War, or that he did then and there commit, or was guilty of, a high misdemeanor in office, and this respondent maintains and will insist:

1. That at the date and delivery of said writing there was a vacancy existing in the office of Secretary for the Department of War.

2. That, notwithstanding the Senate of the United States was then in session, it was lawful and according to long and well-established usage to empower and authorize the said Thomas to act as Secretary of War ad interim.

3. That if the said act regulating the tenure of civil offices be held to be a valid law, no provision of the same was violated by the issuing of said order, or by the designation of said Thomas to act as Secretary of War ad interim.

ANSWER TO ARTICLE III.

And for answer to said third article this respondent says that he abides by his answer to said first and second articles, in so far as the same are responsive to the allegations contained in the said third article, and, without here again repeating the same answer, prays the same be taken as an answer to this third article as fully as if here again set out at length; and as to the new allegation contained in said third article, that this respondent did appoint the said Thomas to be Secretary for the Department of War ad interim, this respondent denies that he gave any other authority to said Thomas than such as appears in said written authority set out in said article, by which he authorized and empowered said Thomas to act as Secretary for the Department of War ad interim; and he denies that the same amounts to an appointment, and insists that it is only a designation of an officer of that department to act temporarily as Secretary for the Department of War ad interim until an appointment should be made. But, whether the said written authority amounts to an appointment or to a temporary authority or designation, this respondent denies that in any sense he did thereby intend to violate the Constitution of the United States, or that he thereby intended to give the said order the character or effect of an appointment in the constitutional or legal sense of that term. He further denies that there was no vacancy in said office of Secretary for the Department of War existing at the date of said written authority.

ANSWER TO ARTICLE IV.

And for answer to said fourth article this respondent denies that on the said 21st day of February, 1868, at Washington aforesaid, or at any other time or place, he did unlawfully conspire with the said Lorenzo Thomas, or with the said Thomas and any other person or persons, with intent by intimidations and threats unlawfully to hinder and prevent the said Stanton from holding said office of Secretary for the Department of War in violation of the Constitution of the United States, or of the provisions of the said act of Congress in said article mentioned, or that he did then and there commit or was guilty of a high crime in office. On the contrary thereof, protesting that the said Stanton was not then and there lawfully the Secretary for the Department of War, this respondent states that his sole purpose in authorizing the said Thomas to act as Secretary for the Department of War ad interim was, as is fully stated in his answer to the said first article, to bring the question of the right of the said Stanton to hold said office, notwithstanding his said suspension and notwithstanding the said order of removal and notwithstanding the said authority of the said Thomas to act as Secretary of War ad interim, to the test of a final decision by the Supreme Court of the United States in the earliest practicable mode by which the question could be brought before that tribunal.

This respondent did not conspire or agree with the said Thomas or any other person or persons to use intimidation or threats to hinder or prevent the said Stanton from holding the said office of Secretary for the Department of War, nor did this respondent at any time command or advise the said Thomas or any other person or persons to resort to or use either threats or intimidation for that purpose. The only means in the contemplation or purpose of respondent to be used are set forth fully in the said orders of February 21, the first addressed to Mr. Stanton and the second to the said Thomas. By the first order the respondent notified Mr. Stanton that he was removed from the said office, and that his functions as Secretary for the Department of War were to terminate upon the receipt of that order, and he also thereby notified the said Stanton that the said Thomas had been authorized to act as Secretary for the Department of War ad interim, and ordered the said Stanton to transfer to him all the records, books, papers, and other public property in his custody

and charge; and by the second order this respondent notified the said Thomas of the removal from office of the said Stanton, and authorized him to act as Secretary for the Department of War ad interim, and directed him to immediately enter upon the discharge of the duties pertaining to the office, and to receive the transfer of all the records, books, papers, and other public property from Mr. Stanton then in his custody and charge.

Respondent gave no instructions to the said Thomas to use intimidation or threats to enforce obedience to these orders. He gave him no authority to call in the aid of the military or any other force to enable him to obtain possession of the office or of the books, papers, records, or property thereof. The only agency resorted to, or intended to be resorted to, was by means of the said Executive orders requiring obedience. But the Secretary for the Department of War refused to obey these orders, and still holds undisturbed possession and custody of that department, and of the records, books, papers, and other public property therein. Respondent further states that, in execution of the orders so by this respondent given to the said Thomas, he, the said Thomas, proceeded in a peaceful manner to demand of the said Stanton a surrender to him of the public property in the said department, and to vacate the possession of the same, and to allow him, the said Thomas, peaceably to exercise the duties devolved upon him by authority of the President. That, as this respondent has been informed and believes, the said Stanton peremptorily refused obedience to the orders so issued. Upon such refusal no force or threat of force was used by the said Thomas, by authority of the President or otherwise, to enforce obedience either then or at any subsequent time.

This respondent doth here except to the sufficiency of the allegations contained in said fourth article, and states for ground of exception that it is not stated that there was any agreement between this respondent and the said Thomas, or any other person or persons, to use intimidation and threats, nor is there any allegation as to the nature of said intimidations and threats or that there was any agreement to carry them into execution, or that any step was taken, or agreed to be taken, to carry them into execution, and that the allegation in said article that the intent of said conspiracy was to use intimidation and threats is wholly insufficient, inasmuch as it is not alleged that the said intent formed the basis or became part of any agreement between the said alleged conspirators, and, furthermore, that there is no allegation of any conspiracy or agreement to use intimidation or threats.

Answer to Article V.

And for answer to the said fifth article this respondent denies that on the said 21st day of February, 1868, or at any other time or times in the same year before the said 2d day of March, 1868, or at any prior or subsequent time, at Washington aforesaid, or at any other place. this respondent did unlawfully conspire with the said Thomas, or with any other person or persons, to prevent or hinder the execution of the said act entitled "An act regulating the tenure of certain civil offices," or that, in pursuance of said alleged conspiracy, he did unlawfully attempt to prevent the said Edwin M. Stanton from holding the said office of Secretary for the Department of War, or that he did thereby commit, or that he was thereby guilty of, a high misdemeanor in office. Respondent, protesting that said Stanton was not then and there Secretary for the Department of War, begs leave to refer to his answer given to the fourth article and to his answer to the first article as to his intent and purpose in issuing the orders for the removal of Mr. Stanton and the authority given to the said Thomas, and prays equal benefit therefrom as if the same were here again repeated and fully set forth.

And this respondent excepts to the sufficiency of the said fifth article, and states his ground for such exception, that it is not alleged by what means or by what agreement the said alleged conspiracy was formed or agreed to be carried out, or in what way the same was attempted to be carried out, or what were the acts done in pursuance thereof.

Answer to Article VI.

And for answer to the said sixth article this respondent denies that on the said 21st day of February, 1868, at Washington aforesaid, or at any other time

or place, he did unlawfully conspire with the said Thomas by force to seize, take, or possess the property of the United States in the Department of War, contrary to the provisions of the said acts referred to in the said article, or either of them, or with intent to violate either of them. Respondent, protesting that said Stanton was not then and there Secretary for the Department of War, not only denies the said conspiracy as charged but also denies any unlawful intent in reference to the custody and charge of the property of the United States in the said Department of War, and again refers to his former answers for a full statement of his intent and purpose in the premises.

ANSWER TO ARTICLE VII.

And for answer to the said seventh article respondent denies that on the said 21st day of February, 1868, at Washington aforesaid, or at any other time and place, he did unlawfully conspire with the said Thomas with intent unlawfully to seize, take, or possess the property of the United States in the Department of War with intent to violate or disregard the said act in the said seventh article referred to, or that he did then and there commit a high misdemeanor in office. Respondent, protesting that the said Stanton was not then and there Secretary for the Department of War, again refers to his former answers, in so far as they are applicable, to show the intent with which he proceeded in the premises, and prays equal benefit therefrom as if the same were here again fully repeated. Respondent further takes exception to the sufficiency of the allegations of this article as to the conspiracy alleged upon the same grounds as stated in the exception set forth in his answer to said article fourth.

ANSWER TO ARTICLE VIII.

And for answer to the said eighth article this respondent denies that on the 21st day of February, 1868, at Washington aforesaid, or at any other time and place, he did issue and deliver to the said Thomas the said letter of authority set forth in the said eighth article, with the intent unlawfully to control the disbursements of the money appropriated for the military service and for the Department of War. This respondent, protesting that there was a vacancy in the office of Secretary of War, admits that he did issue the said letter of authority set forth in the said eighth article, with the intent unlawfully to conspire either to violate the Constitution of the United States or any act of Congress. On the contrary, this respondent again affirms that his sole intent was to vindicate his authority as President of the United States, and by peaceful means to bring the question of the right of the said Stanton to continue to hold the said office of Secretary of War to a final decision before the Supreme Court of the United States, as has been hereinbefore set forth; and he prays the same benefit from his answer in the premises as if the same were here again repeated at length.

ANSWER TO ARTICLE IX.

And for answer to the said ninth article the respondent states that on the said 22d day of February, 1868, the following note was addressed to the said Emory by the private secretary of the respondent:

EXECUTIVE MANSION,
Washington, D. C. February 22, 1868.

GENERAL: The President directs me to say that he will be pleased to have you call upon him as early as practicable.

Respectfully and truly, yours,

WILLIAM G. MOORE,
United States Army.

Gen. Emory called at the Executive Mansion according to this request. The object of respondent was to be advised by Gen. Emory, as commander of the Department of Washington, what changes had been made in the military affairs of the department. Respondent had been informed that various changes had been made which in no wise had been brought to his notice or reported to him from the Department of War or from any other quarter, and desired to ascertain the facts. After the said Emory had explained in detail the changes which had taken place, said Emory called the attention of respondent to a

general order, which he referred to and which this respondent then sent for, when it was produced. It is as follows:

[General Orders, No. 17.]

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
Washington, March 14, 1867.

The following acts of Congress are published for the information and government of all concerned:

* * * * * * *

II.—PUBLIC—No. 85.

AN ACT Making appropriations for the support of the Army for the year ending June 30, 1868, and for other purposes.

* * * * * * *

SEC. 2. *And be it further enacted,* That the headquarters of the General of the Army of the United States shall be at the city of Washington, and all orders and instructions relating to military operations issued by the President or Secretary of War shall be issued through the General of the Army, and in case of his inability through the next in rank. The General of the Army shall not be removed, suspended, or relieved from command or assigned to duty elsewhere than at said headquarters, except at his own request, without the previous approval of the Senate; and any orders or instructions relating to military operations issued contrary to the requirements of this section shall be null and void; and any officer who shall issue orders or instructions contrary to the provisions of this section shall be deemed guilty of a misdemeanor in office; and any officer of the Army who shall transmit, convey, or obey any orders or instructions so issued contrary to the provisions of this section, knowing that such orders were so issued, shall be liable to imprisonment for not less than two nor more than twenty years upon conviction thereof in any court of competent jurisdiction.

* * * * * * *

Approved, March 2, 1867.

* * * * * * *

By order of the Secretary of War.

E. D. TOWNSEND,
Assistant Adjutant General.

Official:
——— ———, *Assistant Adjutant General.*

Gen. Emory not only called the attention of respondent to this order, but to the fact that it was in conformity with a section contained in an appropriation act passed by Congress. Respondent, after reading the order, observed: "This is not in accordance with the Constitution of the United States, which makes me Commander in Chief of the Army and Navy, or of the language of the commission which you hold." Gen. Emory then stated that this order had met the respondent's approval. Respondent then said in reply, in substance: "Am I to understand that the President of the United States can not give an order but through the General in Chief, or Gen. Grant?" Gen. Emory again reiterated the statement that it had met respondent's approval, and that it was the opinion of some of the leading lawyers of the country that this order was constitutional. With some further conversation, respondent then inquired the names of the lawyers who had given the opinion, and he mentioned the names of two. Respondent then said that the object of the law was very evident, referring to the clause in the appropriation act upon which the order purported to be based. This, according to respondent's recollection, was the substance of the conversation had with Gen. Emory.

Respondent denies that any allegations in the said article of any instructions or declaration given to the said Emory then or at any other time contrary to or in addition to what is hereinbefore set forth are true. Respondent denies that in said conversation with said Emory he had any other intent than to express the opinion then given to the said Emory, nor did he then or at any

time request or order the said Emory to disobey any law or any order issued in conformity with any law, or intend to offer any inducement to the said Emory to violate any law. What this respondent then said to Gen. Emory was simply the expression of an opinion which he then fully believed to be sound, and which he yet believes to be so, and that is, that by the express provisions of the Constitution this respondent, as President, is made the Commander in Chief of the Armies of the United States, and as such he is to be respected, and that his orders, whether issued through the War Department or through the General in Chief, or by any other channel of communication, are entitled to respect and obedience, and that such constitutional power can not be taken from him by virtue of any act of Congress. Respondent doth therefore deny that by the expression of such opinion he did commit or was guilty of a high misdemeanor in office; and the respondent doth further say that the said article nine lays no foundation whatever for the conclusion stated in the said article, that the respondent, by reason of the allegations therein contained, was guilty of a high misdemeanor in office.

In reference to the statement made by Gen. Emory that this respondent had approved of said act of Congress containing the section referred to, the respondent admits that his formal approval was given to said act, but accompanied the same by the following message, addressed and sent with the act to the House of Representatives, in which House the said act originated, and from which it came to respondent:

To the House of Representatives:

The act entitled "An act making appropriations for the support of the Army for the year ending June 30, 1868, and for other purposes." contains provisions to which I must call attention. These provisions are contained in the second section, which in certain cases virtually deprives the President of his constitutional functions as Commander in Chief of the Army, and in the sixth section, which denies to 10 States of the Union their constitutional right to protect themselves in any emergency by means of their own militia. These provisions are out of place in an appropriation act, but I am compelled to defeat these necessary appropriations if I withhold my signature from the act. Pressed by these considerations, I feel constrained to return the bill with my signature, but to accompany it with my earnest protest against the sections which I have indicated.

WASHINGTON, D. C., *March 2, 1867.*

Respondent, therefore, did no more than to express to said Emory the same opinion which he had so expressed to the House of Representatives.

ANSWER TO ARTICLE X.

And in answer to the tenth article and specifications thereof the respondent says that on the 14th and 15th days of August, in the year 1866, a political convention of delegates from all or most of the States and Territories of the Union was held in the city of Philadelphia, under the name and style of the national Union convention, for the purpose of maintaining and advancing certain political views and opinions before the people of the United States, and for their support and adoption in the exercise of the constitutional suffrage in the elections of Representatives and Delegates in Congress, which were soon to occur in many of the States and Territories of the Union, which said convention, in the course of its proceedings and in furtherance of the objects of the same, adopted a "declaration of principles" and "an address to the people of the United States," and appointed a committee of two of its members from each State and of one from each Territory and one from the District of Columbia to wait upon the President of the United States and present to him a copy of the proceedings of the convention; that on the 18th day of said month of August this committee waited upon the President of the United States at the Executive Mansion and was received by him in one of the rooms thereof, and by their chairman, Hon. Reverdy Johnson, then and now a Senator of the United States, acting and speaking in their behalf, presented a copy of the proceedings of the convention and addressed the President of the United States in a speech, of which a copy (according to a published report of the same, and, as the respondent believes, substantially a correct report) is hereto annexed as a part of this answer and marked "Exhibit C."

That thereupon, and in reply to the address of said committee by their chairman, this respondent addressed the said committee so waiting upon him in one of the rooms of the Executive Mansion; and this respondent believes that this his address to said committee is the occasion referred to in the first specification of the tenth article; but this respondent does not admit that the passages therein set forth, as if extracts from a speech or address of this respondent upon said occasion, correctly or justly presents his speech or address upon said occasion, but, on the contrary, this respondent demands and insists that if this honorable court shall deem the said article and the said first specification thereof to contain allegation of matter cognizable by this honorable court as a high misdemeanor in office, within the intent and meaning of the Constitution of the United States, and shall receive or allow proof in support of the same, that proof shall be required to be made of the actual speech and address of this respondent on said occasion, which this respondent denies that said article and specification contain or correctly or justly represent.

And this respondent, further answering the tenth article and the specifications thereof, says that at Cleveland, in the State of Ohio, and on the 3d day of September, in the year 1866, he was attended by a large assemblage of his fellow citizens, and in deference and obedience to their call and demand he addressed them upon matters of public and political consideration; and this respondent believes that said occasion and address are referred to in the second specification of the tenth article; but this respondent does not admit that the passages therein set forth, as if extracts from a speech of this respondent on said occasion, correctly or justly present his speech or address upon said occasion, but, on the contrary, this respondent demands and insists that if this honorable court shall deem the said article and the said second specification thereof to contain allegation of matter cognizable by this honorable court as a high misdemeanor in office within the intent and meaning of the Constitution of the United States and shall receive or allow proof in support of the same, that proof shall be required to be made of the actual speech and address of this respondent on said occasion, which this respondent denies that said article and specification contain or correctly or justly represent.

And this respondent, further answering the tenth article and the specifications thereof, says that at St. Louis, in the State of Missouri, and on the 8th day of September, in the year 1866, he was attended by a numerous assemblage of his fellow citizens, and in deference and obedience to their call and demand he addressed them upon matters of public and political consideration; and this respondent believes that said occasion and address are referred to in the third specification of the tenth article; but this respondent does not admit that the passages therein set forth, as if extracts from a speech of this respondent on said occasion, correctly or justly present his speech or address upon said occasion, but, on the contrary, this respondent demands and insists that if this honorable court shall deem the said article and the said third specification thereof to contain allegation of matter cognizable by this honorable court as a high misdemeanor in office within the intent and meaning of the Constitution of the United States, and shall receive or allow proof in support of the same, that proof shall be required to be made of the actual speech and address of this respondent on said occasion, which this respondent denies that the said article and specification contain or correctly or justly represent.

And this respondent, further answering the tenth article, protesting that he has not been unmindful of the high duties of his office, or of the harmony or courtesies which ought to exist and be maintained between the executive and legislative branches of the Government of the United States, denies that he has ever intended or designed to set aside the rightful authority or powers of Congress, or attempted to bring into disgrace, ridicule, hatred, contempt, or reproach the Congress of the United States or either branch thereof, or to impair or destroy the regard or respect of all or any of the good people of the United States for the Congress or the rightful legislative power thereof, or to excite the odium or resentment of all or any of the good people of the United States against Congress and the laws by it duly and constitutionally enacted. This respondent further says that at all times he has, in his official acts as President, recognized the authority of the several Congresses of the United States as constituted and organized during his administration of the office of President of the United States.

And this respondent, further answering, says that he has, from time to time, under his constitutional right and duty as President of the United States, com-

municated to Congress his views and opinions in regard to such acts or resolutions thereof as, being submitted to him as President of the United States in pursuance of the Constitution, seemed to this respondent to require such communications; and he has, from time to time, in the exercise of that freedom of speech which belongs to him as a citizen of the United States, and, in his political relations as President of the United States to the people of the United States, is upon fit occasions a duty of the highest obligation, express to his fellow citizens his views and opinions respecting the measures and proceedings of Congress; and that in such addresses to his fellow citizens and in such his communications to Congress he has expressed his views, opinions, and judgment of and concerning the actual constitution of the two Houses of Congress without representation therein of certain States of the Union, and of the effect that in wisdom and justice, in the opinion and judgment of this respondent, Congress, in its legislation and proceedings, should give to this political circumstance; and whatsoever he has thus communicated to Congress or addressed to his fellow citizens or any assemblage thereof this respondent says was and is within and according to his right and privilege as an American citizen and his right and duty as President of the United States.

And this respondent, not waiving or at all disparaging his right of freedom of opinion and of freedom of speech, as hereinbefore or hereinafter more particularly set forth, but claiming and insisting upon the same, further answering the said tenth article, says that the views and opinions expressed by this respondent in his said addresses to the assemblages of his fellow citizens, as in said articles or in this answer thereto mentioned, are not and were not intended to be other or different from those expressed by him in his communications to Congress; that the 11 States lately in insurrection never had ceased to be States of the Union, and that they were then entitled to representation in Congress by loyal Representatives and Senators as fully as the other States of the Union, and that, consequently, the Congress, as then constituted, was not, in fact, a Congress of all the States, but a Congress of only a part of the States. This respondent, always protesting against the unauthorized exclusion therefrom of the said 11 States, nevertheless gave his assent to all laws passed by said Congress which did not, in his opinion and judgment, violate the Constitution, exercising his constitutional authority of returning bills to said Congress with his objections when they appeared to him to be unconstitutional or inexpedient.

And, further, this respondent has also expressed the opinion, both in his communications to Congress and in his addresses to the people, that the policy adopted by Congress in reference to the States lately in insurrection did not tend to peace, harmony, and union, but, on the contrary, did tend to disunion and the permanent disruption of the States, and that, in following its said policy, laws had been passed by Congress in violation of the fundamental principles of the Government, and which tended to consolidation and despotism; and, such being his deliberate opinions, he would have felt himself unmindful of the high duties of his office if he had failed to express them in his communications to Congress or in his addresses to the people when called upon by them to express his opinions on matters of public and political consideration.

And this respondent, further answering the tenth article, says that he has always claimed and insisted, and now claims and insists, that both in the personal and private capacity of a citizen of the United States and in the political relations of the President of the United States to the people of the United States, whose servant, under the duties and responsibilities of the Constitution of the United States, the President of the United States is and should always remain, this respondent had and has the full right, and in his office of President of the United States is held to the high duty of forming, and on fit occasions expressing opinions of and concerning the legislation of Congress, proposed or completed, in respect of its wisdom, expediency, justice, worthiness, objects, purposes, and public and political motives and tendencies; and within and as a part of such right and duty to form, and on fit occasions to express opinions of and concerning and public character and conduct, views, purposes, objects, motives, and tendencies of all men engaged in the public service, as well in Congress as otherwise, and under no other rules or limits upon this right of freedom of opinion and of freedom of speech, or of responsibility and amenability for the actual exercise of such freedom of opinion and freedom of speech than attend upon such rights and their exercise on the part of all other citizens of the United States, and on the part of all their public servants.

And this respondent, further answering said tenth article, says that the several occasions on which, as is alleged in the several specifications of said article,

this respondent addressed his fellow citizens on subjects of public and political considerations, were not, nor was any one of them, sought or planned by this respondent; but, on the contrary, each of said occasions arose upon the exercise of a lawful and accustomed right of the people of the United States to call upon their public servants and express to them their opinions, wishes, and feelings upon matters of public and political consideration, and to invite from such, their public servants, an expression of their opinions, views, and feelings on matters of public and political consideration; and this respondent claims and insists before this honorable court, and before all the people of the United States, that of or concerning this his right of freedom of opinion and of freedom of speech, and this his exercise of such rights on all matters of public and political consideration, and in respect of all public servants or persons whatsoever engaged in or connected therewith, this respondent, as a citizen or as President of the United States, is not subject to question, inquisition, impeachment, or inculpation in any form or manner whatsoever.

And this respondent says that neither the said tenth article nor any specification thereof nor any allegation therein contained touches or relates to any official act or doing of this respondent in the office of President of the United States or in the discharge of any of its constitutional or legal duties or responsibilities; but said article and the specifications and allegations thereof, wholly and in every part thereof, question only the discretion of property of freedom of opinion or freedom of speech, as exercised by this respondent as a citizen of the United States in his personal right and capacity, and without allegation or imputation against this respondent of the violation of any law of the United States touching or relating to freedom of speech or its exercise by the citizens of the United States, or by this respondent as one of the said citizens, or otherwise; and he denies that by reason of any matter in said article or its specifications alleged he has said or done anything indecent or unbecoming in the Chief Magistrate of the United States, or that he has brought the high office of President of the United States into contempt, ridicule, or disgrace, or that he has committed or has been guilty of a high misdemeanor in office.

Answer to Article XI.

And in answer to the eleventh article this respondent denies that on the 18th day of August, in the year 1866, at the city of Washington, in the District of Columbia, he did, by public speech or otherwise, declare or affirm, in substance or at all, that the Thirty-ninth Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same, or that he did then and there declare or affirm that the said Thirty-ninth Congress was a Congress of only a part of the States in any sense or meaning other than that 10 States of the Union were denied representation therein; or that he made any or either of the declarations or affirmations in this behalf, in the said article alleged, as denying or intending to deny that the legisation of said Thirty-ninth Congress was valid or obligatory upon his respondent, except so far as this respondent saw fit to approve the same; and as to the allegation in said article that he did thereby intend or mean to be understood that the said Congress had not power to propose amendments to the Constitution, this respondent says that in said address he said nothing in reference to the subject of amendments of the Constitution, nor was the question of the competency of the said Congress to propose such amendments, without the participation of said excluded States, at the time of said address, in any way mentioned or considered or referred to by this respondent, nor in what he did say had he any intent regarding the same, and he denies the allegation so made to the contrary thereof. But this respondent, in further answer to and in respect of the said allegations of the said eleventh article hereinbefore traversed and denied, claims and insists upon his personal and official right of freedom of opinion and freedom of speech, and his duty in his political relations as President of the United States to the people of the United States in the exercise of such freedom of opinion and freedom of speech in the same manner, form, and effect as he has in this behalf stated the same in his answer to the said tenth article, and with the same effect as if he here repeated the same; and he further claims and insists, as in said answer to said tenth article he has claimed and insisted, that he is not subject to question, inquisition, impeachment, or inculpation in any form or manner of or concern-

ing such rights of freedom of opinion or freedom of speech or his said alleged exercise thereof.

And this respondent further denies that on the 21st day of February, in the year 1868, or at any other time, at the city of Washington, in the District of Columbia, in pursuance of any such declaration as in that behalf in said eleventh article alleged or otherwise, he did unlawfully and in disregard of the requirement of the Constitution that he should take care that the laws should be faithfully executed, attempt to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, by unlawfully devising or contriving, or attempting to devise or contrive, means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of Secretary for the Department of War; or by unlawfully devising or contriving, or attempting to devise or contrive, means to prevent the execution of an act entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1868, and for other purposes," approved March 2, 1867, or to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States," passed March 2, 1867.

And this respondent, further answering the said eleventh article, says that he has, in his answer to the first article, set forth in detail the acts, steps, and proceedings done and taken by this respondent to and toward or in the matter of the suspension or removal of the said Edwin M. Stanton in or from the office of Secretary for the Department of War, with the times, modes, circumstances, intents, views, purposes, and opinions of official obligations and duty under and with which such acts, steps, and proceedings were done and taken; and he makes answer to this eleventh article of the matters in his answer to the first article, pertaining to the suspension or removal of said Edwin M. Stanton, to the same intent and effect as if they were here repeated and set forth.

And this respondent, further answering the said eleventh article, denies that by means or reason of anything in said article alleged this respondent, as President of the United States, did, on the 21st day of February, 1868, or at any other day or time, commit, or that he was guilty of, a high misdemeanor in office.

And this respondent, further answering the said eleventh article, says that the same and the matters therein contained do not charge or allege the commission of any act whatever by this respondent, in his office of President of the United States, nor the omission by this respondent of any act of official obligation or duty in his office of President of the United States; nor does the said article nor the matters therein contained name, designate, describe, or define any act or mode or form of attempt, device, contrivance, or means, or of attempt at device, contrivance, or means, whereby this respondent can know or understand what act or mode or form of attempt, device, contrivance, or means, or of attempt at device, contrivance, or means are imputed to or charged against this respondent, in his office of President of the United States, or intended so to be, or whereby this respondent can more fully or definitely make answer unto the said article than he hereby does.

And this respondent, in submitting to this honorable court this, his answer to the articles of impeachment exhibited against him, respectfully reserves leave to amend and add to the same from time to time, as may become necessary or proper, and when and as such necessity and propriety shall appear.

ANDREW JOHNSON.

HENRY STANBERY,
B. R. CURTIS,
THOMAS A. R. NELSON,
WILLIAM M. EVARTS,
W. S. GROESBECK,
Of Counsel.

EXHIBIT A.

Message to the Senate, March 2, 1867.

To the Senate of the United States:

I have carefully examined the bill to regulate the tenure of certain civil offices. The material portion of the bill is contained in the first section, and is of the effect following namely:

"That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office and shall become duly qualified to act therein is and shall be entitled to hold such office until a successor shall have been appointed by the President, with the advice and consent of the Senate, and duly qualified; and that the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General, and the Attorney General shall hold their offices, respectively, for and during the term of the President by whom they may have been appointed and for one month thereafter, subject to removal by and with the advice and consent of the Senate."

These provisions are qualified by a reservation in the fourth section, "that nothing contained in the bill shall be construed to extend the term of any office the duration of which is limited by law." In effect the bill provides that the President shall not remove from their places any of the civil officers whose terms of service are not limited by law without the advice and consent of the Senate of the United States. The bill in this respect conflicts, in my judgment, with the Constitution of the United States. The question, as Congress is well aware, is by no means a new one. That the power of removal is constitutionally vested in the President of the United States is a principle which has been not more distinctly declared by judicial authority and judicial commentators than it has been uniformly practiced upon by the legislative and executive departments of the Government. The question arose in the House of Representatives so early as the 16th day of June, 1789, on the bill for establishing an executive department, denominated "The Department of Foreign Affairs." The first clause of the bill, after recapitulating the functions of that officer and defining his duties, had these words: "To be removable from office by the President of the United States." It was moved to strike out these words, and the motion was sustained with great ability and vigor. It was insisted that the President could not constitutionally exercise the power of removal exclusive of the Senate; that the Federalist so interpreted the Constitution when arguing for its adoption by the several States; that the Constitution had nowhere given the President power of removal, either expressly or by strong implication; but, on the contrary, had distinctly provided for removals from office by impeachment only. A construction which denied the power of removal by the President was further maintained by arguments drawn from the danger of the abuse of the power; from the supposed tendency of an exposure of public officers to capricious removal, to impair the efficiency of the civil service; from the alleged injustice and hardship of displacing incumbents, dependent upon their official stations, without sufficient consideration; from a supposed want of responsibility on the part of the President; and from an imagined defect of the guarantees against a vicious President who might incline to abuse the power.

On the other hand, an exclusive power of removal by the President was defended as a true exposition of the text of the Constitution. It was maintained that there are certain causes for which persons ought to be removed from office without being guilty of treason, bribery, or malfeasance, and that the nature of things demands that it should be so. "Suppose," it was said, "a man becomes insane by the visitation of God, and is likely to ruin our affairs; are the hands of Government to be confined from warding off the evil? Suppose a person in office not possessing the talents he was judged to have at the time of the appointment; is the error not to be corrected? Suppose he acquire vicious habits and incurable indolence, or totally neglect the duties of his office, which shall work mischief to the public welfare; is there no way to arrest the threatened danger? Suppose he become odious and unpopular by reason of the measure he pursues—and this he may do without committing any possible offenses against the law—must he preserve his office in despite of the popular will? Suppose him grasping for his own aggrandizement and the elevation of his connections by every means short of the treason defined by the Constitution, hurrying your affairs to the precipice of destruction, endangering your domestic transquility, plundering you of the means of defense, alienating the affections of your allies, and promoting the spirit of discord: must the tardy, tedious, desultory road, by way of impeachment, be traveled to overtake the man who, barely confining himself within the letter of the law, is employed in drawing off the vital principle of the Government?" The nature of things the great objects of society, the express objects of the Constitution itself require that this thing should be otherwise. To unite the Senate with the President "in the exercise of the power" it was said, "would involve us" in the most serious difficulty.

"Suppose a discovery of any of these events should take place when the Senate is not in session, how is the remedy to be applied? The evil could be avoided in no other way than by the Senate sitting always." In regard to the danger of the power being abused if exercised by one man, it was said "that the danger is as great with respect to the Senate who are assembled from various parts of the continent, with different impressions and opinions"; that such a body is more likely to misuse the power of removal than the man whom the united voice of America calls to the presidential chair. As the nature of Government requires the power of removal, it was maintained "that it should be exercised in this way by the hand capable of exerting itself with effect, and the power must be conferred on the President by the Constitution as the executive officer of the Government." Mr. Madison, whose adverse opinion in the Federalist had been relied upon by those who denied the exclusive power, now participated in the debate. He declared that he had reviewed his former opinions, and he summed up the whole case as follows:

"The Constitution affirms that the executive power is vested in the President. Are there exceptions to this proposition? Yes; there are. The Constitution says that in appointing to office the Senate shall be associated with the President, unless in the case of inferior officers, when the law shall otherwise direct. Have we (that is, Congress) a right to extend this exception? I believe not. If the Constitution has invested all executive power in the President, I return to assert that the Legislature has no right to diminish or modify his executive authority. The question now resolves itself into this: Is there power of displacing an executive power? I conceive that if any power whatever is in the Executive it is in the power of appointing, overseeing, and controlling those who execute the laws. If the Constitution had not qualified the power of the President in appointing to office by associating the Senate with him in that business, would it not be clear that he would have the right by virtue of his executive power to make such appointment? Should we be authorized in defiance of that clause in the Constitution—'the executive power shall be vested in the President'—to unite the Senate with the President in the appointment of office? I conceive not. It is admitted that we should not be authorized to do this. I think it may be disputed whether we have a right to associate them in removing persons from office, the one power being as much of an executive nature as the other: and the first is authorized by being excepted out of the general rule established by the Constitution in these words: 'The executive power shall be vested in the President'."

The question thus ably and exhaustively argued was decided by the House of Representatives, by a vote of 34 to 20, in favor of the principle that the executive power of removal is vested by the Constitution in the Executive and in the Senate by the casting vote of the Vice President. The question has often been raised in subsequent times of high excitement, and the practice of the Government has nevertheless conformed in all cases to the decision thus early made.

The question was revived during the administration of President Jackson, who made, as is well recollected, a very large number of removals, which were made an occasion of close and rigorous scrutiny and remonstrance. The subject was long and earnestly debated in the Senate, and the early construction of the Constitution was nevertheless freely accepted as binding and conclusive upon Congress.

The question came before the Supreme Court of the United States in January, 1839, Ex parte Herren. It was declared by the court on that occasion that the power of removal from office was a subject much disputed, and upon which a great diversity of opinion was entertained in the early history of the Government. This related, however, to the power of the President to remove officers appointed with the concurrence of the Senate, and the great question was whether the removal was to be by the President alone or with the concurrence of the Senate, both constituting the appointing power. No one denied the power of the President and Senate jointly to remove where the tenure of the office was not fixed by the Constitution, which was a full recognition of the principle that the power of the removal was incident to the power of appointment; but it was very early adopted at a practical construction of the Constitution that this power was vested in the President alone, and such would appear to have been the legislative construction of the Constitution, for in the organization of the three great Departments of State, War, and Treasury in 1789 provision was

made for the appointment of a subordinate officer by the head of the department, who should have charge of the records, books, and papers appertaining to the office when the head of the department should be removed from office by the President of the United States. When the Navy Department was established in the year 1798 provision was made for the charge and custody of the books, records, and documents of the department in case of vacancy in the office of Secretary by removal or otherwise. It is not here said "by removal of the President," as it is done with respect to the heads of the other departments, yet there can be no doubt that he holds his office with the same tenure as the other Secretaries and is removable by the President. The change of phraseology arose probably from its having become the settled and well-understood construction of the Constitution that the power of removal was vested in the President alone in such cases, although the appointment of the officer is by the President and Senate. (13 Peters, p. 139.)

Our most distinguished and accepted commentators upon the Constitution concur in the construction thus early given by Congress and thus sanctioned by the Supreme Court. After a full analysis of the congressional debate to which I have referred, Mr. Justice Story comes to this conclusion:

"After a most animated discussion the vote finally taken in the House of Representatives was affirmative of the power of removal in the President without any cooperation of the Senate by the vote of 34 Members against 20. In the Senate the clause in the bill affirming the power was carried by the casting vote of the Vice President. That the final decision of this question so made was greatly influenced by the exalted character of the President then in office was asserted at the time and has always been believed, yet the doctrine was opposed as well as supported by the highest talent and patriotism of the country. The public have acquiesced in this decision, and it constitutes perhaps the most extraordinary case in the history of the Government of a power conferred by implication on the Executive by the assent of a bare majority of Congress which has not been questioned on many other occasions."

The commentator adds:

"Nor is this general acquiescence and silence without a satisfactory explanation."

Chancellor Kent's remarks on the subject are as follows: "On the first organization of the Government it was made a question whether the power of removal in case of officers appointed to hold at pleasure resided nowhere but in the body which appointed," and, of course, whether the consent of the Senate was not requisite to remove. This was the construction given to the Constitution while it was pending for ratification before the State conventions by the author of the Federalist. But the construction which was given to the Constitution by Congress, after great consideration and discussion, was different. The words of the act (establishing the Treasury Department) are: "And whenever the same shall be removed from office by the President of the United States, or in any case of vacancy in the office, the assistant shall act." This amounted to a legislative construction of the Constitution, and it has ever since been acquiesced in and acted upon as a decisive authority in the case.

It applies equally to every other officer of the Government appointed by the President whose term of duration is not specially declared. It is supported by the weighty reason that the subordinate officers in the executive department ought to hold at the pleasure of the head of the department, because he is invested generally with the executive authority, and the participation in that authority by the Senate was an exception to a general principle and ought to be taken strictly. The President is the great responsible officer for the execution of the law, and the power of removal was incidental to that duty, and might often be requisite to fulfill it. Thus has the important question presented by this bill been settled, in the language of the late Daniel Webster (who, while dissenting from it, admitted that it was settled), by construction, settled by the practice of the Government, and settled by statute. The events of the last war furnished a practicable confirmation of the wisdom of the Constitution as it has hitherto been maintained in many of its parts, including that which is now the subject of consideration. When the war broke out rebel enemies, traitors, abettors, and sympathizers were found in every department of the Government, as well in the civil service as in the land and naval military service. They were found in Congress and among the keepers of the Capitol, in foreign missions, in each and all of the executive departments, in the judicial service, in the post

office, and among the agents for conducting Indian affairs, and upon probable suspicion they were promptly displaced by my predecessor, so far as they held their offices under Executive authority, and their duties were confided to new and loyal successors. No complaints against that power or doubts of its wisdom were entertained in any quarter. I sincerely trust and believe that no such civil war is likely to occur again. I can not doubt, however, that in whatever form and on whatever occasion sedition can arise, an effort to hinder or embarrass or defeat the legitimate action of this Government, whether by preventing the collection of revenue, or disturbing the public peace, or separating the States, or betraying the country to a foreign enemy, the power of removal from office by the Executive, as it has heretofore existed and been practiced, will be found indispensable. Under these circumstances, as a depository of the executive authority of the Nation. I do not feel at liberty to unite with Congress in reversing it by giving my approval of the bill.

At the early day when the question was settled, and, indeed, at the several periods when it has subsequently been agitated, the success of the Constitution of the United States as a new and peculiar system of free representative government was held doubtful in other countries and was even a subject of patriotic apprehension among the American people themselves. A trial of nearly 80 years, through the vicissitudes of foreign conflicts and of civil war, is confidently regarded as having extinguished all such doubts and apprehensions for the future. During that 80 years the people of the United States have enjoyed a measure of security, peace, prosperity, and happiness never surpassed by any nation. It can not be doubted that the triumphant success of the Constitution is due to the wonderful wisdom with which the functions of government were distributed between the three principal departments—the legislative, the executive, and the judicial—and to the fidelity with which each has confined itself or been confined by the general voice of the Nation within its peculiar and proper sphere.

While a just, proper, and watchful jealousy of executive power constantly prevails, as it ought ever to prevail, yet it is equally true that an efficient Executive, capable, in the language of the oath prescribed to the President, of executing the laws within the sphere of executive action, of preserving, protecting, and defending the Constitution of the United States, is an indispensable security for tranquility at home and peace, honor, and safety abroad. Governments have been erected in many countries upon our model. If one or many of them have thus far failed in fully securing to their people the benefits which we have derived from our system, it may be confidently asserted that their misfortune has resulted from their unfortunate failure to maintain the integrity of each of the three great departments while preserving harmony among them all.

Having at an early period accepted the Constitution in regard to the executive office in the sense to which it was interpreted with the concurrence of its founders. I have found no sufficient grounds in the arguments now opposed to that construction or in any assumed necessity of the times for changing those opinions. For these reasons I return the bill to the Senate, in which House it originated, for the further consideration of Congress, which the Constitution prescribes. Insomuch as the several parts of the bill which I have not considered are matters chiefly of detail and are based altogether upon the theory of the Constitution from which I am obliged to dissent. I have not thought it necessary to examine them with a view to make them an occasion of distinct and special objections. Experience, I think, has shown that it is the easiest, as it is also the most attractive of studies, to frame constitutions for the self-government of free states and nations. But I think experience has equally shown that it is the most difficult of all political labors to preserve and maintain such free constitutions of self-government when once happily established. I know no other way in which they can be preserved and maintained except by a constant adherence to them through the various vicissitudes of national existence, with such adaptations as may become necessary, always to be effected, however, through the agencies and in the forms prescribed in the original constitutions themselves. Whenever administration fails, or seems to fail, in securing any of the great ends for which republican government is established, the proper course seems to be to renew the original spirit and forms of the Constitution itself.

ANDREW JOHNSON.

WASHINGTON, *March 2, 1867.*

EXHIBIT B.

Message to the Senate, December 12, 1867.

To the Senate of the United States:

On the 12th of August last I suspended Mr. Stanton from the exercise of the office of Secretary of War, and on the same day designated Gen. Grant to act as Secretary of War ad interim.

The following are copies of the Executive orders:

EXECUTIVE MANSION,
Washington, August 12, 1867.

SIR: By virtue of the power and authority vested in me as President by the Constitution and the laws of the United States you are hereby suspended from office as Secretary of War and will cease to exercise any and all functions pertaining to the same.

You will at once transfer to Gen. Ulysses S. Grant, who has this day been authorized and empowered to act as Secretary of War ad interim, all records, books, papers, and other public property now in your custody and charge.

Hon. EDWIN M. STANTON, *Secretary of War.*

EXECUTIVE MANSION,
Washington, D.C., August 12, 1867.

SIR: Hon. Edwin M. Stanton having been this day suspended as Secretary of War, you are hereby authorized and empowered to act as Secretary of War ad interim, and will at once enter upon the discharge of the duties of the office.

The Secretary of War has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Gen. ULYSSES S. GRANT, *Washington, D. C.*

The following communication was received from Mr. Stanton:

WAR DEPARTMENT,
Washington City, August 12, 1867.

SIR: Your note of this date has been received informing me that by virtue of the powers and authority vested in you as President by the Constitution and laws of the United States I am suspended from office as Secretary of War, and will cease to exercise any and all functions pertaining to the same; and also directing me at once to transfer to Gen. Ulysses S. Grant, who has this day been authorized and empowered to act as Secretary of War ad interim, all records, books, papers, and other public property now in my custody and charge.

Under a sense of public duty I am compelled to deny your right, under the Constitution and laws of the United States, without the advise and consent of the Senate, and without legal cause, to suspend me from office of Secretary of War, or the exercise of any or all functions pertaining to the same, or without such advice and consent to compel me to transfer to any person the records, books, papers, and public property in my custody as Secretary.

But inasmuch as the general commanding the armies of the United States has been appointed ad interim, and has notified me that he has accepted the appointment, I have no alternative but to submit, under protest, to superior force.

To the PRESIDENT.

The suspension has not been revoked, and the business of the War Department is conducted by the Secretary ad interim. Prior to the date of this suspension I had come to the conclusion that the time had arrived when it was proper Mr. Stanton should retire from my Cabinet. The mutual confidence and general accord which should exist in such a relation had ceased. I supposed that Mr. Stanton was well advised that his continuance in the Cabinet was contrary to my wishes, for I had repeatedly given him so to understand by every mode short of an express request that he should resign. Having waited full time for the voluntary action of Mr. Stanton, and seeing no manifestation on his part of an intention to resign, I addressed him the following note on the 5th of August:

"SIR: Public considerations of a high character constrain me to say that your resignation as Secretary of War will be accepted."

To this note I received the following reply:

WAR DEPARTMENT,
Washington, August 5, 1867.

SIR: Your note of this day has been received, stating that public considerations of a high character constrain you to say that my resignation as Secretary of War will be accepted.

In reply, I have the honor to say that public considerations of a high character, which alone have induced me to continue at the head of this department, constrain me not to resign the office of Secretary of War before the next meeting of Congress.

EDWIN M. STANTON,
Secretary of War.

This reply of Mr. Stanton was not merely a declination of compliance with the request for his resignation; it was a defiance, and something more. Mr. Stanton does not content himself with assuming that public considerations bearing upon his continuance in office form as fully a rule of action for himself as for the President, and that upon so delicate a question as the fitness of an officer for continuance in his office the officer is as competent and as impartial to decide as his superior, who is responsible for his conduct; but he goes further and plainly intimates what he means by "public considerations of a high character," and this is nothing less than his loss of confidence in his superior. He says that these public considerations have "alone induced me to continue at the head of this department," and that they "constrain me not to resign the office of Secretary of War before the next meeting of Congress."

This language is very significant. Mr. Stanton holds the position unwillingly. He continues in office only under a sense of high public duty. He is ready to leave when it is safe to leave, and as the danger he apprehends from his removal then will not exist when Congress is here, he is constrained to remain during the interim. What, then, is that danger which can only be averted by the presence of Mr. Stanton or of Congress? Mr. Stanton does not say that "public considerations of high character" constrain him to hold on to the office indefinitely. He does not say that no one other than himself can at any time be found to take his place and perform its duties. On the contrary, he expresses a desire to leave the office at the earliest moment consistent with these high public considerations. He says in effect that while Congress is away he must remain, but that when Congress is here he can go. In other words, he has lost confidence in the President. He is unwilling to leave the War Department in his hands or in the hands of anyone the President may appoint or designate to perform its duties. If he resigns, the President may appoint a Secretary of War that Mr. Stanton does not approve; therefore he will not resign. But when Congress is in session the President can not appoint a Secretary of War which the Senate does not approve. Consequently, when Congress meets Mr. Stanton is ready to resign.

Whatever cogency these "considerations" may have had upon Mr. Stanton, whatever right he may have had to entertain such considerations, whatever propriety there might be in the expression of them to others, one thing is certain, it was official misconduct, to say the least of it, to parade them before his superior officer. Upon the receipt of this extraordinary note I only delayed the order of suspension long enough to make the necessary arrangements to fill the office. If this were the only cause for his suspension, it would be ample. Necessarily it must end our most important official relations, for I can not imagine a degree of effrontery which would embolden the head of a department to take his seat at the council table in the Executive Mansion after such an act. Nor can I imagine a President so forgetful of the proper respect and dignity which belong to his office as to submit to such intrusion. I will not do Mr. Stanton the wrong to suppose that he entertained any idea of offering to act as one of my constitutional advisers after that note was written. There was an interval of a week between that date and the order of suspension,

during which two Cabinet meetings were held. Mr. Stanton did not present himself at either, nor was he expected. On the 12th of August Mr. Stanton was notified of his suspension and that Gen. Grant had been authorized to take charge of the department. In his answer to this notification, of the same date, Mr. Stanton expresses himself as follows:

"Under a sense of public duty I am compelled to deny your right, under the Constitution and laws of the United States, without the advice and consent of the Senate, to suspend me from office as Secretary of War or the exercise of any or all functions pertaining to the same, or without such advice and consent to compel me to transfer to any person the records, books, papers, and public property in my custody as Secretary. But inasmuch as the General Commanding the Armies of the United States has been appointed ad interim and has notified me that he has accepted the appointment, I have no alternative but to submit, under protest, to superior force."

It will not escape attention that in his note of August 5, Mr. Stanton stated that he had been constrained to continue in the office, even before he was requested to resign, by considerations of a high public character. In this note of August 12, a new and different sense of public duty compels him to deny the President's right to suspend him from office without the consent of the Senate. This last is the public duty of resisting an act contrary to law, and he charges the President with violation of the law in ordering his suspension.

Mr. Stanton refers generally to the "Constitution and laws of the United States," and says that a sense of public duty "under" these compels him to deny the right of the President to suspend him from office. As to his sense of duty under the Constitution, that will be considered in the sequel. As to his sense of duty under the Constitution, that will be considered in the sequel. As to his sense of duty under "the laws of the United States," he certainly can not refer to the law which creates the War Department, for that expressly confers upon the President the unlimited right to remove the head of the department. The only other law bearing upon the question is the tenure-of-office act, passed by Congress over the presidential veto, March 2, 1867. This is the law which, under a sense of public duty, Mr. Stanton volunteers to defend. There is no provision in this law which compels any officer coming within its provisions to remain in office. It forbids removals, but not resignations. Mr. Stanton was perfectly free to resign at any moment, either upon his own motion, or in compliance with a request or an order. It was a matter of choice or of taste. There was nothing compulsory in the nature of legal obligation. Nor does he put his action upon that imperative ground. He says he acts under a "sense of public duty," not of legal obligation, compelling him to hold on, and leaving him no choice. The public duty which is upon him arises from the respect which he owes to the Constitution and the laws, violated in his own case. He is, therefore, compelled by this sense of public duty to vindicate violated law and to stand as its champion.

This was not the first occasion in which Mr. Stanton, in discharge of a public duty, was called upon to consider the provisions of that law. That tenure-of-office law did not pass without notice. Like other acts it was sent to the President for approval. As is my custom, I submitted its consideration to my Cabinet for their advice upon the question whether I should approve it or not. It was a grave question of constitutional law, in which I would, of course, rely most upon the opinion of the Attorney General and of Mr. Stanton, who had once been Attorney General. Every member of my Cabinet advised me that the proposed law was unconstitutional. All spoke without doubt or reservation, but Mr. Stanton's condemnation of the law was the most elaborate and emphatic. He referred to the constitutional provisions, the debates in Congress—especially to the speech of Mr. Buchanan when a Senator—to the decisions of the Supreme Court, and to the usage from the beginning of the Government through every successive administration, all concurring to establish the right of removal, as vested by the Constitution in the President. To all these he added the weight of his own deliberate judgment, and advised me that it was my duty to defend the power of the President from usurpation and to veto the law.

I do not know when a sense of public duty is more imperative upon a head of department than upon such an occasion as this. He acts then under the gravest obligations of law; for when he is called upon the President for advice it is the Constitution which speaks to him. All his other duties are left by the Constitution to be regulated by statute; but this duty was deemed so momentous that it is imposed by the Constitution itself. After all this I was not prepared for the

ground taken by Mr. Stanton in his note of August 12. I was not prepared to find him compelled, by a new and indefinite sense of public duty under "the Constitution," to assume the vindication of a law which, under the solemn obligations of public duty, imposed by the Constitution itself, he advised me was a violation of that Constitution. I make great allowance for a change of opinion, but such a change as this hardly falls within the limits of greatest indulgence. Where our opinions take the shape of advice and influence the action of others, the utmost stretch of charity will scarcely justify us in repudiating them when they come to be applied to ourselves.

But to proceed with the narrative. I was so much struck with the full mastery of the question manifested by Mr. Stanton, and was at the time so fully occupied with the preparation of another veto upon the pending reconstruction act, that I requested him to prepare the veto upon this tenure-of-office bill. This he declined on the ground of physical disability to undergo, at the time, the labor of writing, but stated his readiness to furnish what aid might be required in the preparation of materials for the paper. At the time this subject was before the Cabinet it seemed to be taken for granted that as to those members of the Cabinet who had been appointed by Mr. Lincoln their tenure of office was not fixed by the provisions of the act. I do not remember that the point was distinctly decided; but I well recollect that it was suggested by one member of the Cabinet who was appointed by Mr. Lincoln, and that no dissent was expressed.

Whether the point was well taken or not did not seem to me of any consequence, for the unanimous expression of opinion against the constitutionality and policy of the act was so decided that I felt no concern, so far as the act had reference to the gentlemen then present, that I would be embarrassed in the future. The bill had not then become a law. The limitation upon the power of removal was not yet imposed, and there was yet time to make any changes. If any one of these gentlemen had then said to me that he would avail himself of the provisions of that bill in case it became a law. I should not have hesitated a moment as to his removal. No pledge was then expressly given or required. But there are circumstances when to give an express pledge is not necessary, and when to require it is an imputation of possible bad faith. I felt that if these gentlemen came within the purview of the bill it was, as to them, a dead letter, and that none of them would ever take refuge under its provisions. I now pass to another subject.

When on the 15th of April, 1865, the duties of the presidential office devolved upon me, I found a full Cabinet of seven members, all of them selected by Mr. Lincoln. I made no change. On the contrary, I shortly afterwards ratified a change determined upon, by Mr. Lincoln, but not perfected at his death, and admitted his appointee. Mr. Harlan, in the place of Mr. Usher, who was in office at the time. The great duty of the time was to reestablish government, law, and order in the insurrectionary States. Congress was then in recess, and the sudden overthrow of the rebellion required speedy action. This grave subject had engaged the attention of Mr. Lincoln in the last days of his life, and the plan according to which it was to be managed had been prepared and was ready for adoption. A leading feature of that plan was that it should be carried out by the Executive authority, for, so far as I have been informed, neither Mr. Lincoln nor any member of his Cabinet doubted his authority to act or proposed to call an extra session of Congress to do the work. The first business transacted in Cabinet after I became President was this unfinished business of my predecessor. A plan or scheme of reconstruction was produced which had been prepared for Mr. Lincoln by Mr. Stanton, his Secretary of War. It was approved, and, at the earliest moment practicable, was applied in the form of a proclamation to the State of North Carolina, and afterwards became the basis of action in turn for the other States.

Upon the examination of Mr. Stanton before the impeachment committee he was asked the following question:

"Did any one of the Cabinet express a doubt of the power of the executive branch of the Government to reorganize State governments which had been in rebellion without the aid of Congress?"

He answered:

"None whatever, I had myself entertained no doubt of the authority of the President to take measures for the organization of the rebel States on the plan proposed during the vacation of Congress, and agreed in the plan specified in the proclamation in the case of North Carolina."

There is, perhaps, no act of my administration for which I have been more denounced than this. It was not originated by me, but I shrank from no re-

sponsibility on that account, for the plan approved itself to my own judgmen and I did not hesitate to carry it into execution. Thus far, and upon this vita policy, there was perfect accord between the Cabinet and myself, and I saw n necessity for a change. As time passed on there was developed an unfortunat difference of opinion and of policy between Congress and the President upo this same subject and upon the ultimate basis upon which the reconstructio of these States should proceed, especially upon the question of negro suffrag Upon this point three members of the Cabinet found themselves to be in sym pathy with Congress. They remained only long enough to see that the diffe ence of policy could not be reconciled. They felt that they should remain n longer, and a high sense of duty and propriety constrained them to resig their positions. We parted with mutual respect for the sincerity of each othe in opposite opinions, and mutual regret that the difference was on points s vital as to require a severance of official relations. This was in the summe of 1866. The subsequent sessions of Congress developed new complication when the suffrage bill for the District of Columbia and the reconstruction act of March 2 and March 23, 1867, all passed over the veto. It was in Cabine consultations upon these bills that a difference of opinion upon the most vita points was developed. Upon these questions there was perfect accord betwee all the members of the Cabinet and myself, except Mr. Stanton. He stood alon and the difference of opinion could not be reconciled. That unity of opinio which upon great questions of public policy or administration is so essential t the Executive was gone.

I do not claim that the head of a department should have no other opinion than those of the President. He has the same right, in the conscientious di charge of duty, to entertain and express his own opinions as has the Presiden What I do claim is that the President is the responsible head of the admini tration, and when the opinions of a head of department are irreconcilabl opposed to those of the President in grave matters of policy and administratio there is but one result which can solve the difficulty, and that is a severanc of the official relation. This, in the past history of the Government, has alway been the rule, and it is a wise one, for such differences of opinion among it members must impair the efficiency of any administration.

I have now referred to the general grounds upon which the withdrawal c Mr. Stanton from my administration seemed to me to be proper and necessary but I can not omit to state a special ground which, if it stood alone, woul vindicate my action.

The sanguinary riot which occurred in the city of New Orleans on the 30t of August, 1866, justly aroused public indignation and public inquiry, not onl as to those who were engaged in it, but as to those who, more or less remotel might be held to responsibility for its occurrence. I need not remind the Senat of the effort made to fix that responsibility on the President. The charge wa openly made, and again and again reiterated through all the land, that th President was warned in time, but refused to interfere.

By telegrams from the lieutenant governor and attorney general of Louisian dated the 27th and 28th of August, I was advised that a body of delegate claiming to be a constitutional convention, were about to assemble in Ne Orleans; that the matter was before the grand jury, but that it would b impossible to execute civil process without a riot, and this question was asked "Is the military to interfere to prevent process of court?" This question wa asked at a time when the civil courts were in the full exercise of their authorit and the answer sent by telegraph, on the same 28th of August, was this:

"The military will be expected to sustain, and not to interfere with, th proceedings of the courts."

On the same 28th of August the following telegram was sent to Mr. Stanto by Maj. Gen. Baird, then (owing to the absence of Gen. Sheridan) in comman of the military at New Orleans:

"HON. EDWIN M. STANTON, *Secretary of War:*

"A convention has been called, with the sanction of Gov. Wells, to meet he on Monday. The lieutenant governor and city authorities think it unlawfu and propose to break it up by arresting the delegates. I have given no orde on the subject, but have warned the parties that I could not countenance or perm such action without instructions to that effect from the President. Please instru me at once by telegraph."

The 28th of August was on Saturday. The next morning, the 29th, this dispatch was received by Mr. Stanton at his residence in this city. He took no action upon it, and neither sent instructions to Gen. Baird himself nor presented it to me for such instructions. On the next day (Monday) the riot occurred. I never saw this dispatch from Gen. Baird until some 10 days or two weeks after the riot, when upon my call for all the dispatches, with a view to their publication. Mr. Stanton sent it to me. These facts all appear in the testimony of Mr. Stanton before the Judiciary Committee in the impeachment investigation. On the 30th, the day of the riot, and after it was suppressed. Gen. Baird wrote to Mr. Stanton a long letter, from which I make the following extracts:

"SIR: I have the honor to inform you that a very serious riot occurred here today. I had not been applied to by the convention for protection, but the lieutenant governor and the mayor had freely consulted with me, and I was so fully convinced that it was so strongly the intent of the city authorities to preserve the peace, in order to prevent military interference, that I did not regard an outbreak as a thing to be apprehended. The lieutenant governor had assured me that even if a writ of arrest was issued by the court the sheriff would not attempt to serve it without my permission, and for today they designed to suspend it. I enclose herewith copies of my correspondence with the mayor, and of a dispatch which the lieutenant governor claims to have received from the President. I regret that no reply to my dispatch to you of Saturday has yet reached me. Gen. Sheridan is still absent in Texas."

The dispatch of Gen. Baird, of the 28th, asks for immediate instructions, and his letter of the 30th after detailing the terrible riot which had just happened, ends with the expression of regret that the instructions, which he asked for were not sent. It is not the fault or the error or the omission of the President that this military commander was left without instructions; but for all omissions, for all errors, for all failures to instruct, when instruction might have averted this calamity, the President was openly and persistently held reponsible. Instantly, without waiting for proof, the delinquency of the Presdent was heralded in every form of utterance. Mr. Stanton knew then that the President was not responsible for this delinquency. The exculpation was in his power, but it was not given by him to the public, and only to the President in obedience to a requisition for all the dispatches.

No one regrets more than myself that Gen. Baird's request was not brought to my notice. It is clear, from his dispatch and letter, that if the Secretary of War had given him proper instructions the riot which arose on the assembling of the convention would have been averted. There may be those ready to say that I would have given no instructions even if the dispatch had reached me in time, but all must admit that I ought to have had the opportunity.

The following is the testimony given by Mr. Stanton before the impeachment investigation committee as to the dispatch:

Q. Referring to the dispatch of the 28th of July by Gen. Baird, I ask you whether that dispatch, on its receipt, was communicated?—A. I received that dispatch on Sunday forenoon; I examined it carefully and considered the question presented; I did not see that I could give any instructions different from the line of action which Gen. Baird proposed, and made no answer to the dispatch.

"Q. I see it stated that this was received at 10 o'clock and 20 minutes p.m. Was that the hour at which it was received by you?—A. That is the date of its reception in the telegraph office Saturday night. I received it on Sunday forenoon, at my residence; a copy of the dispatch was furnished to the President several days afterward along with all the other dispatches and communications on that subject, but it was not furnished by me before that time; I suppose it may have been 10 or 15 days afterwards.

"Q. The President himself being in correspondence with those parties upon the same subject, would it not have been proper to have advised him of the reception of that dispatch?—A. I know nothing about his correspondence, and know nothing about any correspondence except this one dispatch. We had intelligence of the riot on Thursday morning. The riot had taken place on Monday."

It is a difficult matter to define all the relations which exist between the heads of department and the President. The legal relations are well enough defined. The Constitution places these officers in the relation of his advisers when he calls upon them for advice. The acts of Congress go further. Take for example, the act of 1789, creating the War Department. It provides that:

"There shall be a principal officer therein, to be called the Secretary for the Department of War, who shall perform and execute such duties as shall from

time to time be enjoined on or intrusted to him by the President of the United States;" and furthermore, "the said principal officer shall conduct the business of the said department in such manner as the President of the United States shall from time to time order and instruct."

Provision is also made for the appointment of an inferior officer by the head of the department, to be called the chief clerk, "who, whenever said principal officer shall be removed from office by the President of the United States," shall have the charge and custody of the books, records, and papers of the department.

The legal relation is analogous to that of the principal and agent. It is the President upon whom the Constitution devolves, as head of the executive department, the duty to see that the laws are faithfully executed; but as he can not execute them in person, he is allowed to select his agents, and is made responsible for their acts within just limits. So complete is the presumed delegation of authority in the relation of a head of department to the President, that the Supreme Court of the United States have decided that an order made by a head of department is presumed to be made by the President himself.

The principal, upon whom such responsibility is placed for the acts of a subordinate, ought to be left as free as possible in the matter of selection and of dismissal. To hold him to responsibility for an officer beyond his control; to leave the question of the fitness of such an agent to be decided for him and not by him; to allow such a subordinate, when the President, moved by "public considerations of a high character," requests his resignation to assume for himself an equal right to act upon his own views of "public considerations," and to make his own conclusions paramount to those of the President—to allow all this is to reverse the just order of administration, and to place the subordinate above the superior.

There are, however, other relations between the President and a head of department beyond these defined legal relations which necessarily attend them, though not expressed. Chief among these is mutual confidence. This relation is so delicate that it is sometimes hard to say when or how it ceases. A single flagrant act may aid it at once, and then there is no difficulty. But confidence may be just as effectually destroyed by a series of causes too subtle for demonstration. As it is a plant of slow growth, so, too, it may be slow in decay. Such has been the process here. I will not pretend to say what acts or omissions have broken up this relation. They are hardly susceptible of statement, and still less of formal proof. Nevertheless no one can read the correspondence of the 5th of August without being convinced that this relation was affectually gone on both sides, and that, while the President was unwilling to allow Mr. Stanton to remain in his administration, Mr. Stanton was equally unwilling to allow the President to carry on his administration without his presence. In the great debate which took place in the House of Representatives in 1789, on the first organization of the principal departments, Mr. Madison spoke as follows:

"It is evidently the intention of the Constitution that the First Magistrate should be responsible for the executive department. So far, therefore, as we do not make the officers who are to aid him in the duties of that department responsible to him, he is not responsible to the country. Again, is there no danger that an officer, when he is appointed by the concurrence of the Senate and his friends in that body, may choose rather to risk his establishment on the favor of that branch than rest it upon the discharge of his duties to the satisfaction of the executive branch, which is constitutionally authorized to inspect and control his conduct? And if it should happen that the officers connect themselves with the Senate, they may mutually support each other, and, for want of efficacy, reduce the power of the President to a mere vapor, in which case his responsibility would be annihilated, and the expectation of it is unjust. The high executive officers joined in cabal with the Senate would lay the foundation of discord, and end in an assumption of the executive power, only to be removed by a revolution of the Government."

Mr. Sedgwick, in the same debate, referring to the proposition that a head of department should only be removed or suspended by the concurrence of the Senate, uses this language:

"But if proof be necessary, what is then the consequence? Why, in nine cases out of ten, where the case is very clear to the mind of the President that the man ought to be removed, the effect can not be produced, because it is absolutely impossible to produce the necessary evidence. Are the Senate to proceed withou

evidence? Some gentleman contend not. Then the object will be lost. Shall a man, under these circumstances, be saddled upon the President, who has been appointed for no other purpose but to aid the President in performing certain duties? Shall he be continued, I ask again, against the will of the President? If he is, where is the responsibility? Are you to look for it in the President, who has no control over the officer, no power to remove him if he acts unfeelingly or unfaithfully? Without you make him responsible, you weaken and destroy the strength and beauty of your system. What is to be done in cases which can only be known from a long acquaintance with the conduct of an officer?"

I have indulged the hope that upon the assembling of Congress Mr. Stanton would have ended this unpleasant complication according to the intimation given in his note of August 12. The duty which I have felt myself called upon to perform was by no means agreeable, but I feel that I am not responsible for the controversy or for the consequences.

Unpleasant as this necessary change in my Cabinet has been to me, upon personal considerations, I have the consolation to be assured that, so far as the public interests are involved, there is no cause for regret. Salutary reforms have been introduced by the Secretary ad interim, and great reductions of expenses have been effected under his administration of its War Department to the saving of millions to the Treasury.

ANDREW JOHNSON.

WASHINGTON, *December 12, 1867.*

EXHIBIT C.

Address to the President by Hon. Reverdy Johnson, August 18, 1868.

Mr. PRESIDENT: We are before you as a committee of the Union national convention, which met in Philadelphia on Tuesday, the 14th instant, charged with the duty of presenting you with an authentic copy of its proceedings.

Before placing it in your hands, you will permit us to congratulate you that in the object for which the convention was called, in the enthusiasm with which in every State and Territory the call was responded to, in the unbroken harmony of its deliberations, in the unanimity with which the principles it has declared were adopted, and more especially in the patriotic and constitutional character of the principles themselves, we are confident that you and the country will find gratifying and cheering evidence that there exists among the people a public sentiment which renders an early and complete restoration of the Union as established by the Constitution certain and inevitable. Party faction, seeking the continuance of its misrule, may momentarily delay it, but the principles of political liberty, for which our fathers successfully contended, and to secure which they adopted the Constitution, are so glaringly inconsistent with the condition in which the country has been placed by such misrule that it will not be permitted a much longer duration.

We wish, Mr. President, you could have witnessed the spirit of concord and brotherly affection which animated every member of the convention. Great as your confidence has ever been in the intelligence and patriotism of your fellow-citizens, in their deep devotion to the Union and their present determination to reinstate and maintain it, that confidence would have become a positive conviction could you have seen and heard all that was done and said upon the occasion. Every heart was evidently full of joy, every eye beamed with patriotic animation; despondency gave place to the assurance that, our late dreadful civil strife ended, the blissful reign of peace, under the protection not of arms but of the Constitution and laws, would have sway and be in every part of our land, cheerfully acknowledged, and in perfect good faith obeyed. You would not have doubted that the recurrence of dangerous domestic insurrections in the future is not to be apprehended.

If you could have seen the men of Massachusetts and South Carolina coming into the convention on the first day of its meeting hand in hand, amid the rapturous applause of the whole body, awakened by heartfelt gratification at the event, filling the eyes of thousands with tears of joy, which they neither could not nor desired to repress, you would have felt, as every person present felt, that the time had arrived when all sectional or other perilous dissensions has ceased and that nothing should be heard in the future but the voice of harmony proclaiming

devotion to a common country, of pride in being bound together by a common union, existing and protected by forms of government proved by experience to be eminently fitted for the exigencies of either war or peace.

In the principles announced by the convention and in the feeling there manifested we have every assurance that harmony throughout our entire land will soon prevail. We know that, as in former days, as was eloquently declared by Webster, the Nation's most gifted statesman, Massachusetts and South Carolina went "shoulder to shoulder through the Revolution," and stood hand in hand "around the administration of Washington and felt his own great arm lean on them for support," so will they again, with like magnanimity, devotion, and power, stand round your administration and cause you to feel that you may also lean on them for support.

In the proceedings, Mr. President, which we are to place in your hands, you will find that the convention performed the grateful duty imposed upon them by their knowledge of your "devotion to the Constitution and laws and interests of your country," as illustrated by your entire presidential career, of declaring that in you they "recognize a Chief Magistrate worthy of the Nation and equal to the great crisis upon which your lot is cast"; and in this declaration it gives us marked pleasure to add we are confident that the convention has but spoken the intelligent and patriotic sentiment of the country. Ever inaccessible to the low influences which often control the mere partisan, governed alone by an honest opinion of constitutional obligations and rights, and of the duty of looking solely to the true interests, safety, and honor of the Nation, such a class is incapable of resorting to any bait for popularity at the expense of the public good.

In the measures which you have adopted for the restoration of the Union the convention saw only a continuance of the policy which for the same purpose was inaugurated by your immediate predecessor. In his reelection by the people, after that policy had been fully indicated and had been made one of the issues of the contest, those of his political friends who are now assailing you for sternly pursuing it are forgetful or regardless of the opinions which their support of his reelection necessarily involved. Being upon the same ticket with that much-lamented public servant, whose foul assassination touched the heart of the civilized world with grief and horror, you would have been false to obvious duty if you had not endeavored to carry out the same policy; and, judging now by the opposite one which Congress has pursued, its wisdom and patriotism are indicated by the fact that that of Congress has but continued a broken Union by keeping 10 of the States, in which at one time the insurrection existed (as far as they could accomplish it), in the condition of subjugated provinces, denying to them the right to be represented, with subjecting their people to every species of legislation, including that of taxation. That such a state of things is at war with the very genius of our Government, inconsistent with every idea of political freedom, and most perilous to the peace and safety of the country, no reflecting man fail to believe.

We hope, sir, that the proceedings of the convention will cause you to adhere, if possible, with even greater firmness to the course which you are pursuing, by satisfying you that the people are with you, and that the wish which lies nearest to their heart is that a perfect restoration of our Union at the earliest moment be attained, and a conviction that the result can only be accomplished by the measures which you are pursuing. And in the discharge of the duties which these impose upon you, we, as did every member of the convention, again for ourselves individually tender to you our profound respect and assurance of our cordial and sincere support.

With a reunited Union, with no foot but that of a freeman treading or permitted to tread our soil, with a nation's faith pledged forever to a strict observance of all its obligations, with kindness and fraternal love everywhere prevailing, the desolations of war will soon be removed; its sacrifices of life, sad as they have been, will, with Christian resignation, be referred to a providential purpose of fixing our beloved country on a firm and enduring basis, which will forever place our liberty and happiness beyond the reach of human peril. Then, too, and forever, will our Government challenge the admiration and receive the respect of the nations of the world, and be in no danger of any efforts to impeach our honor.

And permit me, sir, in conclusion, to add that, great as your solicitude for the restoration of our domestic peace and your labors to that end, you have also a watchful eye to the rights of the Nation, and that any attempt by an

assumed or actual foreign power to enforce an illegal blockade against the Government or citizens of the United States, to use your own mild but expressive words, "will be disallowed." In this determination I am sure you will receive the unanimous approval of your fellow citizens.

Now, sir, as the chairman of this committee, and in behalf of the convention, I have the honor to present you with an authentic copy of its proceedings.

The reading of the answer of the respondent having been concluded,

The Chief Justice submitted the question to the Senate, Shall the answer of the respondent as read by his counsel be received and filed? and

It was determined in the affirmative.

Mr. Boutwell, on the part of the managers, submitted the following motion; which was considered and agreed to:

Ordered, That the managers have time to consult the House of Representatives on a replication, and that they be furnished with a copy of the answer of the respondent; and

Ordered, That the Secretary communicate to the House of Representatives an attested copy of the answer of the President to the articles of impeachment, together with a copy of the foregoing order.

Mr. Evarts, in behalf of the respondent, submitted the following motion:

To the Senate of the United States, sitting as a court of impeachment:

And now, on this 23d day of March, in the year 1868, the counsel for the President of the United States, upon reading and filing his answer to the articles of impeachment exhibited against him, respectfully represent to the honorable court that after the replication shall have been filed to the said answer the due and proper preparation of and for the trial of the cause will require, in the opinion and judgment of such counsel, that a period of not less than 30 days should be allowed to the President of the United States and his counsel for such preparation and before the said trial should proceed.

HENRY STANBERY,
B. R. CURTIS,
THOMAS A. R. NELSON,
WM. M. EVARTS,
W. S. GROESBECK,
Of Counsel.

After argument by the counsel for the President in favor of said order, and by the managers of the impeachment against it,

Mr. Henderson submitted the following order:

Ordered, That the application of the counsel for the President to be allowed 30 days to prepare for the trial of the impeachment be postponed until after replication filed.

After argument by Mr. Butler on the part of the managers against the adoption of said order.

On the question to agree thereto,

It was determined in the negative— Yeas ---------- 25; Nays ---------- 28

On motion by Mr. Trumbull,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are:

Messrs. Anthony, Buckalew, Cattell, Cole, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Johnson, McCreery, Merrill of Maine, Norton, Patterson of Tennessee, Ross, Saulsbury, Sherman, Sprague, Trumbull, Van Winkle, Vickers.

Those who voted in the negative are:

Messrs. Bayard, Cameron, Chandler, Conkling, Conness, Corbett, Cragin, Davis, Drake, Ferry, Harlan, Howard, Howe, Morgan, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Raysey, Stewart, Sumner, Thayer, Tipton, Willey, Williams, Wilson, Yates.

So the order was not agreed to; and,

On the question to agree to the motion of counsel for the respondent to be allowed 30 days to prepare for trial after filing of replication by the managers,

It was determined in the negative	Yeas	12
	Nays	41

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Bayard, Buckalew, Davis, Dixon, Doolittle, Hendricks, Johnson, McCreery, Norton, Patterson of Tennessee, Saulsbury, Vickers.

Those who voted in the negative are,

Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Harlan, Henderson, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Trumbull, Van Winkle, Willey, Williams, Wilson, Yates.

So the motion was not agreed to.

Thereupon,

Mr. Evarts, in behalf of the respondent, submitted the following motion:

That there be allowed for the preparation of the President of the United States for the trial, after the replication shall be filed and before the trial shall be required to proceed, such reasonable time as shall now be fixed by the Senate.

Whereupon

Mr. Johnson submitted the following motion:

Ordered, That 10 days be allowed the President to prepare for trial after filing of the replication by the managers on the part of the House of Representatives.

On motion by Mr. Sherman,

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned to 1 o'clock p.m. to-morrow.

TUESDAY, MARCH 24, 1868.

The United States *v.* Andrew Johnson, President.

At 1 o'clock p.m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr.

Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence at the door of the Senate Chamber of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its Chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel of the President, to wit, Mr. Stanbery, Mr. Curtis, Mr. Nelson, Mr. Evarts, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Journal of proceedings of the Senate, sitting for the trial of the President upon articles of impeachment exhibited against him by the House of Representatives, of yesterday was read.

The following resolution, received from the House of Representatives, was then read:

Resolved, That a message be sent to the Senate by the Clerk of the House informing the Senate that the House of Representatives has adopted a replication to the answer of the President of the United States to the articles of impeachment exhibited against him, and that the same will be presented to the Senate by the managers on the part of the House.

The Chief Justice informed the managers that the Senate would hear the replication of the House of Representatives to the answer of the President of the United States to the articles of impeachment exhibited against him.

Thereupon

Mr. Boutwell, on the part of the managers, read the replication of the House of Representatives, as follows:

REPLICATION BY THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES TO THE ANSWER OF ANDREW JOHNSON, PRESIDENT OF THE UNITED STATES, TO THE ARTICLES OF IMPEACHMENT EXHIBITED AGAINST HIM BY THE HOUSE OF REPRESENTATIVES

The House of Representatives of the United States have considered the several answers of Andrew Johnson, President of the United States, to the several articles of impeachment against him by them exhibited in the name of themselves and of all the people of the United States, and reserving to themselves all advantage of exception to the insufficiency of his answer to each and all of the several articles of impeachment exhibited against said Andrew Johnson, President of the United States, do deny each and every averment in said several answers, or either of them, which denies or traverses the acts, intents, crimes, or misdemeanors charged against said Andrew Johnson in the said articles of impeachment, or either of them, and for replication to the said answer do say that said Andrew Johnson, President of the United States, is guilty of the high crimes and misdemeanors mentioned in said articles, and that the House of Representatives are ready to prove the same.

SCHUYLER COLFAX,
Speaker of the House of Representatives.
EDW'D MCPHERSON,
Clerk of the House of Representatives.

On motion by Mr. Johnson,

Ordered, That the Secretary of the Senate be directed to furnish the counsel of the President an authenticated copy of the replication of the House of Representatives to the answer of the President to the articles of impeachment exhibited against him by the House of Representatives.

The Chief Justice stated that at the adjournment yesterday of the Senate, sitting for the trial of the President upon articles of impeachment, the question before the Senate was the application of the counsel of the President for reasonable time to prepare for trial, and that the motion of the Senator from Maryland, Mr. Johnson, that 10 days be allowed the President to prepare for trial was the pending question.

The motion of Mr. Johnson, having been modified by him, was read, as follows:

Ordered, That the Senate proceed to the trial of the President upon the articles of impeachment exhibited against him at the expiration of 10 days from this day, unless for cause shown to the contrary.

On motion by Mr. Sumner to amend the motion of Mr. Johnson by striking out all after the word "Ordered" and in lieu thereof inserting: "Now that replication has been filed, the Senate, adhering to its rule already adopted, will proceed with the trial from day to day (Sundays excepted) unless otherwise ordered on reason shown,"

Mr. Edmunds moved that the Senate retire to its conference chamber to consider the question involved in the motion of Mr. Johnson and the amendment proposed by Mr. Sumner; and,

On the question to agree to the motion of Mr. Edmunds,

It was determined in the affirmative { Yeas 29 / Nays 23 }

On motion by Mr. Conkling,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Corbett, Davis, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Freylinghuysen, Grimes, Henderson, Hendricks, Howe, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Saulsbury, Sprague, Van Winkle, Vickers, Willey, Williams.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Cragin, Drake, Ferry, Harlan, Howard, Morgan, Nye, Pomeroy, Ramsey, Ross, Sherman, Stewart, Sumner, Thayer, Tipton, Trumbull, Wilson.

So the motion was agreed to; and

The Senate, with the Chief Justice, having retired to its conference chamber,

The Chief Justice stated the question to be on the amendment proposed by Mr. Sumner to the motion of Mr. Johnson.

Ordered, That the Senate will commence the trial of the President upon the articles of impeachment exhibited against him on Thursday, the 2d day of April next.

After debate,

On motion by Mr. Williams to amend the amendment proposed by Mr. Sumner to the motion of Mr. Johnson by striking out all after the word "that," in the first line, and in lieu thereof inserting: "the further consideration of the respondent's application for time be postponed until the managers have opened their case and submitted their evidence."

After further debate,

On motion by Mr. Conkling to amend the motion of Mr. Johnson by striking out the words "Thursday, the 2d day of April next," and in lieu thereof inserting "Monday the thirtieth of March instant,"

It was determined in the affirmative— Yeas 28, Nays 24

On motion by Mr. Sumner,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Cragin, Drake, Ferry, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Stewart, Sumner, Thayer, Tipton, Willey, Williams, Wilson.

Those who voted in the negative are,

Messrs. Anthony, Bayard, Buckalew, Corbett, Davis, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Johnson, McCreery, Norton, Patterson of Tennessee, Saulsbury, Sherman, Sprague, Trumbull, Van Winkle, Vickers.

So the amendment of Mr. Conkling to the motion of Mr. Johnson was agreed to.

The Chief Justice stated that the question now recurred upon the amendment proposed by Mr. Williams to the amendment of Mr. Sumner; and,

On the question to agree to the amendment of Mr. Williams,

It was determined in the negative— Yeas 9, Nays 42

On motion by Mr. Williams,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Chandler, Dixon, Grimes, Harlan, Howard, Morgan, Patterson of Tennessee, Williams.

Those who voted in the negative are,

Messrs. Bayard, Buckalew, Cameron, Cattell, Cole, Conkling, Conness, Cragin, Davis, Doolittle, Drake, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Henderson, Hendricks, Howe, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Morton, Norton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Saulsbury, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Trumbull, Van Winkle, Vickers, Willey, Wilson.

So the amendment of Mr. Williams to the amendment of Mr. Sumner was not agreed to; and

The question recurring on the amendment proposed by Mr. Sumner to the motion of Mr. Johnson.

Mr. Sumner asked, and obtained leave, to withdraw his amendment; and the same being withdrawn,

The Chief Justice then stated the question to be on the motion of Mr. Johnson, as amended on the motion of Mr. Conkling.

A motion was made by Mr. Hendricks to further amend the motion of Mr. Johnson by inserting at the end thereof the words, "unless for good cause shown"; which motion was modified at the suggestion of Mr. Drake, to read: At the end of the motion of Mr. Johnson insert the words, "and proceed therein with all convenient dispatch

under the rules of the Senate sitting upon the trial of an impeachment"; and

On the question to agree thereto,

It was determined in the affirmative; and

On the question to agree to the motion of Mr. Johnson, as amended,

It was determined in the affirmative.

So it was

Ordered, That the Senate will commence the trial of the President upon the articles of impeachment exhibited against him on Monday, the 30th of March instant, and proceed therein with all convenient dispatch under the rules of the Senate sitting upon the trial of an impeachment.

On motion by Mr. Morton,

The Senate then returned to its Chamber; and

The Chief Justice announced to the counsel for the President that the Senate had adopted an order in answer to their application, which would be read by the Secretary.

The Secretary then read the order, as follows:

Ordered, That the Senate will commence the trial of the President upon the articles of impeachment exhibited against him on Monday, the 30th of March instant, and proceed therein with all convenient dispatch under the rules of the Senate sitting upon the trial of an impeachment.

The Chief Justice then inquired of the managers if they had anything further to propose.

Mr. Bingham, on the part of the managers, replying in the negative,

The Chief Justice inquired of the counsel for the President if they had anything further to propose; and

The counsel for the President replying in the negative,

On motion by Mr. Wilson,

The Senate sitting for the trial of the President upon articles of impeachment adjourned to Monday, the 30th March instant, at 12 o'clock and 30 minutes p.m.

MONDAY, MARCH 30, 1868

The United States *v.* Andrew Johnson, President.

At half past 12 o'clock p.m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence at the door of the Senate Chamber of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel of the president, to wit: Mr. Stanbery, Mr. Curtis, Mr. Nelson, Mr. Evarts, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Journal of proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of March 24 was read.

The Chief Justice then informed the managers that they could now proceed in the trial of the impeachment.

Whereupon,

Mr. Butler, on the part of the managers, addressed the Senate in support of the articles of impeachment exhibited by the House of Representatives against the President; and having proceeded in his argument until 5 minutes before 3 o'clock p.m.

On motion by Mr. Wilson,

The Senate took a recess for 10 minutes.

After which,

Mr. Butler resumed his argument; and having concluded the same,

Mr. Bingham, on behalf of the managers, announced that the managers were ready to proceed with the testimony to make good the articles of impeachment exhibited by the House of Representatives against Andrew Johnson, and that Mr. Wilson, one of the managers would present the evidence on the part of the House of Representatives.

Mr. Wilson on the part of the managers, then offered the following documentary evidence; which he read and laid upon the desk of the Secretary:

First. A copy of the oath of office taken and subscribed by Andrew Johnson upon assuming the duties and position of President of the United States, certified by F. W. Seward, Acting Secretary of State.

Second. A copy of the message of Abraham Lincoln, President of the United States, dated January 13, 1862, nominating Edwin M. Stanton, of Pennsylvania, to be Secretary of War, and the resolution of the Senate advising and consenting to the appointment of Edwin M. Stanton to be Secretary of War, certified to by the Secretary of the Senate.

Third. A copy of the message of Andrew Johnson, President of the United States, to the Senate of the United States, informing the Senate that he had suspended Edwin M. Stanton from the office of Secretary of War and appointed Gen. Grant Secretary of War ad interim.

While Mr. Wilson was about to present further documentary evidence on the part of the House of Representatives,

On motion by Mr. Sherman,

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned.

TUESDAY, MARCH 31, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Boutwell,

Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence at the door of the Senate Chamber of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its chairman, Mr. Elihu B. Washburne, and accompanied by the Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel of the President, to wit: Mr. Stanbery, Mr. Curtis, Mr. Nelson, Mr. Evarts, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Journal of the proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of yesterday was read.

Mr. Wilson, on the part of the managers, presented further documentary evidence in support of the articles of impeachment, as follows:

First. A copy of the resolution of the Senate of the 13th of January disapproving the suspension of Edwin M. Stanton from the office of Secretary of War, and the order of the Senate directing the Secretary to communicate an authenticated copy thereof to the President of the United States and to the Secretary of War ad interim.

Second. A copy of the message of the President of the United States of the 21st of February, 1868, communicating to the Senate the removal of Edwin M. Stanton from the office of Secretary of War, and the appointment of Lorenzo Thomas, Adjutant General of the Army, to act as Secretary of War ad interim, together with copies of the letters addressed by the President to those officers relative thereto.

Third. A copy of the resolution of the Senate of the 21st of February, 1868, declaring that, under the Constitution and laws of the United States, the President had no power to remove Edwin M. Stanton from the office of Secretary of War and designate another person to perform the duties of that office ad interim, and the order of the Senate directing the Secretary to communicate copies thereof to the President of the United States, to the Secretary of War, and to the Adjutant General of the Army.

Fourth. A copy of the commission issued to Edwin M. Stanton, as Secretary of war, by Abraham Lincoln, President of the United States.

Fifth. A certified copy of the resolution of the Senate of January 13, 1868, disapproving the suspension of Edwin M. Stanton as Secretary of War, and also a certified copy of the resolution of the Senate of February 21, 1868, declaring that the President had no power, under the Constitution and laws, to remove the Secretary of War and appoint any other officer to perform the duties of that office.

The managers then requested that the witnesses on the part of the United States be called.

William J. McDonald, a witness on the part of the United States, was then called; and being duly sworn by the Secretary, was examined by the managers.

Mr. Wilson, on the part of the managers, then offered in evidence an attested copy of the resolution of the Senate of February 21, 1868, declaring that under the Constitution and laws the President had no power to remove the Secretary of War and designate any other officer to perform the duties of that office ad interim.

John W. Jones, a witness on the part of the United States, was then called; and being duly sworn, was examined by the managers.

Charles E. Creecy, a witness on the part of the United States, was then called; and being duly sworn, was examined by the managers and cross-examined by the counsel for the President.

Burt Van Horn, a witness on the part of the United States, was called; and being duly sworn, was examined by the managers and cross-examined by the counsel for the President.

Burt Van Horn, a witness on the part of the United States, was called; and being duly sworn, was examined by the managers and cross-examined by the counsel for the President.

James K. Moorehead, a witness on the part of the United States, was called; and being duly sworn, was examined by the managers and cross-examined by the counsel for the President.

Walter A. Burleigh, a witness on the part of the United States, was next called; and being duly sworn, and while under examination, a question was propounded to him by Mr. Butler, on the part of the managers.

Mr. Evarts, of counsel for the President, objected to the question.

The Chief Justice expressed the opinion that the testimony was competent, and that it should be heard, unless the Senate should decide otherwise.

Mr. Drake raised the question of order that the Chief Justice was not authorized by the rules of the Senate, sitting for the trial of an impeachment, to decide questions of that character, but that they should be submitted to the Senate for decision.

The Chief Justice stated that in his judgment it was his duty to state his opinion on questions of evidence in the first instance, subject to the decision of the Senate upon the question by vote upon the demand of any Senator.

From this decision of the Chief Justice Mr. Drake appealed to the Senate and was proceeding in remarks on the question when he was called to order by Mr. Johnson.

Mr. Butler on the part of the managers, inquired of the Chief Justice if the question was subject to debate.

The Chief Justice decided it to be debatable by the managers on the part of the House and by the counsel for the President, but not by Senators.

After argument by the managers,

The Chief Justice stated that Mr. Butler, on the part of the managers, had propounded a question to the witness which was objected to by Mr. Stanbery, of counsel for the respondent; that the Chief Justice had ruled that the testimony was competent and overruled the objections raised by the counsel for the President, subject to the decision of the Senate, if demanded by any Senator.

From this decision of the Chief Justice the Senator from Missouri, Mr. Drake, had appealed to the Senate, and that the question before the Senate was:

Shall the decision of the Chief Justice, as to his right and duty in ruling, preliminarily, a question of evidence, stand as the judgment of the Senate?

Mr. Sherman submitted the following question:

I ask the managers what are the precedents in cases of impeachment in the United States upon this point?

Did the Vice President, as presiding officer, decide preliminary questions, or did he submit them in the first instance to the Senate?

Mr. Wilson moved that the Senate retire to their conference chamber to consider the ruling of the Chief Justice and the appeal taken therefrom by Mr. Drake; and

The question being put,

The yeas were 25 and the nays were 25.

On motion by Mr. Thayer,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Buckalew, Cole, Conness, Corbett, Davis, Dixon, Edmunds, Fowler, Grimes, Hendricks, Howe, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ross, Vickers, Williams, Wilson.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Conkling, Cragin, Doolittle, Drake, Ferry, Fessenden, Frelinghuysen, Henderson, Howard, Morgan, Nye, Ramsey, Saulsbury, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Trumbull, Van Winkle, Willey.

The Senate being equally divided,

The Chief Justice voted in the affirmative; and

The Senate accordingly retired to their conference room; and

The Chief Justice having again stated the question before the Senate for decision,

Mr. Sherman submitted the following order for consideration:

Ordered, That under the rules and in accordance with the precedents in the United States, in cases of impeachment, all questions, other than those of order, should be submitted to the Senate.

Mr. Henderson moved that the further consideration of the question on the appeal taken by Mr. Drake from the decision of the Chair, for the purpose of enabling him to move an amendment to the rules of the Senate sitting for the trial of impeachments, be postponed; and

The question being put,

It was determined to be in the affirmative---{Yeas ---------- 32 / Nays ---------- 18}

On motion by Mr. Conness,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Cameron, Cattell, Cole, Corbett, Cragin, Davis, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Frelinghuysen, Henderson, Hendricks, Johnson, McCreery, Morrill of Vermont, Norton, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ross, Saulsbury, Sprague, Trumbull, Van Winkle, Vickers, Willey, Williams.

Those who voted in the negative are,

Messrs. Chandler, Conkling, Conness, Drake, Ferry, Howard, Howe, Morgan, Morrill of Maine, Morton, Nye, Ramsey, Sherman, Stewart, Sumner, Thayer, Tipton, Wilson.

So the question on the appeal was postponed, and

Thereupon,

Mr. Henderson submitted the following resolution for consideration:

Resolved, That the seventh rule of the Senate, sitting for the trial of impeachments, be amended to read as follows:

"VII. The presiding officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the presiding officer on the trial shall direct all the forms of proceeding while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the presiding officer on the trial may rule all questions of evidence and incidental questions, while ruling shall stand as the judgment of the Senate, unless some Member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision: or he may, at his option, in the first instance, submit any such question to a vote of the Members of the Senate."

After debate,

On motion by Mr. Morrill of Maine to amend the resolution submitted by Mr. Henderson by striking out the words "which ruling shall stand as the judgment of the Senate."

It was determined in the negative.

On motion by Mr. Sumner to amend the resolution submitted by Mr. Henderson by inserting at the end thereof the following:

That the Chief Justice, presiding in the Senate on the trial of the President of the United States, is not a Member of the Senate, and has no authority under the Constitution to vote on any question during the trial; and he can pronounce decisions only as the organ of the Senate and with its assent;

After debate,

It was determined in the negative— Yeas 22, Nays 26

On motion by Mr. Sumner,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Cameron, Cattell, Chandler, Conkling, Coneess, Corbett, Cragin, Drake, Howard, Morgan, Morrill of Maine, Morton, Nye, Pomeroy, Ramsey, Stewart, Sumner, Thayer, Tipton, Trumbull, Williams, Wilson.

Those who voted in the negative are,

Messrs. Bayard, Buckalew, Cole, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Henderson, Hendricks, Howe, Johnson, McCreery, Morrill of Vermont, Norton, Patterson of New Hampshire, Patterson of Tennesee, Ross, Sherman, Sprague, Van Winkle, Vickers, Willey.

So the amendment of Mr. Sumner was not agreed to.

On motion by Mr. Drake to amend the resolution submitted by Mr. Henderson by striking out all after the the word "follows" and inserting:

It is the judgment of the Senate that under the Constitution the Chief Justice, presiding over the Senate in the pending trial, has no privilege of ruling questions of law arising therein, but that all such questions should be submitted to and decided by the Senate alone;

After debate,

It was determined in the negative— Yeas 20, Nays 30

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Drake, Ferry, Howard, Howe, Morgan, Morrill of Maine Morton, Nye, Ramsey, Stewart, Sumner, Thayer, Tipton, Wilson.

Those who voted in the negative are,

Messrs. Anthony, Bayard, Buckalew, Corbett, Cragin, Davis, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Frelinghuysen, Henderson, Hendricks, Johnson, McCreery, Morrill of Vermont, Norton, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ross, Saulsbury, Sherman, Sprague, Trumbull, Van Winkle, Vickers, Willey, Williams.

So the amendment of Mr. Drake was not agreed to; and

On the question to agree to the resolution submitted by Mr. Henderson,

It was determined in the affirmative--{Yeas---------- 31
{Nays---------- 19

On motion by Mr. Ferry,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Cameron, Corbett, Cragin, Davis, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Frelinghuysen, Henderson, Hendricks, Johnson, McCreery, Morrill of Vermont, Norton, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ross, Saulsbury, Sherman, Sprague, Trumbull, Van Winkle, Vickers, Willey, Williams.

Those who voted in the negative are,

Messrs. Cattell, Chandler, Cole, Conkling, Conness, Drake, Ferry, Howard, Howe, Morgan, Morrill of Maine, Morton, Nye, Ramsey, Stewart, Sumner, Thayer, Tipton, Wilson.

So the resolution of Mr. Henderson was agreed to, and the seventh rule amended to read as follows:

VII. The Presiding Officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the presiding officer on the trial shall direct all the forms of proceeding while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the presiding officer on the trial may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some Member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may, at his option, in the first instance, submit any such question to a vote of the Members of the Senate.

On motion of Mr. Sumner to further amend the rules of the Senate sitting for the trial of impeachments, by inserting after Rule VII the following as an additional rule:

That the Chief Justice, presiding in the Senate on the trial of the President of the United States, is not a Member of the Senate, and has no authority under the Constitution to vote on any question during the trial.

Mr. Hendricks raised the question of order, that as the proposed amendment did not relate to the question which the Senate had retired to their conference room to deliberate upon, it was not in order.

On motion by Mr. Hendricks,

The Senate returned to its Chamber; and

The Chief Justice stated that the Senate had considered the questions before it at the time of retiring to their conference chamber, and had adopted the following rule:

The Secretary read the rule, as follows:

VII. The Presiding Officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the presiding officer on the trial shall direct all the forms of proceeding while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the presiding officer on the trial may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some Member of the Senate shall ask that a formal vote be taken thereupon, in which case it shall be submitted to the Senate for decision; or he may, at his option, in the first instance, submit any such question to a vote of the Members of the Senate.

On motion by Mr. Williams,

Ordered, That the rules, as amended, be printed.

On motion by Mr. Trumbull, at 20 minutes after 6 o'clock p.m., the Senate, sitting for the trial of the President upon articles of impeachment, adjourned.

WEDNESDAY, APRIL 1, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence at the door of the Senate Chamber of the House of Representatives; and

The House of Representatives, as in Committee of the Whole, preceded by its Chairman, Mr. Elihu B. Washburn, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Stanbery, Mr. Curtis, Mr. Nelson, Mr. Evarts, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The journal of proceedings of the Senate, sitting for the trial of the President upon articles of impeachment of yesterday, having been read,

Mr. Sumner submitted the following motion for consideration:

It appearing from the reading of the Journal of yesterday that, on a question where the Senate were equally divided, the Chief Justice, presiding on the trial of the President, gave a casting vote, it is hereby declared that, in the judgment of the Senate, such vote was without authority under the Constitution of the United States.

The Senate proceeded to consider the said motion; and

On the question to agree thereto,

It was determined in the negative--{Yeas ---------- 21
Nays ---------- 27

On motion by Mr. Sumner,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are.

Messrs. Cameron, Chandler, Cole, Conkling, Conness, Cragin, Drake, Howard, Howe, Morgan, Morrill of Maine, Morton, Pomeroy, Ramsey, Stewart, Sumner, Thayer, Tipton, Trumbull, Williams, Wilson.

Those who voted in the negative are,

Messrs. Anthony, Bayard, Buckalew, Corbett, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Johnson, McCreey, Morrill of Vermont, Norton, Patterson of New Hampshire, Patterson of Tennessee, Ross, Sherman, Sprague, Van Winkle, Vickers, Willey.

So the motion of Mr. Sumner was not agreed to.

The Chief Justice then stated that when the court adjourned yesterday the question before it was whether a question propounded by the managers to the witness then under examination (Walter A. Burleigh) and objected to by the counsel for the President, should be put, and requested the managers to reduce their question to writing:

Whereupon,

Mr. Butler, on the part of the managers, having reduced the question to writing, it was read by the Secretary, as follows:

You said yesterday, in answer to my question, that you had a conversation with Gen. Lorenzo Thomas on the evening of February 21 last. State if he said anything as to the means by which he intended to obtain, or was directed by the President to obtain, possession of the War Department. If so, state all he said as nearly as you can.

Mr. Frelinghuysen submitted the following question to the managers:

Do the managers intend to connect the conversation between the witness and Gen. Thomas with the respondent?

To which question Mr. Butler, on behalf of the managers, responded that they did propose so to connect the question.

After argument by the counsel for the President in support of the objection raised by them to the question, and by the managers in favor of the question propounded by them to the witness,

Mr. Johnson submitted the following question to the managers:

The honorable managers are requested to say whether evidence hereafter will be produced to show—

First. That the President, before the time when the declarations of Thomas, which they propose to prove, were made, authorized him to obtain possession of the office by force, or threats, or intimidations, if necessary; and

Second. If not, that he, the President, had knowledge of such declarations had been made and approved of them.

To which question Mr. Bingham, on behalf of the managers, responded that they did not deem it their duty, being so general in its terms, to make answer.

After further argument by Mr. Bingham and Mr. Butler, on the part of the managers,

The Chief Justice submitted the question to the Senate, Shall the question proposed by the managers be put to the witness? and

It was determined in the affirmative { Yeas 39 / Nays 11 }

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampsire, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Trumbull, Van Winkle, Williams, Wilson.

Those who voted in the negative are,

Messrs. Bayard, Buckalew, Davis, Dixon, Doolittle, Hendricks, Johnson, McCrerry, Norton, Patterson of Tennessee, Vickers.

So the objection of the counsel for the President was overruled; and the witness having been again placed upon the stand, the question proposed by the managers was put to him.

The witness having answered the question, and while under further examination, Mr. Manager Butler proposed the following question:

Shortly before this conversation about which you have testified, and after the President restored Maj. Gen. Thomas to the office of Adjutant General, if you know the fact that he was so restored, were you present in the War Department, and did you hear Thomas make any statements to the officers and clerks, or either of them, belonging to the War Office, as to the rules and orders of Mr. Stanton or of the office which he, Thomas, would revoke, relax, or rescind in favor of such officers and employees when he had control of the affairs therein? If so, state when it was such conversation, as near as you can, occurred; and state all he said, as nearly as you can.

The question being objected to by the counsel for the President.

The Chief Justice stated that, in his opinion, no sufficient foundation has been laid for the introduction of the testimony offered, and that the question was, therefore, inadmissible. He then inquired if any Senator desired that the question should be submitted to the Senate.

Thereupon,

Mr. Howard desired that the question be submitted to the Senate; and

The question was then submitted by the Chief Justice to the Senate. Shall the question proposed by the managers be put to the witness? and

It was determined in the affirmative { Yeas 28 / Nays 22 }

On motion by Mr. Howard,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are,

Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Coukling, Conness, Corbett, Cragin, Drake, Henderson, Howard, Howe, Morgan, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sprague, Stewart, Sumner, Thayer, Tipton, Trumbull, Wilson.

Those who voted in the negative are,

Messrs. Bayard, Buckalew, Davis, Dixon, Doolittle, Edmonds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Hendricks, Johnson, McCreery, Morrill of Maine, Norton, Patterson of Tennessee, Sherman, Van Winkle, Vickers, Wiley, Williams.

So the objection of the counsel for the President was overruled, and the question was put to the witness.

After further examination of the witness,

Mr. Manager Butler propounded to him the following question:

Have you had any conversation since the first one, and since his appointment as Secretary of War ad interim, with Thomas, wherein he has said anything about using force in getting into the War Office, or in any way or manner reasserting the former conversation? And if so, state what he said.

The counsel for the President objecting to the question,

The Chief Justice, in accordance with previous ruling of the Senate, overruled the objection and directed that the question be put to the witness; and

After further examination by the managers and cross-examination by the counsel for the President, the witness was dismissed.

Samuel Wilkeson, a witness on the part of the United States, was then called, and being sworn, was examined by the managers and cross-examined by the counsel for the President.

George W. Karsner, a witness on the part of the United States, was next called, and being duly sworn, was examined by the managers and cross-examined by the counsel for the President; and,

On motion by Mr. Doolittle, at 10 minutes past 5 o'clock p.m., the Senate, sitting for the trial of the President upon articles of impeachment, adjourned.

THURSDAY, APRIL 2, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence, at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Stanbery, Mr. Curtis, Mr. Nelson, Mr. Evarts, and Mr. Grosbeck, appeared at the bar of the Senate and took the seats assigned them.

The journal of proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of yesterday was read.

Mr. Drake submitted the following, as an amendment to the rules of the Senate sitting on the trial of impeachment, for consideration, viz:

Amend Rule VII by inserting at the end thereof the following: "Upon all such questions the vote shall be without a division, unless the yeas and nays be demanded by one-fifth of the members present, or requested by the presiding officer, when the same shall be taken."

The Chief Justice requested the managers on the part of the House of Representatives to proceed with their evidence.

At the request of the counsel for the President,

George W. Karsner, a witness on the part of the United States, was recalled and cross-examined by the counsel for the President.

Thomas W. Ferry, a witness on the part of the United States, was called; and being duly sworn, was examined by the managers and cross-examined by the counsel for the President.

William H. Emory, a witness on the part of the United States, was next called; and being duly sworn, was examined by the managers and cross-examined by the counsel for the President.

Mr. Wilson, on the part of the managers, presented the following documentary evidence in support of the articles of impeachment; which, having been read, was admitted:

1. A copy of the commission of William H. Emory as major general by brevet in the Army of the United States; and a copy of the order of the General of the Army assigning him to the command of the Department of Washington.

2. Letters of the President of the United States, addressed to the General of the Army, expressing his desire that Bvt. Maj. Gen. Lorenzo Thomas resume his duties as Adjutant General of the Army.

3. Letter of the General of the Army to the President of the United States requesting him to give in writing his verbal order of the 19th of January, 1868, to disregard the orders of Edwin M. Stanton as Secretary of War, unless specially otherwise directed by the Executive, together with the indorsement of the President thereon giving the order desired.

Mr. Wilson then proposed to offer in evidence a letter of the President of the United States, dated the 10th of February, 1868, and addressed to the General of the Army, in reply to a letter of the latter of the 3d of February, 1868, relative to his withdrawal from the office of Secretary of War ad interim.

The counsel for the President objecting to the letter of the President of the 10th of February, 1868, being admitted as evidence unless the letters therein referred to be also produced,

The Chief Justice directed the counsel for the President to reduce their objection to writing.

Thereupon,

The counsel for the President submitted their objection, as follows:

The counsel of the President object that the letter is not evidence in the case unless the honorable managers shall also read the inclosures therein referred to, and by the letter made part of the same.

After argument by the managers against the objection of the counsel for the respondent, and by the counsel in support of their objection,

Mr. Conkling submitted the following question to the counsel for the President:

The counsel for the respondent will please read the words in the letter relied upon touching inclosures; and

The counsel for the President having read the portion of the letter as requested,

The Chief Justice submitted the question to the Senate, Shall the objection of the counsel for the President to the evidence proposed to be offered be sustained?

It was determined in the negative— Yeas ---------- 20; Nays ---------- 29

On motion by Mr. Conness,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Bayard, Conkling, Davis, Dixon, Doolittle, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Vermont, Norton, Patterson of Tennessee, Ross, Sprague, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are,

Messrs. Anthony, Buckalew, Cameron, Cattell, Chandler, Cole, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Fessenden, Frelinghuysen, Howard, Howe, Morgan, Morrill of Maine, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Sumner, Thayer, Tipton, Williams, Wilson.

So the objection of the counsel for the respondent was overruled; and it was decided by the Senate that the evidence be admitted.

Mr. Wilson, on the part of the managers, then offered in further evidence the following; which was read and admitted:

1. A copy of a letter from the President to Bvt. Maj. Gen. Lorenzo Thomas, stating that Hon. Edwin M. Stanton having been removed from the office as Secretary of War, he authorized and empowered him to act as Secretary of War ad interim.

2. A copy of a letter from the President to Hon. Edwin M. Stanton, removing him from the office of Secretary of War, and directing him to transfer to Bvt. Maj. Gen. Lorenzo Thomas all records, books, papers, and other public property.

3. An official copy of General Orders, No. 17, dated War Department, Adjutant General's Office, Washington, March 14, 1867.

George W. Wallace, a witness on the part of the United States, was then called; and being duly sworn, was examined by the managers.

On motion by Mr. Drake, at half past 2 o'clock p.m., the Senate took a recess for 10 minutes; at the expiration of which

Mr. Wilson, on behalf of the managers, offered in evidence an order of Gen. Grant, dated February 14, 1868, directing Gen. Lorenzo Thomas to resume his duties as Adjutant General of Army.

William E. Chandler, a witness on the part of the United States, was then called and sworn; and while under examination by the managers touching the appointment of Edmund Cooper as Assistant Secretary of the Treasury,

The counsel for the President requested the managers to state what they proposed to prove by the witness, and objected to his testimony; and,

After argument by the managers and by the counsel for the President,

Mr. Butler, on behalf of the managers, submitted the following:

We offer to prove that after the President had determined on the removal of Mr. Stanton, Secretary of War, in spite of the action of the Senate, there being no vacancy in the office of Assistant Secretary of the Treasury, the President unlawfully appointed his friend and theretofore private secretary, Edmund Cooper, to that position, as one of the means by which he intended to defeat the tenure-of-civil-office act, and other laws of Congress.

Mr. Evarts, on the part of the counsel for the President, objected to the evidence as not relevant to any of the articles of impeachment against the President.

Mr. Sherman submitted the following question to the managers:

Will the managers read the particular clauses of the eighth and eleventh articles, to prove which this testimony is offered?

Whereupon,

Mr. Butler, on the part of the managers, read portions of the eighth and eleventh articles of impeachment, to prove which the testimony was offered.

Mr. Johnson submitted the following question to the managers:

The managers are requested to say whether they propose to show that Cooper was appointed by the President in November, 1867, as a means to obtain the unlawful possession of the public money other than by the appointment itself.

To which question Mr. Butler responded that the managers proposed to show that the President appointed Mr. Cooper, and that he entered upon the duties of Assistant Secretary before his appointment could be legal; and to show that he had been controlling other public moneys since.

Mr. Cameron proposed the following interrogatory to the witness:

Can the Assistant Secretary of the Treasury, under the law, draw warrants for the payment of money by the Treasurer without the direction of the Secretary of the Treasury?

The witness having made answer,

Mr. Fessenden proposed the following interrogatories to the witness:

Has it been the practice, since the passage of the law, for an Assistant Secretary to sign warrants unless specially appointed and authorized by the Secretary of the Treasury?

Has any Assistant Secretary been authorized to sign any warrants except such as are specified in the act?

The witness having made answer,

The Chief Justice submitted the question to the Senate:

Shall the evidence proposed to be offered on the part of the managers be admitted?

It was determined in the negative— Yeas ---------- 22; Nays ---------- 27

On motion by Mr. Howard,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Corbett, Cragin, Drake, Howard, Howe, Morgan, Morrill of Vermont, Nye, Pomeroy, Ramsey, Ross, Sprague, Sumner, Thayer, Tipton, Wilson.

Those who voted in the negative are,

Messrs. Bayard, Buskalew, Conness, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Maine, Norton, Patterson of New Hampshire, Patterson of Tennessee, Sherman, Stewart, Trumbull, Van Winkle, Vickers, Willey, Williams.

So the Senate decided that the evidence proposed to be offered by the managers be not admitted.

Charles A. Tinker, a witness on the part of the United States, was then called and sworn; and while undergoing examination by Mr. Butler, on the part of the managers,

The counsel for the President objected to the testimony as not being relevant to any of the articles of impeachment against the President.

Thereupon,

Mr. Butler, on behalf of the managers, submitted the following:

The managers offer, in support of the several accusations of the House of Representatives, the telegraphic messages of Lewis E. Parsons and Andrew Johnson in answer thereto, in the words and figures following, that is to say:

MONTGOMERY, ALA., *January 17, 1867.*

His Excellency ANDREW JOHNSON, *President:*

Legislature in session. Efforts making to reconsider vote constitutional amendment. Reports from Washington say it is probable an enabling act will pass. We do not know what to believe. I find nothing here.

LEWIS E. PARSONS, *Exchange Hotel.*

[By United States Military Telegraph.]

EXECUTIVE OFFICE,
Washington, D.C., January 17, 1867.

To Hon. LEWIS E. PARSONS, *Montgomery, Ala.:*

What possible good can be attained by reconsidering the constitutional amendment? I know of none in the present posture of affairs; I do not believe that the people of the whole country will sustain any set of individuals in attempts to change the whole character of our Government by enabling acts or otherwise. I believe, on the contrary, that they will eventually uphold all who have patriotism and courage to stand by the Constitution and who place their confidence in the people. There should be no faltering on the part of those who are honest in their determination to sustain the several coordinate departments of the Government in accordance with its original design.

ANDREW JOHNSON.

Mr. Howard submitted the following question to the managers:

What amendment of the Constitution is referred to in Mr. Parson's dispatch?

To which Mr. Butler answered:

The amendment commonly known as the fourteenth article of the Constitution.

The Chief Justice then submitted the question to the Senate,

Shall the evidence proposed to be offered on the part of the managers be admitted?

It was determined in the affirmative.....{Nays 17
Yeas 27

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Henderson, Howard, Morgan, Morrill of Vermont, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Willey, Wilson.

Those who voted in the negative are,

Messrs. Buckalew, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, McCreery, Morrill of Maine, Norton, Patterson of Tennessee, Trumbull, Van Winkle, Vickers, Williams.

So the Senate decided that the evidence proposed to be offered by the managers be admitted.

On motion by Mr. Doolittle, at 5 o'clock p.m., that the Senate, sitting on the trial of the President upon articles of impeachment, adjourn,

The yeas were 22 and the nays were 22.

On motion by Mr. Conness,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Buckalew, Cameron, Corbett, Cragin, Davis, Dixon, Doolittle, Fowler, Frelinghuysen, Henderson, McCreery, Morrill of Vermont, Norton, Patterson of Tennessee, Ramsey, Sprague, Tipton, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are,

Messrs, Cattell, Chandler, Cole, Conkling, Conness, Drake, Edmunds, Fessenden, Howard, Howe, Morgan, Morrill of Maine, Nye, Patterson of New Hampshire, Pomeroy, Ross, Sherman, Stewart, Sumner, Thayer, Williams, Wilson.

The Senate being equally divided,

The Chief Justice voted in the affirmative,

So the motion of Mr. Doolittle was agreed to; and

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned until 12 o'clock m. to-morrow.

FRIDAY, APRIL 3, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence at the door of the Senate Chamber of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its chairman, Mr. Ellihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Stanberry, Mr. Curtis, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Journal of proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of yesterday was read.

On motion by Mr. Drake,

The Senate proceeded to consider the amendment submitted by him yesterday to the rules of the Senate sitting for the trial of impeachment; and

The amendment, having been modified by Mr. Drake, was agreed to, as follows, viz:

Insert at the end of rule 7 the following: "Upon all such questions the vote shall be without a division, unless the yeas and nays be demanded by one-fifth of the members present, when the same shall be taken."

On motion by Mr. Drake,

Ordered, That the rules, as amended, be printed.

The Chief Justice requested the managers on the part of the House of Representatives to proceed with their evidence.

Mr. Manager Butler submitted, as further evidence in support of the articles of impeachment, a copy of a message from the President of the United States, dated June 22, 1866, communicating to the Senate a report of the Secretary of State showing the proceedings under a concurrent resolution of the two Houses of Congress of the 13th instant, requesting the President to submit to the legislatures of the States an additional article to the Constitution of the United States, known as the 14th article; which was read.

Charles A. Tinker, a witness on the part of the United States, was recalled and permitted to correct the testimony yesterday given by him.

James B. Sheridan, a witness on the part of the United States, was called, and being duly sworn, was examined by the managers and cross-examined by the counsel for the President.

James O. Clephane, a witness on the part of the United States, was called, and being duly sworn, was examined by the managers and cross-examined by the counsel for the President.

Charles A. Tinker was again recalled and further examined by the managers.

James B. Sheridan, a witness on the part of the United States, was then recalled and further examined by the managers.

Francis H. Smith, a witness on the part of the United States, was called, and being duly sworn, was examined by the managers and cross-examined by the counsel for the President.

James O. Clephane was here recalled and further examined by the managers and cross-examined by the counsel for the President.

William G. Moore, a witness on the part of the United States, was called, and being duly sworn, was examined by the managers.

On motion by Mr. Tipton, the Senate took a recess for 15 minutes, at the expiration of which,

On motion by Mr. Grimes, that when the Senate, sitting for the trial of the impeachment, adjourn, it be to Monday next at 12 o'clock m.,

It was determined in the negative { Yeas ---- 19 / Nays ---- 28 }

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Buckalew, Corbett, Davis, Dixon, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Norton, Patterson of Tennessee, Ramsey, Saulsbury, Trumbull, Van Winkle, Vickers, Wilson.

Those who voted in the negative are,

Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Nye, Patterson of New Hampshire, Pomeroy, Ross, Sprague, Stewart, Sumner, Thayer, Tipton, Willey, Williams.

So the motion was not agreed to.

Mr. Manager Butler submitted, as further evidence in support of the articles of impeachment:

1. A report of the speech of the President of the United States on the 18th of August, 1866, at the Executive Mansion, in Washington, as reported by Francis H. Smith;

2. A report of the same speech, as reported by James B. Sheridan and corrected by William G. Moore, private secretary of the President;

Which papers were admitted in evidence.

William N. Hudson, a witness on the part of the United States, was called, and being duly sworn, was examined by the managers and cross-examined by the counsel for the President.

Mr. Grimes proposed the following question to the witness:

I desire the witness to specify the particular part of the report as published which was supplied by the reporter, Johnson.

The witness having made answer,

Daniel C. McEwen, a witness on the part of the United States, was called, and being duly sworn, was examined by the managers and cross-examined by the counsel for the President.

Everett D. Stark, a witness on the part of the United States, was called, and being duly sworn, was examined by the managers and cross-examined by the counsel for the President.

Mr. Manager Butler offered in evidence a newspaper called the Cleveland Leader, published on the 4th of September, 1866, containing a report of a speech made by the President at Cleveland, Ohio, on the 3d of September, 1866.

Mr. Evarts, on the part of the counsel for the President, objected to the admission of the evidence offered by the managers.

After argument by the counsel for the President in support of the objection, and by the managers against it.

The Chief Justice stated that it appeared from the testimony of the witness that the report of the speech testified to by him had been made by him in part from the notes of another person, which notes were not produced, nor is the person who made them produced as a witness. Under the circumstances the Chief Justice is of the opinion that the paper is inadmissible as evidence.

Mr. Drake asked that the question of the admissibility of the evidence be submitted to the Senate.

It was so submitted by the Chief Justice; and

On the question, Shall the newspaper report offered by the managers and objected to by the counsel for the President be admitted in evidence?

It was determined in the affirmative ---------- { Yeas ---- 35 / Nays ---- 11

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Fessenden, Frelinghuysen, Henderson, Howard, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Norton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Van Winkle, Willey, Williams.

Those who voted in the negative are,

Messrs. Buckalew, Davis, Dixon, Doolittle, Fowler, Hendricks, Howe, McCreery, Patterson of Tennessee, Trumbull, Vickers.

So the Senate decided that the paper offered by the managers be admitted in evidence.

Mr. Manager Butler offered in further evidence a report of the speech made by the President at Cleveland, Ohio, on the 3d of September, 1866, as reported by Daniel C. McEwen.

Mr. Manager Butler offered in further evidence a newspaper called the Cleveland Herald, published on the 4th of September, 1866, containing a report of a speech made by the President at Cleveland, Ohio, on the 3d of September, 1866.

On motion by Mr. Fessenden that when the Senate, sitting for the trial of the impeachment, adjourn, it to be Monday next at 12 o'clock m.,

It was determined in the affirmative ---------- { Yeas ---- 16 / Nays ---- 29

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Buckalew, Corbett, Davis, Dixon, Doolittle, Fessenden, Fowler, Henderson, Johnson, McCreery, Norton, Nye, Patterson of Tennessee, Trumbull, Van Winkle, Vickers.

Those who voted in the negative are,

Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Hendricks, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Willey, Williams.

So the motion was not agreed to; and,

On motion by Mr. Edmunds, at 5 o'clock p.m., the Senate, sitting for the trial of the President upon articles of impeachment, adjourned until tomorrow at 12 o'clock m.

SATURDAY, APRIL 4, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation.

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seat assigned them.

The Sergeant at Arms announced the presence at the door of the Senate Chamber of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its Chairman, Mr. Elihu B. Washburne, and

accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit: Mr. Stanbery, Mr. Curtis, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Journal of the proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of yesterday was read.

The Chief Justice then requested the managers on the part of the House of Representatives to proceed with their evidence.

L. L. Walbridge, a witness on the part of the United States, was called, and, being duly sworn, was examined by the managers and cross-examined by the counsel for the President.

Mr. Manager Butler offered in further evidence a newspaper called the Missouri Democrat, published at the city of St. Louis, September 9, 1866, containing a report of a speech made by the President at St. Louis, Mo., September 8, 1866; which was read and admitted.

Joseph A. Dare, a witness on the part of the United States, was called, and, being duly sworn, was examined by the managers and cross-examined by the counsel for the President.

Mr. Manager Butler offered in further evidence a manuscript report of a speech made by the President at the city of St. Louis, Mo., September 8, 1866, as reported and written out by Joseph A. Dare for the St. Louis Times; which was read and admitted.

Robert S. Chew, a witness on the part of the United States, was called, and being duly sworn, and while under examination by the managers, a question was propounded to him by Mr. Manager Butler, to which the counsel for the President objected; and

The Chief Justice directed the managers to reduce their question to writing; and

The question being reduced to writing, was read as follows:

Whether any of the letters of authority which you have mentioned came from the Secretary of State, or from what other officer.

The Chief Justice overruled the objection of the counsel; but directed the witness, in answering the question, not to state who signed the letters; and

The witness having made answer, was then cross-examined by the counsel for the President.

Mr. Manager Butler then offered in further evidence various blank forms of commissions used by the Department of State, antecedent and subsequent to the passage of the act of March 2, 1867, regulating the tenure of certain civil offices, in issuing commissions to certain public officers;

Also, a letter of the Secretary of State to the Hon. John A. Bingham, chairman of the managers of the impeachment on the part of the House of Representatives, inclosing schedules of removals and appointments of heads of departments by the President without the advice and consent of the Senate during the sessions of the Senate; which papers were admitted in evidence.

On motion of Mr. Conness, at 2 o'clock and 30 minutes, the Senate took a recess for 15 minutes; at the expiration of which,

Charles E. Creecy, a witness on the part of the United States, was recalled and examined by the managers.

Mr. Manager Bingham offered in further evidence a certified copy of the message of the President of the United States of December 17, 1867, communicating to the Senate, in executive session, copies of correspondence in relation to the suspension of Charles Lee Moses from the duties of consul at Brunai, Borneo, with the evidence and reasons for such suspension, from which the injunction of secrecy had been removed.

Also a certified copy of the message of the President of the United States of December 16, 1867, communicating a letter from the Secretary of the Treasury in relation to the suspension of John H. Patterson from the office of assessor of internal revenue for the fourth district of Virginia, with the evidence and reasons for such suspension, from which the injunction of secrecy had been removed;

Also, a certified copy of the message of the President of the United States of December 16, 1867, communicating correspondence from the Secretary of the Treasury in relation to the suspension of John H. Anderson from the office of collector of internal revenue for the fourth district of Virginia, with the evidence and reasons for such suspension, from which the injunction of secrecy had been removed;

Also, a certified copy of the message of the President of the United States of January 13, 1868, communicating correspondence from the Secretary of the Treasury in relation to the suspension of Charles H. Hopkins from the office of assessor of internal revenue for the first district of Georgia, with the evidence and reasons for such suspension, from which the injunction of secrecy had been removed;

Also, a certified copy of the message of the President of the United States of December 19, 1867, communicating correspondence from the Postmaster General in relation to the suspension of John B. Lowry from the office of Postmaster at Danville, Va., with evidence and reasons for such suspension, from which the injunction of secrecy had been removed;

Also, a certified copy from the Executive Journal of the Senate, showing the action of the Senate on the message of the President of the United States in relation to the removal of Edwin M. Stanton from the office of Secretary of War, and the appointment of the Adjutant General of the Army to act as Secretary of War ad interim.

Mr. Manager Butler offered in further evidence a letter from the President to the Secretary of the Treasury, dated August 14, 1867, notifying him of the suspension Edwin M. Stanton from the office of Secretary of War, and the appointment of Gen. Ulysses S. Grant Secretary of War ad interim; and

The managers announced that they had for the present concluded their testimony, and that the case on the part of the House of Representatives was substantially closed.

Mr. Curtis, on behalf of the counsel for the President, requested that the counsel be allowed three days for the purpose of preparing and arranging the evidence which they proposed to offer on behalf of the President.

Whereupon,

A motion was made by Mr. Conness that the Senate, sitting for the trial of impeachment, adjourn to Wednesday next.

On motion by Mr. Johnson to amend the motion of Mr. Conness by striking out "Wednesday" and inserting "Thursday";

It was determined in the affirmative; and

On the question to agree to the motion of Mr. Conness as amended,

It was determined in the affirmative ---------- { Yeas ---- 37 / Nays ---- 10 }

On motion by Mr. Sumner,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Cattell, Conness, Corbet, Cragin, Davis, Dixon, Edmunds, Ferry, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Howard, Howe, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Norton, Nye, Patterson of New Hampshire, Patterson of Tennessee, Ramsey, Ross, Saulsbury, Sherman, Sprague, Tipton, Trumbull, Van Winkle, Vickers, Wiley, Williams.

Those who voted in the negative are,

Messrs. Cameron, Chandler, Cole, Conkling, Drake, Morgan, Pomeroy, Stewart, Sumner, Thayer.

So the motion was agreed to; and

The Senate, sitting for the trial of the impeachment of the President, adjourned to Thursday next at 12 o'clock m.

THURSDAY, APRIL 9, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence at the door of the Senate Chamber of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its Chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Stanbery, Mr. Curtis, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The reading of the Journal of the procedings of the Senate, sitting for the trial of the President upon articles of impeachment, of April 4 having been commenced by the Secretary,

On motion by Mr. Johnson, the further reading of the Journal was dispensed with.

The Chief Justice inquired of the managers if they had further evidence to produce; and

The managers replying that they had,

M. H. Wood, a witness on the part of the United States, was called; and being duly sworn, was examined by the managers and cross-examined by the counsel for the President, and further examined by the managers.

Foster Blodgett, a witness on the part of the United States, was called; and being duly sworn, was examined by the managers.

Mr. Manager Butler offered in further evidence:

First. The commission signed by the President, and dated the 25th day of July, 1865, issued to Foster Blodgett, appointing him deputy postmaster at Augusta, in the State of Georgia, during the pleasure of the President, for the time being and until the end of the next session of the Senate.

Second. The commission signed by the President, and dated the 27th day of July, 1866, issued to Foster Blodgett, appointing him deputy postmaster at Augusta, in the State of Georgia, for the term of four years from the date of the commission, unless the President should sooner revoke the commission.

Third. The letter of Lorenzo Thomas, Adjutant General of the Army, to the President of the United States stating that he had delivered the communication of the President to Hon. Edwin M. Stanton, removing him from the office of Secretary of War, and acknowledging the letter of the President authorizing and empowering him to act as Secretary of War ad interim and accepting said office.

Mr. Manager Butler than stated that the managers proposed to offer in evidence a certified extract from the records of the Senate, showing that no evidence exists therein of the suspension of Foster Blodgett from the office of deputy postmaster at Augusta, Ga.

The Chief Justice informed the managers that certificates to that effect, when obtained from the Senate, could be offered at any time.

Mr. Manager Butler here stated that the managers had now closed their evidence.

The Chief Justice then informed the counsel for the President that they could now proceed with the defense.

Whereupon

Mr. Curtis, of counsel for the President, rose and proceeded to address the Senate, setting forth the grounds of the defense of the President to the articles of impeachment exhibited against him by the House of Representatives, until 25 minutes past 2 o'clock p.m.; when,

On motion by Mr. Edmunds, the Senate took a recess for 15 minutes, at the expiration of which

The Chief Justice resumed the chair.

On motion by Mr. Morrill of Vermont, that the Senate, sitting for the trial of impeachment of the President, adjourn,

It was determined in the negative ---------- { Yeas ---- 2 / Nays ---- 35

On motion by Mr. Morrill of Vermont,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are:

Messrs. McCreery, Patterson of Tennessee.

Those who voted in the negative are:

Messrs. Buckalew, Cattell, Chandler, Cole, Conkling, Corbett, Cragin, Davis, Dixon, Doolittle, Drake, Ferry, Fessenden, Frelinghuysen, Grimes, Henderson, Hendricks, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Pomeroy, Ross, Sherman, Stewart, Sumner, Thayer, Tipton, Van Wingle, Vickers, Willey, Yates.

So the Senate refused to adjourn; and

Thereupon

Mr. Curtis resumed his argument, and before concluding,

On motion by Mr. Johnson, at 17 minutes to 4 o'clock p.m., the Senate, sitting for the trial of the President upon articles of impeachment, adjourned to to-morrow at 12 o'clock m.

FRIDAY, APRIL 10, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and,

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence at the door of the Senate Chamber of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its Chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Stanbery, Mr. Curtis, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The journal of the proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, for yesterday was read.

Mr. Curtis, of counsel for the President, resumed his argument, and having concluded the same,

On motion by Mr. Conness, at 2 o'clock and 20 minutes p.m., the Senate took a recess for 15 minutes; at the expiration of which

Lorenzo Thomas, a witness on the part of the President, was called and duly sworn; and while under examination by the counsel for the President, a letter signed by Edwin M. Stanton, and dated February 21, 1868, commanding him to abstain from issuing any order other than in his capacity as Adjutant General of the Army, was handed to the witness by Mr. Stanbery, with a request that he read the same; and

The witness having read the letter, a question was propounded to him by Stanbery, of counsel for the President, which was objected to by the managers.

After argument by the managers in support of the objection, and by the counsel for the President against the objection.

Mr. Manager Bingham requested that the question be reduced to writing.

By direction of the Chief Justice the counsel for the President reduced the question to writing, which was read by the Secretary, as follows:

What occurred between the President and yourself at that second interview on the 21st? and

After further argument by Mr. Manager Bingham,

The Chief Justice submitted the question to the Senate, to wit, Is the question admissible? and

It was determined in the affirmative ..... { Yeas ---- 42 / Nays ---- 10

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Bucklalew, Cattell, Cole, Conkling, Corbett, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Howe, Johnson, McCreery, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ross, Sherman, Sprague, Stewart, Sumner, Tipton, Trumbull, Van Winkle, Vickers, Willey, Williams, Wilson, Yates.

Those who voted in the negative are,

Messrs. Cameron, Chandler, Conness, Cragin, Drake, Harlan, Howard, Nye, Ramsey, Thayer.

So the Senate determined that the question was admissible; and

The question was then put to the witness, who made answer thereto.

During further examination by the counsel for the President, a question was proposed to the witness, which was objected to by the managers; and

After argument by the managers in support of the objection and by counsel against the objection,

The Chief Justice directed counsel for the President to reduce their question to writing; and

The question having been reduced to writing, it was read by the Secretary, as follows:

Did the President at any time prior to or including the 9th of March authorize or direct you to use force, intimidation, or threats to get possession of the War Office?

The Chief Justice submitted the question to the Senate, to wit, Is the question admissible? and

It was determined in the affirmative; and

The witness having made answer to the question,

After further examination by the counsel for the President, and while under cross-examination by the managers,

On motion by Mr. Henderson, at 5 o'clock and 20 minutes p.m., the Senate, sitting for the trial of the President upon articles of impeachment, adjourned to to-morrow at 12 o'clock m.

SATURDAY, APRIL 11, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence at the door of the Senate Chamber of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its Chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Stanbery, Mr. Curtis, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The journal of the proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of yesterday was read.

Mr. Manager Bingham asked that the twenty-first rule be so amended as to allow such of the managers as may desire to be heard, and also such of the counsel for the President as desire to be heard, to speak on the final argument, subject to the provision of the rule that the final argument shall be opened and closed by the managers on the part of the House.

Whereupon,

Mr. Frelinghuysen submitted the following motion for consideration:

Ordered, That as many of the managers and of the counsel for the President be permitted to speak on the final argument as shall choose to do so.

Objection being made to the consideration of the motion at this time,

The Chief Justice directed the counsel for the President to proceed with their evidence.

The examination of Lorenzo Thomas, a witness on the part of the President, was then resumed; and the witness, having been permitted to explain a portion of his testimony yesterday, was further cross-examined by the managers and further examined by the counsel for the President.

William T. Sherman, a witness on the part of the President, was then called and sworn, and while under examination by the counsel for the President, a question was proposed to the witness by Mr. Stanbery, which was objected to by the managers.

By direction of the Chief Justice the counsel for the President reduced the question to writing, which was read by the Secretary, as follows:

In that interview what conversation took place between the President and you in regard to the removal of Mr. Stanton?

The Chief Justice stated that he thought the question admissible under previous rulings of the Senate, but would submit the question to the Senate if any Senator desired it; and

After argument by the counsel for the President in favor of the admissibility of the question, and by the managers against it,

On motion by Mr. Sprague, at 20 minutes before 3 o'clock p.m., the Senate took a recess for 15 minutes; at the expiration of which,

After further argument by the managers against the admissibility of the question,

The Chief Justice expressed the opinion that the question now proposed was admissible within the vote of the Senate yesterday, and would state, briefly, the grounds of that opinion. The question yesterday had reference to a conversation between the President and Gen. Thomas after the note addressed to Mr. Stanton was written and delivered, and the Senate held it admissible. The question to-day has reference to a conversation relating to the same subject matter, between the President and Gen. Sherman, which occurred before the note of removal was written and delivered. Both questions are asked for the purpose of proving the intent of the President in the attempt to remove Mr. Stanton.

The Chief Justice thinks that proof of a conversation shortly before a transaction is better evidence of the intent of an actor in it than proof of a conversation after the transaction.

The Chief Justice then submitted the question to the Senate, to wit, Is the question admissible?

It was determined in the negative— Yeas ---------- 23
Nays ---------- 28

On motion by Mr. Conness,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Cole, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Hendricks, Johnson, McCreery, Morgan, Norton, Patterson of Tennessee, Ross, Sprague, Sumner, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Henderson, Howard, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Thayer, Tipton, Williams, Wilson, Yates.

So the Senate decided the question to be admissible; and

The counsel for the President then propounded an interrogatory to the witness, which, being objected to by the managers, was, by direction of the Chief Justice, reduced to writing and read as follows:

What do you know about the creation of the Department of the Atlantic?

The Chief Justice submitted the question to the Senate, to wit, Is the question admissible? and

It was determined in the negative.

The counsel for the President then proposed to the witness the following question; to which objection was made by the managers:

Did the President make any application to you respecting your acceptance of the duties of Secretary of War ad interim?

After argument by counsel in favor of the admissibility of the question, and by the managers against it,

The Chief Justice submitted the question to the Senate, to wit, Is the question admissible?

It was determined in the affirmative; and

The witness having made answer to the question, the counsel for the President proposed to the witness the following questions, to which objection was made by the managers:

At the first interview at which the tender of the duties of the Secretary of War ad interim was made to you by the President, did anything further pass between you and the President in reference to the tender or your acceptance of it?

After argument by counsel in favor of the admissibility of the question, and by the managers against it,

The Chief Justice submitted the question to the Senate, to wit, Is the question admissible?

It was determined in the negative ..... { Yeas ---- 23 / Nays ---- 29 }

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Cole, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Hendricks, Johnson, McCreery, Morgan, Patterson of Tennessee, Ross, Sprague, Sumner, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Henderson, Howard, Howe, Morrill of Maine, Morrill of Vermont, Morton, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Thayer, Tipton, Williams, Wilson, Yates.

So the Senate decided the question to be inadmissible.

The counsel for the President then proposed the following question to the witness:

In either of those conversations did the President say to you that his object in appointing you was that he might thus get the question of Mr. Stanton's right to the office before the Supreme Court? and

The managers having objected to the question,

The Chief Justice submitted the question to the Senate, to wit, Is the question admissible? and

It was determined in the negative ..... { Yeas ---- 7 / Nays ---- 44 }

On motion by Mr. Howard,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Fowler, McCreery, Patterson of Tennessee, Ross, Vickers.

Those who voted in the negative are,

Messrs. Buckalew, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Davis, Dixon, Doolittle, Drake, Edmunds, Ferry, Fessenden, Frelinghuysen, Grimes, Harlan, Henderson, Hendricks, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Norton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Thayer, Tipton, Trumbull, Van Winkle, Willey, Williams, Wilson, Yates.

So the Senate decided the question to be inadmissible.

The counsel for the President then proposed the following question to the witness:

Was anything said at either of those interviews by the President as to any purpose of getting the question of Mr. Stanton's right to the office before the courts?

The managers having objected to the question,

After argument by the managers in support of the objection, and by the counsel of the President against it,

The Chief Justice submitted the question to the Senate, to wit, Is the question admissible? and

It was determined in the negative.

Mr. Henderson proposed the following question to the witness:

Did the President in tendering you the office of Secretary of War ad interim express the object or purpose of so doing?

The managers having objected to the question,

The Chief Justice submitted the question to the Senate, to wit, Is the question admissible?

It was determined in the negative ---------- { Yeas ---- 25 / Nays ---- 27

On motion by Mr. Thayer,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Maine, Morton, Norton, Patterson of Tennessee, Ross, Sherman, Sprague, Sumner, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Vermont, Nye, Patterson of New Hampshire Pomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wilson, Yates.

So the Senate decided the question to be inadmissible.

On motion by Mr. Trumbull, at 4 o'clock and 30 minutes p.m., that the Senate sitting for the trial of the President upon articles of impeachment, adjourn,

It was determined in the negative ---------- { Yeas ---- 25 / Nays ---- 27

On motion of Mr. Stewart,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Bayard, Buckalew, Cameron, Cattell, Corbett, Davis, Dixon, Doolittle, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Howe, Johnson, McCreery, Morton, Norton, Patterson of Tennessee, Ramsey, Sprague, Trumbull, Van Winkle, Vickers.

Those who voted in the negative are,

Messrs. Anthony, Chandler, Cole, Conkling, Conness, Cragin, Drake, Edmunds, Ferry, Harlan, Howard, Morgan, Morrill of Maine,

Morrill of Vermont, Nye, Patterson of New Hampshire, Pomeroy, Ross, Sherman, Stewart, Sumner, Thayer, Tipton, Willey, Williams, Wilson, Yates.

So the Senate refused to adjourn.

The counsel for the President then proposed the following question to the witness:

At either of those interviews was anything said in reference to the use of threats, intimidation, or force to get possession of the War Office, or the contrary?

The managers having objected to the question,

The Chief Justice submitted the question to the Senate, to wit: Is the question admissible?

It was determined in the negative,

On motion by Mr. Anthony, at 4 o'clock and 40 minutes p.m., that the Senate adjourn,

It was determined in the negative ..... { Yeas ---- 20 / Nays ---- 32 }

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Edmunds, Fowler, Grimes, Henderson, Hendricks, Howe, Johnson, McCreery, Morton, Norton, Patterson of Tennessee, Trumbull, Van Winkle, Vickers.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Ferry, Fessenden, Frelinghuysen, Harlan, Howard, Morgan, Morrill of Maine, Morrill of Vermont, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Willey, Williams, Wilson, Yates.

So the Senate refused to adjourn.

The Chief Justice inquired of the counsel for the President if they had any further question to propose to the witness.

Mr. Stanbery, of counsel, replied that they had no further question to propose at the present time, but desired to have the witness recalled on Monday next; and

On motion by Mr. Stewart, at 15 minutes before 5 o'clock p.m.,

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned.

MONDAY, APRIL 13, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddéus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence, at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its Chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit: Mr. Stanbery, Mr. Curtis, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The reading of the journal of the proceedings of the Senate sitting for the trial of the President upon articles of impeachment of Saturday having been commenced by the Secretary,

On motion of Mr. Stewart,

The further reading thereof was dispensed with.

The Chief Justice stated that the motion submitted by Mr. Frelinghuysen, on Saturday, to remove the limit fixed by the 21st rule as to the number of persons who may participate in the final argument of the cause, would now be considered unless objected to; and

The Senate proceeded to consider the said motion.

On motion by Mr. Sumner to amend the motion by inserting at the end thereof the following proviso:

Provided, That the trial shall proceed without any further delay or postponement of this account.

Mr. Frelinghuysen accepted the amendment proposed by Mr. Sumner, and further modified his motion to read as follows:

Ordered, That as many of the managers and of the counsel for the President be permitted to speak on the final argument as shall choose to do so: *Provided*, That the trial shall proceed without any further delay or postponement on this account: *And provided further*, That only one manager shall be heard in the close.

On motion by Mr. Sumner to amend the motion of Mr. Frelinghuysen by striking out the last clause of the proviso and inserting in lieu thereof:

That according to the practice in cases of impeachment the several managers who speak shall close.

After argument,

On motion by Mr. Williams that the motion of Mr. Frelinghuysen lie on the table.

It was determined in the affirmative— Yeas ---------- 38
Nays ---------- 10

On motion by Mr. Williams,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Buckalew, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Fessenden, Harlan, Henderson, Hendricks, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Norton, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sherman, Stewart, Sumner, Thayer, Tipton, Van Winkle, Vickers, Williams, Wilson, Yates.

Those who voted in the negative are,

Messrs. Anthony, Davis, Dixon, Doolittle, Fowler, Grimes, McCreery, Patterson of Tennessee, Trumbull, Willey.

So it was

Ordered, That the motion of Mr. Frelinghuysen lie on the table.

The examination of William T. Sherman, a witness on the part of the President, was then resumed; and

The counsel for the President proposed to the witness the following question, to which objection was made by the managers:

After the restoration of Mr. Stanton to office, did you form an opinion whether the good of the service required a Secretary of War other than Mr. Stanton; and if so, did you communicate that opinion to the President?

After argument by the managers and by the counsel for the President,

Mr. Conkling submitted the following question to the counsel for the President:

Do the counsel for the respondent offer at this point to show by the witness that he advised the President to remove Mr. Stanton in the manner adopted by the President, or merely that he advised the President to nominate, for the action of the Senate, some person other than Mr. Stanton?

The counsel for the President stated, in answer, that they proposed to show by the testimony that the removal was for the good of the service, and that some other person ought to be there.

After further argument by the counsel for the President in favor of the admissibility of the question they had proposed to the witness, and by the managers against it,

The Chief Justice submitted the question to the Senate, to wit, Is the question admissible? and

It was determined in the negative— Yeas ---------- 15; Nays ---------- 35

On motion by Mr. Conness,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are:

Messrs. Anthony, Bayard, Buckalew, Dixon, Doolittle, Fowler, Grimes, Hendricks, Johnson, McCreery, Patterson of Tennessee, Ross, Trumbull, Van Winkle, Vickers.

Those who voted in the negative are:

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Davis, Drake, Edmunds, Ferry, Fessenden, Frelinghuysen, Harlan, Henderson, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Norton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Thayer, Tipton, Willey, Williams, Wilson, Yates.

So the Senate decided the question to be inadmissible.

Mr. Johnson proposed to the witness the following question:

Did you at any time, and when, before the President gave the order for the removal of Mr. Stanton as Secretary of War, advise the President to appoint some other person than Mr. Stanton?

The Chief Justice submitted the question to the Senate, to wit, Is the question admissible? and

It was determined in the negative— Yeas ---------- 18; Nays ---------- 32

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are:

Messrs. Anthony, Bayard, Buckalew, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Patterson of Tennessee, Ross, Trumbull, Van Winkle, Vickers.

Those who voted in the negative are:

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Davis, Drake, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Norton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Thayer, Tipton, Willey, Williams, Wilson, Yates.

So the question was decided to be inadmissible.

No further questions being proposed to the witness,

On motion by Mr. Cole, at 10 minutes after 2 o'clock p.m.,

The Senate took a recess for 15 minutes; at the expiration of which

R. J. Meigs, a witness on the part of the President, was called, and being sworn, was examined by the counsel for the President.

The counsel for the President proposed to offer in evidence the warrant for the arrest of Gen. Lorenzo Thomas and the affidavit on which the warrant was issued.

Objection being made thereto by the managers.

The Chief Justice stated that, in his opinion, the warrant for the arrest of Gen. Thomas and the affidavit upon which the same was issued was competent testimony, but would submit the question to the Senate if any Senator desired it; and

Mr. Conness having desired the question of the admissibility of the evidence proposed to be offered to be submitted to the Senate.

The Chief Justice directed the counsel for the President to state in writing what evidence they proposed to put in;

Whereupon,

The counsel for the President submitted the following statement:

We offer a warrant of arrest of Gen. Thomas, dated February 22, 1868, and the affidavit on which the warrant issued.

The Chief Justice then submitted the question to the Senate, to wit: Shall the evidence offered by the counsel for the President be admitted?

On motion by Mr. Grimes,

It was determined in the affirmative ---------- { Yeas ---- 34 / Nays ---- 17 }

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Cattell, Cole, Corbett, Cragin, Davis, Dixon, Doolittle, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ross, Sherman, Sumner, Trumbull, Van Winkle, Vickers, Willey, Williams, Yates.

Those who voted in the negative are,

Messrs. Cameron, Chandler, Conkling, Conness, Drake, Edmunds, Ferry, Harlan, Howard, Howe, Morgan, Nye, Ramsey Stewart, Thayer, Tipton, Wilson.

So the Senate decided that the evidence should be admitted;

Whereupon,

Mr. Evarts, of counsel for the President, having read the warrant of arrest of Gen. Lorenzo Thomas and the affidavit on which the warrant was issued, offered them in evidence and handed them in at the Secretary's desk.

After further examination of the witness by the counsel for the President,

William T. Sherman, a witness on the part of the President, was recalled; when

Mr. Johnson proposed the following question to the witness:

When the President tendered to you the office of Secretary of War ad interim on the 27th of January, 1868, and on the 30th of the same month and year, did he, at the very time of making such tender, state to you what his purpose in so doing was?

Objection to the question having been made by the managers,

The Chief Justice submitted the question to the Senate, to wit: Is the question admissible? and

It was determined in the affirmative ---------- { Yeas ---- 26 / Nays ---- 22

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Cole, Davis, Dixon, Doolittle, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Morton, Norton, Patterson of Tennessee, Rose, Sherman, Sumner, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are,

Messrs. Cattell, Chandler, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Harlan, Howard, Howe, Morgan, Nye, Pomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wilson, Yates.

So the Senate decided the question to be admissible; and

The witness having made answer thereto,

Mr. Johnson proposed the following question to the witness:

Will witness state what he said his purpose was?

The question being objected to by the managers; and

Mr. Manager Bingham having commenced an argument in support of the objection,

Mr. Davis raised the question of order that it was not in order for the managers to object to a question propounded by a Member of the Senate.

The Chief Justice ruled that neither the managers nor the counsel had a right to object to a question being put by a Member of the Senate, but might discuss the admissibility of the evidence to be given in answer to such a question.

He then submitted the question to the Senate, Is the question proposed by Mr. Johnson admissible? and

It was determined in the affirmative ---------- { Yeas ---- 26 / Nays ---- 25

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anothony, Bayard, Buckalew, Cole, Corbett, Davis, Dixon, Doolittle, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Johnson, McCreery, Morton, Norton, Patterson of Tennessee, Ross, Sherman, Sumner, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Conkling, Conness, Cragin, Drake, Edmunds, Ferry, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wilson, Yates.

So the Senate decided the question to be admissible; and

The witness having made answer thereto,

The counsel for the President proposed the following question to the witness:

Have you answered as to both occasions?

The managers objected to the question on the ground that the counsel having closed their examination of the witness, and the witness having been recalled to answer a question proposed by a Member of the Senate, it was not competent for the counsel of the President to make any further examination of him.

The Chief Justice ruled that the question proposed by the counsel for the President was a matter entirely within the discretion of the court, but that it was usual, under such circumstances, to allow counsel to continue the inquiry relating to the same subject matter.

The Chief Justice then submitted the question to the Senate, to wit, Is the question admissible?

It was determined in the affirmative; and

The witness having made answer to the question,

Mr. Henderson proposed the following question to the witness:

Did the President, on either of the occasions alluded to, express to you a fixed resolution or determination to remove Stanton from his office?

And

The witness having made answer thereto,

Mr. Howard proposed the following question to the witness:

You say the President spoke of force. What did he say about force?

And

The witness have made answer thereto,

Mr. Henderson proposed the following question to the witness:

Did you give any opinion or advice to the President on either of these occasions in regard to the legality or propriety of an ad interim appointment; and, if so, what advice did you give, or what opinion did you express to him?

The Chief Justice submitted the question to the Senate, to wit, Is the question admissible?

It was determined in the negative.

So the Senate decided the question to be inadmissible; and

The examination of the witness having been concluded for the present,

R. J. Meigs, a witness on the part of the President, was recalled; and

The following question was proposed to him by the counsel for the President:

Have you got the docket entries as to the disposition of the case of the United States *v.* Lorenzo Thomas; and if so, will you produce and read them?

Objection by the managers being raised to the question,

The Chief Justice stated that, in his opinion, the evidence sought to be introduced being a part of, or having in connection with, that already testified to by the witness was admissible; and

The question having been answered by the witness,

On motion by Mr. Johnson, at 15 minutes before 5 o'clock p.m.,

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned to 12 o'clock m. tomorrow.

TUESDAY, APRIL 14, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and,

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence at the door of the Senate Chamber of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its Chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Curtis, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Chief Justice having directed the Secretary to read the Journal of the proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of yesterday,

On motion by Mr. Stewart,

The reading of the Journal of the proceedings of the Senate of yesterday was dispensed with.

Mr. Sumner submitted the following motion for consideration:

***Ordered,* That in answer to the motion of the managers under the rule limiting the arguments to two on a side, unless otherwise ordered, such other managers and counsel as choose may print and file arguments at any time before the argument of the closing manager.**

Objection being made to the consideration of the motion at this time,

The Chief Justice directed the counsel for the President to proceed with their evidence.

Mr. Evarts, of counsel, stated that Mr. Stanbery, the senior counsel of the President, was prevented by illness from attending the Senate to-day, and asked that further proceedings in the trial be postponed to to-morrow.

Mr. Drake submitted the following question to the counsel for the President:

Can not this day be occupied by the Counsel for respondent in giving in documentary evidence?

And,

The counsel for the President answered that in consequence of the absence of Mr. Stanbery they could not.

On motion by Mr. Howe,

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned to 12 o'clock m. to-morrow.

WEDNESDAY, APRIL 15, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence at the door of the Senate Chamber of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its Chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Curtis, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Journal of the proceedings of the Senate, sitting for the trial of the President upon articles of imeachment, of yesterday was read.

The Senate proceeded to consider the motion submitted by Mr. Sumner yesterday, to wit:

***Ordered,* That in answer to the motion of the managers under the rule limiting the arguments to two on a side, unless otherwise ordered, such other managers and counsel as choose may print and file arguments at any time before the argument of the closing manager,**

On motion by Mr. Emunds, to amend the motion of Mr. Sumner by striking out at the end thereof the words "closing manager" and inserting the words "opening manager shall be concluded,"

Mr. Sumner accepted the amendment proposed by Mr. Edmunds, and modified his motion accordingly.

On motion by Mr. Conness, to further amend the motion by striking out all after the word "ordered" and inserting in lieu there the following:

That the twenty-first rule shall be so amended as to allow as many of the managers and of the counsel of the President to speak on the final argument as shall choose to do so: *Provided,* That not more than four days on each side shall be allowed. But the managers shall make the opening and the closing argument,

It was determined in the negative { Yeas 19 / Nays 27 }

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Cameron, Conness, Cragin, Dixon, Doolittle, Fowler, Harlan, Henderson, Hendricks, McCreery, Patterson of Tennessee, Ramsey, Sherman, Stewart, Trumbull, Van Winkle, Willey, Wilson, Yates.

Those who voted in the negative are.

Messrs. Anthony, Buckalew, Cattell, Chandler, Cole, Conkling, Davis, Drake, Edmunds, Ferry, Frelinghuysen, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Patterson of New Hampshire, Pomeroy, Ross, Saulsbury, Sumner, Thayer, Tipton, Vickers, Williams.

So the amendment was not agreed to.

On motion by Mr. Doolittle, to amend the motion by Mr. Sumner by striking out all after the word "ordered" and inserting in lieu thereof the following:

That upon the final argument two managers of the House open, two counsel for the respondent reply; that two other managers rejoin, to be followed by two other counsel for the respondent, and they in turn to be followed by two other managers of the House, who shall conclude the argument,

On motion by Mr. Drake, that the motion of Mr. Sumner be postponed indefinitely,

It was determined in the affirmative { Yeas 34 / Nays 15 }

On motion by Mr. Sumner,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Buckalew, Chandler, Cole, Conkling, Conness, Corbett, Davis, Dixon, Drake, Edmunds, Ferry, Fessenden, Grimes, Harlan, Henderson, Hendricks, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Patterson of New Hampshire, Pomeroy, Ross, Saulsbury, Sherman, Stewart, Thayer, Tipton, Williams, Yates.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Cragin, Doolittle, Fowler, Frelinghuysen, McCreery, Patterson of Tennessee, Ramsey, Sumner, Trumbull, Van Winkle, Vickers, Willey, Wilson.

So the motion was postponed indefinitely.

Mr. Ferry submitted the following motion for consideration:

***Ordered,* That the twelfth rule be so modified as that the hour of the day at which the Senate shall sit upon the trial now pending shall be (unless otherwise ordered) at 11 o'clock forenoon, and that there shall be a recess of 30 minutes each day, commencing at 2 o'clock p.m.**

The Senate proceeded, by unanimous consent to consider the said motion; and

On the question to agree thereto,

It was determined in the negative { Yeas 24 / Nays 26 }

On motion by Mr. Conkling,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Ramsey, Sherman, Stewart, Sumner, Thayer, Williams, Wilson.

Those who voted in the negative are,

Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Morton, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ross, Saulsbury, Tipton, Trumbull, Van Winkle, Vickers, Willey, Yates.

So the motion was not agreed to.

Mr. Evarts, of counsel for the President, stated that in the absence of their associate, Mr. Stanbery, who was still detained by indisposition, they would now proceed to submit documentary evidence for the defense.

Mr. Curtis, of counsel, asked to have the message of the President, dated February 22, 1868, nominating Thomas Ewing, of Ohio, to be Secretary for the Department of War, produced in the Senate, to be used in the trial as evidence for the defense.

De Witt C. Clarke, the executive clerk of the Senate, was called, and being sworn, testified as to the time when the said message was received by the Senate.

The counsel for the President proposed to submit as evidence the message of the President of the United States, dated February 22, 1868, and sent in to the Senate on the 24th of that month, relating to the removal of Edwin M. Stanton as Secretary of the Department of War.

The managers objecting to the reception of the message as evidence,

After argument by the counsel for the President in favor of admitting the evidence, and by the managers against it,

The Chief Justice stated that it did not appear that the resolution of the Senate of the 21st of February called for an answer, and the message could only be regarded as a vindication of the act of the President addressed to the Senate, which, in the opinion of the Chief Justice, did not come within any of the rules of evidence which would justify its being admitted as evidence in this trial; he therefore ruled the evidence inadmissible.

The counsel for the President proposed to submit in evidence a tabular statement, prepared at the office of the Attorney General, containing a list of all executive and territorial offices of the United States, excluding all military, naval, and judicial offices, showing their statutory designation and their respective statutory tenures.

The document proposed to be submitted as evidence being objected to by the managers,

After argument by counsel in favor of receiving it, and by the managers against it,

On motion by Mr. Trumbull,

Ordered, That the document be printed as a part of the proceedings on the trial.

De Witt C. Clarke, the executive clerk of the Senate, by unanimous consent of the Senate, was permitted to correct his testimony given today.

William G. Moore, a witness on the part of the United States, was recalled and further examined by the counsel for the President, and cross-examined by the managers.

The counsel for the President then submitted the following documentary evidence on the part of the defense, which was received:

I. A certified copy of the resolution of the Senate of the 13th of May, 1800, advising and consenting to the appointment of John Marshall to be Secretary of State, in the place of Timothy Pickering, removed; and of Samuel Dexter to be Secretary of War, in place of John Marshall, nominated to be Secretary of State.

II. The message of the President of February 22, 1868, nominating Thomas Ewing, sr., of Ohio, to be Secretary of War.

III. A certified copy of the appointment of John Nelson, dated February 29, 1844, to act as Secretary ad interim until a successor to the Hon. A. P. Upshur shall be appointed; and a certified copy of the resolution of the Senate of March 6, 1844, advising and consenting to the appointment of John C. Calhoun to be Secretary of State in the place of A. P. Upshur, deceased.

IV. A certified copy of the appointment of Winfield Scott, dated July 23, 1850, to act as Secretary of War ad interim during the vacancy occasioned by the resignation of George W. Crawford; and a certified copy of the resolution of the Senate of August 15, 1850, advising and consenting to the appointment of Charles M. Conrad as Secretary of War.

V. The certificate of William H. Seward, Secretary of State, that volumes 12 and 13 of Domestic Letters, containing the letters addressed by the Secretary of State to various persons between the 29th of June, 1799, and the 1st of May, 1802, are now and have been for many years missing from the files of the State Department, and also the certificate of the Secretary of State as to the beginning and termination of the first session of the Sixth Congress.

On motion by Mr. Stewart,

Then Senate, at 15 minutes past 2 o'clock p.m., took a recess for 15 minutes; at the expiration of which,

The counsel for the President proposed to submit in further evidence—

Certified copies of two letters addressed by McClintock Young, Acting Secretary of the Treasury, dated 17th August, 1842, one to Richard Coe, appraiser of merchandise at Philadelphia, removing him from office, and one to the collector of customs at Philadelphia, requesting him to deliver an enclosed letter to Richard Coe, appraiser, and also certified copies of the commission issued to Richard Coe and Charles Francis Breuil as appraisers of merchandise at the port of Philadelphia.

The evidence being objected to by the managers,

After argument by the managers,

The Chief Justice ruled the evidence to be admissible, and it was received and read.

The counsel for the President proposed to submit in further evidence—

I. A certified list of civil officers of the Navy appointed under the act of May 15, 1820, and removed before their terms of office had expired.

II. Memoranda of removals of certain Navy agents by the President, with the reasons for such removals, and designations of other persons to act in their stead, certified by the chief clerk of the Navy Department.

The managers objected to the admission of the evidence.

After argument by the managers against the admission of the evidence proposed to be offered,

Mr. Hendricks inquired of the managers whether they objected on the ground that the papers should be given in full so far as they relate to any particular question.

To which question Mr. Manager Butler answer that they did.

Mr. Conkling submitted the following question to the counsel of the President:

Do the counsel for the respondent rely upon any statute other than that referred to?

And

Mr. Curtis, of counsel, replied, I am not aware of any other statute than that referred to.

Mr. Edmunds inquired of the counsel for the President whether the evidence was offered as touching any question or final conclusion of fact, or merely as giving the Senate the history of the practice under consideration.

To which question the counsel for the President answered that it was entirely for the latter purpose.

Mr. Howard proposed the following question to the counsel for the President:

Do the counsel regard these memoranda as legal evidence of the practice of the Government, and are they offered as such?

Mr. Curtis, of counsel, replied that they were not full copies of any record, and they were therefore technically not legal evidence.

Mr. Sherman inquired of the counsel for the President whether the papers now offered in evidence contain the date of the appointment and the character of the office.

The counsel having made answer thereto,

The Chief Justice directed the counsel of the President to reduce to writing what they proposed to offer in evidence; and

The counsel for the President then submitted the following:

We offer in evidence two documents from the Navy Department exhibiting the practice which has existed in that department in respect to removals from office.

The Chief Justice submitted the question to the Senate, to wit, Is the evidence admissible? and

It was determined in the affirmative ---------- Yeas---- 36; Nays---- 15

On motion by Mr. Sherman,

The yeas and nays being desired by one-fifth of the Senators present,

The who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Cole, Conkling, Corbett, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Howe, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Morton, Patterson of New Hampshire, Patterson of Tennessee, Ross, Saulsbury, Sherman, Stewart, Sumner, Trumbull, Van Winkle, Vickers, Willey, Wilson, Yates.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Conness, Cragin, Drake, Harlan, Howard, Morgan, Nye, Pomeroy, Ramsey, Thayer, Tipton, Williams.

So the Senate decided the evidence to be admissible; and

It was received and read.

The counsel for the President submitted in further evidence copies from the records of the Navy Department of letters of removal of certain Navy agents during the session of the Senate.

The counsel for the President submitted in further evidence a copy of the appointment of Moses Kelly to be Acting Secretary of the Interior, dated January 10, 1861; and a copy of the commission of Caleb B. Smith, as Secretary of the Interior, dated March 5, 1861, signed by Abraham Lincoln, President of the United States.

The counsel for the President proposed to submit in further evidence certified copies of appointment of various persons to be Secretaries of the several Executive departments ad interim, by Presidents James Monroe, John Quincy Adams, Andrew Jackson, Martin Van Buren, William H. Harrison, John Tyler, James K. Polk, Zachary Taylor, and Millard Filmore.

The managers having objected to the admission of the evidence,

After argument by the managers in support of their objection,

The Chief Justice overruled the objection, and ruled the evidence admissible; and

The evidence was received.

The counsel for the President submitted in further evidence,

I. The appointment of St. John B. L. Skinner by James Buchanan, dated February 8, 1861, to be Acting First Assistant Postmaster General ad interim in place of Horatio King, Acting Postmaster General.

II. The appointment by Abraham Lincoln of St. John B. L. Skinner, Acting First Assistant Postmaster General, to be Acting Postmaster General ad interim in place of Montgomery Blair, temporarily absent, dated September 26, 1862.

III. A copy of the order of the President directing the Postmaster General to place the post office at the city of New York in charge of a special agent of the Post Office Department, in place of Isaac V. Fowler, removed.

IV. A copy of the order of the President directing the Postmaster General to place the post office at the city of New Orleans in charge of a special agent of the Post Office Department, in place of Samuel F. Marks, removed.

V. A copy of the order of the President directing the Postmaster General to place the post office at the city of Milwaukee in charge of a special agent of the Post Office Department.

The counsel for the President proposed to submit in further evidence the message of the President of the United States of January 16, 1861, in answer to a resolution of the Senate respecting the vacancy in the office of Secretary of War, being Executive Document No. 2, Thirty-sixth Congress, second session, and contained in volume 4, Senate Documents, of said Congress and session.

The managers having objected to the admissibility of the evidence,

After argument by the managers,

The Chief Justice submitted the question to the Senate, to wit, Is the evidence admissible?

It was determined in the affirmative; and

The evidence was received and read.

Mr. Curtis, of counsel for the President, asked that the Secretary of the Senate be directed to make out a statement showing the time of the commencement and termination of each legislative and executive session of the Senate from ———, 1789, to the present time.

The counsel for the President then informed the Senate that they had for the present concluded their documentary evidence.

On motion by Mr. Johnson,

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned to 12 o'clock m. to-morrow.

THURSDAY, APRIL 16, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats provided for them.

The Sergeant at Arms announced the presence, at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its Chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Curtis, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned to them.

The reading of the Journal of the proceedings of the Senate sitting for the trial of the President upon articles of impeachment of yesterday having been commenced by the Secretary,

On motion by Mr. Sherman,

The further reading of the Journal was dispensed with.

Mr. Sumner submitted the following motion for consideration:

Considering the character of this proceeding, that it is a trial of impeachment before the Senate of the United States, and not a proceeding by indictment in an inferior court; considering that Senators are from beginning to end judges of law as well as fact, and that they are judges from whom there is no appeal; considering that the reasons for the exclusion of evidence on an ordinary trial, where the judge responds to the law and the jury, to the fact, are not applicable to such a proceeding; considering that according to parliamentary usage, which is the guide in all such cases, there is on trials of impeachment a certain latitude of inquiry and a freedom from technicality; and considering, finally, that already in the course of this trial there have been differences of opinion as to the admissibility of evidence, therefore, in order to remove all such differences and to hasten the dispatch of business, it is deemed advisable that all evidence offered on either side, not trivial or obviously irrelevant in nature, shall be received without objection, it being understood that the same, when admitted, shall be open to question and comparison at the bar in order to determine its competency and value, and shall be carefully sifted and weighed by Senators in the final judgment.

On motion by Mr. Conness that the motion of Mr. Sumner lie on the table,

It was determined in the affirmative ---------- { Yeas---- 33 / Nays---- 11

On motion by Mr. Conness,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Buckalew, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Davis, Dixon, Doolittle, Drake, Edmunds, Ferry, Fessenden, Frelinghuysen, Harlan, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Saulsbury, Stewart, Thayer, Tipton, Williams, Yates.

Those who voted in the negative are,

Messrs. Anthony, Fowler, Grimes, Morton, Patterson of Tennessee, Sherman, Sumner, Van Winkle, Vickers, Willey, Wilson.

So the motion of Mr. Sumner was ordered to lie on the table.

The Chief Justice then directed the counsel for the President to proceed with the defense.

Mr. Evarts, of counsel, stated that their associate counsel, Mr. Stanbery, would not be present today to take part in the trial, but that the counsel present would proceed with the evidence; and

The counsel for the President then submitted in further evidence, certified copies of appointments of various persons to be Secretaries of the several executive departments ad interim by Presidents Pierce, Buchanan, Lincoln, and Johnson; which were admitted.

The counsel for the President submitted, in further evidence, a statement prepared by the Secretary of the Senate showing the beginning and ending of each executive and legislative session of the Senate from 1789 to 1868.

Walter S. Cox, a witness on the part of the President, was called and sworn, and while under examination

The counsel for the President proposed the following question to him:

When, by whom, and under what circumstances were you employed as counsel in the case of Gen. Thomas?

The question having been objected to by the managers.

The Chief Justice overruled the objection of the managers and directed the witness to proceed.

While the witness was proceeding in his answer to the question he was interrupted by Mr. Manager Butler, who objected to his further answering.

The Chief Justice requested the counsel to state what they proposed to prove by the testimony.

Mr. Edmunds asked that the counsel for the President be directed to reduce to writing what they proposed to prove by the question.

Thereupon,

The counsel submitted the following written statement:

We offer to prove that Mr. Cox was employed, professionally, by the President in the presence of Gen. Thomas to take such legal proceedings in the case that had been commenced against Gen. Thomas as would be effectual to raise, judicially, the question of Mr. Stanton's legal right to hold the office of Secretary for the Department of War against the authority of the President; and also in reference to obtaining a writ of quo warranto for the same purpose, and we shall expect to follow up this proof by evidence of what was done by the witness in pursuance of the above employment.

Mr. Edmunds inquired of the counsel for the President to what date does the proposed evidence relate?

To which the counsel answered that it related to the 22d of February.

The managers objected to the admission of the evidence proposed to be offered.

After argument by the managers in favor of the objection and by the counsel of the President against it,

Mr. Ferry submitted the following question to the counsel of the President:

Do the counsel of the President propose to contradict or vary the statement of the docket entries produced by them to the effect that Gen. Thomas was discharged by Chief Justice Carter on a motion of the defendant's counsel?

To which

Mr. Curtis answered that the counsel for the President do not expect or desire to contradict anything on the docket entries.

After further argument,

The Chief Justice stated that the evidence now offered by the counsel for the President, in his opinion, came within the principles of a previous decision of the Senate, which decision was, in his judgment, correct, and ruled the proposed evidence admissible.

Mr. Drake desired that a vote of the Senate be had on the question of the competency of the evidence; and

The Chief Justice submitted the question to the Senate, to wit, Shall the proof offered be admitted? and

It was determined in the affirmative ---------- Yeas---- 29; Nays---- 21

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Corbett, Davis, Dixon, Doolittle, Fessenden, Fowler, Frelinghuysen, Grimes, Hendricks, Howe, Johnson, McCreery, Morrill of Maine, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Ross, Saulsbury, Sherman, Sprague, Sumner, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Conkling, Cragin, Drake, Edmunds, Ferry, Harlan, Howard, Morgan, Morrill of Vermont, Nye, Pomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wilson, Yates.

So the Senate determined that the proposed testimony be admitted; and

The witness having made answer,

The counsel for the President proposed a further question to the witness; which being objected to by the managers,

Mr. Howard asked that the counsel for the President be directed to reduce their question to writing;

Whereupon

The question was reduced to writing, as follows:

State what conclusions you arrived at as to the proper course to be taken to accomplish the instructions given you by the President.

The Chief Justice ruled the question to be admissible and directed the witness to answer; and

The witness having made answer thereto,

The counsel for the President proposed the following question to the witness:

What did you do toward getting out a writ of habeas corpus under the employment of the President?

The Chief Justice submitted the question to the Senate, to wit, Is the question admissible? and

It was determined in the affirmative ---------- { Yeas---- 27 / Nays---- 23

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Frelinghuysen, Grimes, Hendricks, Johnson, McCreery, Morrill of Maine, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Ross, Saulsbury, Sherman, Sprague, Sumner, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are,

Messrs, Cameron, Cattell, Chandler, Conkling, Conness, Cragin, Drake, Edmunds, Ferry, Harlan, Howard, Howe, Morgan, Morrill of Vermont, Nye, Pomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wilson, Yates.

So the Senate decided the question to be admissible.

The witness proceeded to answer the question, and while so doing alluded to an interview with the President on the 26th of February last.

Mr. Manager Butler raised the objection that what transpired between the President and the witness on the 26th of February at the Executive Mansion could not be received as evidence.

The Chief Justice submitted the question to the Senate, to wit, Is the evidence admissible? and

It was determined in the negative.

The counsel for the President then proposed the following question to the witness:

After you had reported to the President the result of your efforts to obtain a writ of habeas corpus, did you do any other act in pursuance of the original instructions you had received from the President on Saturday to test the right of Mr. Stanton to continue in the office? If so, state what the acts were.

Mr. Sherman asked that the fifth article of impeachment be read, and

The Secretary having read the fifth article of impeachment,

The Chief Justice asked the counsel for the President if the question had relation to that article;

To which the counsel replied, that it certainly had reference to the fifth article.

Whereupon,

The Chief Justice ruled the question to be admissible.

Mr. Howard asked that the question be submitted to the Senate; and

The Chief Justice submitted the question to the Senate, to wit, Is the question admissible? and

It was determined in the affirmative ---------- Yeas---- 27 / Nays---- 23

On motion by Mr. Johnson,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Hendricks, Howe, Johnson, McCreery, Morrill of Maine, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Ross, Saulsbury, Sherman, Sprague, Sumner, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Conkling, Conness, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Morgan, Morrill of Vermont, Nye, Pomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wilson, Yates.

So the Senate decided the question to be admissible; and

The witness having made answer thereto,

On motion by Mr. Conness, at 15 minutes past 2 o'clock p.m.,

The Senate took a recess for 15 minutes; at the expiration of which

The witness was cross-examined by the managers.

Richard T. Merrick, a witness on the part of the President, was called and sworn, and while under examination.

The counsel for the President proposed to the witness a question which was objected to by the managers; and

The question having been reduced to writing was read by the Secretary, as follows:

We offer to prove that about the hour of noon, on the 22d day of February, upon the first communication to the President of the situation of Gen. Thomas's case, the President or the Attorney General, in his presence, gave the witness certain directions as to obtaining a writ of habeas corpus for the purpose of testing, judicially, the right of Mr. Stanton to continue to hold the office of Secretary of War against the authority of the President.

The Chief Justice ruled the question to be admissible; and

The witness having made answer thereto.

The counsel for the President proposed the following question to the witness:

What, if anything, did you and Mr. Cox do in reference to accomplishing the result you have spoken of?

The managers having raised objection to the question,

The Chief Justice ruled the question to be admissible; and

The witness having made answer thereto,

He was cross-examined by the managers and dismissed.

Ewin O. Perrin, a witness on the part of the President, was called and sworn, and while under examination a question was proposed to him, by the counsel for the President, to which objection was made by the managers.

The counsel for the President being required to reduce their question to writing, it was read by the Secretary, as follows:

We offer to prove that the President then stated that he had issued an order for the removal of Mr. Stanton and the employment of Gen. Thomas to perform the duties ad interim; that thereupon Mr. Perrin said, Supposing Mr. Stanton should oppose the order? The President replied. There is no danger of that for Gen. Thomas is already in the office. He then added. It is only a temporary arrangement; I shall send in to the Senate at once a good name for the office.

After argument by the managers against the admissibility of the question, and by the counsel for the President in favor of it,

The Chief Justice submitted the question to the Senate, viz: Is the question admissible? And

It was determined in the negative ..... { Yeas.... 9 / Nays.... 37 }

On motion by Mr. Conness,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Bayard, Buckalew, Davis, Dixon, Doolittle, Hendricks, McCreery, Patterson of Tennessee, Vickers.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Conkling, Conness, Corbett, Cragin, Drake, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Harlan, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Thayer, Tipton, Trumbull, Van Winkle, Wiley, Williams, Wilson, Yates.

So the Senate decided the question to be inadmissible; and

The examination of the witness being closed, and no cross-examination proposed, he was permitted to retire.

Mr. Evarts, of counsel, stated that counsel had now reached a point in their defense where they would desire not to be required to proceed further with their evidence in the absence of their associate counsel, Mr. Stanbery.

After argument by Mr. Manager Butler in favor of proceeding with the trial at once, and a reply by Mr. Evarts, of counsel,

Mr. Conness submitted the following order for consideration:

Ordered, That on each day hereafter the Senate, sitting as a court of impeachment, shall sit at 11 o'clock a.m.;

And

An amendment having been proposed by Mr. Summer,

Mr. Trumbull objected to the present consideration of the order.

On motion by Mr. Ferry,

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned to 12 o'clock m. tomorrow.

FRIDAY, APRIL 17, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and,

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence at the door of the Senate Chamber of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its Chairman, Mr. Elihu B. Washburne, and

accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel of the President, to wit, Mr. Curtis, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Chief Justice having directed the Secretary to read the Journal of the proceedings of the Senate sitting for the trial of the President upon articles of impeachment of yesterday,

On motion by Mr. Stewart,

The reading of the Journal was dispensed with.

The Senate proceeded to consider the motion submitted by Mr. Conness yesterday fixing the hour of the daily meeting of the Senate sitting on the trial of the President upon articles of impeachment hereafter at 11 o'clock a.m.; and

The question being on the amendment proposed by Mr. Summer, to wit, strike out all after the word "*Ordered*," and insert:

That considering the public interest which suffer from the delay of this trial, and in pursuance of the order already adopted to proceed with all convenient dispatch, the Senate will sit from 10 o'clock in the forenoon to 6 o'clock in the afternoon, with such brief recess as may be ordered;

It was determined in the affirmative ---------- { Yeas---- 13 / Nays---- 30

On motion by Mr. Sumner,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Cameron, Chandler, Cole, Harlan, Morrill of Maine, Pomeroy, Ramsey, Stewart, Sumner, Thayer, Tipton, Yates.

Those who voted in the negative are,

Messrs. Anthony, Cattell, Conness, Davis, Dixon, Doolittle, Drake, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Hendricks, Howard, Howe, Johnson, Morgan, Morrill of Vermont, Morton, Patterson of New Hampshire, Patterson of Tennessee, Ross, Saulsbury, Sherman, Trumbull, Van Winkle, Vickers, Wiley, Williams, Wilson.

So the amendment was not agreed to; and

On the question to agree to the motion of Mr. Conness,

It was determined in the negative ---------- { Yeas---- 29 / Nays---- 14

On motion by Mr. Conness,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Sumner, Thayer, Tipton, Willey, Williams, Wilson, Yates.

Those who voted in the negative area,

Messrs. Anthony, Davis, Dixon, Doolittle, Fowler, Grimes, Hendricks, Johnson, Patterson of Tennessee, Ross, Saulsbury, Trumbull, Van Winkle, Vickers.

So it was

Ordered, That on each day hereafter the Senate, sitting as a court of impeachment, shall sit at 11 o'clock a. m.

Mr. Ferry submitted the following resolution for consideration:

Whereas there appear in the proceedings of the Senate of yesterday, as published in the Globe of this morning, certain tabular statements incorporated in the remarks of Mr. Manager Butler upon the question of adjournment, which tabular statements were neither spoken in the discussion nor offered or received in evidence: Therefore.

Ordered, That said tabular statement be omitted from the proceedings of the trial as published by rule of the Senate.

The Senate proceeded, by unanimous consent, to consider the resolution; and

The resolution was agreed to.

The Chief Justice directed the counsel for the President to proceed with the defense; and

William W. Armstrong, a witness on the part of the President, was called; and having been sworn, was examined by counsel for the President and cross-examined by the managers.

Barton Able, a witness on the part of the President, was called; and having been sworn, was examined by the counsel for the President and cross-examined by the managers.

George Knapp, a witness on the part of the President, was called; and being sworn, was examined by the counsel for the President and cross-examined by the managers.

Henry F. Zeider, a witness on the part of the President, was called; and being sworn, was examined by the counsel for the President and cross-examined by the managers.

The counsel for the President submitted in further evidence a statement prepared by Henry F. Zeider, showing the differences in the language used by the President in the speech he made at St. Louis, September 8, 1866, as published in newspapers, the Missouri Republican and the St. Louis Democrat; which was admitted.

The counsel for the President submitted in further evidence a copy of the commission issued by John Adams, President of the United States, to George Washington, appointing him Lieutenant General of the Armies of the United States, in the year 1798; which was read and admitted.

The counsel for the President submitted in further evidence a statement prepared at the Department of the Interior, showing the names and dates of removals of superintendents of Indian affairs and Indian agents from the year 1849 to 1866, inclusive; also the names and dates of removals of registers of land offices and receivers of public moneys; also of surveyors general of the public lands; and also miscellaneous removals for the same period, made during the session as well as during the recess of the Senate.

Frederick W. Seward, a witness on the part of the President, was called; and having been sworn, was examined by the counsel for the President and cross-examined by the managers.

The counsel for the President submitted in further evidence a schedule of appointments of vice consuls during the sessions of the Senate from the year 1838 to the year 1865, inclusive; which was admitted.

Gideon Welles, a witness on the part of the President, was called and sworn; and while being examined a question was proposed by the counsel for the President which was objected to by the managers.

By direction of the Chief Justice the counsel reduced their question to writing, which was read by the Secretary, as follows:

What passed between you and the President after you made that communication and in reference to that communication?

The Chief Justice ruled the question admissible; and

The witness having made answer thereto,

On motion by Mr. Conness, at 20 minutes past 2 o'clock p. m., the Senate took a recess for 15 minutes; at the expiration of which

The examination of Gideon Welles was resumed; and a question being put to the witness by the counsel for the President, which was objected to by the managers, the counsel for the President, by direction of the Chief Justice, submitted in writing a statement of what they offered to prove by the testimony, which was read by the Secretary as follows:

We offer to prove that on this occasion the President communicated to Mr. Welles and the other members of his Cabinet, before the meeting broke up, that he had removed Mr. Stanton and appointed Gen. Thomas Secretary of War ad interim, and that upon the inquiry by Mr. Welles, whether Gen. Thomas was in possession of the office, the President replied that he was; and upon further question of Mr. Welles, whether Mr. Stanton acquiesced, the President replied that he did; all that he required was time to remove his papers.

After argument by the managers against the admissibility of the proposed evidence, and by the counsel in favor of it,

Mr. Howard submitted the following question to counsel,

In what way does the evidence the counsel for the accused now offer meet any of the allegations contained in the impeachment? How does it affect the gravamen of any one of the charges?

And

The counsel for the President having made answer thereto,

The Chief Justice ruled the evidence proposed to be offered by the counsel admissible.

Mr. Cragin requested that the question be submitted to the Senate; and it was accordingly submitted.

Shall the evidence offered by the counsel for the President be admitted?

It was determined in the affirmative ---------- { Yeas---- 26 / Nays---- 23

On motion of Mr. Cragin,

The years and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Cole, Conkling, Corbett, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Hendricks, Johnson, McCreery, Morton, Patterson of Tennessee, Ross, Saulsbury, Sherman, Sprague, Sumner, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Conness, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wilson, Yates.

So the Senate decided the proposed evidence admissible; and

The witness having given in his evidence in response to questions implied in the offer of proof submitted by the counsel for the President, and while being further examined, a question was proposed by the counsel for the President, and objected to by the managers; when,

By direction of the Chief Justice, the counsel for the President submitted a statement in writing of what they proposed to prove by witness, which is as follows:

We offer to prove that the President, at a meeting of the Cabinet, while the bill was before the President for his approval, laid before the Cabinet the tenure of civil office bill for their consideration and advice to the President respecting his approval of the bill; and thereupon the members of the Cabinet then present gave their advice to the President that the bill was unconstitutional and should be returned to Congress with his objections; and that the duty of preparing a message setting forth the objections to the constitutionality of the bill was devolved on Mr. Seward and Mr. Stanton, to be followed by proof as to what was done by the President and Cabinet up to the time of sending in the message.

After argument by the managers against the admissibility of the evidence proposed to be offered, and by the counsel for the President in favor of it,

On motion by Mr. Conness, at 18 minutes to 5 o'clock p.m.,

The Senate sitting for the trial of the President upon articles of impeachment adjourned to 11 o'clock a.m. tomorrow.

SATURDAY, APRIL 18, 1868.

The United States *v.* Andrew Johnson, President.

At 11 o'clock a.m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence, at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Curtis, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The journal of the proceedings of the Senate sitting for the trial of the President upon articles of impeachment of yesterday was read by the Secretary.

The Chief Justice announced that the Senate, at its adjournment yesterday, had under consideration a statement of what the counsel for the President proposed to prove by the witness on the stand; and that the admissibility of the evidence which was therein proposed to be offered was the question now before the Senate.

The statement was read by the Secretary, as follows:

We offer to prove that the President, at a meeting of the Cabinet, while the bill was before the President for his approval, laid before the Cabinet the tenure of civil office bill for their consideration and advice to the President respecting his approval of the bill; and thereupon the members of the Cabinet then present gave their advice to the President that the bill was unconstitutional and should be returned to Congress with his objections; and that the duty of preparing a message setting forth the objections to the constitutionality of the bill was devolved on Mr. Seward and Mr. Stanton, to be followed by proof as to what was done by the President and Cabinet up to the time of sending in the message.

Mr. Johnson submitted the following question to the counsel for the President:

Do the counsel for the President understand that the managers deny the statement made by the President in his message of December 12, 1867, in evidence as given by the managers on page 45 of the official report of the trial, that the members of the Cabinet gave him the opinion there stated as to the tenure of office act? And is this evidence offered to corroborate that statement, or for what other object is it offered?

Mr. Howard submitted the following question to the counsel for the President:

Do not the counsel for the accused consider that the validity of the tenure of office bill was purely a question of law to be determined on this trial by the Senate; and if so, do they claim that the opinion of Cabinet officers touching that question is competent evidence by which the judgment of the Senate ought to be influenced?

The argument upon the admissibility of the proof proposed to be offered was resumed by the counsel for the President, in the course of which the counsel for the President made answer to the questions proposed by Mr. Johnson and Mr. Howard.

Mr. Williams submitted the following question to the counsel for the President:

Is the advice given to the President by his Cabinet with a view of preparing a veto message pertinent to prove the right of the President to disregard the law after it was passed over his veto?

The counsel for the President having made answer to the question,

The Chief Justice expressed the opinion that the intent being the subject to which much of the evidence on both sides had been directed, this testimony was admissible for the purpose of showing the intent with which the President has acted in this transaction; but that if desired by any Senator he would submit the question to the Senate.

Mr. Howard having asked that the question be submitted to the Senate, it was accordingly submitted, viz:

Shall the evidence offered by the counsel for the President be admitted? and

It was determined in the negative---{Yeas---------- 20
{Nays---------- 29

On motion by Mr. Howard,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the negative are,

Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery,

Patterson of Tennessee, Ross, Saulsbury, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Thayer, Tipton, Williams, Wilson, Yates.

So the offer of proof by the counsel for the President was decided not to be admissible.

The examination of Gideon Welles, a witness on the part of the President, was resumed, and the counsel for the President having proposed a question which was objected to by the managers,

The counsel for the President submitted the following statement of what they proposed to prove by the witness:

We offer to prove that at the meetings of the Cabinet at which Mr. Stanton was present, held while the tenure of civil office bill was before the President for approval, the advice of the Cabinet in regard to the same was asked by the President and given by the Cabinet; and thereupon the question whether Mr. Stanton and the other Secretaries who had received their appointments from Mr. Lincoln were within the restrictions upon the President's power of removal from office created by that act was considered, and the opinion expressed that the Secretaries appointed by Mr. Lincoln were not within such restrictions.

After argument by the managers against the admissibility of the proof proposed by the counsel of the President, and by the counsel in favor of it,

The Chief Justice stated that he was of the opinion that this testimony was proper to be taken into consideration by the Senate, but was unable to determine what extent the Senate would give to its previous ruling, or how far it considered that ruling applicable to the present question, and that he would therefore submit the question to the Senate; and

The question being put, Shall the proof proposed by the counsel for the President be admitted?

It was determined in the negative	Yeas	22
	Nays	26

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Patterson of Tennessee, Ross, Saulsbury, Sherman, Sprague, Trumbull, Van Winkle, Willey.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Cole, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wilson, Yates.

So the Senate decided the proof proposed to be offered by the counsel for the President to be inadmissible; and

In the further examination of the witness, the counsel for the President having proposed a question which was objected to by the managers,

The counsel for the President submitted the following statement of what they proposed to prove by the witness:

We offer to prove that at the Cabinet meetings between the passage of the tenure of civil office bill and the order of the 21st of February, 1868, for the removal of Mr. Stanton, upon occasions when the condition of the public service as affected by the operation of that bill came up for the consideration and advice of the Cabinet, it was considered by the President and Cabinet that a proper regard to the public service made it desirable that upon some proper case a judicial determination on the constitutionality of the law should be obtained.

After argument by the managers against the admissibility of the proof proposed to be offered by the counsel for the President, and by the counsel for the President in favor of it,

Mr. Henderson submitted the following question to the managers:

If the President shall be convicted, he must be removed from office. If his guilt should be so great as to demand such punishment, he may be disqualified to hold and enjoy any office under the United States. Is not the evidence now offered competent to go before the court in mitigation?

And Mr. Manager Butler having replied thereto,

The Chief Justice submitted the question to the Senate, to wit, Shall the proof proposed to be offered by the counsel for the President be admitted? and

It was determined in the negative— Yeas 19; Nays 30

On motion by Mr. Conness,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Patterson of Tennessee, Ross, Saulsbury, Trumbull, Van Winkle, Vickers.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Thayer, Tipton, Willey, Wiliams, Wilson, Yates.

So the Senate decided the proof proposed to be offered by the counsel for the President not admissible.

On motion by Mr. Anthony, at 10 minutes before 2 o'clock p.m.,

The Senate took a recess for 15 minutes, at the expiration of which,

The examination of Mr. Welles was resumed by the counsel for the President, during which a question was proposed by counsel and objected to by managers; and

The counsel having reduced their question to writing it was read by the Secretary, as follows:

Was there within the period embraced in the inquiry in the last question and at any discussions or deliberation of the Cabinet concerning the operation of the tenure of civil office act and the requirements of the public service

in regard to the same any suggestion or intimation whatever touching or looking to the vacation of any office by force or getting possession of the same by force?

The Chief Justice submitted the question to the Senate, to wit: Is the question admissible? and

It was determined in the negative— Yeas 18; Nays 26

On motion by Mr. Grimes,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Hendricks, Johnson, McCreery, Patterson of Tennessee, Ross, Saulsbury, Trumbull, Van Winkle, Vickers.

Those who voted in the negative are,

Messrs. Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Thayer, Tipton, Willey, Williams, Wilson, Yates.

So the Senate decided the question to be inadmissible; and

The examination of the witness having been concluded by the counsel for the President, he was cross-examined by the managers.

Edgar T. Welles, a witness on the part of the President, was called, and being sworn, was examined by the counsel for the President and cross-examined by the managers.

The counsel for the President submitted, in further evidence, a blank form of appointment heretofore used in the appointment of Navy agents by the Navy Department, which was admitted.

Alexander W. Randall, a witness on the part of the President, was called; and being sworn, was examined by the counsel for the President.

The counsel for the President submitted, in further evidence, certified papers relative to the suspension of Foster Blodgett, postmaster at Augusta, Ga., which were read and admitted, and

The witness having been cross-examined by the managers,

Mr. Sherman submitted the following question to the witness:

State if after the 2d of March, 1867, the date of the passage of the tenure-of-office act, the question whether the Secretaries appointed by President Lincoln were included within the provisions of that act came before the Cabinet for discussion, and if so, what opinion was given on this question by members of the Cabinet to the President?

The question being objected to by the managers,

The Chief Justice submitted the question to the Senate: Is the question admissible? and

It was determined in the negative— Yeas 20; Nays 26

On motion by Mr. Ferry,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Hendricks, Johnson, McCreery, Patterson

of Tennessee, Ross, Saulsbury, Sherman, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wilson, Yates.

So the Senate decided the question to be inadmissible.

Mr. Evarts, of counsel, stated that the evidence on the part of the President was now closed, unless upon Mr. Stanbery's recovery, to whom was intrusted the examination of witnesses, it should be deemed necessary to adduce further testimony, which he hoped would be permitted if required.

On motion by Mr. Johnson,

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned to Monday next, at 11 o'clock a.m.

MONDAY, APRIL 20, 1868.

The United States *v.* Andrew Johnson, President.

At 11 o'clock a.m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence, at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its chairman. Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Curtis, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Journal of the proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of Saturday having been read in part.

On motion by Mr. Stewart,

The further reading of the Journal was dispensed with.

The Chief Justice inquired of the counsel for the President if they proposed to offer any further evidence on the part of the defense.

The counsel for the President replied that they considered the evidence on the part of the defense as closed.

The Chief Justice inquired of the managers if they proposed to offer any rebutting evidence.

After oral questions proposed by Mr. Johnson and Mr. Yates to the managers and answers thereto by the managers,

The managers offered in further evidence the Journal of Congress of 1774–75, volume 1, pages 121 and 122, showing the proceedings of Congress appointing George Washington General and Commander in Chief of the Army of the United Colonies; also a letter of James Guthrie, Secretary of the Treasury, dated August 23, 1855, to J. H. Smith, of Charleston, declining to appoint William Irving Crandall surveyor of the customs at Chattanooga, Tenn., until the next session of the Senate; which were admitted.

Alexander W. Randall, a witness on the part of the President, was recalled and cross-examined by the managers in reference to the indictment for perjury found by the grand jury of Richmond County, Ga., against Foster Blodgett, postmaster at Augusta, Ga.

Mr. Butler offered, in further evidence, a copy of the indictment found by the grant jury of Richmond County, Ga., against Foster Blodgett, postmaster at Augusta, Ga., for perjury; which was admitted.

The managers offered, in further evidence, a letter from Foster Blodgett in answer to the letter of the Postmaster General dated January 3, 1868, suspending him from the office of postmaster at Augusta, Ga.

The counsel for the President having objected to the evidence,

The Chief Justice directed the managers to reduce to writing what they proposed to show by the evidence;

Whereupon,

The managers submitted the following statement in writing, which was read by the Secretary:

The defendant's counsel having produced from the files of the Post Office Department a part of the record, showing the alleged causes for the suspension of Foster Blodgett as deputy postmaster at Augusta, Ga., we now propose to give in evidence the residue of the soil record, including the papers on file in the said case, for the purpose of showing the whole of the case as the same was presented to the Postmaster General before and at the time of the suspension of the said Blodgett.

After argument by the counsel against the admissibility of the evidence and by the managers in favor of it,

The Chief Justice submitted the question to the Senate, to wit: Shall the evidence offered by the managers be admitted? and

It was determined in the negative.

The witness was then permitted to explain certain portions of the testimony given by him on Saturday last.

Mr. Conness proposed the following question to witness:

Have you ever taken any step since your act suspending Foster Blodgett in the further investigation of his case?

The witness having made answer thereto, and no further questions being proposed to him, his examination was closed.

The managers submitted a paper containing a list of all the officers of the United States in the several executive departments of the Government and of the Army and Navy of the United States, and the salary of each as shown by the Official Register for the year 1865; which was ordered to be printed with the proceedings of the Senate.

The managers offered in further evidence the message of the President of the United States of February 13, 1868, appointing Lieut. Gen. William T. Sherman, of the Army of the United States, general

by brevet; also the message of the President of the 21st February, 1868, appointing Maj. Gen. George H. Thomas, of the Army of the United States, lieutenant general by brevet and also general by brevet.

The counsel for the President having objected to the proposed evidence.

The Chief Justice submitted the question to the Senate, to wit: Is the evidence admissible? and

It was determined in the negative ------ { Yeas ---------- 14
Nays ---------- 35

On motion by Mr. Anthony,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Cole, Fessenden, Fowler, Grimes, Henderson, Morton, Ross, Sumner, Tipton, Trumbull, Van Winkle, Willey, Yates.

Those who voted in the negative are,

Messrs. Buckalew, Cameron, Cattell, Chandler, Conkling, Conness, Corbett, Cragin, Davis, Dixon, Doolittle, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Hendricks, Howard, Howe, Johnson, McCreery, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Thayer, Vickers, Williams, Wilson.

So the Senate decided the evidence to be inadmissible.

Mr. Butler then announced that the evidence on the part of the managers was closed, and that all witnesses attending the trial on subpoenas issued at the instance of the managers might be discharged; and

Mr. Evarts, of counsel for the President, having made a similar announcement on the part of the defense,

The Chief Justice inquired of the managers if they were now ready to proceed in the final argument of the cause.

Mr. Boutwell stated that the duty of opening the argument on the part of the managers had been assigned to him, and as his argument would consume the larger portion of the day, he asked the Senate to permit him to commence his argument to-morrow.

Mr. Evarts stated that in consequence of the illness of Mr. Stanbery, who had been relied upon by the counsel for the President to make the final argument in the defense, he would require an interval of two days to put him in a fitting condition to perform that duty, and requested that two days be allowed for that purpose.

Mr. Logan, one of the managers, stated that he had prepared an argument in the case, which he had had printed, and asked the Senate to permit him to file the same with the case, in order that the counsel for the President might examine it and reply thereto if they should think proper.

Mr. Stewart submitted the following motion for consideration:

Ordered, That the Hon. Manager Logan have leave to file his written argument to-day and furnish a copy to each of the counsel for the respondent.

On motion by Mr. Sherman to amend the motion submitted by Mr. Stewart by striking out all after the word "*Ordered*," and insert-

ing the following: That the managers on the part of the House of Representatives, and the counsel for the respondent, have leave to file written or printed arguments before the final argument commences.

Mr. Stewart accepted the amendment proposed by Mr. Sherman as a modification of his own proposition; and

Objection being made to its present consideration,

On motion by Mr. Johnson,

Ordered, That when the Senate sitting for the trial of the President upon articles of impeachment adjourn, it be to Wednesday next, at 11 o'clock a.m.; and,

On motion by Mr. Edmunds,

The Senate sitting for the trial of the President on articles of impeachment adjourned.

WEDNESDAY, APRIL 22, 1868.

The United States *v.* Andrew Johnson, President.

At 11 o'clock a.m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Curtis, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Secretary having commenced the reading of the Journal of proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of Monday.

On motion by Mr. Edmunds.

The further reading of the Journal was dispensed with.

The Chief Justice stated that the business first in order was the following motion, submitted by Mr. Stewart on Monday last:

Ordered, That the managers on the part of the House of Representatives and counsel of the respondent have leave to file written or printed arguments before the oral argument commences; and

The Senate proceeded to consider the said motion.

On motion by Mr. Vickers to amend the motion of Mr. Stewart by striking out all after the word "Ordered," and inserting:

As the counsel for the President has signified to the Senate, sitting as a court for the trial of the impeachment, that they did not desire to file written or printed arguments, but preferred to argue orally, if allowed to do so, therefore:

Resolved, That any two of the managers other than those who, under the present rule are to open and close the discussion and who have not already addressed the Senate, be permitted to file written or printed arguments at or before the adjournment of to-day, or to make oral addresses after the opening by one of the managers and the first reply of the President's counsel, and that other two of the counsel for the President who have not spoken may have the privilege of reply alternating with the said two managers, and leaving the closing argument for the President, and the managers the final reply, to be made under the original rule.

It was determined in the affirmative ..... Yeas 26, Nays 20

On motion by Mr. Conness.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Buckalew, Cragin, Davis, Doolittle, Edmunds, Fessenden, Fowler, Frelinghuysen, Grimes, Hendricks, Johnson, McCreery, Morrill of Maine, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Saulsbury, Sprague, Tipton Trumbull Van Winkle, Vickers, Willey, Wilson, Yates.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Conness, Corbett, Drake, Ferry, Henderson, Howard, Howe, Morgan, Morrill of Vermont, Pomeroy, Ramsey, Ross, Sherman, Stewart, Sumner, Thayer, Williams.

So the amendment was agreed to; and

On the question to agree to the motion of Mr. Stewart as amended on the motion of Mr. Vickers,

It was determined in the negative ..... Yeas 20, Nays 26

On motion by Mr. Conness.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Buckalew, Cragin, Davis, Doolittle, Fowler, Hendricks, Johnson, McCreery, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Saulsbury, Sumner, Tipton, Trumbull, Vickers, Wiley, Wilson, Yates.

Those who voted in the negative are.

Messrs. Cameron, Cattell, Chandler, Conness, Corbett, Drake, Edmunds, Ferry, Fessenden, Frelinghuysen, Grimes, Henderson, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Thayer, Van Winkle, Williams.

So the motion as amended was not agreed to.

Mr. Vickers submitted the following motion for consideration:

Ordered, That one of the managers on the part of the House be permitted to file his printed argument before the adjournment of to-day, and that after an oral opening by a manager and the reply of one of the President's counsel, another of the President's counsel shall have the privilege of filing a written or making an oral address, to be followed by the closing speech of one of the President's counsel and the final reply of a manager, under the existing rule.

The Senate proceeded, by unanimous consent, to consider the said

On motion by Mr. Conness to amend the motion of Mr. Vickers, by striking out all after the word "Ordered," and inserting,

That such of the managers and counsel for the President as may choose to do so have leave to file arguments on or before Friday, April 24.

On motion by Mr. Buckalew that the motion of Mr. Vickers lie on the table,

It was determined in the negative; and

On the question to agree to the amendment proposed by Mr. Conness,

It was determined in the negative { Yeas---- 24 / Nays---- 25 }

On motion by Mr. Conness,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Cameron, Cattell, Chandler, Conkling, Conness, Corbett, Cragin, Drake, Ferry, Henderson, Howard, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Sumner, Thayer, Tipton, Willey, Williams, Wilson, Yates.

Those who voted in the negative are,

Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Frelinghuysen, Grimes, Hendricks, Howe, Johnson, McCreery, Morgan, Morton, Norton, Patterson of Tennessee, Ross, Saulsbury, Sprague, Trumbull, Van Winkle, Vickers.

So the amendment was not agreed to.

On motion by Mr. Johnson to amend the motion submitted by Mr. Vickers by striking out in the first line the word "one" and inserting the word "two," and in the second line by striking out the word "his" and inserting the word "their,"

It was determined in the affirmative.

On motion by Mr. Sherman to further amend the motion of Mr. Vickers by inserting in the second line, after the word "printed," the words "or written,"

It was determined in the affirmative.

On motion by Mr. Conness to further amend the motion of Mr. Vickers by striking out the words "before the adjournment of today," and inserting in lieu thereof the words "on or before 11 o'clock a.m. to-morrow,"

It was determined in the affirmative.

On motion by Mr. Henderson to further amend the motion of Mr. Vickers by striking out all after the word "Ordered," and inserting—

That all the managers not delivering oral arguments may be permitted to file written arguments at any time before the 24th instant, and the counsel for the President not making oral arguments may file written arguments at any time before 11 o'clock Monday, the 27th instant;

On motion by Mr. Thayer that the motion of Mr. Vickers lie on the table,

It was determined in the negative { Yeas---- 13 / Nays---- 37 }

On motion by Mr. Sprague,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Buckalew, Conkling, Dixon, Doolittle, Edmunds, Grimes, Henderson, McCreery, Norton, Ross, Sprague, Thayer, Williams.

Those who voted in the negative are,

Messrs. Anthony, Cameron, Cattell, Chandler, Conness, Corbett, Cragin, Davis, Drake, Ferry, Fessenden, Fowler, Frelinghuysen, Harlan, Hendricks, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ramsey, Saulsbury, Sherman, Stewart, Sumner, Tipton, Trumbull, Van Winkle, Vickers, Willey, Wilson, Yates.

So the motion to lie on the table was not agreed to.

The question recurring on the amendment proposed by Mr. Henderson,

On motion by Mr. Conness to amend the amendment in the first line by inserting after the word "That" the words "subject to the 21st rule,"

It was determined in the affirmative.

On motion by Mr. Trumbull to further amend the amendment proposed by Mr. Henderson by striking out all after the word "That," in line 1, and inserting "as many of the managers and of the counsel for the President as desire to do so be permitted to file arguments or to address the Senate orally,"

It was determined in the affirmative ---------- { Yeas---- 29 / Nays---- 20

On motion by Mr. Stewart,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Buckalew, Conkling, Cragin, Davis, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Maine, Norton, Patterson of New Hampshire, Patterson of Tennessee, Ramsey, Saulsbury, Sherman, Sprague, Tipton, Trumbull, Van Winkle, Vickers, Willey, Yates.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Conness, Corbett, Dixon, Drake, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Vermont, Morton, Pomeroy, Ross, Stewart, Sumner, Thayer, Williams.

So the amendment of Mr. Trumbull to the amendment proposed by Mr. Henderson was agreed to; and

On the question to agree to the amendment as amended,

On motion by Mr. Buckalew to further amend the amendment by inserting at the end thereof the following: "but the conclusion of the oral argument shall be by one manager, as provided in the 21st rule,"

It was determined in the affirmative.

On motion by Mr. Cameron to further amend the amendment, as amended, by striking out all after the word "That," in the first line, and inserting "all the managers and all the counsel for the President be permitted to file written or printed arguments by 11 o'clock a.m. to-morrow,"

It was determined in the negative.

On motion by Mr. Howe that the motion of Mr. Vickers and the proposed amendment lie on the table,

It was determined in the negative.

On motion by Mr. Yates to further amend the amendment, as amended, by striking out all after the word "That," in the first line,

and inserting "four of the managers and four of the counsel for the respondent be permitted to make printed or written or oral argument, the managers to have the opening and closing, subject to the limitations of the 21st rule,"

It was determined in the negative ---------- Yeas---- 18 / Nays---- 31

On motion by Mr. Yates,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Buckalew, Conkling, Corbett, Cragin, Davis, Doolittle, Fowler, Hendricks, Howard, McCreery, Morgan, Morton, Norton, Saulsbury, Sprague, Van Winkle, Vickers, Yates.

Those who voted in the negative are,

Messrs. Anthony, Bayard, Cameron, Cattell, Chandler, Dixon, Drake, Edmunds, Ferry, Fessenden, Frelinghuysen, Grimes, Harlan, Henderson, Howe, Johnson, Morrill of Maine, Morrill of Vermont, Patterson of Tennessee, Pomeroy, Ramsey, Ross, Sherman, Stewart, Sumner, Thayer, Tipton, Trumbull, Willey, Williams, Wilson.

So the amendment to the amendment was not agreed to.

On motion by Mr. Hendricks that the further consideration of the subject be postponed until Mr. Manager Boutwell shall have made his argument,

It was determined in the negative; and

The question recurring on the amendment of Mr. Henderson, as amended,

It was determined in the affirmative ---------- Yeas---- 28 / Nays---- 22

On motion by Mr. Howard,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Conkling, Cragin, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Maine, Morton, Norton, Patterson of Tennessee, Saulsbury, Sherman, Sprague, Tipton, Trumbull, Van Winkle, Vickers, Willey, Yates.

Those who voted in the negative are,

Messrs. Bayard, Buckalew, Cameron, Cattell, Chandler, Corbett, Drake, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Stewart, Sumner, Thayer, Williams, Wilson.

So the amendment proposed by Mr. Henderson to the motion of Mr. Vickers, as amended on the motion of Mr. Trumbull and the motion of Mr. Buckalew, was agreed to.

The question now recurring on the motion of Mr. Vickers, as amended,

On the question to agree thereto,

It was determined in the affirmative ---------- Yeas---- 28 / Nays---- 22

On motion by Mr. Edmunds,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Cragin, Davis, Doolittle, Ferry, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Morgan, Mor-

rill of Maine, Morton, Norton, Patterson of Tennessee, Ramsey, Saulsbury, Sherman, Sumner, Tipton, Trumbull, Van Winkle, Vickers, Willey, Wilson, Yates.

Those who voted in the negative are,

Messrs. Bayard, Buckalew, Cameron, Cattell, Chandler, Conkling, Corbett, Dixon, Drake, Edmunds, Frelinghuysen, Harlan, Howard, Howe, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ross, Sprague, Stewart, Thayer, Williams.

So it was

Ordered, That as many of the managers and of the counsel for the President as desire to do so be permitted to file arguments or to address the Senate orally; but the conclusion of the oral argument shall be by one manager, as provided in the 21st rule.

Mr. Manager Logan, under the authority of the foregoing order, filed a printed argument.

Mr. Manager Boutwell then commenced his argument in support of the articles of impeachment; and while addressing the Senate yielded for a motion to take a recess for 15 minutes; when,

On motion by Mr. Sprague,

The Senate took a recess for 15 minutes; at the expiration of which,

Mr. Sherman moved that there be a call of the Senate; and

The role being called,

It appeared that 44 Senators were present and answered to their names.

Mr. Boutwell resumed his argument, and, without concluding, yielded to Mr. Conkling, upon whose motion, at 4 o'clock p.m.,

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned to 11 o'clock a.m. tomorrow.

THURSDAY, APRIL 23, 1868.

The United States *v.* Andrew Johnson, President.

At 11 o'clock a.m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens entered the Senate Chamber and took seats assigned them.

The Sergeant at Arms announced the presence, at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its Chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided them.

The counsel for the President, to wit, Mr. Curtis, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Journal of the proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of yesterday was read.

Mr. Grimes submitted the following motion for consideration:

Ordered, **That hereafter the hour for the meeting of the Senate sitting for the trial of the impeachment of Andrew Johnson, President of the United States, shall be 12 o'clock m. of each day, except Sunday.**

Mr. Manager Boutwell resumed his argument in support of the articles of impeachment; and having concluded the same,

On motion by Mr. Johnson,

The Senate took a recess for 15 minutes; at the expiration of which,

Mr. Nelson, of counsel for the President, commenced the argument for the defense; and, without concluding, yielded to Mr. Yates, upon whose motion, at 4 o'clock p.m.,

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned to tomorrow at 11 o'clock a.m.

FRIDAY, APRIL 24, 1868.

The United States *v.* Andrew Johnson, President.

At 11 o'clock a.m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and,

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence, at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its Chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Curtis, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Journal of the proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of yesterday was read.

The Chief Justice stated that the business first in order was the motion submitted by Mr. Grimes yesterday, to fix the hour of the daily meeting of the Senate, sitting for the trial of the impeachment, at 12 o'clock m.; and

The Senate proceeded to consider the said motion.

It was determined in the affirmative ..... { Yeas .... 21 / Nays .... 13 }

On motion by Mr. Wilson,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Davis, Doolittle, Ferry, Fessenden, Fowler, Grimes, Hendricks, Johnson, McCreery, Morgan, Morrill of Vermont, Norton, Patterson of Tennessee, Ramsey, Saulsbury, Trumbull, Van Winkle, Vickers, Willey, Yates.

Those who voted in the negative are,

Messrs. Conkling, Conness, Cragin, Edmunds, Harlan, Howe, Pomeroy, Sprague, Stewart, Sumner, Thayer, Tipton, Wilson.

So it was

Ordered, That hereafter the hour for the meeting of the Senate, sitting for the trial of the impeachment of Andrew Johnson, President of the United States, shall be 12 o'clock m. of each day, except Sunday.

Mr. Edmunds submitted the following motion for consideration:

Ordered, That after the arguments shall be concluded, and when the doors shall be closed for deliberation upon the final question, the official reporters of the Senate shall take down the debates upon the final question, to be reported in the proceedings.

Mr. Nelson, of counsel for the President, resumed his argument for the defense, and continued therein until 15 minutes to 2 o'clock, when he yielded to Mr. Johnson, upon whose motion the Senate took a recess for 15 minutes; at the expiration of which

Mr. Nelson resumed his argument; and having concluded the same,

On motion by Mr. Tipton, at 15 minutes past 4 o'clock p.m.,

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned to to-morrow at 12 o'clock m.

SATURDAY, APRIL 25, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit: Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence, at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Curtis, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Journal of the proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of yesterday was read.

The Chief Justice stated that the business first in order was the motion submitted by Mr. Edmunds yesterday, that after the conclu-

sion of the arguments, when the doors of the Senate shall be closed for deliberation upon the final question, the official reporters of the Senate shall take down the debates to be published in the proceedings.

On motion by Mr. Edmunds that the further consideration of the motion be postponed to Monday next;

On motion by Mr. Drake that the consideration of the motion be postponed indefinitely.

It was determined in the negative ..... {Yeas.... 20 / Nays.... 27}

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Cameron, Chandler, Conkling, Corbett, Drake, Ferry, Harlan, Howard, Morrill of Maine, Morrill of Vermont, Morton, Nye, Pomeroy, Ramsey, Ross, Stewart, Sumner, Thayer, Tipton, Yates.

Those who voted in the negative are,

Messrs. Anthony, Buckalew, Cragin, Davis, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Howe, Johnson, McCreery, Morgan, Norton, Patterson of Tennessee, Saulsbury, Sherman, Trumbull, Van Winkle, Vickers, Willey, Williams, Wilson.

So the motion to postpone indefinitely was not agreed to.

The question recurring on the motion of Mr. Edmunds.

It was determined in the affirmative.

So it was

Ordered, That the further consideration of the question be postponed to Monday next.

Mr. Sumner submitted the following motion for consideration:

Ordered, That the Senate, sitting for the trial of Andrew Johnson, President of the United States, will proceed to vote on the several articles of impeachment at 12 o'clock on the day after the close of the arguments.

Mr. Sumner submitted the following resolution for consideration:

Resolved, That the following be added to the rules of procedure and practice in the Senate when sitting on the trial of impeachments:

"Rule 23. In taking the votes of the Senate on articles of impeachment the presiding officer shall call on each Senator by his name, and upon each article propose the following question, in the manner following: 'Mr. ———, how say you? Is the respondent, ——— ———, guilty or not guilty as charged in the — article of impeachment?' Whereupon each Senator shall rise in his place and answer, 'Guilty,' or 'Not guilty.'

"Rule 24. On a conviction by the Senate, it shall be the duty of the presiding officer forthwith to pronounce the removal from office of the convicted person according to the requirement of the Constitution. Any further judgment shall be on the order of the Senate."

The Chief Justice directed the counsel for the President to proceed with his argument; and

Mr. Groesbeck, of counsel for the President, commenced his argument for the defense; and without concluding, yielded, at 10 minutes past 2 o'clock p.m., to Mr. Sumner, upon whose motion the Senate took a recess for 15 minutes; at the expiration of which,

Mr. Groesbeck resumed his argument; and having concluded the same,

On motion by Mr. Grimes,

The Senate sitting for the trial of the President upon articles of impeachment adjourned to Monday at 12 o'clock m.

MONDAY, APRIL 27, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned to them.

The Sergeant at Arms announced the presence, at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its chairman, Mr. Ellihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Curtis, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The journal of the proceedings of the Senate sitting for the trial of the President upon articles of impeachment of Saturday, the 25th instant, was read.

The Chief Justice stated that the business first in order was the motion submitted by Mr. Edmunds, on the 24th instant, that, after the conclusion of the arguments, when the doors of the Senate shall be closed for deliberation upon the final question, the official reporters of the Senate shall take down the debates to be published in the proceedings; and

The Senate resumed the consideration of the said motion.

On motion by Mr. Williams to amend the motion by inserting at the end thereof the following: "But no Senator shall speak more than once nor to exceed fifteen minutes during such deliberation;"

On motion by Mr. Howard, to amend the amendment proposed by Mr. Williams, by inserting, after the word "minutes," the words "on one question,"

It was determined in the negative ---------- { Yeas---- 19 / Nays---- 30 }

On motion by Mr. Fessenden,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Frelinghuysen, Grimes, Hendricks, Howard, Johnson, McCreery, Norton, Patterson of Tennessee, Saulsbury, Trumbull, Vickers, Willey.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Conkling, Corbett, Cragin, Drake, Edmunds, Ferry, Harlan, Henderson, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sherman, Stewart, Sumner, Thayer, Tipton, Van Winkle, Williams, Wilson, Yates.

So the amendment of Mr. Howard to the amendment proposed by Mr. Williams was not agreed to.

On motion by Mr. Bayard, to amend the amendment proposed by Mr. Williams, by striking out the word "fifteen" and inserting the word "thirty," so that the amendment would read, "nor to exceed thirty minutes,"

It was determined in the negative ---------- { Yeas---- 16 / Nays---- 34

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Bayard, Buckalew, Corbett, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Hendricks, Johnson, McCreery, Norton, Patterson of Tennessee, Saulsbury, Vickers.

Those who voted in the negative are,

Messrs. Anthony, Cameron, Cattell, Chandler, Conkling, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Henderson, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sherman, Stewart, Sumner, Thayer, Tipton, Trumbull, Van Winkle, Willey, Williams, Wilson, Yates.

So the amendment of Mr. Bayard to the amendment proposed by Mr. Williams was not agreed to.

On motion by Mr. Morton,

Ordered, That the further consideration of the motion of Mr. Edmunds be postponed until after the arguments of counsel and managers shall have been closed.

The Chief Justice stated that the next business in order was the motion submitted by Mr. Sumner on Saturday that the Senate proceed to vote on the several articles of impeachment at 12 o'clock on the day after the close of the arguments.

On motion by Mr. Sumner,

Ordered, That the further consideration of the said motion, and also the resolution submitted by him on the 25th instant, proposing two additional rules of proceeding, be postponed until the final argument in the cause shall have been closed.

The Chief Justice directed the managers to proceed with their arguments; and

Thereupon

Mr. Manager Stevens commenced his argument in support of the articles of impeachment; and having concluded the same,

Mr. Manager Williams commenced his argument in support of the said articles; and without concluding, yielded, at 25 minutes past 2 o'clock p.m., to Mr. Conkling, upon whose motion the Senate took a recess for 15 minutes; at the expiration of which,

Mr. Williams resumed his argument; and, without concluding, yielded to Mr. Morrill of Vermont, upon whose motion

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned to to-morrow at 12 o'clock m.

TUESDAY, APRIL 28, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation.

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence, at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Journal of the proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of yesterday was read.

Mr. Sumner submitted the following motion for consideration:

Whereas it is provided in the Constitution of the United States that on trials of impeachment by the Senate "no person shall be convicted without the concurrence of two-thirds of the members present," and the person so convicted "shall be removed from the office"; but this requirement of two-thirds is not extended to any further judgment, which remains subject to the general law that a majority prevails: Therefore, in order to remove any doubt thereupon,

Ordered, That after removal, which necessarily follows conviction, any question which may arise with regard to disqualification or any further judgment shall be determined by a majority of the Members present.

The Chief Justice directed Mr. Manager Williams to proceed with his argument; and

Thereupon

Mr. Manager Williams resumed his argument in support of the articles of impeachment; and, having concluded,

On motion by Mr. Johnson, at 40 minutes past 1 o'clock p. m.,

The Senate took a recess for 15 minutes; at the expiration of which,

Mr. Manager Butler asked and obtained leave to make a brief explanation in regard to a portion of the argument of Mr. Nelson, of counsel for the President; and

After a response thereto by Mr. Nelson,

Mr. Evarts, of counsel for the President, commenced his argument for the defense; and, without concluding, yielded, at 4 o'clock and 25 minutes p.m., to Mr. Conkling, upon whose motion

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned to to-morrow at 12 o'clock m.

WEDNESDAY, APRIL 29, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence, at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its Chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Journal of the proceedings of the Senate sitting for the trial of the President upon articles of impeachment, of yesterday, was read.

Mr. Sumner submitted the following order for consideration:

Whereas Mr. Nelson, one of the counsel for the President, in addressing the Senate has used disorderly words as follows, viz: Beginning with personalities directed to one of the managers he proceeded to say: "So far as any question that the gentleman desires to make of a personal character with me is concerned, this is not the place to make it. Let him make it elsewhere if he desires it."

And whereas such language, besides being discreditable to these proceedings, is apparently intended to provoke a duel, or to signify a willingness to fight a duel, contrary to law and good morals: Therefore

Ordered, That Mr. Nelson, one of the counsel for the President, has justly deserved the disapprobation of the Senate.

Mr. Nelson rose to address the Senate; but objection being made to his proceeding, after some remarks by Mr. Manager Butler,

Mr. Trumbull moved that Mr. Nelson have leave to make an explanation; which motion was agreed to; and

Mr. Nelson having made his explanation, was proceeding to read certain letters, the reading of which was objected to.

On motion by Mr. Hendricks, that Mr. Nelson have leave to read so much of the said letters as would show their dates,

It was determined in the affirmative; and

Mr. Nelson having read so much of the letters as showed their dates, was proceeding to read other portions thereof; which being objected to, be handed the letters to the Secretary.

Mr. Cameron submitted the following motion for consideration:

Ordered, That the Senate, sitting as a court of impeachment, shall hereafter hold night sessions, commencing at 8 o'clck p.m., to-day and continuing until 11 o'clock p.m., until the arguments of the counsel for the President and of the managers on the part of the House of Representatives shall be concluded.

The Chief Justice directed the counsel for the President to proceed with the argument; and

Mr. Evarts, of counsel for the President, resumed his argument for the defense; and, without concluding, yielded, at 2 o'clock p.m., to Mr. Conkling, on whose motion the Senate took a recess for 15 minutes; at the expiration of which

Mr. Evarts resumed his argument for the defense; and, without concluding, yielded, at 4 o'clock p.m., to Mr. Conkling, upon whose motion

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned to to-morrow at 12 o'clock m.

THURSDAY, APRIL 30, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence, at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Journal of the proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of yesterday, was read.

The Chief Justice stated that the first business in order was the motion submitted by Mr. Sumner yesterday that Mr. Nelson, of counsel for the President, has, for disorderly language used while addressing the Senate in reply to Mr. Manager Butler, deserved the disapprobation of the Senate.

The Senate proceeded to consider the said motion.

On motion by Mr. Johnson that it lie on the table,

It was determined in the affirmative ---------- { Yeas ---- 35 / Nays ---- 10 }

On motion by Mr. Sumner,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Cattell, Chandler, Corbett, Cragin, Davis, Dixon, Doolittle, Drake, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Harlan, Hendricks, Howe, Johnson,

Morrill of Maine, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Ramsey, Ross, Saulsbury, Sherman, Tipton, Trumbull, Van Winkle, Vickers, Williams.

Those who voted in the negative are:

Messrs. Cameron Howard, Morgan, Morrill of Vermont, Pomeroy, Stewart, Sumner, Thayer, Wilson, Yates.

So it was ordered that the motion of Mr. Sumner lie on the table.

The Chief Justice stated that the business next in order was the motion submitted by Mr. Cameron yesterday, that the Senate hereafter hold night sessions from 8 o'clock to 11 o'clock p.m., until the arguments by counsel for the President and the managers on the part of the House of Representatives shall have been concluded; and

The Senate proceeded to consider said motion.

On motion by Mr. Sumner to amend the said motion by striking out all after the word "Ordered," and inserting:

That the Senate will sit during the remainder of the trial from 10 o'clock in the forenoon to 6 o'clock in the afternoon, will such brief recess as may be ordered.

On motion by Mr. Trumbull, that the motion of Mr. Cameron lie on the table,

It was determined in the affirmative ..... { Yeas .... 32 / Nays .... 17 }

On motion by Mr. Sumner,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Cattell, Corbett, Davis, Dixon, Doolittle, Drake, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Hendricks, Howe, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Ramsey, Ross, Saulsbury, Sprague, Trumbull, Van Winkle, Vickers, Willey.

Those voted in the negative are,

Messrs. Cameron, Chandler, Conkling, Cragin, Edmunds, Harlan, Howard, Morgan, Pomeroy, Sherman, Stewart, Sumner, Thayer, Tipton, Williams, Wilson, Yates.

So it was ordered that the motion lie on the table.

The Chief Justice directed the counsel for the President to proceed with his argument; and

Mr. Evarts, of counsel for the President, resumed his argument; and, without concluding, yielded to Mr. Conkling, at 2 o'clock p.m., upon whose motion the Senate took a recess for 15 minutes; at the expiration of which,

On motion by Mr. Grimes, that there be a call of the Senate,

It was determined in the affirmative; and

The roll being called by the Secretary, and 42 Senators having answered to their names,

Mr. Evarts resumed his argument for the defense; and, without concluding, yielded to Mr. Henderson, at 4 o'clock and 25 minutes, upon whose motion,

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned to to-morrow at 12 o'clock m.

FRIDAY, MAY 1, 1868.

The United States *v.* Andrew Johnson, President

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit: Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence, at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its Chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit: Mr. Evarts, Mr. Nelson, and Mr. Grosbeck, appeared at the bar of the Senate and took the seats assigned them.

The Journal of the proceedings of the Senate sitting for the trial of the President upon articles of impeachment, of yesterday, was read.

The Chief Justice directed the counsel for the President to proceed with his argument; and

Mr. Evarts, of counsel for the President, resumed his argument for the defense; and having concluded,

On motion by Mr. Pomeroy,

The Senate took a recess for 15 minutes; at the expiration of which,

On motion by Mr. Sherman that there be a call of the Senate,

It was determined in the affirmative; and

The roll being called by the Secretary, 40 Senators answered to their names.

The Chief Justice directed the counsel of the President to proceed with their argument; and

Mr. Stanbery, of counsel for the President, again appeared at the bar and commenced his argument for the defense, and, without concluding, yielded to Mr. Grimes at 4 o'clock and 5 minutes p.m., on whose motion

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned to to-morrow at 12 o'clock m.

SATURDAY, MAY 2, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F.

Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence, at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Stanbery, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Journal of the proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of yesterday was read.

The Chief Justice directed the counsel for the President to proceed with his argument; and

Mr. Stanbery, of counsel for the President, resumed his argument for the defense; but, without concluding, yielded to Mr. Johnson at 2 o'clock p.m., upon whose motion

The Senate took a recess for 15 minutes; at the expiration of which,

Mr. Stanbery resumed his argument for the defense; and having concluded,

On motion by Mr. Howard,

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned to Monday at 12 o'clock m.

MONDAY, MAY 4, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence, at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Nelson and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Journal of the proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of Saturday was read.

The Chief Justice directed the managers to proceed with their argument; and

Mr. Manager Bingham commenced his argument in support of the articles of impeachment, and, without concluding, yielded to Mr. Sherman at 10 minutes to 2 o'clock p.m., upon whose motion the Senate took a recess for 15 minutes; at the expiration of which,

Mr. Bingham resumed his argument, and, without concluding, yielded to Mr. Conness, upon whose motion

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned to to-morrow at 12 o'clock m.

TUESDAY, MAY 5, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President upon articles of impeachment exhibited against him by the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence, at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its Chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Journal of the proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of yesterday was read.

The Chief Justice directed Mr. Manager Bingham to proceed with his argument; and

Mr. Manager Bingham resumed his argument in support of the articles of impeachment, and, without concluding, yielded to Mr. Wilson, upon whose motion the Senate took a recess for 15 minutes; at the expiration of which,

Mr. Bingham resumed his argument, and, without concluding yielded at 4 o'clock and 10 minutes p.m. to Mr. Howard, upon whose motion

The Senate sitting for the trial of the President upon articles of impeachment adjourned to to-morrow at 12 o'clock m.

WEDNESDAY, MAY 6, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock, the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The managers appointed to conduct the trial of the President of the United States upon articles of impeachment exhibited against him by the House of Representatives, to wit: Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence, at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

The counsel for the President, to wit: Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, appeared at the bar of the Senate and took the seats assigned them.

The Journal of the proceedings of the Senate sitting for the trial of the President upon articles of impeachment of yesterday was read.

The Chief Justice directed Mr. Manager Bingham to proceed with his argument; and

Mr. Manager Bingham resumed his argument in support of the articles of impeachment; and having concluded,

A demonstration of applause took place in the galleries.

On motion by Mr. Grimes,

Ordered, That the Sergeant at Arms be directed to clear the galleries.

The Chief Justice directed the Sergeant at Arms to execute the order of the Senate and clear the galleries; and

Pending the execution of the said order,

On motion by Mr. Conness that the Senate take a recess for 15 minutes,

It was determined in the negative.

The galleries having been partially cleared.

On motion of Mr. Anthony to suspend the further execution of the order to clear the galleries,

It was determined in the negative; and

The galleries having been completely cleared,

On motion by Mr. Morrill of Maine, that when the Senate sitting for the trial of impeachment adjourn this day, it will adjourn to Saturday next at 12 o'clock m.,

It was determined in the negative ---------- { Yeas ---- 22 / Nays ---- 29 }

On motion by Mr. Conness,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Cattell, Cragin, Dixon, Doolittle, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Howard, Johnson, Morrill of Maine, Norton, Patterson of New Hampshire, Patterson of Tennessee, Ross, Saulsbury, Sprague, Trumbull, Van Winkle, Willey.

Those who voted in the negative are,

Messrs. Buckalew, Cameron, Chandler, Conkling, Conness, Corbett, Davis, Drake, Edmunds, Ferry, Harlan, Hendricks, Howe, McCreery, Morgan, Morrill of Vermont, Morton, Nye, Pomeroy, Ramsey, Sher-

man, Stewart, Sumner, Thayer, Tipton, Vickers, Williams, Wilson, Yates.

So the motion was not agreed to.

The Chief Justice stated that the argument in behalf of the House of Representatives and in behalf of the President having been closed, the business now in order was the motion submitted by Mr. Edmunds, on the 24th of April, that when the arguments shall have been concluded and the doors closed for deliberation upon the final question, the official reporters of the Senate shall take down the debate upon the final question, to be published in the proceedings.

The Senate resumed the consideration of the said motion; and

On the question to agree to the amendment proposed by Mr. Williams on the 27th of April,

On motion by Mr. Anthony to amend the amendment by inserting at the end thereof the words "except by leave of the Senate, to be had without debate,"

Pending the consideration of the motion,

On motion by Mr. Trumbull,

Ordered, That the doors of the galleries be reopened.

On motion by Mr. Wilson, at 3 o'clock p.m., the Senate took a recess for 15 minutes; at the expiration of which,

On motion by Mr. Edmunds that the doors of the Senate be closed for deliberation,

It was determined in the affirmative; and

The doors having been closed,

The Chief Justice stated the question before the Senate to be on the amendment proposed by Mr. Anthony to the amendment of Mr. Williams to the motion of Mr. Edmunds; and

Pending debate thereon,

The Chief Justice laid before the Senate a letter from the Speaker of the House of Representatives requesting that the House now in session may be informed when the Senate will be ready to receive them at its bar.

On motion by Mr. Edmunds,

Ordered, That the Secretary inform the House of Representatives that the Senate sitting for the trial of the President under articles of impeachment will notify the House when it is ready to receive them again at its bar.

On motion by Mr. Henderson, at 4 o'clock and 20 minutes, that the Senate adjourn,

It was determined in the negative.

The Senate resumed the consideration of the motion of Mr. Edmunds, that when the arguments shall have been concluded and the doors of the Senate closed for deliberation on the final question, the official reporters shall take down the debates, to be published with the proceedings; and

On the question to agree to the amendment proposed by Mr. Anthony to the amendment of Mr. Williams to the said motion,

After debate,

On motion by Mr. Frelinghuysen that the motion of Mr. Edmunds lie on the table,

It was determined in the affirmative ---------- { Yeas ---- 28 / Nays ---- 20 }

On motion by Mr. Edmunds,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are:

Messrs. Cameron, Cattell, Chandler, Conkling, Conness, Corbett, Cragin, Drake, Ferry, Frelinghuysen, Harlan, Henderson, Howe, Morgan, Morrill of Maine, Morton, Norton, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Stewart, Sumner, Thayer, Tipton, Trumbull, Williams, Yates.

Those who voted in the negative are:

Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Grimes, Hendricks, Johnson, McCreery, Morrill of Vermont, Patterson of Tennessee, Saulsbury, Sprague, Van Winkle, Vickers, Willey.

So the motion of Mr. Edmunds was ordered to lie on the table.

Mr. Drake submitted the following resolution for consideration:

Resolved, That the 23d rule be amended by adding thereto the following:

"The fifteen minutes herein allowed shall be for the whole deliberation on the final question, and not to the final question on each article of impeachment."

The Chief Justice stated that the business next in order was the motion submitted by Mr. Sumner on the 25th of April, that the Senate will proceed to vote on the several articles of impeachment at 12 o'clock m. on the day after the close of the arguments; and

The Senate resumed the consideration of the said motion.

On motion by Mr. Johnson, at 15 minutes before 5 o'clock p.m.,

The Senate sitting for the trial of the President upon articles of impeachment adjourned to to-morrow at 12 o'clock m.

THURSDAY, MAY 7, 1868.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The Journal of the proceedings of the Senate, sitting for trial of the President upon articles of impeachment, of yesterday was read.

The Chief Justice stated that at the adjournment of the Senate yesterday it was sitting with closed doors, and that before proceeding with the consideration of the business pending at its adjournment yesterday the doors will be closed; and

The doors having been closed,

The Chief Justice stated that the Senate, at its adjournment yesterday, had under consideration the motion submitted by Mr. Sumner on the 25th of April, that the Senate will proceed to vote on the several articles of impeachment at 12 o'clock m. on the day after the close of the arguments, which being the unfinished business was now before the Senate; and

The Senate resumed the consideration of the said motion.

On motion by Mr. Morrill of Maine to amend the motion of Mr. Sumner by striking out all after the word "that," in the first line, and inserting in lieu there of the following:

When the Senate sitting to try impeachment adjourns on to-day it will be to Monday next, at 12 o'clock m., when the Senate will proceed to take the yeas

and nays on the articles of impeachment, without debate; any Senator desiring it to have permission to file a written opinion, to go upon the record of the proceedings;

On motion by Mr. Drake to amend the amendment proposed by Mr. Morrill of Maine by inserting after the word "permission" the words "at the time of giving his vote,"

After debate,

On motion by Mr. Conkling that the further consideration of the motion of Mr. Sumner be postponed to to-morrow,

After further debate,

On motion by Mr. Trumbull that the motion of Mr. Sumner lie on the table,

It was determined in the affirmative.

Mr. Morrill of Vermont submitted the following motion for consideration:

***Ordered*, That when the Senate adjourns to-day it adjourn to meet on Monday next, at 11 o'clock a.m., for the purpose of deliberation under the rules of the Senate, sitting on the trial of impeachment; and that on Tuesday, at 12 o'clock m., the Senate shall proceed to vote, without debate, on the several articles of impeachment, and each Senator shall be permitted to file within two days after the vote shall have been so taken his written opinion, to go on the record.**

The Senate proceeded, by unanimous consent, to consider the said motion.

On motion by Mr. Anthony to amend the motion of Mr. Morrill of Vermont by striking out the word "Tuesday" and inserting the words "on or before Wednesday,"

It was determined in the negative ..... { Yeas ---- 13 / Nays ---- 37 }

On motion by Mr. Conness,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Buckalew, Davis, Dixon, Doolittle, Fowler, Hendricks, McCreery, Patterson of Tennessee, Ross, Saulsbury, Sprague, Vickers.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Henderson, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Norton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Sumner, Thayer, Tipton, Trumbull, Van Winkle, Willey, Williams, Wilson, Yates.

So the amendment of Mr. Anthony was not agreed to.

On motion of Mr. Sumner that the further consideration of the motion of Mr. Morrill of Vermont be postponed, and that the Senate proceed to consider the articles of impeachment,

It was decided in the negative ..... { Yeas ---- 15 / Nays ---- 38 }

On motion by Mr. Sumner,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Cameron, Conkling, Conness, Drake, Harlan, Morgan, Nye, Pomeroy, Stewart, Sumner, Thayer, Tipton, Williams, Wilson, Yates.

Those who voted in the negative are,

Messrs. Anthony, Bayard, Buckalew, Cattell, Chandler, Cole, Corbett, Cragin, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Howard, Howe, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Ramsey, Ross, Saulsbury, Sherman, Sprague, Trumbull, Van Winkle, Vickers, Willey.

So the motion of Mr. Sumner was not agreed to.

On motion of Mr. Sumner to amend the motion of Mr. Morrill of Vermont by striking out the word "Monday" and inserting the word "Saturday,"

It was determined in the negative ---------- { Yeas ---- 16 / Nays ---- 36

On motion by Mr. Sumner.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Cameron, Chandler, Cole, Conkling, Conness, Drake, Harlan, Howard, Morgan, Pomeroy, Stewart, Sumner, Thayer, Williams, Wilson, Yates.

Those who voted in the negative are,

Messrs. Anthony, Bayard, Buckalew, Cattell, Corbett, Cragin, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Howe, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Ramsey, Ross, Saulsbury, Sherman, Sprague, Tipton, Trumbull, Van Winkle, Vickers, Willey.

So the amendment was not agreed to.

On motion by Mr. Sumner to amend the motion of Mr. Morrill of Vermont by striking out at the end thereof the folowing: "and each Senator shall be permitted to file, within two days after the vote shall have been so taken, his written opinion, to go on the record,"

On motion by Mr. Drake to amend the clause proposed to be stricken out by striking out the words "within two days after the vote shall have been so taken," and inserting in lieu thereof the words "at the time of giving his vote,"

After debate,

It was determined in the negative ---------- { Yeas ---- 12 / Nays ---- 38

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Cameron, Chandler, Conkling, Conness, Drake, Harlan, Howard, Morgan, Ramsey, Stewart, Sumner, Thayer.

Those who voted in the negative are,

Messrs. Anthony, Bayard, Buckalew, Cattell, Cole, Corbett. Cragin, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Morton, Norton, Patterson of

New Hampshire, Patterson of Tennessee, Ross, Saulsbury, Sherman, Sprague, Tipton, Trumbull, Van Winkle, Vickers, Willey, Williams, Wilson, Yates.

So the amendment was not agreed to.

The question recurring on the amendment proposed by Mr. Sumner to strike out the last clause of the motion of Mr. Morrill,

It was determined in the negative ..... { Yeas ---- 6 / Nays ---- 42

On motion by Mr. Sumner,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Drake, Harlan, Ramsey, Stewart, Sumner, Thayer.

Those who voted in the negative are,

Messrs. Bayard, Buckalew, Cameron, Cattell, Chandler, Cole, Corbett, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Howard, Howe, Johnson, McCreery, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ross, Saulsbury, Sherman, Sprague, Tipton, Trumbull, Van Winkle, Vickers, Willey, Williams, Wilson, Yates.

So the amendment was not agreed to; and

The question recurring on the motion of Mr. Morrill of Vermont, and the same having been modified by the mover, it was agreed to, as follows:

Ordered, That when the Senate adjourns to-day it adjourn to meet on Monday next, at 11 o'clock a.m., for the purpose of deliberation under the rules of the Senate sitting on the trial of impeachment, and that on Tuesday next following, at 12 o'clock m., the Senate shall proceed to vote, without debate, on the several articles of impeachment, and each Senator shall be permitted to file, within two days after the vote shall have been so taken, his written opinion to be printed with the proceedings.

The Senate proceeded to consider the resolution submitted by Mr. Drake yesterday to amend the twenty-third rule by adding thereto the following:

"The 15 minutes herein allowed shall be for the whole deliberation on the final question, and not to the final question on each article of impeachment:" and

The resolution was agreed to.

The Senate proceeded to consider the resolution submitted by Mr. Sumner on the 25th of April, to amend the rules by inserting, as an additional rule, the following:

Rule 23. In taking the votes of the Senate on the articles of impeachment the Presiding Officer shall call each Senator by his name, and upon each article propose the following question in the manner following: Mr. ———, how say you, is the respondent, ——— ———, guilty as charged in the ——— article of impeachment? Whereupon each Senator shall rise in his place and answer "Guilty" or "Not guilty."

A motion was made by Mr. Conkling to amend the resolution by striking out the words "as charged," and inserting after the words "not guilty" the words "of a high crime or misdemeanor, as the case may be within."

After debate.

Mr. Sumner having modified his proposition to read:

In taking the votes of the Senate on the articles of impeachment the Presiding Officer shall call each Senator by his name, and upon each article propose the following question in the manner following: Mr. ———, how say you, is the respondent, ——— ———, guilty or not guilty of a high crime or misdemeanor as charged in the ——— article of impeachment? Whereupon each Senator shall rise in his place and answer "Guilty" or "Not guilty."

On motion by Mr. Buckalew to strike out the words—

Mr. ———, how say you, is the respondent, ——— ———, guilty or not guilty of a high crime or misdemeanor as charged in the —— article of impeachment,

And in lieu thereof insert:

Mr. ——, how say you, is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of a high crime or misdemeanor (as the case may be) as charged in the —— article of impeachment?

Pending which,

The following amendment was proposed by Mr. Conness to the resolution of Mr. Sumner, viz strike out the words—

And upon each article propose the following question in the manner following: Mr. ———, how say you, is the respondent, ——— ———, guilty or not guilty of a high crime or misdemeanor as charged in the —— article of impeachment? Whereupon each Senator shall rise in his place and answer "Guilty" or "Not guilty,"

And in lieu thereof insert:

Upon each of the articles numbered one, two, three, five, seven, eight, nine, ten, and eleven propose the following question in the manner following: Mr. Senator ———, how say you, is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of a high misdemeanor as charged in this article? And upon each of the articles numbered four and six he shall propose the following question: Mr. Senator ———, how say you, is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of a high crime as charged in this article? Whereupon each Senator shall rise in his place and answer "guilty" or "not guilty."

And the question being put on the amendment proposed by Mr. Conness,

On motion by Mr. Hendricks to amend the amendment proposed by Mr. Conness, by inserting at the end thereof the following:

But in taking the vote on the eleventh article the question shall be put as to each clause of said article charging a distinct offense.

After debate,

It was determined in the affirmative ---------- { Yeas ---- 22 / Nays ---- 15 }

On motion of Mr. Conness,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Davis, Doolittle, Drake, Edmunds, Ferry, Fowler, Frelinghuysen, Harlan, Henderson, Hendricks, Johnson, McCreery, Norton, Patterson of Tennessee, Ross, Sprague, Tipton, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are,

Messrs. Buckalew, Cole, Conness, Corbett, Cragin, Morton, Patterson of New Hampshire, Pomeroy, Ramsey, Stewart, Sumner, Thayer, Williams, Wilson, Yates.

So the amendment of Mr. Hendricks to the amendment of Mr. Conness was agreed to.

After debate,

On the question to agree to the amendment proposed by Mr. Conness, as amended,

On motion by Mr. Johnson, that the resolution of Mr. Sumner and the proposed amendments lie on the table,

It was determined in the affirmative ..... { Yeas ---- 24 / Nays ---- 11 }

On motion by Mr. Sumner,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Bayard, Buckalew, Cameron, Cattell, Conness, Davis, Doolittle, Drake, Harlan, Henderson, Hendricks, Johnson, McCreery, Norton, Patterson of Tennessee, Saulsbury, Sprague, Thayer, Tipton, Trumbull, Van Winkle, Vickers, Willey, Yates.

Those who voted in the negative are,

Messrs. Cole, Corbett, Cragin, Edmunds, Ferry, Pomeroy, Ramsey, Ross, Sumner, Williams, Wilson.

So it was ordered that the resolution lie on the table.

On motion by Mr. Yates,

Ordered, That when the Senate, sitting for the trial of the President upon articles of impeachment, adjourn it be to Monday next at 10 o'clock a.m.; and

On motion by Mr. Cole,

The Senate, sitting for the trial of the President upon articles of impeachment, adjourned.

Monday, May 11, 1868.

The United States *v.* Andrew Johnson, President.

At 10 o'clock a.m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The Journal of the proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of Thursday was read.

The Chief Justice stated that the Senate had met this morning for deliberation, and that, in accordance with the rule, the doors would be closed; and

The doors of the Senate Chamber having been closed,

The Chief Justice stated that, in compliance with what he understood to be the wish of the Senate, he had prepared the question to be addressed to Senators upon each article of impeachment, and that he had reduced his views thereon to writing, which, with permission of the Senate, he would read; and having read the same,

On motion by Mr. Buckalew, and by unanimous consent,

Ordered, That the views of the Chief Justice be entered upon the Journal of the Senate sitting for the trial of impeachment; which are as follows:

Senators: In conformity with what seemed to be the general wish of the Senate when it adjourned last Thursday, the Chief Justice, in taking the vote on the articles of impeachment, will adopt the mode

sanctioned by the practice in the cases of Chase, Peck, and Humphreys.

He will direct the Secretary to read the several articles successively, and after the reading of each article will put the question of guilty or not guilty to each Senator, rising in his place, in the form used in the case of Judge Chase:

Mr. Senator ———, how say you? Is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of a high misdemeanor, as charged in this article?

In putting the question on articles 4 and 6, each of which charge a crime, the word "crime" will be substituted for the word "misdemeanor."

The Chief Justice has carefully considered the suggestion of the Senator from Indiana [Mr. Hendricks], which appeared to meet the approval of the Senate, that in taking the vote on the 11th article the question should be put on each clause, and has found himself unable to divide the article as suggested. The article charges several facts, but they are so connected that they make but one allegation, and they are charged as constituting one misdemeanor.

The first fact charged is, in substance, that the President publicly declared in August, 1866, that the Thirty-ninth Congress was a Congress of only part of the States and not a constitutional Congress, intending thereby to deny its constitutional competency to enact laws or propose amendments of the Constitution; and the charge seems to have been made as introductory, and as qualify that which follows, namely, that the President in pursuance of this declaration attempted to prevent the execution of the tenure-of-office act by contriving and attempting to contrive means to prevent Mr. Stanton from resuming the functions of Secretary of War after the refusal of the Senate to concur in his suspension, and also by contriving and attempting to contrive means to prevent the execution of the appropriation act of March 2, 1867, and also to prevent the execution of the rebel States governments act of the same date.

The gravamen of the article seems to be that the President attempted to defeat the execution of the tenure-of-office act, and that he did this in pursuance of a declaration which was intended to deny the constitutional competency of Congress to enact laws or propose constitutional amendments, and by contriving means to prevent Mr. Stanton from resuming his office of Secretary, and also to prevent the execution of the appropriation act and the rebel States governments act.

The single substantive matter charged is the attempt to prevent the execution of the tenure-of-office act; and the other facts are alleged either as introductory and exhibiting this general purpose, or as showing the means contrived in furtherance of that attempt.

This single matter, connected with the other matters previously and subsequently alleged, is charged as the high misdemeanor of which the President is alleged to have been guilty.

The general question, guilty or not guilty of a high misdemeanor as charged, seems fully to cover the whole charge, and will be put as to this article as well as to the others, unless the Senate direct some mode of division.

In the tenth article the division suggested by the Senator from New York [Mr. Conklin] may be more easily made. It contains a general allegation to the effect that on the 18th of August, and on other days, the President, with intent to set aside the rightful authority of Congress and bring it into contempt, delivered certain scandalous harangues, and therein uttered loud threats and bitter menaces against Congress and the laws of the United States, enacted by Congress, thereby bringing the office of President into disgrace, to the great scandal of all good citizens, and sets forth, in three distinct specifications, the harangues, threats, and menaces complained of.

In respect to this article, if the Senate sees fit to direct, the question of guilty or not guilty of the facts charged may be taken in respect to the several specifications, and then the question of guilty or not guilty of a high misdemeanor, as charged in the article, can also be taken.

The Chief Justice, however, sees no objection to putting the general question on this article in the same manner as on the others, for, whether particular questions be put on the specifications or not, the answer to the final question must be determined by the judgment of the Senate, whether or not the facts alleged in the specifications have been sufficiently proved, and whether, if sufficiently proved, they amount to a high misdemeanor within the meaning of the Constitution.

On the whole, therefore, the Chief Justice thinks that the better practice will be to put the general question on each article without attempting to make any subdivision, and will pursue this course if no objection is made. He will, however, be pleased to conform to such directions as the Senate may see fit to give in this respect.

Whereupon,

Mr. Sumner submitted the following order; which was considered by unanimous consent and agreed to:

Ordered, That the questions be put as proposed by the Presiding Officer of the Senate, and each Senator shall rise in his place and answer "guilty," or "not guilty," only.

On motion by Mr. Sumner,

The Senate proceeded to consider the following resolution submitted by him on the 25th of April last:

Resolved, That the following be added to the rules of procedure and practice in the Senate when sitting on the trial of impeachments:

On a conviction by the Senate it shall be the duty of the presiding officer forthwith to pronounce the removal from office of the convicted person, according to the requirements of the Constitution. Any further judgment shall be on the order of the Senate.

And pending debate thereon.

The Chief Justice announced that the hour of 11 o'clock, fixed by the order of the Senate for deliberation, had arrived, and that Senators could now submit their views upon the several articles of impeachment, subject to the limitation of debate fixed by the 23d rule; and

After deliberation,

On motion by Mr. Cameron, at 10 minutes before 2 o'clock p.m.,

The Senate took a recess for 20 minutes; at the expiration of which,

After further deliberation,

On motion by Mr. Conness,

The Senate took a recess from half past 5 o'clock until half past 7 o'clock p.m.

HALF PAST 7 O'CLOCK P.M.

Mr. Edmunds submitted the following motion; which was considered by unanimous consent and agreed to:

Ordered, That the Secretary be directed to inform the House of Representatives that the Senate, sitting for the trial of the President of the United States upon articles of impeachment, will be ready to receive the House of Representatives in the Senate Chamber on Tuesday, the 12th of May, at 12 o'clock m.;

And after further deliberation,

Mr. Edmunds submitted the following motion for consideration:

Ordered, That the standing order of the Senate, that it will proceed at 12 o'clock noon to-morrow to vote on the articles of impeachment, be rescinded.

Mr. Williams submitted the following motion for consideration:

Ordered, That the Chief Justice in directing the Secretary to read the several articles of impeachment shall direct him to read the eleventh article first, and the question shall then be taken upon that article, and thereafter the other ten successively as they stand.

On motion by Mr. Edmunds,

Ordered, That when the Senate, sitting for the trial of the President upon articles of impeachment, adjourn, it be to meet to-morrow at half past 11 o'clock a. m., to sit with open doors.

On motion by Mr. Cameron,

The Senate sitting for the trial of the President upon articles of impeachment adjourned.

TUESDAY, MAY 12, 1868.

The United States *v.* Andrew Johnson, President.

At 11:30 o'clock a. m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The journal of the proceedings of the Senate sitting for the trial of the President upon articles of impeachment, of yesterday, was read.

On motion by Mr. Edmunds,

The Senate proceeded to consider the motion submitted by him yesterday, to rescind the order of the Senate that it will proceed to vote at 12 o'clock to-day on the articles of impeachment; and

The motion was agreed to, and the order rescinded accordingly.

On motion by Mr. Chandler that when the Senate, sitting for the trial of the President upon articles of impeachment, adjourn, it be to Saturday next at 12 o'clock m.;

On motion by Mr. Hendricks to amend the motion of Mr. Chandler by striking out the word "Saturday" and inserting in lieu thereof the word "Thursday,"

It was determined in the negative.

On motion by Mr. Tipton to amend the motion by Mr. Chandler by striking out the word "Saturday," and in lieu thereof inserting "Friday,"

It was determined in the negative; and

On the question to agree to the motion of Mr. Chandler,

It was determined in the affirmative.

So it was

Ordered, That when the Senate, sitting for the trial of the President upon articles of impeachment, adjourn, it be to Saturday next at 12 o'clock m.

On motion by Mr. Drake,

The Senate sitting for the trial of the President upon articles of impeachment adjourned.

SATURDAY, MAY 16, 1968.

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

The Journal of the proceedings of the Senate sitting for the trial of the President upon articles of impeachment of Tuesday was read.

Mr. Edmunds submitted the following resolution; which was considered by unanimous consent, and agree to:

Resolved, That the Secretary be directed to inform the House of Representatives that the Senate sitting for the trial of the President upon articles of impeachment is now ready to receive them in the Senate Chamber.

On motion by Mr. Williams that the Senate proceed to consider the motion submitted by him on the 11th instant, directing that the eleventh article of impeachment be read first and the question be then taken upon that article.

It was determined in the affirmative ---------- { Yeas ---- 34 / Nays ---- 19

On motion by Mr. Johnson,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Wade, Williams, Wilson, Yates.

Those who voted in the negative are,

Messrs. Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Henderson, Hendricks, Johnson, McCreery, Norton, Patterson of Tennessee, Ross, Saulsbury, Trumbull, Van Winkle, Vickers, Willey.

So the motion was agreed to; and

The Senate proceeded to consider the said motion; and

On the question to agree thereto,

It was determined in the affirmative ---------- { Yeas ---- 34 / Nays ---- 19

On motion by Mr. Fessenden,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Wade, Williams, Wilson, Yates.

Those who voted in the negative are,

Messrs. Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Henderson, Hendricks, Johnson, McCreery, Norton, Patterson of Tennessee, Ross, Saulsbury, Trumbull, Van Winkle, Vickers, Willey.

So it was

Ordered, That the Chief Justice in directing the Secretary to read the several articles of impeachment shall direct him to read the eleventh article first, and the question shall then be taken on that article, and thereafter on the other ten successively as they stand.

The managers on the part of the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence, at the door of the Senate Chamber, of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its Chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provide for them.

Mr. Stanbery, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, of counsel for the President, appeared at the bar of the Senate and took the seats assigned them.

Mr. Edmunds submitted the following motion; which was considered by unanimous consent, and agreed to:

Ordered, That the Senate now proceed to vote upon the articles according to the rules of the Senate

The Chief Justice stated that in pursuance of the order of the Senate he would now proceed to take the judgment of the Senate on the eleventh article; and

The Secretary, by direction of the Chief Justice, read the eleventh article of impeachment, as follows:

ARTICLE XI. That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, and in disregard of the Constitution and laws of the United States, did, heretofore, to wit, on the eighteenth day of August, A.D eighteen hundred and sixty-six, at the city of Washington, in the District of Columbia, by public speech, declare and affirm, in substance, that the Thirty-ninth Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same, but, on the contrary, was a Congress of only part of the States, thereby denying, and intending to deny, that the legislation of said Congress was valid or obligatory upon him, the said Andrew Johnson, except in so far as he saw fit to approve the same, and also thereby denying, and intending to deny, the power of the said Thirty-ninth Congress to propose amendments to the Constitution of the United States; and in pursuance of said declaration the said Andrew Johnson, President of the United States, afterwards, to wit, on the twenty-first day of February, AD. eighteen hundred and sixty-eight, at the city of Washington, in the District of Columbia, did, unlaw-

fully and in disregard of the requirements of the Constitution, that he should take care that the laws be faithfully executed, attempt to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, by unlawfully devising and contriving, and attempting to devise and contrive, means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of the office of Secretary for the Department of War, notwithstanding the refusal of the Senate to concur in the suspension therefore made by said Andrew Johnson of said Edwin M. Stanton from said office of Secretary for the Department of War; and also, by further unlawfully devising and contriving, and attempting to devise and contrive, means, then and there, to prevent the execution of an act entitled "An act making appropriations for the support of the Army for the fiscal year ending June thirtieth, eighteen hundred and sixty-eight, and for other purposes," approved March second, eighteen hundred and sixty-seven; and also to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States," passed March second, eighteen hundred and sixty-seven, whereby the said Andrew Johnson, President of the United States, did then, to wit, on the twenty-first day of February, AD. eighteen hundred and sixty-eight, at the city of Washington, commit, and was guilty of, a high misdemeanor in office.

The Chief Justice directed the Secretary to call the names of the Senators.

Each Senator, as his name was called, rose in his place and the Chief Justice proposed to him the following question:

Mr. Senator ———, how say you? Is the respondent, Andrew Johnson, President of the United States, guilty, or not guilty, of a high misdemeanor, as charged in this article of impeachment?

The Senators who answered "guilty" are,

Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmonds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill, of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Wade, Williams, Willey, Wilson, Yates—35.

The Senators who answered "not guilty" are,

Messrs. Baynard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Norton, Patterson of Tennessee, Ross, Saulsbury, Trumbull, Van Winkle, Vickers—19.

The Chief Justice announced that upon this article 35 Senators had voted "guilty" and 19 Senators "not guilty," and declared that two-thirds of the Senators present not having pronounced him guilty, Andrew Johnson, President of the United States, stood acquitted of the charges contained in the eleventh article of impeachment.

On motion of Mr. Williams that the Senate take a recess for 15 minutes.

It was determined in the negative.

On motion by Mr. Williams that the Senate, sitting for the trial of the President upon articles of impeachment, adjourn to Tuesday, the 26th instant, at 12 o'clock m.,

Mr. Hendricks raised a question of order, namely: That the Senate is now executing an order already made to proceed now to vote upon the articles of impeachment, and that no motion to adjourn, other than a simple motion to adjourn at once, is in order.

The Chief Justice decided that a motion to adjourn to a day certain is within the principle of a motion that when the Senate adjourns it adjourn to meet on a certain day, and that this motion is not in order

pending the execution of the order already made by the Senate that it proceed now to vote upon the articles of impeachment according to the rules of the Senate.

From this decision Mr. Conness appealed to the Senate; and

The question being put by the Chief Justice, Shall the decision of the Chair stand as the judgment of the Senate?

It was determined in the negative ---------- { Yeas ---- 24 / Nays ---- 30

On motion by Mr. Conness,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Conkling, Davis, Dixon, Doolittle, Ferry, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Morgan, Norton, Patterson of Tennessee, Saulsbury, Sherman, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are:

Messrs. Cameron, Cattell, Chandler, Cole, Conness, Corbett, Cragin, Drake, Edmunds, Frelinghuysen, Harlan, Howard, Howe, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sprague, Stewart, Summer, Thayer, Tipton, Wade, Williams, Wilson, Yates.

So the decision of the Chair was not sustained; and,

The question recurring on the motion submitted by Mr. Williams,

On motion by Mr. Henderson to amend the motion of Mr. Williams by striking out the words "Tuesday, the 26th instant" and inserting "Wednesday, the first day of July next,"

It was determined in the negative ---------- { Yeas ---- 20 / Nays ---- 34

On motion by Mr. Henderson,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are:

Messrs. Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Norton, Patterson of Tennessee, Ross, Saulsbury, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are:

Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmonds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Wade, Williams, Wilson, Yates.

So the amendment of Mr. Henderson was not agreed to.

On the motion of Mr. McCreery to amend the motion of Mr. Williams by striking out the words "to Tuesday, the 26th instant, at 12 o'clock m.," and in lieu thereof inserting "without day,"

It was determined in the negative ---------- { Yeas ---- 6 / Nays ---- 47

On motion by Mr. McCreery.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are:

Messrs. Bayard, Davis, Dixon, Doolittle, McCreery, Vickers.

Those who voted in the negative are:

Messrs. Anthony, Buckalew, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Harlan, Henderson, Hendricks, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Norton, Nye, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ramsey, Ross, Saulsbury, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Trumbull, Van Winkle, Wade, Willey, Williams, Wilson, Yates.

So the amendment of Mr. McCreery was not agreed to.

On motion by Mr. Buckalew to amend the motion of Mr. Williams, by striking out the words "Tuesday, the 26th instant," and inserting the words "Monday next,"

It was determined in the negative; and

On the question to agree to the motion of Mr. Williams,

It was determined in the affirmative ---------- { Yeas ---- 32 / Nays ---- 21 }

On motion by Mr. Hendricks,

The yeas and nays being desired by one-fifth of the Senators present,

Those vho voted in the affirmative are,

Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conness, Corbett, Cragin, Drake, Edmunds, Frelinghuysen, Harlan, Howard, Howe, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sprague, Stewart, Sumner, Thayer, Tipton, Van Winkle, Wade, Williams, Wilson, Yates.

Those who voted in the negative are,

Messrs. Bayard, Buckalew, Conkling, Davis, Dixon, Doolittle, Ferry, Fessenden, Fowler, Henderson, Hendricks, Johnson, McCreery, Morgan, Norton, Patterson of Tennessee, Saulsbury, Sherman, Trumbull, Vickers, Willey.

So the motion of Mr. Williams was agreed to; and

The Senate sitting for the trial of the President upon articles of impeachment adjourned to Tuesday, the 26th instant, at 12 o'clock m.

TUESDAY, MAY 26, 1868

The United States *v.* Andrew Johnson, President.

At 12 o'clock m. the Chief Justice of the United States entered the Senate Chamber and resumed the chair; and

The Sergeant at Arms having made proclamation,

Mr. Edmunds submitted the following motion; which was considered, by unanimous consent, and agreed to.

Ordered, That the Secretary inform the House of Representatives that the Senate, sitting for the trial of Andrew Johnson, President of the United States, upon articles of impeachment, is now ready to receive them in the Senate Chamber.

Thereupon,

The managers on the part of the House of Representatives, to wit, Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate Chamber and took the seats assigned them.

The Sergeant at Arms announced the presence at the door of the Senate Chamber of the House of Representatives; and

The House of Representatives, as in Committee of the Whole House, preceded by its Chairman, Mr. Elihu B. Washburne, and accompanied by its Speaker and Clerk, entered the Senate Chamber and took the seats provided for them.

Mr. Stanbery, Mr. Evarts, and Mr. Nelson, of counsel for the President, appeared at the bar of the Senate and took the seats assigned them.

The Journal of the proceedings of the Senate, sitting for the trial of the President upon articles of impeachment, of Saturday, the 16th instant, was read.

Mr. Williams submitted the following resolution for consideration:

Resolved, That the resolution heretofore adopted as to the order of reading and voting upon the articles of impeachment be rescinded.

The present consideration of the resolution being demanded,

Mr. Buckalew objected to its present consideration and raised a question of order, to wit: That the resolution proposed a change of a standing order of the Senate and must lie on the table one day under the twenty-sixth rule.

The Chief Justice stated that the present motion is to change the orders previously adopted by the Senate as to the order of voting upon the articles of impeachment, as well as the twenty-second rule; and that he was of opinion that a single objection would carry the resolution over this day; but that without deciding the question he would submit it directly to the Senate, as it was a matter which related especially to the present order of business; and

The question being submitted to the Senate, Is the present consideration of the resolution submitted by Mr. Williams in order?

It was determined in the affirmative ---------- Yeas ---- 29; Nays ---- 25

On motion by Mr. Henderson,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Cragin, Drake, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morton, Nye, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Wade, Williams, Wilson, Yates.

Those who voted in the negative are,

Messrs. Anthony, Bayard, Buckalew, Corbett, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Vermont, Norton, Patterson of New Hampshire, Patterson of Tennessee, Saulsbury, Trumbull, Van Winkle, Vickers, Willey.

So the Senate decided that the present consideration of the resolution of Mr. Williams was in order.

On motion by Mr. Conkling to amend the resolution of Mr. Williams by striking out all after the word "Resolved" and inserting,

That the Senate sitting for the trial of Andrew Johnson, President of the United States, will now proceed, in manner prescribed by the rules in that behalf, to vote in their order upon the remaining articles of impeachment,

It was determined in the negative { Yeas---- 26 / Nays---- 28 }

On motion by Mr. Trumbull,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Bayard, Buckalew, Cole, Conkling, Davis, Dixon, Doolittle, Ferry, Fessenden, Fowler, Grimes, Henderson, Hendricks Johnson, McCreery, Morgan, Morrill of Vermont, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Saulsbury, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are,

Messrs. Anthony, Cameron, Cattell, Chandler, Conness, Corbett, Cragin, Drake, Edmunds, Freylinghuysen, Harlan, Howard, Howe, Morrill of Maine, Nye, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Wade, Williams Wilson Yates.

So Mr. Conkling's amendment was not agreed to.

Mr. Williams having modified his resolution to read,

***Resolved,* That the several orders heretofore adopted as to the order of reading and voting upon the articles of impeachment be rescinded.**

Mr. Trumbull raised a question of order, viz: That it was not in order, first, because it proposes to rescind an order of the Senate which had already been partly executed; and secondly, that it was a violation of the rule which requires one day's notice to change a standing rule, as it did expressly now propose to change a rule.

Mr. Edmunds moved that the Senate retire to its conference chamber for consultaion; and, on the question to agree thereto,

It was determined in the negative.

The Chief Justice then submitted the question of order raised by Mr. Trumbull to the decision of the Senate, to wit: Will the Senate sustain the question of order raised by Mr. Trumbull? and

It was determined in the negative { Yeas---- 24 / Nays---- 30 }

On motion of Mr. Trumbull,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Morgan, Morrill of Vermont, Norton, Patterson of Tennessee, Saulsbury, Trumbull, Van Winkle, Vickers, Willey.

Those who voted in the negative are,

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Frelinghuysen, Harlan, Howard, Howe, Morrill of Maine, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Summer, Thayer, Tipton, Wade, Williams, Wilson, Yates.

So the question of order raised by Mr. Trumbull was not sustained.

On motion by Mr. Morrill of Maine, that the Senate sitting for the trial of the President upon articles of impeachment adjourn to Tuesday, the 23d day of June next,

The Chief Justice stated that he had heretofore ruled that while another question was pending and undetermined, a motion of the character of that now submitted was not in order, but that he would submit the question to the decision of the Senate; and

The question was accordingly submitted to the Senate, Is the motion of Mr. Morrill of Maine in order?

It was determined in the affirmative ---------- { Yeas ---- 35 / Nays ---- 18

On motion by Mr. Henderson,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Wade, Willey, Williams, Wilson, Yates.

Those who voted in the negative are,

Messrs. Bayard, Buckalew, Davis, Dixon, Doolittle, Fressenden, Fowler, Henderson, Hendricks, Johnson, McCreery, Morgan, Norton, Patterson of Tennessee, Saulsbury, Trumbull, Van Winkle, Vickers.

So the motion of Mr. Morrill of Maine was decided to be in order; and,

On the question to agree thereto,

On motion by Mr. Ross to amend the motion by striking out the words "Tuesday, the 23d day of June," and inserting "Tuesday, the 1st day of September,"

It was determined in the negative ---------- { Yeas ---- 15 / Nays ---- 39

On motion by Mr. Ross,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Bayard, Davis, Dixon, Doolittle, Fessenden, Fowler, Henderson, Johnson, McCreery, Norton, Ross, Saulsbury, Trumbull, Van Winkle, Vickers.

Those who voted in the negative are,

Messrs. Anthony, Buckalew, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Grimes, Harlan, Hendricks, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Wade, Willey, Williams, Wilson, Yates.

So the amendment of Mr. Ross to the motion of Mr. Morrill of Maine was not agreed to; and

On the question to agree to the motion of Mr. Morrill of Maine,

It was determined in the negative {Yeas---- 27 / Nays---- 27}

On motion by Mr. Morrill of Maine,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Cameron, Cattell, Chandler, Conness, Corbett, Cragin, Drake, Harlan, Howard, Howe, Morrill of Maine, Nye, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Wade, Willey, Williams, Wilson, Yates.

Those who voted in the negative are,

Messrs. Bayard, Buckalew, Cole, Conkling, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler Frelinghuysen, Grimes, Henderson, Hendricks, Johnson, McCreery, Morgan, Morrill of Vermont, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Saulsbury, Trumbull, Van Winkle, Vickers.

So the motion of Mr. Morrill of Maine was not agreed to.

The question recurring on the resolution submitted by Mr. Williams,

It was determined in the affirmative; so it was

Resolved, That the several orders heretofore adopted, as to the order of reading and voting upon the articles of impeachment, be rescinded.

On motion by Mr. Williams that the Senate do now proceed to vote on the second article of impeachment,

It was determined in the affirmative; and

The Secretary, by direction of the Chief Justice, read the second article of impeachment, as follows:

ARTICLE II. That on said twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, said Andrew Johnson, President of the United States, unmindful of the high duties of his office, of his oath of office, and in violation of the Constitution of the United States, and contrary to the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, without the advice and consent of the Senate of the United States, said Senate then and there being in session, and without authority of law, did, with intent to violate the Constitution of the United States, and the act aforesaid, issue and deliver to one Lorenzo Thomas a letter of authority in substance as follows, that is to say:

EXECUTIVE MANSION,
Washington, D.C., February 21, 1868.

SIR: The Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War ad interim, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectively, yours,

ANDREW JOHNSON.

To Brevet Maj. Gen. LORENZO THOMAS,
Adjutant General, U.S. Army, Washington, D.C.

Then and there being no vacancy in said office of Secretary for the Department of War, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

The Chief Justice directed the Secretary to call the names of the Senators.

Each Senator as his name was called rose in his place, and the Chief Justice proposed to him the following question:

Mr. Senator ———, how say you? Is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of a high misdemeanor as charged in this article?

The Senators who answered "guilty" are,

Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Wade, Willey, Williams, Wilson, Yates.

The Senators who answered "not guilty" are,

Messrs. Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Norton, Patterson of Tennessee, Ross, Saulsbury, Trumbull, Van Winkle, Vickers.

The Chief Justice announced that upon this article 35 Senators had voted "guilty," and 19 Senators had voted "not guilty," and declared that two-thirds of the Senators present not having pronounced him guilty, Andrew Johnson, President of the United States, stood acquitted of the charges contained in the second article of impeachment.

On motion by Mr. Williams,

That the Senate do now proceed to vote on the third article of impeachment,

It was determined in the affirmative; and

The Secretary, by direction of the Chief Justice, read the third article of impeachment, as follows:

ARTICLE III. That said Andrew Johnson, President of the United States, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did commit and was guilty of a high misdemeanor in office in this, that, without authority of law, while the Senate of the United States was then and there in session, he did appoint one Lorenzo Thomas to be Secretary for the Department of War *ad interim*, without the advice and consent of the Senate, and with intent to violate the Constitution of the United States, no vacancy having happened in said office of Secretary for the Department of War during the recess of the Senate and no vacancy existing in said office at the time, and which said appointment, so made by said Andrew Johnson, of said Lorenzo Thomas, is in substance as follows—that is to say:

EXECUTIVE MANSION,
Washington, D.C., February 21, 1868.

SIR: The Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War ad interim, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully, yours,

ANDREW JOHNSON.

To Brevet Maj. Gen. LORENZO THOMAS,
Adjutant General, U.S. Army, Washington, D.C.

The Chief Justice directed the Secretary to call the names of the Senators.

Each Senator, as his name was called, rose in his place, and the Chief Justice proposed to him the following question:

Mr. Senator ———, how say you? Is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of a high misdemeanor as charged in this article?

The Senators who answered "guilty" are,

Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Wade, Willey, Williams, Wilson, Yates.

The Senators who answered "Not guilty" are,

Messrs. Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Norton, Patterson of Tennessee, Ross, Saulsbury, Trumbull, Van Winkle, Vickers.

The Chief Justice announced that upon this article 35 Senators had voted "guilty," and 19 Senators had voted "not guilty"; and declared that two-thirds of the Senators present not having pronounced him guilty, Andrew Johnson, President of the United States, stood acquitted of the charges contained in the third article.

Thereupon,

Mr. Williams moved that the Senate sitting for the trial of the President upon articles of impeachment do now adjourn without day.

On the question to agree to the motion, Mr. Williams asked that the question be taken by yeas and nays; and the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Van Winkle, Wade, Willey, Williams, Wilson, Yates.

Those who voted in the negative are.

Messrs, Bayard, Buckalew, Davis, Dixon, Doolittle, Fowler, Henderson, Hendricks, Johnson, McCreery, Norton, Patterson of Tennessee, Ross, Saulsbury, Trumbull, Vickers.

The Chief Justice stated that before announcing the result of the vote just taken he desired to call the attention of the Senate to the twenty-second rule, which provides that "if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of the members present," a judgment of acquittal shall be entered; and that if not objected to, he would direct the Secretary to enter a judgment of acquittal according to this rule; and

No objection being made, the Secretary, by direction of the Chief Justice, entered the judgment of the Senate upon the second, third, and eleventh articles, as follows:

The Senate having tried Andrew Johnson, President of the United States, upon articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present not having found him guilty of the charges contained in the second, third, and eleventh articles of impeachment, it is therefore

Ordered and adjudged. That the said Andrew Johnson, President of the United States be, and he is, acquitted of the charges in said articles made and set forth.

The Chief Justice then announced the vote on the motion of Mr. Williams to be yeas 34, nays 16;

And, thereupon,

Declared the Senate sitting as a court of impeachment for the trial of Andrew Johnson, President of the United States, upon articles of impeachment exhibited against him by the House of Representatives, adjourned without day.

Report of the Committee Appointed on the 29th Dec. 1826, on a Letter of John C. Calhoun, Vice President of the United States Asking an Investigation of His Conduct While Secretary of War

REPORT

OF THE

COMMITTEE APPOINTED ON THE 29TH DEC. 1826,

ON A LETTER OF

JOHN C. CALHOUN,

VICE PRESIDENT OF THE UNITED STATES,

ASKING

An investigation of his conduct while Secretary of War.

Mr. WRIGHT, from the Select Committee to which was referred the letter of the Vice President, of the 29th December last, made the following

The Select Committee, to whom was referred the Communication of the Vice President, of the 29th December last, respectfully report:

That, immediately after they assembled, they informed the Vice President of their being organized, and of their readiness to receive any communication, which he might see fit to make. On the receipt of his reply, dated the 3d of January, and which accompanies this report, Mr. McDuffie, as the friend and representative of the Vice President, was admitted before the committee, and attended throughout the examination which followed.

The first objects of inquiry in proceeding to business, was, to ascertain whether any charges against the Vice President, had been placed among the public records of the War Department. And after an examination on this point, the committee became satisfied that no charges were, or had been among the records or papers of that department. But as the letter from Elijah Mix, addressed to Major Satterlee Clark, under the name of "Hancock," had been published in the Alexandria Phœnix Gazette, of the 28th December, which publication the Vice President had particularly referred to, in his note to the committee, they felt bound to examine fully and freely into the truth or falsity of the matters contained in that letter.

From the nature of the duties imposed upon a committee of inquiry, especially when connected with the distinct wish, as expressed by the Vice President in the present instance, for the "freest investigation," it has been impossible for the committee to give to their proceedings the connexion and conciseness incident to trials, where the testimony is ascertained and arranged, before it is presented. They have, however, diligently applied themselves to the subject referred to them; and, after a long and laborious examination, they are unanimously of the opinion, that there are no facts which will authorize the belief, or even suspicion, that the Vice President was ever interested, or that he participated, directly or indirectly, in the profits of any contract formed with the Government through the Department of War, while he was entrusted with the discharge of its duties, or at any other time. They are also of opinion, that the conduct of Mr. Barbour, the present Secretary of War, in regard to the letter of E. Mix, is not in the slightest degree deserving of censure. The accusation contained in the letter was regarded by him as a base calumny upon the Vice President, penned by a man wholly unworthy of notice; and the committee have no reason to believe that the supposed truth of that accusation was at any time the basis of any act of the War Department. The publication of the letter appears to have been produced as follows: In the month of December last, Howes Goldsborough and Elijah Mix were competitors for a contract with the War Department. Goldsborough, soon after his arrival in Washington, obtained from Major S. Clark a copy of the letter with a view to use the same against Mix, should he find it necessary. From this copy a transcript was obtained by Wm. F. Thornton, the junior Editor of the Phoenix Gazette, on the 27th of December, which he published the next morning in that Paper, accompanied by his editorial remarks. In this publication, Mr. Barbour had no agency, either direct or indirct. When he heard that the letter had been made public, he requested Col. R. M. Johnson, of the Senate, to call upon the Vice President, as a mutual friend, and inform him of the manner in which the letter had come to his (Mr. Barbour's) hands, and that the same had been subsequently transmitted through the Post Office, in an envelope to Major Clark, to whom it belonged. This information was given by Col. Johnson to the Vice President, in the morning of the 29th of December, just before he transmitted his communication to the House.

The letter to "Hancock," as published, and to which the Vice President had referred, contained, among other things, the following assertion: "and I have written letters of Vandeventer's, which most positively mention, that he, (meaning Mr. Calhoun,) was engaged, and received some portion of the contract." As such letters, if they existed, might lead to further evidence, and be important to aid the committee in their inquiries, they thought proper, in the early stage of their proceedings, to issue a subpoena both for Mix and Vandeventer, with a clause therein contained, commanding them to produce any papers in their possession tending to prove the accusation which Mix had made, in the letter to "Hancock." In obedience to this summons, the witnesses appeared, and Mix having been first called upon to testify, produced, during his examination, the letters from

Major Vandeventer, dated August 7th, 1818, September 10th, 1818, July 8th, 1820, March 24th, 1821, and the letter from Colonel W. K. Armistead, dated March 24th, 1821. On his second examination he produced the letters from Major Vandeventer, dated August 3d, 1818, September 19th, 1818, and October 17th, 1820. When it was perceived, that in one of the letters of Major Vandeventer, to wit, in the one dated the 7th of August, 1818, and to which they here particularly refer, allusion was made to a partner in the contract, whose name was to have been kept secret, the committee felt it to be their duty to discover, if they could, who this secret partner was, or at any rate to push the inquiry so far as to leave no room for suspicion that the Vice President was the person alluded to. This branch of the subject has been the principal cause of their consuming so much time in the investigation. They found that they were here led into a wider field than could have been at first anticipated, and that it was necessary, in order to get a view of the whole ground, to go thoroughly into the origin and history of what is commonly called the Mix contract. The letters of Major Vandeventer, above referred to, appear to relate; principally, to the private and confidential transactions between him and E. Mix, in regard to the contract, and there is no reason to believe, or presume, that the Vice President was ever made acquainted with their contents. The letter from Colonel Armistead, written while he was at the head of the Engineer Department, although it wears the appearance of an official paper, and was improperly intended, as the committee believe, to bring the weight of official influence to bear upon the private transactions between Vandeventer and Mix, was not written with the sanction or knowledge of the Vice President, and no copy of it was ever entered in the letter book of the Department.

The committee will here remark, that they place no reliance whatever on the testimony of Elijah Mix. From the self-contradictions apparent on the face of his testimony, and which it is unnecessary here to recapitulate, aside from the infamy attached to his character, the committee were satisfied that he ought not to be believed on his oath. The letters, however, just referred to, and produced by him, during his examination, do not rest for their authenticity on his testimony. Those from Major Vandeventer, excepting such parts as had been defaced or obliterated, were acknowledged by Major Vandeventer himself to be genuine; and he was requested, in every instance, to state, with the letters before him, what names or words had occupied the obliterated places, when the letters were written. The letter from Colonel Armistead was also acknowledged by that officer to be genuine. But the three papers purporting to be copies or the substance of a letter from Major Vandeventer to Mr. Calhoun, rest for their authenticity on the unsupported testimony of E. Mix, and are regarded by the committee as having been fabricated by him. They are also of opinion that the words or names defaced from the letters of Major Vendeventer, were so defaced by E. Mix: and the committee have been unable to ascertain, with certainty, either from Vandeventer, the admitted author of the letters, or from any other source, what the words or names were. which have been thus obliterated.

The offer for the contract appears to have been made by E. Mix, on the 23d of July, 1818, and proposes to deliver at Old Point Comfort, "from one to one hundred and fifty thousand perches of stone, at three dollars per perch." The contract, as furnished from the War Department, bears date the 25th of July, 1818. It stipulates for the delivery of one hundred and fifty thousand perches of stone, at three dollars per perch; is drawn up in the hand writing of Major Vandeventer, and by him alone witnessed, and is signed by General Joseph G. Swift, then Chief Engineer, and by Elijah Mix. Although Mix here appears to have been the only contractor, yet, from the evidence, there is reason to believe, that, at the time the contract was made, or soon after, and before the execution of any valid bond for the performance thereof, it was divided into shares, and that one-fourth belonged to Major Vandeventer, one-fourth to Elijah Mix, one-fourth to R. C. Jennings, and the remaining fourth to a person whose name was not to have been mentioned. The title of Vandeventer to his fourth, at the time above referred to, appears to have rested on a verbal and confidential agreement between him and Mix, and so remained till the 24th of April, 1819, when he received a written bill of sale, of one-half of the whole contract. Howes Goldsborough & Co. subsequently became the owners of one-fourth, by purchase from Samuel Cooper, who had previously purchased from Major Vandeventer; and they (Goldsborough & Co.) were recognized at the War Department, by the consent of E. Mix, expressed in a letter sent by him to the Secretary of War, and dated the 18th of April, 1821.

The first bond, received at the Engineer Department, on the contract, is dated 5th of August, 1818, and describes the contract as having been made by Elijah Mix and *George Cooper*, for the delivery of but *one hundred thousand* perches of stone, being fifty thousand less than Mix was entitled to deliver. This bond is signed by E. Mix, and George Cooper, as contractors, and by Samuel Cooper and James Oakley, as sureties; the sureties were regularly approved by R. Riker, Recorder of the city of New York, as appears by his certificate following immediately after the signatures, and dated the same as the bond. It will be perceived at once, that there is an obvious and fatal variance between this bond and the contract. In an official letter written from the Engineer Department, on the 11th day of August, 1818, to Lieutenant George Blaney, and copied into the letter book of that Department, the contract is described as for one hundred thousand perches of stone; the language of the letter is as follows: "You will inform the Agent that a contract has been made with Capt. E. Mix to deliver, as soon as practicable, at the Rip Raps, one hundred thousand perch of stone." In a subsequent letter written to James Maurice, also copied into the same letter book, and dated the 21st day of August, 1818, the contract is described as being for two hundred thousand perches; the language of this letter is as follows: "Mr. E. Mix will soon commence to deliver stone at the Rip Raps under contract with this Department for two hundred thousand perch."

Sometime after the delivery at the Engineer Department, of the first bond, but at what precise time does not appear, a new bond was given for the delivery of one hundred and fifty thousand perches, describing the contract as made by E. Mix. This second bond is signed

by E. Mix as contractor, and Samuel Cooper and James Oakley, as sureties, and it is ante dated to 5th of August, 1818, but no certificate in regard to the sufficiency of the sureties was attached to this instrument. The committee have been unable to ascertain when this second bond was received at the Engineer Department; though the impression of General Swift, is, that it was received before he left the office, which was on the 11th of November, 1818. Major Vandeventer also expresses his belief that it was delivered during the Fall of 1818; how far his testimony conflicts, if at all, with his letter to Mix, dated 17th of October, 1820, in which he urges upon the latter to attend to "the bond," the committee will not undertake to determine,

The attention of General Swift was particularly directed, before the committee, to the discrepancies in the bonds, and, also, to the two letters from the Engineer Department, in which the contract is alluded to. The explanation which he gives, will be found in his testimony, to which the committee refer.

During an investigation relative to this contract by a committee of the House of Representatives, in 1822, a copy of the bond was requested by that committee. In answer to which, the Engineer Department furnished a copy of the second bond which had been substituted for the one first given; but as there was no certificate of the Recorder of New York approving the sureties on the second bond, a copy of the certificate annexed to the cancelled bond, was made, and attached to the copy of the bond furnished. Capt. Smith, of the Engineer Department, who attested these copies, has explained the cause of his certifying to this inaccuracy, and to his testimony in that particular, the committee here refer.

The question still remains who was the secret partner? But the committee being entirely satisfied that the secret partner was not the Vice President, which was the main question to be decided, will leave the conflicting testimony on the other point with the House, without attempting to decide upon its relative weight.

On the 27th January, 1827, the committee closed the examination of witnesses on their part, except as to one or two, who had been summoned, but had not attended. On that day the friend and representative of the Vice President was advised that the committee had so closed their examination, and he was also informed by a member of the committee, in its presence, that the committee were unanimously of opinion that the Vice President was innocent of the charge of having participated in any manner in any contract made with the War Department, while he was Secretary of War. The same day, at the instance of Mr. McDuffie, subpoenas were issued for witnesses to appear and testify on behalf of the Vice President. On the 29th of January, the committee received from the friend and representative of the Vice President a paper, protesting against the previous proceedings of the committee. Considering this paper as prepared and presented under the sanction of the high officer in whose behalf it protests, the committee have deemed it their duty to transmit it to the House; but they forbear all comment on its contents.

The committee submit herewith all the testimony they have received during the examination.

No. 1.

Letter from J. C. Calhoun, Vice President, to the House of Representatives—upon which the Committee of Investigation was instituted.

The Speaker of the House of Representatives—

SIR: You will please to lay before the House over which you preside the enclosed communication addressed to that body.

Very respectfully, yours, &c.

J. C. CALHOUN.

To the Honorable the Members of the House of Representatives:

An imperious sense of duty, and a sacred regard to the honor of the station which I occupy, compel me to approach your body in its high character of grand inquest of the nation.

Charges have been made against me of the most serious nature, and which, if true, ought to degrade me from the high station in which I have been placed by the choice of my fellow-citizens, and to consign my name to perpetual infamy.

In claiming the investigation of the House, I am sensible that, under our free and happy institutions, the conduct of public servants is a fair subject of the closed scrutiny and the freest remarks, and that a firm and faithful discharge of duty affords, ordinarily, ample protection against political attacks; but, when such attacks assume the character of impeachable offences, and become, in some degree, official, by being placed among the public records, an officer thus assailed, however base the instruments used, if conscious of innocence, can look for refuge only to the Hall of the immediate Representatives of the People. It is thus I find myself most unexpectedly placed.

On Wednesday morning last it was, for the first time, intimated to me that charges of a very serious nature against me were lodged in one of the Executive Departments. During the day, rumors from several quarters, to the same effect, reached me, but the first certain information of their character was received yesterday morning, through one of the newspapers of the District. It appears, from its statement, that I am accused of the sordid and infamous crime of participating in the profits of a contract formed with the Government, through the Department of War, while I was entrusted with the discharge of its duties, and that the accusation has been officially presented as the basis of an official act of the War Department, and, consequently, to be placed among its records, as a lasting stigma on my character.

Conscious of my entire innocence in this and every other public act, and that I have ever been incapable, in the performance of duty; of being influenced by any other motive than a sacred regard to the public interest, and resolved, as far as human effort can extend, to leave an untarnished reputation to posterity, I challenge the freest investigation of the House, as the only means effectually to repel this premeditated attack to prostrate me, by destroying forver my character.

J. C. CALHOUN,
Vice President of the U. States.

WASHINGTON, *29th Dec. 1826.*

No. 2.

CONGRESS OF THE UNITED STATES,
In the House of Representatives, December 29, 1826.

Ordered, That the letter from the Vice President of the United States, asking an investigation into his official conduct while Secretary of the Department of War, this day communicated to the House, be referred to a select committee; and that the Committee have power to send for persons and papers.

And Mr. Floyd, Mr. Wright, Mr. Williams, Mr. Campbell, Mr. Clarke, Mr. Ingersoll, Mr. Sprague,

were appointed the said committee.

Attest, MW. ST. CLAIR CLARKE,
Clerk House of Reps. U.S.

No. 3.

The Chairman of the Committee to the Vice President.

CAPITOL, *January 2, 1827.*

SIR: I am directed by the Select Committee of the House of Representatives, to which your communication of the 29th of December last was referred, to inform you that the committee "is organized," and will receive any communication you may think proper to make.

I have the honor to be, Sir,
Your obedient servant,
JOHN FLOYD,
Chairman Select Committee House of Reps.

His Excellency, JOHN C. CALHOUN,
Vice President of the United States.

No. 4.

Answer of the Vice President.

WASHINGTON, *3d Jan., 1827.*

SIR: I have received your communication, of the 2d instant, in which you state, that the committee of investigation is organized, and will receive any communication which I may think proper to make; and, in reply, I have to state, that my communication to the House of the 29th of December last, will make known to the committee my motives in soliciting an inquiry, and that I have nothing farther to add, but to reiterate my desire to have a full investigation.

In order to avoid the inconvenience and delay of communicating by letter, I have requested Mr. McDuffie to act, as my friend, before the committee.

With great respect,
I am, &c. &c.

JOHN C. CALHOUN.

Hon. JOHN FLOYD,
Chairman of the Select Committee of Investigation.

P. S. It may not be improper to add, that the paper of the District, to which I referred in my communication to the House, as containing the statement therein alluded to, is the Phœnix Gazette, of the 28th December last, printed at Alexandria, and which I would respectfully refer the committee.

J. C. C.

No. 5.

Publication in the Phoenix Gazette; i.e. *Mix's letter to Hancock, with the Editor's remarks.*

Most of our readers, we presume, have either heard or read of the celebrated Elijah Mix, whose name has been so often associated with *Castle Calhoun* and the *Rip Raps*. This distinguished personage has again made his appearance in the political world, much to the annoyance, however, of those who contributed, and were still endeavoring to contribute, to his fortune and consequence. He has kicked up a dust in Washington, from which the whole tribe of his late associates are flying in every direction, denouncing him with an intensity of bitterness, equalled only by that of their previous friendship. It appears that the War Department was yesterday about to close a contract for a further supply of stone necessary to the completion of the fortifications at Old Point Comfort, and that this same Mr. Elijah Mix had made the lowest proposals; but, just when he and some of his particular friends in the Department thought that every thing was as snug as heart could wish, a gentleman opportunely arrived from New York, and, as the Roanoke Senator would say, blowed them *sky high, sir! sky high!*

The gentleman alluded to is the author of several articles, signed Hancock, which appeared in the New York papers, scrutinizing the official conduct of Mr. Calhoun, while Secretary of War. To this gentleman Elijah Mix addressed a letter, under date of the 1st of November, 1825, charging Mr. Calhoun and Mr. Vandeventer, of the War Department, with a direct participation in the notorious Rip Rap contract, and stating that he had the receipt of the latter genleman for $19,500, a portion of which was declared, by him, to be for Mr. Calhoun's use. The letter was marked "confidential;" but Hancock, not choosing to consider it so, communicated it yesterday to the Secretary of War, who immediately rejected Mix's proposals, deeming him unworthy to be a party to a contract, and thinking, probably, that such a man might have the hardihood, hereafter, to make an attempt upon *his* reputation.

We have procured a copy of the letter, which will be found below, *verbatim et literatim.* What course will be pursued in regard to it, we cannot say; but it is rumored that a call will be made for it by the Senate to-day. For ourselves, we acquit Mr. Calhoun of any participation in the *profits* of contracts made by him; but we are not disposed to acquit him of *connivance*, nor can we disbelieve the charge in relation to Mr. Vandeventer, who is the brother-in-law of Mix, until he shall have vindicated his character, and punished Mix for so unprincipled an outrage.

GEORGETOWN, *November* 1, 1825.

TO THE AUTHOR OF HANCOCK

If any information is wanted on the subject of Mr. Calhoun's infidelity, I have it in my power, I think, to furnish you matter sufficient to awaken any unbiassed mind, that he was concerned in the Rip Rap contract, either directly or indirectly; and I have written letters of Vandeventer's, which most positively mention, that he (Calhoun) was engaged, and received some portion of the contract. I knew that Vandeventer was making a traffic of it, and I represented to him (Calhoun) the injustice of compelling me to pay the amount of the advance which Vandeventer had received. He told me his decision was final, and that there was no appeal; although he must have known the injustice of the decision; and I gave him, at the same time, a receipt which I had received from Vandeventer, which he (Calhoun) refused to receive. Let me hear from you as early as possible, and state what way I shall direct you.

Your obedient,

E. MIX.

N. B. On the subject of General Swift, you are misinformed; and I can put you in the way to know another person which you have not suspected.

No. 6.

Deposition of Mr. Barbour.—Sworn to and subscribed, this 4th day of January, 1827

Col. Gratiot, the Superintendent of the public works at Old Point Comfort, invited proposals for sundry articles wanted in the construction of those works. Among others, 16,000 perches of stone were submitted to the lowest bidder. Elijah Mix was the lowest bidder; Howes Goldsborough the next. Col. Gratiot, according to his limited powers, was obliged to recognise Mix, as the person entitled to the contract, subject, however, to the final sanction of the Secretary of War. Goldsborough presented himself at the Department, about the 22d December, (for the day is not particularly recollected,) to insist on his being entitled to the contract; first, on the ground of the great superiority of his stone, and their particular fitness for the works; and secondly, on the notoriously bad character of Mix, which, he urged, rendered him unworthy of the countenance of the Govern-

ment. As no official information had been received from Col. Gratiot, no step could then be taken. I stated to Mr. Goldsborough, that the rejection of the lowest bidder involved a delicate responsibility, both to the public and the individual rejected; that I had, in a few strong cases, rejected the lowest bidder, on the ground of his unworthy character; and that I should investigate maturely the objections he had urged, and, if I found sufficient reasons, I would do it in Mix's case.

The Monday or Tuesday thereafter, Satterlee Clark called upon me, at my dwelling. He stated that he had heard that Mix was seeking to obtain another contract from the Government, and that he was satisfied, after the perusal of a letter from Mix to him. I would be of an opinion, that he was not entitled to such attention from the Government; and, thereupon, he took from his pocket the letter of Mix, and commenced reading. So soon as he had reached the part implicating the integrity of Mr. Calhoun, I interrupted him, by saying, that it must be a foul calumny; Clark replied, that he so considered it, and that, under that impression, he had brought the letter for the purpose of convincing me of the baseness of Mix; and, he added, if you give him countenance, you will be just as liable to the same imputations. He stated, that I might either at once return him the letter, or if I preferred to keep it, for the purpose of being more fully satisfied, that he would call upon me, at the office, for it. As I was just setting out to the office, and expected to meet the rival parties for the contract. I retained it. On arriving at the office, after perusing the report [made] some years [since,] of the House of Representatives, and the accompanying documents, on the Rip Rap contract, among which I found evidence of Mix's having been indicated for forgery, and his flying from the prosecution, I called in Gen. Macomb, to inquire if Col. Gratiot had yet been heard from; being answered in the negative. I told him of this letter, and that I was so well convinced of its being an unfounded calumny, that he would consider Mix's offer as not to be regarded, and, of consequence, to accept Goldsborough's; and that he might state, that my decision was founded on Mix's bad character, to Col. Gratiot, and the parties concerned. The papers from Col. Gratiot were not received till Thursday.

I heard, on Wednesday morning, from Major Nourse, that one or more copies of Mix's letter were in circulation, and I think, he added, that he had seen it, and had heard that the original had been shown to me. I explained to him to what end it had been presented to me. About 4 o'clock on that day, the Board of Commissioners on the Navy Hospital Fund, composed of Mr. Rush, Mr. Southard, and myself, being in session, in my office, a note was sent me from Major Nourse, submitting the propriety of sending Mix's letter to Mr. Calhoun. The idea of taking such a step had not occurred to me. Considering it an unfounded calumny, and the source from which it came as unworthy of notice, and the sentence which I myself had passed on the author, these considerations, when I was called to decide on the question submitted, brought my mind at once to the conclusion, that it would be indelicate to Mr. Calhoun, as it might imply that I thought some explanation necessary. But, lest my views might be incorrect, I took counsel of Mr. Rush and Mr. Southard, both of whom promptly

expressed a coincidence of opinion with me; and was agreed by all, that as Clark had not applied for the letter, it ought to be returned to him. Accordingly, the next morning, the first thing I did, was to enclose it and send it to Clark, through the Post Office, before leaving my own house. To the Committee, and to all who know me, it is unnecessary to state, that the copy or copies of this letter, alluded to above, had been taken before the letter was put in my possession, and that none were permitted by me, and the fact is adverted to only to protect me from the inferences of the malignant.

After my reaching my office, on Thursday, Gen. Floyd called, to say to me, that he, in common with some other of my friends, had been pained to hear a rumor, that Mix and Clark had filed, by letter, a serious charge at the Department, against Mr. Calhoun; they being of an opinion, that I ought either to have burnt it, or sent a copy to Mr. Calhoun. Upon which I gave him the above narrative, with which he said he was relieved on my account, and satisfied. He suggested the propriety of my stating, on paper, the facts. This, I told him, I thought unnecessary; but asked him to communicate them to Mr. Calhoun or to any other person he might think proper. I stated to him, furthermore, that I would see him at my own house that evening, and that I was willing to adopt any proper course, that a misrepresentation of the facts as far as I was concerned, might make necessary. The General wrote me, in the evening, that on his getting to the House, he found the Phoenix Gazette, containing Mix's letter, in the hands of some of the members; and, in consequence, he had made no communication to Mr. Calhoun. Most anxious to have my conduct fairly represented, and fearful that the ear of Mr. Calhoun had been abused, I sent, early on Friday morning, for Col. Richard M. Johnson, a friend to us both, and requested him, as soon as his convenience would permit, to see Mr. Calhoun, and give him the history of the transaction, as detailed above. He readily consented, and proceeded, as he informed me, immediately to his lodgings, where he complied with my request; when Mr. Calhoun replied, that he was entirely satisfied with my conduct in the whole affair.

After this, I saw with surprise, that Mr. Calhoun had stated, in his communication to the House, that charges of a serious character, against him, had become in some degree official, by being placed among the public records, and had become the basis of an official act at the War Department; when, in truth, the letter of Mix to Clark, never was among the records, nor was ever intended by me to be placed among the records; when no charge was made by Clark, in consequence of Mix's letter, but, on the contrary, as avowed by himself, to fix the crime of calumny on Mix, which was predicated exclusively on the innocence of Mr. Calhoun, for his innocence made Mix's crime. Nor was any official act of the War Department based on the charge; but the *falsehood* of the charge, united with other imputed crimes, induced me to reject Mix, as unworthy of any connexion with the Government. And I solemnly aver, that, in receiving this letter, and, in short, that every act of mine, in this whole affair, was guided by an exclusive eye to the public interest, and in rejecting Mix's proposals, as I thought, by a due regard to the moral sense of my country; that from the first moment of hearing the

charge, I thought it a calumny, and, coming from the quarter it did, unworthy of any man's notice. The declaration of Mr. Calhoun, made to Col. Johnson, of his entire satisfaction with my course, and indeed, self respect, forbid me from applying to myself any of the innuendos in Mr. Calhoun's communication to the House, yet, as the world may infer from the communication, that they have a bearing against me, I think it proper to add, that any such imputation will constitute a calumny.

Questions and answers of Mr. Barbour.

Question by Mr. Wright. Have you knowledge of any contract, entered into in behalf of the United States, by the War Department, while Mr. Calhoun was Secretary of that Department, in which he was in any way interested, or in the profit of which he participated?

Answer. I know nothing of such contract.

Question by Mr. Campbell. Did you speak of Mix's letter to any other person than those whose names you have already mentioned, while the letter was in your possession? If your answer be affirmative, to whom?

Answer. I have no recollection of having spoke or shown it to any other persons than those referred to in my deposition. I recollect consulting the President on the propriety of rejecting Mix's proposals; whether before or after the receiving Mix's letter, I do not distinctly recollect. If after receiving it, I presume I spoke of it to him. The conversation with the President took place in a walk with him from church on Christmas day.

JAMES BARBOUR.

No. 7.

Deposition of Mr. Rush, sworn and subscribed to the 4th day of January, 1827.

Mr. Rush, being first sworn, deposeth and saith—"I believe it was one day last week, perhaps on Wednesday, that I attended at the War Office to meet the Secretary of War and of the Navy, in discharge of duties which attached to us as Commissioners of the Navy Pension and Hospital Fund. After the business upon which we were engaged had been nearly finished, a note was handed to the Secretary of War by his messenger. After reading it, he digressed from the business in which we were engaged, and proceeded to inform us that the letter in question, from Mr. Mix, had been put into his hands a day or two before, and that he would read that letter to us. This he did, taking the letter, as I think, from his pocket. After reading the whole of it, which, as it appeared to me, he did not so much for the purpose of inviting consulation as for that of expressing his own opinion upon it, he went on to express that opinion: He said that he considered it as containing a calumny upon the Vice President expressing himself to that effect, in language very strong. He continued his remarks upon it by saying, that he had determined, since the receipt of that letter, to have no connection whatever with the writer of it, touching a

certain contract then pending before his Department, even if he should have entertained any connection with him touching that contract prior to the receipt of the letter, under the conviction that the author of so base a fabrication was not a suitable person to approach his Department. Finally, he remarked, that his desire and his purpose was to have nothing to do either with Mr. Mix or his letter. Both Mr. Southard and I unequivocally expressed our conviction of the propriety of his course, and, above all, our own belief also that the charge against the Vice President could be no other than such a calumny as he had represented it. The Secretary of War further expressed his intention of getting rid of this letter as soon as he could, in the propriety of which course the Secretary of the Navy and myself also concurred. The Secretary of War said, in effect, that, to be in the possession of that letter at all was disagreeable to him, and that his wish was to part with it immediately.

The witness adds, that it was not until last evening that he had any occasion to recall the circumstances attending the conversation above described; he therefore cannot vouch for accuracy either as regards the order of the conversation or the words employed in it; but he feels much confidence that he has given, correctly, its true spirit and drift.

Question by Mr. Wright.—Have you knowledge of any contract entered into, in behalf of the United States, by the War Department, while Mr. Calhoun was Secretary of that Department, in which he was, in any way, interested, or in the profit of which he participated?

Answer.—None.

Question by Mr. Campbell.—Did the Secretary of War, at the time he read the letter to you and Mr. Southard, impose injunctions of secrecy as to the contents?

Answer.—Not to my recollection.

Question by Mr. Clarke.—Did the Secretary, in the conversation you had with him, as detailed by you, speak of communicating the contents of the letter to the Vice President, and, if he did, what he did say on that subject?

Answer.—I have, at present, no recollection of his having said any thing upon that point. I left the War Office before either of the other gentlemen, who, as well as I can remember, were still in conversation upon the subject of the letter.

RICHARD RUSH.

No. 8.

Deposition of Mr. Johnson.—Sworn to and subscribed this 4th day of January, 1827

Richard M. Johnson, a Senator of the United States from the State of Kentucky, appeared before the committee, was sworn and testified as follows:

Immediately after breakfast Friday morning Gov. Barbour, Secretary of War, sent a messenger to my room with a request to come to his house, if convenient, without delay; if not convenient, he would call at my room. I, without any delay, went to his house;

he informed me that he wished to state his conduct and proceeding relative to the charge which had been made against Mr. Calhoun by Mr. Mix; that I might see Calhoun, and, as a mutual friend, give him the facts in detail.

I heard what Gov. Barbour had to say and then went to the lodging of Mr. Calhoun. Col. Hayne of the Senate was present. I told Mr. Calhoun that Gov. Barbour had requested me to call on him, and explain the course he had taken in regard to the charge aforesaid. He was then busy in folding up and sealing some letter, which I presume was the one he directed to the Speaker of the House on the subject. I stated to Mr. Calhoun that Gov. Barbour had been presented with the letter of Mix, by a Mr. Clark, making the charge aforesaid; that upon reading the letter he came to the part which made the charge against Mr. Calhoun; that he, Gov. Barbour, told Mr. Clark, that he had no doubt that the charge was a base calumny against Mr. Calhoun. Mr. Clark replied, that he believed so likewise, and it was with a view to present Mix as making this foul charge, to prove him unworthy of the confidence of the Department, and, therefore, should not obtain a certain contract for which he was then the lowest bidder; and state, that if he could make such a charge against Mr. Calhoun, he might make the same charge against him, Gov. Barbour. This was urged, as I understand, by Clark, to have the proposition of Mix for the contract rejected—that he requested Mr. Clark to leave the letter with him, that he might look over it, as he was also examining some other papers which made charges against Mix, showing him unworthy of confidence—that, in examining the papers alluded to, he found charges of such a character against Mix, that, connected with his charge against Mr. Calhoun, he had no hesitation in rejecting his proposals, although the lowest bid, as unworthy of the confidence of the Department. Gov. Barbour stated, that he understood that some friends of his and Mr. Calhoun's thought he ought to have retained the letter and advised Mr. Calhoun of it, or, that he ought to have sent the letter to Mr. Calhoun; upon that subject he stated, that believing the charge false and not entitled to any credit, he did not think that it was worthy of such consequence or notice, and that, moreover, he feared that he might insult the feelings of Mr. Calhoun by giving such serious importance to the charge, and in order to wash his hands of the whole affair, he had returned the letter to Mr. Clark under cover and rejected the proposals of Mr. Mix, upon the grounds aforesaid, that he was unworthy of confidence and public trust, upon the ground of this charge against Mr. Calhoun, as well as other infamous charges against said Mix. I think it was the charge of forgery; and he hoped Mr. Calhoun knew him too well to believe that he should for a moment suppose he was capable of acting in any way to give countenance to such a slander against him. I communicated in substance these facts to Mr. Calhoun, who without hesitation said he believed Gov. Barbour incapable of a design to do him injustice in the case, and acquitted him, as I understood, of any wish to injure him in this respect, by giving the least countenance to the charge aforesaid.

Question by Mr. Clarke.—Did you hold this conversation with the Vice President, before he made his communication to the House?

Answer.—I did. It was the morning of the day, and before he made the communication to the House.

Question by Mr. Campbell.—Did Mr. Calhoun, when you called on him, speak of the publication in the Phoenix Gazette of the 28th of December; if he did, what were his observations?

Answer.—I do not recollect of having any other conversation with him than that I have related. We did not go into any detail in relation to the publication.

Question by Mr. Wright.—At the time you made the communication to Mr. Calhoun, at the request of Governor Barbour, did he speak on the subject of the Mix contract? And if so, relate what he said.

Answer.—I do not recollect that he said a single word respecting the Mix contract. We entered into no detail. My object was single and identical; viz: to show him that Governor Barbour had acted honorably towards him. Upon satisfying Mr. Calhoun on that subject, we had no farther conversation. In fact, I talked and said nearly all that was said; and that I have related as nearly as I can.

Question by Mr. Wright.—Have you knowledge of any contract entered into in behalf of the United States by the War Department, while Mr. Calhoun was Secretary of that Department, in which he was in any way interested, or in the profit of which he participated?

Answer.—I never have; and I should be sorry to know or believe such a thing of him or any other man who has ever filled that Department, or ever will fill it. I have had a great deal of business with him during his whole term of service, as the agent, or rather friend, of army contractors; and I say, that I believe he is a man of as much integrity as any on earth.

Question by Mr. Clarke.—Had you been informed by any person before the publication of Mix's letter in the Phoenix Gazette, that the said letter would appear there, and by whom were you so informed?

Answer.—I never did know or hear of the existence of any such letter, until it was published.

Sworn to and subscribed this 4th day of January, 1827.

RICHARD M. JOHNSON.

No. 9.

Deposition of Mr. Southard, Secretary of the Navy.

At two o'clock, on Wednesday of last week, at my instance and request, there was a meeting of the Secretary of the Treasury, the Secretary of War, and myself, as Commissioners of Navy Hospitals and of the Pension Fund, in the office of the Secretary of War, for the purpose of considering certain matters relating to the Hospital and Pension Funds, and, on which, I wished the advice and direction of the other Commissioners. About an hour and a half after we met, and sometime, perhaps a half an hour before we separated, and while engaged in the business for which we met the messenger brought to

Mr. Barbour a short note, which he read, and, immediately remarked, "I have a case of conscience; come tell what I ought to do." He then took from his pocket, a letter which seemed to be very much worn, and remarked, that it contained as base a calumny as had ever been uttered by any calumniator—that he would read it, and state how it came into his possession, and then ask us whether we thought he ought to send it to Mr. Calhoun. He read it—and stated, that stone being necessary at some of the works, near the the mouth of the Chesapeake, Mix had made the lowest bid for the contract, and been so reported by the officer directed to receive the bids; that the person, (I think a Mr. Goldsborough) making the next lowest bid, objected to Mix's receiving the contract, and requested the Secretary to look into his conduct on a former occasion; he did so, and was satisfied that the stone furnished by him, was not so good as that furnished by Mr. Goldsborough; and that he was a most corrupt man, having been guilty of most improper and criminal conduct; and that he had resolved not to give Mix the contract. I do not positively recollect whether Mr. Barbour stated, that his resolution not to give him the contract was taken before or after he received Mix's letter; but think it was after he had received it.

Mr. Barbour then informed us, that, on the day before our conversation, Major S. Clark had called at his house, and presented to him Mix's letter, to shew, as he had said, that Mix was so great a scoundrel that he ought not to be trusted with the contract; that when he (Mr. B.) learned the contents of the letter, he instantly denounced Mix as a caluminator, and the letter as a calumny; to which Major C. replied, that it was solely with that object the letter was presented to him; to prove the extent of his villany, and that there was no safety in making a contract with him. Major C. requested Mr. B. to examine the letter and then return it to him.

Mr. Barbour then stated to Mr. Rush and myself, that it had been suggested to him (and, I believe, by the note just received) that he ought to communicate Mix's letter to Mr. Calhoun, as it contained such a charge against him, but that he thought it would be an offence and so considered by Mr. Calhoun, to communicate such a letter, coming from such a source, and that he did not think it right to send it.

I concurred in this opinion, and added that I neither saw the necessity nor propriety of that measure; that I presumed no one could be found who would question Mr. Calhoun's integrity, or credit, for one moment, so foul a charge, that, receiving the letter as he did to examine and return it; I thought he had nothing farther to do with it, but ought without delay to return it to Major Clark; that sending it to Mr. Calhoun would be giving to it a notice and weight of which it was, both from its character and author, utterly unworthy—might be misconstrued by others, and unkindly received by Mr. Calhoun himself.

I believe Mr. Rush concurred in this opinion, and Mr. Barbour said that he would immediately return it to Major Clark through the Post Office.

Until Mr. Barbour shewed me the letter in his office, I had never seen it, nor heard of its existence; nor, after our conversation there, did I see it or hear it mentioned, nor, did it, as I believe, recur to

my recollection, until I saw it in the Phoenix Gazette next morning, about ten o'clock, in my own office.

Question by Mr. Wright. Have you knowledge of any contract entered into in behalf of the United States, by the War Department while Mr. Calhoun was Secretary of that Department, in which he was in any way interested, or in the profit of which he participated?

Answer. I have not.

Sworn and subscribed, this 4th day of January, 1827.

SAMUEL L. SOUTHARD.

No. 10.

Deposition of General Alexander Macomb, taken Jan. 5th, 1827.

Some time last week, I believe it was Wednesday, the Secretary of War sent for me in the War Office, to inquire whether the proposals for furnishing stone for the works at Old Point Comfort and at the Rip Raps, had been received at my office: I informed him that they had not been received, but expected them every minute. The Secretary then informed me that the reason he made the inquiry was in consequence of his understanding that Mr. Mix was a bidder, and that his character had been represented to him as being of such a cast as to make it proper that he should be excluded; that, besides unfavorable reports of him, he had now conclusive proofs of his baseness in a letter which he had written some time ago to an anonymous writer in New York, in which he accuses Mr. Calhoun—Here, read it, said the Secretary, handing me the letter. I commenced reading it, but did not get along with reading it very well. The Secretary of War said, hand it to me and I will read it. I did so; and the Secretary of War read the letter; and when finished, he asked me what I thought of such a fellow? (meaning Mix)—Have you not heard he has been guilty of forgery in New York? Do you think that we ought to permit him to have the contract if he should be the lowest bidder, as I am informed he is? I replied certainly not; well, then, you will not count on Mix's bid at all: for, if he can act towards my predecessor so infamously, he will not hesitate when it suits his views to act in the same manner towards me. I then returned to my office. The day the proposals arrived, which I believe was the next day, I handed them to the Secretary of War; he examined them, and desired me to accept Mr. Goldborough's bid, the next lowest after Mix's bid. The Secretary of War afterwards informed that it was reported about that the letter which he had shewn me, meaning Mix's letter, was used by him for the purposes of injuring the character of Mr. Calhoun. God knows, said he, that I should be the last man to take such means to injure the character of any one, especially one of the high standing of Mr. Calhoun, in whose integrity he had the greatest confidence; and generally the Secretary spoke in terms of contempt of the letter and of the writer. This I believe to be the words or conversation had with Mr. Barbour, the Secretary of War, and I am sure the above is the substance of the conversation.

ALEX. MACOMB,
Maj. Gen.

Question by Mr. Wright. Have you knowledge of any contract entered into in behalf of the United States, by the War Department, while Mr. Calhoun was Secretary of that Department, in which he was in any way interested, or in the profit of which he participated?

Answer. No; I never heard of his having anything to do with any contract, or ever heard it surmised that he had, at the War Department.

Question by Mr. Sprague. Was the letter of Mix at any time placed on file in the Department?

Answer. It was not; it is customary to put on file in the proper sub-department the documents which refer to that Department; such, for instance, as letters, papers containing accounts, recommendations, and generally all documents which appertain to the objects with which the sub-department is charged.

Question by Mr. Campbell. Is this letter now shown to you, purporting to be written by E. Mix to S. Clark, on the 2d of November, 1825, the same that was exhibited to you by Governor Barbour, and to which you have alluded?

Answer. It is; I know it to be the hand writing of Mr. Mix. Perhaps, in giving my testimony in this case, as I am sworn to tell the truth, the whole truth, and nothing but the truth, it would have been proper for me to have added to my narrative, that Mr. Mix was the lowest bidder for the stone, and that he offered Mr. Clement Smith, of Georgetown, for his security, and a Mr. Oakley, or some such name, in New York; that on New Year's evening, I met Mr. Clement Smith, and in talking of the subject now under consideration, Mr. Clement Smith stated, that he was informed that Mr. Mix had given his name in as one of his sureties. Why, said Mr. Clement Smith, it is the most impudent act I ever heard of. I would not have been his security for fifty dollars. I never authorized him to use my name in any way whatever in this transaction. I would also state, that Mr. Mix called upon me at my office, to ascertain whether the bids for the contract had arrived from Old Point Comfort. I informed him that they had not as yet arrived, but were hourly expected; that the steamboat had been stopped in the ice at Alexandria. Mr. Mix said that he had received from Col. Gratiot a certificate that he was the lowest bidder, and that his proposals were accepted. I told him I could do nothing until I should see the proposals. Mr. Mix withdrew from the office, and after a while came again, and begged me to inform him if there were any objections to his having the contract, or any prejudices against him. I replied that there was strong prejudices; for I had been informed that he had written a letter, which had been published in the Alexandria paper, accusing the Vice President of participation in the contract, (commonly called the Mix contract,) and otherwise accusing him of misconduct in his Department as Secretary of War. Mr. Mix said, that some time ago that he had addressed a letter to Hancock, in New York, a copy of which letter he still had in his possession, and that he never had mentioned the name of Mr. Calhoun; that it was an infamous forgery, if any such accusations were in any letter purporting to be one from him; that when he wrote the letter, he was mad with Major Vandeventer, and in a fit of anger and excitement, he wrote a letter to Hancock, which

he marked confidential, and that his name was not to be used. That it was an infamous thing to publish any letter with such a mark upon it! I believe he then left my room and returned again much agitated, requesting me, for the sake of his family, to let him know if his bid would be rejected; for, if that was the case, he would withdraw his bid and his sureties' names: for, if he should be publicly refused the contract, after being lowest bidder, his character would be ruined, and his family suffer thereby. I say I believe he returned, because he was in my room several times that day; it was the day the publication appeared in the Alexandria paper.

Question by Mr. Floyd. Where, when, and by whom, was the contract now referred to by you, advertised?

Answer. The proposals for forming the contract alluded to, were advertised in several newspapers; I have seen it, I believe, in the National Intelligencer, the Norfolk paper; it is probable that they were also advertised in New York. I cannot state the date of the advertisement; but it can be readily known by reference to the National Intelligencer. The advertisement was signed by Lieut. Col. Charles Gratiot, of the Corps of Engineers, who is the chief officer of Engineers in Hampton Roads.

Sworn and subscribed this 5th day of January, 1827.

ALEX MACOMB,
Maj. Gen. Chief Eng.

No. 11

Deposition of Major Satterlee Clark

I am the author of some pieces, signed "Hancock," and "Young Rifle," which were published in the Autum of 1825, in the New York National Advocate. At this period, the columns of a scurrilous paper, in this city, believed to be under the control of Mr. Calhoun and his friends, were employed to disseminate the vilest slanders against me. The papers containing these slanders were sent to the city of New York, and thrown into hotels and reading rooms, the keepers of which did not subscribe for them, and at the time, this was done, an important suit was there depending between the United States and myself. On the 9th day of November, 1825, the letter, which I yesterday gave to the Chairman of this committee, was received by me at the office of the New York National Advocate, and from the hands of the editor, by whom it had been opened. A conversation then ensued between the editor and myself, as to the propriety of publishing the letter. He said "it would make a devil of a noise, that nobody could blame me, considering the course which had been pursued, in relation to myself, by Mr. Calhoun, and the Washington City Gazette; that the publication of the letter would mortify the Vice President, when he found that his old friend Mix had turned against him, and that he deserved to suffer the mortification for the part he had taken in the infamous plot against Mr. Crawford." I replied, "the letter shall not be published." My reasons for the course which I determined to pursue were these. I

had no acquaintance whatever with Mr. Mix, and I could not readily believe that he had taken the liberty of addressing such a letter to me. My first impressions were, that it had been forged by some of the creatures of Mr. Calhoun, who were silly enough to suppose that I would make charges against him upon it, and thus bring disgrace upon myself. If I had known the letter to be genuine, and that Mix could prove all which he stated in it, I would not have consented to its publication, because, I was not ambitious of appearing before the public in connexion with a man of his character, and because I have too much magnaminity to accuse any public officer upon the testimony of such a man as Mr. Mix. The only use I made of the letter, at that time, was to take a copy if it; that copy, I sent to a gentleman in the War Department, and requested him to call upon Mr. Mix, and ask him if he had written that letter to me; and, also, to ask him, if he had Major Vandeventer's account for $19,500, received on account of the Rip Rap Contract; and, also, letters which he said he had received from Major Vandeventer, charging Mr. Calhoun with having participated in the contract. If he had, to exhibit them to this gentleman. The gentleman to whom I wrote, declined calling on Captain Mix, and so the business rested until my arrival in Washington, in December last. Charles Hills is the gentleman to whom I write, as above mentioned. On the evening of the 24th December, I was introduced to a gentleman of the name of Howes Goldsborough, in this city.

Knowing that he had previously been a contractor with Government about fortifications I asked him if he got the contract this year? He replied, he had not; but that Elijah Mix had got the certificate of the officer that he, Mix, was entitled to it; he being the lowest bidder. I asked him, if the Secretary of War, yet has no power over it. He replied, that the contract had not been made, and that the Secretary could otherwise dispose of it if he should think proper. I remarked, that I had in my possession a letter, purporting to be written by E. Mix, which, if genuine, I thought would induce the Secretary of War to refuse to make a contract with him. He replied to me he was well acquainted with the hand writing of Mix, and if I would shew it to him, he could tell if it were genuine. I did so: he pronounced it genuine, and said he could swear to it. He asked my permission to take a copy for the purpose of shewing it to the Secretary of War. I gave my permission, and he took a copy. I afterwards concluded it would be most delicate and proper for me to go to the Secretary of War with the original letter; but, as I was personally unacquainted with the Secretary, I called on Judge Anderson, First Comptroller, for advice. He had served with my father in the Revolutionary War, and had always been friendly to me, and I could rely on his judgment and friendship. I shewed the letter to him, and told him the object I had in view in calling upon the Secretary. He advised me to call on the Secretary and shew him the letter; expressing his belief that the Secretary would be obliged to me for the information. Accordingly, I went to the Secretary's house on Christmas morning; I stated to him his predecessor had been very much censured for making a contract with Elijah Mix, that I had the evening before been informed that Mix was again an

applicant for a contract, at Old Point Comfort, and heard he was the lowest bidder; that, in my opinion, it would be neither honorable nor safe for him to contract with Mix. In addition to all which had heretofore been said of Mr. Mix, I had, in my pocket, further evidence of his rascality. He had written me a letter, in which he had vilely slandered Mr. Calhoun, which letter I wished to shew him; I put the letter into his hands, and he commenced reading it; before he had gotten through reading the letter, he broke off, and said, it is, indeed, an infamous calumny. After he had read the letter through, he said he would make no contract with the rascal; he might probably charge him with going snacks if he did; he considered him civiliter mortuus, as he did not offer to return the letter to me. I remarked to him, as soon as he should have decided on the contract, I should call on him for it. It was my belief he would shew the letter to Mix himself, and it was my intention, if Mix admitted the letter to be genuine, to send it to Mr. Calhoun.

On the evening previous to the publication in the Alexandria paper, a Captain Thornton, whom I had known during the war, commanding a company of volunteer Cavalry, told me he had heard the circumstances which I have recapitulated, and asked me if I had any objections to show him the letter. I replied, the letter was in the possession of the Secretary of War, and I had retained no copy of it. He asked me, if there was no one in the city who had a copy. I told him Mr. Goldsborough had taken a copy, but whether he had retained it, or given it to the Secretary of War, I did not know. He then called on Mr. Goldsborough, and asked permission to see the copy, if he had it in his possession—(this was in my presence). Mr. Goldsborough came to me and asked me, (we were all in the same room at supper, at Williamson's,) if I had any objections to Captain Thornton seeing the copy. I said I had none. Captain Thornton took it, went out of the room, was absent two or three minutes, not more, returned and gave the copy back, either to Mr. Goldsborough, or myself; I don't know which. I did not know he had made a copy, nor did I suppose he had been absent sufficient time to have done it. He then made some remark, which induced me to suppose he was connected with some newspaper, upon which I stated to him that I was ignorant of his being connected with any newspaper, and that, if he had made a copy of the letter, I hoped he would not publish it. That it was not my province to advise as to what editorial remarks he might think proper to make on Mr. Mix; but I should be very sorry, if the letter should ever appear in the public prints. It is my belief, that Mr. Thornton had a copy when he came there, and his object was to compare it, either with the original or another copy. This is my inference, from the short time he had the copy from Mr. Goldsborough. Thornton immediately left me, I was much surprized and displeased, when, next morning, I saw what purported to be a copy of the letter in the newspaper.

Question by Mr. Wright.—Have you any papers, going to shew that Mr. Calhoun ever participated in any contract?

Answer.—No.

By Mr. Wright.—Do you know of any contract being entered into by the War Department, while Mr. Calhoun was Secretary of War,

in which he was, either directly or indirectly interested, or conducing to show such interest, or of the profits of which he received any part? If yea, state particularly what you know, and name those persons, if any, you have heard accuse Mr. Calhoun of being interested in any such contract, or of receiving any part of the profits of any such contract.

Answer.—I do not. I have already stated, that I did not know of any contract in which he was interested; nor did I believe he participated in the profits of any such contract.

MONDAY, JANUARY 8, 1827.

Continuation of the testimony of Major Clark.

I had no intercourse whatever with any member of the Administration, nor did I consult or advise with either of them, unless the first Comptroller of the Treasury be so considered, and him only, so far as I have stated.

Cross examined by Mr. McDuffie.

Question. Was any person in company with Mr. Thornton when he applied to see the letter of Mix? and, if yea, state who it was.

Answer. Whether any person came with Mr. Thornton I do not know. I have already stated that there were many persons in the room: it was a public hotel. I do not know whether he had company with him or not.

Question. Was there any other person present who had any agency in obtaining a sight of the letter, or whom you have any reason to suppose had any agency in procuring a copy, or causing its publication?

Answer. I was sitting by the fire, in conversation with some of the boarders, whose names I do not now remember. Capt. Thornton came up to the fire: I think Mr. Haughton, who is also a boarder in the house, introduced him to me. I remarked that Capt. T. had been known to me during the war. Mr. Haughton remarked that Thornton wanted to speak to me. Thornton then requested me to step aside, when the conversation which I have already detailed took place. This is all that did occur.

Upon being asked the christian name of Mr. Haughton, Major Clark answered that he did not know it. He understood he was a reporter for some newspaper, which he did not know. He was commonly called "Major Haughton."

Question by Mr. Clarke (member of the committee.) Did the Vice President know of the letter of Mix to you before the same was made public through the Phoenix Gazette? and, if yea, what reasons have you to suppose he had such knowledge?

Answer. It is my belief that the Vice President has known the existence of the letter for a long time. My reasons for believing so are, that Major Vandeventer has known of its existence, and I presume from the circumstances of the intimacy between Major Vandeventer and Mr. Calhoun, and from its containing charges against them both, that Major Vandeventer had communicated the fact of the existence of this letter to Mr. Calhoun.

Question by Mr. Ingersoll. What reason have you to believe that Major Vandeventer knew of the existence of the letter prior to its being handed by you to Gov. Barbour?

Answer. Major Vandeventer has so stated in conversation, to several gentlemen, as those gentlemen informed me, and that he was informed of it by Mix's brother, who, I believe, is a Lieutenant in the United States' Navy. I have had no personal intercourse or conversation with Major Vandevener upon the subject.

Question by Mr. Wright. Will you name those gentlemen who have given you this information?

Answer. Although I have heard it repeatedly, yet I cannot now recollect them all. I will mention Mr. Howes Goldsborough as one of them. I think Mr. Charles Hills, whom I have heretofore named in my testimony, also gave me the information.

Question by the Chairman. Has the letter of Elijah Mix to you, bearing date the 2d of November, 1825, been constantly in your possession until you handed it to the Secretary of the Department of War, in December last?

Answer. It has been constantly in my possession from the date of its receipt by me (the 9th of November, 1825,) till handed to the Secretary of War.

Question by the Chairman. Why did you preserve the letter of Elijah Mix above alluded to, believing it a calumny, as you have stated?

Answer. I have stated in my deposition that I had sent a copy of the letter to a gentleman in the War Department. I preserved the original lest that Mr. Mix might be disposed to deny, if the original should be lost, that he had ever written a letter. I also preserved it as a curiosity.

Question by Mr. Williams. How long have you known the general character of Mix?

Answer. I have known the general character of Mix since the famous Rip Rap contract was made. I have never had any personal intercourse or acquaintance with him.

Sworn and subscribed this 8th day of January, 1827.

SAT. CLARK.

No. 12.

EXHIBIT accompanying the testimony of Major Clark. Original letter from E. Mix to Hancock, with Governor Barbour's envelope, enclosing it to S. Clark.

The letter of Mix is returned.

JAMES BARBOUR.

Major CLARK.

Confidential to S. Clark, Esq. my name not be disclosed at present.

GEORGETOWN, 2*d Nov.* 1825.

To the writer of "Hancock:"

If any information is wanted on the subject of Mr. Calhoun's infidelity, I have it in my power, I think, to furnish you matter suffi-

cient to awaken any unbiassed mind that he was concerned in the Rip Rap contract, either directly or indirectly, and have a written letter of Vandeventer's, which most positively mentions that he was engaged and received some portion of the contract, or knew that Vandeventer was making a traffic of it; and when I represented to him the injustice of compelling me to pay the amount of the advance which Vandeventer received, he told me his decision was final, and that there was no appeal, although he must have known the injustice of the decision; and I gave him at the same time a receipt, which I had received from Vandeventer, stating that I had paid him $19,500, which he refused to read. Let me hear from you as early as possible, and state what way I shall direct.

Your obedient, E. MIX.

N. B.—On the subject of Swift, you are misinformed; and I can put you in the way to know another person, which you have not suspected.

No. 13.

Testimony of Elijah Mix.

Elijah Mix appeared before the Committee, in obedience to the summons served on him; and being sworn in due form of law, and informed by the chairman of the purposes for which his attendance was required, proceeded as follows:

I arrived here in July, 1818. On passing Old Point Comfort, on my way here, I understood that there was a contract for stone for that place to be given out. I made application to the Engineer Department. They stated, that, on General Swift's return, who was then absent from the city, the contract would be given out. On the 25th of July, I was informed that I was the lowest bidder. After I had received the contract, I went immediately to New York, and applied to James Oakley to be my security. Previous to my going to New York, Major Vandeventer stated to me, that he considered one half the contract as belonging to him. On the 6th or 7th August, I received a letter from Major Vandeventer, (See No. 1.) stating, that he had subdivided the contract into four parts; one to me, one to Mr. Jennings, one to himself, and one to a person whose name was not to be known. He stated likewise, that he should bring on the advance that was required, which was $10,000. He did so, gave it to Major Cooper, of New York, who is the father mentioned in Major Vandeventer's letter, and what became of it I do not know. The draft for this sum was in my favor, was presented to me, with the blank side uppermost, by Major Vandeventer, for my endorsement, and was endorsed and returned to Major Vandeventer. A portion of that money was for the outfit of some vessels I had purchased in New York. I went on with the vessels to York river, where I had commenced my operations and continued delivering stone from there, until the 10th of September, 1818, when I received another letter (See No. 2.) from Major Vandeventer, stating that he had made an arrangement with the Agent of fortifications, to receive the money for all the deliveries of stone on my contract. I remonstrated with him

for receiving the money; he stated, that he should mange the whole of the funds of the contract, and requested me to accede to his proposals to Major Maurice, who was the Agent. I refused to acknowledge Major Maurice's right to receive my money; but on the 6th November, same year, I deposited to the credit of Major Vandeventer, in the Branch Bank at Norfolk, out of the first deliveries I had made of stone, $4,000, which he received and used for his private purposes.

In April, 1819, Major Vandeventer called on me for a bill of sale for that half of the contract which he claimed. I gave it him, without any consideration whatever, and it remained in his possession until some time in October, 1819. Finding it was a great inconvenience that the contract should be thus divided, I made a proposition to him to take it back again; he answered, that he would take $12,000 for one half of the half he owned; that is, one fourth of the whole contract. I gave him that sum, $5,000 in cash, and $7,000 in two accepted drafts of $3,500 each, upon which I have his receipt. (See No. 3, *a* and *b*.) The other quarter he consented to transfer to me, upon my paying all the claims on the one-half which he has held. I consented to it, and took the remaining fourth. The first year the contract was not profitable; it had, however, become so by this time.

I now come to that part which has produced the present inquiry. The contract having now become profitable, Major Vandeventer made a second sale of the last quarter which I had previously purchased, to a Major Cooper, of New York, for a sum which I understood to be $13,600. Major Cooper sold to Howes Goldsborough. On learning this, I represented the matter to Mr. Calhoun, and exhibited Mr. Vandeventer's bills of sale of the contract to me. (See No, 4.) Mr. Calhoun would at no time read them, and stated, that he had had an explanation with Major Vandeventer on the subject. I then left Washington for New York; two or three days after my arrival there, I received a letter from the ~~Chief Engineer, (No. 5.)~~ Walker K. Armistead, which is hereunto annexed, marked No. 5. I also received, at the same time, a letter from Major Vandeventer, annexed and marked No. 6. On Major Vandeventer's arrival at New York, he informed me that Mr. Calhoun had determined that, unless I gave up this quarter, he (said Vandeventer) should leave the office. Rather than suffer him to lose his situation in the office. I consented to give up the fourth of the contract in controversy, and wrote a letter to the Department to that effect, dated 13th April, 1821.

On my arrival in this place, previous to the 13th April, I presented to Mr. Calhoun the two bills of sale, a copy of a confidential letter which Major Vandeventer stated he had written to him, with a letter of my own, stating all the facts as they then were. I presented these papers to Mr. Calhoun myself, in the presence of General Macomb and Captain Smith, observing that they were explanations of my contract. Mr. C. took the papers, laid them on the desk before him, and stated he would attend to them. I left the room, and, in the course of five or ten minutes, returned into the audience room and wrote Mr. C. a note, asking to see him for a few moments, or to return me my papers. The porter brought them to the door; I opened them, and found the copy of the letter of Mr. Vandeventer to Mr. Calhoun missing. I went immediately into the office, and stated the fact of this letter's being missing

to Mr. Calhoun, in the presence of General Macomb and Captain Smith. He called Major Vandeventer into the room, to whom he had given the papers in my absence, and asked him if he knew anything of it. Major Vandeventer answered, decidedly, no. The Secretary then looked severely, first at Major Vandeventer, and then at me, and said that he knew nothing of it. Under these circumstances I found there was no redress and that something was wrong whenever I appealed for justice. The confidential letter alluded to was addressed by C. Vandeventer to J. C. Calhoun, Secretary of War, and had been communicated to me by Mr. Vandeventer, as a copy of one which he had written to Mr. Calhoun, and was marked "private," dated 1st April, 1821, the substance of which was that he had brought me to terms, and that I had only to return to Washington and conform to the Secretary's wishes in the transfer to that quarter of my contract to Messrs. Goldsborough and Co. At the bottom of this copy was a writing addressed to me, stating that he hoped that I would not have any objection to go before the Secretary of War and fulfill what he had that morning stated to him I would do, which was to give up that portion of the contract to Goldsborough.

The letter dated, "Georgetown, 2d Nov. 1825, was here shown to Mr. Mix, when he acknowledged the letter to be written by him, and observed, that the first reason he had for using the terms, "*directly or indirectly*," as contained in it, was, that on my appealing to Mr. Calhoun, to have my portion of the contract restored to me, and that the debts might fall where they ought to have fallen, was that Mr. Calhoun at all times told me the decision was final; another reason was, that on Major Vandeventer stating that he had nothing to do with the contract in the early part of it, and that another person was concerned in the contract, and that he advanced more on the contract, when it was the reverse, and that he stated before the committee, that he asked the Secretary, and that the Secretary gave permission, but stated, that perhaps it might be the cause of some inconvenience to himself, and that he stated to me on the 7th of August in the letter above referred to, that another person was concerned in the contract, whose name was not to be known; these were the causes which influenced me to write the letter in question to Major Satterlee Clark, and that it might also be the means of causing the money which I conceived to be unjustly withheld at the War Department, paid or returned to me, and not for the purpose of injuring Mr. Calhoun.

I called on Mr. Calhoun about December 1825, or January 1826, since he has been Vice President, and presented those bills of sale and two letters which I had of Major Vandeventer, one of which, after he had read it, he requested me to state what "Sect" meant; I told him I did not know, I thought it explained itself. He made no reply to me, took one of the bills of sale, and after reading a part of it, he stated, that he thought, if I made an appeal to Major Vandeventer, he would see those accounts settled; he stated at the same time, that he had better pay them than to lose $2,000 a year. I then requested Mr. Calhoun to intercede with him to pay them—he stated that he would have nothing to do with the business.

Question by Mr. Campbell. Do you know that Mr. Calhoun participated in the profits of the contract to which you have so often alluded? If yea, to what amount?

Answer. The sums of $10,000, $4,000, and $12,000, have never been accounted for to me as yet, on account of the contract. I don't pretend to say what because of them; they were taken from the proceeds of my contract.

Question by Mr. Ingersoll. Have you produced all your letters from Major Vandeventer in relation to the Rip Rap contract? If not, where are the remainder?

Answer. I have one in my hand, which I now produce, (See No. 7.) the remainder were burned at Capt. Smith's house, in Georgetown, in the presence of Capt. Smith, James T. Dent, and Major Vandeventer, at the request of Major Vandeventer.

Question by Mr. Williams. In the interview with Mr. Calhoun since he became Vice President, as described by you, you say he asked you what *Sect* meant, and you answered, you thought it explained itself; what explanation would you attach to it?

Answer. I could not pretend to say, I thought the Secretary had discernment enough to make the explanation.

Question by Mr. Sprague. What were the contents of the letters which you say you exhibited to Mr. Calhoun at his house, and particularly that which contained the letters *Sect?*

Answer. I recollect perfectly well that it began that the *Sect.* ordered me to, &c. I can't now pretend to repeat, or recollect the contends. I don't recollect the contents of the other letter.

Question by Mr. Sprague.—How did Major Vandeventer become the original owner of one half of the contract?

Answer.—I made it on the 24th of July, and as near as I can recollect, on the 27th, or 28th, I was about leaving for New York; Maj. Vandeventer stated to me, that I had better let him have a part of the contract; this was the first time that he had mentioned it to me. I asked him, on what ground he wanted it; he stated, that he should be able to render me many facilities, which I would not be able to get in any way; one of which would be, that he would give one half the bonds. Upon my arrival in New York, I gave my bondsman; his refused to sign, without some other person was let into the partnership; out of which grew the correspondence, and the letter of the 7th of August, 1818.

Question by Mr. Wright.—State, whether the person applied to, to sign the bond, as Major Vandeventer's surety, was not the father-in-law of Major Vandeventer and yourself?

Answer.—He was.

Question by same.—Was the person mentioned in Major Vandeventer's letter of the 7th August, 1818, as "George," the brother of the witness's and Major Vandeventer's wives?

Answer.—He was.

Question by Mr. Campbell.—May not the sums $10,000, $4,000, and $12,000, still be in the Treasury, and be drawn by you on the exhibition of the proper vouchers?

Answer.—They cannot.

Question by Mr. Campbell.—Do you know to whom Major Vandeventer alludes, in his letters to you as a partner in the contracts, whose name was to be concealed? if yea, name the person?

Answer.—I do not know to whom he alludes; I have suspected many.

Question by Mr. Wright.—Did Major Vandeventer ever inform you directly, or otherwise give you to understand who was the person interested in the contract whose name was to be kept secret?

Answer.—No, I don't think he ever did. I am confident he did not.

Question by Mr. Williams.—By what authority did Major Vandeventer make the sub-division of the contract, of which he informed you, in his letter of the 7th August, 1818?

Answer.—By the same authority that he drew the $10,000, and used it; he had no authority whatever to do it.

Question by Mr. Wright.—Do you know, of your own knowledge, or have you any good reason to believe, that Mr. Calhoun, while he was Secretary of War, had any interest in any contract entered into with that Department, or participated in the profits of any such contract? if yea, state particularly what you know, and the reasons, if any, for your belief?

Answer.—My only reasons are those already stated, that these sums of money have never been accounted for to me, in the contract, by the Chief Clerk. I have no personal knowledge, that Mr. Calhoun participated in the profits of any contract.

Question by Mr. Clarke.—Did General Swift, at any time before the completion of the contract, know that Major Vandeventer was to participate in the profits of it?

Answer.—I cannot say. I don't know any thing in relation to this inquiry.

Question by Mr. Ingersoll.—How were you informed that proposals would be received for the Rip Rap contract, to which you made the lowest bid?

Answer.—I was informed of it by Captain Lewis, of the Engineer corps; I saw him at Old Point, on my way to Richmond; this was the only information of it I received; it was in April, 1818, as well as I now can recollect.

Question by the Chairman.—May not the $10,000, which you have just spoken of, in your answer to Mr. Campbell's question, be the same money which you state Mr. Vandeventer to have taken to you in New York, and which, you say you endorsed in his presence, and which he deposited in one of the banks of that city, subject to his own draft?

Answer.—It is the same sum.

Question by Mr. Campbell.—What sum, in clear profits, did Major Vandeventer realize from the contract; and if he realized any thing, how do you know the fact?

Answer.—I have paid to him money, which I know he received, of $4,000, $12,000, $2,500, and $2,500, making altogether $21,000: the proof of the fact, is the bill of sale of $12,000, $4,000 deposited by me, to his credit, in the Branch Bank at Norfolk, the two sums of $2,500, which I paid to the United States, and the advance which he received of the United States, viz: $10,000, one half of which is accounted for by these two sums of $2,500 each, which I refunded to the United States, and that portion which was taken from me and given to Goldborough and Co. of $13,600, this was clear profits; these several sums amount to $34,600. I will state, that this is not all that Mr. Vandeventer received; the whole amount he did

receive, was $45,100; he however expended, on account of the contract, a sum of about $7,366.21, as far as I could ever learn, leaving the balance of $37,283 clear profits.—See a statement hereto annexed, marked No. 8.

Question by the Chairman.—Do you know what words those were, which appear to have been erased at the end of the first line, and the beginning of the second line, in Mr. Vandeventer's letter to you, bearing date, the 7th of Aug. 1818; or do you know who erased them?

Answer. I do not know what the words were, the letter came to me with the erasure.

Question by Mr. Sprague. Had you any communication with Major Vandeventer, in relation to the contract at any time prior to the conversation on the 27th or 28th of July, which you have mentioned?

Answer. I cannot say positively, I may have conversed with him in relation to the subject, but I have no kind of recollection now of the fact.

Question by Mr. Sprague. Did you make any transfer of any part of the contract to Major Vandeventer? if yea, when and of what part?

Answer. I have already given an answer to this question; if my memory serves me, I did on the 24th April, 1819, transfer him one half of the contract. I wish to be distinctly understood, that, although I did make this transfer, it was not because Major Vandeventer had any right to the contract. I found I was compelled to do it; and all subsequent transfers were made by Major Vandeventer arbitrarily, and not by any authority of mine. I was ruled with a rod of iron, and had to submit.

Question by Mr. Wright. Did you make the obliterations near the close of the letter from Major Vandeventer, of 7th August, 1818, heretofore referred to and, if so, state when you made it?

Answer. I did make the obliteration herein referred to, the matter relates exclusively to domestic or family concerns—it was made about the time of the former investigation of the subject of the Rip Rap contract in 1822, as well as I now recollect.

Question by Mr. Williams. At the time Major Vandeventer proposed to become interested in the contract, had he become bound in your behalf for the reimbursement of any loans or advances of money made to you.

Answer. None; none whatever; he was not bound, for my account, to any person on earth.

Question by Mr. Wright. Was he bound, for you, for any sum, when he took the interest in the contract in April?

Answer. He was not. He has never, at any time, been bound, on my account, for any sum of money, but was, on the contrary, at that time, indebted to me in a very considerable sum of money, on account of the contract. I have never been indebted to Major Vandeventer in a sum equal to one hundred dollars.

Question by Mr. Clarke. Is the Major Cooper, to whom Major Vandeventer sold a fourth of the contract, the father-in-law of Vandeventer, and the security, in the bond, for the fulfilment of the contract?

Answer. Yes.

Question by Mr. Clarke. In your letter to "Hancock," you have stated that you have in your possession letters from Major Vandeventer, which state that Mr. Calhoun was interested in the contract; did you ever receive any such letters? If yea, produce them; if not in your possession, what has become of them?

Answer. The letter I alluded to was the copy of a private communication to Mr. Calhoun, dated 1st April, 1821, from Major Vandeventer, which I presented, with a package, to Mr. Calhoun; and, on my calling for said letter, as heretofore stated, Mr. Calhoun stated he knew nothing of it, and called upon Major Vandeventer when the occurrence took place, which I have, in a former part of my examination, detailed; and another letter, dated 3d August, 1818, which I showed to the Vice President; he read it twice, and requested to know what "Sect." contained within it, meant. This is the same letter before referred to; and the occurrence took place which I have heretofore detailed. That letter was in my possession within a month past; during my absence from home, and while at my farm in Virginia, the publication of the letter to "Hancock" was made; I looked for the letter here referred to, it was gone from the place in which I had deposited it, with other letters and papers of value to me, and I do not know what has become of it.

Question by Mr. Clarke. Did any person, except yourself and Mr. Calhoun ever read that letter? and if yea, who was that person?

Answer. Captain John S. Smith, of the Engineer Department, read that letter on the evening after the missing of the letter in the War Department.

Question by Mr. Williams. What idea did you intend to convey in your letter to "Hancock," as to the interest of Mr. Calhoun in the contract?

Answer. The idea I intended to convey in my letter to "Hancock," as to the interest which Mr. Calhoun had in the contract, was, that he was indirectly concerned in compelling me to deliver up to Mr. Goldsborough that fourth or portion of the contract which I had previously purchased of Mr. Vandeventer, as per his bill of sale dated 19th of October, 1819.

Question by Mr. Williams. Why did you, in April, 1819, convey one half of the contract to Vandeventer, when, in his letter to you of the 7th of August, 1818, he informed you that he had subdivided the contract into four equal parts, of which one only was given to himself?

Answer. He claimed jurisdiction over the quarter which was assigned to the unknown person, and stated that he had a right to manage it.

Question by Mr. Williams. Are you acquainted with Mr. Jennings, referred to in Major Vandeventer's letter of the 7th of August, 1818, as a partner in the contract?

Answer. At the commencement of the contract I did not know him, nor had I ever seen him. It was two months after the contract was formed before I saw him.

Question by Mr. Williams. Do you know how he happened to be a participator in the contract, or whether he paid any thing for his share of it?

Answer. I do not. I had always contended against his right, and did not, until June, 1821, after a great deal of altercation, give up to his participation in it.

Question by Mr. Williams. At what time did you present the papers to Mr. Calhoun containing the confidential letter to him from Major Vandeventer, and which you say was never returned to you, in the manner before stated?

Answer. I do not remember the time. I think it was about the time of making appointments of Cadets. The year I do not remember; it was probably five or six months or a year before he left the Department.

Question by Mr. Campbell. Did Goldsborough and Jennings give bond and security for the performance of their parts of the contract, as you did?

Answer. Mr. Jennings never gave security. Mr. Goldsborough was admitted to give security when he took that part of the contract.

Question by Mr. Williams. How happened it that your papers were exposed to the inspection and use of other persons beside yourself, and by whose negligence or design do you think they have been lost?

Answer. My papers are kept in an office where my whole family have access. They are usually filed in bundles, and laid on the table, and numbered and lettered, letters of such and such dates. This was among a bundle containing thirteen or fourteen confidential letters, from Robert Fulton, and others.

Question by Mr. Wright. Did you ever authorize the Secretary of War or Major Vandeventer to subdivide your contract, and give any part of it to any other person whatever? If so, state particularly the authority, the time when given, and in what way it was given.

Answer. I don't recollect ever giving any authority to subdivide my contract, except in the way already stated, on the 13th of April. I might have given Mr. Jennings authority to deliver stone on my part of the contract, but did not authorize him to divide it.

Question by Mr. Wright. Have you made search for the confidential letter since you were under examination yesterday, and what is the result of that search?

Answer. I have made the search, but have not found it.

Question by Mr. Wright. Have you any memorandum by which you can arrive at its contents, or do you remember them? If so, detail them.

Answer. There is one part which I think I recollect: it is the latter part of the letter. It related to Mayor Vandeventer's going abroad, or on some mission, which he had stated to the Secretary he could not finally answer till his return to Washington, or till the contract was put to sleep. It was my belief that he never sent any such letter to the Secretary, and that he was holding it out to me as an inducement to surrender that part of the contract which Goldsborough afterwards obtained: or, in other words, to induce me to believe that he had great power and authority in the Government. This letter, about two years ago, I showed to Gen. Macomb, who laughed heartily at it.

The witness here produced a paper, which he stated was a part of the substance of the letter, whereupon he was required to give it to

the committee, but declined, on the ground that it was too imperfect.

Question by Mr. Wright. Will you state particularly what is the character of the paper to which you have referred, when it was written, and for what purpose you read it here?

Answer. It is, in part, a copy of the letter I lost at the War Department. I copied it about or previous to the time I lost the original. I read it merely to call to mind some of the circumstances to which it alluded, and not for the purpose of offering it as evidence.

Question by Mr. Wright. Was the original present when you wrote the paper you say was in part of a copy?

Answer. I wrote a copy from the original letter; I took the heads of the letter on another occasion, and on another I took a part, all three of which I filed together, and found them this morning.

Question by Mr. Wright. Have you either of the other papers alluded to in your last answer?

Answer. I have them at home as I think.

Question by Mr. Wright. Have you seen those copies since your examination yesterday, and if so, why did you not bring them with you?

Answer. Because I could not say which was the original; I have seen the copies since my examination yesterday.

Question by Mr. Wright. How came you to select the one you brought in preference to the others?

Answer. I merely selected it provided I might refer to it in case any question should be asked concerning the letter. I am perfectly willing all three copies should be seen together by the committee. One of them is a copy, or nearly so, though, probably not perfectly accurate.

Question by Mr. Ingersoll. In answer to my question yesterday, you stated, that a number of your letters from Major Vandeventer were burnt at his request. How many letters were burnt at that time?

Answer. About twenty-five or six, which, I supposed, was all I then possessed.

Question by Mr. Williams. Did Major Vandeventer state his reason or motive for burning the letters?

Answer. He has, for some time previous to this, mentioned several times that he thought we ought to meet together, and burn all our old papers, and pass accounts and be friends again, and stated he would fulfill some things which relate to family concerns, and which he did not and has not fulfilled. I put the letters into his hands, and he threw them into the fire, and immediately thereafter was as hostile as ever.

Question by Mr. Sprague. In a letter of Major Vandeventer to you, dated 24th March, 1821, he says: "I will state fully to you my situation when I see you in New York"—Did he soon afterwards visit New York and make a statement of his situation? if yea, what was that statement?

Answer. He visited New York immediately after he wrote me this letter, and stated that a situation was offered him of very great importance, and provided I did not make the transfer, as he required, he would lose this appointment, as well as his situation in the War Office. He gave me no reasons why he should lose his situation.

Question by Mr. McDuffie. Did the letter of Major Vandeventer, which you shewed to Mr. Calhoun, since he was Vice President, con-

taining the doubtful letters "Sect," contain any statement that he (Mr. Calhoun) was interest in the contract, which you made with the Engineer Department?

Answer. Not directly; it did not, if I recollect right. I don't pretend to say that it contained any indirect charge, as I cannot recollect the amount which the letter intended to convey. I was under the impression that, by showing it to Mr. Calhoun, it would throw some light on the subject and convince him of the deception which I believed had been practiced upon him.

Question by Mr. McDuffie. State the substance of that letter, as far as you can recollect it?

Answer. I could not, positively, state one word of the subject. The latter part of the letter stated something about the bond for twenty thousand dollars, sending it on, &c. Mr. Calhoun read it twice over, and read it attentively, and will, probably, recollect something of its contents. Capt. Smith may also recollect something of it. Mr. Calhoun, after reading the letter the second time, stated that he had always been under the impression that Major Vandeventer, previous to this, had acted correctly, or something which conveys this idea.

Question by Mr. McDuffie. Have you not recently stated that you presented a letter to the present Secretary of War, containing the letters "*Sect*," and that he asked you what those letters meant—and is the fact so?

Answer. No. I have not—never. I showed him the letter of Col. Armistead. It is the only letter I ever showed him or communicated. When he asked me what my views were, I told him it was to show him that part of my contract had been taken from me by the same Messrs. Goldsborough before. He stated that the investigation was too long to look into at present. I then offered him a letter from Col. Gratiot, which I now exhibit. (See No. 9.) This will show that I had again obtained the contract, which was about now, (that is about the 28th of December last,) to be taken from me again, at a loss of upwards of 2,400 dollars to the Government.

Question by Mr. Ingersoll. When you speak of Mr. Calhoun's refusing to interfere between you and Mr. Vandeventer, saying, that his determination was final, do you mean to be understood to say that he refused to recognize any one as contractor, who was not originally so, and who did not appear so by the records of the department?

Answer. In the instance of Mr. Goldsborough he did recognize another person. I did not so understand him: but understood that his decision was final as to any representation I might make as to any transactions between Major Vandeventer and myself.

Question by Mr. Ingersoll. When you were called upon by the Secretary of War to refund money, was it money which you had received as Contractor?

Answer. It was the $10,000 which Major Vandeventer had received in the first instance from the Department.

Question by Mr. Ingersoll. Has your loss been occasioned by your permitting money that you had drawn as contractor to get into the hands of persons who purchased under you, but who were not recognised as contractors by the War Department.

Answer. No; my losses have been occasioned by the decisions of Mr. Calhoun in making me pay up money that was advanced on the con-

tract, and of which I had no control; that is the $10,000 advanced to Major Vandeventer.

Question by Mr. Wright. You have stated that you were perfectly willing all the three copies of the letter of Major Vandeventer sent you purporting to be a copy of a confidential letter sent by him to Mr. Calhoun should be before the Committee; will you hand or send those papers to the Committee?

Answer. Yes.

Question by Mr. Williams. How much did Goldsborough & Co. pay for their shares of the contract; and to whom did they make payment?

Answer. They paid 40 cents a perch on 34,000 perches; the money was left in the hands of the receiving officer at Old Point (Major James Maurice and Col. Gratiot) and drawn, as I supposed, by Major Vandeventer or Major Cooper; it was left there subject to their order.

Question by Mr. McDuffie. You say Major Vandeventer received $10,000 from the Department—do you mean to say he received the money from the Department, or a warrant issued in your favor?

Answer. I do not know, the draft on the Branch Bank in New York, was brought on by Major Vandeventer in my favor, was endorsed by me and return to him, as I have heretofore stated.

Question by Mr. McDuffie. Was not the $10,000 in question, received by Major Vandeventer from you?

Answer. No, it was not. It was brought on from the War Department by himself, and the first time I saw it was when he presented it to me with the back up.

Question by Mr. McDuffie. Did you not endorse to him the draft in your favor, from the War Department, for $10,000?

Answer. Yes.

Question by Mr. McDuffie. Was not that endorsement the authority by which he received the money?

Answer. Yes.

Before signing and closing this testimony, I wish to state distinctly to the Committee, that, at the time of writing the letter to "Hancock," I had no intention of injuring Mr. Calhoun. I supposed I was addressing a man of honor, who would not expose it to the public; it was headed "*confidential.*" I hope the Committee will view the thing in the light I have mentioned. I wish it to be borne in mind, that my only object was to obtain justice, and vindicate myself from charges which had been made against me.

ELIJAH MIX.

January 9th, 1827.

No. 14.

Exhibit No. 1, accompanying Elijah Mix's deposition

7th August, 1818.

DEAR SIR: I am very sorry that the [obliterated] are concerned in the contract will not agree to admit George on the terms you have stated. When I informed father that you and I and Mr. Jennings were

each to have one-fourth, I stated that one other person (whom I did not name, because his name is not to be known,) was to have the other fourth part, and the contract is concluded accordingly, and all the other partners have given bonds; and as we cannot admit, without their consent, any one into the concern, I do not see but that if father insists on George's having an equal part, we must either give up the contract to the other partners, or get some one else to be our security; for the other gentleman [erasure] will not admit any new associate, but insist that we either fulfill our agreement, or give the whole up to them. Under this circumstance, I hope father will agree to sign a bond with Mr. Oakley for the amount which he has already signed, leaving George's name out of the question. I would most cheerfully have made a reservation in favor of George or father, could I have foreseen that either would have wished it; but now it cannot be done. If, therefore, when I come on, and explain fully to father the whole circumstances of the case, he should still make it a condition to signing a bond that George be equally concerned with us, we must give up the contract to those who have complied with their engagements to us, or we must find other security. I do not think this would be difficult for me, but I do not like it, because I am unwilling to make any one else but father acquainted with my being engaged in the contract. I therefore feel confident father will not insist on this condition, when he reflects that it is not in my power or in yours to comply, because the other partners will not agree. In a word, we must abide our engagements or lose all; and father, when he knows the whole facts, will not think it reasonable to ask of us what we cannot, if we would, grant, and by insisting on our performing an impossibility, deprive us of a competency, and thus enrich others at our loss.

I shall procure an advance of the money you require on security, which I have gotten here, but this security is [erasure] only for the advance now made, and is not equal in amount to what must be given. I shall leave here on [MS. torn] morning, for New York, when I [MS. torn] part of the contract which you must sign, and then I will return the bond, provided father will not consider it as independent of George. This step I really regret, but it is imposed upon me by the determination of other associates.

Show this to father, if you please. Yours truly,

C. VANDEVENTER.

E. MIX, *Esq.*

Exhibit No. 2, accompanying Elijah Mix deposition.

WASHINGTON, *September* 10, 1818.

DEAR SIR: I have received a letter from Mr. Maurice, acceding to the arrangement of paying for the stone by a draft in my favor on the bank here. But the late order of the United States' Bank respecting deposits, will make a difference of exchange between Norfolk and this place, for which he will have to pay. To avoid this expense I have requested Mr. Maurice to deposite to my credit, in the Branch Bank of the United States at Norfolk, the amount of the deliveries of stone, and to transmit to me the certificate of the cashier of such deposits. This mode will save the premium of exchange be-

tween this place and Norfolk both ways. I wish you to state your approbation of this arrangement to Mr. Maurice.

Inform me as soon as convenient what prospect of deliveries this month, and whether you can get wood sent up to us, and at what rate; so that we may calculate for Winter supply accordingly. If you can procure a few hundred weight of best Virginia hams, put them into a cask, and send them up. I forgot to mention these things to you before you left us. Let us hear of your progress, and of wood and bacon, as soon as you have time to inform yourself on these points.

Yours truly,

C. VANDEVENTER.

Captain E. Mix.

Major Cooper has just informed me that he cannot effect insurance on the vessels in New York without having the vessels examined by an agent of some of the insurance companies in New York. You must, therefore, try to effect insurance in Norfolk. Let me hear from you soon on this subject. Do not hazard the vessels, if insurance can be had for a reasonable sum.

C. V.

Exhibit No. 3a accompanying Elijah Mix's deposition.

To all people of the United States of America, I, Christopher Vandeventer, of the City of Washington, District of Columbia, send greeting: Know ye that I, Christopher Vandeventer, for, and in consideration of the sum of twelve thousand dollars, five thousand of which to me in hand paid, by Elijah Mix, of the City of Georgetown, District of Columbia, I truly acknowledge to have received; and I do acknowledge to have received two drafts, drawn by the said Elijah Mix, on James Maurice, Agent of Fortifications at Norfolk, Virginia, in favor of Major C. Vandeventer, for three thousand five hundred dollars each, the one dated the 15th of October, 1819, and made payable to the said C. Vandeventer or order, the first day of June, 1820, the other for the same sum, dated the 15th of October, 1819, and made payable above, on the first day of August 1820; which drafts, being together seven thousand dollars, when paid, will constitute the whole sum of twelve thousand dollars, to me to be paid, by the said Elijah Mix; and this bill of sale which hereinafter follows, is not to be considered binding in law or equity on me, but will be null and void, unless said drafts above mentioned, to wit: two drafts for three thousand five hundred dollars each, drawn by the said Elijah Mix aforesaid, payable, the one, the first day of June, 1820, the other, the first day of August, 1820, on James Maurice aforesaid, in favor of the said C. Vandeventer, to be paid to me in hand, at the times above specified, to wit: the first of June, 1820, and the first of August, 1820, have granted and sold, and by these presents, I, the said Christopher Vendeventer, do grant, bargain, and sell, unto the said Elijah Mix, on the condition of the punctual payments of the drafts above mentioned, for seven thousand dollars, thirty seven thousand five hundred perches of stone, being one fourth part of the amount of stone, which the said Elijah Mix contracted with the Engineer Department of the

United States, to deliver at Old Point Comfort, or the Rip Raps, in Hampton Roads, Virginia, on the 25th day of July, 1818; of the same quality of stone specified to be delivered by the contract above alluded to, to have and to hold the said thirty seven thousand five hundred perches of stone. And all the other premises hereby granted, with the advantages thereof, under the said Elijah Mix, his executors, administrators, and assigns, as his and their own proper goods and property, and to his and their own proper use and uses forever.

And I, the said Christopher Vandeventer, do, for myself, my heirs, executors, and administrators, covenant and grant to and with the said Elijah Mix, his executors, and assigns, by these presents, that I, the said Christopher Vandeventer, at the time of sealing and delivering these presents, am the true and lawful owner and proprietor of the said thirty seven thousand five hundred perches of stone, being the one fourth part of the contract above mentioned, and advantages hereby granted, upon the conditions before mentioned; and that I have full power and authority to grant, bargain, and sell, to the said Elijah Mix, thirty seven thousand five hundred perches of stone aforesaid, with the advantages hereby mentioned to be granted, namely, that thirty-seven thousand five hundred perches of stone, are thus conveyed as above mentioned, with the conditions aforesaid, to wit: the due and faithful payment of the drafts for seven thousand dollars above mentioned, and for every perch of stone delivered at Old Point Comfort, or the Rip Raps, the said Elijah Mix will receive three dollars; and it is expected and agreed upon by and between the said Christopher Vandeventer and the said Elijah Mix, that this instrument be null and void, unless the drafts before mentioned be punctually paid when due as before mentioned; and also, that it shall and may be lawful to and for the said Elijah Mix, his executors, and assigns, from time to time, and at all times, hereafter, quietly and peaceably to have, hold, posses, and enjoy, the said thirty-seven thousand five hundred perches of stone, after the drafts for seven thousand above mentioned are fully paid, and all other the premises hereby granted, or mentioned, or intended to be granted, with the appurtenances, without lett, trouble, denial, molestation, hindrance, or disturbance, whatsoever, of me the said Christopher Vandeventer, my executors, administrators, or assigns, or any other person or persons whatsoever, lawfully claiming, to claim, from, by, or under, me, them, or any of us, and that freed and discharged of and from all former and other bargains, sales, forfeitures, and incumbrances, whatsoever, made, done, or committed, by me, the said Christopher Vandeventer, of the City of Washington. The above bill of sale and instrument to continue in force if the two drafts, to wit, in words following:

NORFOLK, *October* 15*th*, 1819.

SIR: On the first day of June, 1820, please to pay to Major C. Vandeventer or order, the sum of three thousand five hundred dollars, for value received; and place the same to account of

Your most obedient servant,

$3,500. ELIJAH MIX.

To JAMES MAURICE,
Agent for Fortifications, Norfolk, Virginia.

NORFOLK, *October* 15*th*, 1819.

SIR: On the first day of August, 1820, please to pay to Major Christ. Vandeventer or order, the sum of three thousand five hundred dollars, for value received; and place the same to account of

Your most obedient servant,

$3,500. ELIJAH MIX.

To JAMES MAURICE,
Agent for Fortifications.

Signed, sealed, and delivered, this nineteenth day of October, one thousand eight hundred and nineteen.

Witness C. VANDEVENTER.
SAMUEL COOPER, Jun.

Exhibit No. 3*b*, accompanying Elijah Mix's Deposition

FORT MONROE, *May* 19*th*, 1820.

Mr. E. MIX,

Dear Sir: I avail myself of the return of Captain Clark to acknowledge receipt of yours of the 15th instant, enclosing my acceptance to your draft in favor of Major Vandeventer for $3,500, payable 1st of June next, and which is passed to account accordingly.

I am much rejoiced to hear from you, that I may expect a remittance soon of the balance of my estimate, for the amount sent is already disposed of, and I have not a sufficiency to meet the payment of freight for stone. One half of the second quarter is already passed, and no money has been sent on account of it. I hope now that the bustle among the Heads of Departments is somewhat removed by the rising of Congress, I shall be kept more regularly supplied with money in advance. I wish you to write me immediately and inform me of the precise time, as near as possible, when further funds will be sent; this you no doubt can learn through our friend the Major, to whom I beg you to present my best salutations.

I calculate that about 9,000 perch of stone will be delivered on the Rip Raps, in all this month alone, and perhaps as much in June.

Yours sincerely,

JAMES MAURICE.

Exhibit No. 4, accompanying Elijah Mix's Deposition.

To all people of the United States of America, I, Christopher Vandeventer, of the City of Washington, District of Columbia, send greeting: Know ye, that I, Christopher Vandeventer, for and in consideration of the sum of two thousand five hundred dollars, which is agreed to be paid by Elijah Mix, of the City of Georgetown, District of Columbia, to the United States, being one-fourth part of an advance to him on his contract; and in consideration of said Mix assuming to pay such other demands as the said Vandeventer is liable for as owner of that portion of the contract he now conveys, have granted, bargained and sold, and by these presents, I, the said Chris-

topher Vandeventer, do grant, bargain and sell, unto the said Elijah Mix, one the condition aforesaid, 37,500 perches of stone, being one fourth part of the amount of stone which the said Elijah Mix contracted with the Engineer Department of the United States to deliver at Old Point Comfort or the Rip Raps, in Hampton Roads, in the State of Virginia, on the 25th day of July, 1818; to have and to hold the said 37,500 perches of stone, and all the other premises hereby granted, with the advantages thereby, under the said Elijah Mix, his executors, administrators and assigns, as his and their own proper goods and property, and to his and their own proper use and uses forever. And I, the said Christopher Vandeventer, do, for myself, my heirs, executors, and administrators, covenant and grant to and with the said Elijah Mix, his executors and assigns, by these presents, that I, the said Christopher Vendeventer, at the time of sealing and delivering these presents, and the true and lawful owner and proprietor of the said 37,500 perches of stone, being the one-fourth part of the contract above mentioned, and advantages hereby granted, upon the conditions within mentioned, and that I have full power and authority to grant, bargain and sell the said Elijah Mix 37,500 perches aforesaid, and also, that it shall and may be lawful to and for said Elijah Mix, his executors and assigns, from time to time, and at all times hereafter, quietly and peaceably to have, hold, possess and enjoy the said 37,500 perches of stone, and all other the premises hereby granted or mentioned, or intended to be granted, with the appurtenances, without lett, trouble, denial, molestation, hindrance, or disturbance, whatsoever of me the said Christopher Vandeventer, my executors, administrators or assigns, or any other person or persons whatsoever, lawfully claiming or to claim from, by or under me, them, or any of us, and that freed and discharged of and from all former and other bargains, sales, forfeitures, and circumstances whatsoever, made, done or committed by me the said Christopher Vandeventer, of the City of Washington, District of Columbia.

Signed, sealed, and delivered, this fifteenth day of October, in the year of our Lord one thousand eight hundred and nineteen.

C. VANDEVENTER.

Witness,
SAML. COOPER, Jun.

Exhibit No. 5, accompanying Elijah Mix's Deposition.

ENGINEER DEPARTMENT,
March 24th, 1921.

DEAR SIR: Goldsborough & Co. have now come forward to claim their right to deliver the quantity of stone which now remains to be delivered, as the fourth part of your contract, which Major Cooper has transferred to them, and the title to the remaining fourth part, equally good. I am instructed to state to you that they will be recognised by the Department, unless you voluntarily empower them to deliver proportionally on your contract, and receive the pay for the same; the final order to this effect is postponed to offer you the opportunity of adjusting this matter without the interference of the Depart-

ment. As your well wisher, and the friend of Major Vanderventer, the unfortunate results that may take place in regard to him if you do not come forward, and grant the parties full powers of attorney to receive payment for such stone as they may deliver, must be foreseen. This voluntary act on your part may protect all.

I shall delay giving the order until the time expires for a reply to this, which will be by return of mail.

I am, dear Sir,
Your most obedient.

Capt. E. Mix. W. K. ARMISTEAD.

Exhibit No. 6, accompanying Elijah Mix's Deposition.

Dear Sir: Goldsborough has again come before the Secretary, and the Secretary has told him you would not put any obstacles in his way; but, if you did, he then would decide that payments be made to him for such deliveries as he should make on the part of the contract the company own. The Secretary would have decided at once, but upon my representation that you would give the necessary authority voluntarily for payments to Goldsborough & Co. Nor until this morning did I know the consequences to myself if you oblige the Secretary to interfere. I therefore request you will not leave New-York until I arrive there. I will leave here on Monday morning. On your conduct in this matter will depend whether or no I shall return to my functions in this Department. It has finally come to that unfortunate result. You can stay the evil or complete the ruin. Truth obliges me to speak thus plain. The issue can be no longer avoided. I will state fully to you my situation when I see you in New-York.

Yours, truly,

C. VANDEVENTER,
Saturday, 24th March, 1821.

E. Mix, Esq.

Exhibit No. 7, accompanying Elijah Mix's Deposition

New York, *8th July, 1820.*

Dear Sir: Thine of the 4th is with me, and I would address this to Norfolk, if I had not supposed it would be there too late.

I wrote from Philadelphia to Mr. Smith, to call on Major Maurice, and formally stop payment of the draft, so that the Major could not in future say he was not properly noticed of its loss.

I wished much to see you about the Goldsborough deliveries. I want you to allow me to deliver, of your quantity this year, 3 or 4000 perch, which quantity is necessary to make up to Goldsborough, the 900 perch for this year. If this can be done, all the difficulty with Goldsborough will be closed.

I will be in town again by the 15th or 18th inst. when I hope to see you, and have all matters adjusted to mutual satisfaction.

Yours, truly,

Capt. E. Mix. VAN.

Exhibit No. 8, accompanying Elijah Mix's Deposition

Statement of Major Vandeventer, account with the Rip Rap contract with E. Mix

1818. August 8.	Received the advance of $10,000	$10,000
	Cash deposited in Branch Bank, Norfolk	4,000
1819. Oct. 15.	Cash paid him for ¼ contract	12,000
	Compelled to pay by Mr. Calhoun's order	2,500
	To the United States for his other quota	2,500
	Cash sundry times from me	550
1820.	Sold to Major Cooper 34,000 perch of the contract	13,000
		$45,150

Exhibit No. 9, accompanying Elijah Mix's Deposition

FORTRESS MONROE, *December* 21, 1826.

SIR: Your proposals for supplying sixteen thousand perches of stone for the construction of this Fortress and Fort Calhoun, during the year 1827, at an average cost of two dollars eighteen cents per perch, are accepted.

The written contracts for signature will be forwarded to you in a few days, and before returning them, you are requested to have them confirmed by the War Department, as required by the advertisement, under which the proposals are predicated.

I am, respectfully, sir,
Your most obedient servant,
C. GRATIOT, *Lieut. Col. Com.*

E. MIX, ESQ. *Georgetown, D.C.*

No. 15

Testimony of Major Vandeventer.

January 10, 1827.—Major Vandeventer appeared before the committee, and being duly sworn, deposed and said, that the contract was formed with the Engineer Department, I think, the last part of July, 1818. I had not the least agency in procuring said contract, nor the slightest interest in it at its formation. At the time it was made it was considered by those most experienced in such business, as a bad contract, and as "ruinous to the contractor." Mr. Mix finding difficulty in procuring security on account, as I believe, of this impression of the contract, he applied to me for my assistance; we had married sisters, and I considered him an active business man, well caculated for such an undertaking; from no other motives but kind feelings towards himself and family, and the mortification of seeing one standing in the relation that he did to me, fail in a public engagement, I determined to afford him what aid I could in obtaining security, and executing his contract. Having determined to afford him assistance. I went to New York, at the urgent request of Mr. Mix, for this object, and in the course of the operations of this year, 1818, I became responsible for facilities afforded him through my agency, to the amount of $5,583.63, a sum greater than the whole amount of my property

at the time; about this time Mr. Mix offered me one-fourth of the contract, as security for my responsibility, which I took, simply with that view, on a verbal understanding only. In this state my relation to the contract remained until April, 1819, all of which time it was a losing transaction, according to Mr. Mix's own statement.

Having lost some confidence in his manner of executing the contract, and seeing no way of securing myself against eventual loss to the amount of my fortune, I became at the time, with the view of so securing myself, interested in one-half of the contract. Previous to my being so interested, I intimated to the then Secretary, Mr. Calhoun, without stating the particulars of the case, my wish, if it could be done with propriety, to invest money in it; that Mr. Calhoun replied that it would not be illegal as there was no law to prohibit it, but he thought it would expose me to improper insinuations, and would, therefore be injurious. I had subsequently no further conversation with the Secretary, and it is due to him to state that I have every reason to believe that he remained under the impression that I had declined, in accordance with his suggestion, being concerned in the contract, and that he remained ignorant of my actual connexion until after the subject was first moved in Congress, at which time I had parted with all my interest in it. Feeling, however, uneasy on account of my liability I determined to secure myself in the manner above stated; in doing so, I believed I violated no law, and that I could not by possibility do injury to the public. I neither had nor could have control over the contract—it was made in the Engineer Department, and was executed wholly through that Department, without passing, in its details, through myself or any other Clerk in the immediate office of the Secretary, and in fact, neither while a portion of the contract remained in me, nor at any time before or since, did I ever attempt directly or indirectly to exercise the least influence in relation to it, nor has the public, to my knowledge, suffered the least loss by my connexion with it, but, on the contrary, I believe it was owing to my assistance, given from motives which I have stated, that the contract, which at the time was supposed to be on terms favorable to the public, was executed at all. I do not excuse myself for this participation by the previsous example of others in the Departments being engaged in transactions of this kind, although such instances existed, as I do not conceive it necessary to my justification.

So soon as I found that I could free myself from my original responsibility, I determined to separate myself from all connection with the contract, which I did, by re-conveying to Mr. Mix himself one-half of the portion that I held, in October, 1819; but a few months after I purchased from him; and the remainder to Mr. Cooper in January following. I took this step, when by the great fall of prices in freight and labor, the contract promised to be very profitable, but I was induced to do it after having effected the original object I had in view in entering into it, that of securing myself, from a sense of delicacy as connected with my situation. This took place before the subject was agitated in Congress. For the fourth which I sold to Mr. Mix, I received, as expressed in the bill of sale, I think $ 12,000, $ 5,000 of which, however, was never paid to me, but was inserted to conclude the transaction; $ 7,000 was paid to me, and was considered

in satisfaction of debts assumed by me, and for property retained by Mr. Mix, such as vessels, stone quarries, &c. The remainder I sold to Samuel Cooper in January, 1820; for the terms of this sale to Mr. Cooper, I refer to a copy of his account current herewith.

It is due to Mr. Calhoun to say, that he expressed his regret and disapprobation that I was ever engaged in the contract, when the facts came to be known to him; and that he determined if ever he should be compelled, in the discharge of his duty, to make a decision that might seem to favor the portion of the contract that was once vested in me, that the consequence would be I should no longer remain in the Department. He informed me and Capt. Smith, of the Engineer Department, of his determination, when Mr. Mix applied to the Department of War, to prevent Mr. Goldsborough, who had engaged to deliver the fourth I had transferred to Mr. Cooper, from receiving payment on the delivery of stone. Mr. Calhoun, on examination, came to the conclusion, as I understand, that the conduct of Mr. Mix was unreasonable, and consequently, determined to protect Mr. Goldsborough, the sub-contractor. But informed me, at the same time, the consequences of his decision would be my removal from office. He agreed, however, on application, to allow a reasonable time for the parties to come to some agreement, for which purpose I proceeded to New York to make an arrangement with Mr. Mix, after much vexatious delay on his part, and for particulars, I would refer to Captain Smith of the Engineer Department, was effected.

In regard to Mr. Calhoun, it never entered my conception that he had the remotest connection with, or interest in, the contract. He would be, I think, one of the last men on earth to whom such a thing could be suggested. I have known him intimately, since the last part of 1817, and was Chief Clerk during the whole time he remained in the War Department; and I profited by so ample an opportunity to study well his public and private character, and can say, with confidence, that I have never known a man whose actions were governed by a higher sense of moral obligation; of purer patriotism; of a more stern integrity, and inflexible justice. In connection with this subject I deem it my duty to state the voluntary conversation of Mr. Mix since the agitation of this subject. Mr. Mix said, in reference to the charge contained in his letter, that he knew nothing against Mr. Calhoun, and his character in the matter was as pure as tried gold; and, on my declining to converse with him without a third person, he stated, in the presence of Mr. Gideon Davis of the War Department, whom I called in, what is contained in Mr. Davis' affidavit herewith annexed; and subsequently he alleged, in my presence, that as the cause of his feelings towards Mr. Calhoun, that he had never treated him with civility, or asked him to take a chair in his office when he called on him on business.

I also annex the affidavit of Mr. Jesse Scott, of Georgetown, which was placed in my hand voluntarily, of a conversation of Mr. Mix in his presence, which may have some bearing on the subject of the investigation before the committee. Mr. Mix has, however, subsequently stated to me, that he had never called on the President as he states he had done in Mr. Scott's affidavit, and I know from Gov. Barbour that nothing of what Mr. Mix states took place, mentioned in Mr. Scott's affidavit, ever happened.

Question by Mr. Sprague. Name all the persons who were at any time interested in the contract, the time when, and the manner in which they severally became interested, and the extent of the interest of each?

I answer, Mr. Mix made the contract; Mr. Jennings had one fourth, I had, at one time, one half, Mr. Cooper and Goldsborough and Co. under me, and one fourth resold to Mr. Mix. These are the names of all the persons I know of. I have stated when I became interested; my right was vested 24th April, 1810; I had a verbal lien only as security on one fourth, offered by Mr. Mix a few days after he concluded it. I have no precise knowledge when Mr. Jennings became interested, or the terms, but believe it was very soon after the formation. A few days after the formation of the contract, but how long I do not recollect, Mr. Mix mentioned to me that he had parted, or was about to do so, with one-fourth to a Mr. Walker, whose name he wished should not be mentioned.

Question by Mr. Campbell. Under whom did Jennings hold?

Answer. Under Mr. Mix, as I always understood.

Question by Mr. Wright. At what time did your verbal interest accrue—before or after the bond was signed by Cooper?

Answer. I am not precise as to date; I have no memorandum to go by, but it was when Mr. Mix requested my assistance in getting security and facilities to execute his contract. I think it was before I went to New York; the difficulty existed as to getting security, for some weeks after the formation of the contract, was owing to the name of George Cooper being inserted in the first bond as a party to the contract, when the contract was solely made by Mr. Mix, and a new bond became necessary to conform to the fact.

Question by Mr. Wright. When did you first converse with Mr. Mix on the subject of letting you into a participation of his contract, and what conversation did you have?

Answer. I can't recollect the precise day, nor do I recollect the precise conversation; the time has gone by almost nine years; it must have been, however, subsequently to forming the contract.

Question by Mr. Wright. Did Mix ever give you authority to divide his contract, and assign parts of it to himself, to yourself, to Jennings, and to another person whose name was to be kept secret? If yea, and it be in writing, produce it; if not, state it fully?

Answer. I have no such authority, and never exercised any such authority—no such authority ever existed. In reference to the distribution of this contract, I may have recapitulated what he himself informed me, to wit: that I should have one-fourth, as I have explained, as indemnity for my liabilities; Jennings one-fourth, as he informed me; and one-fourth to Mr. Walker, whose name Mix requested should not be mentioned—of course Mr. Walker's name was never mentioned by me till this time. This is probably the best time to state that I do not believe this last quarter was ever conveyed to Mr. Walker. At the time herein referred to, this Mr. Walker was, as I believe, a citizen of North Carolina. I do not know his Christian name. I do not know where he now resides.

Question by Mr. Wright. Were those persons, or any of them, ever recognized in the War Department as partners in the contract? If so, when, and in what manner, and by whom?

Answer. No, they were never presented, to my knowledge, for recognition, except Mr. Goldsborough & Co. remotely under myself; the 13th April, 1821, Mr. Mix authorized them to be acknowledged. Mr. Jennings has, I believe, presented himself for recognition, but I do not know that he has been acknowledged. At the time Goldsborough presented himself for recognition, it was explained to the Secretary of War that he was a sub-contractor remotely through me. (See document K, in the report of the Committee on Mix contract, made 7th May, 1822, No. 109 Rep. Com. House of Rep's, 17th Cong. 1st Sess.) This was not the first intimation that the Secretary had that I had been interested in the contract. I have already described or related the facts on this point as they occurred between the Secretary and myself.

Question by Mr. Wright. Was the letter, dated the 7th August, 1818, marked No. 1, and now shown to you, written by you; if so, relate who is therein meant by "father" and "George." and where those persons now are; state, also, who you describe in that letter by the following clause: "I stated that one other person, (who I did not name, because his name is not to be known,) was to have the other fourth part," and why was his name to be kept secret?

Answer. This letter appears to be in my own hand writing. The person mentioned as "father" means Major Samuel Cooper—George Cooper is the person mentioned as "George." Major Cooper is my father in law, and George was the brother of my wife. Major Cooper is in New York—the other is dead. The other person referred to in the letter, is the Mr. Walker before mentioned.

Question by Mr. Wright. Why was the name of Walker concealed in a letter to Mix, to whom it was before known?

Answer. It was not intended to be concealed from Mix, as the information was derived from him. All these statements were founded upon his statements to me, that those persons whom he designated had given security, and the tone which I here assume was only to admonish him that he could not depart from his arrangements.

Question by Mr. Wright. Who is the Mr. Jennings who has been mentioned as interested in part of the Mix contract, and to whom a part of it was assigned?

Answer. R. C. Jennings; he lives at Norfolk, Va. I believe. It is peculiarly unfortunate for me that my papers have been destroyed, as his (Mix's) letter to which this letter (No. 1) is an answer, would have completely explained the whole. This barely recapitulates the arrangements which he (Mix) had made, and communicated to me. All the information which I gave to Major Cooper was derived from Mix. It appears that the whole tone of this paper was assumed on the facts communicated to me by Mix, to extricate him (Mix) from the difficulties into which he had got, in proffering a portion of his contract to George Cooper, which he had already pledged to some one else.

Question by Mr. Wright. Was the obliteration in the first and second lines of said letter, of the 7th August, (No. 1,) made by you; if so, when did you make it, and what were the words obliterated?

Answer. I did not make it, and do not, now, know what the words were.

Question by Mr. Wright. Did you go to New York shortly after the 7th August, 1818? and, if so, did you see Mix and your father-in-law,

and have any explanation with them on the subject of your letter to Mix, of the 7th of August, 1818? if so, detail the explanation?

Answer. I went, I think, about the 10th of August, 1818; I saw both of them, and think a full understanding, in relation to the difficulties alluded to in the letter of the 7th August, was had; and that, in consequence, the difficulties respecting his sureties were done away.

Question by Mr. Wright. Did Jennings, or any other person, ever apply to you for a part of Mix's contract? if so, state particularly the time and manner of such application, and all the negotiations between you and either of those persons on that subject; and, if you have any document, or writing, connected with it, produce it.

Answer. I have no recollection of any person ever applying to me.

Question by Mr. Ingersoll. Where are the letters of Mix to you, received in course of the correspondence relative to this contract; if you have them, or either of them, produce them to the committee?

Answer. These letters have all been destroyed by the award of arbitrators, to whom all our difficulties were referred for adjustment: These arbitrartors were James T. Dent and Captain John S. Smith, who made their award the 11th March, 1825, in these words: (See No. 1.) These arbitrators required that all papers relating to the subject of this contract in the possession of either of us, should be delivered up to them. I gave them mine in good faith; they destroyed them, independently of my will. It appears, however, that Mix has kept back such as he deemed would be injurious to me in the absence of those which I had from him, and on which he has attempted to extort money from me.

Question by Mr. Wright. Were bonds ever given in the contract by Jennings and the person whose name was not to be known, on their parts of said contract? if yea, state the date and the amount of the bonds, the names of the obligors therein, and where said bonds are now; and, if you have them in possession, produce them.

Answer. Mix informed me that he had bonds from Jennings, and others, to whom he pledged his contract, but I have never seen them, never heard the names of the obligers, and gave him, myself, no bond. I do not know, of my own knowledge, of any such bonds.

Question by Mr. Wright. Did you receive from Mr. Calhoun, on or about the 13th of April, 1821, a package of papers, said to have been left there by Mr. Mix, relating to the Mix contract? if so, state what papers you received, and what Mr. Calhoun said, if any thing, when you received them.

Answer. I do not recollect any thing, as to this question, in 1821. Some time in the beginning of 1825, Mr. Calhoun sent to me, by the Messenger, a strip of paper, on which was written, by Mr. Mix, a request to return him the papers which he had just sent to him. On my reporting myself to the Secretary, that I had seen no such papers; he directed me to look on his table, where I found a package of papers addressed to the Secretary by Mr. Mix, and took it, passed from the Secretary's room to the door of the hall, called the Messenger, gave him the packet, with directions to hand it to Mr. Mix, who was then in the audience room. The whole time occupied did not exceed one or two minutes. Captain Smith, of the Engineer Office, I recollect, was with the Secretary when he called me in, and when I took the papers

to hand them to the Messenger. What the packet contained I do not know. In a few minutes after the Secretary again called me, saying Mr. Mix alleges that there is a paper missing; I replied I handed them to the Messenger as I took them up. If I recollect right, the cover was never opened, neither while in the Secretary's office, or in repassing to Mr. Mix. I did not know that such a packet of papers were in the office, til called upon by the Secretary to return them to Mr. Mix.

Question by Mr. Wright. Was any one of those papers taken out of the package by you, and retained?

Answer. No.

Question by Mr. Wright. Did you ever exhibit to Mr. Calhoun the bill of sale, from Mix to you, of any part of his contract, and come to any explanation with him concerning it? if so, state the explanation fully.

Answer. I do not recollect that I ever did; but I do recollect, while Mr. Mix was opposing the payment to Goldsborough for his deliveries, on the ground that I owed him $2,500, being the fourth of the advance of $10,000 made to Mix, of reading to the Secretary a memorandum of agreement between Mix and myself, which clearly proved that Mix, and not I, was to repay that portion of the advance. This, I think, was the only paper I ever exhibited to the Secretary, and was, I think, in the Spring of 1821.

Question by Mr. Clarke. Were you examined before the Committee *first* raised upon the Mix contract? and if yea, did you, on your examination, state that you had parted with your interest because it was disagreeable to Mr. Calhoun for you to retain it, or did you so state on your examination before the *last* Committee in 1822?

Answer. I was examined before the first Committee, but do not now recollect the particulars of my statement at the time. Before the Committee, on the second examinatoin, I stated as a fact that believing it was disagreeable to Mr. Calhoun, was one of my principal motives for freeing myself of the contract. I inferred this from the manner in which he had stated, in reply to my question whether it would be improper to invest money in it, that it would expose me to improper insinuations, and would therefore be injurious to me.

Question by Mr. Clarke. Did Mr. Calhoun know of your interest, before your first examination?

Answer. I have already stated that I did not believe that he did know it.

Question by Mr. Clarke. Is the letter No. 6, now shown to you, purporting to have your signature to it, in your hand writing?

Answer. Yes. I derived, I think, the information contained in that letter, first from Captain Smith, of the Engineer Department, and then from the Secretary himself.

Question by Mr. Clarke. Is the letter No. 7, now shown you, and signed "Van," in your hand writing?

Answer. Yes; one of the drafts which Mr. Mix gave me, and which are specified in the bill of sale, was lost. He would not give me a new one, and payment was obtained only through a bond of indemnity given to Mr. Maurice, the Agent of fortifications; while the fourth part of the contract, which I sold to Mr. Cooper, remained

in my possession, he (Mr. Cooper,) as my agent, made an arrangement with Goldsborough for the delivery of all that remained of that fourth, then to be delivered, at the rate of 9,000 perch a year, which corresponded to the portion to be delivered under the whole contract. While Goldsborough was executing this arrangement, the amount of stone to be delivered under the contract was greatly diminished, in consequence of the appropriations for fortifications for that year being lessened. This fact prevented Major Cooper from complying with his part of the engagement with Goldsborough, and, in consequence, Goldsborough exacted the penalty of the obligation. At the instance I think, of Major Cooper, I made the proposition contained in the third clause, to enable him to comply with his engagement; the right and interest at that time being in Major Cooper, and, previous to writing this letter, Cooper had alienated to Goldsborough.

Question by Mr. Williams. You have said it was customary for persons in the Departments to participate in contracts before you were concerned in the contract with Mr. Mix: state the names on the persons who were so interested, and the contracts in which they were concerned?

Answer. I have been informed that Mr. Forrest, of the State Department, had contracted with the Ordnance Department for the delivery of arms, under the administration of Mr. Monroe, as Secretary of War; as also of Mr. Boyd, of the War Department, with the Department, for the delivery of arms, flints, &c. under the administration of Mr. Crawford. There are the only instances I know of.

Question by Mr. Campbell. When did you first hear of the existence of the letter addressed by Mix, to "Hancock," and which was published in the Phoenix Gazette of the 28th December last?

Answer. I think it was somewhere between the 10th and middle of November, 1825. I think it was first mentioned to me by Mr. Anthony, of the Treasury Department, he having seen a copy of it sent by Major Clark to a gentleman in the City, a Mr. Hill, requesting him to procure the papers referred to by Mix from him, and stating that otherwise he might sell them to Vandeventer or Calhoun. On the 16th of November, I had a conversation with Lieutenant M. P. Mix, of the Navy, who was here at that time, who also mentioned to me this letter, and stated. I think, that its object was to extort money from me. Shortly after this conversation, and on the same day, I received a note from him, dated 16th November, 1825, giving me information respecting an affidavit taken at Richmond, which affidavit is the one purporting to have been made by Walter S. Conkling, on the 14th of May, 1822. This information induced me to call immediately on Elijah Mix, who told me that he did make that affidavit, and did not care how soon I published the fact; that he was as low and degraded as he could be made; and would not give twenty-five cents to have all the papers in the case destroyed. I also told Elijah Mix, at this interview, that I understood he had written to Satterlee Clark, to inform him that he had proofs of Mr. Calhoun's being concerned in the Rip Rap contract; he said, in reply, he had, and he would make that assertion to Congress, unless Mr. Calhoun procured some of his decisions, in relation to his contract, to be reversed. I said, "is it possible you can, Mr. Mix, assert so atrocious a falsehood?" He said he knew it was false, but did not care if he could get money by it.

Question by Mr. Campbell. At what time did you first converse with Mr. Calhoun, on the subject of Mix's letter to "Hancock."

Answer. I think it was the Wednesday preceding the publication of the letter in the Phoenix Gazette. I mentioned to him, that there was such a letter, and that I had seen a copy of it on the 26th of December, two days before its publication; it was shown to me by Mr. Goldsborough.

Question by Mr. Clarke. Is letter No. 2, and dated September 10, 1818, and now shown you, in your hand writing, and was the contracts, No. 3, and 4, signed "C. Vandeventer," and now shown you, executed by you, and is the letter No. 5, now shown you, signed "W. K. Armistead," in the hand writing of said Armistead?

Answer. Letter No. 2 was written by me. The contracts No. 3, and 4, were executed by me, when the bill of sale, of the 15th of October, was executed, the accounts incurred on account of the contract, prior to the bill of sale from Mix to me, of the 24th April, 1819, had not been settled. For particulars, I refer to a memorandum, which I now present to the Committee. (See No. 2.) A similar memorandum was made on the 15th of October, by which Mix obligated himself, for the half of these debts; it was, however, subsequently agreed, upon a partial adjustment of the accounts between us, that the bill of sale of the 15th October, should be cancelled, and a new bill, that of the 19th of October, expressing more fully the particulars of the transaction, should be given, and I accordingly gave that of the 19th of October, by which the bill of sale of the 15th was made void, as these bills were for the identical quantity of stone. No. 5, I believe to be the hand writing of W. K. Armistead, and the allusion made to me in it, refers, I presume, to the then known decision of the Secretary of War, to dismiss me from the office, if he had to make a decision upon the affairs of this contract, even remotely favoring my interest. In relation to No. 2 being responsible for the debts contracted by Mix, at the commencement of the execution of his contract, a portion of which debts, consisting of notes, payable at 60 days, 90 days, four and six months, it was important to make arrangements to meet these payments out of the proceeds of the first delivery of stone, for which purpose, it was agreed that Mr. Mix, should deposite such proceeds in the Bank of Norfolk, subject to my draft, of which he did deposite, I think $4,000; that as these notes came round for payment, I did draw 3,300 dollars of it, which were applied to the payment of these notes, as will appear by reference to the three checks, herewith (See No. 3, a, b, c) the balance of the deposite was paid to orders of Mix himself, and was accounted for in that way to him; that was the only sum ever so deposited to my credit.

Question by Mr. Clarke. Do you know who authorized Col. Armistead, to use in his letter, the language "I am instructed to state to you, that they will be recognized by the Department," &c. if state who gave the authority?

Answer. I do not know.

Question by Mr. Clarke. Have you a recollection of having written the letter dated 7th August, 1818, and if you have, is there no circumstance connected with it. that will bring to your recollection the name of the persons erased from said letter, or do you at this time recollect the names of those persons?

Answer. I have reflected much on this, and have no recollection of what is covered by these erasures. This whole letter was written, I think, to Mix, to enable him to extricate himself from the pledges which he was making, as I stated yesterday, I had no recollection of having written such a letter as this, until it was shown to me yesterday.

Question by Mr. Clarke. In your letter to Mix, dated 7th August, 1818, you state, that yourself, Mix, and Jennings were, each, to have one-fourth, and a person whose name was to be a secret, the other fourth; how did you become entitled to the one half you afterwards assigned to said Mix?

Answer. The arrangement for giving this fourth to Mr. Walker, who was the unknown person, was never, as I believe, carried into effect; Mix then had the right to dispose of that quarter.

Question by Mr. Williams. Do you know that Mr. Walker was in this city then, or at any other time?

Answer. He was here, I think, just after the contract was closed.

Question by Mr. Sprague. In concluding the letter No. 6, you say, "I will state fully my situation when I see you," what was the situation to which you then referred?

Answer. That I was to be dismissed from the office, if the Secretary was compelled to make any decision remotely affecting my interest, as I have heretofore stated.

Question by Mr. Sprague. Why did Mr. Calhoun declare that he would remove you from office, if compelled to decide between Mix and Goldsborough?

Answer. From my peculiar relation to him as Chief Clerk that he would not be in a situation in relation to this contract, that would subject him to any imputation on account of any decision respecting it.

Question by Mr. Sprague. When did you first become responsible for Mr. Mix; in what manner, and to what amount?

Answer. It was about the time I went to New York, in August, 1818, that I first became responsible. I do not, distinctly, recollect whether it was before or after I went to that city; the manner, was by assuring Major Cooper, that I would see him paid for any facilities, liabilities, or advances, he might make to Mix on account of this contract; the amount is stated in Mr. Cooper's account current with me in December, 1818, at $5,583.69. I went to New York about the 9th or 10th of the month.

Question by Mr. Sprague. When did you first ascertain or believe that the contract would be profitable?

Answer. The first year's operations were a losing business, and I think it first became profitable in the Summer of 1819; from the calculations made by Mr. Mix, at the time of his forming the contract, and in which he felt confident, he gave me the impression that it would be profitable from the beginning; but experience proved that these calculations were erroneous, and that the contract was not profitable the first year. The circumstances of the York river stone being rejected by the Engineer Department, and the contractors being obliged to furnish stone from other places at a much greater expenses, obviously made the contract a losing one during the period of high prices.

Question by Mr. Williams. Do you know, or have you understood that any person engaged in the service of the Government, at the time the contract was concluded with Elijah Mix, was connected with, or related to Mr. Walker, in any manner?

Answer. General Swift, was, I believe, his brother-in-law.

Question by Mr. Williams. Do you know, or have you ever understood, the reason for concealing his name?

Answer. No. I have no knowledge on that point.

Question by Mr. Campbell. Have you realized any profits from the Mix contract? If yea, to what amount? And please to state whether Mr. Calhoun, while Secretary of War, conversed with you on the subject of the profits.

Answer. I refer to the paper referred to in my general statement, marked B, from which it will appear, that a balance of about four thousand dollars was realized by me. I have no recollection of ever conversing with Mr. Calhoun respecting the profits of the contract.

Question by Mr. Ingersoll. Were the papers which you have produced this morning to the comimttee, before the arbitrators? and if yea, why were they not burnt with the rest?

Answer. They were not—they were with my accounts with Major Cooper, to which the appertained.

Question by Mr. Williams. Did E. Mix allege as a reason for his unwillingness to admit Goldsborough and Co. to participate in the contract, that you had previously sold to him that portion of it to which Goldsborough and Co. set up a claim, by virtue of the purchase they had made from Major Cooper?

Answer. Never that I heard of; but he objected on the ground that I was liable for the one-fourth of the advance of $10,000, which pertained to the fourth that I re-conveyed to him. I read at the time, as I stated yesterday, an agreement between Mr. Mix and myself, which clearly proved that he, and not I, was liable for that portion of the advance. Mix well knew at this time that the bill of sale of the 19th of October, was the only valid bill on the subject.

Question by Mr. Wright. Did Jennings and Mix continue copartners in the contract after the 24th April, 1819?

Answer. Jennings, I believe, continued sub-contractor in the execution of one-fourth of the contract. Mix, of course, continued in the contract, having the entire control of one-fourth.

Question by Mr. Wright. Were the facts connected with your sale to Mix and to Goldsborough, communicated to the Secretary of War before the date of the letter of Colonel Armistead to Mix, dated 24th March, 1821? If so, state when, and by whom, they were communicated.

Answer. I have no recollection on these points. I made no communication of these facts to the Secretary of War.

Question by Mr. Wright. Was there any written transfer from Mix to Jennings?

Answer. I have no knowledge on that subject. I have an impression there was; the time and circumstances I do not know.

Question by Mr. Wright. You have said you became interested to the amount of one-half of the contract, solely with a view of indemnifying yourself against liabilities incurred for Mix in the year 1818; state

what these liabilities were, specially, with whom incurred, and when, and to what amount, with each person, and the particular nature of the contracts out of which your liabilities accrued: and whether these liabilities existed before you wrote the letter of the 7th August, 1818.

Answer. I have stated that my liabilities amounted to $5,583.63, at the close of the year 1818; they were for advances and facilities furnished by Major Cooper, from the beginning of the execution of the contract. Of course these liabilities accrued subsequent to the 7th August, 1818, as the contract had not then gone into execution, although the purchase of some of the property, for the payment of which I became liable, was purchased before the 7th August. My engagements were to Major Cooper. I was under obligation to no other that I now recollect of.

Question by Mr. Wright. When did Mix begin the execution of his contract?

Answer. He began his preparations about 1st August. When he made his first deliveries I cannot state.

Question by Mr. Wright. At what time was Mix's bond under the contract filed in the Office—was it before the 7th August, 1818?

Answer. I don't recollect: those are details that belong to the Engineer Office; the bond came enclosed to me, I think, by Mr. Mix; I must have received it about the 8th or 9th August, 1818, and handed it over to the Engineer Department immediately.

Question by Mr. Wright. According to the practice of the War Office, is the contract considered complete until the bond is approved and filed?

Answer. These are details of office that do not go through me, and I am ignorant upon the subject: my impressions are that the practice is that they must be approved and filed: but the details refer themselves to subordinate offices of the Department—I am not prepared to speak positively on the subject.

Question by Mr. Wright. Were you ever notified by the War Department that Mix's bond was approved? and, if so, when, and by whom?

Answer. I have no recollection on this point.

Question by Mr. Wright. Have you any knowledge that Mix was notified of the approval of his bond; if so, when, and by whom?

Answer. I have no knowledge or recollection of any official notification, but in a private communication from myself to him, I think I advised him of the difficulties in relation to the first bond, and that a substitute would perhaps be required: but the persons who were on the first, continued the surety to the end, and the bond was approved, if I recollect, by the Recorder of the city of New York.

Question by Mr. Wright. What difficulty did arise in relation to Mix's bond; by whom were objections raised, and communicated to you?

Answer. Difficulty arose in relation to the name of George Cooper being mentioned as a party to the contract, when, in fact, he was not. The objections arose in the Engineer Office, and by some of the officers there, I don't remember which, was communicated to me. It was a subject of general remark in the Engineer Office.

Question by Mr. Wright. Was any other bond ever filed by Mix, on his contract, than that of the 5th of August, 1818, signed by Mix, Samuel Cooper, and Joseph Oakley? if so, describe it, and state when, and by whom, it was submitted to the War Department for appropriation.

Answer. The bond was corrected by leaving out the name of George Cooper; but, whether the bond first transmitted was returned, I do not recollect; nor do I know whether it was retained on the files of the Engineer Office. Information on that point can be obtained from that office. The correction was at the instance, doubtless, of the Engineer Department, but I think I interested myself with Major Cooper, to have it effected. I cannot answer as to the time of the correction, because I do not recollect it. Major Cooper signed as the security of Mr. Mix.

Question by Mr. Wright. Was George Cooper's name mentioned in the first bond, on which the difficulty arose? if not, and you wrote the letter of the 7th August, 1818, to extricate Mix from his pledges in relation to the contract, how came the Superintendents of the Engineer Department informed of George Cooper's claim to an interest in the contract?

Answer. George Cooper's name was in the first; and when I wrote the letter of the 7th of August, it was upon information communicated to me by Mix, that that would be the case; but the Engineer Department did not know it until the bond arrived, which was probably the next day. Doubtless, when the bond was corrected, a transcript of the first bond was made, leaving out only the name of George Cooper; this is only my presumption. I do not know whether George Cooper's name was ever submitted to the War Department as a partner in the contract with Mix.

Question by Mr. Wright. Do you know, or have you good reason to believe, that Mr. Calhoun participated in the profits of, or was, either directly or indirectly, interested in any contract entered into in the War Department, while he was Secretary of that Department? if yea, state particularly your knowledge, and the grounds of your belief?

Answer. No. I believe he would be the last man on earth, standing in such a relation, to do such an act.

Questions by Mr. McDuffie.

Question. When you resold to Mix, in October, 1819, how did you know, or what induced you to believe, your participation in the contract was disagreeable to the Secretary of War?

Answer. From his expression to me that, although it was not illegal, as there was no law to prohibit it, yet it would subject me to improper insinuations, and would therefore be injurious. In fact, a belief that it was disagreeable to him was the strong motive for divesting myself of all interest in the contract.

Question. When did Mr. Calhoun use the expression to which you refer, and did he repeat it?

Answer. The precise time I cannot recollect, but it was between the Fall of 1818 and the Spring of 1819, before the execution of the bill of sale, of 24th of April, 1819. He never repeated it; that was the only conversation we had respecting it.

Question. Was this the same conversation to which you alluded in your general statement?

Answer. Yes.

Quest. You state that the Secretary of War determined to dismiss you in the event of his having to decide in favor of the claim of Goldsborough, because it might favor your interest remotely. How could it be supposed to affect your interest?

Answer. Because Goldsborough derived his title from me, through Major Cooper.

Quest. Did the Secretary of War, in the decisions he had occasion to make, on the contract of E. Mix, ever manifest any disposition to favor that contract? Or were his decisions strict and rigorous, in their operation against it?

Answer. His decisions were always considered as strict and rigorous, in the extreme, in their operation upon it.

Quest. by Mr. Williams. Who were employed in the Engineer Department, at the time the objections were first made, to the original bond; and what are the names of the persons who raised the objections?

Answer. General Swift, Captains Smith and Blaney; who raised the objections, I do not recollect.

Quest. by Mr. Williams. Did you consider the objections as coming from those who had a right to control the contract?

Ans. I did. General Swift was the Chief Engineer, to whom pertained such details of his office.

Sworn on the 9th, and subscribed this 11th day of January, 1827.

C. VANDEVENTER.

Exhibit No. 1, accompanying Major Vandeventer's testimony.

We agree, that all money, or other business transactions, which have heretofore existed between us, shall be considered to be canceled, and we hereby mutually release each other from all liability, in relation to them, but it is understood that this mutual release is not to exonerate Major Vandeventer from the liabilities which attach to him, as one of the parties in the contract with the United States, in my name, for the delivery of 150,000 perches of Stone, at the Rip Raps, in relation to such portion of that contract as remains to be fulfilled. Duplicates hereof signed, and one copy delivered to each of the parties, at Georgetown, this 11th March, 1825,

In presence of

JAMES S. DENT, C. VANDEVENTER.
J. L. SMITH. E. MIX.

Exhibit No. 2*a*, accompanying Major Vandeventer's testimony.

GEORGETOWN, 24*th April*, 1819.

MEMORANDUM.

It is agreed, by and between Elijah Mix and C. Vandeventer, that the said Vandeventer, in consideration of payment for seventy five thousand perch of Stone, being one half of E. Mix's contract with the Engineer Department, for the delivering stone at the Rip Raps, and Old Point Comfort, which he, the said Mix, sold to said Vandeventer,

as per bill of sale of this date, binds himself to pay one half of the debts against said contract, at this date, which consists in the advance of ten thousand dollars, made the said Mix, by the Government, and certain accounts, incurred, on the deliveries already made, and not yet paid.

C. VANDEVENTER.
ELIJAH MIX.

Exhibit No. 2b, accompanying Major Vandeventer's testimony.

I, Eli Adams, now of New-London, in the State of Connecticut, of lawful age, on oath, do testify and say: That, being at Norfolk, in Virginia, about the first week in June, 1819, the deponent did then and there receive letters and papers from Major C. Vandeventer, of the city of Washington, appointing the deponent agent, on his behalf, to settle and adjust accounts between him, the said Vandeventer, and Mr. Elijah Mix, up to the 24th of April, of the same year, agreeably to papers, passed between them. The deponent immediately waited on Mr. Mix, who was then in Norfolk, and to whom the papers were shown. Mr. Mix appeared satisfied, and promised to attend to the settlement as soon as he obtained some Mechanics' bills, which, he observed, had not been sent in, and the amount of which, he did not recollect. Several appointments were made, by the said Mr. Mix and the deponent, in order to close this settlement, all of which were defeated by some excuse of his, or his not appearing at the time appointed. Some time in July, of the same year, we met in Norfolk, for the purpose of settlement, when the said Mix told the deponent that he had engaged an Accountant at ten dollars per day, to draw off his account current. After waiting two days, he promised to call that evening, with his papers, and make a final settlement; not calling that evening, according to appointment, the deponent inquired for him next morning, and found he had left town. The deponent met the said Mr. Mix, several times after, in the months of August, September and October, of the same year, and urged him to a settlement, but without effect.

Witness,
FOSTER SWIFT.
DEBORAH SWIFT.

ELI ADAMS.

New London County, ss.

NEW LONDON, January 3*d*, 1822.

Personally appeared, Eli Adams, signer of the foregoing deposition, and made solemn oath to the truth of the facts therein stated and contained. Before

EBENEZER LEARNED,
Justice of Peace.

Exhibit No. 3a, accompanying Major Vandeventer's testimony.

WASHINGTON, *October* 28, 1818.

Cashier of the Office of Discount and Deposite, at Norfolk, Virginia, pay to Samuel Cooper, or order, one thousand eight hundred dollars.

C. VANDEVENTER.

Exhibit No. 3b, accompanying Major Vandeventer's testimony.

WASHINGTON, *November* 19*th*, 1818.

Cashier of the Office of Discount and Deposite at Norfolk, pay to Elijah Mix, or order, six hundred dollars.

C. VANDEVENTER.

Exhibit No. 3c, accompanying Major Vandeventer's testimony.

NORFOLK, *March* 6*th*, 1819.

Cashier of the Office of Discount and Deposite, please pay Samuel Cooper, or bearer, nine hundred dollars.

C. VANDEVENTER.

Exhibit A, accompanying Major Vandeventer's testimony.

GEORGETOWN, *April* 24*th*, 1819.

To all people of the United States, I, Elijah Mix, of Georgetown, send greeting: Know ye that I, the said Elijah Mix, for and in consideration of the sum of one hundred dollars, to me in hand paid by Christopher Vandeventer, of Georgetown, District of Columbia, the receipt whereof I do hereby acknowledge—have granted, bargained, and sold; and by these presents, I, the said Elijah Mix, do grant, bargain, and sell, unto the said Christopher Vandeventer one half part (the whole in half equal parts to the dividend,) of my contract made with the Engineer Department of the United States' service, on the 25th day of July, one thousand eight hundred and eighteen, for the delivery of one hundred and fifty thousand perch of stone at the Rip Raps or Old Point Comfort, in the Bay of Chesapeake and State of Virginia, at three dollars a perch: To have and to hold the said half part of the said contract, and all other the premises hereby granted, with the advantages thereof, under the said Christopher Vandeventer, his executors, administrators, and assigns, as his and their own proper goods and property, and to his and their own proper use and uses forever. And I, the said Elijah Mix, do, for myself, my heirs, executors, and administrators, covenant and grant to and with the said Christopher Vandeventer, his executors and assigns, by these presents; that I, the said Elijah Mix, at the time of sealing and delivering these presents, am the true and lawful owner and proprietor of the said half part of the said contract, and advantages hereby granted, and that I have full power and authority to grant, bargain, and sell, the said half part of the said contract aforesaid with the advantages hereby mentioned to be granted, namely, that 75,000 perch of stone, being one half of the amount of the said contract, is thus conveyed as above mentioned; and for every perch of which delivered or caused to be delivered at Old Point Comfort or the Rip Raps aforesaid, by the said Christopher Vandeventer, he will receive three dollars; and it is expected that the said Christopher Vandeventer will deliver or cause to be delivered at least one thousand five hundred perch a month, beginning the first of June ensuing the date hereof, except in such months as it is inclement and boisterous on that coast—to the said Christopher Vandeventer,

his executors, and administrators, and assigns, in manner aforesaid, and also, that it shall and may be lawful to and for said Christopher Vandeventer, his executors and assigns, from time to time, and at all times hereafter, quietly and peaceably to have, hold, possess, and enjoy the said half part of the said contract and all other the premises hereby granted, or mentioned, or intended to be granted, with the appurtenances, without let, trouble, denial, molestation, hindrance or disturbance whatsoever, of me the said Elijah Mix my executors, administrators, or assigns, or of any other person or persons whatsoever lawfully claiming, or to claim from, by, or under me, them or any of us: and that freed and discharged of and from all former and other bargains, sales, forfeitures and incumberances whatsoever, made, done, or committed by me the said Elijah Mix, of Georgetown, District of Columbia.

Witness my hand and seal, this 24th day of April, 1819.

ELIJAH MIX, [SEAL.]

Witness, SAMUEL COOPER, Jr.

No. 17.

Testimony of Colonel Armistead.

Colonel Walker K. Armistead, of the Army of the United States, appeared before the Committe, was duly sworn, and testified as follows:

Question by Mr. Ingersoll. Was the letter now shewn to you, and marked No. 5, written by you? if yea, by whose authority did you write it?

Answer. This letter was written by me. Major Vandeventer advised me to write it to Mix; that is, to the best of my knowledge; it is so long since it was written, that I cannot speak positively.

Question by Mr. Ingersoll. In that letter, you say I am instructed to state to you, &c. who gave you the instructions?

Answer. I imagine that Major Vandeventer must have given them to me.

Question by Mr. Ingersoll. From whom did you, ordinarily, receive instructions in the department?

Answer. Mr. Calhoun.

Question by Mr. Ingersoll. Did Major Vandeventer tell you at the time that letter was written, that he was directed by the Secretary so to instruct you.

Answer. No, he did not.

Question by Mr. Campbell. Was Mr. Calhoun absent at the time you wrote the letter, if so, do you know where he was?

Answer. No, he was not as I recollect.

Question by the Chairman. Do you know the names of all the persons who were, at that time, or any other time, concerned in the contract for the delivery of stone at the Rip Raps and Old Point Comfort, commonly called *the Mix Contract.*

Answer. Major Vandeventer, General Swift, Mr. Jennings, or Mr. Robertson, (I don't know which,) and Mr. Mix.

Question by Mr. Campbell. Was there a person by the name of Mr. Walker concerned?

Answer. Not to my knowledge. I never heard of the man, that I now recollect.

Question by Mr. Clarke. From whom did you learn that General Swift was interested in that contract?

Answer. I learned, as I think, from General Swift himself, and probably from Major Vandeventer afterwards.

Question by Mr. Campbell. State the extent of the interst held in the contract by Gen. Swift, and state all you know of his being concerned.

Answer. I can only state that I heard he held a fourth.

Question by Mr. Clarke. Have you a distinct recollection of General Swift's having held any conversation with you about his (Swift's) interest in the contract?

Answer. I think, while I was superintending the erection of the works at Fort Washington, I was on a visit to this city, and General Swift told me he had some idea of becoming concerned in the contract, as he did not intend to remain in the army any longer. I do not now know whether this was before or after the formation of the contract—it was somewhere about that time.

Question by Mr. Campbell. Can you say that Mr. Calhoun, while Secretary of War, had any knowledge of General Swift's being concerned in the contract?

Answer. Nothing but what General Swift himself told me. As well as I recollected the conversation, I asked General Swift if he had asked permission from the Secretary for his being concerned. He said he had.

Question by the Chairman. Have you knowledge of any contract with the Department of War, whilst Mr. Calhoun was Secretary of that Department, in which Mr. Calhoun was concerned, or in the profits of which he participated?

Answer. No. Sir.

Question by Mr. Sprague. Can you recollect any conversation with Major Vandeventer as to General Swift's interest in the contract? If so, state it.

Answer. I don't recollect of any particular conversation with Major Vandeventer on the subject.

Question by Mr. Sprague. What order had you received, which, at the close of your letter, you say you should delay?

Answer. I presume it was the order for the transfer of the fourth of the contract from Mix to Goldsborough.

Question by Mr. Sprague. From whom did you receive such authority, to give such an order?

Answer. I received no such order. I presume the right to give the order was in myself. It is now so long since these transactions took place, that my recollections upon the subject are not distinct; I may have received orders from Major Vandeventer, or I may have acted from my own views and knowledge of the business, as it then existed.

Question by Mr. Clarke. Was it ever made known to Mr. Calhoun, that Vandeventer and Swift, or either of them, was interested in the contract, and when was he informed of it?

Answer. I don't know.

Question by Mr. Williams. At what time did you take the place of Chief Engineer of the Department?

Answer. I can't recollect the month. General Swift left the Department in November, (I believe,) in 1818, or 1819. I came in, some months after. Reference to the Army list will show the time.

Question by Mr. Sprague. Had you more than one conversation with General Swift, as to this contract?

Answer. Not to my knowledge.

Question by Mr. Ingersoll. Did General Swift mention to you his concern in the contract, as a secret?

Answer. I do not know that he did, specially, intend it to be secret; I presume he intended it to be confidential.

Question by Mr. Ingersol. Have you ever mentioned the subject till the present time?

Answer. It is probable that I may have, in conversation with Major Vandeventer, mentioned it to him. I have no diary of my conversation. And never expected to be questioned on the subject.

Question by Mr. Wright. Are you confident that Major Vandeventer had knowledge of General Swift's interest in the contract?

Answer. I presume he had.

Question by Mr. Wright. Please state the grounds of your presumption?

Answer. I think Major Vandeventer mentioned it to me in conversation; I am not certain, and will not speak positively. I do not recollect the time.

Question by Mr. Wright. Why were you desirous of recognising Goldsborough, as holding part of the contract, as intimated in your letter, written on the 24th of March, 1821?

Answer. It was from instructions from Major Vandeventer, as I have heretofore answered. I knew nothing of the transfers from one party to another, until informed of them by Major Vandeventer.

Question by Mr. Wright. When was the bond on Mix's contract received in the office, from whom was it received, and at what time, and when, and how was it approved?

Answer. The Honorable Committee will have to get that information from the Engineer Department. It was before I went into the office.

Question by Mr. Wright. Had you no agency in the receipt of any bond connected with that contract?

Answer. None that I now recollect.

Question by Mr. Wright. Was it the custom of the Engineer Department, while you was engaged in it, to make a record of bonds given to ensure the performance of contracts?

Answer. Yes, Sir. I think it was a custom at that time to copy them in a book, and file the original. They were sent in to the clerk, whose duty it was to attend to such business; and it is most natural to suppose that such was the course.

Question by Mr. Wright. Do you recollect the name of George Cooper, as in any way connected with the Mix contract?

Answer. No, Sir. I never heard his name coupled with the contract.

Question by Mr. Wright. Do you know of any other person employed in the War Department, who have been concerned, directly

or indirectly, in contracts entered into with that Department, while they were so employed?

Answer. None.

Question by Mr. Sprague. Had you no information or instructions on which to write the letter, of the 24th March, 1821, except from Major Vandeventer?

Answer. None. It is now my impression, that it was more a threat on the part of Major Vandeventer, to make Mix comply, or render justice to the parties concerned, than instructions received from any other person. It is possible I may have had this view of it at the time, but am not able, positively, to say so. I, however, think the letter originated in this way.

Question by Mr. Wright. I will ask you whether any proposition from Goldsborough to be recognised as a party in interest in that contract, was before you at the time, or prior to your writing the letter of the 24th March, 1821?

Answer. I don't recollect that there was; it was a matter entirely among themselves.

Question by Mr. Williams. Did you understand from Major Vandeventer, or any body else, what was the cause of Mix's unwillingness to transfer one fourth of the contract to Major Cooper?

Answer. I can't distinctly recollect any cause being given to me. Major Vandeventer may have assigned a cause, but I don't recollect it.

Question by Mr. McDuffie. Do you know of any facts connected with the execution of the Mix contract, which go to shew that General Swift was interested in that contract, or received any part of the money appropriated for it; if yea, state them fully?

Answer. I have no other facts than those I have stated; how much he received, or did not receive, I do not know.

Question. Do you know of General Swift's having received any money under this contract?

Answer. None to my knowledge, I never heard him say he did.

Question. How were the payments made under that contract, and to whom?

Answer. I believe, always to Mix.

Question. Could Gen. Swift have received money under that contract without the knowledge of Mix?

Answer. I presume he could not. I cannot conceive how he could.

Question. Could he have received money under this contract, without the knowledge of Vandeventer?

Answer. I think not.

Question. Why must Vandeventer have necessarily known it, if Swift received money under the contract?

Answer. Because the profits of the contract, I presume, were divided among them. I can't conceive any other way, if Gen. Swift was a party concerned.

Question. If Mix sold to Gen. Swift, one-half of his half of the contract, and authorized, or permitted him to draw money on it, must this have been necessarily known to Vandeventer?

Answer. It does not follow of course; that if there were private transactions between them, that Vandeventer must have known of the receipt of money.

Question. Is there any thing in the nature of the transaction from which it follows that Vandeventer must have known of Gen. Swift's participation in the contract, or of his receiving part of the money, admitting that Gen. Swift was concerned in it?

Answer. If the circumstances of partnership existed, I presume one could not have received money on it, without the other knowing it.

Question. If Swift claimed by virtue of a private contract, with Mix, could not the matter have been conducted, and the money paid by Mix to Swift, without the knowledge of the other persons concerned?

Answer. It think it possible—I will here state as an explanation of the answer, to the question sometime since put to me, by Mr. McDuffie, "why must Vandeventer, have necessarily known it, if Swift received money under the contract," that if Gen. Swift was not originally concerned, and Mix afterwards sold part of his contract to him, I conceive Mix might have paid money to Gen. Swift, without the knowledge of Major Vandeventer.

Question. When Gen. Swift conversed with you about being concerned in this contract, was the name of Mix mentioned?

Answer. I don't think it was; indeed I am sure it was not, as I did not hear of Mix, till some time afterwards, to the best of my belief.

Question. Do you think, from any circumstances, that this conversation was before the contract was made with Mix?

Answer. It was before the contract was made with Mix, as I had not then, to the best of my belief, heard of Mix; this is all conjecture on my part: this contract might have been then in the Engineer Office, for I had very few opportunities of visiting Washington, and never inquired respecting the contracts made by that Department.

Question. When Gen. Swift spoke of becoming concerned in a contract, did he state particularly what contract he alluded to?

Answer. I don't know that he did; I conceived it to be the contract for the delivery of stone, at Old Point Comfort: I know of no other at the time.

Question. Did you ever afterwards have any conversation or transaction with Gen. Swift, from which you inferred that he had actually become interested in this contract?

Answer. None that I recollect of.

Question. Are you distinct in your recollection that Major Vandeventer ever had any conversation with you, going to show that General Swift was interested in the Mix contract?

Answer. I do not, distinctly, recollect any such conversation, save on one point alone; and that was, I think, that General Swift had made a purchase of a house in Brooklyn from money derived from the contract; it is so long since this converstation took place, that I cannot pretend distinctly to state all the circumstances of it; and up on reflection, I will say that I am not even certain that this conversation was with Major Vandeventer: I think, however, it was.

Question. Where was this conversation held?

Answer. I don't, distinctly, recollect.

Question. Was it in Washington?

Answer. I believe it was in Washington or Georgetown.

Question. In your letter to Mix, dated March 24th, 1821, you speak of the "unfortunate results that may take place in regard to" Major Vandeventer, if Mix should refuse to comply voluntarily, with what you state would be the decision of the department. To what results did you have reference?

Answer. I apprehended that however honorable the motives or intentions of Major Vandeventer were in joining in this contract, that it would be considered improper by the world at large—that the contract was made under my positive belief, and I may say assurance, lower than it could possibly have been from any other quarter.

Question. Did you understand that Major Vandeventer was to be dismissed from office in case the Secretary of War should have to decide the point in controversy between Mix and Goldsborough?

Answer. No, I did not so understand.

Question. Are you clear in your impression that the letter to Mix, dated 24th March, 1821, was written without any order from the Secretary of War?

Answer. The Secretary never gave me the order.

Question. How happened it that you wrote such a letter without the order of the Secretary?

Answer. I wrote the letter by request of Major Vandeventer.

Question. Were you in the habit of giving orders by the request of Major Vandeventer?

Answer. No.

Question. Do you know that the Secretary of War was absent in South Carolina, in the Spring and Summer of 1818? If yea, when did he leave Washington, and when did he return?

Answer. I think he was absent in South Carolina in 1818, but when he left home or returned I can't recollect.

Question. Did you examine the bond given by Mix to secure the performance of his contract, when it was first presented? If not, when did you first examine it?

Answer. I never did examine it, to the best of my knowledge; the bond was given and filed before I came into the office.

The witness here explained the answer "no" given to the question of Mr. McDuffie, "were you in the habit of giving orders by the request of Major Vandeventer," by adding these words—"unless in the absence of the Secretary of War."

Question by Mr. Sprague. Did you ever have any conversation with any person other than Major Vandeventer and General Swift, relative to General Swift's interest in the contract?

Answer. Not to my knowledge.

Sworn the 11th and subscribed this 12th day of January, 1827.

W. K. ARMISTEAD,
Col. 3d Regt. Artillery.

No. 18.

Testimony of Jesse Scott.

On this 18th day of January, 1827, Jesse Scott, of Georgetown, in the District of Columbia, appeared before the Committee, and deposed as follows:

On the 30th of last month, a gentleman of the name of Mr. Queen came into my house, and advised to get a contract at Old Point; that Mr. Mix had lost it by some letter, as he had understood. I then observed that I had never attempted to get a contract. He advised me then to go to John W. Baker, and inform him of it, so that he might get it. I went across the street to Mr. Baker's store, and asked him who had got the contract? He observed that he believed that Mr. Mix was the lowest bidder for it: but, by writing a confidential letter to some person in New York, he expected or thought he would not get it. About this time Mr. Mix came into Mr. Baker's store, and appeared to be very angry, and observed that the damned scroundel to whom he had written a letter, had published it in an Alexandria paper, and that he had written it when in a passion, and was sorry for it. Mr. Baker replied to him he ought never to write a letter in a passion; that he would injure himself by so doing, if he had not already done so, or to that amount. Mr. Mix then observed that the damned, drunken, gambling scoundrel, to whom he had written his confidential letter—he had paid a dollar to a watchman to take him out of the street, and put him to bed. Mr. Baker told him he ought to be very cautious how he put his pen to paper. Mix then, if I am not mistaken, said he had been to Mr. Secretary Barbour's on the day before, and compared the letter with the one published, and that they did not agree—he said he mentioned "Secretary" once in the letter, but never mentioned Mr. Calhoun's name; when Mr. Calhoun's name was mentioned in the paper several times. He then said he also shewed Governor Barbour a letter written by his Head Clerk; he said the Secretary, in reading it over, came to the letters "Sct." and asked him (Mix) what they meant, saying he did not understand their meaning. Mix said he told them he understood him to mean "Secretary." The Secretary then went on to read the letter, and came to the letters "Sct. rather says you can't do this, and Sct. says you shan't do that." Mix also observed that Mr. Barbour made use of some language that he thought unbecoming. Mix also observed that he went to the President, who advised him and asked him to have the letters published, so as to bring every thing to light. Mr. Mix said, if he did not get the contract he would publish the letters; that they were only mad with him for speaking the truth; that he had dined with Commodore Porter, in New York, who said to him that there was no purity in the Government, and that they were angry with him for telling the truth. He (Mix) also said it was in the mouth of every person in Washington, that Mr. Goldsborough had given a thousand dollars for this letter (the letter to Hancock) to publish it. Mr. Baker observed, "perhaps conditionally so." Mr. Mix then said that he supposed he gave two hundred dollars cash to the damned, drunken, gambling scoundrel, Clark, and if he (Goldsborough) got the contract, was to pay him the balance. Mix also observed that if Clark was a gentleman, he would put a brace of balls through him. Mr. Purley, a stone quarrier, who was present, observed that he thought it very curious that Goldsborough was not at Court to attend to the trial between Mr. John W. Baker and him (Goldsborough.) Mr. Mix then said that Goldsborough was at a damned sight better court, in buying that letter to publish it. I believe this all, or the sub-

stance of all, the conversation I heard on that occasion, as I then left the room.

Question by Mr. Floyd. Is this your signature to the paper now shown to you, and marked D? If so, who requested you to prepare the statement therein contained?

Answer. It is my signature; the statement was prepared at the request of Mr. Richard T. Queen, and was then handed by me to Major Vandeventer.

Question by Mr. Wright. Had you any conversation with Major Vandeventer, or any other person except Mr. Queen, about reducing it to writing, before it was so reduced?

Answer. No, Sir, and never before saw Major Vandeventer, to the best of my knowledge; and should not know him now, if I were to meet him.

Question by Mr. Wright. How came you to present the affidavit to Vandeventer, and what conversation had you with him at the time you presented it to him?

Answer. By the request of Mr. Queen, I carried the affidavit to Mr. Vandeventer's office; after reading it, he asked me if I would swear to it? I told him I would—and did do it. When I offered the paper to Major Vandeventer, I observed, in handing it to him, that I was requested to do so by Mr. Queen.

Question by Mr. Wright. Did Vandeventer, when you presented him the paper, express any surprise that Queen should have requested you to deliver him the paper?

Answer. No, sir.

Question by Mr. Wright. You have observed that Mix said he had shown Secretary Barbour a letter from the Head Clerk, and that he in reading came to the word "Sct," and asked him what the letters meant—Did Mix, when speaking of having shown that letter, mention the name of Barbour, or was it your inference from the conversation that Mr. Barbour was the person alluded to?

Answer. He mentioned "Secretary Barbour."

Question by Mr. Wright. Have you knowledge of any contract with the Department of War, whilst Mr. Calhoun was Secretary of that Department, in which he was concerned, or in the emoluments of which he participated?

Answer. None, sir.

Sworn to and subscribed this 13th day of January, 1827.

JESSE SCOTT.

Exhibit D.—Accompanying the testimony of Jesse Scott.

WASHINGTON COUNTY, GEORGETOWN,
District of Columbia,

On Saturday last, (the 30th December, 1826,) I called at the store of John W. Baker, about 8 o'clock in the morning, and spoke to him about a contract, and asked him, "who had the contract," alluding to the contract at "Old Point;" he told me that Mr. Mix was the lowest bidder, but having written a confidential letter to some person in

New York, in a passion, he was thrown out of it, (as he understood.) Mr. Mix here came in, and appeared to be in a passion, and observed, "that the damned scoundrel, to whom he had written a confidential letter, some time past, in a passion, for which he was sorry, had published it in an Alexandria paper." Mr. Baker then observed, "that he should not write a letter in a passion; that he was injuring himself, and had, perhaps, already injured himself by it, in some measure." Mr. Mix then replied, that "the damned scoundrel, to whom he had written the confidential letter, was a drunkard and a gambler, and that he had to pay (or) paid a dollar to a watchman, to take him out of the street, and put him to bed, and that if he was a gentleman, he would put a brace of balls through him." Mr. Baker then, the second time, observed, that he ought to be very cautious how he used his pen. Mr. Mix then observed, that he had been to Secretary Barbour's the day before, and that he, and the Secretary had compared "the letter" with the one published, and that they did not agree, because *he* had only used the word "Secretary," once, and had not mentioned Mr. Calhoun's name; whereas, in the paper, Mr. Calhoun's name was used several times. Mr. Mix, then further said, that he had shown Secretary Barbour a letter from the head Clerk; that the Secretary, in reading said letter, came to the letters "S. C. T." who asked him, (Mix,) what they (the letters) meant, for that he did not understand it? Mix answered, that he should take them to mean, "Secretary;" and went on to say, that, said "S. C. T." said, "you could not do this, and you should not do that;" and that Governor Barbour said, he could not understand what "S. C. T." meant; that he then told Mr. Barbour, that he took the "letters" to mean "Secretary;" and that Governor Barbour then made use of remarks, which he thought unbecoming him, (or words to the same import;) that he (Mix) then went to the President's, who told him to have all the letters published, in order to bring all to light. Mix then further observed, that if *he* did not get the contract, he would publish them, (the letters,) and that they were only mad with him for speaking the truth; and said, that in dining with Commodore Porter, in New York, he, (P.) remarked, that there was no purity in the Government, and that they were angry with him, for speaking the truth; and Mix further observed, that it was in the mouths of every person, in Washington, that Goldsborough had given one thousand dollars to Clark, for the "letter," (alluding to the letter handed to Gov. Barbour.) Mr. Baker then observed, perhaps conditionally, Sir. Mix then said, that Goldsborough had given, he supposed, $200 cash, to the damned drunken, gambling scoundrel, and that if he (G.) got the contract, he was to pay him the balance. A gentleman being in the store, at the time, by name Purly, observed that he thought it very curious, that he did not see Mr. Goldsborough in court, during the trial between him (G.) and Baker. Mix replied, that he, (G.) was at a damned sight better court, about buying this letter, in order to publish it.

JESSE SCOTT.

Sworn to, before me, this second day of January, 1827.

R. JOHNSON,
Justice Peace.

No. 19.

Testimony of Gideon Davis.

On this 13th day of January, 1827, Gideon Davis, of Georgetown, in the District of Columbia, a Clerk in the Department of War, appeared before the Committee, and being duly sworn, deposed as follows:

The only information I have, in relation to a letter signed Elijah Mix, and addressed to "Hancock," and which has appeared in the public prints, arises from a conversation which took place in my presence, between Col. Vandeventer, and Mr. Nix. I think this conversation was on the 28th December, 1826. I know it was on the morning on which the letter appeared in the Phoenix Gazette. Mr. Vandeventer on that morning came into my room, and requested me to go into his. I did so; and he then requested me to witness a conversation between himself and Mr. Mix. Mr. Vandeventer read to Mr. Mix a letter purporting to be a letter from Mix to the author of "Hancock." When he read a part of the letter, that part which contained the charge against Mr. Calhoun, he stopped, and asked Mix, if that charge was correct. Mix answered that "it was not," or words to that effect, I will not be certain as to the precise terms. Mr. Vandeventer then read the balance of the letter, and then again asked him if the charges, in that letter, were true. Mix again repeated that the statements in that letter were not true. Mr. Vandeventer then asked him if he had written that letter. He said he did not, but that he might have written something contained in that letter. I understood him to say, it was in some other letter, and not in that letter, that he made such statements. He then asked for the paper in which the letter had appeared that morning, and declared, as I understood him, that he would deny the whole of it, through the channel in which it had appeared. This, I believe, is the substance of all I heard or know about it.

Question by Mr. Wright. Are you employed in the War Office as a Clerk, and if so, how long have you been so employed?

Answer. I am employed in the War Office, and have been so employed, as a Clerk, since August or September, 1813.

Question by Mr. Wright. Are your services in that office connected with the Engineer Department.

Answer. Not particularly so. I see generally the correspondence that goes to the Engineer Department, as all written instructions from the Secretary to that department comes under my inspection.

Question by Mr. Wright. Will you relate, if you know any thing of any directions from the Secretary of War to the Engineer Department, connected with the Mix contract?

Answer. I have no knowledge of having ever seen any such instructions, of any description.

Question by Mr. Wright. Did you ever reduce the substance of the conversation, between Mix and Vandeventer, now testified about, to writing? if so, state when and at whose request.

Answer. I did reduce it to writing, and, I think it was the day after it took place; and the request of Mr. Vandeventer.

Question by Mr. Wright. Is the paper now shown you, marked C, the paper to which you refer in your answer to the last question?

Answer. Yes.

Question by Mr. Wright. Was the request of Major Vandeventer to reduce that to writing made at the time of the interview with Mix, spoken of or immediately thereafter?

Answer. It was made immediately after Mix left Major Vandeventer's room—I wrote part of it down that day, but being very much engaged in official duties it was not finished till next day, when it was prepared and signed.

Question by Mr. Wright. What reason did Major Vandeventer give you, if any, for soliciting you to witness the interview between him and Mix?

Answer. He stated to me, that on Mix's coming into his room to make explanations, that he had said to Mix that he would have nothing to say to him on that subject. except in the presence of a witness.

Question by Mr. Wright. What reason did Major Vandeventer give for his request to reduce the substance of the conversation to writing?

Answer. The reason he assigned to me, was, that he was advised to have it published in the newspapers; he afterwards told me that he had been advised not to publish it; but I do not remember that he told me by whom he was so advised in either case.

Question by Mr. Wright. Do you know any instructions, written or verbal, proceeding from the Engineer Department at any time respecting the Mix contract?

Answer. I do not.

Question by Mr. Wright. Have you knowledge of any contract made with the Department of War whilst Mr. Calhoun was Secretary of that Department, in which he was concerned, or in the emoluments of which he participated?

Answer. I have no knowledge of any such contract or contracts.

Question by Mr. Wright. Do you know of any order from the Secretary of War to the Engineer Department, to write the letter of the 24th of March, 1821, signed "W. K. Armistead," addressed to Capt. E. Mix, and now shown to you?

Answer. I have no recollection of any such order—from the multiplicity of business that passes through my hands, it is not likely that I would remember distinctly any thing in relation to such an order. I, however, think there is no such order on the records of the office.

Question by Mr. Wright. Do you know any order from Mr. Calhoun for the recognition of any person other than E. Mix, as interested in any part of Mix's contract? If yea, state particularly your knowledge.

Answer. I have no knowledge of any such order.

Question by Mr. Wright. Do you know of any order or decision made by Mr. Calhoun, touching the bond or bonds given by Mix to secure the performance of his contract? If yea, describe such order or decision.

Answer. I have no recollection of any order upon that subject.

Question by Mr. Wright. Did Vandeventer send for Mix prior to the interview you were requested to be present at on the morning of the 28th December last?

Answer. I do not know, farther than I heard Major Vandeventer say that he considered it a providential circumstance, that Mix came into his room that morning.

Question by Mr. Ingersoll. Is it the practice of the Engineer Department to preserve copies of all official letters which issue from that Department?

Answer. My impression is, that that is the general practice.

Question by Mr. Williams. Did you ever hear Major Vandeventer or any other person, say who were the partners in Mix's contract? If yea, name the partners; the portion of the contract held by each, and the amount received.

Answer. I never heard any person say who were the parties to that contract; my impression is, that I heard Major Vandeventer say, on one occasion, that he had had an interest in that contract; that that interest accrued subsequent to the making the contract, and that it was acquired by purchase; this conversation was subsequent to a former investigation of the subject of that contract.

Question by Mr. Williams. Did you ever know anything of a person in this city by the name of Walker?

Answer. I have no knowledge of any Walker as connected with the Mix contract.

Question by the Chairman. Do you recollect any conversation between Mr. Vandeventer and Elijah Mix, relating to letters which Mix says, in his letter to the author of "Hancock," he had of Vandeventer's, showing that Mr. Calhoun had an interest in that contract? If so, state what you know.

Answer. In the interview between Major Vandeventer and Mix, at which I was present, and which I have described, Major Vandeventer asked Mix if he had the letters described in his letter to the author of "Hancock," he admitted that he had not, and that he never had them.

Sworn to and subscribed, this 13th day of January, 1827.

GIDEON DAVIS.

Exhibit C.—Accompanying Gideon Davis' Testimony.

Memorandum of a conversation and interview had in my presence between Colonel Vandeventer and Mr. Mix, being called by Colonel Vandeventer to witness the same. It was in the War Office, the 28th December, 1826. The Colonel read to Mr. Mix the following part of a letter, purporting to be from said Mix, to the author of "Hancock," dated Georgetown, 1st November, 1825, viz: "If any information is wanted on the subject of Mr. Calhoun's infidelity, I have it in my power, I think, to furnish you matter sufficient to awaken any unbiased mind, that he was concerned in the Rip Rap Contract, either directly or indirectly, and have written letters of Vandeventer, which most positively mentions that he was engaged, and received some portion of the contract;" and, after having done so, he asked Mr. Mix, if that statement was true, and he answered, no; he asked him then, if he ever had such letters as are referred to; he answered, he never had, or words to that effect. The Colonel then proceeded to read the balance of the

letter, and, after having finished it, he asked Mr. Mix, if any part of the statements therein contained, were true; he said, they were not; and that he would deny ever having written such a letter; but stated that he may have written some part of it, or, as I understood him, a letter containing some statements therein mentioned. He then inquired for the newspaper, in which it was published, in order, as I understood him, to deny the authenticity of the letter through the same channel.

GIDEON DAVIS.

December 29, 1826.

WASHINGTON COUNTY,
District of Columbia, 30*th December*, 1826.

Personally appeared, Gideon Davis, before me, a Justice of the Peace, in and for the county aforesaid, and made oath, that the foregoing statement is substantially correct, to the best of his knowledge and belief; but is not certain as to the identical words used in every instance, either by Colonel Vandeventer or Mr. Mix.

R. JOHNSON, *J. P.*

No. 20.

Testimony of James L. Anthony.

James L. Anthony, a Clerk in the Treasury Department, appeared before the Committee, was duly sworn, and testified as follows:

In the Fall of 1825, in going to my chamber at the Inn where I lodged, I met Mr. Charles Hill, who observed to me that he had received a very strange letter, and that, if I was at leisure, and would walk up with him to his chamber, he would let me peruse it. I did so, and then saw the letter for the first time, which has since been published, purporting to be a letter from Elijah Mix to the writer of "Hancock," copied on part of a letter addressed by Satterlee Clark to Mr. Hill, with a request from Clark that he would wait upon Mix, and receive from him the evidences in Mix's possession in support of the charges that he had made in his confidential note to "Hancock." Mr. Hill stated to me, that he felt somewhat at a loss what course to pursue. I observed to him, that I knew Vandeventer well, and that I considered the note of Mix to Hancock a base calumny; and that Mix, in addressing a confidential note to an anonymous writer, appeared to me to be both knave and fool; and that, had I received such a communication from Clark, I should have returned it promptly, and leave him to find out some other channel for Mix to convey his slanders in. I do not recollect having any further conversation with Mr. Hill on the subject. I mentioned it to Vandeventer in four or five weeks afterwards, and done it with a view of putting him upon his guard against Mix. I told him that I did not consider the communication of Clark's letter to Hill to me as confidential, but that I would rather not have my name mentioned, or Mr. Hill's, in any steps he might consider it proper to pursue in relation to the subject. I also told Vandeventer that I was not satisfied that I was acting with strict propriety in making to him the communication; that, although

secrecy was not enjoined, yet I considered it a matter left to my discretion, and that, probably Mr. Hill did not expect to hear of any thing farther on this subject.

Question by Mr. Wright.—Do you know whether the contents of Mix's letter to "Hancock" was ever communicated to Mr. Calhoun.

Answer.—I do not.

Question by Mr. Wright. Were you the clerk in the Treasury Department who, in 1818, 1819, and 1820, issued warrants for the payment of moneys?

Answer. I issued the warrants in those years.

Question by Mr. Wright. Do you recollect whether, during that time, any requisition from the War Department passed through your hands for disbursements upon the Mix contract, in the name of any person other than Mix? if so, name them.

Answer. No. During that period warrants issued from the Treasury Department in favor of the Treasurer of the United States, as agent for the War Department, for large or gross sums, under the different appropriations for that Department.

Question by Mr. Wright. Do you know of any person having an interest in the Mix contract, other than Mix? if so, state who they are.

Answer. I do not, except from report.

Question by Mr. Wright. I wish to know whether the report, of which you speak, implicated Major Vandeventer as being concerned, and whether it was before or after you had the conversation with him about the letter to "Hancock?"

Answer. I understand Major Vandeventer was interested. I heard it long before the conversation I have mentioned.

Question by Mr. Wright. Why then were you desirous of putting Major Vandeventer on his guard against Mix?

Answer. I knew that Mix and Vandeventer had had a difference, and I considered that it was probable that part of his confidential note was true, that is, that he had letters of Vandeventer's in relation to the contract, and not knowing what letters Vandeventer had written, and supposing that he probably might have resorted to some address in making a settlement with Mix, that it would be well for him to recollect what he had written to him, not doubting that Mix would make use of his letters, and misrepresent them, to suit his purposes.

Question by Mr. Wright. Why did you not communicate the circumstance of the existence of the letter of Mix to "Hancock," to Mr. Calhoun, or to the Secretary of the Treasury, in whose Department you was?

Answer. I did not consider it necessary, or that it was required of me to become public expositor; and because, as I have already stated, that I did not believe the charges contained in the letter, believing them a calumny.

Question by Mr. Wright. Had you ever any conversation with Major Vandeventer about his interest in that contract? if so, state the time when it took place, and what it was.

Answer. I do not recollect mentioning the subject to him prior to the Fall of 1825, that is, the time of this letter. I made no remark to him concerning the interest he had in the contract; but Vandeventer observed to me, that it was an unfortunate contract for him, in bring-

ing him in contact or connection with Mix, and that the charges made in Mix's note to "Hancock," as they related to Mr. Calhoun and himself, were utterly untrue.

Question by Mr. Wright. Do you know of any person, other than Mix and Vandeventer, as concerned in that contract? if so, please to name them.

Answer. I know of no other person.

Question by Mr. Williams. Do you know whether any money, drawn from the Treasury in the name of Mix, was subsequently paid to any other person? if yea, state the names of those other persons, and the purposes, as far as you know them, for which the money was so paid.

Answer. I do not.

Question by Mr. Floyd. Do you know of any contract made with the Department of War, whilst Mr. Calhoun was Secretary of that Department, in which he had an interest, or in the profits of which he participated?

Answer. I do not

Question by Mr. Floyd. Do you recollect whether or not Clark desired Mr. Hill to procure those papers from Mix, lest he (Mix,) should sell them to Mr. Calhoun or Vandeventer? if so, what do you know.

Answer. This, I think, was part of the letter from Clark to Hill; I know nothing more of this than reading some such expressions in Clark's letter to Hill. This was assigned by Clark as a reason for wishing to get the papers out of Mix's possession promptly.

Question by Mr. Floyd. How long have you been a Clerk in the Department of the Treasury?

Answer. About 18 years.

Sworn and subscribed, this 15th January, 1827.

J. L. ANTHONY.

No. 21.

Testimony of Charles S. Hill.

Charles S. Hill, of the Quartermaster General's office, appeared before the Committee, was sworn, and testified as follows:

Between the 1st and 10th of November, 1825, I received a letter from Major Satterlee Clark, containing a copy of a letter from Mix to him, with a request that I would call upon Mix, and ascertain what documents or evidence he had in support of the facts stated in his letter with some further remarks that he was anxious to get possession of the information as soon as possible, with a view of laying it before Congress at the then approaching session; also, desiring my interference in the matter, not only as a personal favor to him but saying that it was a public duty. His (Clark's) letter also contained one addressed to Mr. Mix, acknowledging the receipt of his communication addressed to the author of "Hancock," and authorizing me to receive any papers he might have touching the subject. This is the substance of the communication I received from Mr. Clark.

Question by the Chairman. Can you furnish the Committee with the letter from Clark to you, referred to?

Answer—Yes, Sir.

The witness then handed to the Committee the following letter, (marked F.)

Question by Mr. Floyd. Did you ever furnish this letter, or a copy of any part thereof, to any person?

Answer. I never furnished a copy of the letter to any person, nor did any person take a copy of it, or any part thereof. I read a part of the letter to an intimate acquaintance, and the letter was read by another.

Question by Mr. Floyd. Do you know how this letter of Mix to Clarke came to be published in the Phoenix Gazette?

Answer. No, Sir.

Question by Mr. Floyd. How long, and in what capacity, have you been employed in the Department of War?

Answer. I came to Washington in the Fall of 1820: at that time I was in the line of the Army, and employed in the Quartermaster's Department. In December, 1822, I was appointed Military Storekeeper on this station, which appointment rendered me liable to do duty in the office of the Quartermaster General, in the War Department.

Question by Mr. Floyd. Do you know of any contract made with the Department of War, whilst Mr. Calhoun was Secretary of that Department, in which he had an interest, or in the profits of which he participated?

Answer. I do not.

Question by Mr. Wright. To whom did you read the letter of Mix to "Hancock," and who is the other person who was permitted to read it?

Answer. I read part of it to General Jesup, and spoke to him, generally, of the other parts of it. This was, I think, within two days after the receipt of the letter. The other person who was permitted to read it, is Major Cross, who is associated with me in office.

Question by Mr. Wright. Have you had any conversation with Major Vandeventer about his interest in the Mix contract?

Answer. I have not.

Question by Mr. Williams. Do you know whether any persons, other than Mix, were concerned in the Mix contract?

Answer. I do not, except what I have learned through the medium of public newspapers.

Question by Mr. Wright. Do you know if Howes Goldsborough had a copy of the letter from Mix to Hancock, before its publication; and, if so, how he came by it?

Answer. I do not.

Question by Mr. Floyd. Had you ever any conversation relative to this letter with Mr. Anthony, of the Department of the Treasury?

Answer. Yes, Sir; and I only now recollect it. At the time of the receipt of the letter, I was living in Georgetown, and Mr. Anthony was my immediate neighbor. I don't think, however, he read the letter; but, upon this subject, my memory is not clear, and I am not willing to speak positively.

Question by Mr. Wright. Did you not call Mr. Anthony to your room, and disclose to him the contents of the letter?

Answer. I can only refer to my answer to the last question in giving an answer to this.

Sworn and subscribed, this 15th January, 1827.

CHAS. S. HILL.

After the witness had signed his testimony, the following question was put to him:

Question by Mr. Floyd. Why did you not communicate this information to Mr. Calhoun?

Answer. I did not place any confidence in it, and conceived he would have looked upon it as a piece of officious impertinence in me had I done so.

CHAS. S. HILL.

Exhibit F.—Accompanying Charles S. Hill's Deposition.

NEW YORK, *November 8th*, 1825.

DEAR SIR: You have below a copy of a letter which I have received from Mr. E. Mix, of Georgetown. If what he states be true, he is in possession of documents of the highest importance to the public, and I have taken the liberty of requesting you to call upon him, and ascertain the facts. I know nothing about the writer of the letter, and shall not make an assertion upon his authority; but if he will permit you take copies of the letters and receipt, of which he speaks, and you know them to be in the hand writing of Vandeventer, upon the receipt of those copies, I will cause an explosion which will blow the late Secretary of War and his chief clerk to the d—l. If I mistake not, the Major, in his examination before a committee of Congress, stated that he had not received any money, nor derived any benefit from the "Rip Rap" contract. Now, if Mix has his receipt for $19,500, on account of the contract, that will do his business; and if he has a letter from Vandeventer, stating that Calhoun was concerned, that will do his business.

If you are willing to do so much for me as I have requested of you, you will not only confer an obligation upon me, but you will be entitled to the thanks of the nation; and I pray you to do it speedily, that I may be able to present every member of Congress, on his arrival at Washington, with positive proof of Mr. C.'s and Major V.'s corruption.

Although my health is not yet perfectly restored, yet I am well enough either to write or fight, and as apt to do so as a Captain of Engineers.

I received your printed handbill, and assure you that the friends of Captain S. are surprised and mortified by his conduct. No one attempts to justify or defend it. Are you not the writer of "Hancock," No. 12?" I have examined the manuscript, and, at first, supposed it was written by Major Cross, but on comparing the writing with the superscription of your handbill, I have changed my opinion.

COPY.

"Confidential to S. Clark, Esq., my name not to be disclosed at present."

"GEORGETOWN, 2*d*, *November*, 1825.

"To the writer of "Hancock." If any information is wanted on the subject of Mr. Calhoun's infidelity, I have it in my power, I think, to furnish you matter sufficient to awaken any unbiassed mind, that he was concerned in the Rip Rap contract, either directly or indirectly, and have written letters of Vandeventer, which most positively mention that he was engaged, and received some portion of the contract, or knew that Vandeventer was making a traffic of it; and when I represented to him the injustice of compelling me to pay the amount of the advance which Vandeventer received, he told me his decision was final, and that there was no appeal, although he must have known the injustice of the decision; and I gave him, at the same time, a receipt, which I had received from Vandeventer, stating that I had paid him $19,500, which he refused to read. Let me hear from you as early as possible, and state what way I shall direct to you.

"E. MIX."

From the tenor of the foregoing letter, you will perceive that the writer wishes to remain unknown at present, and I suspect he wishes to sell the information, of which he is possessed, to Mr. Calhoun, or Major Vandeventer. For this reason, I am anxious to get hold of it as soon as possible.

I am, very respectfully,
Your obedient servant,

SAT. CLARK.

Mr. CHARLES HILL.

No. 22.

Testimony of Samuel Snowden.

Samuel Snowden, of Alexandria, in the District of Columbia, appeared before the Committee, and testified as follows:

Question by Mr. Floyd. Are you not one of the editors and proprietors of the Phoenix Gazette, of Alexandria.

Answer. I am.

Question by Mr. Floyd. How came the letter signed, "E. Mix," addressed to the author of "Hancock," to be published in the Phoenix Gazette?

Answer. I am not aware how it came to be published: I was absent from Alexandria, at the time of its publication.

Question by Mr. Floyd. Do you know who wrote the editorial article, in relation to that letter, and which accompanied its publication?

Answer. I do not, positively, know, but presume the junior editor, William F. Thornton, wrote it.

Question by Mr. Floyd. Do you know of any contract made with the Department of War, whilst Mr. Calhoun was Secretary of that Depart-

ment, in which he had an interest, or in the profits of which he participated?

Answer. I do not.

Question by Mr. Floyd. Have you knowledge of the individuals who were concerned in the Mix contract? if so, state who they were.

Answer. I have no knowledge of any person as concerned in that contract.

Sworn and subscribed, the 15th January, 1827.

S. SNOWDEN.

No. 23

Testimnoy of William F. Thornton.

William F. Thornton, of the town of Alexandria, in the District of Columbia, appeared before the Committee, was duly sworn, and deposed as follows:

Question by Mr. Floyd. Are you not one of the Editors and Proprietors of the Phoenix Gazette, of Alexandria?

Answer. I am.

Question. How came the letter, signed "E. Mix," addressed to the author of "Hancock," to be published in the Phoenix Gazette?

Answer. On Wednesday morning, which was the day previous to the publication of that letter in the Phœnix Gazette, I heard, as a common street rumor, and generally about the house, some communication had been made to the War Department, implicating Mr. Calhoun and Mr. Vandeventer in the profits of the Rip Rap Contract. In the afternoon of the same day, it was communicated to me by Major Haughton, that a letter from Mix to a gentleman in New York had been communicated to the War Department, the result of which would be that Mix would lose a contract which, otherwise, he would have gotten. I inquired of Major Haughton, whether he could refer me to any source where I might obtain more correct information. He said that Major Satterlee Clark, formerly of the Army, was then at Williamson's tavern, and if I could procure an introduction to Major Clark, he expected that he would have no objection to give me the information I desired. I informed him that Major Clark had been an acquaintance of mine, as we had served in the Army together, and that I would call on him, and if his information was satisfactory, would make use of it. I did call on Major Clark after the adjournment of the House of Representatives, stated to him the rumors I had heard, and that his name had been associated with them. He then gave me a history of the manner in which he came by the letter, and the reasons which induced him to place that letter in the War Department: he received the letter during the year 1825, while he was writing under the anonymous signature of "Hancock," a number of strictures upon Mr. Calhoun's administration of the War Department; that he knew Mix to be a great scoundrel, and, in his opinion, a perjured villain; and that he would not sufficiently rely upon any thing coming from him to make use of his information against Mr. Calhoun; he wrote, however, to a friend in Washington, enclosing him the original, or a copy, I am not certain which, of Mix's letter, and

requesting him to see Mix, and endeavor to obtain the authentic papers, upon which Mix had grounded this information; that the gentleman being an officer under Government, declined, on the score of propriety, to have any agency in the matter whatever, and returned Mix's letter; that he afterwards saw Mix in New York, spoke to him on the subject of his letter, which Mix acknowledged he had written, promising at the same time, to furnish the evidence which he then had in his possession, relative to Mr. Calhoun's participation in the Rip Rap Contract, but left the city without complying with his promise; that he never did make any use of Mix's letter in his writings; that when he came on to Washington, a few days before I saw him, he understood, for the first time, I think he said, that Mix had made proposals for another contract, and that he then determined that he would give the Department such evidence of the base character of Mix as would induce it to reject his proposals; that he did carry this letter to the Secretary of War, and explained to him his motive for doing so, which was, in substance, the same he explained to me.

After having received this history of the transaction, and informing Major Clark, that it was my intention to explain it in the Phoenix Gazette, I asked him, if he had any objection to his name being used, or a reference made to him; he said he had not, but it might, perhaps, be as well to use the name of "Hancock," which would answer the same purpose; since every body knew that he was the author of the communications in the New York papers, over that signature. I then observed to him that I should be glad to get a copy of the letter; he said that, by calling at the War Department, he had no doubt that I could procure a copy, which I informed him I should decline doing. During my conversation with Major Clark, there was a gentleman with him, to whom I was introduced on first entering the room, and whose name I do not now remember; but he was one of those who had made proposals for the pending contract. He called me aside, and told me that, while the letter was in the possession of Major Clark, he had taken a copy of it, which he was satisfied was a true copy, even to the spelling, and that, if I thought it would be of any service to me, I might take a copy of it, under an injunction that his name was not to be referred to, since he expected that, if Mix lost the contract, he might possibly get it. I caused my Clerk to take a copy of the letter—I reading to him while he wrote; that letter I published, preceded by my own comments. After handing the manuscript to my printers, I left the office, and did not see the paper that evening until it was too late to correct an error, which I discovered had been made, that of omitting the $19,500; the word "Calhoun," introduced into the letter three times within brackets, was done by myself; that being the usual mode of printers to shew when interpolations are made, for the purpose of making the sense more clear. Upon coming to Washington the next day, I called upon Major Clark, and the gentleman before alluded to, and explained to them the cause of the omission. Major Clark then informed me, that the Secretary of War had returned him the letter, which letter he shewed me, together with the Secretary's envelope. From that time to this, I have held no communication either with Major Clark, or with the gentleman who furnished me with the copy. I will add, that, upon the first interview with Major Clark, he

expressed his decided disbelief of the charges brought by Mix's letter against Mr. Calhoun.

Question by Mr. Floyd. What is the name of the person from whom you received a copy of E. Mix's letter?

Answer. I do not remember; if I were to hear it repeated, it is probable I should remember it.

Question by Mr. Wright. Was it "Goldsborough?"

Answer. I believe it was.

Question by Mr. Floyd. Had you any assistance in writing the editorial article, accompanying the publication of E. Mix's letter; or did you ever consult any person about the propriety of publishing that letter?

Answer. I had no assistance; neither did I consult any person.

Question by Mr. Floyd. Do you know of any contract made with the Department of War, whilst Mr. Calhoun was Secretary of that Department, in which he had an interest, or in the profits of which he participated?

Answer. I have no such knowledge.

Questions by Mr. McDuffie

Question. Did Clark express any unwillingness to permit the letter to be published, in your first conversation?

Answer. He did not, that I remember.

Question. Did you inform any person or persons of your intention to publish the letter? If yea, state the names of these persons, and whether they approved or disapproved of the intended publication.

Answer. I informed no person except Major Clark, Mr. Goldsborough, if that be the name of the gentleman, and my own clerk.

Question. You speak of rumors which you heard on the Wednesday preceding the publication in your paper, of the letter signed "E. Mix," tending to implicate Mr. Calhoun and Major Vandeventer. Can you recollect any of the persons from whom you heard these rumors?

Answer. I can name no person distinctly, till Major Haughton gave me the information: no communication was made, direct to me except by Major Haughton.

Sworn and subscribed, this 15th day of January, 1827.

W. F. THORNTON.

No. 24.

Testimony of Captain J. L. Smith.

Capt. John L. Smith, of the Corps of Engineers, and now employed in the Engineer office of the War Department, appeared before the committee, was sworn, and testified as follows:

I have no knowledge of Mr. Calhoun's having been concerned, directly or indirectly, in the Rip Rap contract, nor do I know of any letters of Major Vandeventer, which have any reference to that circumstance. I know of Mr. Mix's having represented to Mr. Calhoun, the injustice of compelling him to account for all the advance, which had been made originally on the contract. In order to explain this

circumstance, it is proper to state, that, at the commencement of the operations of the contract, an advance, amounting to the sum of ten thousand dollars, was accorded by the War Department, to facilitate the operations under that contract; Mr. Mix, being the only person responsible to the War Department, directly, was held accountable for the liquidation of that advance. It was known, however, to the Secretary of War, that other parties were concerned in that contract. Major Vandeventer, Mr. Jennings, holding from Mix, were these parties, when the Secretary of War determined to have the advance liquidated, by withholding from the avails of deliveries under the contract, one-third of their amount, and applying it to that purpose.

The decision alluded to in the letter of E. Mix, as being final, is not distinctly recollected; but is supposed to have referred to the accountability of Mix, which has been explained. I know nothing of a receipt from Major Vandeventer to Mix, which it is alleged Mr. Calhoun had refused to receive.

Question by Mr. Wright. Do you know of any person or person being concerned in the Mix contract, other than E. Mix?

Answer. I know that Major Vandeventer and Howes Goldsborough & Co. were concerned in the contract. Major Vandeventer, I understood, became concerned in February or March, 1819, at which time, I understood, he had one half the contract. Howes Goldsborough & Co. became interested in April, 1821, as well as I recollect: these are the only persons that have been recognised; Jennings, as I have stated before, held under Mix, and was never recognised. I know the fact of Major Vandeventer's being concerned, from having seen the instrument of writing by which he became concerned; as it was, at one time, filed in the Engineer Department.

Question by Mr. Wright. When did Vandeventer become interested in the contract; and when and how was the knowledge of his interest first communicated to Mr. Calhoun?

Answer. I don't know when he became interested, other than by reference to the instrument of writing I have mentioned. As to the latter part of the qustion, I have no knowledge. The first investigation which resulted in a development of the circumstances relating to the Mix contract, was in the Spring of 1820, I think; it was induced by an anonymous communication to the President, alleging several instances of mal-administration of the War Department, and particularly of the Engineer Department. Among these allegations, was one referring to the connexion of Major Vandeventer with the Mix contract, which gave rise to a statement which was prepared privately, and handed to the President; it was wanted and sent for, before it was finished, and the original rough copy was sent, and no copy was preserved; it was not intended to be recorded.

Question by Mr. Wright. At whose instance, and by whom, was the private statement spoken of, made out; and what were its contents, as near as you can recollect?

Answer. It was prepared by me, by direction of Mr. Calhoun, Secretary of War. It contained answers to the allegations adverted to. Those of them which referred to the Engineer Department, and which, of course, were those only to which the answers referred, I believe to have been comprised in objections to the manner in which

the works were carried on at Old Point Comfort, and particularly to the number of houses that had been constructed, and to the fitting up of a vessel at a very great expense; there was some charge against Gen. Swift, but what it was I don't now recollect. The answers to the allegations were satisfactory to the President, with the exception of those which charged bad economy in the arrangements at Old Point Comfort.

Question by Mr. Wright. Was there any thing in those charges, or in the statement made out by you, relating to the Mix contract, or Vandeventer's or any other person's interest in it; and at what time was that statement made out?

Answer. I have stated that one of the allegations was Major Vandeventer's connection with it; I have also stated that it was in the Spring of 1820, but the month I cannot name.

Question by Mr. Wright. Had you any conversation with Mr. Calhoun, about his being satisfied with Major Vandeventer's participation in that contract, if so, relate it?

Answer. I have had a conversation with Mr. Calhoun respecting Major Vandeventer's connection with the contract; but so far from his expressing himself as being satisfied, he told me Major Vandeventer must leave the office, unless he should abandon his connection with the contract. I have heard Mr. Calhoun frequently express his regret at Major Vandeventer's connection with the contract.

Question by Mr. Wright. At what time did the conversation you have mentioned in your last answer, take place with Mr. Calhoun?

Answer. The conservation referred to in the first part of the answer, in which Mr. Calhoun expressed his determination to put Major Vandeventer out of the office, unless he should relinquish his interest in the contract, occurred some time before Goldsborough & Co. became interested in the contract, and was induced as, I believe, from the determination of Mr. Calhoun, to make the decision which has been adverted to in a previous part of the testimony, and which might operate immediately against the interest of Mix; because that decision would be unfavorable to the interest of Vandeventer, if he still continued to hold an interest in the contract.

Question by Mr. Wright. When did Goldsborough and Co. become interested in the contract?

Answer. On the 13th April, 1821.

Question by Mr. Wright. You say the statement was sent for before it was completed, and the rough draft forwarded; by whom was the statement sent for?

Answer. By the President.

Question by Mr. Wright. Did Mr. Calhoun give any specific directions what facts you shall carry into the statement?

Answer. No.

Question by Mr. Wright. Was Vandeventer ever recognised by the Secretary of War as a party in interest in Mix's contract; if so, at what time, and in what way?

Answer. I don't know of his having been directly recognised at any time.

Question by Mr. Wright. At what time was the instrument of writing you speak of, as showing Vandeventer's interest in the Mix con-

tract, filed in the Engineer Department; and when, for what purpose, and by whose order, was the instrument withdrawn from the Department?

Answer. Some time in the year 1819, to the best of my recollection, the instrument was filed as stated, and I don't recollect that it ever has been withdrawn; it may be there yet.

Question by Mr. Campbell. Have you any knowledge of a person by the name of Walker being concurred in the Rip Rap contract?

Answer. I have not.

Question by Mr. Williams. Was Major Vandeventer indirectly recognised, at any time, as a partner in the Mix contract?

Answer. He was known to be interested in the contract, and with the assent of Mix, his (Vandeventer's) agents were recognised by Col. Gratiot; so far as that may be considered as an indirect recognition, he was so recognised.

Question by Mr. Williams. Do you know whether money, drawn from the Treasury, in the name of Mix, was afterwards paid to any other persons? If so, state the name of those other persons, and the purposes for which payment was made to them.

Answer. I don't know that money was drawn from the Treasury in the name of Mix. It it unusual to draw money from the Treasury in the name of any but disbursing agents.

Question by Mr. Williams. Do you know whether the disbursing agent made payment to any person, other than Mix, under the Mix contract?

Answer. I have stated before, that Jennings held under Mix; money was paid to him under the authority derived from Mix; money was also paid to Goldsborough and Co. I don't know of money having been paid to any other.

Question by Mr. Ingersoll. At what time did Mr. Calhoun determine to have the advance liquidated, in the manner you have stated; and how do you know that he ever did so determine?

Answer. His first decision was communicated through the Engineer Department to Col. Gratiot, in January, 1821, to take effect on the 1st July, 1821. I know that fact of his determination, from my official situation in the Engineer Department.

Question by Mr. Ingersoll. How long have you been employed in the Engineer Department?

Answer. Since April, 1819.

Question by Mr. Ingersoll. Do you know when the bond was received in the Department for the performance of the Mix contract?

Answer. I was not in the Department when the first bond was received, and I have no distinct recollection respecting the second bond, whether it was received before or subsequent to my being in the Department.

Question by Mr. Ingersoll. Did you furnish the Committee, in 1822, with a certified copy of the bond given by Mix, Oakley, and Samuel Cooper, dated 5th August, 1818, with a certificate of R. Riker, approving the security, of the same date?

Answer. In conversation with Mr. Barbour, yesterday, he pointed out to me, among the documents accompanying the report made by the Engineer Department to the Committtee, and at the period referred to,

and observed that the certificate of Riker, which appears to have been written upon the copy furnished as a true copy of the second bond, was not written on the original bond. He inquired if I could explain it. I told him at the time, I had not recollection of the circumstance; that copies of papers prepared in the office by the clerks, were certified to by the officers, on faith of the correctness of the clerk. I have reflected a good deal upon the matter since; have conversed with one of the clerks now in the office, who was in the office at the period alluded to, and, also, with Major Vandeventer; the result of these conversations has made upon my mind an indistinct impression of the reason why the second bond was accepted without the certification, to wit; that the securities on the two bonds were the same, and that the first bond, having the certificate, was supposed to fulfill the object contemplated by the certificate. Respecting the certificate being attached to the copy of the same bond, I have no knowledge.

Question by Mr. Campbell. Was the information communicated to the President, and to which you have alluded, derived from the files of the Engineer Department?

Answer. So much of it as related to the charges against the Engineer at Old Point Comfort, was derived from the files of that Department. So much of it as related to Major Vandeventer and Gen. Swift, was obtained from them.

Question by Mr. Ingersoll. Were the parties to both bonds the same, and was the quantity of stone specified in both bonds the same?

Answer. The first bond was singed by Mix and George Cooper, as the parties to the contract; the second bond was signed by Mix only, as the party to the contract; the quantity of stone stated in the first bond, was one hundred thousand perches; in the second bond, the quantity is stated at one hundred and fifty thousand.

Question by Mr. Williams. By whose authority was the original bond cancelled?

Answer. My answer detailing conversations with Mr. Barbour, Major Vandeventer, and one of the clerks of the Engineer Department, contains all I know in relation to the object of this question.

Question by Mr. Williams. Was Mix in this city at the date of the execution of the second bond?

Answer. I don't know.

Question by Mr. Ingersoll. You say you have no knowledge of Mr. R. Riker's certificate being attached to the copy of the second bond furnished the Committee, in 1822. Was the paper now presented to you, marked H, certified "a true copy," by "J. I. Smith," furnished that committee by you?

Answer. The signature attached to the certificate is mine.

Question by Mr. Ingersoll. Why did you attach to that paper the certificate of R. Riker, approving of the bond, when there is no such certificate on the original bond?

Answer. I have stated that copies of papers prepared in the Engineer Department, were made by the clerks, and certificates of their being true copies were signed by the officers on the faith of the correctness of the clerks, and generally without examining by the officers.

Questions by Mr. Ingersoll. Did you certify that this paper was a true copy, without comparing it with the original?

Answer. I am sure I did, as I would not knowingly certify that to be a true copy which was not so.

Question by Mr. Ingersoll. What clerk made out this copy for you to certify?

Answer. George Bibby, who is now dead.

Question by Mr. Ingersoll. Is what purports to be a copy of Rikers certificate, in the hand writing of Mr. Bibby?

Answer. Yes.

Question by Mr. Wright. Have you knowledge of Mix presenting to Mr. Calhoun about April 1821, a bundle of papers relating to the Mix contract? If so, state particularly what you know.

Answer. I have no knowledge of the fact alluded to.

Question by Mr. Wright. Do you know any thing of a confidential letter written by, or purporting to be written by, Major Vandeventer, connected with Vandeventer's interest in the Mix contract? If so, state what you know, how you became informed, where the letter now is, or what become of it, and if lost, its contents, as well as you recollect.

Answer. I never heard of such a letter before.

Question by Mr. Wright. Do you know of Mix's ever requesting of Mr. Calhoun the return of such a letter, and alleging that such a paper had been withdrawn from his bundle? If so, state particularly what you know.

Answer. I have just stated that I never heard, before, of such a letter.

Question by Mr. Wright. Do you know of Mix's making a request of Mr. Calhoun to have any paper of that kind returned? If so, state what you know relating to that matter.

Answer. My answer is the same as before, but if the question were modified by striking out "of that kind;" I answer that I was in the room of the Secretary of War when Mr. Mix came in and demanded the return of some paper; of the nature of the paper I have no knowledge. I was engaged in business with the Secretary respecting the Engineer Department when Mr. Mix came into the room, and asked for the return of some papers. I don't recollect whether the Secretary handed the papers to him from his table, or whether he referred him to the clerk, but, very shortly afterwards, Mr. Mix returned and said that one of the papers contained in the bundle he had left with the Secretary, was not returned. I left the Secretary's room immediately after; Mr. Mix left the room before me.

Question by Mr. Wright. Was Mr. Vandeventer in the room after Mix demanded the lost paper and before you left it?

Answer. The Secretary of War sent for Major Vandeventer upon the complaint being made by Mix that one of the papers furnished was not included in those returned, and asked him if such was the fact, or if he knew any thing about it; Major Vandeventer replied that all the papers had been returned.

Question by Mr. Wright. If Mr. Calhoun made any observations relating to the lost paper, other than you have stated, relate them.

Answer. I don't recollect any.

Question by Mr. Wright. Were you ever present at any other interview between Mr. Calhoun and Mix, concerning the Rip Rap contract? If so, state what occurred during such interview.

Answer. I may have been present on occasions such as those adverted to, but have no recollection of any particular occasion, or of any thing that transpired concerning the Rip Rap contract.

Question by Mr. Wright. Have you ever seen a letter purporting to be from Vandeventer to Mix, dated the 3d August, 1818, in which there was any allegation that the Secretary directs, or the *Seet*, directs any thing touching the Mix contract? If yea, state particularly all you know relating to it.

Answer. I have never seen such a letter.

Question by Mr. Wright. Do you know of any person, other than Vandeventer, employed in the Department of War, being interested in any contract with that Department while they were so employed? if yea, name them.

Answer. The predecessor of Mr. Calhoun, Mr. Crawford, made a contract with a clerk in the War Department, (Mr. Boyd) for the supply of muskets for the Department; the fact is alluded to in the report of the Engineer Department of the 29th April, 1822, addressed to the committee then engaged in the investigation of the Mix contract. I recollect no other.

Question by Mr. Wright. Have you ever had any conversation with Vandeventer or General Swift, as to their's, or either, interest in the Mix contract? If so, relate it.

Answer. I have already stated that I have had conversation with Vandeventer respecting his interest in the Mix contract. I have never had any conversation with General Swift, in relation to any interest of his in the contract, nor do I believe he ever had an interest in the contract. His affidavit that he had no interest in the contract is sufficient to satisfy me.

Question by Mr. Wright. Do you know of Mr. Calhoun's ever having been interested in any contract made with the Department of War, while he was Secretary of War; or of his participating in the profits of any such contract?

Answer. I do not.

Question by Mr. Ingersoll. Were you one of the arbitrators to settle the difficulty between Mix and Major Vandeventer? If yea, state what you know about the papers being burned.

Answer. I was one of the arbitrators for the purpose stated; the other was Major Dent, the brother-in-law of Vandeventer and Mix. He was staying at my house, and being on friendly terms with both families, (Mix and Vandeventer's) he frequently alluded to hostile feeling which he supposed to exist at that time between them, and expressed a desire that a reconciliation should be brought about. In the course of our frequent conversations on the subject, it was suggested that, as their differences arose from a misunderstanding in relation to their pecuniary affairs, each supposing the other to be his debtor, that the matter might be settled by a reference to friends, and, the statements of each being exhibited, that the correct state of the fact could be ascertained. They, the parties, Mix and Vandeventer, were accordingly invited to meet Major Dent and myself at my house, and to bring with them all papers they had in their possession which had any bearing on the subject of difference between them. They assembled at my house some time in the Spring of 1825, I think in

pursuance of the invitation adverted to, each party provided with the papers necessary to establish his claim. On examining the papers, neither Major Dent nor myself could determine the merits of the relative claims. Major Vandeventer and Mix, each, in sustaining their claims, entered into a warm discussion, which amounted to very little more than crimination and recrimination, as to the designs of each to deprive the other of his just dues. After a while, when the parties became a little more moderate, it was suggested that as it was extremely difficult to ascertain which had right on his side; that it might be for the advantage of both to come to an amicable settlement of their accounts, by releasing each other from all obligations under them. The parties having agreed to this suggestion, it was inquired whether their accounts were embraced exclusively in the papers exhibited, and it was answered that their whole correspondence had reference to their pecuniary concerns. It was then suggested and agreed to, that each party should return to his house and bring with him all letters or communications received from the other, that he might have in his possession. The papers were brought and burned in the presence of Major Dent and myself, without being examined by either, each party having pledged himself that all the papers in their possession were included among those furnished.

Question by Mr. Ingersoll. Was any thing said, at this time, about a person being interested in the Rip Rap contract whose name was to be kept secret?

Answer. There was not, to my recollection.

Question by Mr. Ingersoll. Why did you advise that all papers relating to this contract should be burned?

Answer. For the reasons stated, that their whole correspondence referred to their pecuniary concerns, which it was proposed to settle by a mutual release of all claims.

Question by Mr. Ingersoll. Can you tell the committee what those papers which were burned, or any of them, contained?

Answer. I cannot, because they were burned without being examined.

Question by Mr. Williams. Have you any recollection of the points in contestation between Vandeventer and Mix? if so state them.

Answer. It related to expenses that had been incurred by each in the early stages of the contract, before it had gone fully into operation.

Question by Mr. Williams. At what time were these expenses incurred, and for what purposes?

Answer. I do not recollect distinctly, but it is my impression that Major Vandeventer's claim included responsibilities incurred by him as a friend of Mix, before he became interested in the contract.

Question by Mr. Williams. Who were the persons to whom Major Vandeventer became so responsible?

Answer. I don't recollect.

Question by Mr. Williams. Did you ever hear Mix say that Vandeventer had sold to him the fourth of the contract, which was subsequently sold by Vandeventer to Samuel Cooper, of New York?

Answer. I have, but don't recollect what he said about it.

Question by Mr. Williams. Did you ever hear Vandeventer say any thing on this subject?

Answer. I have no recollection of having heard him say any thing on this subject.

Question by Mr. Williams. Who owned the vessel in the fitting up of which bad economy, in the opinion of the President, had been used, and which you say was not satisfactory to him?

Answer. Government. The explanation of Colonel Gratiot was, that, relying on the experience of Commodore Barron, he had requested him to superintend the fitting up of this vessel, and Com. Barron had gone into greater expenses in effecting that object than he would have authorized, had he been aware of the fact that they would have been made. The vessel was called a "tender," and was intended to be used in plying between Old Point Comfort and Norfolk, or other places, with which communication was necessary in the prosecution of the works, in transporting freight and passengers.

Question by Mr. Williams. Why was it necessary to make a private explanation respecting that transaction?

Answer. The cause of the statement being made privately, was the shape in which the accusation was presented, being anonymous. So much as related to the transaction above stated, was afterwards made the ground of an official correspondence with Col. Gratiot.

Question by Mr. Floyd. When was the Engineer Department organized as it now exists; and when was the Chief Engineer ordered to this place?

Answer. The present organization of the Department, has been the effect of gradual improvement; the Chief Engineer was ordered to establish himself in Washington, as the Chief of the Engineer Department, on the 3d April, 1818. When I entered the Engineer Office, in April, 1819, there was no organization; the letters and papers were not filed, nor was there any arrangement of the drawings, which would admit of a ready reference to them; besides there was a great deal of business in arrear, and a number of voluminous reports were to be entered in the report book; the clerks were employed during such intervals as could be spared from the attention requisite to be given to the current business of the office, in filing and registering the letters and papers, and in bringing up the arrearage business alluded to. It is my impression that more than a year was consumed in effecting these objects.

Question by Mr. Floyd. Do you know whether Mr. Calhoun entertained any suspicion that Gen. Swift was concerned in the Rip Rap contract?

Answer. I have reason to believe that he did not entertain any such suspicion from the fact of his having declared to Commodore Lewis, upon the occasion of a general charge of misdemeanor, being alleged against Gen. Swift, in a communication from Commodore Lewis to Mr. Calhoun, that he would pledge himself to have a thorough investigation instituted upon any charge that he might make against any officer of the Government. Gen. Swift's name was included with that of Maj. Vandeventer and Col. Armistead, in the communication of Commodore Lewis, which has been adverted to; subsequent communications from Commodore Lewis, led to an investigation of

the charge alleged against Col. Armistead, and the result was, an honorable acquital of Col. Armistead of the charge. The charges against Major Vandeventer and Gen. Swift, were not repeated by Commodore Lewis, in such a manner as to warrant the Secretary of War in noticing them.

Question by Mr. Clarke. What were those charges made by Commodore Lewis, against Gen. Swift and Major Vandeventer; and were they made in writing?

Answer. I don't think there was any specific charge; but they were made in writing, and the communications on the subject are now official, although, at first, the letter of Com. Lewis was marked "private;" the files and records of the War Department will furnish the correspondence.

Question by Mr. Floyd. When did Gen. Swift resign his office of Chief Engineer?

Answer. On the 12th November, 1818.

Question by Mr. Floyd. Previous to Mr. Calhoun's going into the Department of War, what was the usage of the Engineer Department in relation to contracts, to records, and the routine of business?

Answer. I can only only answer from my own experience as a superintending Engineer and disbursing agent. I was not called upon by my instructions from the Chief Engineer, to submit contracts for approval, before they were entered into; I nevertheless, in regard to two large contracts that I entered into, did submit them to Gen. Swift of my own accord. Gen. Swift approved of them, and they were entered into without having been submitted to the War Department. I made other contracts of less importance, without consulting the Chief Engineer, upon the general authority vested in me, by my instructions to pursue such measures as should be best adapted to the prosecution of the object committed to my superintendence. As to records, and the routine of business, I am not able to say, distinctly, what was the practice of the Chief Engineer; but it is my impression that no records were kept, loose copies being preserved of communications that were made by the Chief Engineer, and the routine of business being confined, chiefly, to general instructions. I never received particular instructions, not even in relation to the mode of keeping and rendering accounts.

Question by Mr. Floyd. Was there any correspondence from the Department of War, relative to the execution of the Mix contract at the Rip Raps, or Old Point Comfort; if so, can you state the character of that correspondence?

Answer. I don't recollect any correspondence of the War Department, referring to the object of the question, except that in relation to the size of the stone required to be furnished. Mr. Mix contended that he might furnish the stone of any size that was most convenient to himself, as there was no provision in the contract respecting the size of the stone: the Secretary of War, contended, and decided accordingly, that the stone must be furnished of a suitable kind, with respect to size, as well as quality, to fulfill the object contemplated by the Government in entering into the contract: accordingly, in the first instance, he required the contractor to furnish stones weighing

one hundred and fifty pounds or more, and afterwards required him to furnish stones weighing at least one thousand pounds.

Question by Mr. Floyd. What is your impression relative to the manner in which the execution of that contract was enforced?

Answer. I have always considered the manner of the Secretary of War, Mr. Calhoun, alluded to, as just, although it may be considered severe, in comparing it with the manner in which other contracts, of the same nature, were permitted to be executed.

Question by Mr. Floyd. Have you any knowledge of Mix's impression on those points?

Answer. The indulgences granted, by Mr. Calhoun, to the other contracts alluded to, were known to Mix, and were the foundation of frequent complaints from him.

Question by Mr. Floyd. What were the impressions, as to the general conduct of the administration of the Department of War, from 1817, to March, 1825, whilst Mr. Calhoun was Secretary of that Department?

Answer. I will answer what were my own impressions, and what gave rise to them: my own impression has always been, that the War Department had great defects in its organization at the time Mr. Calhoun entered upon its administration, and that during his administration, it attained to as perfect a state of organization, as it was susceptible of. Since I have been employed in the Engineer Department, I have had occasion to hold frequent intercourse with Mr. Calhoun, concerning the details of the Engineer Department. When Mr. Calhoun first commenced upon the re-organization of the Engineer Department, I differed with him in opinion as to the expediency and propriety of some of the measures suggested by him, and carried into effect by his order. I stated my objections to him, but they were overruled, I have since been satisfied of the correctness of those measures.

Question by Mr. Floyd. Do you know when Mr. Calhoun left this city, for South Carolina, and when he returned, during the year 1818?

Answer. I was not in Washington at the period of his departure, or of his return, at the time alluded to.

Question by Mr. Floyd. Have you had any conversation with Satterlee Clark, touching this investigation, or the publication of Mix's letter? if so, state that conversation.

Answer. On the day before yesterday, on my way to the Capitol, to attend the Committee, I was stopped by Major Clark, near Williamson's hotel. The most friendly intercourse has always existed between Major Clark and myself. He commenced some remarks, the object of which appeared to be, to satisfy me that he had had no concern in furnishing the letter, published in the Phoenix Gazette, signed "E. Mix." I told him it was not necessary for him to offer any explanation to satisfy me that he would not be guilty of a discreditable act. He then declared, that, in this business, he acted independently of every one; that, on reading this communication, in the Phoenix Gazette, he had called upon the Editor, and demanded the author of the remarks which accompanied the communication, and the source from which both had been received. The answer of the Editor was,

that he could not give up the name of the author; that the communication was received from too high authority to warrant him in giving up the name. He also spoke of a letter, that had been written from Washington, stating that Goldsborough had paid him a thousand dollars, as a bribe, for delivering up the letter from Mix, and of two letters having arrived at the Post Office of Washington, on the same day; one of them known to be from the gentleman to whom the information alluded to, had been communicated; the other, in the same hand writing, addressed to Major Vandeventer. He stated, as his object in mentioning the circumstance to me, that he wished me to ascertain from Vandeventer, if he, Vandeventer, had made any such communication. I informed Major Clark, that Major Vandeventer had informed me of a declaration having been made, of such a bribe having been offered and accepted, and had been communicated to him; that he (Major Vandeventer) had, at the same time, mentioned to me that he regarded it as a fabrication, and not worthy of the consideration of any one. Major Clark then related to me what had passed between him and Goldsborough; he stated that, having understood that Goldsborough had been underbid, recently, in proposing for a contract, he had taken occasion to inquire of him the truth of the fact, and whether any decision had been made in favor of the bid of Mix, the person who furnished the lower bid alluded to; on learning from Goldsborough that it was not certain that any decision had been made on the subject, he mentioned to him that he had, in his possession, a letter, which, he supposed, if genuine, would prevent the Secretary of War from giving any contract to Mix, if he should become informed of the existence of said letter. He then showed the letter to Goldsborough, and asked him if he knew the writing to be Mix's? Goldsborough replied in the affirmative, and requested permission to take a copy of the letter, which was granted; that, on the morning of Christmas day, he called on the Secretary of War, and handed him the letter, privately, and, after several days, it was returned to him.

Question by Mr. Campbell. Please to state all you know of the letters to which you have alluded, in your last answer?

Answer. On mentioning to Major Vandeventer the conversation I had had with Major Clark, so far as he was concerned, he told me the letter, to which Major Clark alluded, must have been one he had addressed to Mr. Goldsborough, in which he had stated the fact alluded to, and, at the same time, his belief of its being without foundation; that the two letters received, on the same day, in Washington, must have been from Goldsborough, as he had, shortly after, received a letter from him on the subject, and supposed he, Goldsborough, may have communicated with some other friend at the same time.

Question by Mr. Ingersoll. Who determines on the sufficiency of bonds sent to the Department on their arrival there?

Answer. Since I have been in the Engineer Department, the Secretary of War has decided upon the sufficiency of bonds offered in relation to transactions in the Engineer Department.

Question by Mr. Ingersoll. Do the rules of the Department allow a contractor to receive advances, and to enter upon the performance of his contract, before bonds have been received and approved?

Answer. Not since I have been in the Engineer Department.

JANUARY 18, 1827—*Examination Continued.*

Question by Mr. Williams. What contracts did you make without consulting the Secretary of War?

Answer. I made two large contracts, one for the supply of stone, one for the execution of masonry, at Fort Niagara. The contract for stone was with Ephraim T. Gilbert; the contract for the execution of masonry was with Wilcox, McIntyre, and Stewart. Both contracts were made in the Spring of 1816. Besides these, I made a great many small contracts, that I do not now recollect; they have all been published among the documents of Congress; these contracts have all been executed.

Question by Mr. Floyd. Do you know whether the then Secretary of War had any knowledge of these contracts?

Answer. I do not.

Questions by Mr. McDuffie.

Question. When was it that Mix alleged to Mr. Calhoun the loss of a paper as you have testified?

Answer. I don't recollect the date exactly; I think it must have been late in the year 1824.

Question. In the execution of the Mix contract, was there a decision made by Mr. Calhoun that the stone should be delivered from the Potomac, instead of the York river; and have you heard Mix complain of that decision?

Answer. There was a decision of Mr. Calhoun that the stone of York River, being found to be of a quality unsuitable for the purposes for which it was wanted, would not be received; nor would any stone be received that was not of a suitable quality. I don't know that Mr. Calhoun specified the Potomac as the point from which the stone should be furnished. It is proper for me to state that the decision above mentioned, was made before I entered the Engineer Department, and that I can speak of it now only from information derived from others. I know that Mix has frequently complained at the refusal of the Government to receive the stone from York river, agreeably to the stipulations of the contract.

Question. What was the estimated difference in the expense of furnishing stone from these two points?

Answer. I don't know that any estimate has ever been made; but I suppose the difference would be that which would be produced by the difference in the expense of freighting the stone; the distance from York river being not more than a fourth or fifth of the distance from the Potomac; and the value of the stone in the quarry, which Mr. Mix was compelled to pay on the Potomac, and which would have been without expense to him in York river as he owned the quarry.

Question. What difference would these circumstances make in the price, according to the best opinion you can form?

Answer. I suppose the difference of freight would be more than one-half in favor of York river, say three-fifths; the freight, at the time the contract was entered into, was two dollars and a quarter to two dollars and a half per perch, from the Potomac; the cost of the stone

in the quarry, I have learned, was about fifteen cents a perch, at or about that time.

Question. In organizing the Engineer Department, to what extent did Mr. Calhoun bestow his personal attention and labor to the minute details of the system?

Answer. Besides suggesting most of the measures which led to the organization of the Department as it now exists, in the early part of his administration, while I was in the Engineer Department, Mr. Calhoun supervised the correspondence in relation to all important subjects, and entered into the most minute examination of the accounts of the disbursing agents; he devoted himself particularly to the supervision of the accounts. Since I have been in the Engineer Department, it has always been my duty to inspect the accounts; during the period above stated of the strict supervision of the accounts by Mr. Calhoun, I was required to carry the accounts into his room, and to read over to him every item of each account, and to state any objections to them that occurred to me in the progress of reading; it very often happened that objections were made by him to items that I considered to be unworthy of notice, on account of their trivial amount: he would then remark that the efficiency of an inspection depended more upon its being applied to small concerns, which it might be supposed would not attract notice or objection, than to large concerns, which were not likely to be neglected designedly: the effect of this minute inspection, and of frequency of objections to accounts, became manifest by the improvement which was gradually made by the disbursing agents in making out or preparing their accounts. The regulations now existing for the government of the Engineer Department, providing for the accountability for property resulted, from suggestions from Mr. Calhoun; the effect of these regulations, and of the regulations which they superseded, has been such that no measure can be adopted without knowledge being in possession of the War Department, in relation to all facts connected with it: that no estimate relating to an important and extensive object is acted upon without being submitted to the test of an examination of an individual not concerned in making out the original estimate; that no money is asked for without a detailed exhibit of the objects to which it is to be applied, being furnished; that the most minute information in relation to the manner of making, and the effect produced by a disbursement is furnished by the subordinate officers; that moneys being furnished monthly upon requisitions, no defalcations can now occur for a period beyond a month, as it is required before the money is furnished upon the monthly requisition, that an exhibit should be furnished of the money previously obtained.

Question. Are the accounts of the disbursing officers examined in the Engineer Department, before they are sent to the Auditors of the Treasury? if yea, state the difference between such examination and that which is made by the Auditors, and its importance.

Answer. The regulations alluded to, enjoin that such an inspection should be made at the Engineer Department, and it is made accordingly. The difference between the examination made at the Engineer Department, and that made by the Auditors, is, that the former is directed to the necessity and adaptation of the articles charged, for the

purposes for which they were procured; and, also, to the quantities and prices. The examination of the Auditor is intended to ascertain if the disbursements are authorized by existing laws, and if the calculations are correctly made, and the forms of the Treasury Department complied with. The importance of the inspection by the Engineer Department, is, that the objects to which it is directed are of a nature which can be understood by those only who have professional qualification, and which, therefore, it may be supposed the Auditors would not understand.

Question. Was there any examination, other than that by the Auditors, before the new organization of the Engineer Department by Mr. Calhoun?

Answer. I am under the impression that, after I entered the Engineer Department, the practice which had perviously existed of disbursing agents sending their accounts directly to the Auditor, was continued for some time.

Question. Under the new organization and arrangements, can you, at any time, by the documents filed in the Department, ascertain the exact state of every fortification, the amount of money expended, and the progress of the work? if yea, explain the manner of doing it.

Answer. To the question I answer, Yes. The following circumstances will admit of its being done. A report is made, monthly, exhibiting the progress and cost of the work during the month, and of the quantity and cost of the materials procured, and of the portion thereof consumed during the month. At the expiration of each quarter, with the quarterly accounts, are furnished returns of property procured during the quarter, and shewing the portion of it applied, and how applied. These returns constitute the accountability of the agents for the property, in contradistinction to their accountability for the moneys in their possession. At the expiration of each year, terminating on the 30th September, each superintending Engineer furnishes a statement exhibiting, in the most minute detail, the object of every expenditure that had been made, up to the termination of the 30th September preceding, and the same particulars in relation to the year between the periods stated. This statement also exhibits the amount of moneys available for the service of the year, whether derived from appropriations of the year, of balances of former appropriations undrawn from the Treasury, or for the balance remaining in their hands unexpended. The statement first represented, as to the application of the moneys disbursed, corresponds with this exhibit. The balance unexpended on the 30th September, of the year embraced by the report, whether remaining in the Treasury, or in the hands of the Agent, is exhibited, and its contemplated application is shewn. Accompanying this general statement, is a memoir, shewing the progress of the work since its commencement, and detailing more particularly any important incidents which may have occurred in its progress through the year reported upon; also, reporting the number of contracts existing, distinguishing those made during the year, and stating the opinion of the officer with regard to the ability of the several contractors. The results exhibited by the statement and memoir, are illustrated by a drawing, or drawings, exhibiting the exact condition of the work at the termination of the year reported upon.

Question. Did any of the means of enforcing accountability, enumerated in your answers to the foregoing questions, exist under the system which prevailed before Mr. Calhoun came into the War Department?

Answer. There were none other than the regulations established by the Treasury Department, which I suppose were not generally communicated, from the fact that they were never communicated to me while I was a disbursing agent.

Question. Was the general tendency of Mr. Calhoun's improvements to substitute fixed rules, in the place of discretionary power, in the head of the Department?

Answer. It was.

Question. What was the general character of his administration, as relates to the rigid and inflexible enforcement of the general rules established for the government of its subordinate agents?

Answer. That first impression among the Engineer officers was, that the rules, and the mode of enforcing them, were unnecessarily rigid. The present impression, and the impression for some time past, I believe to be directly the reverse of that represented to have been made in the first instance. My own impression respecting the rules, is very favorable to them, as to the effects they are calculated to produce; but I always considered that the effects alluded to, have been produced chiefly by the rigid manner in which they have been enforced.

Question. What was the general character of Mr. Calhoun's administration of the War Department, on the score of fidelity, zeal, and devotedness to the public service?

Answer. I think the best answer to that is a reference to the results that have been produced, during his administration of the War Department, compared with the results produced by the administration of any other Institution in the country. As far as my personal knowledge enables me to answer the question specifically, and the frequency of my intercourse with Mr. Calhoun gave me ample opportunity of acquiring such knowledge, I believe that the fidelity, zeal, and devotedness to the public service, of Mr. Calhoun, during his administration of the War Department, has never been surpassed by any public other in the performance of his duties.

Questions by the Committee

Question by Mr. Ingersoll. Have you examined the contract made between General Swift and E. Mix, of July 25th, 1818? if yea, in whose hand writing is the instrument drawn?

Answer. That writing is Major Vandeventer's.

Question by Mr. Williams. To which of the Auditors were the accounts of disbursing agents submitted for revision and settlement prior to the present organization of the Engineer Department?

Answer. In the year 1816, and in so much of 1815 as was subsequent to the ratification of the peace, the accounts of the Engineer officers were settled. I think, by the Second Auditor. My reasons for supposing so are, that the first account I settled was with Mr. Lee. the Second Auditor, in the beginning of the year 1817; and my next

accounts, in the beginning of the year 1818, were settled by the Third Auditor, Mr. Hagner. Since the year 1818, I know Mr. Hagner has settled the accounts of the Engineers Department.

Question by Mr. Wright. Do you know at what time the book, in which bonds are recorded in the Engineer Department, was procured, and at what time the record was made of the two bonds given by Mr. Mix, dated 5th August, 1818? if so, state when.

Answer. I do not.

Question by Mr. Wright. How long have you known the book existing in the Engineer Office?

Answer. Having, in the answer to the previous question, stated that I did not know when the book was procured, I am unable to answer this question.

Question by Mr. Wright. How long is it since you knew of the existence of that book in the office?

Answer. By its having the hand writing of Mr. Bibby among the records, I know of its having been there before he left the office. I do not recollect, precisely, the date at which he left the office, but I think it must have been after the year 1821.

Question by Mr. Wright. When did you first see the book?

Answer. I first saw it when it was brought into the office by the book-binder. The circumstance that enables me to state this is, that, for a number of years, I had disbursed the contingent expenses of the Department, and must have paid for the book. The date I do not recollect.

Question by Mr. Wright. Will not your memory enable you to state about what time it was received into the office?

Answer. My memory has experienced no change since my answer was given to the last question, in which I stated that I did not recollect the date at which it was furnished to the office.

Question by Mr. Wright. Can you ascertain, by reference to the books or papers of the Office, when you paid for the book?

Answer. I can.

Question by Mr. Wright. Will you do so, and inform the Committee?

Answer. I will, if called upon to do so.

Question by Mr. Wright. In whose hand writing is the body of the letter from Mix to Mr. Calhoun, dated "Georgetown, 18th April, 1821," signifying his assent that Goldsborough should be recognised as a partner in the Mix contract, and now shown to you?

Answer. In mine, the body of the letter; the signature is Mix's.

Question by Mr. Wright. How came you to write that letter for Mix? State all the circumstances that operated to induce you to write it.

Answer. I was present at the house of Mr. Mix, when Major Vandeventer and Mr. Mix, having agreed that such a letter should be written, made a draft of the letter they proposed to write, and requested my opinion if it would answer. I did not think it would answer, on account of its not stating explicitly the object contemplated. I was then requested by them to draft a letter, such as I thought would answer, and accordingly drafted the letter in question.

Question by Mr. Wright. Was you present at that time by request of either or both of these gentlemen? If so, state who requested you to attend, and the reason, if any, given for that request.

Answer. I do not recollect whether it was at the request of both of the gentlemen, or of Major Vandeventer only, that I was present at the time alluded to. I don't know any other object that could have been contemplated by either of the gentlemen, in desiring my presence, than to consult me with regard to the arrangement, when it should be agreed upon, as to its conformity with the views of the Engineer Department. I don't recollect that they assigned to me any reason for desiring my presence; what I have stated I presume to have been their motive.

Question by Mr. Wright. What considerations did Major Vandeventer urge upon Mix, to induce him to send the letter to the Secretary of War?

Answer. I don't recollect.

Question by Mr. Wright. When Goldsborough was recognized as holder of one-fourth of Mix's contract, was he (Mix) exonerated from accountability for one-fourth of the advance of ten thousand dollars made, and notified of his being so exonerated? If so, state when, how, and by whom, he was so exonerated and notified.

Answer. I cannot state by whom, or how, or when, he was notified of his being exonerated in the manner contemplated by the question; but I feel confident of the fact that he was exonerated.

Question by Mr. Wright. Have you seen the envelope covering the cancelled bond of Mix, George Cooper, and others, dated the 5th of August, 1818? If yea, state in whose hand writing the endorsement on that envelope is.

Answer. I have seen an envelope addressed "To Messrs. Samuel Cooper and James Oakley, New York," in the hand writing of Mr. George Bibby; and having upon it, in pencil, the words "Containing a cancelled bond for $20,000," in the hand writing of Mr. G. T. Rhodes.

Question by Mr. Wright. If Mix was exonerated from his liability for the one-fourth part of the $10,000 advanced to him, would there be any entry of such exoneration in the books of the Engineer Office, or that of the Secretary of War?

Answer. There ought to be, and I presume there is such an entry on the books of the Engineer Office.

Sworn to and subscribed, this 18th day of January, 1827.

J. L. SMITH.

Exhibition II, accompanying Capt. Smith's Deposition, Copy of Contract, &c. Certified 29th April, 1822.

This Agreement, made between Joseph G. Swift, on the part of the War Department of the United States, on the one part, and Elijah Mix, of New York, of the other part, witnesseth, that the said Elijah Mix agrees to deliver one hundred and fifty thousand perch of stone, from the banks of York river, Virginia, agreeably to samples this day lodged in the Engineer Department, at Old Point Comfort, and the Rip Rap Shoals, in Hampton Roads, Virginia, at the rate of not less than three thousand perch a month, commencing by the fifteenth day of September, 1818; and the aforesaid Joseph G. Swift agrees to pay, or cause to be paid him the said

Elijah Mix, three dollars a perch, for every perch of stone delivered at the above-mentioned places, agreeably to this contract.

In witness whereof, we have hereunto set our hands and seals, this twenty-fifth day of July, one thousand eight hundred and eighteen, at the city of Washington.

J. G. SWIFT,
ELIJAH MIX.

Witness, C. VANDEVENTER.

ENGINEER DEPARTMENT, *April 29, 1822.*

A true copy.

J. L. SMITH,
Capt. of Engineers.

Know all men by these presents, That we, Elijah Mix, Samuel Cooper, and James Oakley, are held and firmly bound to the United States of America, in the sum of twenty thousand dollars, lawful money of the United States, for which payment, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, for and in the whole, jointly and severally, firmly by these presents, sealed with our seals, and dated the fifth day of August, in the year of our Lord, one thousand eight hundred and eighteen, and of the Independence of the United States, the forty-third.

The condition of the above obligation is such, that whereas, the above bounden Elijah Mix, has contracted with Joseph G. Swift, United States' Chief Engineer, to deliver one hundred and fifty thousand perch of stone, at Old Point Comfort, Virginia. Now, if the said Elijah Mix does faithfully perform his part of said contract, then the above obligation to be void, otherwise to remain in full force and virtue.

ELIJAH MIX, [L. S.].
SAMUEL COOPER, [L. S.].
JAMES OAKLEY, [L. S.].

Sealed and delivered in the presence of Edward Macomber, for E. Mix.

R. RIKER.

The sureties having been by me duly sworn, I do hereby approve of them as good and sufficient.

R. RIKER.

NEW YORK, *5th August, 1818.*

ENGINEER DEPARTMENT, *April 29, 1822.*

A true copy.

J. L. SMITH,
Capt. Corps of Engineers.

No. 25.

Captain J. L. Smith to the Committee.

WASHINGTON, *January 1, 1827.*

SIR: In pursuance of the desire of the committee over which you preside, of which I had the honor, yesterday, to be notified through

you, I have examined the accounts relating to contingent expenses of the Engineer Department, and have ascertained that the bond book of the Engineer Department is charged at the date of the 12th of April 1821, in an account that was settled on the 3d of October 1821.

I have the honor to be, Sir,
Very respectfully,

Your obed't serv't,
J. L. SMITH,
Capt. Corps of Engineers.

The Hon. J. FLOYD,
Chairman, Sec. House of Representatives.

No. 26.

Testimony of Howes Goldsborough.

Howes Goldsborough, of the town of Havre de Grace, in the State of Maryland, appeared before the committee, was sworn and testified as follows:

I owned on the Susquehannah river large and extensive quarries of grey granite stone, in the year 1821. Subsequent to the contract taken by Mr. Mix, I purchased of Major Samuel Cooper, of New York, a part of his, Cooper's, one-fourth of E. Mix's contract, as will appear by the letter which I herewith exhibit, marked [I.]. The committee will perceive by this letter that, without any manner of concern with E. Mix or Major Vandeventer, in the original taking of this contract, how I became possessed of a part of the Rip Rap contract. I went on and did complete that part of the contract mentioned in Major Cooper's letter, above exhibited.

On inquiry of Major Cooper, what authority he had for the disposal of this portion of the contract, he expressly stated to me, that he obtained his title from Major Vandeventer of the War Department; that Major Vandeventer received his title from Mr. Mix. On requiring from him a legal title, he produced to me a written title from Vandeventer to him, as well as a title from Mix to Vandeventer, which title was shown by me to Mr. Calhoun, then Secretary of War; this was, I think, in the Summer of the year 1822. The cause of my showing these titles to the Secretary of War, arose from this circumstance: After I had purchased of Major Cooper, I applied to Mr. Mix, to know whether the purchase met with his approbation, as he was the original contractor; he expressly stated, that he was happy it had fallen into my hands, as he knew it would now be executed; having received, as I now thought, a full and valid title to the contract, I went on to ship the stone; and having shipped, I think, from four to six thousand dollars worth, for which I held the receipts of the officer of the Government, Mr. Mix, without my having ever had a transaction with him to the value of a cent, ordered Major Maurice, the agent of the Government, not to pay me a cent.

Astonished at this conduct, I applied to Mr. Mix to know the cause, who told me, that, although he knew that I owed him not a cent, yet that Major Cooper and Major Vandeventer owed him large sums, and

that he had concluded, that I should not draw any money until he was reimbursed by Major Cooper and Major Vandeventer; finding that no redress could be had from Mr. Mix I applied to the Secretary of War, Mr. Calhoun, for redress, who immediately summoned Mr. Mix to appear before him, and to state why, after the title papers, which I had exhibited to him (the Secretary) from Mr. Mix, had the approbation he had given for my delivery of stone, he withheld my money. Mr. Mix not choosing to appear before the Secretary, after being so requested, the Secretary gave orders to General Hacomb to instruct Col. Gratiot, of the Engineer Corps, to pay me the money for the certificates, which I held against the Government, and to recognise me as owning the residue of the portion I have referred to, of the E. Mix contract, and to retain the money due Mix, until the Government was reimbursed the advance thus made to me; previous however to this advance, I was required, by Mr. Calhoun, to give bond with two securities for the faithful performance of the contract. As it regards any participation of Mr. Calhoun in the Mix contract, I know nothing, I always discovered in the conduct of that gentleman, strong desire to protect the interest of the United States, as well as to do individual justice.

Question by Mr. Ingersoll. Do you know of any persons, besides those you have named, who were at any time interested in the contract? If yea, state who those persons are, and when, and how, they became interested.

Answer. Robert C. Jennings of Norfolk, was said to own a part and delivered stone; by what authority I have no knowledge.

Question by Mr. Ingersoll. Do you know when, and how, Major Vandeventer became interested?

Answer. I have already spoken as to this point in my general statement; I have no knowledge on this point but what I have there stated.

Question by Mr. Ingersoll. State what you know of the letter from E. Mix to "Hancock," published in the Alexandria Phoenix Gazette?

Answer. During the last Fall, Col. Charles Gratiot, of the Corps of Engineers, issued proposals for sixteen thousand perches of stone, to be delivered at Fortress Monroe and Castle Calhoun, during the year 1827; for which I became with others a bidder. On receiving the bids by Col. Gratiot, it appeared that Elijah Mix was the lowest bidder by twelve cents in the perch; of which fact he obtained a certificate of Col. Gratiot, as I understood. As Col. Gratiot had uniformly said, that the stone which I had previously furnished the Government, being the Susquehannah stone, as well as all the officers and masons with whom I had conversed on the subject, together with the circumstance, as I thought, of the unfair character of Mr. Mix, and that as my material was fifty odd cents in the perch better than that of Mix, I told Col. Gratiot that I should apply to the Secretary of War to give me the contract. I immediately came on to Washington, and stated to the Secretary my claims for the contract, over those of Mr. Mix; that although Mr. Mix's proposal was twelve cents in the perch lower than mine, that yet my stone being twenty-five per cent, or fifty odd cents a perch better stone than his, of which I produced him, the Secretary, certificates signed by high officers of the Government, as well as masons, it clearly shewed that my proposition was, by eight thousand dollars,

or thereabouts, better for the Government than Mr. Mix's; and, in the course of other conversation with the Secretary of War, I did state to him, that I thought there was some respect due to the morality of the country, and did then, also, state to him, that I had heard Mr. Mix had committed acts in the city of New York, that would shew to him (the Secretary of War) that he, Mix, was unworthy of a contract; the Secretary replied, that he would investigate the subject, and that, if found true, he should "hold him in utter abhorrence." The night previous to this conversation with Gov. Barbour, the Secretary of War, sitting at supper at Williamson's Hotel, I was asked by Mr. Edward Wier, what had brought me to the city of Washington; I stated to him I had come here to get a contract from the Government, in which Mr. Mix was concerned; he observed, with respect to Mr. Mix, there was a gentleman at the table, by name Major Satterlee Clark, who could give me much information relative to Mix. With Mr. Clark I had but a very slight acquaintance, but, being introduced to him by Mr. Wier, I stated to him the object of my visit to Washington, and asked him what information he had in his possession relative to improper conduct of Mr. Mix.

He replied, that he, Clark, formerly wrote in the New York papers, under the assumed name of "Hancock," and while writing under that name, he received a letter from Mr. Mix, the same letter which he, Clark, afterwards handed to the Secretary of War; that he, Clark, although not friendly to Mr. Calhoun, did not believe the charges contained in that letter, against Mr. Calhoun, and therefore would publish nothing, in any of the papers, relative to them, because he believed Mr. Mix a base man, and would not reply to his letter in any manner, or have any thing to do with him; that he determined, on his arrival at Washington, as soon as his health would permit, to lay the letter before the Secretary of War; he thought it was due to the Government, and to the present Secretary of War, that he should know it, for if he, Mix, was base enough to calumniate Mr. Calhoun, and charge him with bribery and corruption, that, if Mr. Barbour gave him another contract, he might say the same thing of him, (Mr. Barbour.) For those reasons, and those alone, he would, at ten o'clock the next day, submit the original letter to Gov. Barbour, which letter, he subsequently told me, he did submit to the Secretary. On the night he told me he had this letter, I asked him if he would give me a copy; he said he had no objection to my taking it; in consequence of which, I did take a copy, for my own satisfaction, and with no view, whatever, of making it public. Mr. Clark also told me that he had sent a copy to this city, many months since, from the State of New York, and presumed the contents of the letter could no longer be a secret. I think, the next day after Mr. Clark had shown the letter to the Secretary of War, at Williamson's tavern, a gentleman came in, a perfect stranger to me, whose name or person I never heard of or saw before; he commenced a conversation with Mr. Clark, which conversation I did not hear; both gentlemen, shortly afterwards, approached near me in the room, and Mr. Clark introduced the gentleman to me, by the name of "Major Thornton," whom, I supposed at the time, by calling him Major, was an officer in the army. Thornton immediately began

to converse with Mr. Clark, and told him that he had heard that he, Clark, had in his possession a letter written by Elijah Mix, while he wrote in the name of "Hancock," in the New York papers, which letter, he (Thornton) would be glad to see. Clark told him that he had lodged the original letter with Mr. Barbour, the Secretary of War, otherwise he would let him see it. I observed to Major Clark, that the copy which he had suffered me to take, the night previous, was in my pocket, and at his service. He (Clark,) then observed to me, "let me have it." Major Thornton immediately observed, "let me see it."

I replied to him, that, as I had got the copy from Mr. Clark, I was not willing to let him see it, unless by Major Clark's permission. Clark replied, that he had no objection to his seeing it, as it could not be longer a secret; that he had sent a copy, many months before, as I have before observed, to the city of Washington. In consequence of which permission from Clark, I handed the copy to Maj. Thornton, whose objects and views for seeing it, being a perfect stranger to me, I did not at that moment know. After getting possession of the copy, he went with it to an adjoining room, and was gone but a short time. During his absence, I asked Major Clark who that gentleman was. He stated to me that he had formerly been an officer in the army; that he did not know, but believed, he edited one of the Alexandria papers. I immediately replied to Clark, and during the absence of Thornton, that I was fearful he intended to publish it; that, if so, it met with my decided disapprobation. On Thornton's return to the room, I expressed to him, that I hoped he would not publish it, and bid him to recollect that I had nothing to do with publishing it, and that my name should have nothing to do with it.

Question by Mr. Campbell. Have you any knowledge of any person being a partner in the Rip Rap contract, whose name was to be kept secret?

Answer. I have not.

Question by Mr. Williams. How much did you give for the portion of the contract which you held?

Answer. On twenty thousand perches, I paid to Major Cooper's agent forty cents per perch; and fifty cents a perch for all I delivered above twenty thousand perches.

Question by Mr. Floyd. Was there any person in company with Thornton when he came to Williamson's hotel, or when he came to you?

Answer. There was no person but Clark, when he came to me. I know nothing as to any person coming to the tavern with him. Major Haughton told me that he had informed Thornton that Clark had such a letter. In a conversation with Major Vandeventer, at his office, on or about the day of the publication of Mix's letter in the Phoenix Gazette, he acknowledged to me that he had heard of this letter some months previous; that he had called upon Mr. Mix relative to the said letter; that Mix acknowledged that he had written such a letter to the author of "Hancock;" that it answered his then purposes, and he did not then care a damn about it.

Question by Mr. Floyd. Did you ever pay, or agree to pay, to Satterlee Clark, any thing for the copy of the confidential letter E. Mix

wrote to the author of "Hancock," or for publishing that letter in the Phoenix Gazette of the 28th of December last?

Answer. I never did pay, or agree to pay, to the value of a single cent, for the copy of that letter, or for its publication, and never thought of such a thing. Upon the subject of this question and answer, I have received a letter from Major Vandeventer, which I herewith exhibit. (See it, marked K.)

Sworn and subscribed, this 19th day of January, 1827.

HOWES GOLDSBOROUGH.

Exhibit I, accompanying testimony of Howes Goldsborough.

NEW YORK, *Dec. 26th*, 1821.

GENTLEMEN: I have delayed the acknowledgment of your favor of the 6th of August last, in expectation that the information it afforded me, I should have been able to effect a settlement with Major Maurice, before this time; but, to my utter astonishment, and I fear, my great injury, it will now be long delayed, and perhaps ultimately lost. I have therefore thought proper to address you, and say, that I am disposed to sell you all that part reserved to myself, on fair and honorable terms, for cash, and assign the whole to you, the nett proceeds of which, when the delivery is completed, will amount, agreeable to my calculation, to about $10,000; that is, the 20,000 perch at the 40 cents, will be $8,000, the remaining number of perch at 50 cents, I think will be about $2,000; making in all, as above stated, $10,000. Now, what will you give me in cash, and take the whole to yourselves?

You are pleased to observe, that I may think myself well off that I have got rid of it. I should have been better pleased if I had not meddled with it, or if I could say I had realized any benefit from it, which has not yet been the case; but, on the contrary, am in a fair way of losing nearly $7,000.

I will esteem it a particular favor if you will consult yourselves on this subject, and inform me, as soon as convenient, on what terms you are disposed to meet this proposition, and you will oblige

Your respectful and unfortunate humble servant,

SAM COOPER.

MESSRS. HOWES GOLDSBOROUGH & CO.

Exhibit K, accompanying testimony of Howes Goldsborough.

January 2, 1827.

DEAR SIR: To-day an affidavit was voluntarily handed to me by a respectable citizen of Georgetown, which details a long and varied conversation of Mr. Mix, in which, among other things, he calumniates you, in saying, "It is in the mouth of every person in Washington, that Goldsborough had given $1,000 to Clark for the letter, alluding to the letter handed to Governor Barbour." As I shall be obliged, in defence of myself, to use this affidavit to show the calumnious character of this man, I promptly apprize you of it, and

tender the assurance of my utter disbelief of every thing mentioned in it, as will every body else who may see it.

In haste, your friend,

C. VANDEVENTER.

HOWES GOLDSBOROUGH, ESQ.
Havre de Grace.

No. 27.

Testimony of G. T. Rhodes.

G. T. Rhodes, Chief Clerk in the Engineer Office of the War Department, appeared before the Committee, was sworn, and testified as follows:

I have no knowledge of any act going to implicate Mr. Calhoun, in any manner whatever, in connection with the subject before this Committee. I entered the Engineer Department as the principal Clerk in the year 1819, and have continued in that capacity till the present time.

Question by Mr. Ingersoll. When was the contract of E. Mix, which is dated 25th July, 1818, recorded in the Department, and by whom?

Answer. When it was recorded, I do not distinctly remember. I think it was in 1822. My reason for so thinking, is the fact, that the bond book, and, probably, the contract book, were procured about the same time; and I find from vouchers in the office, that the bond book was procured in the last quarter of 1821. I judge that both books were procured at or about the same time. The bonds and the contracts, according to my recollection, lay in the Engineer Office for some time after I entered it, and were of course not recorded before I came into the office. I recorded the contract alluded to in the question.

Question by Mr. Ingersoll. When did you first see that contract?

Answer. Probably a short time after I entered the office. I have no distinct recollection as to the time.

Question by Mr. Ingersoll. Here is a bond (cancelled) signed by E. Mix, George Cooper, Samuel Cooper, and James Oakley, for the delivery of one hundred thousand perches of stone, dated 5th August, 1818. Do you know who made the memorandum of its being cancelled, which appears on the back of this instrument, and when was it made?

Answer. The memorandum is in my hand writing. I would remark, by way of explanation, as to my agency in the endorsement on this bond, that the bonds, contracts, and other papers appertaining to the Engineer Department, were in a state of confusion, at least not arranged with any method, until some time after I came into the Engineer Department. It became my duty to arrange those papers, or some of them; and, judging from the face of the bond, which is evidently erroneous, I made the endorsement, probably with a view to a memorandum, not recalling at this time, that I had any specific authority for so doing. The error referred to, as appearing upon the face of this bond, and just stated, consists in re-

citing "one hundred thousand perch of stone," instead of one hundred and fifty thousand perches of stone, the quantity contemplated by the contract to which the bond intended to refer. In answer to that part of the question which refers to the time at which the memorandum or endorsement in question was made, I have to state, that I have no distinct recollection; but suppose I made it at the time I took up the loose bundle of papers in which it was contained, for the purpose of regularly filing them away.

Question by Mr. Ingersoll. Do you know who drafted that bond?

Answer. I do not; it is a hand writing entirely unknown to me.

Question by Mr. Ingersoll. When contracts are made, are the forms of the required bonds furnished in blank at the Department?

Answer. Since I have been in the Department, the bonds relating to contracts made by the Engineer Department at Washington, have been drawn up in that Department, not by any specific form, but in a way adapted to the nature of the obligations contracted under them.

Question by Mr. Ingersoll. Have you examined the envelope enclosing the cancelled bond? if yea, in whose hand-writing are the following words, in pencil—"containing a cancelled bond for $20,000?"

Answer. I have examined the envelope; the endorsement in pencil is in my hand-writing. I cannot recollect when it was made.

Question by Mr. Ingersoll. Here is another bond, signed by E. Mix, Samuel Cooper, and James Oakley, for the delivery of one hundred and fifty thousand perches of stone, also dated 5th of August, 1818. Do you know when this was received at the Department?

Answer. I do not.

Question by Mr. Ingersoll. Did you consult with any person in the Department about cancelling the bond for 100,000 perches?

Answer. Not that I recollect.

Question by Mr. Ingersoll. Was the envelope enclosing the cancelled bond, and directed to "Messrs. Samuel Cooper and James Oakley, New York," ever forwarded to those persons?

Answer. I should say not, as I found the other day the envelope containing the cancelled bond in an old file of papers, in which it appears to have been lying from the time in which it was placed there.

Question by Mr. Williams. Do you know whether any order was given, by the Secretary of War, for cancelling the original bond?

Answer. I have no specific recollection on the subject, but, from the fact of my endorsement, it must have been understood that competent authority rested in the Engineer Department for so doing.

Question by Mr. Williams. Who was the person in whom this competent authority rested at the time?

Answer. In the Chief Engineer, or his assistant at the time. Colonel Armistead, or General Macomb, was Chief Engineer at the time.

Question by Mr. Ingersoll. Who were the Clerks in the Engineer Department, from 25th July, 1818, till the period when you entered the Department?

Answer. Lt. George Blaney was acting as an aid or assistant to General Swift till 17th April, 1819, and continued attached to the office till 1st March, 1820. John R. Beall was a clerk in the Department from, say, 1st January, 1818, till 18th April, 1820. Dean Wey-

mouth was also in the office, though not regularly a clerk, from ——— till March, 1819, and probably some time afterwards.

Question by Mr. Ingersoll. Where are those persons now?

Answer. Captain Blaney is charged with the superintendence of a fort under construction in North Carolina; John R. Beall, I believe, is residing in some part of the State of Maryland. I do not know where Dean Weymouth resides.

Question by Mr. Ingersoll. In whose hand writing is the bond for one hundred and fifty thousand perches; and state, if you know the hand writing of the memoranda on the outside?

Answer. I do not know in whose hand writing the bond is; of the memorandum in these words, "Elijah Mix bond $20,000, to deliver 150,000 perch of stone at the Rip Rap Shoals, Hampton Roads, 5th August, 1818," I am ignorant. The second memorandum, in these words, "Recorded B. B. page 15," is in the hand writing of George A. Bibby, deceased.

Question by Mr. Williams. Can you account for the difference between the contract which stipulates for 150,000 perch of stone, and the original cancelled bond which provides only for 100,000, and the difference of parties?

Answer. I cannot.

Question by Mr. Williams. There appears to be a difference between the endorsement on the cancelled bond, and the entry in the record book, the latter stating that the bond was "cancelled by order of the Secretary of War, by a new bond, of the same date," the former omitting to state that order of the Secretary of War as a reason for cancelling the bond; can you explain this?

Answer. The endorsement on the cancelled bond is in my hand writing, and is explained, so far as it is explicable by me, in my answer previously made to the question in relation to it. The entry in the record book is in the hand writing of George A. Bibby, and the remark "by order of the Secretary of War," made by him, must be presumed to have been made under competent authority existing either in the Secretary of War, the Chief Engineer, or his representative.

Question by Mr. Wright. Was the endorsement on the bond made by you, made before or after the record in the bond book, and the entry in the margin of the book opposite the record of the bond?

Answer. I do not know, Sir; can't tell.

Question by Mr. Wright. Were there no other bonds connected with contracts in the Engineer Department found by you when you came into the office, then those recorded? If yea, why were they not recorded?

Answer. When I came into the Department, there were no bonds on record. All those bonds available were afterwards recorded, to the best of my knowledge.

Question by Mr. Wright. Have all the bonds connected with contracts in the Engineer Department, since the record of the Mix bond, been recorded in the bond book? and if not, why have any been omitted?

Answer. I believe they have all been recorded; if any have been omitted, of which I am not now certain, they must be unimportant local bonds, taken by agents superintending operations under the directions of the Engineer Department.

Question by Mr. Wright. Why were not the bonds you found unrecorded, entered in the record book in the order of their dates?

Answer. They should have been so entered; probably any irregularity of that sort is ascribable to inattention, though the order of time cannot be accurately kept, because they do not come into the office in the order of their dates.

Question by Mr. Wright. How does it happen that nearly all the bonds recorded in the bond book before the year 1826, relate to contracts connected with the works at Old Point Comfort, the Rip Raps, and Dauphin Island; were there no other works under contract with the Engineer Department, at that time in progress?

Answer. Because, as it is presumed, there were no other bonds received at the Engineer Department. Anterior to 1826, there were other works in progress, namely, Fort Diamond, at New-Yort, Fort Delaware, at the Pea Patch Island, Fort Washington, on the Potomac, the work at Mobile Point, and those at the Rigolets and at Chef Menteur, Fort Adams, Fort Hamilton, two forts in North Carolina recently commenced. In relation to Fort Delaware, Fort Diamond, and Fort Washington, Fort Adams, Fort Hamilton, and the works in North Carolina, no bonds, I believe, were taken, those works being entrusted to the local Engineers, who, I believe, made no contracts of any importance. Bonds were taken in reference to the works at Mobile Point and the Rigolets, including Chef Menteur.

Question by Mr. Wright. Did you make the memorandum in pencil mark, on the 23d page of the bond book, containing the words "handed in to Second Comptroller's Office, 22 May, 1823. G.T.R." if yea, how came you by the original bond, and how do you account for the entry in the next page made by Mr. Bibby, that he delivered that bond, among others, to the Chief Clerk of the Comptroller's Office. the 12th November. 1821?

Answer. I made the pencil memorandum. I cannot answer the latter portion of the question in a satisfactory manner, but would suggest, by way of a possible mode of accounting for the discrepancy in the entries referred to, that the original bond to which the pencil mark is attached, had been withdrawn from the Comptroller's Office for temporary reference, and returned to said office at the time stated in the pencil mark.

Question by Mr. Wright. Were all the contracts made with the Engineer Department since you have been in the office, or found by you unexecuted when you came into office, entered of record on the contract book; if not, why were any omitted?

Answer. All the original contracts, except those that were fulfilled or abrogated, by which I mean to express the idea that they were unavailing; those made by C. W. Wever, Superintendent of the Cumberland Road, and possibly some contracts of minor importance, were so recorded. Where copies were received, in some cases, they were recorded, and in others, an abstract of their contents was entered in the margin of the contract book; those of Mr. Wever having been thus referred to in the margin.

Question by Mr. Wright. Do you know who wrote the words "advertised" and "not advertised" in pencil mark on the record book of contracts shewn to you? If yea, name the person, and state why those words were written, and what they mean.

Answer. The words "not advertised" (in pencil) were written by Capt. J. L. Smith, and the word in pencil "advertised" is also in the hand writing of Captain Smith. They were written no doubt, to ascertain whether or not those contracts were advertised with a view to furnish information of that character, that is, whether advertised or not.

Question by Mr. Wright. Have you knowledge of any contract made by the War Department while John C. Calhoun was Secretary of that Department, in which he was a party in interest concerned, or in the emoluments and profits of which, he, in any manner, participated?

Answer. I have none.

Sworn to and subscribed, this 20th day of January, 1827.

G. T. RHODES.

Elijah Mix's second examination

No. 28

JANUARY 20TH, 1827.

Elijah Mix, again appeared before the Committee and was further examined and testified as follows:

Question by Mr. Floyd. Are the papers now shown you, those you enclosed to the Committee on the 13th of the present month?

Answer. They are.

Question by Mr. Floyd. Is not the paper now shown you, marked "Paper No. 1," being one of the papers exhibited with the previous question, the paper you had with you and declined to give up to the Committee during your first examination?

Answer. It is.

Question by Mr. Floyd. Are the other two papers enclosed by you at the same time to the Committee, and now again shewn to you, both copied from the original at the same time?

Answer. They were copied at different times, probably a month separate from each other, and, as near as may be, the substance of the letter lost at the War Department. They were copied previous to the writing of the letter to Hancock; the less of that letter was one of the reasons for writing the letter to Hancock.

Question by Mr. Floyd. What time was the paper marked No. 1 copied?

Answer. I cannot pretend to say.

Question by Mr. Floyd. At what time were the two copies made?

Answer. I have already stated that they were made before I lost the original at the War Department, probably a month or two before that event.

Question by Mr. Floyd. Where were the different copies taken, No 1, No. 2, and No. 3?

Answer. I think they were all taken at my house, it is, however, probable, one might have been taken at the War Department when I sent the original to the Secretary of War; of this I am not certain.

Question by Mr. Floyd. Can you designate that one?

Answer. No, I cannot, because I am not certain of the fact; they were taken at times when I wished to disclose to the Secretary a subject of which I thought he was entirely ignorant. I was oppressed at the time, and was not very particular in making either of the copies; as an instance of which oppression, I now exhibit to the Committee an original paper, (marked No. 4.) being the letter I wrote and sent through the Post Office to the Engineer Department, recognising Goldsborough as interested in my contract, and which was brought back to me by Captain Smith, with alterations written in the body thereof in pencil, and I was informed by Captain Smith, that the letter must conform to these alterations before it would be received by the Department; these alterations made a difference against me of 40 cents a perch on 34,000 perch of stone.

Question by Mr. Wright. Was the letter now shewn to you, marked L. signed by you?

Answer. Yes.

Question by Mr. Wright. In whose hand writing is the body of that letter? where was it written? was any person present at the writing and signing of that letter? and, if so, name them?

Answer. Capt. John L. Smith, of the Engineer Corps: it was written at my house in Georgetown—Samuel Cooper and Major Vandeventer were present at the writing and signing of the letter, and absolutely coerced me in the signing of the letter, by stating that I should lose my whole contract if I did not sign it: the letter says, "I have no objection to his being recognised by the Government as the owner thereof, and to their giving orders for payment to be made to him, or to such persons as he may authorize to receive it for him, without further authority from me for the deliveries that have already been, or that may hereafter be made thereon." By the papers which I now herewith also exhibit, marked M, it will be seen that he, Mr. Goldsborough, had delivered, prior to the 21st December, 1820, 5,566 perch of stone on my contract, for which he received payment, except for fifteen hundred perch: for which, I refused that payment should be made on my account, which was the cause of the letter being thus worded on the 13th April following.

Question by Mr. Floyd. Did he deliver the 5,566 perch of stone on that part of the contract which was still yours, or on that part which you had sold to Vandeventer, and which Vandeventer sold to Cooper, and which Cooper sold to Goldsborough?

Answer. He delivered the stone after Vandeventer had resold that part of the contract to me, and given me a bill of sale for it, which bill of sale I exhibited to the Committee on my former examination dated the 19th Oct. 1819.

Question by Mr. Williams. Do you know any thing of an original bond relating to your contract, which was cancelled by the substitution of a new one? if yea, is the paper now shown to you, that original bond?

Answer. This is the original bond.

Question by Mr. Williams. Why was this bond given to ensure the delivery of 100,000 perch, if the contract was made for the delivery of 150,000 perch of stone?

Answer. I never knew till now, that the bond was for only 100,000 perch of stone; I supposed it was for 150,000, and presume the difference was occasioned by an error in writing the bond.

Question by Mr. Williams. State the time, place, and all other circumstances attending the execution of the two bonds?

Answer. The first bond was first presented to me for signature, at the time Major Vandeventer brought on the advance of S 10,000, and, as near as I can recollect between the 8th and 10th of August, 1813. The other bond, was executed in the Fall of 1820. I was in New York; it was sent on to me with a request that I would get Mr. Oakley again to sign it—I did not know for what purpose. I went to the Recorder of the City in company with Mr. Oakley, where the bond was executed, Mr. Oakley taking the oath prescribed as to his sufficiency.

Question by Mr. Williams. At what time, and in what place, did you sign the articles of agreement or contract now exhibited to you? And in whose hand writing are those articles?

Answer. I signed it on the day and date mentioned in the paper, and in the Engineer Department. The writing is that of Major Vandeventer.

Question by Mr. Williams. Did you write to Major Vandeventer from New York, between the 25th of July, 1818, and the 7th of August, of that year? if yea, relate what you communicated to him on the subject of this contract.

Answer. I wrote to Major Vandeventer immediately after I arrived in New York, but don't recollect any thing of what I therein said on the subject of the contract.

Question by Mr. Sprague. Have you any letter or memorandum which would enable you to fix the time of the execution of the second bond?

Answer. Yes. I have at home a letter of Major Vandeventer's, which will enable me to ascertain the date of the execution of the second bond.

The witness then, intimating that he might have the letter in the house, retired and, in a short time, returned, and presented to the committee the letter marked N, saying that he had found it in his pocket.

After which the Committee adjourned till Monday.

MONDAY, JANUARY 22, 1827.

Mr. Mix's examination was resumed as follows:

Question by Mr. Floyd. Why did you make this erasure in this letter of Major Vandeventer to you of the 17th of October, 1820, and what words are they which you have so blotted, and when was the erasure made?

Answer. I made it because I was requested to put out every thing which related to any person as concerned in the contract other than Major Vandeventer. The erasure was made prior to the investigation of 1822. I don't recollect what are the words blotted out.

Question by Mr. Floyd. By whom was you requested to make the erasure?

Answer. By Mr. Vandeventer. He requested me to give up the letter, together with other letter of his. I refused to do so, and he then requested me to erase, in the manner I have stated.

Question by Mr. Floyd. You said, on your first examination before this Committee, that you had delivered to them all Major Vandeventer's letters relating to the contract. How is that, your present examination, you produce this other letter of the 17th of October, 1820?

Answer. It will be recollected that I stated that I produced all the letters of Major Vandeventer to me that I knew of at the time.

Question by Mr. Floyd. Did you not give Major Vandeventer a second bill of sale for a fourth of your contract, upon the assurance that the first was lost?

Answer. I never gave Major Vandeventer but one bill of sale, which was in April 1819.

Question by Mr. Campbell. Was the second bond executed about the time you received Major Vandeventer's letter last referred to?

Answer. I think it was executed about that time.

Question by Mr. Floyd. Have you had any conversation, or any communication in writing, with any person touching the evidence you were giving, or were to give before this Committee?

Answer. It is probable I might have made some communication to some persons on the subject. I recollect, in a conversation with Maj. Vandeventer, he stated that he had seen the letters which I had presented to the Committee, and that they were of no importance, either directly or indirectly, except one, which he did not describe.

Question by Mr. Campbell. Please to say what were the words erased from the letter of the 17th October, 1820?

Answer. I can't now say what they were.

Question by Mr. Campbell. Was not the bill of sale given by Vandeventer to you on the 15th October, 1819, for one-fourth of the contract, canceled by that of the 19th of the same month, and was not the last bill of sale intended as a substitute for the first?

Answer. No, it was not. I had letters to prove fully that he sold both quarters to me, which letters were burned at Capt. Smith's, at his request, as I have heretofore detailed; he also wished me to burn the bills of sale, which I refused to do. The first quarter he sold me, as he has stated before the Committee in 1822, dated on the 19th of October, and was on condition of paying the debts, and is truly dated; the other was sold to me subsequently, and upon which I was to pay him the $12,000, and was antedated to the 15th of October.

Question by Mr. Floyd. Do you recollect holding conversation with no other person except Major Vandeventer, respecting your examination before this Committee?

Answer. I can designate no other at present. It is probable I may have conversed with others; their names, however, do not now suggest themselves to me.

Question by Mr. Williams. At what time, and how was Mr. Jennings first admitted to participate in your contract; and by what authority did he hold his share, and receive his part of the money?

Answer. I have answered this question in my first examination. I recognised Mr. Jennings, for the first time, in June 1821, in consequence of a letter from the Engineer Department, dated in March, 1821, stating that Goldsborough would be recognised, and the other quarter equally good, which other quarter I understood to mean Jennings. Previous to June 1821, Jennings had made deliveries of stone,

but I receipted for them, gave Jennings the receipts, and he drew the money from the disbursing officer.

Question by Mr. Williams. Did you consider yourself as coerced to make payment to Jennings?

Answer. Yes, I considered the orders I received occasionally from the Engineer Department as coercing me to make payment to Jennings.

Question by Mr. Floyd. Was General Joseph Swift interested, at any time, in your contract?

Answer. Not to my knowledge.

Question by Mr. Floyd. Did you ever state or intimate to Major Vandeventer that General Swift was interested in your contract?

Answer. I think it very probable I might.

Question by Mr. Wright. Look at the papers now shewn to you, marked A, No. 1, No. 2, (*a*) No. 3 (*b*), and state if the signatures "Elijah Mix," thereon written, were written by you?

Answer. The signature on these papers is mine.

Question by Mr. Wright. In whose hand writing is the exhibit A, shown to you?

Answer. I cannot tell; I think it is Samuel Cooper's.

Question by Mr. Wright. Look at the letter of Vandeventer of the 17th of October, 1820, which you have exhibited, and say what were the words in that letter obliterated by you?

Answer. I stated before that I did not know; I can't pretend to designate the words.

Question by Mr. Wright. To what place was the letter of C. Vandeventer to you of the 17th of October, 1820, directed to you, or where did you receive it?

Answer. It was directed to me in New York, and I received it there.

Question by Mr. Wright. Did you, while in New York, shortly after you received the letter of the 17th October, 1820, take any steps in relation to the bond spoken of? if so, state what steps you took.

Answer. I went immediately and got the bond executed. I allude to the last bond given on the contract.

Question by Mr. Wright. Why was that bond dated 5th of August, 1818?

Answer. I did not know before that it was so dated. I thought it was dated at the time it was executed. The bond now shewn to me is the bond executed at the time I have mentioned.

Question by Mr. Wright. What difficulty existed at the date of the letter of the 17th of October, 1820, about the bond, which you were desired to remedy, by attending to the bond?

Answer. I don't know the difficulty alluded to.

Question by Mr. Wright. What did you understand Vandeventer to mean by the clause in the letter of the 17th of October, 1820, "This furnishes another proof of great circumspection on your part?"

Answer. I don't know what he intended, nor do I know what he meant by "circumspection."

Question by Mr. Wright. Was the bond sent by you, after the receipt of the letter of the 17th October, 1820, to Washington? If yea, to whom did you send it?

Answer. I did not send it; after I signed it, it was left in the hand of Major Cooper, and I did not afterwards know what became of it.

Question by Mr. Wright. How came the first part of the letter, containing the superscription, torn off? and by whom and for what purpose was it torn off?

Answer. I don't know.

Question by Mr. Wright. Have you any other letters from Vandeventer or the Secretary of War, or other papers concerning your contract? If yea, produce it.

Answer. I have no letters to produce.

Questions by Mr. McDuffie

Question. Which of the three papers presented is the most correct copy?

Answer. I don't know which of them.

Question. Why did you take three copies?

Answer. This is a question I have already answered. Because, at three different times I was about to present the letter to the Secretary of War, and did not until the time I lost it.

Question. You state that, in the Fall of 1820, the second bond was sent to you with a request that you would get Oakley to sign it again: by whom was it sent?

Answer. It was presented to me by Major Cooper, in New York.

Question. Was the bond already signed by yourself and the sureties when presented to you?

Answer. No, certainly, it was not. I signed it, after it was presented to me, before the Recorder.

Question. Have you a distinct recollection of signing the second bond in the Fall of 1820, and of seeing Mr. Oakley and Major Cooper sign it at the same time?

Answer. I have a distinct recollection of signing it, but not in 1820; the only reason I have for supposing it to be that time, is the letter of Major Vandeventer of the 17th October. I recollect seeing them sign it; but won't be positive it was in 1820.

Question. Do you not know that the object of carrying the bond to the Recorder in 1820, was to have the sureties sworn and approved, and not to have the bond then executed?

Answer. I do not know what was the cause of its being brought to me; all I know on the subject is, that the bond was presented to me with a request that it should be again executed. On the bond being presented, I called on Mr. Oakley, who was my surety, and he went with me to have it executed, and being duly sworn, the Recorder signed it accordingly. I don't recollect particularly about it.

Question. Was there a second bond executed and signed by you a few weeks after the execution of the first in August, 1818?

Answer. I do recollect signing two bonds; what was the cause of it, I don't recollect. These two bonds were signed about that time, I now recollect, because George Cooper's name was in one of them; that the other had to be executed.

Question. Did you ever make any contract with Jennings, by which he was to have a fourth or any part of your contract?

Answer. No; I never made any contract, to my recollection, except giving him authority to the Engineer Department, to deliver something like 20,000 perch of stone.

Question. Why did you give him that authority?

Answer. The causes already stated must answer. I gave it in consequence of receiving the letter from the Engineer Department, of the 24th of March, 1821, wherein Col. Armistead says, "the other fourth equally good," alluding to that quarter which Jennings claimed of the contract.

Question. Had you not, previous to the receipt of Col. Armistead's letter, authorized Mr. Jennings to deliver stone, and receive money under your contract?

Answer. Yes, I had, but not in his own name; he acted as my agent, and delivered it at $2.75 cents, and $2.50 cents per perch.

Question. Did you personate Walter S. Conkling, and in his name swear to the affidavit now shewn to you, dated 14th May, 1822, and sworn before C. Tompkins?—(see O.)

[The witness objected to answer this question: Whereupon the parties were required to withdraw, that the committee might take the matter into consideration; and, after deliberating thereon, the parties were requested to return, and the chairman instructed to inform the witness that he was not bound to answer any question which went to criminate himself; which was done. The witness then refused to answer the question.]

Question. You state that you considered the orders occasionally received from the Engineer Department, as coercing you to make payment to Jennings, can you produce any one of these orders, or state by whom they were given?

Answer. I cannot produce the orders; they were verbal orders, given by Col. Armistead. I don't know that they could be considered orders; they were, properly speaking, requests.

Question. Did any person, other than Jennings and Vandeventer, ever purchase or contract with you for a part of your contract?

Answer. Yes. Captain Brown contracted for a small quantity, five or six thousand perch. I don't recollect any other person.

Question. As all the money on that contract was drawn from the Treasury in your name, can you produce the receipts of those to whom you paid money as holding under you?

Answer. No. I did not draw all the money. Major Cooper, Goldsborough, and Jennings, have drawn money, and there is some which remains due me.

Question by Mr. Floyd. How much do you think is yet due you?

Answer. There is thirty odd thousand dollars due me.

Question by Mr. Floyd. You say that the Secretary of War did recognise Mr. Goldsborough, as a party in your contract. Did he not do so upon the receipt and authority of your letter of April 15th, 1821, requesting him to recognize him as a partner?

Answer. He was recognised previous to the date of my letter, and made deliveries as may be seen by his own papers.

Question by Mr. Clarke. You have said in an answer to an interrogatory propounded to you, that there were two bonds executed, one shortly after the other in the year 1818. Do you mean the bond which is now shewn to you, for the delivery of one hundred and fifty thousand perch of stone, and which, in a former part of your testimony, you say was executed in the Fall of the year 1820, as one of those bonds, which you said was executed in 1818?

Answer. I can't say; but from the face of this bond, I should say it is the one executed in the year 1820.

Question by Mr. Clarke. Were there three bonds, to which you were a party, executed for the fulfilment of that contract?

Answer. Yes, sir. I think there was.

The testimony of Mr. Mix was about to be closed, whereupon he requested that the conclusion should be suspended, till he should have an opportunity to take counsel as to the propriety or impropriety of answering Mr. McDuffie's question, to which he had heretofore refused to answer. The Committee took the request into consideration, and decided that Mr. Mix should be allowed until ten o'clock to morrow, to determine whether he would answer the question aforesaid.

TUESDAY, JANUARY 23d, 1827.

Mr. Mix again appeared before the Committee, and announced his determination to answer the interrogatory propounded by Mr. McDuffie, yesterday, in the words following: "Did you personate Walter S. Conkling, and, in his name, swear to the affidavit now shown you, dated 14th May, 1822, and sworn before C. Tompkins?" (See O.)

Answer. No, I did not.

Further questions by Mr. McDuffie

Question. Do you know C. Tompkins, of Richmond, in Virginia?

Answer. No.

Question. Did you ever see a man by the name of Tompkins, formerly of Richmond, Virginia?

Answer. Not to my knowledge. I might have seen him, but did not know him.

Question. Did you make an affidavit, in Richmond, Virginia, in the Spring of 1822?

Answer. No, not to my recollection. I might have made an affidavit respecting some land I purchased, within twenty-seven miles of Richmond, in the year 1822; but I think I purchased that land in the Fall of that year.

Question. Are you certain that you never saw the paper now presented to you, purporting to be the affidavit of Walter S. Conkling, (see O.) and that you never made an affidavit containing the substance of the one just referred to?

Answer. I am perfectly certain I have seen it, or a copy of it, two or three times, as it was shown to me by Major Vandeventer, with a threat that he would use it against me, if I made any disclosures against him. I then told him that he might publish it as soon as he pleased; and, if he did. I would publish a paper of his, dated in 1813, while an Assistant Commissary General, wherein he defrauded the United States of six thousand dollars, and divided it with a man now living; and, while a hostage in Canada, he drew two thousand dollars of that very money. I never made, to my knowledge, an affidavit, in any shape, containing the substance of the one shown me.

Question. Did you ever acknowledge, to Lieut. Mix, of the navy, or Major Vandeventer, that you did make an affidavit, in the name of Walter S. Conkling?

Answer. No, never.

Mr. Mix here stated to the Committee as follows: Major Vandeventer called upon me between my first and second examination, and requested me to look for, and see if I could find, that letter, (meaning the letter I had shown to the Vice President.) I then looked for it, and, on the next day, called at the War Department and told him I had found it. He begged me not to speak of it there, as we were overheard and watched; that he would call on me in the evening; which he did; and, after soliciting me for some time to let him erase the names, or cut them out, I consented, and he took his knife, and cut them out. This took place at my house, in Georgetown. It was at the earnest request of Major Vandeventer, that I consented to this transaction. He promised to be friendly to me hereafter, and to do every thing he could, to appease the Vice President towards me.

Question by Mr. Campbell. Can you now say what words be cut out of the letter?

Answer. No, Sir, I cannot say what the words were.

Question by Mr. Floyd. Did you expect to be examined a second time, before this Committee?

Answer. No. I did not. I supposed the committee had discharged me in full, as I asked the question whether I was further wanted.

Question by Mr. Floyd. On what day was it you called on Major Vandeventer, at the Department of War, to inform him that you had found the letter marked s. c. t.

Answer. I can't pretend to name the day; it was after my first examination. I don't say it was the letter containing s. c. t. it was the letter I had shown to the Vice President he asked for.

Question by Mr. Floyd. Your motives being pure and good towards Major Vandeventer, why did you not permit the letter to be destroyed, rather than keep it thus mutilated, to be given to the committee?

Answer. It was not my intention to have given it to the committee, but supposing that the charges would come before the House of Representatives, and it might be necessary for me to produce it, as I had spoken of it in my first examination.

Question by Mr. Floyd. Have you heard of, or inquired for, Lt. Mix, of the Navy, within these twenty four hours?

Answer. No, I have not.

Question by Mr. Floyd. Have you had any conversation, correspondence, or other communication, with Satterlee Clark, touching the administration of the War Department, whilst Mr. Calhoun was Secretary of that Department, other than the confidential letter you wrote to him as the author of "Hancock," which was published in the Phoenix Gazette of the 28th of December last?

Answer. In the months of May and June last, he dined with me twice, in New York, at the National Hotel, and frequently importuned me for communications on the subject of Mr. Calhoun's administration of the War Department, and whether I had letters and papers to give him. I stated that I should return to Washington, and would probably bring them with me when I returned to New York.

He frequently called on me to ascertain whether I had done so or not. This is all the communication I have had with him to my recollection.

Question by Mr. Floyd. Have you had any conversation, correspondence, or any other kind of interchange of opinions, since he and yourself have been in this District, this Winter?

Answer. I don't know of any other intercourse with him this Winter, other than using some harsh expressions to him for publishing the letter in the Phoenix Gazette.

Question by Mr. Floyd. Have you had any conversation, consultation, or correspondence, with any person, concerning the publication of the papers you have produced to this committee?

Answer. I don't know that I have; I don't recollect particularly.

Question by Mr. Floyd. Were you ever advised to publish these papers as the proper course to be pursued to bring all things to light? if you have, state who the person or persons were who advised you?

Answer. I do think that Satterlee Clark once or twice advised me to publish the papers, though I am not confident; if he ever did so, it was when we met in New York. I have been occasionally advised as I think, to publish things, but don't recollect by whom.

Question by Mr. Floyd. Have you heard of, or inquired for, or caused any inquiry to be made, concerning Lieutenant Mix, of the Navy, since you were before the committee on yesterday?

Answer. No, I have not in any shape or form whatever.

Question by Mr. Williams. Do you know any thing of a Mr. Walker, as an original partner in your contract?

Answer. No, I never heard of his name before, to my knowledge.

Question by Mr. Williams. Did you ever inform any person that "Walker" was the name of the individual who was not to be known in the contract?

Answer. No; never.

At this stage of the examination, the witness, by direction of the committee, returned to his residence for the purpose of getting the letter herein before referred to, as the one shown to the Vice President; and, having returned, he produced to the committee two letters. (See letters marked P, and Q.)

Question by Mr. McDuffie. What were the words that have been cut out of the second line of the letter of the 3d of August, 1818, (marked P.) from Major Vandeventer to yourself?

Answer. I cannot say positively what they were; it is the same letter I showed to the Secretary of War since he was Vice President; in that space was the word ———, upon the reading of which, he asked me what it meant; and I answered, I thought it explained itself.

Question by Mr. McDuffie. What was that word?

Answer. I cannot pretend to say.

Question by Mr. McDuffie. What were the words that have been cut out of that letter in the two last lines of the first page?

Answer. I do not know.

Question by Mr. Campbell. Was it in this communication the letters "s. e. c. t." were written?

Answer. I believe it was, but I won't say I am certain.

Question by Mr. Campbell. What became of the scraps cut from this letter?

Answer. I do not know.

Question by Mr. Campbell. On what day, and at what hour of the day, did Major Vandeventer cut the words from this letter? Please state as near as you can.

Answer. I do not recollect the day. I know it was between my first and second examination. They were cut out late in the evening, say between 8 and 9 o'clock.

Question by Mr. Floyd. What was the word cut out from the beginning of the second line of the second page?

Answer. I believe it was the same as that cut out from the second line at the first page.

Question by Mr. Floyd. Were there then no word or words lost in the second line of the second page by that cutting?

Answer. As near as I can come to it, it was the same as that cut from the second line of the first page.

Question by Mr. Williams. What is the name of the man now living, by whom, you say, you can prove that Major Vandeventer cheated the United States out of six thousand dollars, in the year 1813?

Answer. I could designate the man, but can't now remember his name; I have often seen him in New York; he was formerly a soldier, and was Major Vandeventer's clerk at the time alluded to. He lives in New York City.

Question by Mr. McDuffie. What was your motive for permitting Vandeventer to mutiliate the letter in question?

Answer. I have already stated. Friendly feelings toward him and his family, and a promise, on his part, to use his influence with the Vice President in my favor, and an attempt to get the last contract which was taken from me, restored to me by the Secretary of War, were the motives.

Question by Mr. McDuffie. Why, then did you not give it up to him, and what was your motive for retaining it?

Answer. I have already stated, that, if the inquiry should be brought up in the House of Representatives, and I should be forced to produce the letter, I could have it to shew.

Question by Mr. Williams. Do you know any thing of the transaction by which you say Major Vandeventer cheated the United States out of six thousand dollars, in 1813?

Answer. I know as much as this, that he employed this man, to go into market and price the articles he wanted for the army, and would furnish him money to buy them; then add to the bill any thing he thought it would bear, and divide the excess with his man.

Question by Mr. Floyd. Do you know this of your own knowledge?

Answer. It was reported to me and I was satisfied with the report, and I threatened him to communicate it to the War Department in 1816, in the presence of Peter B. Van Buren, who was a partner of mine, in business, in New York, at that time.

Question by Mr. McDuffie. Who reported it to you?

Answer. It was reported to me in the first instance by his first wife.

Question by Mr. McDuffie. Did Vandeventer ever acknowledge it to you?

Answer. No.

Question by Mr. McDuffie. How then do you know it, except from the information of others?

Answer. I knew it by a paper which I held of his, and which I think, I have now, but do not know exactly at this time where to lay my hand upon it.

Question by Mr. McDuffie. What did that paper contain?

Answer. I don't know at present.

Question by Mr. McDuffie. What paper was it?

Answer. It was an account current, or a copy, made out against the United States.

Question by Mr. Floyd. In whose hand writing was that account?

Answer. Part of it was in Major Vandeventer's, and part of it in that of his clerk.

Question by Mr. Floyd. You say it was good feeling toward Major Vandeventer which induced you to let him mutilate this letter. Did you not think the production of this letter so mutilated, much more likely to injure Major Vandeventer, than if in its entire form?

Answer. No, Sir, I do not; I think in the other state it would have injured one he esteems very highly as a friend; in the present state it injures no one.

Question by Mr. Floyd. How do you know that it would have injured one he esteems, when you cannot recollect the words which have been cut out?

Answer. I think to the eyes of the world it would have borne strongly on a person whom I suppose has been a friend to him; because, when Mr. Calhoun read that letter he seemed very much offended.

Question by Mr. Floyd. Are you in the habit of friendly intercourse with Major Vandeventer?

Answer. I am not at present; I have been heretofore, but have not been so for the last eighteen months.

Question by Mr. Floyd. You were informed by the committee when you first appeared before them, that they wished you to produce all the papers you had in your possession touching this contract, so far as embraced in this investigation; why did you not then produce these letters, marked P and Q?

Answer. I produced all the papers that I knew I had at that time, in relation to the contract, but have since found these two letters, as also the letter dated 17th October, 1820.

Question by Mr. Floyd. When did you find them?

Answer. Soon after my first examination.

Question. Are you and Major Vandeventer in the habit of free conversation at this time, or has *all* intercourse ceased for eighteen months, as stated in your answer just now?

Answer. I spoke to him yesterday, and have been in the habit of seeing him five of six times since the publication of the letter to "Hancock." He called on me, wishing to know, what steps I intended to take; I told him I intended to tell the truth on the subject, as far as I knew it; he told me, I had better throw myself in the mercy of the committee, and tell them I knew nothing.

Question by Mr. Floyd. Have you had any other conversation with Vandeventer, and was any body present?

Answer. Yes, Sir. I had a conversation with him in the War Department, in the presence of one of the Clerks, (Mr. Davis, I be-

lieve.) After the conversation was over, he asked Mr. Davis to take notice of what I said. I then stated to Mr. Davis, that it was not worth while, for I had not seen the letters for some time, as I could not pretend to say what the letters stated relating to the publication.

Question by Mr. Floyd. What letters do you mean?

Answer. All the letter before the Committee.

Question by Mr. Floyd. Was this the last conversation you had with Major Vandeventer?

Answer. No. I saw him yesterday, and repeatedly, as I have stated.

Question by Mr. Floyd. Were these letters the subject of conversation with him, or did you see him without conversation with him?

Answer. I conversed with him on the subject of the contract, independently of the letters.

Question by Mr. Floyd. Had you any particular conversation, in regard to any of these letters?

Answer. On the subject of the letter of the 3d of August, 1818, (marked P,) he was very desirous to have it destroyed.

Question by Mr. Campbell. Why did Major Vandeventer, in his letter of the 3d of August, 1818, express so much anxiety to have the contract closed for fear your bid might be lost, since you and General Swift had several days before, made a contract? did he ever explain this matter to you?

Answer. No, he never did: but, I suppose, he alluded to having the bonds given, as General Swift would not consider the contract closed till that was done.

Subscribed this 23d day of January, in the year of our Lord 1827.

ELIJAH MIX.

No. 29.

Paper No. 1, in E. Mix's second Examination.

[PRIVATE.]

To J. C. Calhoun:

April 1st, 1821.

SIR: I have this morning settled all points with Mr. Mix, and he has consented to be guided by the Secretary, in the transfer to Messrs. G. & Co. the one-fourth of the contract, agreeable to your wishes; he has only to return to Washington, and will then be directed by the Secretary. He would not have holden out thus long, had he been acquainted with the consequences to *all concerned;* but all will now, I trust, be settled, as he has promised. On the subject of my going abroad, I cannot answer until this concern is settled; and on my arrival at Washington, I shall be prepared to give the Secretary a final answer.

C. VANDEVENTER.

Mr. E. MIX,
At Mrs. Mann's Boarding House, New York.

I have but this evening learned that you leave town in the morning, and have above stated to you a part of a private communication made this morning to the Secretary, and I expect you will be guided by his orders, or all will be lost; you cannot know the consequence provided you hold out longer, and thereby oblige the Secretary to take it from

you by consent. In this matter you will enable me to accept of a situation above alluded to, and save the Secretary deciding much against your interest. Major C. has sold to G. & C. at 40 cts. which will nett a profit of $18,600.

C. VANDEVENTER.

Paper No. 2, in E. Mix's second Examination.

[PRIVATE.]

To J. C. Calhoun:

SIR: All is settled with Mr. Mix, and he has promised to be directed by the Secretary, and transfer, without further opposition, to Goldsborough & Co. one-fourth of the contract. He would not have holden out thus long, had he known *all concerned*, but has only to return to Washington, and will then and there transfer to the order of the Secretary, without opposition, one-fourth of his contract. I have fully stated to him *all*, and the views which the Secretary has taken of the subject; and that *all* will be lost if he does not comply with the Secretary's wishes. On the subject of my foreign visit, I will answer fully on my return to Washington, and this contract put to rest.

C. VANDEVENTER.

Mr. E. MIX,
At Mrs. Mann's Boarding House.

I have but this moment learned that you leave in the morning, and have above stated to you part of a private correspondence with the Secretary, and hope you will, without opposition, transfer the one-fourth, as the Secretary shall direct; the event cannot be longer stayed, and if you wish to preserve all, you will, without opposition, comply with the Secretary's wishes. In this matter all shall be settled in Washington, whither I shall come in a few days, and probably accept of the situation alluded to above. Yours,

C. VANDEVENTER.

April 1st, 1821.

Major C. has sold for 40 cts. to Goldsborough, which will nett to the company $13,600.

Paper No. 3, in E. Mix's second Examination.

[PRIVATE.]

To J. C. Calhoun:

SIR: I have this morning settled all with Mr. Mix, and he will, without opposition to the Secretary, transfer to Goldsborough & Co. one-fourth of his contract. He would not have holden out in opposition to the Secretary's order, but did not know all the concern. I have made him fully acquainted with all the consequences provided he does not consent to the Secretary's wishes, and have no doubt but all will be as you wish. On the subject of my foreign mission, I will fully answer the Secretary on my arrival in Washington, whither I expect to be within a few days.

C. VANDEVENTER.

Mr. E. Mix,
At Mrs. Mann's.

I have but this moment learned you leave town in the morning, and have above communicated to you part of a letter I have wrote to the Secretary, and hope you will be directed by him, and fully comply with our wishes, which will enable me to accept the situation above alluded to, and settle all trouble in the Department. Major C. has sold to Goldsborough & Co. for 40 cts. which will net $13,600.

Yours, VANDEVENTER.

Exhibit No. 4, accompanying Elijah Mix's second Examination.

GEORGETOWN, 13*th April*, 1821.

SIR: Mr. H. Goldsborough having purchased from a Mr. S. Cooper the undelivered part of one-fourth of my contract, I have no objections to his being recognized by the Government as the owner thereof, and to their giving orders for payment to be made to him, or to such persons as he may authorize to receive it for him, without further authority from me for the deliveries that have already been, or they may hereafter be, made thereon, at the contract price; provided the responsibility now attaching to me, for the due fulfillment of the whole contract, be so modified, as to transfer from me to him so much thereof as will apply to the portion withdrawn, as above stated, from my jurisdiction; and provided, also, the Government will release me from obligation to liquidate one-fourth of the $10,000 advanced by them on the contract, holding him liable therefor. The above I will consider to be binding on me, whenever I shall receive a notification of its acceptance by the War Department.

Letter to the Secretary at War.

GEORGETOWN, 13*th April*, 1821.

SIR: Mr. H. Goldsborough having purchased from Mr. S. Cooper the undelivered part of one quarter of my contract, I have no objection to the Department giving orders for his receiving the amount of two dollars and sixty cents per perch, on his becoming responsible to the Government for the punctual fulfillment of his proportion of the contract; the Department to receive the remaining forty cents until the full amount of five thousand dollars, advanced to the contract by the Department, be paid up; and on the commissioned officer acknowledging the payment of the sum of five thousand dollars, the balance be retained in the hands of the officers of Government, until all claims against this half of the contract are settled.

I have the honor to be, Sir,
With the highest respect,
Your very obedient humble servant,
ELIJAH MIX.

Hon. J. C. CALHOUN,
Secretary at War, Washington.

[A great portion of the last of the foregoing letters is erased by a pencil mark passing over the words. It is also interlined by words

written in pencil, the most of which are illegible. It cannot therefore be printed so as to show the alterations made in pencil, and to which Mr. Mix refers in his second deposition.—S. B.]

Exhibit M, accompanying Elijah Mix's second Examination.

HAVRE DE GRACE, *October* 31*st*, 1821.

SIR: On an examination of Major Maurice's books, on the first day of April last, we find there remained of Rip Rap stone for us yet to deliver, (besides what we delivered last year on account of this,) seventeen thousand nine hundred and seventy perches of stone. It being our proportion at that time yet to deliver on the E. Mix's contract, agreeably to the orders of the Secretary of War, which quantity of stone we claim as our right, exclusive of all other deliveries made previous to that date, either by Major Cooper, or any other person for us.

We are, respectfully,

HOWES GOLDSBOROUGH & Co.

Colonel GRATIOT,
Fort Monroe, Virginia.

A true copy.

C. GRATIOT.

ACCOUNT OF DELIVERIES OF STONE AT THE RIP RAPS, BY H. GOLDSBOROUGH & CO. ON ACCOUNT OF E. MIX'S CONTRACT, DURING THE MONTHS OF JULY AND AUGUST, 1820

When delivered	Vessels' names and masters	Quantity delivered	
		Perches	Feet
July 10	Leander: H. Hayden	62	14
12	Agnes: A. Whittlesey	70	6
	Sarah F. Hollingshead: John Ireland	56	17
13	Sea Serpent: Samuel Ely	59	1
	Friendship, Jun'r: J. Johnson	54	6
	Defiance: A. Shipman	77	0
	Hope, Jun'r: S. Stratton	52	7
	Belvidevira: J. Paier	44	5
14	Harmony: E. Sterling	68	22
15	Victory: McCullum	70	19
17	Leander: H. Hayden	63	14
	Rambler: M. Anderson	85	6
20	Independence: Rt. Hamilton	65	9
	Patty Washington: Job North	58	16
	Commerce: John Brooks	66	16
13	Harriet: White	50	20
	Superior: Lord	10	0
	Paragon: R. Jones	10	12
14	Louisa: E. Barlowe	70	0
22	Superb: Fisher	65	6
21	Hound: J. Williams	65	1
	Boxer: Shaw	67	0
24	Leander: H. Hayden	62	14
25	Friendship, Jr.: Johnson	49	10
	Sea Seapent: Samuel Ely	59	1
	S. F. Hollingshead: J. Ireland	56	17
26	Defiance: A. Shipman	77	0
27	Victory: McCullum	61	13
	Rambler: M. Anderson	85	6
26	Hope, Jun'r: S. Stratton	49	13
July 25	Harmony: Goodrich	68	22
21	Mary Elizabeth: S. Traverse	45	15
28	Essex: H. Harrington	59	1
	Six Sisters: James Clarridge	46	19
25	Friendship: Geo. Stinchcomb	67	22
31	Lady's Delight: J. Colfer	64	14
27	Edward and Margaret: W. Simmons.	36	12
27	High Flyer: Thomas	32	22
28	Stranger: W. Jones	42	24
	Mary Ann Jane: James North	54	10
27	Harriet: William Jones	67	7
22	Commerce: Trope	20	5
23	Mary: Thomas Handy	42	14
22	Commerce: S. Phillips	22	18
Aug. 8	Mahala: S. Harrington	57	10
3	Commerce: John Brooks	63	1
	Patty Washington: Job North	61	19
	George Washington: W. Tucker/	65	14
4	Flight: Cullumber	34	22
	Independence: M. Navy	42	14
3	Leander: H. Hayden	62	4
10	Mary and Eliza: Ab. Cater	45	1
16	Defiance: A. Shipman	77	
	Victory: McCullum	76	
	Rambler: M. M. Anderson	35	5
	Sea Serpent: Samuel Ely	59	1
	George Washington: William Tacker	65	14
21	Rebecca: C. Creighton	44	4
	Total	3,280	13

Abstract account of stone delivered at the Rip Raps, by Howes Goldsborough & Co. during the months of July and August, 1820.

	Perches	Feet
Deliverances in March, April, and May, as per abstract	2,285	17
Deliverances in July and August	3,280	18
	5,566	05

Of the above quantity of five thousand five hundred and sixty-six perches and five feet, delivered by us at the Rip Raps, payment has been refused for the quantity of fifteen hundred and nine perches and twenty-four feet of stone, alleged to be an excess above the quantity that Major Cooper had a right to deliver this year, and which we delivered on account of his sub-contract, in consequence of his promise to us, to purchase of Mr. Mix five thousand perches over and above his original purchase of one-fourth of Mr. Mix's original contract, so as to enable us to deliver nine thousand perches this year; which promise had not been complied with.

21st *Dec.* 1820.

HOWES GOLDSBOROUGH & CO.

Exhibit N, accompanying deposition of E. Mix. Second Examination.

DEAR SIR: I have received, to day, an anonymous letter from Norfolk, stating that a combination has been formed at Norfolk, to pursue the investigation commenced last session, respecting your contract. Mr. Tazewell, General Taylor, and others, are mentioned as associating in effort for this purpose. It is stated that a statement of their views has been sent to the Metropolitan of this city, and then to be published at Philadelphia. I barely mention this, that while you are at New York, you may attend to the bond. Every point should be in order, to shew it as truth requires, and then you need not apprehend the result. [erasure] and myself will be implicated, and as many others as may be necessary for the purposes of malice. If this publication be made with all the rancor that is threatened, I shall, myself, demand to be heard before a Committee of Congress, and then their wishes may be gratified, if they only wish a fair investigation. This furnishes another proof of great circumspection on your part. The old story of extravagance is alleged, as proof of improper proceedings, &c. &c.

The mail is about starting. Attend to the bond. Maria and family are well.

Yours truly,
C. VANDEVENTER.

Capt. ELIJAH MIX.
October, 17*th*, 1820.

Raper O, referred to in a question propounded by Mr. McDuffie to Elijah Mix, Esq. second examination, January 22, 1827.

This day, Walter S. Cronkling, personally appeared before me, a Justice of the Peace for the city of Richmond, and made oath, that,

some time in November, in the year 1817, while he was staying at the Union Hotel, in the said city, that he there became acquainted with a certain Samuel Stilwell, of the city of New York, who, at that time, was very ill, and who stated to him, that he had materially injured one E. Mix, by making a note, purporting to be drawn by the said Mix, and having obtained the endorsement of Hone and Towns; this he had prepared for the special purpose of injuring the said Mix's reputation, as well as to produce some difficulty in the said Mix recovering from him eight or ten thousand dollars, which he acknowledged justly to owe the said Mix; he also mentioned that he had, at one time, proposed to the said Mix, that, if he would dismiss the suit, which he had instituted against him, that he would then publish this fraudulent transaction, and thereby remove the stain which it had left upon his character.

C. TOMPKINS.

Richmond, May 14*th*, 1822.

Exhibit Q. Second Examination of Elijah Mix.

September 19*th*, 1818.

DEAR SIR: I have received yours of the 16th instant, and really sorry that you meet with obstacles, and experience delays in getting your vessels measured. Why does not the Agent attend at once to it? or does he intend to put you to all trouble and expense possible? If he does, you must put on your best managing suit, and flatter him out of his designs to put you to trouble. It is very important to have it ascertained how much the vessels each will carry; and, unless you induce Mr. Maurice to fix it, we may lose a great deal, or the United States must lose. Mr. Maurice cannot suppose you to throw away your time and money for his convenience. By all means, represent the injury it is to you to be thus delayed; that you cannot fulfill your contract without his giving you all the facilities which the United States are bound, by their engagements, to afford you; and that it is to avoid any dissension hereafter that you are desirous to get your vessels gauged, and the amount they will carry fixed, as well as the manner of getting receipts for what you deliver. Be prudent, patient, and accommodating, on your part, and you will have a fair claim to demand like treatment.

The want of hands must be remedied. Where is Mr. Jennings with the hands he said he could get you? I have written to New York for 8 or 10. When you receive the sloop Sisters, you can acknowledge the arrival, and ask him to send as many hands as you want.

Yours truly,
C. VANDEVENTER.

(MS. torn) shall endeavor to get him to go down to Old Point. I have just seen Col. Armistead, who says that the best way to ascertain the quantity each vessel will carry, is to load them as deep as you think best, and go to Old Point Comfort, and put each load out on the beach by itself, and leave it there, having it piled and measured, as it can be used at Old Point as well as on the Rip Raps.

This, if you have not already fixed the mode, will obviate all difficulties: thus you will know what each vessel will carry.

C. V.

Capt. E. Mix.

Exhibit P. Second Examination of Elijah Mix.

My Dear Sir: I have shown your letter, of the 30th ultimo, to the (MS. cut,) who directs me to inform you that he does not wish any stone from New York; that it will not do; and that he does not understand the last paragraph, where you say "there is a person now in New York who has chartered two vessels to carry stone to Old Point," as there is not one engaged to deliver stone at Old Point from New York. It is most important that you engage very secretly your vessels, either by purchase or on freight, and leave New York as soon as possible; and, for God's sake, do no suffer yourself to speak of the (MS. cut,) except to the men who are to be (MS. cut.) As to any Agent in New York, we want none: In a word, the (MS. cut,) is at a loss how to construe your letter; because, as you yourself say, the idea that we can afford to pay $1 a perch for transportation will (erasure.) be secret, and come back as soon as possible, for we are losing much by del (MS. cut,) 4 or 5 vessels on a short credit. Send them round, and come on and close the contract, before a lower bid may be made. If a lower bid be made (erasure) may be lost. I feel anxious to have the contract closed. Mr. Jennings is expected here daily, and it will be important to us that you both are here together.

Again: be secret in your operations, and do not let the prospect which is before us, be lost, (here 2½ lines of MS. are erased.) Engage no vessels to deliver stone at Old Point from New York. If you can (MS. cut,) a few which you could afterwards (MS. cut,) stone from York to Old Point, do so, and leave New York as soon as possible.

All well. Get the security in a bond for $20,000.

Yours truly,

C. VANDEVENTER.

August 3, 1818.

Capt. Elijah Mix, *New York.*

No. 30.

Second Testimony of Major Vandeventer.

Major Christopher Vandeventer again appeared before the committee by their order, and was further examined, and testified as follows:

Question by Mr. Ingersoll. Is the letter now shewn to you, addressed to E. Mix, dated 17th October, 1820, and marked N, in your hand writing?

Answer. Yes.

Question by Mr. Ingersoll. Do you know what word has been erased from the 15th line of the 1st page, and by whom the erasure was made?

Answer. I cannot swear positively to the words that are erased, but I can give my impressions as to what they are: I have no doubt

the words may have been "the General," or they may be "the Secretary;" the whole letter could best have its explanation, by referring to the time and circumstances under which it was written. It was at a time of high political excitement, when a great deal was said respecting the disbursement and administration of the War Department. The circumstances under which it was written are pretty generally explained in the context of the letter; at this time I had received an anonymous letter from Norfolk, stating that a new attack would be made on this contract, and that the names here mentioned, had associated for that purpose, and that the attack would be made in the Metropolitan of Georgetown. In the Spring preceding the date of this letter, that is, in April, 1820, there had been an investigation into this contract by a Committee of the House of Representatives, during which, as I was called before the Committee, I had occasion to examine into the state of facts in relation to this contract, as they existed in the Engineer Department. I then discovered that the second bond had not attached to it the certificate of the Recorder of New York, which he had affixed to the first. Thinking that that might be a cause for blame, and believing, also, that the movement was wholly political, and intended, as I supposed, to visit censure upon the Secretary of War, on account of my connection with the contract, and feeling, also, great pain that he should be harassed for an act of mine which I had reason to believe he did not approve, I was desirous of removing even this informality in relation to the bond, and wrote this letter to Mix, in order to induce him to obtain from the Recorder the accessory certificate, to comply more fully with the forms of office; for, after all, it was required merely by the forms of office, as the sureties in the second bond were the same as in the first, to which the certificate was attached. These were the motives for writing this letter, as far as I can recollect. I did not make the erasure, nor do I know by whom it was made, for I have never seen this letter from the day of its date to the moment it was now handed to me. I will repeat that I cannot swear positively what name has been erased. My present impression is, that it may be "Swift." It is proper to state to the committee that I early had the impression from Mix that General Swift was indirectly concerned in the contract; that I labored under that impression, up to the time of the investigation in 1822, when General Swift deposed that he was not, nor had he been, directly or indirectly, concerned in this contract; believing this deposition, it effaced from my mind all impressions of the contrary, and I then perceived, with great pain, and so stated to Gen. Swift, the injury which I had done to his character, when laboring under a different impression. I should have stated before to the committee what I now state, in relation to General Swift, had I not considered that it was mere suspicion, and which had been done away by his deposition. The committee will readily perceive that this erroneous impression under which I labored and acted on, in my correspondence with Mix, has enabled him, by obliteration, to create the mystery which is apparent on the face of these letters.

Question by Mr. Ingersoll. Did you send the bond to New York, in 1820, to have Mr. Riker's certificate attached to it?

Answer. No; I have no recollection of it.

Question by Mr. Ingersoll. Was any certificate ever given by Mr. Riker, as to the bond you have just alluded to?

Answer. Not that I know of.

Question by Mr. Ingersoll. How long after the execution of the first, was the second bond executed?

Answer. I could not be exact as to time, but I think it could not have exceeded September or October following.

Question by Mr. Ingersoll. Had you conversed with Mix about procuring Mr. Riker's certificate, before you wrote the letter of 17th October, 1820?

Answer. I don't recollect that I did. It is apparent to my mind that this letter had reference solely to the certificate of the Recorder, when I speak of the bond, and it is also apparent to me, as I have stated, that the whole letter was written in reference to the political excitement of the day.

Question by Mr. Ingersoll. If you have previously said nothing to Mix about procuring the certificate, how did you suppose he was to take your meaning, when in the letter you argued him to attend "to the bond?"

Answer. I wrote upon the presumption that he already knew that the certificate was not attached to the bond.

Question by Mr. Ingersoll. When the second bond was executed, why was it dated back to the 5th August, 1818, instead of bearing the true date?

Answer. I do not know, but presume it was that the first bond should be surrended up, and that but one bond should be filed with the contract. That, however, is mere presumption.

Question by Mr. Ingersoll. Were advances made by the Department to Mix before the execution of the second bond? and, if so, to what amount?

Answer. They were: the advance of $10,000, if I recollect, was made on the receipt of the first bond, on the recommendation of the Chief Engineer.

Question by Mr. Ingersoll. Why was the bond ever accepted at the Department, when it describes a contract for 100,000 perches of stone only, and names George Cooper and Mix as the contractors—the contract being for 150,000 perches, and Mix sole contractor?

Answer. I do not know that it ever was accepted by the War Department; it being defective, I presume it never was.

Question by Mr. Ingersoll. If the first bond was never accepted, why were advances made to Mix, after its receipt?

Answer. The advances were made, as usual in all such cases, upon the recommendation of the Chief Engineer. No money is remitted from the War Department, but on the recommendation or requisition of the Chief of the subordinate Department, who is charged with the disbursements of that branch of the appropriations.

Question by Mr. Ingersoll. How many bonds were given for that contract?

Answer. I have never seen but the two.

Question by Mr. Williams. What authority had you for taking on to New York the advance of 10,000 dollars.

Answer. Having determined to go to New York, as I before explained, to give assistance to Mr. Mix, he requested me to bring with me any advance which might be made, if any, and I accordingly, if I

recollect, took a sealed letter from the Treasurer, containing the draft for the advance, which I handed to Mix at New York.

Question by Mr. Williams. What assistance were you to give Mr. Mix?

Answer. I have before stated to the Committee, that it was to assist him to get his securities, and to enable him to procure an outfit for the execution of his contract?

Question by Mr. Ingersoll. Is the letter now shown you, addressed to E. Mix, dated third August, 1818, and marked P, in your handwriting?

Answer. Yes.

Question by Mr. Ingersoll. Do you know what were the words cut out of this letter, or who cut them out?

Answer. I do not recollect, but I presume that the word cut out in the second line of the first page is "General," referring, for the reasons I have stated, to General Swift. Those cut out in the two bottom lines of the first page, I do not know what they are, but presume that those in the second line from the bottom of the page may be "business," or some such word—it would make sense if that were relied on. The words cut out from the second line of the second page, I presume to be the same as those cut out in the second line of the first page. I do not know who cut out the words.

Question by Mr. Ingersoll. Was the contract drawn up and signed at the time you wrote that letter?

Answer. Yes. There is a part therefore of this letter at variance with that fact, for the contract was signed on the day of its date. I feel the more confident in that fact as calling on that day at General Swift's office, on my way home from the War Office, I found him and Mr. Mix about concluding the contract, that the General had drawn out a rough draft of it which he requested me to copy, which I did, and witnessed their signatures.

Question by Mr. Ingersoll. Why then did you express your anxiety in that letter to have the contract closed, lest a lower bid might be made.

Answer. I obviously allude by that phrase to the completing of the bond; and the phrase of "lower bid be made" was unquestionably used to expedite his exertions to procure the bond—the other parts of the letter relating to business, obviously is a reply to his of the 30th.

Question by Mr. Ingersoll. Can a contractor be underbid after he has signed articles of agreement with the agent of the Government, and while he is procuring bonds?

Answer. No. But my allusion to that contingency was manifestly to stimulate him to forward his bond: if bond be not furnished within reasonable time, it is usual to take the next lowest bid.

Question by Mr. Ingersoll. Your letter bears date nine days after the contract: did you consider that Mix was endangering the contract by not sending the bond at that time?

Answer. I cannot say that he was, as no lower bid was ever made: but if he had not furnished bond within a reasonable time he would have been in danger of losing the contract.

Question by Mr. Ingersoll. Why was you anxious that the contract should be completed, and the bond given, if your interest was only a

verbal lien to indemnify you against your responsibilities for Mix?

Answer. Mr. Mix's situation, with a large family, without business and means to support them, and his family, at the time, being at my house, naturally created a strong desire that he should not fail in this undertaking.

Question by Mr. Ingersoll. Will you produce the anonymous communication which you say you received before writing the letter to E. Mix, of the seventeenth of October, 1820?

Answer. I have not got it; it was destroyed, I presume, with my other papers, by the arbitrators, as before mentioned.

Question by Mr. Ingersoll. Is the letter now shown you, dated September 19, 1818, addressed to E. Mix, and marked Q, in your handwriting?

Answer. Yes.

Question by Mr. Ingersoll. Do you know what words have been torn out of the third page?

Answer. I do not.

Question by Mr. Wright. Is not the first of the two words obliterated in your letter of the seventeenth October, 1820, "The?"

Answer. It is probable that it is.

Question by Mr. Wright. Does not the send of these words obliterated begin with the capital letter S, and end with the letter t—and is there any appearance of any intermediate letter extending above and below the line, like a letter f?

Answer. That seems to be the fact. The first letter seems, in a stronger light than when I looked at it before, to be an S, or the top part of it, and the last a t, as far as the obliteration will allow of making out any letter. There does not appear to be any letter like an f.

Question by Mr. Wright. Are you not now able to say, distinctly, what were the words obliterated in that letter?

Answer. I am not; but my impression is that it was "Swift," or "the General," for the reasons I have stated before.

Question by Mr. Wright. Whence arises your impression, that the obliterated words were "the General," or "General Swift," if the first letter of the second word is S, and there is no appearance of a letter f?

Answer. If it be "Swift," the first and the last letters only had been written, and the same if it be "General," the first and the last letters only were written.

Question by Mr. Wright. Would you, if writing of General Swift, write "the Swift."

Answer. I should be more apt to write "the General," if writing of him.

Question by Mr. Wright. Why did you obtain Mr. Calhoun's frank on your letter to Mix, of the 19th of September, 1818, and did you inform him it was a private letter of yours?

Answer. It was sometimes the case that the Secretary's frank was put on private letters, as it appears to have been in this case, and without his being informed of its being a private letter. I might say that it is almost a custom of all who have franks to give them on private letters.

Question by Mr. Wright. Do you know of any other instance of a person having the right to frank, using it for letters other than his own?

Answer. I believe the fact, although I might not be able to specify name and time.

Question by Mr. Wright. Are there any other instances of your having obtained the Secretary's frank on your private letters to Mix, concerning Mix's contract?

Answer. I believe there may be.

Question by Mr. Wright. Had you any conversation with Mr. Calhoun in relation to the letter of J. Lewis & Co. to him, dated 21st June, 1821, a copy of which is now shown you, and marked R? If yea, relate it.

Answer. I do not recollect any particular conversation with the Secretary in relation to this letter, and all the knowledge I have of it consists, I believe, in reading the reply of the Secretary of War to it.

Question by Mr. Wright. Had you any conversation with Mr. Calhoun about any charges made by Jacob Lewis & Co. against you, as connected with the Mix contract?

Answer. No; and the only information I had in relation to the subject was the reading the Secretary's letter to Lewis, in which he tells him to make specific charges.

Question by Mr. Wright. Had you any conversation with Mr. Calhoun on the subject of the meaning of the following passage in the letter last alluded to, to wit: "The company were not aware that they should have to contend with the father, two sons, and a Gist, [word not legible,] the latter the private contract points out?" if yea, relate it, and state, also, who you understood are alluded to in said letter, in the words quoted, and who you understood the words "a Gesl, the latter the private contract points out," to mean?

Answer. I do not recollect to have had any conversation with Mr. Calhoun in relation to the passage quoted in the question: but taking together, the letter itself, as before me, and my recollection of the replies of the Secretary, the writer doubtless meant, by "the father, two sons," Major Cooper, myself, and Mix; who the other is, I am as unable to decipher as others who have examined it. I come to this conclusion, also, from having heard that Commodore Lewis had charged that we were concerned in the Rip Rap contract.

Question by Mr. Wright. How long after the second bond was executed before it was delivered in the War Department, and to whom was it delivered?

Answer. I cannot state, as it is a matter of detail appertaining wholly to the Engineer Department.

Question by Mr. Wright. Was the second bond ever shown to the Secretary of War?

Answer. I cannot state that it was, or was not.

Question by Mr. Williams. Was it ever in the power of the Chief Engineer to obtain advances for contractors by recommending that they should be made before the bonds from said contractors had been duly executed and filed in the War Department?

Answer. The Secretary of War always reposed such confidence in the Chiefs of the Bureaus, especially when he first came into office,

as to make advances when recommended by those chiefs; that if the fact had been stated that a bond was incomplete, and there would be danger in making any advance, he would not have authorized it.

Question by Mr. Williams. Did you state to the Secretary that the bond was incomplete before the advance of the $10,000 was made?

Answer. No. I had no conversation with the Secretary respecting the advance or the bond. I never understood that the Chief Engineer said any thing to him respecting the bonds being incomplete at the time of the advance.

Question by Mr. Williams. From whom did you receive authority to obtain the draft for $10,000 from the Treasurer?

Answer. After I understood from the Chief Engineer that an advance of $10,000 had been made on the contract, I think I went to the Treasurer's office to inquire whether it had been remitted, and was told that it had not been, and stated to him that I was requested by Mr. Nix to bring the remittance to him at New York, whither I was then going. He then gave me the letter to which I have alluded, or shortly after, on the same day, sent it to me, I don't now recollect which, and I carried it with me to New York and delivered it to Mix.

Question by Mr. Williams. Did the Chief Engineer or the Secretary of War issue the order for this advance of $10,000? and at what time was it issued?

Answer. I have stated that this advance was made on the recommendation of the Chief Engineer to the Secretary of War, and that the warrant issued, I think, about the 8th of August, and that the advance was made on the same day on which it was recommended.

Question by Mr. Williams. Did you receipt for this draft?

Answer. I received a sealed letter which I was told contained the draft. I never gave any receipt for the draft.

Question by Mr. Ingersoll. Was any contract ever made by E. Mix, or by E. Mix and George Cooper, for the delivery of 100,000 perches of stone, being the quantity named in the first bond.

Answer. Not to my knowledge.

Question by Mr. Ingersoll. You say that you do not know when the second bond was delivered at the Engineer Department, but that you believe it was executed in the Fall of 1818; why do you believe that it was executed at the time you have mentioned?

Answer. I found this belief upon the general recollection that the subject was repeatedly alluded to at that period, and that after General Swift left the office, which, I think, was in October, I heard no more on the subject, and I, therefore, conclude the bond was there when he left the office. More accurate information on this point may be had by reference to the sureties themselves.

Questions by Mr. McDuffie.

Question. Did you ever write to the Secretary of War, Mr. Calhoun, a letter, containing the substance of either of those now presented to you? (See Nos. 1, 2, 3, of Exhibits accompanying E. Mix's second deposition.)

Answer. I did not write at all to the Secretary at that period, as I recollect, and at no time did I write to him any part of the papers now shewn to me.

Question. Did you ever request Elijah Mix, to permit you to erase or cut out any words in the letter now presented to you, dated 3d of August, 1818? and if yea, did you so cut out the words, which appear to be cut out?

Answer. I never requested permission to cut them out, I did not cut them out, and never saw the letter from the time of writing it till it was shewn to me to-day.

Question. Have you, within the last three weeks, been at the house of Elijah Mix? if yea, what induced you to go, and what conversation had you with Mix?

Answer. I was there on the 15th of this month, at his urgent solicitation through Captain Smith. On meeting him, I demanded to know what he wanted of me; he began his reply by professions of friendship and good will, and terminated it by disclosing the object for which he wished to see me, to wit: To ascertain whether I had requested to have his brother and Major Cooper summoned before the Committee; not giving him the full satisfaction that he wished, he began to threaten with disclosing more letters to the Committee, to deter me from requesting the attendance of those gentlemen; discovering his object, I immediately left his house, and I was not in it, the whole time, as long as it has taken to relate what past; I met him the night before last in the street, he being in his gig, drove furiously up to me, and demanded whether I had laid any letter from his brother to me, on the subject of the Richmond, affidavit before the Committee; and telling him, I had informed the Committee of the fact, he replied that he would make me "Smell Hell" for it. He then drove off from me as furiously as he had driven up to me.

Question. Did you ever converse with Mix relative to what he was to testify before the Committee, and advise him to throw himself upon the mercy of the Committee, and state that he knew nothing?

Answer. On the first morning of my attendance here, in obedience to the summons of the Committee, I was shown by Mr. Carr, into the room of the Sergeant-at-Arms. A short time after going into the room, Mix was shewn into it. He commenced conversation by saying that he had been very anxious to see me; that he had called at my room at the Department, for the purpose, to say that he had got himself into great difficulties by his letter to Major Clark; that he knew he had not any thing to substantiate his charges, and that he was at a loss what course to pursue. I replied to him, that his course was a plain one, to state the truth throughout. I never did advise him to throw himself on the mercy of the Committee, and to state that he knew nothing; or give him advice of any sort.

Question. Did you ever converse with Mix at the War Department on the subject of the letter of the 3d of August, and state in that conversation that you would probably be over heard, and, therefore, that you would go to his house with a view of conversing on the subject?

Answer. No. The only conversation I ever had with him at the War Office, was in the presence of Mr. Davis, which has been detailed to the Committee.

Question. Had you ever any conversation with Elijah Mix on the subject of peculations, committed by you on the Government, while you were in the Quartermaster's Department, or in any other Department, in which you admitted that you had committed such peculations,

or in which Mix threatened you, that he would publish the fact of your having done so?

Answer. I think it is, perhaps, twelve months past or more, that Mix once made an allusion to the subject in the way of a threat, and which I met by a most positive denial and defiance, and a threat of prosecution on my part, if he ever dared to make the charge. He knew it was false, and made it only as a threat, as he has a great many other things. I now take the opportunity to state to the Committee, if it be within the range of its powers, my request that this subject be fully investigated and examined. I would point out to the Committee, that the abstracts of my accounts are filed in the Auditor's office.

Question by Mr. Floyd. Had you a clerk in your service in 1818, who was a soldier?

Answer. Yes; an enlisted soldier, whose name was James McGowman.

Question by Mr. Floyd. Where does he now reside?

Answer. I believe he is dead. The records in the Adjutant General's Office will probably show the fact.

Question by Mr. Wright. Did you know any thing of Captain Smith's certifying to the Committee in 1822, a copy of the second bond, including a certificate from Richard Riker, approving the security?

Answer. I do not

Question by Mr. Wright. In whose hand writing Is the words "bond and contract, Elijah Mix, 150,000 perch stone for Rip Rap Shoals, Hampton Roads," endorsed on the back of the first bond on Mix's contract?

Answer. I believe it to be General Swift's.

Question by Mr. Wright. Are these words written on the back of the bond in the way such endorsements were in the year 1818, usually made in the office where bonds are accepted?

Answer. I do not know.

Question by Mr. Wright. In whose hand writing is the body of the second bond in the Mix contract?

Answer. I think it is in the writing of Major Cooper, but would not be positive.

Subscribed this 24th day of January, 1827.

C. VANDEVENTER.

Mr. Vandeventer to Mr. Floyd.

WASHINGTON, *January 24th*, 1827.

SIR: Allow me to correct my statement to day, in relation to the christian name of McGowan: it is Owen, and not James.

I have the honor to be,
Your most obedient servant,

C. VANDEVENTER.

Hon. JOHN FLOYD,
Chairman of the Select Committee
on the Vice President's letter, &c. &c.

Exhibit R. accompanying Major Vandeventer's Second Examination

[PRIVATE.]

Hon. J. C. CALHOUN,

SIR: We have the honor to transmit to you a synopsis, by which it will appear, that the affairs of Jacob Lewis & Co., are rendered desperate, by the studied management of the Engineer Department.

The enclosed statements of annual deliveries, are certainly inexplicable; but alone goes to show that the company are on the wide road to *infallible ruin*, and nothing but your interference can prevent its being *immediate*.

Most, if not all, of the named vessels had been measured, perched, and marked, under the inspection of *Captain Smith's brother, while Inspector at Old Point Comfort*, in the years 1819 and 1820. Compare the receipts for deliveries with 1821, when the vessels were loaded to the same marks, and it will be found, Sir, that the difference made is incomprehensible if the mode of measurement is insisted on as correct.

It is known to me as a nautical man, that all vessels constructed for burthen, will carry a perch to a ton: (that is to say,) a vessel of 90 tons will carry 90 perches. The sloop Halcyon has carried 15 perches more than her tonnage. The Naval Commissioners will confirm my assertion, or Mr. Homan, who is an old sailor, and knows these things, that all flat burthensome vessels, in rivers, will carry at least one perch for ton. All the captains of the freighting vessels declare it, and leave the employ in consequence of short measurement, and other difficulties that are thrown in their way.

The quarrymen have quit their quarries in consequence of hearing of the exaction respecting Rip Rap stone, which is contrary to justice; the nature of the Rip Rap contract, contrary to custom, and, in our opinions, contrary to judgment.

We have seen the massive works of Europe, such as Sherbourg, and many others, where fortifications have been built in the water, upon (*Pierre Perdu;*) we have have always observed that the stone to be from the size of an orange to a barrel. Diamond Fort, at New York, has for its foundation, stone of every size, in the same manner; but, it is necessary to observe, that Major Vandeventer's father furnished the stone.

But, Sir, suppose that stone of 150 lbs. were really preferable, which every man will deny who is acquainted with such work, have the Engineer Department, from custom and the nature of the contract, a right to make the exaction? Ought they not to make another contract, specifying the kind of stone, &c.? Instead of which, after we have got out a vast quantity of what was *agreed* to be Rip Rap stone, we are told they are not the kind; they must be of 150 lbs. weight, and our vessel sent back with the cargo to Havre de Grace. This circumstance, after what has happened before, has ruined the company's credit again. We have on the shores $15,000 in Rip Rap stone, as fine for its purpose as ever was seen, and it might all have been delivered. The men who have quarried it, call on us to take it away as we had agreed to do; and do not hesitate to say, that they will sell it if we do not, as they have determined to go away; but it is necessary that the stone

go to Old Point to be measured, (we had agreed to pay according to receipts,) before we can settle accounts. Judge, therefore, Sir, of the embarrassed situation in which we are placed. While writing this, there are six quarrymen in our presence, who boldly declare, that they will sell the stone, and murder the man who shall attempt to prevent the delivery of them. Pray, how are we to act, Sir, under such embarrassments? In vain do we tell them that justice will be done to them; their answer is, that they cannot stay here and starve; they have *nothing*, and justice travels too slow, and is often impeded by malice and intrigue.

It may be asked, why does the Engineer Department wage hostilities against J. L. & Co.? What interest can the Department have, or any of the Corps, in so doing? In answer, it must be told, that this feeling commenced from the moment the contract was taken by J. Lewis & Co. The company were not aware that they would have to contend with the father, two sons, and *a* [word illegible] *the latter the private contract points at.* If they had, they would not have been so hardy as to have taken the field. However, it was not long before we discovered that the father was in Washington, and had put in his proposals for the group, and they supposed they had the contract; and they became outrageous when they found their disappointment. The first attempt then was to discourage us. General Swift went to Doctor Le Barron, and endeavored to prevail on him to give up the contract, that he would be ruined, and that we had taken it too low, &c.; although these gentlemen were *within a half a cent of us.*

Swift said there were persons ready to take it off our hands. Major Vandeventer said the same. The father went to our bondsmen and endeavored to discourage them, and advised them to prevail on us to give up the contract, that there were persons stood ready to take it off our hands. Finding all would not do, the next thing was to destroy us by every possible means. Swift used his influence, for although an *imbecile* he had cunning enough to make great friends with the officers.

Vandeventer, from his situation, had great power in many ways. Mix, this unprincipled fugative, he stuck at nothing: he offered a quarter of a dollar more per perch than we were giving. The men employed by him were in the habit of hailing vessels in our employ, and telling the captains not to work for J. L. & Co., that [they] would never be paid. Every obstacle was produced at Old Point Comfort. Colonel Armistead's brother, a Sutler, was in the habit of saying, that J. L. & Co. would be ruined, they had better give up the contract; there are persons ready to take it off their hands, &c.

The measures, when the captains found fault, always were in the habit of saying, tell J. L. & Co. they had better give up the contract, *there are persons ready to take it off their hands.*

There were no landing places prepared, to give that facility in landing the stone *which by contract we were entitled to.* A fleet of our vessels were sent back with their cargo. All these circumstances combined, must inevitably have produced our ruin, had not your timely intervention prevented it.

After finding all attempts to ruin us proved abortive, then other expedients were thought of. We received information that Colonel Armistead had entered into a contract with a Messrs. Pomfrey &

Baker, of Georgetown, which those persons said was part of the contract of Jacob Lewis & Co. It was hinted to us that this was an understanding between the Col. and those persons who General Mason will tell you are base characters.

In a few days I received a letter from Col. Armistead, which confirmed by suspicions, the substance of which you will find in my answer thereto, herewith enclosed. I heard no more of the business. The next thing I hear is, requiring our captains should transport the stone thirty or forty yards from the sides of the vessel, then put them on a high pile. This was calculated to drive all the captains away. The next thing was refusing to receive the cargoes, as marked by Mr. Smith, and marking them over again, to our great *prejudice.* The cap sheaf is that of requiring that all Rip Rap stone should be 150 lbs. *I presume avoirdupois.*

It is remarkable that they took from the deck load *only* of the vessel they sent back, six perches of building stone, at Point Comfort, yet refused the cargo for the Rip Raps, which must have been half fine building stone, although sent down for Rip Raps. This answered their great purpose; the vessel was freighted, and belonged to a person who had three others; all of them he withdrew, in consequence of it, from our service, and none others will come into it, and if they should they run but one trip.

We will undertake to prove, that Col. Armistead was concerned with the mason, at Old Point, in the contract for brick. We know not who is concerned with him in building the work, but when we are left in the wide field of conjecture, we have a right to draw our own inferences.

We have related all these facts with simplicity and freedom, in the same manner that we should have done *viva voce.* For their *correctness we pledge ourselves, when called on.* We conclude by supplicating your immediate interposition.

While writing this, we are handed a copy of a letter from Colonel Gratiot, which we take to be a quiz; however, it goes to show the spirit of the times. I herewith enclose it for your perusal.

We have the honor to assure you of our high consideration and profound respect.

Havre de Grace, 21*st June*, 1821.

J. LEWIS & CO.

No. 31.

Testimony of Robert C. Jennings.

Robert Cary Jennings, of Norfolk, in the State of Virginia, appeared before the Committee, was sworn, and testified as follows:

I became interested in the early part of the delivery of stone under the Mix contract, and continued to make deliveries for nearly a year, and during which time I experienced many difficulties in obtaining pay for my deliveries, through Mr. Mix's objections, which difficulties the papers herewith submitted will explain. (See exhibit S, being a letter or report of General Macomb to Governor Barbour, Secretary of War, dated 10th March, 1826, with five enclosures.)

By applying to the Engineer Department, then under the command of Colonel Armistead, I was enabled to obtain partial payments. Notwithstanding the right, which it will be seen by these papers, that I had to payment for my deliveries of stone. I continually experienced difficulties and embarrassments in getting my money, which were thrown in the way by Elijah Mix. The Department withheld from the avails of deliveries made by me two thousand five hundred dollars, being the one-fourth part of an advance made to Mix in the commencement of his contract, although I never received any part of said advance, and that sum is to this day lost to me. Finding Mix so unprincipled a man, and so many difficulties being thrown in my way, I, at one period, actually abandoned my portion of the contract, but was, from the interference of Colonel Armistead, induced to resume it. The first year I did not clear my expenses under the contract, but, from the fall in the price of labor, and the increased facilities of transportation, it afterwards became profitable.

Question by Mr. Floyd. Do you know the names of all the persons who were at any time in the Mix contract?

Answer. Major Vandeventer, I understood, was interested. My information after this is derived from Mix. Major Cooper was probably interested. I do not think it worthwhile to detail information received from Elijah Mix: for I have almost invariably found the fact to be the reverse of whatsoever I have been told by him. Mix never hinted to me, nor had I the remotest cause to suspect, that Mr. Calhoun was concerned in this contract; and I was utterly astonished at hearing Mr. Calhoun's name coupled with such a vile monster as Mix. Mix stated to me that General Swift had patronized him. I don't know that General Swift ever received a cent under this contract; but I understood Mix to say, that General Swift had an interest in the contract. Major Vandeventer's part was afterwards sold out to a Mr. Goldsborough, at forty cents a perch, subject to losses which Mix had previously charged against Vandeventer, and the latter could not have realized any considerable sum under his portion of the contract.

Question by Mr. Floyd. Have you any knowledge of Mr. Calhoun's being interested in any contract made with the Department of War, whilst he was Secretary of that Department, or in the profits of which he participated?

Answer. I have no such knowledge, nor have I any suspicion of any such thing.

Question by Mr. Williams. Do you know whether Major Vandeventer sold the whole or only a part of his interest in the contract to Major Cooper?

Answer. I don't know. As well as my recollection serves me, the whole of the interest of Vandeventer and Cooper was sold to Goldsborough.

Question by Mr. Williams. In what manner, from whom, and at what time, did you first obtain your interest in the contract?

Answer. I obtained my interest under Mix, and was to receive the full contract price. I can't specify the month I became interested; it was about the time of the commencement of the execution of the contract.

Question by Mr. Ingersoll. Were you in Washington at the time Mix made the contract?

Answer. I was not; and it was some time afterwards before I came to Washington; perhaps some months afterwards.

Question by Mr. Williams. When and where did you engage with Mix to become a partner in the contract?

Answer. At Norfolk. Mix came there to see me. I don't recollect the time. I saw Mix at Hampton, York, and Norfolk.

Question by Mr. Williams. Did he propose it to you, or you to him?

Answer. He proposed it to me.

Question by Mr. Ingersoll. Did Mix consult with you about making the contract before he made it?

Answer. I don't know whether he did or not?

Question by Mr. Ingersoll. Was your agreement with him for the one-fourth in writing or not?

Answer. It was not in writing.

The witness states, in explanation, that he did receive a small sum, only a few hundred dollars, of the advance of $10,000 made to Mix, but that he delivered stone to the amount thereof.

Question by Mr. Williams. Do you know whether any money drawn from the Treasury in the name of Mix, was paid to any persons other than Mix? if yea, state the names of those persons.

Answer. I do not know of money being drawn from the Treasury in the name of Mix, and paid to any other person.

Sworn and subscribed, this 29th day of January, 1827.

R. C. JENNINGS.

Exhibit S, referred to in testimony of R. C. Jennings, with five enclosures.

ENGINEER DEPARTMENT,
March 10, 1826.

SIR: Mr. Robert C. Jennings, who claims to be the owner of one-fourth of the contract between the Government and Mr. E. Mix, for the delivery of stone for the fortifications at Old Point Comfort and the Rip Raps, apprehends from the import of a letter, recently received by Colonel Gratiot from Mr. Mix, that it is the intention of the latter, to deprive him of the right of ownership in the said fourth of the contract, adverted to, with which he considers himself to be legally vested, and appeals to the Government to protect him in those rights, against any attempt of Mr. Mix to deprive him of them, should any be made.

He founds his claim to be considered the owner of the fourth of the contract alluded to, upon a letter from Mr. Mix to Colonel Gratiot, dated the 15th of June, 1821, in which the latter is authorized to pay Mr. Jennings for all stone he may deliver, on account of his (Mix's) contract, until the quantity so delivered, shall amount to 19,800 perches, the quantity remaining to be delivered upon the sub-contract between him (Mix,) and Jennings, and upon a letter from Mr. Mix to the Chief Engineer, dated the 18th of July, 1821, in which is repreated, in substance, the authority contained in the letter to Colonel Gratiot of the 15th of June preceding.

He founds his appeal to the Government, for the protection desired by him, upon the fact of the authority vested in the Government, by the letter above stated, being unreserved, and therefore, irrevocable

without the consent of the Government, and upon the fact of his having been indirectly recognized by the Government, in the rights claimed by being required, as the owner of one-fourth of the contract, to refund one-fourth of an advance of 10,000 dollars made by the Government to Mr. Mix, to assist him in carrying on the contract.

A letter from Mr. Mix to the Secretary of War, dated the 15th of June, 1821, authorizes the recognition of Mr. Jennings by the Government, as the owner of one-fourth of his (Mix's,) contract, upon the acceptance by the Government of security to be furnished by Jennings, for the faithful execution of the same, and the release of Mix's securities, to the amount corresponding therewith. A letter from Mr. Mix to the Chief Engineer, dated the 19th of March, 1822, recalls the authority, conveyed in his letter of the 15th of June, 1821, above stated, to pay Jennings for deliveries to the extent of 19,800 perches. Another letter from Mr. Mix to the Chief Engineer, dated the 1st of April, 1822, states that he had been informed by Colonel Gratiot, that he had been ordered by the Engineer Department, to recognize Mr. Jennings as the proprietor of one-fourth of the contract; asks for a copy of the orders alluded to by Colonel Gratiot, and states that he had never given any authority upon which they could have been predicated; also, stating that he requested that Mr. Jennings might be recognized as his agent, for the delivery of a certain number of perches under his contract, agreeably to conditions and arrangements understood between them.

The arrangement proposed in Mr. Mix's letter of the 15th of June, 1821, was never carried into effect: Mr. Jennings never having furnished the security required by Mr. Mix, to be substituted for his. The letter of Mr. Mix of the 19th of March, 1822, was not acted on, before it was superseded by that of the 1st of April following. The orders of the Engineer Department, alluded to in the latter, directed deliveries to be received from Mr. Jennings, but the payment for them to be withheld until the dispute between him and Mr. Mix should be settled. They were dated the 28th of March, 1821, and the dispute was settled in June following.

Mr. Jennings exhibits a letter to him from Mr. Mix, dated the 7th of March, 1825, containing a copy of a letter from Mr. Jennings, addressed to the Chief Engineer, dated the 18th of July, 1821, stating he was ready to furnish security for the sum of 5000 dollars, for the faithful performance of his fourth of the Mix contract, whenever the same should be demanded of him by Mr. Mix, which letter Mr. Mix states, he had transmitted to the Chief Engineer, and calls upon Mr. Jennings to furnish the security to which it adverts. It is proper to observe, that the letter of Jennings, which Mr. Mix states had been sent to the Engineer Department, was never received.

Mr. Jennings states, that he always has been, and is now, ready to furnish security for the faithful execution of his fourth of the contract and requests he may be permitted to do so, and be recognized as the owner of the fourth of the contract, independently of Mr. Mix, if the Government does not now, so recognise him under the authority furnished by Mr. Mix's letter, dated the 15th of June and 18th of July, 1821.

Respectfully submitted,
ALEX. MACOMB,
Major Gen. Chief Engineer.

The Hon. J. BARBOUR, *Secretary of War.*

P.S. Since the foregoing was written, Mr. Jennings has mentioned a fact not before known, which it may be proper to include in this statement. He states, that the letter of Mr. Mix, of the 15th of June, 1821, in which the Government is authorized to recognise him as the owner of one fourth of the contract, upon his furnishing security to their satisfaction for 5000 dollars, to release one fourth of the amount of the original security was never seen by him, until he saw it in this office yesterday, nor ever heard of before.

Respectfully submitted,
ALEX. MACOMB,
Major Gen. Chief Engineer.

GEORGETOWN, 15*th June*, 1821.

Col. C. GRATIOT,

SIR: All differences between myself and Mr. Jennings, as relates to my contract, being settled, you will please cause him to be paid for all stone, which he may deliver, until they amount to nineteen thousand eight hundred perch, which will agree with his contract with me, exclusive of all deliveries heretofore made by him.

I have the honor to be,
with true respect, your ob't serv't,
ELIJAH MIX.

There is no objection to the acknowledgement of Mr. Jennings, as an agent for Mr. Mix.

ALEXANDER MACOMB,
Maj. Gen. Chief Engineer.

Engineer Department, July 20*th*, 1821.

A true copy.
J. T. RHODES.

July 20*th*, 1821.

GEORGETOWN, *June* 15*th*, 1821.

SIR: The Engineer Department, will please recognise R. C. Jennings, as a sub-contractor for nineteen thousand, eight hundred perch of stone, in a proportion of one-fourth of the whole, on his giving bonds to the Department, that shall release me from the proportion that the above quantity bears to the whole contract made by me, with the Department, in July 1818, for one hundred and fifty thousand perch of Stone, for the Rip Raps and Old Point Comfort; the above proportion to be subject all restriction relating to the contract.

I have the honor to be,
Sir, your ob't servant,
ELIJAH MIX.

J. C. CALHOUN,
Secretary of War.

Gen'l MACOMB,
Com'dt of the Corps of Engineers.

Mr. Robert C. Jennings, has to deliver, on account of one-fourth of my contract, 19,800 perch of stone, exclusive of all deliveries heretofore made, except those from the first of this year; and you will please direct payment to be made to Mr. Jennings, or order, accordingly; his deliveries bearing one-fourth full proportion to my whole contract.

I have the honor to be,
Your most obedient servant,
ELIJAH MIX.

Georgetown, July 18th, 1821.

GEORGETOWN, *April* 1, 1822.

SIR: I am informed by Col. Gratiot, that, in the month of March, 1821, he received orders from the Engineer Department to recognise Robert C. Jennings as the proprietor of one-fourth of my contract for the delivery of one hundred and fifty thousand perches of stone at the Rip Raps and Old Point Comfort.

As I have never given Mr. Jennings such authority, you will much oblige me by giving me a copy of such orders as relates to the subject—as I have never consented to a transfer of any of my rights in this particular to Mr. Jennings—I have myself requested that Mr. Jennings might be recognised as my agent for the delivery of a certain number of perches on certain conditions and arrangements understood between us.

I have the honor to be, Sir,
With respect, your ob't serv't.
ELIJAH MIX.

Gen. ALEXANDER MACOMB,
Engineer Department, Washington.

GEORGETOWN, *March* 19, 1822.

SIR: On the 15th June, 1821, I gave Mr. R. C. Jennings permission to sign certificates for me as my agent for nineteen thousand eight hundred perch of stone, being a part of my contract with the Engineer Department to deliver at the Rip Raps and Old Point Comfort, one hundred and fifty thousand perch of foundation stone.

I have to request that if any orders have been issued from your Department relating to the above agency, that they may be countermanded, if such orders go to give him permission to sign for me; as no stone delivered by him after this date will be considered as a part of my above contract.

I have the honor to be, Sir,
Very respectfully, your ob't serv't,
ELIJAH MIX.

Gen. ALEXANDER MACOMB,
Engineer Department.

No. 32.

Testimony of Colonel Towson.

Colonel N. Towson, Paymaster General of the Army of the United States, appeared before the Committee, was sworn, and testified as follows:

Examined by Mr. McDuffie.

Question. What office do you fill in the War Department?

Answer. That of Paymaster General.

Question. When were you appointed?

Answer. I was first appointed in the Fall of 1819. I remained in the Department till 1821, and was re-appointed in 1822.

Question. What are the duties of your office?

Answer. To cause the troops to be paid their pay proper; the officers their subsistence, forage, and allowances for servants; to make the Paymasters render their accounts with promptitude, and to examine them previous to turning them over to the accounting officers of the Treasury Department.

Question. What sum is annually disbursed through your Department, and by how many subordinate officers?

Answer. The annual disbursements are about one million of dollars. There are fifteen Paymasters attached to the Department.

Question. What was the condition of your Department when you came into it, and what was its condition when Mr. Calhoun left the War Department in March, 1825.

Answer. The payment of the troops, when I came into the Department, was very much in arrears, and the accounts of the Paymasters for the advances were also behind. When Mr. Calhoun left the Department the troops were promptly paid, and the accounts promptly rendered, as will appear by the reports of the Department submitted to Congress.

Question. On what does a perfect administration of your Department depend?

Answer. It depends on paying the troops promptly, and in accounting for the money entrusted to Paymasters for that purpose—in a judicious selection of officers of the Department, and in the regulations and rules for their government.

Question. What was the amount of defalcations the four or five years preceding 1822, and what has been the amount of defalcations since?

Answer. I think the defalcation for the first period is between 250,000 and 350,000 dollars; the latter, that is since 1822, is about 14,000 dollars. I believe there has been but two instances since 1822.

Question. What two instances are those?

Answer. One was the case of Paymaster Albright, who is a defaulter for something less than one thousand dollars; the other is Major Satterlee Clark, who is a defaulter for something over $13,000. The former was ordered to be cashiered by a sentence of a Court Martial; the latter was dismissed by order of the President of the United States.

Question. What disposition has been made of the case and accounts of Satterlee Clark?

Answer. The account of Satterlee Clark was reported for suit to the Agent of the Treasury Department; suit was brought in the District Court of New York; the case has been tried; but the Attorney for the United States has been instructed to move for a new trial.

Question. What were the causes of the dismissal of Clark from the Department, and what agency had Mr. Calhoun in that dismissal?

Answer. Major Clark was dismissed for not accounting for the public money advanced to him, within the time limited by law. Mr. Calhoun's agency in it was, communicating my report of the fact to the President, and instructing me, under the orders of the President, to furnish Major Clark with a copy of my report, and to inform him that, if he did not render his accounts against a given day, which he directed me to fix, that the provisions of the law requiring his dismissal would be enforced against him. I know of no other agency which Mr. Calhoun had in the dismission of Major Clark.

Question. What claims has Clark set up as an offset against his defalcations?

Answer. The claims he presented to the accounting officers of the Treasury Department did not pass through my office, but I have understood them to be for a commission on disbursements made by him on account of fortifications, previous to the last war, when he was performing the duty of Quartermaster. A second item in his account was, for commissions upon his disbursements as paymaster, during the latter part of the war. He claimed two and a half per cent, I think, which amounted to upwards of thirty thousand dollars, and was founded on the pretext that he was not an officer of the Pay Department at the time the disbursements were made. He was appointed a Regimental Paymaster when he was a subaltern in the line. After the passage of the law passed during the war, authorizing the appointment of District Paymasters from citizens, he asked permission of the Paymaster General to resign his commission in the line of the Army, and to be put upon a footing with the District Paymasters: his resignation as Lieut. was accepted, and he continued to perform the duties of Paymaster, and to receive the usual compensation for them. He now contends that the resignation of his commission as Lieutenant necessarily involved that of Paymaster, and that, not being reappointed, he was, of course, nothing more than a citizen.

Question. Are not these claims founded upon services anterior to settlements with Clark, in which they were not presented?

Answer. Yes. I never knew of his presenting them till after his dismission, and do not believe that he did. In addition to my answer to the previous question, I will state that he also claims the difference between the compensation of a Major of cavalry and a Major of infantry. This I think he is entitled to; it amounts to something more than seventeen hundred dollars; but the accounting officers and the Attorney General have given a different opinion. There are one or two small items in his account that, I think, under some circumstances, might be allowed to him. There is another item for a per diem for travelling, other than to and from Courts Martial; if Major Clark is entitled to this, all officers who have been in service since the passage of the law, in the year 1792, are equally entitled—those who are allowed forage to one dollar, and those who are not allowed forage

to one dollar and twenty-five cents for every thirty miles travel; it never has been claimed by, or allowed to, any officer.

Question. When did he receive the money which remains to be accounted for?

Answer. In the early part of January, 1824. Under the orders of the Department it should it have been accounted for within two months, and might have been within one month from the time he received it; but it was not at the time of his dismission, more than six months from the date of the receipt.

Question. At what time was he dismissed?

Answer. He was dismissed on the 5th of August, 1824. The time limited by law for him to settle his accounts, to prevent dismission, expired on the 12th of July.

Question. Did you furnish Mr. Monroe last Spring, through the Vice President, with a copy of your report to him while President, relative to Major Clark's dismissal, and have you now a copy of that report? State any conversation you may have had with Clark on the subject.

Answer. I did furnish Mr. Monroe with a copy of that report, and have a copy of it in the office; it is very full and explanatory of the causes which led to his defalcation. Some time after the report was made, Major Clark called at my office, and handed me a paper, in which he complained of unfairness on my part towards him, in not furnishing him with a full statement of the charges on which the President ordered him to be dismissed. I told him that, from the language of the paper, I did not consider myself under any obligation to give him the information, but that, as I perceived he had written it under wrong impressions, as to facts, and making allowance for the state of his feelings, I would overlook the offensive matter in the communication. I then informed him that the report of which he complained was not made till after he was dismissed: the report upon which he was dismissed merely stated that he had failed to comply with a law in rendering his accounts: it also stated, that on a settlement of the last accounts rendered by him, there appeared to be a balance in his favor: and that it was reported he had been sick. I have since ascertained that, at the time that balance was stated, he had borrowed a considerably larger sum, in his character of Paymaster, from the Ontario Branch Bank.

Question. Can the expenditures of your Department be much diminished by good administration? How much have the expenditures been diminished by the present system, compared with that which formerly existed? and in what does the superiority of the present system consist?

Answer. The expenditures of the Department consist of fixed allowances. A good administration will prevent defalcation. I don't know that the expenditures can be lessened in any other way. The advantages of the present organization have decreased the amount of defalcation from between three and four per cent, on the disbursements to something less than one-third of one per cent. The accounts now undergo an examination in the Pay Department, particularly on military points, before they are transmitted to the Treasury Department for final settlement. An important improvement, also, was, the

changing of Paymasters from Regimental to District Paymasters, and requiring them to account for advances made to them previous to furnishing them with a second supply. All these improvements or changes were introduced since the year 1820.

Question. What was the general character of Mr. Calhoun's administration of the War Department, as to the industry, energy, and integrity, with which he devoted himself to the public service?

Answer. I do not think it could be better.

Question. What was the character of his administration as to the rigid and impartial enforcement of responsibility upon subordinate officers?

Answer. Mr. Calhoun was uncommonly vigilant; he caused frequent reports to be made to him by the heads of the different bureaus, and held frequent conversations with them on the subject of their departments, particularly as it related to the fiscal concerns, and took prompt and efficient measures to correct any abuse in disbursements.

The witness here, in reference to that part of a former question propounded by Mr. McDuffie, in which he is directed to state the conversation which passed between witness and Satterlee Clark, further stated, that Satterlee Clark said that the President could not do otherwise than dismiss him under the law, but complained that he appointed a successor so soon. To a question put to him, why he had not candidly stated his circumstances to me, and what were the causes of his defalcation, he said he had borrowed a sum of money of the Utica Bank to purchase his father's estate, and that the bank had applied the deposit of his public money to the payment of that debt. When the President called upon me for a report in Clark's case, he said that Clark had denied the receipt of any intelligence that he was to be dismissed until it took place; but I have a letter acknowledging the receipt of my report, and informing him that he would be dismissed on the 21st July, and he was not dismissed until the 5th of August, five days after the time I had limited him to. I also informed him that the feelings of the President and of the Secretary of War towards him was most kind and friendly; and that, in appointing his successor, they acted upon information given by me, and upon my opinion, that he had misapplied the public money; that if blame attached to any person for his dismission, other than himself, it was to me.

Question by Mr. Williams. Have not other officers of the Army besides Major Clark, in settling their accounts, made claims upon Government which have been rejected by the War Department? If yea, state the names of those officers.

Answer. It is the case with a great many officers. I can't specify particulars.

Question by Mr. Floyd. Do you know of Mr. Calhoun's having engaged in any contract with the Department of War, whilst he was Secretary of that Department, or in the profits of which he participated?

Answer. I do not, nor do I believe he did in any.

Question by Mr. Floyd. Do you recollect of any items in any officers' accounts which will form a parallel case to that of Major Satterlee Clark, which have been rejected?

Answer. I do not, except in relation to the charge for disbursements on fortifications, and I know of none exactly parallel in that.

Sworn and subscribed, this 29th day of January, 1827.

N. TOWSON.

In explanation of the question, "On what does a perfect administration of your Department depend?" the witness asked leave to amend his answer so as to read, On salutary laws and regulations for its government, rigidly enforced. "On a prompt and accurate settlement of accounts when rendered. A judicious selection of Paymasters, and their dismission, when found unworthy."

The witness further said, that Major Clark, subsequent to his dismission, presented vouchers to the Second Auditor, to be passed to his credit, but withdrew them before they were examined. I am not certain that they did not form part of his claims submitted to the Court in New York, but believe they did not. They would, probably have reduced the sum for which he was sued, some four or five thousand dollars.

Question by Mr. McDuffie. What is the character of Major Vandeventer for honor and veracity?

Answer. I have known Major Vandeventer since 1813. I know nothing personally that should impeach either, and have never heard of any circumstance except that growing out of his connection with the Mix contract, of which my impressions have been that he was unfortunate, perhaps imprudent, but not criminal. They have never impaired my confidence in Major Vandeventer's integrity.

N. TOWSON.

No. 33

Testimony of General Jessup.

General Thomas S. Jesup, Quartermaster General of the Army of the United States appeared before the committee, was sworn and testified as follows:

Questions by Mr. McDuffie.

Question. What office do you fill, and when were you appointed?

Answer. I hold the appointment of Quartermaster General of the Army; I was appointed some time in May, 1818.

Question. What are the duties of your office?

Answer. I have the general superintendence of the officers of the Quartermaster's Department; their specific duties are to furnish the transportation for the Army, fuel, forage, stationery, to furnish quarters, either by erecting them or otherwise, that is those not connected with fortifications; to superintend the construction of all roads made by troops or made in part by troops; to receive the arms and supplies from the Ordnance Department, distribute them to the Army and to the militia—receive all subsistence stores that are to be transported, and to deliver them at the points whence they are to be forwarded; to receive the supplies of clothing and camp equipage from the Purchasing Department, and distribute them to the Army; to receive the medical supplies, and distribute them also.

Question. In what do you consider the perfection of the administration of your department to consist?

Answer. Promptness in furnishing supplies, and in the strict accountability of all officers and agents of the Department.

Question. Are not the expenditures of your department of a description peculiarly liable to be diminished or increased by good or bad administration?

Answer. They are.

Question. What was the condition of your department when you came into it, and what was its condition on the 4th of March, 1825? state fully.

Answer. The condition was as bad as that of any department could be when I took charge of it in 1818. There was no efficient accountability for money, and nothing that could be called accountability for property. The losses to individuals from the inefficiency of the department, as well as to the Government, was understood to be considerable. Practices prevailed in different parts of the country not only injurious to the service but extremely injurious to the national character, one of which was, that agents frequently made purchases, received the receipts of claimants, and, in place of paying the money, gave their own "due bills," by which they were enabled to receive a credit at the Treasury, and withhold the sums due to claimants. I mention this as one of the many abuses that then existed, and which was promptly corrected. It was also, understood, unofficially, that agents of the Department were in the habit of furnishing supplies, or in fact, of contracting to furnish supplies; and also, of purchasing claims on the Government, to correct which, the regulation I hold in my hand was recommended to the War Department, and was adopted. This regulation is in the words following, (the number 993, is that by which it is distinguished in the printed regulations of the Department.)

"993. No officer or other person employed in the Quartermaster's Department shall be concerned, directly or indirectly, either for himself or others, in any contract with any Department of the Government; nor in the purchase of any claim on the Government, whether of a soldier or a citizen, nor in the purchase or sale of any article of military supply, except on public account."

As far as they could be ascertained, all abuses were promptly corrected, and a strict accountability of all officers and agents enforced.

Question. Was there any record of the proceedings of your department, or any means of ascertaining the amount of its expenditures before 1818, and is there any under the present organization?

Answer. I don't know of any record of the Department; the accounts of the agents were received at and deposited in the Treasury Department previous to the present organization. There is now a record kept of all the transactions of the Department; all estimates, either for supplies or money, are deposited in the office of the Quartermaster General. If, when received, the estimate is approved, the article is furnished. I, however, exercise the right of judging of the propriety of furnishing any article, and, if any be not approved, I strike it out.

Question. What are the advantages of an administrative examination of accounts; and was there any such examination of the accounts of your department previous to the new organization?

Answer. The advantage of such an examination, if made by practical soldiers, is, that they are able to determine whether the service or the nature of the case require the supply. If it is found that supplies are required by officers, not warranted by the nature of the service, the abuse can be immediately corrected. Previous to the present organization of the Department, I believe there was no such examination.

Question. How many disbursing officers are attached to your Department?

Answer. There is, generally, one at every post in the Union, either a regular or temporary agent. The number of officers of the Quartermaster's Department, exclusive of myself, is twenty-four: the law, however, authorizes the employment of officers of the Subsistence Department at posts where there are no Quartermasters. The number of both, that is, the whole number of disbursing officers, varies, generally, from forty to fifty. Besides disbursing officers, every officer of the Army who receives supplies of the Quartermaster's Department, or clothing, or camp equipage, renders accounts for the same, quarterly, to my office.

Question. What sums do you annually disburse through the agency of those officers?

Answer. The appropriation for the Quartermaster's Department, is disbursed by the officers of that Department; besides which, we disburse, occasionally, for other Departments; the amount, annually, exceeds, altogether, 300,000 dollars.

Question. What was the amount of the defalcations of your Department, for the year preceeding March, 1825?

Answer. I don't remember any in that period.

Question. What was the amount of defalcations for three years preceeding the time you came into office?

Answer. 'Tis a question I cannot possibly answer; it can only be ascertained by reference to the Treasury Department.

Question. What are the savings in your Department, including that on clothing, effected by the improvements since 1818?

Answer. It is almost impossible to answer this question positively, the circumstances in no two years are exactly the same; every exertion has been made to secure a perfect and rigid accountability, and measures have been adopted to get supplies at the lowest rate, by inviting a fair competition, and to make every one account for whatsoever he receives.

Question. In what respect has the new organization improved, with regard to the accountability of officers for the public property, and what was the situation of public property before the adoption of the new organization?

Answer. Every officer who receives property, whether for his own command, or for distribution to other commands, is held strictly accountable for its application; if any part of it be lost or injured by neglect, or furnished to persons not entitled to receive it, the damage, whatever it may be, is charged to his personal account, and he is compelled to pay for it; by a system of reports, in regard to stores, I can generally tell if property be lost, between which two military posts it is lost, and the officer who forwards the supply is made to account for it, or is compelled to make the person, by whom it is forwarded, account for it.

Question. What was the situation of the Pay Department, as regards the prompt and regular paying of the troops, previous to the new organization, and what the character of the supplies of the Army?

Answer. In the Summer of 1816, I commanded the Military Department, including Louisiana, Mississippi, and a part of Alabama; part of my command, I found, had been two years without pay, no part of it, I believe, had been less than five or six months without pay. The Quartermaster's Department was without funds or credit, there were no supplies, and, in order to furnish the necessary supplies for the troops, I was compelled to put my own notes into bank to procure endorsers, and raise money in that way; two letters, which I wrote to the Secretary of War, at that time, one dated 19th June, and the other, 8th July, will shew the state of the Department, and the embarrassed situation in which I was placed, better than I could now express it. I borrowed those letters from the files of the War Department, and have had copies made of them, which I herewith exhibit, (see exhibit T, *a* & *b*.) The supplies were generally bad; the supply of blankets, particularly, for the hospital, was so bad that I was confident the Secretary of War could not believe, from any representation I could make, the extent of the abuse that was practised upon the public. I therefore sent him a blanket, in a letter; it was not larger, when folded, than a common package of muster rolls.

Question. What is your opinion of Mr. Calhoun, as an administrator of a Department?

Answer. I approved, generally, of his administration of the Department. I very often, on particular points, differed in opinion with him. I found him, so far as regards my own Department, ready to support me in the most efficient measures, either for its improvement or its administration.

Question. What is your opinion of his official and private integrity?

Answer. So far as his conduct came under my observation, I considered he was, in his acts, governed by proper motives. I considered that I had some reason to be dissatisfied with him, personally, and for the last three years of his administration of the War Department, had scarcely any other than official intercourse with him; but I believe, that during the whole time of his administration of the War Department, there were as few errors committed, as ever were committed, in the same period, in any Department; and I further believe the Department was as ably administered, as it was possible, under the circumstances, to administer it.

Question. What is your opinion of the new organization of the Army of the United States, compared with the organization of any other army, of which you have any knowledge?

Answer. I consider the organization as decidedly good; and decidedly better than that of any foreign army. We require a more efficient organization in this country, than is required in any other country; in Europe, for instance, the civil power being entirely subservient to the military, any defect, in the organization of any army, may be made up by calling upon the civil authorities for aid; in this country, the military can derive no other than voluntary aid, from the civil power; it must, therefore, have such an organization, as will enable it to move independently of any other power. The principles of the

present organization were contained in two reports, from my office, to the War Department.

Question. What is the character of Major Vandeventer, for honor and integrity?

Answer. I always disapproved of Major Vandeventer's connection with a contract with the War Department; but, as a neighbor and a gentleman, I have always respected him. It may be proper for me to add, that there is nothing, save a sense of propriety, to prevent officers engaging in contracts. I believe mine is the only Department, in which they are excluded; and that exclusion is by regulation, and not by law.

Question by Mr. Clarke. Is the improved organization of the War Department, about which you have been speaking, the effect of congressional legislation? or is it the effect of arrangements, made by the head of that Department, unconnected with such legislation?

Answer. The offices were created by law; but the chiefs of the different branches of the staff, attached to the War Department, were stationed at this city by the authority of that Department. The regulations for the government of the several Departments are authorized by law, but prepared under the direction of the Secretary of War.

Question by Mr. Clarke. Is the new organization of the Army, the effect of Congressional legislation, or not?

Answer. It is the effect of Congressional legislation.

Question by Mr. Williams. Are the officers of the Pay Department of the Army, under martial law? if yea, were they so formerly? and state the effect resulting from those different regulations,

Answer. I believe they are now; but don't remember whether they were formerly. It is necessary that all Departments of the Army, be subject to martial law; if any Department be not so subject, there would be no means of enforcing a proper performance of its duties.

Question by Mr. Williams. Has, or has not, the introduction of the commissariat, in the place of the contract system, been productive of great benefits, in the operations of the Army?

Answer. I believe it has been productive of great benefit. It is proper to add, that previous to the establishment of the Commissariat Department, the Army seldom was supplied with good provisions. The supplies are now always of good quality, and, it is believed, furnished at a much cheaper rate than formerly.

Question by Mr. McDuffie. Had Congressional legislation any agency in producing the new organization further than to give to the Department legal power to execute the system which the Secretary recommended to Congress?

Answer. As well as my memory serves me, a report was made by the Secretary of War on the reduction of the Army, in obedience to a resolution of the House of Representatives. A bill was reported to that House, materially different from the plant of reduction proposed by the War Department; the present organization was, I believe, the result of one or more conferences between the Secretary of War and the Military Committee of the Senate, or some of its members. The bill which passed the Senate, and afterwards received the sanction of the House, I put into form, at the request of Col. Williams and Col. Trimble, from memoranda furnished by them.

Question by Mr. McDuffie. How far did the bill which was passed differ from the recommendations of the Secretary of War, and in what particulars?

Answer. Without having reference to the law and to the report, it would be impossible to answer positively, but I believe the principal difference consisted in this that the Secretary recommended two Major Generals and four Brigadiers: the Committee of the Senate, one Major General and two Brigadiers. I don't remember whether there is any difference in the details. The report itself, compared with the law, will best ascertain that fact.

Question by Mr. McDuffie. Was not the act of 1818 for the organization of the staff, passed in conformity with the recommendation of the Secretary?

Answer. I believe that act was the result of the combined efforts of the Secretary and Colonel Williams of the Senate. I conversed with both of them at the time, and knew that it was in accordance with their opinions.

Question by Mr. Floyd. Have you knowledge of Mr. Calhoun's being interested in any contract made with the Department of War, whilst he was Secretary of that Department, or in the profits of which he participated?

Answer. I have not.

Sworn to and subscribed, this 30th day of January 1827.

TH. S. JESUP,
B. Gen. and Q. M. Gen.

Exhibit T, (a,) accompanying General Jesup's deposition.

NEW ORLEANS, *June 19th*, 1826.

SIR: The embarrassment occasioned at this post by the want of funds, has compelled me to take the responsibility of ordering the Quartermaster General to draw on you for such sums as may be necessary to meet the incidental expenses of my command. Major Wolstoncraft, is acting as Quartermaster General: and I have limited his drafts to five thousand dollars per month. That sum, I am very sensible is too small, but will it enable us to obtain such supplies as cannot be purchased on credit. The want of funds increases our expenses, perhaps twenty per cent, there has been so little punctuality in discharging the debts of the public in this quarter, that the people have lost all confidence in the Government and its Agents; and those who would be willing to supply us on moderate terms, were they certain of receiving their pay in a reasonable time, charge for all articles which we are compelled to purchase from them, in proportion to the supposed risk.

Nothing less than the absolute necessities of the service, and the entire prostration of public credit here, would have compelled me to the course which I have adopted. I therefore flatter myself that the drafts of Major Wolstoncraft, (not exceeding the sums to which I have limited him.) will be paid. I shall hold myself accountable for the proper application of the money.

Whilst on the subject of funds, I consider it my duty to represent to you the situation of the soldiery of this Department, as well those

recently discharged, as those now in service; many of the former have been unable to obtain an adjustment of their accounts; they are distant from their homes, and have not the means of returning. Their situation is truly deplorable, nor is that of the soldiers now in service much better. It is true they received their clothing and rations, but many of them have been two years without pay; some of them one year, and none of them less than five or six months. The rations furnished by the contractor, even when of the best quality, is not suitable to this climate; of course the pay of the soldier is almost necessary to his existence. If he were regularly paid, as the law contemplates, he would be enabled to obtain many comforts which are now denied him; and those scenes of dissipation, which invariably succeed a six months' payment would be avoided. I do not attach blame to any individual or Department, but I must be permitted to say, there has been a failure of duty somewhere, and it is to ascertain where that failure lies, that the present appeal is made.

With sentiments of the highest respect,

I have the honor to be, Sir,

Your obedient servant,

THOMAS S. JESUP,

Col. Commanding 8th Military Department.

The Hon. WM. H. CRAWFORD,
Secretary of War, Washington.

Exhibit T, (b) accompanying General Jesup's deposition.

NEW ORLEANS, *July 8th*, 1816.

SIR: Finding it impossible to dispose of bills on the War Department at a discount of less than ten per cent, and the public service requiring an immediate supply of money, I have been compelled to apply to the banks for relief. The Bank of Orleans is the only one from which we have been able to obtain a cent. The Directors have consented to furnish us with such sums as the exigencies of the service may require, on joint notes, signed by Major Wolstoncraft and myself, binding us individually as well as officially. We have pledged ourselves that the amount borrowed shall be paid out of the first moneys furnished this department for the service of the present year; at all events, our notes must be taken up in sixty days. We have, already, borrowed five thousand dollars for the purpose of discharging the accounts of the month of June, and we shall find it necessary to borrow an equal, if not a greater sum, for the present month.

In addition to the supply of this department, we are frequently called upon to make large purchases for the department East of us, particularly of medicines and hospital stores; and the Quartermaster is obliged to furnish transportation for troops, stores, clothing, &c. destined to that department.

My situation is truly unpleasant and embarrassing. The depression of public credit rendered necessary the responsibility which I have assumed: I, therefore, flatten myself that a sufficient sum will be

placed at my disposal to enable me to meet my engagement with the bank.

The troops have been a long time without pay; some of them more than two years.

I have the honor to be, sir,
Your obedient servant,
T. S. JESUP,
Col. Commanding 8th Military Dept.

The Hon. W. H. CRAWFORD,
Secretary of War, Washington.

No. 34.

Testimony of General Brown.

General Jacob Brown, of the United States' Army, appeared before the Committee, was sworn, and testified as follows:

Examined by Mr. McDuffie.

Question. Have you been familiar with the state of the Army since the late war?

Answer. I have endeavored to be so.

Question. Was the condition of the Army improved during the administration of Mr. Calhoun, and in what respect?

Answer. The Army was improved, and has been improving since the peace. The army had not the organization which, as military men, we thought it ought to have, till after the peace. The improvements that were called for were admitted by military men. There was but one sentiment, they were so self-evident; and the officers of the Army thought themselves peculiary happy in having a chief of the War Department who would listen to their reasonings and understand them. The most obvious improvements was in the organization of the Staff, particularly of the Staff of the Department itself. There was the Quartermaster General, who was principal disbursing officer, whose duty it was to superintend all the expenditures under his Department, to see the same faithfully accountable only to the chief of the War accountable to him, he being accountable only to the chief of the War Department, but who paid out no moneys whatsoever himself, and, not having the handling of money, was not liable to become corrupted. The great object of such an organization was to make some individual responsible for all things appertaining to a particular branch of business. The same observations apply to the Medical Department. Previous to the present organization, there was no head of that branch of the public business; there was no Surgeon General; the War Department had to deal separately with every Surgeon of the Army; much trouble and difficulty was experienced in doing so. Now the Surgeon General, who is the head of the Medical Department, controls that branch, and the War Department looks to him only. The consequence has been that the expenditures of that branch were reduced about fifty per cent in the course of two or three years.

Question. Was it not a general principle adopted in the new organization of 1818, that the officer who controlled the disbursements should have no agency in making them?

Answer. Yes, as far as it could be done; that was the object in view. These improvements had suggested themselves to the officers of the Army they communicated them to Mr. Calhoun, who perceived their importance and utility, and adopted and embodied them, and was the organ, if I may so call it, of making them known. I have never understood, nor do I believe Mr. Calhoun claimed any great merit or applause for his agency in the business, as he was actuated by a great desire to further the public good. In carrying these impovements into operation, that is, in getting the Staff bill through Congress. much credit is due to Col. John Williams, then a Senator from Tennessee, and Chairman of the Committee on Military Affairs, in the Senate of the United States.

Question. Do you not regard it as the first qualification of an Executive Chief to avail himself of the peculiar talents of all the subordinate officers, and combine the results of their experience for the public service?

Answer. To this question I answer, yes.

Question. What was the relative state of the supplies as to their quality and the regularity of their distribution, at the time Mr. Calhoun took charge of the War Department, and at the time he left it?

Answer. They were greatly improved in quality, and the promptness of distribution was much greater. One principal branch of supply, that of subsistence, was formerly by contract, per ration, it is now found by the Commissariat system, which is considered by military men a great improvement. We felt much indebted to Mr. Calhoun for his adoption of the principle of this change or improvement. It was of vast consequence, and again I must express my sense of the services of Col. Williams in effecting the passage of the act authorizing the adoption of Mr. Calhoun's propositions. This change was in direct opposition to the opinion of civil gentlemen, or politicians, and it was with great difficulty they could be brought into the measure.

Question. Was not the adoption of the Commissariat system urged upon Congress by Mr. Calhoun, in an argumentative report?

Answer. I think it was.

Question. What was the relative condition of the army as to its moral and discipline, at the commencement and at the end of Mr. Calhoun's administration?

Answer. I answer, greatly improved during the time; greatly improved by general and rigid responsibility. We should also make due allowance for the effect produced from the Military Academy, as a great many officers have been admitted into the army from that school; it turns upon the army no unworthy man, that is, he is not unworthy when he comes among us; he may become unworthy afterwards, but he comes there pure. If that school continues for ten years longer, it will furnish the army with a set of officers not surpassed, or equalled in the world.

Question. What have been the character and effect of the rules and regulations adopted during Mr. Calhoun's administration, and how far has their tendency been to substitute fixed rules for official discretion?

Answer. To the first part of the question I answer good. The general tendency has been to substitute fixed rules for official discretion, and the effect has been happy.

Question. What is your opinion of Mr. Calhoun as an administrator of a Department?

Answer. I answer good.

Question. What is your opinion of him as to public and private integrity?

Answer. I entertain no doubt as to his integrity.

Question. Was the general economy of the military disbursements improved during Mr. Calhoun's administration, and in what degree?

Answer. They were improved; and, as it bore upon the expenditures of the army, as such, greatly.

Question. What is the character of Major Vandeventer as to honor and veracity?

Answer. I know nothing against Major Vandeventer; his general character is good.

Question by Mr. Floyd. Do you know of any contract made with the Department of War, whilst Mr. Calhoun was Secretary of that Department, in which he was interested, or in the profits of which he participated?

Answer. I do not; and I will go further, and say, that I never even heard it suggested by any man who is entitled to be listened to, that he was so interested, or that he did so participate.

Sworn and subscribed, this 30th day of January, 1827.

JAC. BROWN.

No. 35.

Testimony of Doctor Lovell.

Dr. Joseph Lovell, Surgeon General of the Army of the United States, appeared before the Committee, was sworn, and testified as follows:

Examined by Mr. McDuffie.

Question. What office do you fill, and when were you appointed?

Answer. I am Surgeon General of the army, and was appointed in April, 1818.

Question. How long had you been in the army before, and in what capacity?

Answer. I entered the army in the Spring of 1812, as a Regimental Surgeon, was appointed a Hospital Surgeon in 1814, I believe, and continued in that situation till April, 1818.

Question. What is your opinion of Mr. Calhoun as the administrator of a Department; and of the general character of his administration, for industry, ability, and devotion to the public service?

Answer. In all my official communications with him, I had the highest opinion of him in those respects.

Question. What is your opinion of Mr. Calhoun, as to public and private integrity?

Answer. Precisely the same as my answer to the preceding question.

Question. What was the state of the Medical Department of the Army before the establishment of your Department; and what have been the improvements in the economy, regularity, and excellence of the supplies, and the health of the soldiers?

[This question being objected to by Mr. Campbell, on the ground of it irrelevancy, it was decided by the Committee, that the witness do not answer the question.]

Question. What was the principle of responsibility introduced by Mr. Calhoun, in the new organization of the Department, with regard to the examination of accounts? Explain the importance of it, as relates to your Department.

Answer. The principle I suppose to be referred to, is, that, in general, purchases should be made but on the order of the Head of the respective Departments; and all accounts should be first transmitted to them, and audited by them. The effect on my Department, was a reduction of the average expense, from about $95,000, to about $39,000, and of holding each surgeon responsible for all property under his charge. The supplies continued the same in quantity, and the aggregate number of the army was also the same.

Question. In what consists the difference between an administrative examination of accounts, such as is referred to in the last question, and the examination made by the Auditors of the Treasury, under the old system?

Answer. The Auditors simply ascertain the fact, that the article had been purchased, without reference to the necessity of the purchase, or to the price, except in cases where the quantity and price were excessive, that is, beyond the ordinary quantity and price. The examination, in my Department, has reference to both those points: thus, an Auditor would not inquire whether a surgeon wanted one pound of medicine or ten pounds, but simply into the fact of his receipt of it.

Question. Was, or was not, Mr. Calhoun remarkable for his vigilance, in having all irregularities corrected in the subordinate departments?

Answer. Yes, he was, and promptly. He required quarterly reports from every Department, giving a minute detail of all its concerns.

Question. Do you, or do you not, think your Department was very much improved during Mr. Calhoun's administration, as to its economy, and the regularity of the supplies; and, also, as to the health of the soldiers?

Answer. I know it was, in all these respects, from the reports of the Surgeons, and from those of the inspecting officers.

Question. How long have you known Major Vandeventer, and what is his character for honor and veracity?

Answer. I have known his since 1818; I have always had a high opinion of his character, both for honor and veracity; and, in proof of it, I signed for him the only paper involving pecuniary responsibility of any considerable amount, that I have ever signed. I will add, it was his statement, which, if true, made the paper a mere form; and, if false, involved me to a considerable amount.

Question by Mr. Floyd. Do you know of Mr. Calhoun's being interested in any contract made with the Department of War, while he was Secretary of that Department, or in the profits of which he participated?

Answer. I do not; nor did I ever hear it suggested while he was in the Department.

Question by Mr. Williams. Do you know who were the partners in the Mix contract, at any time?

Answer. I know of no other one than Major Vandeventer.

Sworn and subscribed, this 31st day of January, 1827.

JOS. LOVELL,
Surgeon General, U.S.A.

No. 36

Testimony of Col. John E. Wool.

Col. John E. Wool, Inspector General of the Army of the United States, appeared before the Committee, was sworn and testified as follows:

Questions by Mr. McDuffie

Question. What office do you fill, and when was you appointed?

Answer. I fill the office of Inspector General of the Army, and was appointed on the 29th of April, 1816.

Question. What are the duties of your office?

Answer. Inspectoral; and extend to the inspection of all departments of the Army, save one, that is the Corps of Engineers.

Question. Have the discipline and moral of the Army been much improved during Mr. Calhoun's administration?

Answer. Yes. The discipline of the Army as well as the moral of the Army were much improved during the administration of the War Department, by Mr. Calhoun.

Question. Was there any great improvement made during that time, in the preservation of the public property?

Answer. A very considerable improvement was made.

Question. To what do you ascribe these improvements generally?

Answer. To an efficiency that was imparted to the various Departments; forming systems for the different Departments, which did not exist before; giving to the Department's heads that were responsible for enforcing the regulations, &c.

Question. Has the quality of the supplies been much improved, as also, the regularity of their distribution?

Answer. Very great, indeed. The supplies furnished the army previous to the organization of the commissariat, will bear no comparison with those now furnished.

Question. What is your opinion of Mr. Calhoun as an administrator of a Department?

Answer. I consider him a very able and efficient administrator.

Question. What is your opinion of him as to public and private integrity?

Answer. From any intercourse I had with Mr. Calhoun, I have no reason to suppose that he was otherwise than a man of perfect integrity, both in private and in public.

Question by Mr. Williams. Do you know the names of the partners in the Mix contract? Have you ever had any conversations with

those partners? if yea, state the names of those partners, and the conversations you have had with them.

Answer. I know nothing, of my own knowledge. In a conversation I had with Major Vandeventer, I asked him how he came to be engaged in that contract; he replied, that, at the time he did engage in it, he was not aware of the impropriety of doing so, and regretted his connection with it very much; he also stated, that he relinquished it as soon as he could do so.

Question by Mr. Floyd. Have you knowledge of any contract made with the Department of War, whilst Mr. Calhoun was Secretary of that Department, in which he was interested, or in the profits of which he participated?

Answer. I have no such knowledge.

Sworn to and subscribed, this 31st day of January, 1827.

JOHN E. WOOL,
Inspector General U.S. Army.

The witness, upon a reading of his testimony, asked leave to frame his answer to the question—

"To what do you ascribe these improvements?"

To read—

"To a better organization of the army than had previously existed; to uniform systems of instruction; to a better and more systematic arrangement of the Executive and Administrative Departments; giving to each a chief, who was responsible for the faithful execution of the laws and regulations prescribed for the government of his Department; thereby imparting to all departments an efficiency that could not fail to improve the condition of the army."

Col. Wool was further examined, as follows:

Question by Mr. Clarke. Were or were not the Quartermaster General's Department, the Department of Commissary General of Subsistence, the Paymaster General's Department, the Surgeon General's Department, the Department of Commissary General of Purchases, the Ordnance Department, and the Engineer Department, all established by acts of Congress? and, if yea, what better organization, improving the condition of the Department of War, was introduced by the late head of that Department?

Answer. Yes; these Departments, I believe, were created by act of Congress; no other organization was introduced by the late head of the War Department, than such as was authorized by acts of Congress.

JOHN E. WOOL,
Inspector General U.S. Army.

No. 37.

Testimony of General Macomb. Second Examination.

General Macomb appeared before the committee, was sworn and testified as follows:

Question by Mr. McDuffie.

Question. What office do you fill, and when were you appointed?

Answer. I fill the office of Chief Engineer; I was appointed the 1st of June, 1821.

Question. What are the duties of your office?

Answer. The duties of my office are explained in the general Army Regulations, under the head of "*Engineer Department, art. 67;*" by which I am to direct and regulate the duties of the Corps of Engineers, and those also of the Topographical Engineers, and am also, charged with the inspection and correspondence of the Military Academy; these duties comprehend the reconnoitring and surveying for militray purposes, and for internal improvements; together with the collection and preservation of topograhical and geographical memoirs, and drawings referring to those objects; the selection of sites, the formation of plans and estimates, the construction, repair, and inspection, of fortifications, and the disbursement of the sums appropriated for the fulfilment of those objects, severally, comprising those of the Military Academy; also, the superintendence of the execution of the acts of Congress, in relation to internal improvements, by roads, canals, the navigation of rivers, and the repairs and improvements connected with the harbors of the United States, or the entrance into the same, which may be authorized by acts of Congress; with the execution of which the War Department may be charged.

Question. Was or was not Mr. Calhoun vigilant in enforcing regularity and promptitude in the details of the subordinate departments?

Answer. He was exceedingly vigilant and prompt in regulating the details of the subordinate department, especially that of the Engineer Department.

Question. Was he or was he not strict and rigorous in controlling the fiscal operations of your department?

Answer. He was; upon all occasions he inquired into the concerns of the department; relating to money transactions, he was so particular, as to have the individual accounts frequently brought before him, for his inspection and examination, to see whether the officers were prudent and economical in the purchases and other expenditures; and also, whether I kept a strict control over the fiscal affairs; he desired that I would be very particular in the smallest accounts, to check every sort of extravagance, and to make all the officers explain when I had the least suspicion, that a due regard to economy had not been observed by them: for, says he, "if you take care of the small things the greater will take care of themselves;" this was his common remark. He would always remind me of the necessity of great care in the expenditure of the public money, for that great vigilance was necessary in that particular, to sustain the character of the Engineer Department.

Question. What is your opinion of Mr. Calhoun as the administrator of a Department?

Answer. I have always had a very exalted opinion, since I became acquainted with Mr. Calhoun, of his great talents and tact for administration, as he appeared to understand every thing that was

submitted to him for consideration, almost intuitively; and therefore was capable of despatching much business in a short time, and did despatch much business in a short time.

Question. What is your opinion of his official and private integrity, and of the singleness of his devotion to the public service?

Answer. My opinion of his official and private integrity, has been founded upon the perfect honesty and fairness with which he dealt with me, and every body with whom I saw him or knew him to act, in his official and private capacity; and I have always been much impressed with the idea that he devoted himself fully to the public service.

Question. What directions did he give you, as to exposing and correcting the errors of your Department?

Answer. In giving me instructions to comply with the frequent calls of Congress for information, which had reference to the Engineer Department, he directed me to make my reports as full as possible, to answer those calls; and, if any errors should have been committed by the Department in the execution of the duties assigned to it, to expose those errors, as it was better that they should be known at once, than be drawn out by compulsion; and that always to avoid such errors in future, as may have been committed, however trifling

Question. Was there any considerable improvement made by Mr. Calhoun in the organization and details of your Department, and in the economy of its disbursements?

Answer. The Engineer Department, when its direction was committed to me, appeared to have been in the progress of gradual improvement, from the date of its establishment at Washington, by Mr. Calhoun. Its condition continued to improve while Mr. Calhoun was Secretary of War; the organization, as well as the administration, of the duties of the bureau at Washington was improved, and the effect was improvement in those respects to the duties of the officers and others under its direction and control. The improvement consisted chiefly in the promptitude with which business was attended to, and the substitution of specific for general information. The extent of improvement may be illustrated by the fact, that when Mr. Calhoun entered upon the administration of the War Department, it was difficult to procure minute and accurate information, even by the means often resorted to, of requiring the personal attendance of officers at the Seat of Government; but now, owing to the system established of preserving the public documents of every description in the Engineer Department at the Seat of Government, every information possessed by the several members of the Engineer Department, including the officers and agents, can be promptly obtained. As it regards the economy of the disbursements, the most rigid attention was paid, and could not be otherwise, under the regulations which have been established to ensure a correct and economical application of the public money.

Question. About what sum is annually disbursed through your Department?

Answer. Taking the last four years, commencing with 1823, about 500,000 dollars; in 1824, between 6 and 700,000 dollars; in 1825, between 7 and 800,000 dollars; and, in 1826, upwards of one million.

Question. What have been the defalcations since 1823; and what were they for three years previous to that time?

Answer. I do not know that there have been any defalcations since 1823. Previously to that year, I think there was a defalcation on the part of one of the Agents, for a sum which I cannot now recollect, but I suppose it to be about 15 or 16,000 dollars.

Question. Did Mr. Calhoun make any improvement in the system of fortifications?

Answer. Mr. Calhoun established a Board of Engineers for fortification, with a view to examine all the points of defence along the seaboard, including the Gulf of Mexico; which Board, having reconnoitred the seaboard before mentioned, selected the positions to be fortified; but, previously to the projection of the plans, directed that the Topographical Engineers should make minute surveys, and present topographical delineations of the country and positions on which the fortifications were to be erected; and, having formed a general system of defence, the Board of Engineers were directed to transmit to the Engineer Department that system, dividing the same into classes, shewing the fortifications that ought immediately to be commenced, and those that might be deferred to different periods; classing them into first, second, and third, with their reasons for the works, estimates of the expense, the number of men to defend them in peace and war; all to be laid before him, for his approbation.

Question. Did Mr. Calhoun make any considerable improvement in the condition of the Military Academy?

Answer. He did. He formed the regulations which are known under the head "Military Academy, article 78," of the Army Regulations, which is, undoubtedly, a great improvement upon those in force previously.

Question. What is the character of Major Vandeventer for honor and integrity?

Answer. I have known Major Vandeventer for many years, and always considered him as an honorable and upright man, and he bore that character both in and out of the Army.

Question by Mr. Ingersoll. Do you know who directed the bond for 100,000 perches, on the Mix contract, to be cancelled; or who directed the entry to that effect, to be made on the margin of the bond book?

Answer. I know nothing more than what is on the face of the record.

Question by Mr. Ingersoll. Did you examine the two bonds before making out your report to the Committee, in 1822?

Answer. Not that I recollect.

Question by Mr. Williams. Have you any knowledge of two instruments of writing, purporting to be articles of agreement between J. G. Swift and Elijah Mix?

Answer. None.

Question by Mr. Williams. Have you any knowledge of the persons concerned in the Mix contract, or any one whose name was not to be mentioned as a partner? If yea, state the names of those persons, and any conversations you many have had with them, or him, on that subject.

Answer. I have no knowledge upon the subject of this question, other than that I gave in my former examination.

Question by Mr. Williams. What was the name of the man that proved a defaulter, to whom you have alluded; and where did he reside at the time of his defalcation?

Answer. It was Major Maurice, who was Agent for the fortifications at Old Point Comfort, and the Rip Raps; and he resided, I believe in Norfolk.

Sworn to and subscribed, this 31st of January, 1827.

ALEX MACOMB,
Major Gen. Ch. Eng.

No. 38.

Testimony of Col. I. Roberdeau

Col. Isaac Roberdeau appeared before the Committee, was sworn, and testified as follows:

Examined by Mr. McDuffie

Question. What office do you fill, and how long have you filled it?

Answer. I am Brevet Lieutenant Colonel, and Topographical Engineer, having charge of the Topographical Bureau. My orders to repair to Washington, are dated on the first of August, 1818. I arrived in that month, and entered, with other officers, on duty, projecting the defences of Chesapeake bay. The Topographical Bureau was not established until 1819, because the building now occupied as the War Office, was not, until then, finished; and the place used by the Engineer Department was too confined for such purpose.

Question. What are the duties of your office?

Answer. They are prescribed by the 914th article of army regulations, in these words: "An officer of Topographical Engineers shall be stationed at Washington, and, besides performing such other duties as may be assigned to him, shall be charged, under the Chief Engineer, with the safekeeping and preservation of the instruments, books, charts, maps, plans, surveys, topographical reports, descriptive and military memoirs, &c. belonging to the Engineer Department; and shall be responsible, not only for their good preservation, but for their arrangement, which shall be such as to admit of the most ready reference." And, in article 915, the officers of Engineers are to make quarterly returns of the instruments, books, &c. of the United States, in their possession; and the officer in charge of the Topographical Bureau, will make a consolidated semi-annual return of the same, which will be deposited with the proper Auditor, with the view of their being severally charged to the officer who may have them in his possession. These duties have been strictly adhered to; but, in the original formation of the Bureau, it was contemplated to annex other, and equally important duties, such as to abridge and make a critical analysis of all memoirs on similar subjects; also, to connect separate maps, charts, and surveys; to form statistical tables, showing the resources, of all kinds, that the country can afford the army; itinerary tables, respecting the concentration of the militia on points of rendezvous, so that the orders for the movement of a detachment, and

those for their supplies, should exactly correspond, and the line of march of certain given points distinctly marked; that no undue expenditure of public property be incurred, at the same time that adequate supplies are furnished.

Question. What was the condition and organization of the Topographical Corps, and of your Bureau, when you were appointed to your present office? and what when Mr. Calhoun left the War Department, in March, 1825?

Answer. When I was appointed to my present office, the Topographical Engineers belonged to the General Staff of the army, as they now do; they were distributed among the general officers, who directed their operation, and to whom their reports were made. At that time there was no central office, in which to preserve their records, or the results of their labors; the consequence of which was, that much was lost to the Government. In 1818, they were all, or nearly all, placed under the command of the Chief of the Corps of Engineers, under whom they continue to be. Previously to this time, the attentions of the corps were confined chiefly to a few military reconnoissances; subsequently, they embraced the various objects which come under the heads of military defence, of hydrography, and internal improvement. The Topographical Bureau did not then exist. It was formed by Mr. Calhoun, when the building for the War Office was finished, and the Department removed to it, in 1819. The constant attention of Mr. Calhoun, during his administration, to this branch of service, and the large and valuable additions made to it, of original, and other documents, placed it in its present condition.

Question. Were there any maps, books, or records, formerly, and are there now?

Answer. On the information of the Bureau there were few of these; the number of maps, charts, &c. was about 65; and a few atlases, containing maps of different parts of the world. Now, there are more than 1180 maps, plans, drawings, and engravings, &c. on the register; and more than 300 projections and drawings of fortifications, and other plans of defence. This does not include the drawings and reports for internal improvement, and many others which are in a state of preparation for the Bureau, and not on the Register; so that it may be safely asserted, that there are, at present, at the disposal of the Bureau, nearly 2,000 charts, plans, &c. of various kinds.

Question. What were the public instruments, and how were they taken care of formerly, and where are they now kept and preserved?

Answer. There were no public instruments, at this time, belonging to the Corps, excepting a very few, in the hands of individual officers, The instruments and books for the survey of the coast, were received at the Engineer Department, in 1819. I believe, they were placed in my charge by Mr. Calhoun, in February, 1820, who subsequently ordered that they should be charged to me, in the Second Auditor's books, which was done, and they continue so to be. They are in good preservation. Previously to the administration of Mr. Calhoun, I know not of any returns, or accounts, being given of instruments: now, the returns are quarterly made to the Bureau; and semi-annual consolidated returns from it, reported to the proper Auditor, agreeably to regulation.

Question. What is your opinion of Mr. Calhoun, in the administration of a Department?

Answer. It is a question of delicacy; but my opinion on this subject may be known, by the replies already made to other questions: these facts clearly show the conduct of his administration, so far as I have been concerned in it.

Question. What is your opinion of his public and private integrity?

Answer. My opinion of the private worth and integrity of Mr. Calhoun, is unqualified, and which must regulate his public life also.

Question. What is the character of Maj. Vandeventer, for honor and veracity?

Answer. The character of that gentleman for honor and veracity, I have never known to be doubted, by those who personally knew him.

Question by Mr. Floyd. Have you knowledge of any contract made with the Department of War, while Mr. Calhoun was Secretary of that Department, in which he was interested, or in the profits of which he participated?

Answer. I have not.

Question by Mr. McDuffie. Was Mr. Calhoun vigilant in enforcing regularity in the subordinate departments?

Answer. He was very much so.

Question by Mr. Williams. Have you any knowledge of the persons concerned in the Mix contract, or of any one whose name was not to be mentioned as a partner? If yea, state the names of those persons, and any conversations you may have had with them or him, on that subject.

Answer. I have no knowledge whatever on this subject.

Sworn to and subscribed, this 31st day of January, 1827.

I. ROBERDEAU,
Lt. Col. and Top. Eng'r.

No. 39.

Testimony of Colonel Gibson.

Col. George Gibson, appeared before the Committee, was sworn, and testified as follows:

Questions by Mr. McDuffie.

Question. What office do you fill, and when were you appointed?

Answer. I am Commissary General of Subsistence, and was appointed in April, 1818.

Question. What are the duties of your office?

Answer. My duties are, to make contracts, under the Secretary of War, for subsistence stores, to supervise the accounts of the Department on their way to the Treasury, and to give a general direction to my assistants in their purchases.

Question. What is your opinion of Mr. Calhoun, as an administrator of a department?

Answer. I have the very highest opinion of Mr. Calhoun, as the head of a Department?

Question. Was he vigilant and rigorous in enforcing regularity in the subordinate departments?

Answer. He was.

Question. What is your opinion of his public and private integrity?

Answer. I have the highest opinion of both his public and private integrity.

Question. Was there any considerable improvement made by Mr. Calhoun, during his administration, in the organization of your Department, as to the economy of supplying the Army, and the excellence of the supplies?

Answer. I believe there were great improvements. The ration is now much better than under the old system, and I think it is furnished cheaper. The ration formerly was very bad indeed.

Question. At what time did Mr. Calhoun put a stop to advances in your department?

Answer. He first spoke to me of it in 1820, and in 1821 I introduced into my advertisement for proposals that no advances would be made.

Question by Mr. Floyd. Have you knowledge of any contract made with the Department of War, whilst Mr. Calhoun was Secretary of that Department, in which he was interested, or in the profits of which he participated?

Answer. I have no knowledge of any such contract.

Sworn to and subscribed, this 31st of January, 1827.

GEO. GIBSON, *C. G. S.*

No. 40.

Testimony of Colonel Bomford.

Colonel George Bomford, of the United States' Army, appeared before the Committee, was sworn, and testified as follows:

Examined by Mr. McDuffie

Question. What office do you fill, and when were you appointed?

Answer. The office of Colonel of Ordnance. I came to that office, permanently, in 1820; I occasionally discharged the duties, temporarily, in the absence of Colonel Wadsworth, before that period.

Question. What are the duties of your office, at this time?

Answer. It is to provide, to inspect, to distribute, and to preserve, all the varieties of Ordnance and Ordnance Stores, embracing small arms of every description, and ammunition.

Questioin. What is your opinion of Mr. Calhoun, as an administrator of a Department?

Answer. My opinion is that he was a very able and efficient administrator of the War Department.

Question. Was he prompt and rigorous in correcting the irregularities of the subordinate Departments?

Answer. As far as my Department was concerned, and to the best of my knowledge, he was, strictly, so.

Question. What is your opinion of Mr. Calhoun as to official and private integrity?

Answer. I have the highest opinion of Mr. Calhoun on both these points.

Question. Were the organization and condition of your Department much improved during Mr. Calhoun's administration of the War Department? and in what respect?

Answer. I consider the Department was improved generally at all points, throughout all its ramifications, and particularly on the strict accountability of its officers to the Department, and in receiving all the accounts of the disbursing officers, in the first instance, in order that they might be strictly and critically examined before they went to the Treasury for adjustment. Prior to Mr. Calhoun's administration of the War Department, the accounts of disbursing officers went directly to the Treasury.

Question. What has been the annual saving in your Department, as far as you can estimate it, effected by the improvements made during Mr. Calhoun's administration?

Answer. I will premise by saying that this is a difficult question to answer with precision; but, in making some estimates during the past year, upon the probable results and saving by the improved organization and increased accountability of the Department, and making allowances for the variation in the prices of materials and labor, the saving amounted to from ten to fifteen per cent. on the disbursements, which are from six to nine hundred thousand dollars a year; for instance, the muskets are now fabricated for twelve dollars each, and are of a very superior quality to those manufactured in 1817 and 1818, which cost fourteen dollars each.

Question. What has been the amount of defalcations in your Department since the improved organization was introduced?

Answer. There has been no defalcations since that period.

Question. Has any improvement been made in the preservation and care of the public property?

Answer. There have been many improvements made in the manner of preserving the public property, since the commencement of Mr. Calhoun's administration of the War Department.

Question. Was there any improvement made in the quality of the arms during that time, and how was it effected?

Answer. There was many improvements made in the quality of the arms, but the most important was in constructing Hall's patent rifle, which Mr. Calhoun particularly patronized. This arm has been proven by a series of experiments, and tested by five months' firing at the school of practice. The result has been that it is in the ratio of two to one, when compared with any other rifle in the country. It has also been proven, by a series of experiments that it is in the ratio of three to two when compared with the best muskets.

Question. When was the management of the lead mines transferred to the War Department, and what improvement did Mr. Calhoun make in their management and productiveness?

Answer. The lead mines were transferred to the War Department in 1821; Mr. Crawford, at the time of the transfer, stated that they had produced nothing to the public Treasury; the tythe which the public received during the last year, was between two hundred and thirty-three and two hundred and thirty-four thousand pounds of lead. The regulations by which the mines are now conducted were adopted by Mr. Calhoun, in the year 1822.

Question. What is the character of Major Vandeventer for honor and veracity?

Answer. I have been long acquainted with Major Vandeventer, and I never had any reason, in any of my communications with him, to doubt either the one or the other.

Question by Mr. Williams. Have you any knowledge of the persons concerned in the Mix contract, or of any one whose name was not to be mentioned as a partner? If yea, state the names of those persons, and any conversations you may have had with them, or him, on that subject.

Answer. I have no knowledge whatever in relation to this question.

Question by Mr. Williams. At what instance or recommendation were the lead mines transferred from the Treasury to the War Department?

Answer. At the instance of Mr. Crawford, the Secretary of the Treasury, who recommended the transfer of that branch of business to the War Department, as that of the Treasury had no efficient aid to apply to their superintendence.

Question by Mr. Floyd. Have you any knowledge of any contract made with the Department of War, while Mr. Calhoun was Secretary of that Department, in which he was interested, or in the profits of which he participated?

Answer. I have no knowledge whatever of any such contract; and I have too high an opinion of Mr. Calhoun to believe he could ever have been induced to participate in any contract.

Question by Mr. Williams. Had you ever any conversation with Mr. Crawford as to the propriety of establishing the heads of bureaux at this city, before he left the War Department?

Answer. I had some general conversation with Mr. Crawford on that subject, who remarked, that he intended, whenever the current business of his office would permit him, to establish a better system for the government of the War Department, as he found the present one too diffuse.

Sworn and subscribed, this 31st day of January, 1827.

GEORGE BOMFORD,
Br. Col. on Ordnance Service.

No. 41.

Testimony of General Swift.

General Joseph G. Swift, of the city of New York, appeared before the committee, in obedience to their summons, was sworn, and testified as follows:

Examined by Mr. McDuffie.

Question. Had you ever a conversation with Col. Armistead, in which you stated that you were interested, or about to be interested in the contract commonly called the Mix contract?

Answer. No; I never had any such conversation with Col. Armistead.

Question. Had you ever any conversation with Col. Armistead, in which you stated that you had asked Mr. Calhoun's permission to become interested in that contract?

Answer. No; I have had various conversations with Col. Armistead, but none of that sort.

Question. Have you ever had conversation with Col. Armistead on the subject of your being interested in any contract? if yea, state fully what that conversation was.

Answer. I have had conversation with Col. Armistead, whether more than once I do not recollect, with respect to my interest in the Mobile contract.

Question. What was your interest in that contract, and when and how did it accrue.

Answer. In the Spring of 1818, I made a contract, as Chief Engineer, with Benjamin Hopkins to construct fortifications at Mobile Point. In the year 1819, I believe in the month of September, Hopkins, while executing that contract, died of yellow fever. His father, Roswell Hopkins, of New York, was one of his sureties for the execution of the contract. R. Hopkins offered to sell to Samuel Hawkins, then of New York, his right and title in the contract of his deceased son. I was then residing in New York, as the Surveyor of the port. Hawkins called on me for advice whether or not he should purchase that contract. I told him that it was my opinion that the contract, in the hands of an able man, was a good one. He then proposed that himself and myself should purchase it together. I declined doing it; he stated that his desire for having me interested in it, was that he might have the advantage of my professional ability to commence and construct the work. After various propositions on his part, he made this proposition: that I should furnish advice and directions for the construction of the work; and, at the completion of it, I should receive one-fourth of the net profits, without, however, myself incurring responsibility for the expense. I acceded to his proposals; commenced furnishing directions to him, and he went to Washington, to make some modification in the contract with the War Department; what that modification was I don't now recollect. This is the sum total of my interest in, and connection with, the Mobile contract. This subject was at the time, and various times thereafter, mentioned by me to the gentlemen of the War Department. I mentioned the fact to Mr. Calhoun; he stated that he hoped that it would prove advantageous to me, and that it was satisfactory to the Government, as it would give an assurance that the work would be properly and satisfactorily executed.

Question. Had you in fact, at any time, an interest in the contract you made with Mix, for the supply of stone at the Rip Rap Shoal, near Old Point Comfort; or did you ever intimate to Mr. Calhoun, directly or indirectly, that you had?

Answer. I never had any interest in it, and I never made such an intimation to Mr. Calhoun, or to any body else.

Question. What was the practice of the War Department with regard to advertising for contracts, previous to 1818? State fully.

Answer. The War Department, previous to 1818, had no practice of that sort, that I know of, in relation to fortifications. Previous to the year 1819, it was the practise of the Engineers to make their separate contracts with individuals, wherever they were stationed, each in his own Department. In 1818, in consequence of the remoteness of the works that were to be constructed upon the Gulf of Mexico frontier, I caused advertisements to be made in New York, Phila-

delphia, Baltimore, New Orleans, and Washington, and possibly at other places not now recollected. The proposals received, in consequence of those advertisements, from Louisiana and Mississippi, were not equal to what was received from various parts of this country; and the contracts were made with citizens from this part of the country, who came to the Department and examined the plans and specifications, and predicated their bids upon the estimates of the Engineers. In relation to the Mix contract, I caused various examinations to be made on James river, Potomac, Susquehannah, and the Hudson; and, upon the reports made under these examinations, I was enabled to ascertain what was the lowest price at which stone could be furnished. The proceedings of the Committee of Investigation in 1822, will exhibit the particulars of that matter.

Question. When did you leave the office of Chief Engineer?

Answer. In the month of November, 1818.

Question. When was Hawkins recognised by the Engineer Department, as the successor of Hopkins?

Answer. I believe it was early in the year 1820, with some modifications of the original contract.

Question. Can you explain the reason why, in a letter from the Engineer Department to Lieut. Blaney, of the 11th August, 1818, it is stated that a contract had been made with Mix for 100,000 perch of stone; and, in a letter to James Maurice, of the 21st August, 1818, it is stated that the contract was for 200,000 perches?

Answer. I cannot; it is an error, very evidently.

Question. What was the condition of the Engineer Department previous to the new organization made by Mr. Calhoun?

Answer. I don't think the condition of the Corps of Engineers, as to its organization previous to 1818, was as good as it was after that period. I will state further, that the headquarters and the office was at New York; I was generally, indeed, almost all the time, travelling about the country; the business of the office had to be transacted when I was at home, which was for very short periods.

Question by Mr. Ingersoll. Will you examine the letter book, and say, whether the original letters to Lieutenant Blaney and Mr. Maurice, which are there copied, were written by you?

Answer. I think that, with the exception of the number of perches, which ought to be 150,000, the letters are according to the spirit of my instructions. I cannot say, positively, whether I did, or did not, write the letters originally; my usual practice was to furnish rough sketches, or instructions to my Aid, of whatever I wished written.

Question by Mr. Ingersoll. Did you have any negotiation with Mix during the month of August, 1818, or at any other time, about increasing the contract to 200,000 perches?

Answer. I had no other negotiation with Mr. Mix than stating to him, I was willing to increase the contract 100,000 perches, if he desired it; he did not accede to it; my reason for this was, that I considered the contract an excellent one on the part of the Government.

Questions by Mr. McDuffie.

Question. Will you examine the contract now presented to you and state, whether it was executed on the day on which it purports to have been executed?

Answer. Yes. It was executed on that day, to the best of my recollection; indeed, I am certain, it was.

Question. Do you know any thing of the execution of a second bond for the fulfilment of the Mix contract, if yea, what was the cause of it, and when was it executed?

Answer. Yes. The first bond, although considered ample for the purpose for which it was taken, had in it the name of George Cooper. Mr. Mix objected to this name, and, I think, he was informed, that, if he produced another bond, equally satisfactory, the first bond would be given up; a second bond was furnished, I think, some time in the course of the Fall of that year, the month I do not recollect, but it was before I left the office.

Question. Do you know any thing of a bond for the fulfilment of the Mix contract, executed in the Fall of 1820?

Answer. No. I do not; that was after I left the Army.

Examined by the Committee.

Question by Mr. Ingersoll. Why did the first bond describe the contract as for 100,000 perches, and as having been made by Mix and George Cooper, as Contractors?

Answer. I cannot tell. I have no way to account for the discrepance. The endorsement is for 150,000 perches, and is in my hand writing.

Question by Mr. Ingersoll. Was the bond ever approved or accepted by the Department as sufficient?

Answer. I think it was.

Question by Mr. Ingersoll. When was the first bond cancelled, and by whose order?

Answer. I do not recollect.

Question by Mr. Ingersoll. Were the forms of these bonds furnished by the Engineer Department?

Answer. I do not recollect, but think they were. We had no printed forms at that time.

Question by Mr. Ingersoll. Were advances made to Mix on the delivery of the first bond? and if yea, to what amount?

Answer. My impression is, that upon the delivery of the first bond, an advance was made to Mix of $10,000.

Question by Mr. Ingersoll. Who gave the requisition for that advance, and was the requisition in writing?

Answer. My impression is that the requisition was in writing, and was signed by me, but am not certain, whether it was or was not. In some instances, the requisitions were verbally given. At that time the Accounting Officers had charge of that business.

Question by Mr. Ingersoll. Who delivered either or both of these bonds at the Engineer Office?

Answer. I cannot recollect. I think, it was Mr. Mix; it may have been Major Vandeventer; but I have no distinct recollection upon this point.

Question by Mr. Ingersoll. Was any record or memorandum made in the office, while you were there, of the receipt of the second bond, and the cancelling of the first?

Answer. I presume there was. I cannot recollect upon this point.

Question by Mr. Ingersoll. Are you distinct in your recollection, that the second bond was received before you left the Department?

Answer. To say that *I am distinct* in my recollection, is to speak more precisely than I can; my *impression* is that it was.

Question by Mr. Ingersoll. At what time was the Engineer Department established at Washington?

Answer. I believe it was in April, 1818.

Question by Mr. Ingersoll. Will you state the day when you left the Department as Chief Engineer?

Answer. November, 1818; I think the 11th day.

Question by Mr. Ingersoll. Have you a brother-in-law, of the name of Walker? If yea, was he, at any time interested in the Mix contract.

Answer. I have a brother-in-law of that name; I dont believe he was interested at any time in the Mix contract, or any other contract with the Government; if he had been so interested, I think I should have known it.

Question by Mr. Sprague. Do you know the names of the persons who have been at any time interested in the Mix contract? if so, state them to the Committee.

Answer. I have heard that Mr. Jennings, Mr. Vandeventer, Mr. Cooper, and Mr. Goldsborough, say they were connected with that contract.

Question by Mr. Williams. Do you know whether any money drawn from the Treasury in the name of Elijah Mix, was afterwards paid to persons other than Mix? if yea, state the names of those persons, and the purposes for which the money was paid to them.

Answer. I have no knowledge of any such transaction.

Question by Mr. Williams. At what time did Major Vandeventer's interest in the Mix contract commence, and what part of it was he to hold?

Answer. Major Vandeventer, told me his interest commenced in the Spring of 1819; and that he held, I think, one-fourth, or one half, I don't recollect which, but am inclined to think one-fourth.

Question by Mr. Williams. At what time was the first bond filed in the Department?

Answer. I think it was early in August, 1818.

Question by Mr. Floyd. Have you knowledge of any contract made with the Department of War, whilst Mr. Calhoun was Secretary of that Department, in which he was concerned, or in the profits of which he participated?

Answer. I have no knowledge of any such contract.

Sworn to and subscribed, this 5th day of February, 1827.

J. G. SWIFT.

Letter from the Engineer Department, to Lieutenant Blaney, referred to in the testimony of General Swift.

ENGINEER DEPARTMENT,
11th August, 1818.

Lieutenant GEORGE BLANEY:
Corps of Engineers.

SIR: You will repair to Old Point Comfort, Hampton Roads. The Agent of Fortifications, Mr. Maurice, has been directed to have ready at Old Point, five heavy anchors, about 38 or 40 cwt.; these anchors, with the cables and buoys, I wish to have placed by you upon the Rip

Rap Shoal, in a position agreeable to the subjoined diagram. You will ascertain the nearest position of the point of shoal in 3 fathoms water, to Old Point Comfort, upon which you will recollect we had a buoy anchored last Winter. From that point of shoal, in a due South direction, at the distance of one hundred and fifty yards, I wish an anchor A and buoy to be put down; the other four anchors, &c. B, C, D, E, I wish to have put down at the distance of sixty yards each, from A 1st, in a due N. W. 2d in a due N. E. 3d in a S. E. and 4th in a S. W. direction from A. The buoys must of course be large enough to be easily seen. On A. there must be a large flag. You will require the agent to furnish you with such boats, and hands, &c. as may be necessary to execute this order. I wish the anchor A, to be in such position as will allow the vessels which come down with stone, to come to its buoy, to deposite with ease their loads. This anchor must have a stout iron chain cable attached to it, that the stone may not chafe the cable asunder. The vessels, on their arrival, should lay in an East and West direction, with the buoy on the side of the vessel next to Old Point Comfort, and by a warp, extended to B, C, D, or E, as the case may require, can with ease take the same position with each succeeding load of stone. By this arrangement, 3, or even 4 vessels may discharge at the same time; a desirable thing in forming a foundation upon sand. You will inform the agent that a contract has been made with Captain E. Mix, to deliver, as soon as practicable, at the Rip Raps, one hundred thousand perch of stone; that I wish him, the agent, to employ an honest, intelligent, and capable man, to look after the anchors and to see that they are not disturbed; and also, to superintend the delivery of every load of stone, of which he is to keep an exact account. After completing the duty assigned you, you will return to this place.

(Signed.)

Engineer Department, *9th Feb.* 1827. The foregoing is a true copy of a letter recorded in one of the letter books of this Department.

ALEX. MACOMB, *Maj. Gen.*

Letter from the Engineer Department, to James Maurice, referred to in the testimony of General Swift

ENGINEER DEPARTMENT,
August 21*st*, 1818.

JAMES MAURICE, Esq. *Norfolk.*

SIR: Your letter of the 18th arrived this day. It pleases me much to find that you are able to execute rapidly the orders given. I enclose your letter of appointment; also, the regulations for your government. You will receive ten thousand dollars from the Treasurer of the United States, to be disbursed as you may be required by this Department. Mr. E. Mix will soon commence to deliver stone at the Rip Raps, under contract with this Department, for two hundred thousand perch. You will send a trusty person, or go yourself to the quarry with Mr. Mix, to determine how many perch, of 24 solid feet each, each vessel will contain. By this, no delay will arise in the delivery. All communications will be made to this Department. You will report to this

Department what is the cost of landing the stone at Old Point Comfort. The bonds which you enclosed to me have the approbation of the Secretary of War. Until an Engineer be sent to Old Point Comfort to superintend, you will receive your orders from this office.

(Signed.)

Engineer Department, 9th Feb. 1827. On the preceding page is a true copy of a letter recorded in one of the letter books of this Department.

ALEX. MACOMB,
Maj. Gen. Chief Engineer.

No. 42.

Second testimony of Captain J. L. Smith.

Captain John S. Smith again appeared before the Committee, and further testified as follows:

Examined by Mr. McDuffie

Question. Did you make the alterations which appears to have been made with a pencil in the letter of Elijah Mix, now presented to you, dated 13th April, 1821? (See exhibit No. 4, Mix's second deposition.)

Answer. I did not; they are in the hand writing of Major Vandeventer.

Question. Did you ever send from the Engineer Department the form of a letter which Mix would be required to write, transferring a part of his contract to Goldsborough?

Answer. I did not.

Question. Were the terms of the letter which you actually wrote, and which was signed by Mix, agreed upon by the parties in your presence?

Answer. They were.

Question. Was Major Cooper [present] when that letter was written by you, and signed by Mix?

Answer. I do not think he was.

Question. Was any compulsion used, by menace, or otherwise, to induce Mix to sign the letter in question?

Answer. There was not.

Question. Was the letter which has been presented to you, (see No. 4, Mix's second deposition,) interlined in pencil, ever sent to the Engineer Department, and by you sent back, with the alterations which appear in pencil?

Answer. No. I think this is the letter alluded to in my testimony when before the committee some time ago, as the draft prepared by Mr. Mix and Major Vandeventer.

Question. Was any compulsion used by Mix towards Vandeventer, in extorting from him an obligation for the payment of money, at the time of signing the letter of Mix, to the War Department, of the 13th of April, 1821.

Answer. There was. Mr. Mix refused to sign any letter authorizing the Secretary of War to recognise Goldsborough & Co. owners of one-fourth of the contract, independent of him, unless Major Vandeventer would sign a note to him for the sum of a thousand dollars; I think that was the amount which he claimed as a balance due him by Major Vandeventer. Major Vandeventer signed the note with the understanding that it was to be retained by Mix, until the accounts should be adjusted by arbitration; and if it should then appear that the amount of the note was not due to him, that he should be considered bound by the note for such amount only as should be awarded. This note Mr. Mix negotiated in the Branch Bank at Washington. Major Vandeventer consulted Colonel Randall, as his counsel, to know whether he would be justified in refusing to pay the note. Colonel Randall had a correspondence with the Bank on the subject, in which I understood he introduced the substance of a memorandum, setting forth the particulars of the transaction, which was obtained from me for the purpose; and I understood that the Bank, satisfied with the unfairness of the transaction, consented to commence a suit against Mr. Mix, upon his endorsement of the note.

Subscribed this 5th day of February, 1827.

J. L. SMITH.

No. 43.

Testimony of John B. Thorp.

John B. Thorp, of the City of New York, appeared before the Committee, in obedience to their summons, was sworn, and testified as follows:

Examined by Mr. McDuffie.

Question. Are you acquainted with the general character of Elijah Mix, formerly of New York? If yea, state fully what is his general character.

Answer. His general character is very bad. I became acquainted with him in 1813; he was then under indictment, in New York, for forging the name of Hone & Town, or rather, writing a note on a piece of paper containing their name, cut out of a receipt. He sent for me, and wished to make some accommodation of the suit I had against some of his creditors. On inquiring what he had to do with it, he answered he would get up the indictment on the forged note. He then stated, particularly, that that note had been by him forged for the purpose of raising money; and, if the person whose name was "Stillwell," to whom he passed it, had not exposed him by showing the note to Hone & Town, he would have taken it up, and nothing would have ever been heard of it. He then proposed to give me securities which he held against people in Nova Scotia, (Halifax.) I refused to take it, and the negotiation ended. Some years afterwards, there was a publication in the papers respecting that transaction; and among others, an affidavit in the Richmond Enquirer, purporting to be made by Walter S. Conkling, and purporting, also, to be an acknowledgment of Mr. Stillwell, that he had himself forged this note, for the purpose of injuring Mix.

Question. Do you or do you not regard the character of Elijah Mix as being perfectly infamous, and do you think him entitled to be believed on his oath?

Answer. His character is so infamous that I think no community where he is known would believe him on his oath.

Sworn to and subscribed, this 5th day of February, 1827.

JOHN B. THORP.

No. 44

Testimony of John Harned.

John Harned, of the city of New York, appeared before the Committee, in obedience to summons, was sworn, and testified as follows:

Examined by Mr. McDuffie.

Question. What is the general character of Elijah Mix, and what have been your means and opportunities of knowing it? state fully.

Answer. I have known him for several years; his general character is bad; he committed a forgery on Messrs. Hone & Town, of New York, and acknowledged the same to me, some time afterwards. This confession he made to me in the year 1812. He had previously absconded from New York. I would not believe him on oath.

Question by Mr. Williams. Do you know who were concerned in what is commonly called the Rip Rap or Mix contract, made with the Engineer Department, in 1818?

Answer. I do not, except from hearsay.

Question by Mr. Williams. Do you know that money, drawn from the Treasury in the name of Elijah Mix, was subsequently paid to persons other than Mix? if yea, state the names of those persons, and the purposes for which the money was paid to them.

Answer. I do not know any thing in relation to this interrogatory.

Sworn to and subscribed, this ninth day of February, 1827.

JOHN HARNED.

No. 45.

Copy of a letter from the Chairman of Committee to the Hon. Mr. Barbour, Secretary of War, requesting his attendance.

CAPITOL, *January* 2, 1827.

Sir: I am directed by the Select Committee of the House of Representatives, to which has been referred the communication of the Vice President of the United States, to transmit to you a copy of that communication, which is herewith enclosed, and to request that you will attend their next meeting, and bring with you all such papers and documents, in the Department of War, if any there be, relating to the subject-matter of said letter.

The Committee will assemble to-morrow, at 10 o'clock, at the Capitol, in the Committee room of Foreign Affairs.

I have the honor to be,
Sir, your obedient servant,
JOHN FLOYD,
Chairman of Select Com. House of Reps.

Hon. JAMES BARBOUR,
Secretary of the Department of War.

Mr. Barbour to Mr. Floyd, Chairman, &c. requesting certain persons to be summond before Committee.

4 o'clock, Tuesday, Jan. 2.

SIR: I have this moment received your communication, requiring my attendance on the Committee to-morrow at 10 o'clock. I see, most unexpectedly, that Mr. Calhoun has given, in his letter to the House, a prominency to the War Department, in connection with the object of your inquiry. It has become, therefore, desirable, on my part, that every act of mine, in relation thereto, should be fully explained; to that end, I consider the evidence of Mr. Rush, Mr. Southard, General Macomb, and Col. R. M. Johnson, necessary. I have, therefore, to request that they may be summoned as witnesses.

Very respectfully, yours, &c.
JAMES BARBOUR.

General FLOYD, *Chairman, &c.*

No. 46.

Letter from C. Vandeventer to General Floyd.

WASHINGTON, *January* 9, 1827.

SIR: If, in the testimony given by E. Mix before the Committee over which you preside, he has, in any way, implicated my statements, on the subject of his contract, I respectfully claim to be heard on the conflicting points; and as I have grounds on which to discredit the veracity of Mr. Mix, I respectfully request that Lieutenant M. P. Mix, of the United States' Navy now on board the Lexington, at New York, may be examined, touching the author of a certain affidavit, purporting to be made by Walter S. Conkling, at Richmond, Va. the 15th of May, 1822. Also, the admissions of E. Mix to him, that he had no paper to sustain his charge against Mr. Calhoun, but had made the charge as a threat to intimate me to pay him money. I also wish John Harned and John M. Thorp, of the city of New York, examined, touching a forgery committed by E. Mix, and confessed to them, in that city, in 1810, and respecting his general character,

I have the honor to be,
Your obedient servant,
C. VANDEVENTER.

Hon. J. FLOYD,
Chairman of the Select Committee, &c.

No. 47.

Address of Major Vandeventer to the Committee—received and read Jan. 10, 1827.

GENTLEMEN: A regard for my character, and for truth, are my motives for addressing you.

I have drawn up my statement on oath, at the direction of the committee, without having been informed on what points in particular my evidence was required, or whether the evidence of Mr. Mix in any degree affects my character, or whether it may be opposed on any point to that which I have given in my statement. If there be any thing in his evidence which, in the opinion of the committee, tends to impair my character, or, through me, to affect others, even ever so remotely, and which is not satisfactorily explained by my statement on oath, or if his has, in any particular, contradicted mine, I claim the right of every citizen standing in my situation, to be made acquainted with the same, in order to repel such imputation, and which I feel it to be in my power to do fully, whether the same shall have grown out of any letter or correspondence of mine with him, of which I kept no copies, or proceeds from any other source. If his oath contradicts mine in any particular, I claim the right of introducing testimony to show that he is utterly unworthy of credit under oath, by particularly showing that, in the year 1822, pending an investigation his contract before the House, he went to Richmond, in Virginia, and, under the fictitious name of Walter S. Conkling, made the oath of which the annexed is a copy, in order to acquit himself of the charges of forgery against him.

The witnesses against his credibility are principally in the city of New York, which fact I mention so that there may be no delay if it be thought that these oaths are necessary, and a list of whose names I am ready to furnish.

In making this communication to the committee, I am not actuated by the least disrespect towards them, but wholly by a due regard to character and truth, and with the view that neither myself nor any other through me, should be injured by my not having an opportunity fully to explain my conduct in this transaction, or by the oath of a man whom I believe to be without any title to credit, and who I believe is actuated by malignant feelings against me. Whatever may be the decision of the committee on the points submitted, I request that this communication may accompany the report of the committee to the House. I have the honor to be, your most obedient servant,

C. VANDEVENTER.

The Select Committee.

No. 48.

Chairman of the Committee to the Secretary of War.

CAPITOL, *Jan.* 13, 1827.

SIR: I am directed by the Select Committee, to whom was referred the communication of the Vice President, of the 27th of December

last, to request you to furnish them with a copy of the letter of W. K. Armistead, of the Engineer Department, under date of the 24th of March, 1821.

I have the honor to be,
Sir, your obedient servant,
JOHN FLOYD.
Chairman of Select Committee.

Hon. JAMES BARBOUR,
Secretary of the Department of War.

No. 49.

Secretary of War to Committee, in answer to letter of Chairman of the Committee of the 13th January.

WAR DEPARTMENT, *Jan.* 13, 1827.

SIR: I have the honor to acknowledge the receipt of your letter of this date, stating that you are requested by the select committee to whom was referred the communication of the Vice President of the 29th of December last, to request me to furnish them with a copy of the letter of W. K. Armistead, of the Engineer Department, under date of the 24th of March, 1821, and have the honor to state, in reply, that I have personally, with the Chief Engineer, examined the books of the Engineer Department, and find no letter of the date referred to entered on the books of said department.

I have the honor to be, very respectfully, your obedient servant,
JAMES BARBOUR.

To the Hon. JOHN FLOYD,
Chairman of Select Committee.

No. 50.

Chairman of Committee to Secretary of War.

CAPITOL, *January* 12, 1827.

SIR: I am directed by the Select Committee, to whom was referred the communication of the Vice President, of the 29th of December last. to request you to furnish them with the original bond or bonds, filed in the Department of War, in relation to the Mix contract; and that you also inform the committee whether it was the custom of the Department, at the time these bonds were received, to record such bonds; and, if so, to give the committee the name of the officer at that time charged with that duty: and, also, the copy of any entry on the books of the Department touching the receipt or approval of those bonds.

I have the honor to be,
Sir, your obedient servant,
JOHN FLOYD,
Chairman Select Committee H. of R. U. S.

The Honorable JAMES BARBOUR,
Secretary of the Department of War.

Letter from Secretary of War, enclosing original bond of Mix, with a copy of the cancelled bond.

DEPARTMENT OF WAR,
January 18th, 1827.

SIR: I have the honor to acknowledge the receipt of your note of yesterday's date, written under instructions of the committee to whom was referred the communication of the Vice President, of the 29th of December last, requesting me to furnish them with the original bond, or bonds, filed in the War Department in relation to the Mix contract; and that I will also inform the committee whether it was the custom of the Department, at the time those bonds were received, to record such bonds; and, if so, to give the committee the name of the officer, at the time, charged with that duty: and, also, a copy of any entry on the books of the Department touching the reception or approval of those bonds.

In compliance with the request, I enclose, herewith, the original bond, which has been procured from the office of the Second Comptroller of the Treasury, where all original bonds and contracts are deposited, dated on the 5th of August, 1818, signed by Elijah Mix, Samuel Cooper, and James Oakley. Of this bond there is no record in the office of the Secretary of War, nor any correspondence in relation to it on the files of the War Department, or in the office of the Chief Engineer.

The formation of the contract, and of the bond to which it refers, was, it appears, arranged by personal communications between the parties concerned; the then Chief Engineer having the immediate charge of the papers growing out of the business.

I have caused the bond-book and records of the Engineer Department to be carefully examined, with reference to the inquiries of the committee, and I find an exact record made of the original bond (before mention) and on the preceding page of the same book, the record of a bond signed Elijah Mix, George Cooper, Samuel Cooper, and James Oakley, dated on the 5th of August, 1818, with an approval of the sureties, signed by R. Riker, then Recorder of the city of New York, which bond was cancelled by order of the Secretary of War. A literal transcript of this bond is also enclosed.

I have to observe, farther, that previous to the establishment and organization of the subordinate departments of the War Office, in the early part of 1818, it was, as I understand, the custom of that office to record it in bonds taken in connexion with its special and proper business; and that, subsequently to that event, it was made the duty of those subordinate Departments to record all bonds relating to matters under their immediate control, the details of which devolved upon them. I will further observe, that the bonds mentioned, as entered in the bond book of the Engineer Department, are in the hand writing of a clerk, (now dead,) who was not appointed to it before December, 1820, and, of course, that they were not recorded there before that period.

At the time the bond was taken, General Swift was the Chief Engineer, Lieutenant George Blaney, of the Corps of Engineers, his Aid, and John R. Beall, the only clerk in the Engineer Department, whose duty it would probably have been to make the record of the bonds.

There appears to be on entry, other than that mentioned as attached to the cancelled bond, touching the receipt or approval of the bonds, upon the books of the War Office, or in those of the Engineer Department; nor is there any officer or clerk now in the Engineer Department who was attached to it at the time the contract with Mr. Mix was made.

I request that the original bond may be returned to this office when no longer wanted for the use of the committee;

And am, with great respect,
Sir, your most obedient servant,
JAMES BARBOUR.

Hon. JOHN FLOYD,
Chairman of Committee, &c. &c. Washington.

Elijah Mix's Bond, 5*th August*, 1818.

Know all men by these presents: That we, Elijah Mix, Samuel Cooper, and James Oakley, are held, and firmley bound, to the United States of America, in the sum of twenty thousand dollars, lawful money of the United States; for which payment, well and truly to be made, we bind ourselves, and each of us, ourselves and each of us, our and each of our heirs, executors, and administrators, for and in the whole, jointly and severally, firmly by these presents, scaled with our seals, and dated the fifth day of August, in the year of our Lord one thousand eight hundred and eighteen, and of the Independence of the United States the forty-third.

The condition of the above obligation is such, that whereas the above bounden Elijah Mix has contracted with Joseph G. Swift, U. S. Chief Engineer, to deliver one hundred and fifty-thousand perch of stone at Old Point Comfort, Virginia: Now, if the said Elijah Mix does faithfully perform his part of said contract, then the above obligation to be void; otherwise to remain in full force and virtue.

ELIJAH MIX, [L. S.]
SAM'L COOPER, [L. S.]
JAMES OAKLEY [L. S.]

Signed and delivered in presence of
EDW'D MACOMBER, for *Elijah Mix.*
R. RIKER.

Transcribed from the Bond Book of the Engineer Department.

[Cancelled, by order of the Secretary of War, by a new bond, of the same date. Recorded, page 15.]

Know all men by these presents: That we, Elijah Mix, George Cooper, Samuel Cooper, and James Oakley, are held, and firmly bound, to the United States of America, in the sum of twenty thousand dollars, lawful money of the United States, to be paid to the United States; for which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators for and in the whole, jointly and severally, firmly by these presents, sealed with our seals, dated the fifth day of August, in the

year of our Lord one thousand eight hundred and eighteen, and of the Independence of said States the forty-third.

The condition of this obligation is such, That whereas the above bounden Elijah Mix and George Cooper has contracted with J. G. Swift, Chief Engineer, to deliver one hundred thousand perch of stone at Old Point Comfort, Virginia; Now, if the said Elijah Mix and George Cooper does faithfully perform their part of the contract, then the above obligation to be void; otherwise to remain in full force and virtue.

ELIJAH MIX, [L. S.]
GEORGE COOPER, [L. S.]
SAM'L COOPER, [L. S.]
JAMES OAKLEY. [L. S.]

Sealed and delivered in presence of
JOHN MORTON,
SIMON HILLYER.

The sureties having been, by me, duly sworn, I do hereby approve of them as sufficient.

New York, 5th Aug. 1818 R. RIKER.

A true transcript, from the Bond Book of the Engineer Department.

ALEX. MACOMB,
Major General Chief Engineer.

No. 52.

Chairman of the Select Committee to the Secretary of War.

CAPITOL, *January* 15, 1827.

SIR: I am directed by the Committee to whom was referred the communication of the Vice President, of the 29th of December last, to request you to furnish them with the original bond of Mix, which was cancelled; the original articles of agreement or contract; the Record Book in which these bonds were recorded; also, the time each bond, the cancelled bond and the substitute, were filed in the Comptroller's office.

I have the honor to be, Sir,
Your obedient servant,

J. FLOYD,
Chairman Select Committee.

The Hon. JAMES BARBOUR,
Secretary of the Department of War.

No. 53.

Secretary of War, to the Chairman of Committee.

WAR DEPARTMENT, *January 16th*, 1827.

SIR: I have received your communication of the 15th instant, stating that you are directed by the Committee to whom was referred

the communication of the Vice President, of the 29th of December last, to request me to furnish them with the original bond of Mix, which was cancelled; the original articles of agreement, or contract: also, the record book in which these bonds were recorded; the time each bond, the cancelled bond, and the substitute, were filed in the Comptroller's Office.

The original bond of Mix, which was cancelled, is not to be found in the files of the War Office, or on those of the Engineer Department; nor is there any trace of it, other than the transcript of it in the Bond Book of the Engineer Department, of which an exact copy was sent in my letter to you of the 13th instant.

I enclose the original articles of agreement of contract, dated on the 25th of July, 1818, signed J. G. Swift, Elijah Mix; and I send the record book (of the Engineer Department) in which these bonds, the cancelled bond, and the substitute, are recorded.

The time at which these bonds were filed in the Comptroller's Office, cannot be ascertained, as there does not appear to be any entry on the subject in the War Office, the Engineer Department, or in the Comptroller's Office.

It is requested that the contract may be returned to this office.

I have the honor to be,
Very respectfully,
Your obedient servant,
JAMES BARBOUR.

Hon. JOHN FLOYD, *Chairman*, &c. &c.
Washington.

Contract between Elijah Mix and J. G. Swift, for delivering Stone at Rip Raps.

This agreement, made between Joseph G. Swift on the part of the War Department of the United States, on the one part, and Elijah Mix of New York, of the other part, witnesseth: that the said Elijah Mix agrees to deliver one hundred and fifty thousand perch of stone from the banks of York river in Virginia, agreeably to samples this day lodged in the Engineer Department, at Old Point Comfort and the Rip Rap Shoals, in Hampton Roads, Virginia, at the rate of not less than three thousand perch a month, commencing by the fifteenth day of September, 1818; and the aforesaid Joseph G. Swift agrees to pay, or cause to be paid, him, the said Elijah Mix, three dollars a perch, for every perch of stone delivered at the abovementioned places agreeably to this contract.

In witness whereof, we have hereunto set our hands and seals, this twenty-fifth day of July, one thousand eight hundred and eighteen, at the city of Washington.

J. G. SWIFT, [SEAL.]
ELIJAH MIX, [SEAL.]

Witness. C. VANDEVENTER.

No. 54.

Elijah Mix's Bond, 5th August, 1818.

[Cancelled by another bond of same date, this being incorrect in reciting a contract for 100,000, instead of 150,000 perches.]

Know all men, by these presents, that we, Elijah Mix, George Cooper, Samuel Cooper, and James Oakley, are held, and firmly bound, to the United States of America, in the sum of twenty thousand dollars, lawful money of the United States, to be paid to the United States; for which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, for and in the whole, jointly and severally, firmly by these presents.

Sealed with our seals, dated the fifth day of August, in the year of our Lord, one thousand eight hundred and eighteen, and of the independence of said States the forty-third.

The condition of this obligation is such, that, whereas, the above bounden Elijah Mix and George Cooper, has contracted with J. G. Swift, Chief Engineer, to deliver one hundred thousand perch of stone at Old Point Comfort, Virginia. Now, if the said Elijah Mix, and George Cooper does faithfully perform their part of the contract, then the above obligation to be void, otherwise to remain in full force and virtue.

ELIJAH MIX, [L. S.]
GEORGE COOPER, [L. S.]
SAMUEL COOPER, [L. S.]
JAMES OAKLEY, [L. S.]

Sealed and delivered in the presence of
JOHN MARTIN,
SIMON HILLYER.

The sureties, having been by me duly sworn, I do hereby approve of them as good and sufficient.

R. RIKER.

New York, 5th Aug. 1818.

No. 55.

Letter from the Chairman to the Secretary of War.

CAPITOL, *Jan.* 17, 1827.

SIR: I am directed by the Committee, to whom was referred the communication of the Vice President of the 29th of December last, to request you to furnish them with the letter of Mix to the Secretary of the Department of War, consenting to Goldsborough's interest being recognised, dated the 13th of April, 1821.

Also, that you would inform them whether the original contract with Mix was recorded, when recorded, and by whom.

I have the honor to be, Sir,
Your obedient servant,
JOHN FLOYD,
Chairman Select Committee.

The HON. JAMES BARBOUR,
Secretary of the Department of War.

No. 56.

Letter from Gen. Macomb to the Committee, with Mix's letter recognising Goldsborough.

ENGINEER DEPARTMENT,
Washington, January 18th, 1827.

SIR: Your letter of this morning to the Secretary of War, stating that you are directed by the Committee, to whom was referred the communication of the Vice President of the 29th of December last, to request the Secretary of War to furnish them with the letter of Mix to the Secretary of the Department of War, consenting to Goldsborough's interest being recognised, dated the 13th of April 1821; also, that the Secretary would inform them, whether the original contract with Mix was recorded, when recorded, and by whom, was received by the Secretary of War this morning, when about starting for Alexandria, and was immediately put into my hands, with direction to answer it.

The letter of Mix, referred to, is not on the files of this office, but is probably with other papers, in the hands of Captain Smith, now before the Committee. I find, however, the following entry in the brief book of letters received at the Engineer Department, which in no doubt, an abstract of the contents of the letter in question, though there is no date affixed to the entry, by which it could otherwise be certainly identified. "Letter referred, No. 142: Capt. E. Mix to Secretary of War, is willing that Mr. H. Goldsborough, who had purchased of Mr. S. Cooper one-fourth of the Mix contract, be recognised by the Government as the proprietor of said one-fourth, and receive payment on delivery made thereon, provided Government will absolve him (Mix) from a proportionate degree of responsibility for the execution of his contract and the redemption of $10,000 advanced: the arrangement will be considered conclusive upon the notification to that effect by the Department of War."

The original contract with Mix was recorded in the Engineer Office contract-book, by G. T. Rhodes, a clerk now in said office, but the time at which it was recorded does not appear from any entry in the book or otherwise, though as Mr. Rhodes was not attached to the

office till March 29th, 1819, it could not have been recorded by him before that time; probably some considerable time afterwards.

I have the honor to be,
Very respectfully, sir,
Your obedient servant,
ALEX MACOMB,
Maj. Gen. Chief Engineer.

Hon. JOHN FLOYD,
Chairman of Committee, &c. &c.

GEORGETOWN, 13*th April*, 1821.

SIRS: Mr. H. Goldsborough having purchased from Mr. S. Cooper, the undelivered part of one fourth of my contract, I have no objection to his being recognised by the Government as the owner thereof, and, to their giving orders for payment to be made to him or to such persons as he may authorize to receive it for him, without further authority from me, for the deliveries that have already been or that may hereafter be made thereon, provided the responsibility now attaching to me for the due fulfilment of the whole contract be so modified as to transfer from me to him, so much thereof as will apply to the portion withdrawn as above stated, from my jurisdiction, and provided, also, the Government will exonerate me from obligation to liquidate one fourth of the $10,000 advanced by them on the contract, holding him liable therefor.

The foregoing I will consider to be binding on me, whenever I shall receive a notification of its acceptance by the War Department.

I have the honor to be, sir,
With much respect,
Your obedient Servant,
ELIJAH MIX.

Hon. J. C. CALHOUN,
Secretary of War.

No. 57.

Chairman of the Committee to the Secretary of War.

CAPITOL, COMMITTEE ROOM,
January 18, 1827.

SIR: I am directed by the Committee to whom was referred the communication of the Vice President, of the 29th of December last, to require you to send them "Mix's original proposition (for delivering stone at Old Point Comfort:) the original acceptance of the Engineer Department of that proposition, or any entry that shows the time of accepting it; the private statement furnished by the Engineer Department to the President; the instrument showing Vandeventer's interest; the instructions given to Lt. Col. Gratiot, dated Engineer Department, August 19th, 1819; the letter, information, or statement on which the last named instructions were predicated; the in-

structions given to Capt. F. Lewis, dated Engineer Department, 1st of June, 1820; also copies of any entry in the War Department, touching the exoneration of Mix from accountability for one-fourth of the advance of $10,000 made to Mix on his contract, on Goldsborough's being recognised as party in interest in the contract, and of his notification of such exoneration."

I have the honor to be, Sir, your obedient servant,

JOHN FLOYD,
Chairman, Select Committee, Ho. of Reps.

The Hon. JAMES BARBOUR,
Secretary of the Department of War.

No. 58.

Letter from the Secretary of War to the Chairman of the Committee.

WAR DEPARTMENT, *Jan.* 22, 1827.

SIR: Much time has been consumed in searching the papers of the Department to procure, if possible, the documents required by the Committee, as described in your letter of the 18th. As many of them cannot be found, and as the contemporary letter book contains all the information in this Department connected with the inquiries of the Committee, I have instructed Gen. Macomb to present himself to the Committee, with the letter book, and refer to such letters as the Committee may wish to see.

I offer you my respects.

JAMES BARBOUR.

To the Hon. J. FLOYD,
Chairman, &c. &c.

Original proposals of Elijah Mix, to deliver stone at Old Point Comfort, 23*d July*, 1818.

WASHINGTON, 23*d July*, 1818.

SIR: I offer to deliver, at Old Point Comfort, from one to one hundred and fifty thousand perch of stone, at three dollars per perch, of sample No. 1, exhibited. I will deliver, at the same place, from one to two thousand perch of the sample No. 2, for $2.75 a perch.

I offer Samuel Cooper, James Oakley, and Mudler Robbins, as securities in such sums as may be agreed upon for the performance of any contract I may make with the United States.

I have the honor to be, Sir, with true respect, your obed't serv't,

ELIJAH MIX.

Brig. Gen. SWIFT,
Chief Engineer, U.S.

No. 59.

Chairman of the Select Committee to the Secretary of War.

CAPITOL, COMMITTEE ROOM,
January 22, 1827.

SIR: I am directed by the Committee, to whom was referred the Vice President's communication of December 29th last, to request you to furnish them the correspondence of Commodore Lewis with the Department of War, touching charges against General Swift, Colonel W. K. Armistead, and Major Vandeventer.

I have the honor to be, Sir,
Your obedient servant,

JOHN FLOYD,
Chairman of Select Committee.

The Hon. JAMES BARBOUR,
Secretary of the Department of War.

No. 60.

Secretary of War to Chairman of Select Committee.

WAR DEPARTMENT,
January 23*d*, 1827.

SIR: I have the honor to acknowledge the receipt of your communication, addressed to me, under date of the 22d instant, in which you request, at the instance of the Select Committee appointed for the investigation of the subject-matter presented in the Vice President's letter of the 29th ultimo, that they be furnished with "the correspondence of Commodore Lewis with the Department of War, touching charges against General Swift, Col. W. K. Armistead, and Major Vandeventer;" and, in compliance with the request, I transmit herewith, copies of the documents containing the correspondence called for, of which the following is an abstract:

No. 1. Colonel Armistead to Colonel Gratiot, dated August 19, 1819, stating, that an arrangement had taken place, as stated.
2. J. Lewis to the Secretary of War; March 28, 1821.
3. W. K. Armistead to J. Lewis & Co., stating the conditions on which 7,000 dollars would be advanced; March 29, 1821.
4. J. Lewis & Co. to the Secretary of War; June 7, 1821.
5. Secretary of War to J. Lewis & Co.; June 14, 1821.
6. J. Lewis & Co. to the Secretary of War; June 21, 1821.
7. Secretary of War to J. Lewis & Co.; June 25, 1821.
8. Do. do. do. do. June 28, 1821.
9. J. Lewis & Co. to the Secretary of War; June 29, 1821.
10. J. Lewis & Co. to the Secretary of War, enclosing a copy of a letter from them to Col. Gratiot—remarks by the Engineer Department enclosed; June 30, 1821.

11. F. Le Baron to Secretary of War, disclaiming the sentiments of a letter written on the 25th ult. by J. Lewis & Co.; July 1, 1821.
12. J. Lewis & Co. to the Secretary of War; July 25, 1821.
13. Secretary of War to J. Lewis & Co.; August 2, 1821.
14. Secretary of War to Col. Armistead, relative to certain charges against him; August 3, 1821.
15. Secretary of War to J. Lewis & Co.; August 3, 1821.
16. F. Le Baron to Secretary of War, relative to a letter suspecting the motives of General Swift, &c.; Aug. 6, 1821.
17. J. Lewis to Secretary of War; August 17, 1821.
18. General Macomb to Colonel Gratiot, authorizing indulgence to J. Lewis & Co.; September 27, 1821.

I am, very respectfully, Sir,

Your obedient servant,

JAMES BARBOUR.

Honorable JOHN FLOYD,
Chairman of Select Com. &c. Washington.

Enclosure No. 1.

ENGINEER DEPARTMENT,
Washington August 19th, 1819.

Lt. Col. C. GRATIOT,
Corps of Engineer, Old Point Comfort, Va.

SIR: An explanation has taken place between the Secretary of War and Messrs. Jacob Lewis & Co. on the subject of their contract for supplying stone at Old Point Comfort; the following is the result: viz:

1st. The draughts of their vessels to be marked, and several cargoes of each vessel to be measured, and, if the results shall be satisfactorily conclusive of the correctness of that mode of ascertaining the measurement, then to adopt it.

2d. The Captains of their vessels, in all cases, except receiving payments, to be considered the Agents of Messrs. J. Lewis & Co. unless either of the parties being present shall choose to assume the agency, or unless they shall appoint a special Agent.

3d. The Government are to afford to Messrs. J. Lewis & Co. every reasonable facility in the execution of their contract, particularly in promptly taking the necessary steps to receive the stone as soon as the Captains or Agent report the arrival of a vessel or vessels, so that there will be no delay or detention in the delivery.

4th. The Government is to provide a number of wharves sufficient to admit their vessels to discharge as fast as they shall arrive.

5th. When unloading at those wharves, if the vessel can approach them near enough to admit of the stone being hoisted from the vessel upon the wharf, without the aid of staging or skids, then Messrs. J. Lewis & Co. are to deliver the stone upon the wharf; but, if staging or skids be necessary, (and in that case they are to be provided, placed upon the vessel, and removed when done with, at the expense of Gov-

ernment) then they are to deliver the stone upon the gunwale of the vessel or, if they prefer, upon the staging or skids.

6th. While the wharves are preparing, a part of the vessels may discharge their cargoes along the beach, if the calmness of the sea will admit of it, without danger to the vessels, and, if their draught will permit their being brought near enough thereto. In such cases, staging or skids will be used as was stated with regard to wharves, and the deliveries will be made accordingly.

7th. Whether the delivery be made directly from the vessel upon the wharf, upon staging or skids, the Government is to remove the stone as fast as it shall be delivered, so that no interruption will be experienced by Messrs. J. Lewis & Co. in the delivery.

8th. Messrs. J. Lewis & Co. under the conditions governing in the contract of Mr. Elijah Mix, except the price, are authorized to deliver upon the Rip Raps, one-fourth of the whole quantity of stone, contemplated in their contract; and, until the preparations for receiving stone at Old Point Comfort, shall be farther advanced, they may be permitted to make the bulk of their deliveries at the Rip Raps.

9th. Messrs. J. Lewis & Co. shall be entitled to receive payment for stone already delivered, or that may be delivered, by them, either at Old Point Comfort or the Rip Raps, until the 6th day of October next. The sums that shall become due to them for deliveries made by them after that period, to be applied to the liquidation of advances, to the amount of thirty thousand dollars, that will have been made to them upon their contract up to that period. After the liquidation of said advances, the payments upon deliveries to be resumed.

10th. The following to be considered a definition of building stone, and to govern in receiving stone upon the contract with J. Lewis & Co. The stone to be in the rough state in which it is quarried; the length and breadth to be greater than, and to bear such proportions to, the thickness, as to admit of breaking joints, and making a good bond; the stones to be of such size that two men may conveniently lift them; but if a portion shall be furnished larger than that size, a corresponding portion of a smaller size may be received; in either case, the proportions of the length and breadth to the thickness, as above stated, to be required; each stone to have a good bed and face.

As it is not contemplated to face the walls connected with the fortifications at Old Point Comfort in regular parallel courses, such stone only will be required as is necessary to make strong masonry. Stones of the description above defined, are considered suitable and sufficient for that purpose. If, however, you should be of a different opinion, the Department would be pleased to learn the nature and extent of your objections, and to receive from you a description of such stone, as you may conceive to be suitable for the construction of the walls, forming a part of the fortifications to be erected at Old Point Comfort.

You will appropriate, and place at the disposal of Messrs. J. Lewis & Co. a comfortable room for their accommodation as quarters, while at the Point.

I have the honor to be, &c.

W. K. ARMISTEAD,
Colonel Engineers.

Enclosure No. 2.

J. Lewis to the Secretary of War.

The liberal manner, in which you decided my business, yesterday, induces me to make one more effort by the following explanation, viz: The securities of the contract, are, in all respects, bound for the fulfilment of it. The advances of the Government do not exceed the sum stipulated in the contract. The sum stipulated, is $30,000. It has been diminished to about $22,000; the sum now granted will bring the amount within the sum specified, consequently, the responsibility of the securities continue the same, although no question can exist as to their consent to the measure, yet the time it would take to obtain it, would be a very serious loss to me. My business in Havre de Grace is suffering beyond calculation, for want of immediate money and my presence.

My claim on the Hayhen Government requires my presence at home, in order that I may provide Mr. Robinson with the necessary documents, and the more so, as the Senate of that Government rise in May. His departure without delay, is highly important to me; under all these considerations, I hope and trust you will forthwith order the sum, which you have accorded me, to be placed in my hands, and thereby essentially oblige one, who holds you in the highest respect and esteem.

LEWIS.

March 28th, 1821.

P.S. I would have made this representation personally, but I am in bed.

To the SECRETARY OF WAR.

ENGINEER DEPARTMENT,
Washington, March 29, 1821.

GENTLEMEN: Commodore Lewis, in your behalf, yesterday consented to relinquish and cancel all claims of indemnity for demurrage, or for any other injury, for which you may have thought yourselves to be entitled to indemnity, depending upon, or having connexion with, however remotely, your transactions with the Government, or any of its officers, growing out of your contract with the Government for the delivery of 80,000 perches of building stone at Old Point Comfort, provided the Government would advance you, on account of the aforesaid contract, the sum of $7,000, to be liquidated by stoppages from the avails of deliveries on account of the contract, in such proportions as may be determined on by the War Department.

In pursuance thereof, the Secretary of War has authorized me to state to you, that the $7,000 will be advanced to you on the condition before stated, upon your furnishing to this Department a declaration from the sureties to the bond for the fulfilment of the stipulations of the contract aforesaid, of their assent thereto, and a certificate or certificate from the Attorney or Attorneys of the United States, for the district or districts in which they may reside, declaring their present competency for $50,000, the amount of that bond.

Your answer to this letter will be expected with your assent to the arrangement.

I have the honor to be, &c. &c.

W. K. ARMISTEAD,
Colonel Engineers.

P. S. If the District of Attorney is not within convenient distance, a certificate from the Member of Congress for the district will answer.

W. K. A.

Messrs. J. LEWIS & Co. *Washington.*

Enclosure No. 4

Hon. JOHN C. CALHOUN, *Secretary of War:*

SIR: We regret exceedingly to have occasion, and indeed be under the necessity of again addressing you on the subject of our contract, but such are the difficulties and obstacles thrown in our way, that it becomes a duty we owe to you, as well as to ourselves, to hand you the following exposition of facts, (brief:)

Scarcely had our J. Lewis signed the document which was so carefully handed to him by C. Smith, the object of which was to obtain a pledge from the Company that they would not prefer charges against the Engineer Department for an absolute breach of contract, and other injuries done to J. Lewis Co. contrary to the intent and meaning of said contract, than a recurrence happened of a similar nature to those which happened before, and others of a new kind, equally unjust and unwarrantable, namely, sending our vessels back with Rip Rap stone; making our captain and crews transport the stone twenty or thirty feet from the vessel, and place it on a high pile; and, above all, they refuse all Rip Rap stone under one hundred fifty pounds. We expect hourly to receive information that they are weighing the Rip Rap stone in scales.

It will be remembered, when our J. Lewis had the honor of an interview with you, at which time he presented our demand for damage, and which had previously been agreed to, it was observed that the accommodation afforded J. Lewis & Co. by permitting them to cast stone on the Rip Raps, was, and ought to be, considered as a quid pro quo, and although our J. Lewis, under all circumstances, consider it a severe exaction, consented in preference to demur.

Now let us examine, Sir, the nature of the supposed advantages given to J. Lewis & Co. by permitting them to cast stone on the Rip Raps which by C. Armistead has been considered a fair offset to our just demand for demurrage. After having obtained the supposed indulgence, we employed a great number of men to quarry. We have on our shores 6,000 perch of stone, *paid* for, called Rip Raps, such as we had furnished. We are now called on to furnish Rip Rap stone of one hundred and fifty pounds weight; consequently these stone are all lost to us, provided Mr. Delafield's caprice is adopted in violation of common sense and justice: for we contend that large and small stone, mixed promiscuously together, lay infinitely more solid than stone all of one size. He is a boy in practice and experience; he is supercilious

in manners and conduct; he is the one appointed to determine as to the quality of stone for mason work, or otherwise, what is called building stone; he is known to have a determined hatred to J. Lewis & Co.; he has evinced it in every instance in his power; he is in fact incompetent, if he was without prejudice; and it is him, we are told, who, in his wisdom, has made the latter determination, that no stone shall be received at the Rip Raps of less weight than 150 lbs. The consequence is, that our quarrymen quit laboring; our quarries are choaked by Rip Rap stone, and we cannot work the building; vessels quit freighting, &c.

We have another grievous circumstance to contend with. The Engineer Department have contracted to have the wall laid by the perch. This arrangement operates most prejudicial to J. Lewis & Co. The mason objects to every stone that requires hammering, or that will not fall exactly into its bed, and this becomes a criterion with the officer inspecting.

Another serious grievance is the mode in which the stone has been and is now measured. We contend, notwithstanding the repeated difficulties made by Col. Gratiot, that such superior building stone never was delivered at any post in the country; yet it is measured twenty-five feet to the perch, instead of sixteen. Such are the two sides of it, that it perches like a solid mass.

Such stone as we often deliver, would sell, in Baltimore for $8 per perch, 16 feet measurement, which is a perch. It is called coping and corner stone. Notwithstanding, if two stones appear, in a whole cargo, not to please Mr. Delafield, he will order the vessel to take those two stones to Fort Calhoun, or back to Havre de Grace, all which is intended to ruin J. Lewis & Co.

Freighted vessels we cannot keep; the captains all exclaim, they are determined to ruin J. L. & Co. at Old Point Comfort, and all of which we knew before, and they will succeed, unless we are saved by your interposition. We had better, and indeed necessity will conduct us to the measure, stop now, than linger twelve months longer, and then be hung, and pay forty shillings for the halter; which must inevitably be the result, if we continue to work the quarries under such disadvantages as we are placed by the Engineer Department.

Captain Smith, who is the amanuensis and mouth piece of Colonel Armistead, had (an esprit de corps) with him, and is offended at our letter written to Colonel Armistead, more particularly, as he was the author, therefore will say every thing in favor of his chieftain and patron. Colonel Gratiot is offended also, because in the charges we made to the Engineer Department he was included, so that J. Lewis & Co. have to contend with a most *determined resolution on the part of those gentlemen to ruin them;* and they certainly have it in their power to effect it, provided they are allowed to proceed as they have done, and appear determined to do.

And J. Lewis & Co. contend, that the Engineer Department have again twice broken the contract; we wish an examination into the fact, when many more important facts shall be related and substantiated. If General Bernard could be made the judge on the subject, we should be satisfied, or Colonel Totten, or any other unprejudiced judge or judges; a survey of masons from Norfolk; in short, any mode

we would willingly consent to, when pointed out by justice, otherwise ruin is inevitable, and we must immediately stop; our quarries are all choaked by our exertions to hurry, but all is abortive. Expecting to be honored with your reply, we have the honor, &c.

J. LEWIS & Co.

Havre de Grace, June 7, 1821.

Enclosure No. 5.

DEPARTMENT OF WAR,
14*th June*, 1821.

SIR: I regret to learn, by yours of the 7th instant, that you should experience, what you consider as unreasonable difficulties, in the execution of your contract, from the Engineer superintending the works. I did hope, after the arrangements made with Com. Lewis, when he was last in this city, that no further difficulty would be experienced. I cannot assent to the idea suggested in your letter, that the arrangement then made, was to obtain a pledge from the company, that they would not prefer charges against the Engineer Department. The arrangement originated wholly with the Department, and was intended to adjust, in a manner satisfactory to both parties, claims, which grew out of points of dispute in the construction of the contract, admitting of doubt. If an officer is guilty of neglect of duty, or offensive conduct, it is not the practice of this Department, to shelter him from merited censure or punishment, much less to sacrifice the public interest for that purpose. Your complaints may, I think, be principally embraced under three heads: that you are compelled to transport the stone to too great a distance, and place them on a high pile; that you are compelled to deliver at the Rip Raps, stone weighing at least 150 lbs.; and that the perch is estimated at or near 25 feet, instead of 16. On the first point I have no information; but Col. Gratiot has been directed to report the facts, and the reason for the order, if there is one, for transporting to so great a distance. When his answer is received, it will become the subject of a communication. The order to deliver stone not less than 150 lbs. has been extended alike to Mr. Mix's contract and yours; and has been founded on the belief, that the stones for casing the exterior ought to be at least of that size. But the difficulty arising to the contractors, of choking the quarries, of which you complain, appearing to be well founded, the Col. has been ordered to receive, in separate cargoes, stone of an inferior size, in due proportion, to be deposited within, in order to clear the quarries, if he should be of the opinion it can be done consistently with the public interest; but, if he should be of an opposite opinion, to report the grounds of such opinion to the Department, in order that a final decision may be made here. You must, however, remember, that the delivery at the Rip Raps, under your contract, is not a matter of obligation on your part, but an indulgence on the part of this Department; and, if the decision as to the size should be unfavorable to your wishes, it is at your option to deliver the whole at the Point, according to the terms of your contract.

On the last point, I understand, that the custom is well established, of estimating the perch at 25 feet, or rather, 24¾, and that the experi-

ments made by the Engineer Department, previous to making any contract for stone at those works, in order that the price which ought to be paid might be ascertained, were on perches of that measurement, and that the delivery, on Mr. Mix's contract, has been invariably so measured, both before and since the date of your contract.

I have the honor, &c.

J. C. CALHOUN.

Messrs. JACOB LEWIS & Co.
Havre de Grace.

[Enclosure No. 6, of this Document, is referred to as Exhibit R, in Major Vandeventer's second deposition, and is filed with it.]

Enclosure No. 7.

DEPARTMENT OF WAR,
25th June, 1821.

SIR: I have received your letter of the 21st instant, marked private, which I have perused with attention. I perceive from the perusal, that you have not received mine of the 14th instant, in answer to yours of the 7th, which ought to have been received by you, previous to the date of your last, and which you have probably received before this time. By it you will learn in what light the subjects to which it refers, are regarded by this Department, and what means have been adopted in consequence of your representation.

I have no information in relation to the additional point of complaint, as to measurement of the stone, but have directed Col. Gratiot, to report the facts, and the explanation why the same vessels deliver perches less now than formerly. When this answer is received, it will become the subject of an additional communication.

I have examined your contract, and the correspondence with you and Col. Gratiot, in relation to it, by the Engineer Department, and I must say, that I cannot discover any thing inimical to you on the part of that Department. The advantages granted to you, are to the full, (in fact, I might say, much more so.) as liberal as those to other contractors. To Mix, I believe not a single has been granted, and the order as to the size of the Rip Rap stones, equally embraces him, and those who hold under him. He has acquiesced thus far without a complaint. The contractors under him, have done the same, simply requesting that they might be permitted to deliver a portion of small stones, at the same time, if it could be done consistently with the public interest. When it is considered that your delivery at the Rip Raps, is mere indulgence, your contract being for the delivery of massive stone, of a kind calculated for building the most substantial wall, and that you have still the right to use the indulgence or not, at your option, it does appear singular, that you, to whom the indulgence is granted, should complain of a measure as highly injurious to you, while those who deliver under an express contract, and whose right must, under the view which you take, be so deeply affected, should acquiesce. The complaint ought to have come from them, and not from you; but still being desirous that no inconvenience should result to you in the fulfilment of your contract, which can be avoided, I have

directed Col. Gratiot, as was stated to you, to permit the delivery of smaller stones in proper proportion, if it can be done in his opinion consistently with the public interest, and, if not, to report the facts with his opinion to this Department, for its special decision.

Your charges against Gen. Swift, Col. Armistead, and Major Vandeventer, are of a very serious character, as deeply affecting their integrity, and ought to be investigated. If they have prostituted in a single instance, their official station for peculation, favoritism, or oppression, they ought not to be permitted to hold a commission from the Government for a moment. These officers have partaken, and do still partake of my good opinion, but only on the supposition of their integrity; but I will not permit any favorable impression in any degree to screen them from the severest scrutiny, and merited punishment, if they are guilty. If you will give me the means of investigation, it shall be pursued with zeal. You say that you will undertake to prove that Col. Armistead, was concerned with the mason at Old Point Comfort, in the contract for brick. I must call on you as a duty, which you owe the country, to present the charges against him for investigation; or if you do not choose to appear as prosecutors, to give me the name of the person or persons, by whom the charge can be substantiated, in order that an immediate investigation may take place, so that, if guilty, he may be punished, or, if innocent, that he may be freed from the suspicion.

Unless you take some measure to substantiate these charges, I must in justice to these officers, refuse to receive, as private, any additional communication implicating them.

I return you the letters, and the copies of the letters accompanying your last.

I have the honor &c.

J. C. CALHOUN.

Messrs. Jacob Lewis & Co.
Havre de Grace, Md.

Enclosure No. 8

Department of War,
28th June, 1821.

Gentlemen: Since my letter to you, of the 25th instant, a report from Colonel Gratiot, on the subject, has satisfied me as to the necessity of having large stones at the Rip Raps, as required by him, as well as the reasonableness of his requisition. The following extract, from the same report, will, no doubt, convince you, that your complaint, to which it refer, was not well founded. Extract, "With respect to the complaints of Messrs. Jacob Lewis and Co. that they are required to transport their stones, 20 or 30 feet, after landing them, is founded on misrepresentations obtained from captains of their vessels, and not, as might have been expected, from their agent, located to watch over and transact their business, at this place. It is required of them, as of all other contractors, that the stones should be deposited on the crest of the pile; this is accomplished, most generally, by means of planks, 12 or 15 feet long, reaching from the gunwale of the vessel to the pile, on which the stone is either carried, slided, or rolled, to the place of deposite. The object of placing the stone on the crest, is to allow the

pile to assume, externally, a regular slope to the bottom. Without this precaution, and were masters of vessels permitted to discharge from the gunwale, the consequence is evident, that after a few deliveries, the free access to the pile would be cut off by irregular projections on the slopes and sunken piles, over which it would be dangerous for other vessels to pass."

I have the honor, &c.
J. C. CALHOUN.

Messrs. JACOB LEWIS & Co.
Havre de Grace, Md.

Enclosure No. 9.

HAVRE DE GRACE, *June* 29, 1821.

SIR: We have the honor to acknowledge receipt of your favor of the 14th instant, on the 25th, and that of the 25th in due course. Com. J. Lewis had departed for Old Point Comfort, previous to the receipt of the first letter. On his return, which we look for in a few days, they will be immediately presented to him.

With respect,
JACOB LEWIS & Co.
per ARCH. AUSTIN.

Hon. J. C. CALHOUN,
Secretary of War.

Enclosure No. 10.

FORT MONTRE, 30*th June*, 1821.

The Hon. JOHN C. CALHOUN:

SIR: I have the honor to acknowledge the receipt of a copy of the communication made by you to Jacob Lewis & Co. under date of the 14th instant, touching the subject of their contract with the Government; previous to which I had had an interview with Colonel Gratiot, and a general conversation, relative to the several difficulties which, either generally or partially, existed between the Engineer Department and Jacob Lewis & Co. *from the commencement.* I stated very frankly the nature of our complaints, as well as our determination, and the consequences that must inevitably follow, provided he persisted in persevering in the same conduct towards us as he had hitherto done.

Firstly, I stated that the loss by measurement must be our utter *ruin.*

(*a*) He answered, that he was sensible of the difference between measuring such superior laminated stone as we were delivering, and that delivered at Fort Calhoun, the loss must be from 25 to 30 per cent.; but at the same time observed, that the remedy was not with him, that I had my appeal, &c. *This loss alone is evident ruin.*

Secondly, I stated, that when the indulgence, *so called*, was given to J. Lewis & Co. to cart stone on the Rip Raps, it was not mentioned, consequently not contemplated, that stone of 150 lbs. would be required; therefore, we quarried such stone as we were told were considered Rip Rap stone, and there they are (*b*).

Answer. The remedy is not in me. I am sensible that it is a grievance, and that the Government ought to indemnify J. Lewis & Co.

Thirdly, That, as to the transportation of the stone on the works, *it was totally out of the question;* that the request was not warranted either by custom, or usual understanding, or contract.

(*c*) Answer. Mix has consented to it, why not J. Lewis & Co.?

Fourthly, I stated, because Mix had not made any stipulation as to the mode of delivery, and that he could well afford to sport away a few thousands while he was, and had been, delivering Rip Raps for $8, a gain of 25 per cent in the measurement, and got his stone carried for half a dollar less per perch than J. Lewis & Co. pay for building stone. These are incontrovertible facts, whatever may be said to the contrary notwithstanding.

(*d*) Finally. The Colonel proposed that the stone should be measured by tonnage measurements, being, in his opinion, more equitable. He also proposed referring our differences to the Board of Engineers. To this I cheerfully consented, or, if it would be more convenient to the Department, to Mr. Hoban, (who is reported to be a man of strict honor, and to be the first judge of massive work in the country.) He has been in the service of Government since the year 1792. I have the honor to enclose you, herewith, a copy of my answer to Colonel Gratiot's proposition.

Be assured, Sir, of my highest consideration, and profound respect.

J. LEWIS.

Remarks on a letter from Jacob Lewis to the Secretary of War, dated 30th June, 1821.

(*a*) A letter from Colonel Gratiot, to the Engineer Department, dated 25th June, 1821, expresses a suspicion that the fact of the great increase of measurement of small stones in comparison with large, had chiefly influenced J. L. & Co. in making objections to the delivery of the latter kind, and, in proof, asserts the fact to be known to him, that they had purchased small stones to be delivered at the Rip Raps, that were not produced in their own quarries.

(*b*) It may be doubted if Colonel Gratiot had, as here stated, admitted to be a grievance, what he had, in a previous letter to J. L. & Co. claimed as a right, supporting his claim by the argument, that the Government could not be suspected of having intended in their contract that rabbish stone should be received, when it was known to them that stone of that kind would not answer the purpose for which stone was to be furnished. Besides, had he examined the letter to him of 19th August, 1819, authorizing certain ameliorations to J. L. & Co's contract, he must have seen, that the size of the stone is there distinctly regulated to be such, that each may be lifted by two men.

(*c*) This answer is conclusive: because in the ameliorations above stated, it is distinctly provided, that they shall be governed in their deliveries at the Rip Raps by Mix's contract.

(*d*) All the difficulties complained of are founded on objections to the manner of Government, in administering favors to J. L. & Co. A withdrawal of those favors would, therefore, remove the cause of complaint, and render a reference unnecessary.

Enclosure No. 11

HAVRE DE GRACE, *Md. July 1st*, 1821.

SIR: In your letter of the 25th ultimo, addressed to Jacob Lewis & Co. I read, with surprise, that portion of it answering a clause inserted in a letter from said Company, respecting certain charges made against three gentlemen mentioned therein. For my part, Sir, as I compose the only partner of J. Lewis, I disavow any knowledge or participation of any communication made to you implicating either of those gentlemen therein alluded to. They are gentlemen for whom I have the warmest friendship and esteem, and nothing but direct and strong proof can alter any opinion I have of them, that derogates from honest and honorable actions.

I have the honor to be,
Most respectfully,
Your obedient servant,
FRANCIS LE BARON.

Hon. J. C. CALHOUN, *Secretary of War.*

Enclosure No. 12

Honorable J. C. CALHOUN,
Secretary of War, Washington.

SIR: Seeing by your late communications to J. Lewis & Co. that you have manifested high displeasure at their writing the word "private" on their communication to you, as well as their effort, as you suppose, to prejudice you against persons whom you appear to esteem highly, in consequence of which I feel it a duty to inform you, that all parts of the communication which J. Lewis & Co. had the honor to make to you, of a personal nature, I am individually the author of, consequently personally responsible.

My apology for having so mal apropos incurred your displeasure, allow me to proffer. When I had the honor of an interview with you, I proposed a private and confidential communication to you; you appeared to receive it cheerfully, and at the same time informed me, that you was always ready to receive any information from any quarter, &c. I therefore took it for granted, and thought that I could write with the same confidence that I had spoken. I was induced to believe so the more, because I had been in the habit of writing confidentially to the Department of State since twenty years, and often received the thanks of the Department as well as the President of the United States. I was also invited by an opinion of my own consequence. I did think that I deserved as well of my country and your confidence as either of the gentlemen in question, having served it in three ways with, I trust, honor, and equal rank with either. And, finally, I did believe, that the information I gave you in my private communication respecting Mix, connected with the style and nature of their contract, would at least have shaken your prepossession in favor of General Swift and Mr. Vandeventer; and I did think the information of the highest importance to you, consequently my duty to tell you, and I was promptly by no other feelings. For proof, I beg leave to refer you to Mr. George Bibby, of the Engineer Depart-

ment, or John and Philip Hone, New York. You require particularly that I will give you the name of the person by whom the charge can be substantiated against Col. Armistead; in some instances it would be improper for me to do so, but that which is mine I can give. The person is Captain Lewis, of the Engineeer Corps, my son, who was the person that made the contract for bricks with Mr. Laws, and received the information from his, Mr. Laws, mouth; and I received it from Captain Lewis, and I believe Captain Lewis had no particular motive for mentioning the circumstance to me, believing that it was not more incompatible for Col. Armistead to be connected in a contract than for Major Vandeventer, inasmuch as he was not the person who made the contract. If, for any reasons that you may entertain, you are desirous to make public my *private* communications, I hereby withdraw the injunction.

I have the honor to assure you of my consideration and respect.

J. LEWIS.

HAVRE DE GRACE, *July* 25*th*, 1821.

Enclosure No. 82

DEPARTMENT OF WAR,
August 2, 1821.

SIR: I have received your letter of the 25th of July, and can assure you, that I neither felt, nor intended to express, that "high displeasure" which you have been pleased to infer from my letter of the 25th June. I am at all times desirous to obtain such information as may enable me correctly to discharge my duty, whether it be communicated privately or publicly, and to that effect I informed you in the conversation to which you refer. In the particular case under consideration, though I had no right to be displeased with the form in which you might think proper to communicate the statement which you made, yet it was of such a character as to compel me to adopt the course which I did. With the exception of its being marked private, it seems to me in no other respect to be so. It was signed Jacob Lewis & Co.; the great body of the communication consisted of representations in relation to your contract, and complaints against the decision of the superintending Engineer in relation to it. In fact, it had so much the business character about it, that to effect what appeared to be your object, I had to make it the basis of a communication and order to the Engineer, which necessarily compelled me to place the communication among the papers of the office, with, however, its private character affixed to it. It thus became liable to future inspection by those who might succeed me in office, or to become the subject of a call on an investigation. Thus circumstanced, I could not, particularly with your pledge "to prove the correctness of the statement," in duty to myself, to the officers implicated, or to the country, adopt, as it appears to me, any other course than the one which I did; and such, I trust, will be your own impression; on a review of the facts.

The charge against Colonel Armistead has assumed such a shape, both as to its character and proof, that I deem it my duty to cause an inquiry to be made into it, and shall accordingly avail myself of the

extent which the inquiry may make necessary, of your permission to consider your former communication as public.

I have the honor, &c.

J. C. CALHOUN.

Messrs. JACOB LEWIS & Co.

Enclosure No. 14.

DEPARTMENT OF WAR,
3d August, 1821.

SIR: I have been informed, from a source which does not permit me to overlook it, that you are concerned with Mr. Laws in the contract for brick at Old Point Comfort, made with Captain Lewis, of the Corps of Engineers. My informant states, that he understands that the information was given to Captain Lewis by Mr. Laws the contractor. The charge, you will perceive, is specific, and the proof referred to of such a nature as to enable you to meet it fairly, if not founded in truth. Having always entertained a high opinion of your honor and integrity, I deem it my duty in the present stage of the inquiry to apprize you of the charge which has been made, so that you might take such measures to meet it and satisfy this Department of your not being guilty of the charge as you might judge advisable. You will see the necessity of prompt attention to the subject.

I am, &c.

J. C. CALHOUN.

Col. W. K. ARMISTEAD,
Fort Washington, Potomac.

Enclosure No. 15.

DEPARTMENT OF WAR,
August 3, 1821.

SIR: I wrote you yesterday, in answer to your letter of the 25th of July, and I now enclose a copy of my letter to Colonel Armistead, that you may be apprized of the shape which has been given to the inquiry. The charges against the other person implicated in your letter will claim the early attention of the Department.

I will not, unless it should become absolutely necessary, use your name in the inquiry.

I have the honor, &c.

J. C. CALHOUN.

Com. JACOB LEWIS,
Havre de Grace, Maryland.

Enclosure No. 16.

WASHINGTON CITY, *6th August*, 1821.

SIR: I have read with some surprise, that part of Commodore Lewis's letter to you relative to his suspicions of the motives that influenced

General Swift and Major Vandeventer, in their conversation with, and advice to me, on the subject of my stone contract, which he believed to be interested and base. My opinion, Sir, is diametrically opposite to that of Commodore Lewis's, and I here beg leave explicitly to declare to you, and to all those who may see said letter, that I had no conversation whatever with Major Vandeventer on the subject of my contract; and none with General Swift, except a friendly wish, frequently expressed to me, that I ought, in some way or the other, to extricate myself from the contract, as he considered it a ruinous one. Such advice was, in my opinion, given with sincerity and truth, and emanated from the best feelings of a friendly heart, and I am more led to this belief from a knowledge of General Swift's character; and I am sure that no motive could possibly ever exist to induce the General to depart from those high principles of honor in which he was educated.

I have the honor to be,
Most respectfully,
Your obedient servant,
F. LE BARON.

Hon. J. C. CALHOUN, &c.

Enclosure No. 17.

Hon. J. C. Calhoun:

SIR: Capt. Lewis has called on me, on the subject of a letter received from Col. Armistead. It appears, from his explanation, that I was mistaken in stating that he heard Mr. Laws say, that Col. Armistead was concerned with him in a contract for bricks; but it was from others, whose names he will give when called on to do so, and who state that they heard Mr. Laws say so, and that indeed it was in the mouths of many.

I have the honor to assure you of my consideration and respect,
J. LEWIS.

New York, Aug. 17, 1821.

WASHINGTON CITY, *August 1st*, 1821.

SIR: I have come on here to represent to the War Department, through you, the difficulties we have to encounter in the performance of our contract, and to that extent that forbids its completion, unless the Engineer Department will extend to us more liberal arrangement than now exists at Old Point, and at the Rip Raps. The following statement will exhibit to you wherein we can be benefitted. Our contract was made to supply your Department with building stone. Whatever the ideas of the Superintendent of Works may be, he cannot have it in his power so to construe the words of that contract, as to materially alter the quality of that article, especially if the article is more valuable and difficult to procure, unless proportionable allowances are made. In consequence of the Department allowing us to deposite our small building stone, and the large and small refuse stone, on the Rip Raps, to the extent of one-fourth of the whole amount of our contract, we agreed to furnish at Old Point, building stone not less than two men could easily handle. This arrangement was useful to

us both, as the Government had already a large portion of small stone then on the Point furnished by the Engineer Department, and we necessarily quarried out some refuse stone, and had broken off from the building stone a quantity of spawls. This enabled us to agree to furnish this uncommon size building stone, and to throw on the Rip Raps common quality of stone. Such arrangements being made with the Engineer Department, we had to make the same with all our subcontractors, taking care not to allow them to break up any, unless over a ton; and we have for ourselves always observed that rule, and contrary to the practice of other Rip Rap contractors, have delivered large and small mixed, as the Inspectors at the Rip Raps will testify. The stone, on an average, has been as follows: one-third, over 110 lbs., one third, over 50 lbs.; and one third, less.

Now, I submit to you, Sir, if stone of that size is not more suitable to make a loose wall, with an angle of 45 degrees, than if all was 150 lbs., and upwards, as we are directed to furnish; and is it justice to us to reject such stone as we have purchased and quarried out on the faith that they would be received? Two to four thousand perches are now on hand, paid for. No notice was forwarded to us until April, that these stones would not be received: and then they were all quarried, and to handle over and pick out such size stone as would cost more than we received for them. We complain as a hardship, that our crews are obliged, contrary to all mercantile rules, to carry up the cargo fifty yards, (in some instances) and fill up the inequalities of the crown, when the only duty that can be required of the crew is to deliver the cargo over the gunwale and deposite on a wharf, shore, cart, or vessel. This regulation bears peculiarly hard on us, as we lose all our chartered vessels by it, as the crews will not submit to the exaction, and the owners of the vessels will not subject their vessels to lay so long chafing their bottoms and wakes against the sides of the cone, and we cannot charter them to carry building stone, alone. One quarter must be refuse stone, or our quarries will be so choked as to stop working them. If the pile is to be graduated, is it proper that the crews of our vessels are to do it? Why not employ a gang of men to attend exclusively to this business? But a still greater hardship than those before enumerated, we complain of, as it draws daily from us our hard earned profits, which we so much want at this time, to answer the demands of Government and individuals. At the bare mention of it, you will see at one view the necessity of making some immediate arrangement for our relief. Even Colonel Gratiot himself gives it as his unequivocal opinion that it bears too heavily on us; and computes the loss of measurement, since the opening of our new quarries, at 25 to 30 per cent. This loss is occasioned by the superior quality of stone, which affords no interstice when piled and packed for measurement, or not one-eighth of what common building stone forms. When the contract was made, we supposed the stone would be weighed and measured, so as to come as near $16\frac{9}{12}$ feet cubic, as possible. We found that, in this district, and in neighboring States, 8 feet was allowed to make up for interstices.

In New York and New England, where the stone is better, five feet only is allowed, but we are perfectly satisfied that $24\frac{9}{12}$ cubic feet should be the measurement, providing our vessels are marked with the common building stone of the country, such as our contract specifies.

But to furnish the quality of stone we have been sending to Old Point since March last, at that measurement, cannot be done, without certain ruin to the contractors. Mr. Hoban, Mr. Colter, and several other architects and masons, who have seen the stone from our quarries, say they are worth to the Engineer Department $6 per perch, for their peculiar work. If the Department will allow our vessels to be marked with common stone, such as the contract mentions, or with large Rip Raps, we will be perfectly satisfied on that point. In making them, however, if the Department prefers common building stone, to have them marked with, we will send down one or two loads, as they may think best, and it shall be inspected by master masons from Norfolk, or elsewhere, who are *disinterested*, and who act under oath, to say that the stone is equal to the article meant by the contract. This precaution is necessary, as heretofore our stone has been rejected and complained of—by whom? Why, the stone contractor, who has agreed to lay the stone at a certain price per perch! and nothing less than square stone would suit him, if he was allowed to be the judge, as then he could easily and rapidly make up the wall, and his fortune besides. The Inspectors of Stone are necessarily biassed by his opinion, as their former lives and occupations little fitted them to be judges of the quality of building stone. If the Department say that our vessels shall be perched by the assorted Rip Raps, or the large kind, then we are willing to submit the measurement to the Government agents, and measurers under the Superintendent. We are sure the object of Government is not to ruin but to protect the contractors: especially, when it sees those who have taken contracts low, and are threatened with ruin unless such protection is extended to them. Convinced of this, we will point out in a few words what we want to save us, and what we think can be granted without injury to the Government, but rather an advantage.

Let us deliver all our Rip Rap stone, now quarried out and paid for, providing it does not exceed the proportion allowed, and then allow us to deliver such quality of Rip Raps, as before mentioned.

Oblige us not to carry the cargoes at the Rip Rips farther than it is necessary to deposite them in safety: say at the top of the pile, or on the sides of the cone.

Let our vessels, carrying building-stone, be marked with common building-stone, such as will pass a board of master-masons on oath; or marked with large Rip Raps, as inspected by the Government surveyor and measurer, all at the rate of $24\frac{9}{12}$ cubic feet.

Allow all deficiencies according to the new measurement since the opening of the Spring navigation.

If these indulgences are granted us, nothing else, I hope, will prevent the completion of the contract without ruin to ourselves, and in good faith to the Government.

Respectfully, your obedient, servants,

FRANCIS LE BARON,
for
JACOB LEWIS & Co.

To Maj. Gen. ALEX. MACOMB,
Chief U. S. Engineer Department,
Washington City.

Enclosure No. 18

ENGINEER DEPARTMENT,
Washington, 27th Sept. 1821.

SIR: Upon examining the grievances complained of, by Messrs. J. Lewis & Co. in executing their contract for delivering stone at Old Point Comfort, it is deemed proper to grant them the following facilities and indulgences.

The delivery of stone of any description whatever at the Rip Raps, is an indulgence. The small stone therefore, which they may be permitted to deliver in the centre of the mole, and stone of such size as shall be required by the Engineer, to form that part of the mole, on which the foundation of the Fort is to rest, must be deposited according to the directions of the Engineer, and agreeably to the plan; and larger stones to form the breakwater in their proper places.

But the contractors will only be required, in the first instance, to deposite their cargoes on the top of the pile, and not obliged to fill up any inequalities or cavities, which were not occasioned by their own neglect or carelessness in making the deposite in the first instance, or which were occasioned by the gradual settling of the mole, or by any other accident. They are, however, to deposite their cargoes on the top of the mole and around it, in such places as the Engineer shall point out, and not where they may select.

The stone shall be measured as agreed upon, and specified in the 10th article of the arrangement, of the 19th of August, 1819.

Messrs. Lewis & Co. also complain that the perch is measured at 24 cubic feet, instead of 24 9/12. This measurement of the perch was fixed upon before they made the contract with the Engineer Department, and has been the customary measurement at all the public works on the Potomac and Hampton roads. The other contractors have made no complaints on this subject, and it is not deemed advisable to deviate from the established mode of measurement.

In order to enable the contractors to deliver their cargoes with facility, at the Rip Raps, you will allow them the use of the public buoys, anchors, and cables, purchased for the use of that service, provided they moor them, &c. at their own expense.

You will furnish to J. Lewis & Co. a copy of these instructions, as soon as convenient.

I have, &c.
ALEX. MACOMB, *Maj. Gen.*

Lt. Col. C. GRATIOT,
Corps of Engineers, Old Point Comfort.

Tons	Name	1819	1820	1821	Perch	Minus
	Sloop:					
70 46/100	Slater	69	67.5	55.4	14	
53 85/95	Halcyon	69	69.3	44	25	
88 16/95	Lincoln	78.16	74.18	40.12	38	One of the most burthensome vessels in the Chesapeake.
54	Manilla	44.4	45	45	--------	
79 7/95	Borealis	52	55	50.10	2½	Do.
	Schooner:					
174	Marino	111	116	--------	(1)	Do.
99 65/95	Union	66.22	64	50.10	16	Do.
	Sloop Susanna:					
81 65/100	1	61.15	124.16	67.5	35	Do.
	2	50.10	285			

[1] Not yet arrived.

J. Lewis & Co. to Col. Gratiot, Fort Monroe, July 27th, 1921.

FORT MONROE, *July 29th*, 1821.

SIR: I have perused your communication of the 18th instant, made to Thomas B. Smith, Agent for J. Lewis & Co. at Fort Monroe. The nature of the proposition, together with the conditions therein contained, inhibits the possibility of J. Lewis & Co.'s accepting it; that is to say, if J. Lewis & Co. are to understand that they are to deliver 979 perches *only*, and that to be at their expense placed on the pile as the Superintendent may direct, and non less than 50 pounds weight.

J. Lewis & Co. are very desirous of being informed, if Colonel Gratiot is determined to persist, *now* and henceforth, to require the compliance, on the part of J. Lewis & Co. to the condition and proposals alluded to.

We have the honor to assure you of our respects.

J. LEWIS & CO.

Colonel GRATIOT,
Commanding Fort Monroe.

No. 61.

Mr. McDuffie's Communication to the Committee.

The Hon. JOHN FLOYD:

Sir: The Committee of Investigation over which you preside, having announced to me as the friend and representative of Mr. Calhoun, that they have closed the examination of all the witnesses they deem it necessary or proper to summon before them, I should be equally insensible to the claims of private friendship and the obligations of public duty, were I not to enter my solemn protest against the extraordinary course, and not less extraordinary conclusion, of a proceeding singularly destitute of almost every attribute of a legal investigation. Even if it should be considered that this Committee was instituted, not for the exclusive purpose of sitting in judgment on the specific charges submitted to their examination, but for the additional purpose of exercising, to a certain extent, the functions of an inquisitorial commission, I cannot conceive that there would be any thing in the character of such a commission that would authorize it to depart from the fundamental principles of judicial investigation, and the established rules of judicial evidence, and, after wandering at large through the perplexing mazes of suspicion and conjecture, guided only by the bewildering lights of incompetent and inadmissible testimony, to select the precise point where suspicion ends and legal evidence begins, as the conclusion of their inquiries. But, confidently believing that it was the intention of the House that this Committee should assume the solemn character of a judicial tribunal, and that the facts and opinions which they may report to the House, will be consequently regarded by the public as having the stamp of judicial authenticity. I feel impelled, by a profound sense of the duty which I owe to Mr. Calhoun, to the country, and even to the Committee themselves, to state briefly and distinctly my objections to the course pursued, before it shall be

too late to correct or to palliate its injustice: and, in the very outset of my remarks, I cannot but advert to the fact, as strikingly illustrative of the anamolous character of this proceeding, that with the exception of the solitary question as to the fact of Mr. Calhoun's participation, which every witness has promptly and unequivocally answered in the negative, there is not one tittle of all the incumbring mass of documentary and oral testimony which has occupied the incessant labors of the Committee for more than twenty days, that has the slightest pretension to the character of legal evidence, whether we regard it as applicable to the present accusation, or to any other accusation against the private integrity or official purity of Mr. Calhoun. In order to demonstrate this proposition, I beg leave to present, for the re-consideration of the Committee, a descriptive and analytical review of the recorded testimony.

It will be recollected that the first three or four days of this inquiry, were devoted to the examination of witnesses, professedly produced for the purpose of exculpating the present Secretary of War from the imputation of having any agency, either in bringing forward the charge of peculation against Mr. Calhoun, or in the infamous publication of the equally infamous letter of the yet more infamous instrument of this dark and nefarious conspiracy. It is not my purpose to complain of the course pursued by the Committee, in this respect, although it might seem to indicate a move anxious desire to exonerate one, against whom no imputation had been made, than to administer speedy justice to the second officer of the Government, when actually on his trial, upon a charge of official delinquency, calculated, if true, to stamp his reputation with indelible infamy. But as the Committee have thought proper to make the conduct of Mr. Barbour, in this transaction, a distinct subject of inquiry, I feel constrained to remark, that, although I readily exonerate him from any intentional participation in this most insidious attempt at moral and political assassination, yet it is a circumstance much to be regretted, that, in the editorial commentaries by which the publication of the letter of Elijah Mix, in the Phoenix Gazette, was accompanied, the name, and office, and official decision of the Secretary of War, were so artfully associated with the charge against Mr. Calhoun, as to give it additional solemnity and importance; and that no measures were taken to have this injurious association disclaimed, through the same channel. It is a fact, equally to be regretted, that the Secretary should have retained in his possession, officially, for three days, the letter containing the charge against Mr. Calhoun, without giving him the slightest intimation of it. And even the verbal declaration made by the Secretary to Colonel Johnson, that he believed the charge against Mr. Calhoun to be an atrocious calumny, was not made until a day had elapsed after the publication in the Phoenix Gazette, and was only communicated to Mr. Calhoun after he had prepared and sealed his letters to the House of Representatives, and placed it in the hands of a friend. And I must also state as a fact worthy of notice, that neither in the Phoenix Gazette, which assumed a semi-official attitude, in stating the proceedings of the Secretary of War, in relation to the letter of Mix, nor in the notice taken of the publications in that Gazette by the National Intelligencer, the next day, was the fact stated, that the Secretary regarded the charge against Mr. Calhoun as an atrocious calumny.

But to resume the analysis of the testimony, with a view to its immediate bearing upon my opening proposition. After submitting the obvious remark, that all the evidence produced to exculpate Mr. Barbour, was not only irrelative, but immaterial to the pending issue, I will proceed to the examination of that part of the testimony which is intended, as I presume, to bear directly or indirectly upon the official character and integrity of Mr. Calhoun. The great mass of the evidence that has so long engaged the attention of the Committee, consist of the private letters of Major Vandeventer to Elijah Mix, with the explanations to which they have given rise. It is hardly necessary that I should enter in a course of argument, before a Committee, of which six out of seven are lawyers by profession, to show that these letters ought to have been promptly rejected, as incompetent and improper testimony. Even if it be granted that Mr. Calhoun is now on his trial for every act of his life, official or private, and not merely upon the specific charge referred to the Committee, it is perfectly clear that, according to those great principles of evidence which have been devised by the wisdom, and consecrated by the experience of ages, the letters or declarations of another person cannot be given in evidence against him. Nor is this one of those technical principles which sometimes mar the symmetry of the law, and have no foundation in reason. There are no principles of our law more deeply founded in wisdom, than those which regulate the admission of evidences: and I will take this occasion to remark that, next to such an organization of the Government as will secure the effective responsibility of political agents, civil liberty derives its principal security from the establishment and sacred observance of fixed rules of judicial proceedings, and of judicial evidence. The opinion entertained by the enlightened sense of modern times, of the inseparable connection between the rulers of criminal evidence and civil liberty, may be clearly inferred from the opposite judgments which posterity has pronounced upon the characters of Sidney and of Jeffries: for, while the name of Sidney is inscribed on the imperishable rolls of fame as a patriot and martyr, that of Jeffries has, by universal consent, been consigned to everlasting infamy, as a judicial monster. And yet the catastrophe of the victim has excited the sympathy, and the tyranny of the judge, the abhorrence, of mankind, principally because the sacrifice was effected by violating those rules of evidence in which every member of the community had a common interest, as the only means of securing his life and character against the combined machinations of prostitute informers and profligate rulers. To unsettle and subvert these rules, therefore, under whatever plausible pretext it may be attempted, is to destroy the only substantial security for every thing sacred in life, and consequently to inflict a vital stab upon the public liberty. Nor is there any thing in the character or circumstances of the present investigation that should absolve the Committee from the observance of these rules.

On the contrary, all history will justify the remark that there are no occasions in which their rigid observance is so highly important as when legislative bodies or political commissions exercise judicial powers for the trial of political offences. On such occasions, the strongest of human passions almost unavoidably usurp the seat of judgment, and unless restrained by pre-established forms of proceed-

ing and pre-established rules of evidence, the most capricious freaks of despotism and vengeance are perpetrated in the sacred names of law and justice. Without referring for illustration, to the lawless proceedings of those inquisitorial tribunals which are at once the reproach and the terror of despotic Governments, or to the shocking outrages committed by the revoluntary tribunals of France, it would be sufficient to advert to the disgraceful proceedings of the Parliament of England in cases of attainder, not only to sustain the general principles here presented, but to communicate the most vivid impression of their truth and importance. If these general views evince to the Committee the necessity of adhering to the established rules of evidence, and if I have shown that one of the most important of those rules excludes the letters or declarations of a third person under any circumstances, how incomparably stronger does the objection to their admission become, when we advert to the singular and extraordinary circumstances under which the letters of Major Vandeventer have been produced to the Committee. In the first place, they are obviously the detached parts of a garbled correspondence. In the second place, they are mutilated and defaced, so as to render their meaning unintelligible as to every purpose connected with the investigation. But, what is of infinitely more importance, this correspondence was obviously garbled, and the letters mutilated and defaced, by one of the most artful and consummate villains that ever figured in the annals of human depravity, for the unquestionable purpose of exciting doubts and suspicions, by means of the mutilations and erasures, which could not have been produced by the letters in their original and entire state. It is impossible, therefore, to conceive a combination of circumstances more strikingly demonstrative of the wisdom of those rules of evidence from which the Committee have thought proper to depart, than that which exists in the present instance. For it is obvious to remark, that this is a political commission, composed of political men; and, disguise it as we may, I must be permitted to add, without intending to insinuate any thing in the slightest degree disrespectful to a majority of the Committee, that they are sitting in judgment on a political opponent charged with a political offence. And when it is moreover considered, that these garbled and multilated letters have been produced by the vilest of all that tribe of informers who have been the disgrace and the terror of those countries in which they have been countenanced by the wickedness and profligacy of rulers—a self-condemned and self-immolated wretch, who, in the very presence of the Committee, has literally covered himself with "all the multiplying villanies of nature"—I cannot but believe that the Committee will themselves shrink back with abhorrence from those machinations and devices, which they have unwittingly received in the place of evidence, and upon which the characters of incompetency and infamy are so clearly and indelibly impressed. There is one other species of testimony sought by the questions, and placed upon the records of the Committee, equally excluded by the principles upon which I have insisted. Hearsay evidence is inadmissible, not only by the code to which we have been accustomed, but by every system of civilized jurisprudence with which we have any acquaintance: and yet the Committee, apparently assuming, by a strange complication of issues, that every officer of the War

Department who had any agency in forming a certain contract with Elijah Mix, or any interest in it, is now actually under trial, have received and recorded, as testimony, the declarations of those officers, indistinctly recollected, and vaguely and doubtingly stated.

Admitting that it is proper for the committee to assume inquisitorial powers in this investigation, and in that character to ask of the witnesses not only what they know, but what they have heard from others, it must be exceeding apparent, that the only excusable purpose, even of an inquisitorial kind, for which such questions could be propounded, is the discovery of other witnesses, by whose evidence the charge might be established. Let us see how far the proceedings of the committee have been conformable to this view of their functions. In the evidence recorded by the committee, Col. Armistead states, in substance, that either Major Vandeventer, on Gen. Swift, informed him that the latter was concerned in the Mix contract. Upon further recollection, the witness states that he must have received this information from General Swift himself, for that he remembers to have had a conversation with him, in which the General stated that he had an idea of leaving the army and becoming interested in some contract with the Government, which the witness supposed to have been the contract in question. He further states, in the same conversation, Gen. Swift informed him that he had asked the permission of Mr. Calhoun to become thus interested. This evidence, if evidence it may be called, is to be regarded in the two-fold aspect of implicating Gen. Swift in a criminal participation in a contract made by himself as the agent of the Government, and Mr. Calhoun in a scarcely less criminal connivance at such a participation. So far as it relates to Gen. Swift, common justice requires me to remark that, it is contrary to those great principles of criminal jurisprudence which our forefathers have consecrated by a constitutional declaration, to sit in judgment upon a citizen against whom no charge has been presented, who has no notice that his character is even thus informally implicated, and who, instead of being present to confront his accusers, is wholly unrepresented before the committee.

But, so far as this testimony tends to implicate Mr. Calhoun, the course adopted by the committee is liable to a much stronger objection than that merely of receiving and recording for publication, incompetent and improper testimony. They have evidently closed the investigation precisely where it ought to have commenced; leaving upon the reputation of Mr. Calhoun all the suspicion which illegal evidence could produce, and omitting to summon before them the only witness who could give legal testimony on the matter in question.

Col. Armistead states, obviously from the recollections of a most treacherous and feeble memory, that Gen. Swift informed him, eight or nine years ago, that he had asked Mr. Calhoun's permission to become concerned in some contract with the Government. This is the only material fact bearing upon the character of Mr. Calhoun, and it must have been obvious to the committee, that Gen. Swift was the only witness who could give legal testimony in relation to it. Yet they have declined to summon him on their own motion, no doubt from a view of the subject satisfactory to themselves. The ground upon which I must presume they have acted, is the incompetency of the evidence before them, and its utter insufficiency to fix upon Mr. Calhoun any imputa-

tion which requires to be refuted. But I must be permitted to say, that the incompetency and insufficiency of the evidence, though a very sufficient reason for rejecting it altogether, is no reason at all for refusing, when it is improperly received and recorded, to produce the only legal testimony by which judicial certainty could be obtained on the subject. Although, therefore, the committee must have acted with a view to impartial justice, the course they have pursued has been precisely that which is best calculated to give the most injurious efficacy to illegal testimony against Mr. Calhoun, and to avoid the conclusive refutation which the production of legal evidence would undoubtedly establish. To do away the effect of this proceeding, the only alternative left to Mr. Calhoun is, to place the most emphatic and unequivocal negative, which I am expressly authorized to do, upon the imputation of his ever having any knowledge or belief of Gen. Swift's participation in the contract, and to call upon the committee to examine Gen. Swift himself, as to the imputed fact of Mr. Calhoun's knowledge and connivance.

Having shewn that the entire mass of the testimony produced, is legally inadmissible, on the trial of any issue which can be made upon Mr. Calhoun's official conduct or moral integrity, it is due to the committee that I should explain my reasons for not objecting to it as it occurred, in the progress of the investigation.

Convinced of the absolute falsity of the charges presented, and of the entire purity of Mr. Calhoun's character, in all the relations, public or private, in which it can be contemplated, I determined, from the beginning, that I would interpose no objection to any inquiry which the committee might think proper to institute, nor to any description of evidence by which they might think proper to pursue it. Any attempt, on my part, to restrain the latitude of the investigation, or to prevent the adduction even of improper evidence, would have been construed by the malicious into a desire to screen Mr. Calhoun behind technical forms, from a full and free investigation. And as I was satisfied that the more severe the ordeal, the more conclusive would be the evidence of the fidelity and zeal of his official conduct, I was the more willing that the investigation should assume any form which the committee might choose to give it, and be prosecuted by any sort of evidence which they might think proper to admit, upon their own responsibility.

But, although I had a right, as the personal friend of Mr. Calhoun, to abstain from any interference with the course of the committee, I have no right, considering the relation in which he stands, and in which I stand, to the public, to sanction, by my acquiescence, a species of unlicensed inquisition, unknown to the jurisprudence of any free country, and which would furnish a precedent utterly subversive of the only effectual safeguards of the reputation of public men in periods of great political excitement.

Having disposed of that branch of the investigation which relates to the imputations upon Mr. Calhoun's official integrity, it remains for me to offer a few remarks upon a view of this subject, which, though not involved in the issue referred to the committee, is evidently embraced in the scope of their inquiries. It has been too apparent to escape the observation, even of one less interested than I am, to mark the bearings of this investigation, that a very large portion of the

testimony can have no other application, or object, than to call in question the general administration of the War Department, while Mr. Calhoun presided over it, by holding him responsible for the minute irregularities of its subordinate branches, and particularly those of the Engineer Department. While, therefore, the charge is specific and limited, the investigation is general and undefined; and the most obvious principles of justice require that the defence should be, at least, co-extensive with the attack, whether this be open and direct, or disguised and incidental.

Assuming, then, that the general irregularities of a subordinate branch of the War Department are fair subjects of inquiry, let us see whether the specifications are such as, admitting their truth, will fairly fix any portion of the responsibility on Mr. Calhoun. The contract, in relation to which the imputed irregularities occured, was made the 25th of July 1818. Mr. Calhoun took charge of the War Department the 8th December, 1817; and it is a fact of undisputed notoriety, that he found it utterly destitute of organization in almost all its branches, and pre-eminently so in the Engineer Department. The extensive operations and large disbursements of the then recent war, effected under a system of administration having neither organization nor responsibility, had introduced such irregularities and abuses, and caused the accumulation of such a mass of unsettled accounts and unfinished business, that the War Department was actually shunned by several distinguished citizens who were solicited to preside over it, as an Augean stable, holding out in prospect the labors of Hercules, without any portion of his fame. Such being the condition of the Department when Mr. Calhoun became its chief officer, and every irregularity which is imputable to the Mix contract, including the omission to advertise, having been common and frequent in every preceding Administration, without any effectual effort to correct them, the injustice of holding Mr. Calhoun responsible for not correcting, in a few months, irregularities which his predecessors had not even attempted to correct in as many years, is too gross to be tolerated for a moment.

It is obvious that the head of such a Department cannot, upon any rational principle, be made responsible for a particular instance of irregularity in the details of a subordinate department. The true point of his responsibility is, the general laxity and want of system from which the particular instance arises. If, therefore, Mr. Calhoun is obnoxious to any censure in the present case, it is for the imperfect organization of the Engineer Department on the 25th of July, 1818. In this view of the subject, it is to be remarked, that he took charge of the Department in December, 1817, at the opening of the session of Congress, left Washington for South Carolina, on indispensable business, immediately after the close of the session in the May following, and did not return until the month of July, only two weeks before the contract in question was closed, and was almost incessantly occupied, during those two weeks, in the deliberations of the Cabinet on the military occurrences of the Seminole campaign.

Under these circumstances, the irregularities in question, cannot be imputed to him, either in fact or in theory. Coming into a complicated Department, which was almost literally in a state of chaos, nothing but a spirit of official quackery could have prompted him to commence

the great work of a general and systematic reformation before he had deliberately surveyed the working of its disordered machinery, and ascertained both the causes of the existing irregularities, and the most effective means of correcting them permanently.

In fact, when it is considered that Mr. Calhoun first necessarily devoted himself to the creation and organization of the Departments of the Quartermaster General, Surgeon General, and Commissary General, under an act of Congress passed, upon his recommendation, in April, 1818, the wonder is, that the reformation of the Engineer Department was commenced and completed at such early periods as, in fact, it was. I cannot believe it possible, therefore, the Committee will select the minute irregularities of detail, in a transaction which was conducted exclusively by subordinate officers, and of which the irregularities really belonged to the antecedent period of disorder, as criterion of Mr. Calhoun's general administration of the War Department.

Indeed, the very irregularities which we are now considering are the more striking, because of the perfect organization, responsibility, and system, which Mr. Calhoun has the high merit of having subsequently imparted to all the arrangements and operations of the Department.

Standing in contrast with his own improvements, these petty and subordinate irregularities are exhibited in bold relief to the prying and invidious research of the censorious; and, in this way, not only the imperfections which he found in the system of administration, but the signal regularity which he introduced in the proceedings of the Department, are made to furnish matter of accusation against him.

As the general industry, zeal, and ability, with which Mr. Calhoun discharged his official duties, are thus distinctly put in issue by the direction which the committee have given to the examination, I claim the right of calling before them all the heads of the subordinate departments, who were his able coadjutors in the great work of reform, and of showing, by their united testimony, the condition in which he found the departments, the fidelity and unremitting labor with which he devoted himself to its improvement, and the high perfection of its arrangements, which crowned his labors with a success equally conducive to his own fame, and to the welfare of his country. I must, therefore, request that the committee will examine the following gentlemen touching this branch of the inquiry: Major General Brown, General Thomas S. Jessup, General A. Macomb, Doctor J. Lovell, Colonel N. Towson, Colonel G. Gibson, Colonel G. Bomford, Colonel I. Roberdeau, and Colonel John E. Wool. If I am not greatly mistaken, it will conclusively appear, from their evidence, that the system of rigorous responsibility and strict economy which Mr. Calhoun introduced in the operations and disbursements of the military establishment, have effected an annual saving in the national expenditure of more than a million of dollars, to say nothing of the striking improvement made in the moral of the Army, as well as in its military discipline and efficiency.

Although the views already presented, shew the injustice of holding Mr. Calhoun in any degree responsible for the formal irregularities which may have existed in the formation of the contract with Elijah Mix, it is due to the historical truth of the case that I should state,

that, in point of fact, no injury resulted to the Government from those irregularities, or from the making of the contract with such a person. On the contrary, it was conclusively shewn, in the investigation which took place on the subject in the House of Representatives, in May, 1822, that, previous to the formation of the contract, notice was actually given, and inquiries made, at all the points where suitable stone could be procured, and that Colonel Armistead, to use his own words, "made experiments, by having the stone quarried near Georgetown by laborers hired by the United States, and found that it could not be procured and carried to Old Point Comfort for less than $3 50 per perch, together with the great uncertainty of getting vessels to transport it." The testimony of Commodore Rodgers, General Mason, Mr. Baker, of Georgetown, and various other witnesses, all concured in the uncontradicted statement, that $3 50 per perch was the lowest sum for which the stone could be delivered; and, accordingly, $3 50 was the lowest bid, except that of Elijah Mix. It is apparent, therefore, that the contract at $3 per perch would have been ruinous to Mix, but for "the very unexpected and rapid fall in the price of labor and transportation," adverted to by the witnesses in the former examination. Such was the conclusive force of this testimony in 1822, that the bare reading of it, without a single word of commentary or argument, induced the House of Representatives, by a vote of 131 to 20, to reject the report and resolution of the select committee, which recommended a suspension of all appropriations for the fulfillment of that contract. Although, therefore, the character of Mix was, even at the date of the contract, stamped with infamy, the fact was then wholly unknown to Mr. Calhoun, and, I believe, to every officer of the Engineer Department; and however much some of those officers may have suffered from having to deal with a man so profligate and unprincipled, it is clear that the Government has actually saved $75,000 in the whole contract, by accepting his bid. And I cannot but remark, in concluding this part of the subject, that the vigilant regard for the public interest with which Mr. Calhoun has invariably enforced upon Mix the performance of this contract, has evidently brought upon him the infamous calumny which has given rise to this investigation.

I cannot bring this communication to a close without formally and distinctly protesting against blending the examination and trial of charges against the subordinate officers of the War Department with the present investigation. The injustice of such a course to those officers has been already stated. It would be, literally, condemning them without trial. The injustice to Mr. Calhoun is equally great, though not quite so obvious. Upon principles of association, which the committee will readily comprehend, it woud be visiting upon Mr. Calhoun, by a most severe and cruel dispensation, the guilt of these subordinate officers, established by a mode of proceeding having none of the forms of legal accusation and trial, but assuming the most odious of the prerogatives of those inquisitorial tribunals, fortunately known to us only by the history of less favored countries.

Finally, I cannot but express my sincere regret, at the extraordinary delay which has characterized this proceeding, and at the great injustice and injury which have unavoidably resulted to Mr. Calhoun, from that circumstance alone. It is now more than four weeks since the

Committee was charged to inquire whether the Vice President of the United States had been guilty of the infamous offence of participating, while Secretary of War, in the profits of a contract, made with an individual, by the Department, over which he presided. The atrocious character of the charge, and the high station of the individual, implicated, naturally excited, in every portion of the Union, the most lively interest in the proceedings of the Committee; and the people of the United States, at a loss to account for the delay, upon any other supposition than that *some* evidence of guilt had been exhibited, have been looking, day after day, and week after week, with the most intense anxiety, for the result of an investigation, involving, not only the honest name of a public servant, who has been, for fifteen years, honorably and eminently identified with the political history of the country, but involving, also, in no small degree, the reputation of that country, whose rights and whose honor he has so largely contributed to defend; whose character he has so largely contributed to elevate; and whose institutions he has so successfully labored to establish and mature. If, from the high honor and unsuspected purity, which have characterized every action of his life, all who knew him, whether friends or enemies, have looked, with equal confidence, to his entire acquittal of the charge presented, it can scarcely be doubted that a large portion of the people of the United States, who do not know him, must have regarded the unexpected procrastination of the inquiry, as a circumstance inexplicable, if not suspicious. And while I am under the necessity, from the course pursued by the Committee, of still farther protracting the investigation, I shall use every effort, in which I earnestly solicit their co-operation, to bring this long labor to a speedy termination.

I have the honor to be,
With very great respect,
Your obedient servant,
GEO. M'DUFFIE.

No. 62.

Letter from Elijah Mix to the Engineer Department, laid before the Committee by Mr. McDuffie.

GEORGETOWN, 12*th May*, 1825.

SIR: I take the liberty of applying to the Department, and am convinced I think that the justice of my cause gives me right to expect a decision founded on the principles of justice. My contract with the Department, in July, 1818, has nearly been closed, under many disadvantages. In the first place, by purchasing a quarry on York River, Virginia, which cost me two thousand dollars for ten acres. After delivering twenty loads of stone from these quarries, the commanding officer at the Point rejected it, as being unfit for the purpose for which it was intended, and it was rendered useless to me. I then purchased quarries on the Appamatox, after giving to Colonel Armistead a sample of the stone, and getting him to approve of the quality. Those quarries cost me two thousand five hundred dollars; and, after delivering sixteen hundred perch, they shared the same fate as the others, and were condemned at the time I had stone on board of vessels, and at the Point, amounting to six hundred dollars.

Since that time, (1819,) I have been delivering stone from this neighborhood, and have closed my contract, except fourteen thousand perch, and have purchased quarries that have cost me more than four thousand dollars, and am now required by the Colonel to deliver no stone of a less size than one thousand pounds. I find, on attempting to fulfill such an order (however unjust,) that my quarries will not turn out stone which will answer the demand. Not more than one-fourth of the stone now quarried will pass, and the balance have to be removed, and the transportation of them is enormous, and will oblige me to again abandon my quarries, and purchase or hire new ones, at an extra expense. You will perceive that I have already expended eight thousand five hundred dollars, for that purpose; and, at this late day in my contract, it would be unjust in the extreme, to oblige me to again resort to purchasing, for so small a quantity as I have to deliver. I have no redress but to apply to the Department for justice, founded upon the rights of man to man. You will see that my contract only mentions quality, not size. The quality has already been changed for the pleasure and advantage of the Government, at a loss of at least three thousand dollars to me. Can this be justice? The only reason that the commanding officer at Old Point states for demanding from me stone of the above size, is that he does not want the size formerly received; he has forgotten, perhaps, that, for the relief of a defaulting contractor, and for the benefit of the Government, that twenty thousand perches of stone were received at the Rip Raps, and deposited to fill up the plan stated for my stone, which was contracted for two years before. The Government, by this, secured an advance of twenty thousand dollars, and now are obliging me to deliver stone, which, if contracted for at the time my contract was made with the Government, could not have been furnished for six dollars per perch. There is another evil: the stone are of such a size, that no vessel, or but few, that has been in the habit of handling small stones, will take them on freight, and I am obliged to purchase vessels for that purpose.

I have only to ask, that I may be put upon a footing with other contractors, and deliver such size stone as is allowed to them; and should that size not be wanted, that a compensation may be made to me, for increasing the size from fifty to one hundred and fifty pounds, and from one hundred and fifty to one thousand pounds. I am at present paying three times the price of quarrying. I am paying more freight, and I am obliged to expend at least one thousand dollars for machinery to handle those large stone.

I have to request that I may be allowed to deliver some part of my stone of a size that are usually quarried from those shores; and that an order may be given to the Colonel to that effect, as he is now receiving, from Messrs. Goldsborough, stone of the size usually received. He cannot object to receive them from me, upon the grounds that he does not want them.

I have the honor to be, Sir,
With the highest respect,
Your very obedient servant,
E. MIX.

GEN. ALEX. MACOMB.

No. 66.

Chairman of the Committee to Major Vandeventer.

CAPITOL, COMMITTEE ROOM,
January 15, 1827.

SIR: I am directed by the Committee to whom was referred the communication of the Vice President, of the 29th of December last, to request you to furnish them with the original of the account current between yourself and Samuel Cooper, of which you exhibited a transcript on your first examination—as, also, the original accounts upon which that account current was raised; together with the vouchers in support of the items charged in said accounts.

I am, Sir,
Respectfully,
Your obedient servant,
JOHN FLOYD,
Chairman Select Committee.

Major C. VANDEVENTER,
Department of War.

No. 64.

Major Vandeventer to Chairman.

WASHINGTON, JANUARY 26th, 1827.

SIR: I have received your letter of the 25th instant, requesting me to furnish the Committee over which you preside, with the original account current between myself and Samuel Cooper, of which I left with the Committee a transcript; also, the original accounts upon which the account current was raised, together with the vouchers in support of the items charged in said account: and, in reply, transmit, herewith, the original account current, and have to state, that the other papers required by the Committee, in relation to this account current, are not in my possession.

I have the honor to be,
Your most obedient servant,
C. VANDEVENTER.

Hon. JOHN FLOYD,
Chairman Select Committee on the
Letter of the Vice President, &c. &c.
House of Representatives.

No. 65.

Chairman to Secretary of War.

CAPITOL, COMMITTEE ROOM,
January 24, 1827.

SIR: I am directed by the Committee to whom was referred the communication of the Vice President, of the 29th of December last, to request you to furnish them the original letter of J. Lewis & Co. to

the Honorable John C. Calhoun, dated Havre de Grace, 21st June, 1821, and for any letter from the Treasurer of the United States to Elijah Mix, covering a check or draft, dated 8th of August, 1818, in favor of Mix, for the 10,000 dollars advanced on his contract. Also, the original order from the War Department, directing the first advance of 10,000 dollars to Elijah Mix, under his contract, the time when that order was given, and in whose hand writing the order appears.

I have the honor to be, Sir,
Your obedient servant,
JOHN FLOYD,
Chairman of Select Committee.

The Hon. JAMES BARBOUR,
Secretary of the Department of War.

No. 66.

Secretary of War to Committee.

WAR DEPARTMENT, *January* 25th, 1827.

SIR: I have received your letter of the 24th instant, stating, that you are directed by the Committee to whom was referred the communication of the Vice President, of the 29th of December last, to request me to furnish them with the original letter of J. Lewis & Co. to the Honorable John C. Calhoun, dated Havre de Grace, 21st June, 1821; and any letter from the Treasurer of the United States to Elijah Mix, covering a check or draft, dated the 8th of August, 1818, in favor of Mix, for 10,000 dollars, advanced on his contract; and, also, the original order from the War Department, directing the first advance of 10,000 dollars to Elijah Mix, under his contract, the time when that order was given, and in whose hand writing the order appears.

In compliance with the first request, I enclose, herewith, the original letter of J. Lewis & Co. referred to.

Upon inquiry of the Treasurer of the United States for any letter from him to E. Mix, covering a check or draft, as mentioned in your communication, the printed form of the letters, in which drafts given in payment of warrants are remitted by the Treasurer, was furnished; a copy of which form, filled up to-day at the Treasurer's Office as a transcript or representative of the letter to E. Mix, covering the draft alluded to, is enclosed, with the Treasurer's statement subjoined to it, that no copies of such letters are kept in his office. The draft itself was produced from the office of the Register of the Treasury, and is also enclosed, under the belief that it is embraced by the spirit of that request. The draft, as received from the Treasurer's office, was attached to the original warrant by a wafer. It is drawn by the Treasurer of the United States, in favor of Captain Elijah Mix or order, for $10,000, dated on the 8th of August, 1818, payable at sight at the Branch Bank of the United States, in New York, and endorsed by Elijah Mix; and a receipt for the payment, given on the back of it, by Samuel Cooper. The original warrant, which is also communicated as attached to the draft, is drawn by J. C. Calhoun, Secretary of War, upon the

Treasurer of the United States, for the same amount, bears the same date, and is payable to the same person, as the draft.

In answer to so much of the request of the Committee as relates to information in regard to the original order from the War Department, respecting the first advance of the 10,000 dollars to Elijah Mix, &c. &c., on examination of the files, no requisition is to be found on which the warrant issued.

I will thank you to cause the draft and warrant to be returned to this Department, as soon as it may suit the purposes of the Committee to dispense with them, in order that they may be restored to the Treasury, where they belong.

I am, very respectfully, Sir,
Your obedient servant,
JAMES BARBOUR.

Hon. JOHN FLOYD,
Chairman Committee, &c. Washington.

[PRIVATE]

Hon. JOHN C. CALHOUN.

Sir: We have the honor to transmit to you a synopsis, by which it will appear that the affairs of Jacob Lewis & Co. are rendered desperate by the studied management of the Engineer Department.

The enclosed statements of annual deliveries are certainly inexplicable, but alone goes to show that the Company are on the wide road to *infallible ruin*, and nothing but your interference can prevent its being *immediate*.

Most, if not all, of the named vessels, had been measured, perched, and marked, under the inspection of Capt. *Smith's brother, while Inspector at Old Point Comfort*, in the year 1819 and '20; compare the receipts for deliveries with 1821, when the vessels were loaded, to the same marks, and it will be found, Sir, that the difference made is incomprehensible, if the mode of measurement is insisted on as correct.

It is known to me as a nautical man, that all vessels, constructed for burthen, will carry a perch to a ton; (that is to say,) a vessel of 90 tons will carry 90 perches: the sloop Halcyon has carried fifteen perches more than her tonnage. The Navy Commissioners will confirm my assertion, or Mr. Homans, who is an old sailor, and knows these things, that all flat burthensome vessels, in rivers, will carry at least perch for ton. All the Captains of the freighting vessels declare it, and leave the employ in consequence of short measurement, and other difficulties, that are thrown in their way.

The Quarrymen have quit their quarries, in consequence of hearing of the exaction respecting Rip Rap stone, which is contrary to justice; the nature of the Rip Rap contract, contrary to custom, and, in our opinions, contrary to good judgment.

We have seen the massive works of Europe, such as Cherbourg, and many others, where fortifications have been built in the water, upon (*pierreperdu*,) we have always observed that the stone to be from the size of an orange to a barrel. Diamond Fort, at New York, has for its foundation, stones of every size, in the same manner—but it is necessary to observe that Major Vandeventer's father furnished the stone.

But, sir, suppose that some of 150 lbs, were really preferable, which every man will deny who is acquainted with such work, have the Engineer Department, from custom, and the nature of the contract, a right to make the exaction? Ought they not to make another contract, specifying the kind of stone, &c? Instead of which, after we have got out a vast quantity of what was *agreed* to be the Rip Rap stone, we are told they are not the kind; they must be of 150 lbs. weight, and our vessel sent back with the cargo to Havre de Grace. This circumstance, after what has happened before, has ruined the Company's credit again. We have on the shores, $15,000 in Rip Rap stone, as fine for its purpose as ever was seen, and it might all have been delivered; the men who have quarried it call on us to take it away, as we had agreed to do, and do not hesitate to say they will sell it, if we do not, as they have determined to go away; but it is necessary that the stone goes to Old Point to be measured; we had agreed to pay, according to receipts, before we can settle accounts. Judge, therefore, Sir, of the embarrassed situation in which we are placed. While writing this, there are six quarrymen in our presence who boldly declare that they will sell the stone, and murder the man who shall attempt to prevent the delivery of them. Pray how are we to act, Sir, under such embarrassments? In vain do we tell them that justice will be done to them. Their answer is that they cannot stay here and starve; they have *nothing;* and justice travels too slow, and is too often impeded by malice and intrigue.

It may be asked, why does the Engineer Department wage hostilities against Jacob Lewis & Co.? What interest can the Department have, or any of the corps, in so doing? In answer, it must be told, that this feeling commenced from the moment the contract was taken by J. Lewis & Co. The Company were not aware that they would have to contend with the father, two sons, and a [word ineligible] *the latter the private contract points at.* If they had, they would not have been so hardy as to have taken the field; (however,) it was not long before we discovered that the father was in Washington, and had put in his proposals for the group, and they supposed they had the contract, and they became outrageous when they found their disappointment. The first attempt, then, was to discourage us. Gen. Swift went to Doct. Le Baron, and endeavored to prevail on him to give up the contract; that he would be ruined; that we had taken it too low &c.; although these gentlemen were *within half a cent of us.*

Swift said, there were persons ready to take it off our hands; Major Vandeventer said the same; the father went to our bondsmen, and endeavored to discourage them, and advised them to prevail on us to give up the contract; that there were persons stood ready to take it off our hands. Finding all would not do, the next thing was to destroy us by every possible means. Swift used his influence: for, although an *imbecille,* he had cunning enough to make great friends with the officers. Vandeventer, from his situation, had great power in many ways. Mix, this unprincipled fugitive, he stuck at nothing; he offered a quarter of a dollar more per perch than we were giving. The men employed by him were in the habit of hailing vessels in our employ, and telling the Captains not to work for J. Lewis & Co.; that they would never be paid; every obsticle was produced at Old Point Comfort. Col. Armistead's brother, a sutler, was in the habit of saying, that J. Lewis & Co. would

be ruined; they had better give up the contract; there are persons ready to take it off their hands, &c.

The measurers, when the Captains found fault, always were in the habit of saying, tell J. Lewis & Co. they had better give up the contract; *there are persons ready to take it off their hands.* There were no landing places prepared to give that facility in landing the stone, *which, by contract, we were entitled to.* A fleet of our vessels were sent back, with their cargo. All these circumstances combined, must inevitably have produced our ruin, had not your timely intervention prevented it.

After finding all attempts to ruin us proved abortive, then other expedients were thought of; we received information that Col. Armistead had entered into a contract with a Messrs. Pomfry and Baker, of Georgetown, which those persons said was part of the contract of Jacob Lewis & Co.; it was hinted to us, that this an understanding between the Colonel and these persons, who, Gen. Mason will tell you, are base characters.

In a few days I received a letter from Colonel Armistead, which confirmed my suspicious, the substance of which you will find in my answer thereto, herewith enclosed. I heard no more of the business. The next thing I hear, is requiring our Captains should transport the stone 30 to 40 yards from the sides of the vessel, then put them on a high pile; this was calculated to drive all the Captains away; the next thing was refusing to receive the cargoes as marked by Mr. Smith, and marking them over again, to our great *prejudice;* the cap sheaf, is that of requiring that all Rip Rap stone should be 150 lbs. I *presume avoirdupoise.*

It is remarkable, that they took from the deck load *only*, if the vessel they sent back, six perches of building stone, at Point Comfort, yet refused the cargo for the Rip Raps, which must have been half fine building stone, although sent down for Rip Raps; this answered their great purpose; the vessel was freighted, and belonged to a person who had three others, all of them he withdrew, in consequence of it, from our service, and none others will come into it, and if they should, they run but one trip.

We will undertake to prove, that Colonel Armistead was concerned with the mason at Old Point, in the contract for brick; we know not who is concerned with him in building the work; but when we are left in the wide field of conjecture, we have a right to draw our own inferences.

We have related all these facts with simplicity and freedom, in the same manner that we should have done viva voce: for their *correctness we pledge ourselves when called on.* We conclude, by supplicating your immediate interposition.

While writing this, we are handed a copy of a letter from Colonel Gratiot, which we take to be a quiz; however, it goes to show the spirit of the times.

I herewith enclose it for your perusal.

We have the honor to assure you of our high consideration and profound respect.

J. LEWIS & CO.

Havre de Grace, June 21, 1821,

TREASURY OF THE UNITED STATES,
Washington, August 8th, 1818.

SIR: Enclosed you will find my draft, No. 2,617, on the Branch Bank of the United States, at New York, for $10,000, the amount of warrant, No. 2,443, issued by the Secretary of War, on receipt whereof be pleased to favor me with an early acknowledgement, specifying the sum received.

With due consideration,
I am, sir, your obedient servant,
THS. T. TUCKER,
Treasurer of the United States,

Capt. ELIJAH MIX.

January 25, 1827.

Above is the form of the letters that are transmitted from the Treasurer's Office, in which letters drafts are enclosed for the payment of warrants. No copies of such letters are kept in the office.

THS. T. TUCKER, *T. U. S.*

FORTIFICATIONS.

To THOMAS TUDOR TUCKER,
Treasurer of the United States.

Pay to Captain Elijah Mix, at New York, (out of the moneys deposited with you on account of the Military Department,) the sum of ten thousand dollars, on account of Fortifications, for which sum he is accountable.

For which payment this shall be your warrant.

No. 2,443.

Given under my hand, and the seal of the War Office of the United States, this eighth day of August, 1818.

$10,000.

J. C. CALHOUN, *Secretary of War.*

Countersigned,
RICHARD CUTTS, *2d Comptroller.*

Registered—For the Third Auditor.
J. THOMPSON, *Chief Clerk.*

Draft 2,617 payable at the Branch Bank, New York.

No. 2,617—Registered August 8, 1818.

For the Register,
C. DAWSON.

No. 2,617—$10,000.

TREASURY OF THE UNITED STATES,
Washington, August 8, 1818.

SIR: At sight, pay to Captain Elijah Mix, of the Army, or order, ten thousand dollars, value received.

THS. T. TUCKER, *Treasurer U.S.*

To JONA. SMITH, ESQ.
Cashier Bank United States.

Payable at the Branch Bank, New York.

Endorsed by E. Mix.

Received payment.

SAMUEL COOPER.

I have no recollection of receiving a written acknowledgment from Mr. Mix.

TIL D. DASHDELL, Clerk.

January 25, 1927.

No. 67.

Chairman of the Committee to the President of the United States.

CAPITOL, COMMITTEE ROOM,
January 30, 1827.

SIR: I am directed by the committee, to whom was referred the communication of the Vice President of the 29th of December last, to desire you to inform them whether "the private statement prepared at Engineer Department, in relation to charges preferred against certain officers of the War Department, by Commodore Lewis, for the information of the President of the United States, remains among the papers in the President's possession; and, if so, to request you to forward the same to the committee."

I have the honor to be, sir,
Your obedient servant,
JOHN FLOYD,
Chairman Select Committee.

The PRESIDENT *of the United States.*

No. 68.

President of the United States to the Committee.

JOHN FLOYD, Esq. *Chairman*
of a Select Committee House of Representatives, U. S.
WASHINGTON, *30th, January, 1827.*

SIR: In answer to your letter of this day, I readily state, that the paper to which you refer is not, and never has been, in my possession.

With respectful consideration, &c.

JOHN QUINCY ADAMS.

No. 69.

Chairman to Secretary of War.

COMMITTEE ROOM, CAPITOL U. S.
February 8, 1827.

SIR: I am directed by the Committee to which has been referred the letter of the Vice President to the House of Representatives, dated the

29th of December last, to inquire of you "whether, at any time, it was the practice of Government to make advances without written instructions from the officers who asked for advances; and whether there are any instances in the Department where the practice has been dispensed with; and, if there are, to request you to state such instances to the Committee."

I have the honor to be,
Very respectfully, Sir,
Your most obedient servant,
JOHN FLOYD,
Chairman Select Committee.

Hon. JAMES BARBOUR, *Secretary of War.*

No. 70.

Secretary of War to Committee.

DEPARTMENT OF WAR,

February 10th, 1827.

SIR: In compliance with your letter calling for the usage of this Department in the issue of warrants, I beg leave to enclose the report of the Clerk charged with that duty. The usage of the Department at this time, which I found established when I came into it, is, for the officers superintending the different branches of service, to address a letter to the Head of the Department, stating the sum required, and the object. The Head of the Department signifies his assent by putting his initials on this requisition. It is then sent to the warrant Clerk, who draws a warrant on the Secretary of the Treasury, which is signed by the Secretary of War: It is then countersigned by one of the Auditors, and the Second Comptroller. The letter of the subordinate officer is then registered and filed in this Department.

In the report of the warrant Clerk, it will be seen that the usage formerly was not regulated, and hence, in the months of July, August, and September, 1818, while requirements were generally made, the instances referred to in his report present the exceptions.

I have the honor to be,
Your obdient servant,
JAMES BARBOUR.

Hon. JOHN FLOYD,
Chairman of the Select Committee,
on the Letter of the Vice President, Ho. of Reps.

The following sums have been advanced to sundry persons, for which no written requisitions appear on the files of this Department.

Date		Amount
1818	Passed through the Third Auditor's Office:	
July 1	To Lt. Tho. W. Maurice, Engineer, on account of Fortifications	$20,000
	To Lt. Wm. H. Chase	3,000
	To Charles Hegins, Cont. for Subsistence	5,000
2	To Benj. G. Orr, Cont. for Subsistence	10,000
8	To Wm. P. Rathbone, Cont. for Subsistence, Bill of Exchange	50,000
	To Matthew L. Davis, Cont. for Subsistence	10,000
10	To Capt. J. D. Hayden, Quartermaster's Department	1,000
16	To Col. Jacob Hindman, Fortifications	5,000
20	To Brig. Gen. Thos. A. Smith, Quartermaster's Department	3,000
22	To Capt. Saml. Babcock, Engineer, Fortifications	5,000
23	To Saml. Cooper, Agent of Fortifications, New York	15,000
28	To Lt. Col. A. Eustis, Fortifications	1,500
Aug. 1	To Benj. G. Orr, Cont. for Subsistence	13,000
8	To Elijah Mix, Cont. Fortifications	8,000
10	To Lt. Col. J. G. Totten, of Eng., Fortifications	10,000
13	To Brig. Gen. T. A. Smith, Quartermaster's Department	2,000
14	To Richard Harris, Fortifications	30,000
15	To Lewis Morgan, Agent of Fortifications	1,200
17	To Lt. Col. A. Eustis, Fortifications	1,500
21	To Lt. T. W. Maurice, of Eng., Fortifications	20,000
22	To Capt. Saml. Babcock, of Eng., Fortifications	3,000
25	To Col. Jacob Hindman, of Eng., Fortifications	3,000
Sept. 2	To Brig. Gen. T. A. Smith, Quartermaster's Department	3,000
7	To Darby Noon, Dep. Com., Quartermaster's Department	5,000
11	To Robinson & Taylor, Cont., for Subsistence	10,000
	Passed through Second Auditor's Office:	
July 8	Lt. W. C. Lyman, Arsenal at Augusta, Geo	5,000
15	Capt. Geo. Talcott, Arsenal at Watertown, Ms	15,000
25	Major J. Dalaby, Arsenal at Watervliet, N.Y	8,000
Aug. 4	Daniel Bussard, Cont. for Powder	10,000
8	Lt. John Symington, Ordnance	3,500
10	Capt. R. L. Baker, Ordnance	5,000
	Lt. W. C. Lyman, Arsenal at Augusta	10,000
11	Alex. McRae, Richmond, Cont. for Muskets	15,000
17	John Clarke & Co., Richmond, Cont. for Cannon, etc	15,000

It may be proper to state that, at this period, and previously, warrants were issued by the Secretary of War, upon verbal as well as written recommendations; and the latter was not invariably established, until after the Chiefs of the several disbursing branches of the Staff were fixed at Washington, and attached to the War Department, in the Autumn of 1818, and were held responsible for the disbursements of the appropriations for their branches of service, respectively. Written recommendations for advances, fect., were then uniformly required; and, sometime afterwards, the approval of the Secretary of War, by fixing the initials of his name to the recommendation, was established, before a warrant could be issued.

WAR DEPARTMENT, *February 10, 1827.*

L. EDWARDS.
Warrant Clerk.

VIEWS OF THE MINORITY

Of the Select Committee appointed on the 29th December last, on the letter addressed to the House of Representatives of the United States by John C. Calhoun, Vice President of the United States, in the shape of a report of that committee.

FEBRUARY 13, 1827

Read and laid upon the table.,

The Select Committee to whom was referred the Communication of the Vice-President, of the 29th of December last, have had the same under consideration, and

REPORT:

That the committee convened as soon after their appointment as could be done with convenience, to consider the subject referred to them. The first step which they thought it advisable to take, was, to inform the Vice President that the committee was organized, and would receive any communication he might think proper to make. This was accordingly done on the 2d of January last.

In reply to which, the committee received a letter on the 3d, stating, that his communication to the House, of the 29th of December last, would make known to the committee his motive for soliciting an inquiry, that he had nothing further to add than to reiterate his desire to have a full investigation; and that, in order to avoid the inconveniences and delay of communicating by letter, he had requested Mr. M'Duffie to act as his friend before the committee. Upon the receipt of this letter, Mr. M'Duffie was admitted accordingly.

The committee then proceeded to inquire, whether there were any charges on file in the Department of War, or any paper or document which went to show that the Vice President had been, whilst Secretary of that Department, engaged in any contract, or in the profits of which he in any way participated. The result of this inquiry was, that there were no charges or other evidences of any kind against him.

Yet, as a confidential letter, signed by E. Mix, and addressed to the author of "Hancock," who was known to be Major Satterlee Clark, a paymaster who had been dismissed from the service whilst Mr. Calhoun was Secretary of the Department of War, for not settling his accounts, as will be more distinctly seen by reference to the testimony of Colonel Towson, had appeared in one of the newspapers printed in this District, and the Vice President, in his communication to the committee of the 3d of January last, having referred to it, and desiring a full investigation, the committee felt it their duty to examine the whole subject, fully and freely, as containing the foundation of his letter to the House of Representatives.

From an inquiry into this subject, it was ascertained by the committee, that Howes Goldsborough and Elijah Mix were competitors for a contract with the Government of the United States, in December last, and on Goldsborough's arriving in this City, he procured from Major Satterlee Clark, the author of the publications signed "Hancock," a copy of the confidential letter from Mix to the author of Hancock, to be used in depriving Mix of the contract, should he find it necessary.

From this copy, a transcript was taken by Wm. F. Thornton, the junior editor of the Phoenix Gazette, and published by him in that paper the next day, which was the 28th of December last, accompanied with his editorial remarks. This letter of Mix, to the author of Hancock, is an exhibit among the files of the committee, and was acknowledged by him to be in his own hand writing. The motives which induced him to make this communication, he has himself developed. To

extort money seems to have been his aim, without any scruples as to the means by which his object was to be accomplished.

From a view of the whole evidence on this part of the subject, the committee are unable to find any thing warranting the belief that the officer of the head of the Department of War had any agency in the publication of this letter in the Phoenix Gazette.

It is due, however, to Mr. Calhoun, that the committee should state, that his communication to the House of Representatives was founded exclusively on the publication in the Phoenix Gazette, of the 28th of December, and that the facts assumed in that communication, viz: that the letter of Mix, to the author of Hancock, had been made the basis of an official act, and would of course be filed among the records of the Department, were professedly stated; the first upon the authority of that paper, and the second as an inference from the statement contained in it.

In the early stages of this investigation, the committee discovered, from the letter of Major Vandeventer to E. Mix, dated the 7th of August, 1818, and to which they refer, that a person, whose name was to have been kept secret, was interested in the contract, commonly called the Mix, or Rip Rap contract.

On making this discovery, the committee felt bound, if possible, to bring to light this hidden associate; and in following up their inquiries they have been led into a much wider field than could at first have been anticipated. They have, in short, found it necessary to go thoroughly into the origin and history of the Rip Rap contract, which involved the necessity of summoning numerous witnesses, from distant parts, who were believed to possess knowledge of this contract; consequently requiring much time for their examination.

The committee, are, however, unanimously of opinion, that there is nothing in the evidence to warrant a belief, or even the slightest suspicion, that the Vice President was interested in any contract made with the Department War, whilst he was entrusted with the discharge of its duties; or that he, either directly or indirectly, participated in the profits of any such contract; or that he connived at such participation in any of his subordinate officers.

The prominent figure which Elijah Mix makes in this transaction, throughout, occupying the two fold attitude of an informer and a witness, seems to demand of the committee a direct expression of the opinion they have formed of his general character for veracity, as well as of the specific opinion they have formed in relation to some of the most prominent parts of his testimony.

On the subject of his general character for veracity, they have no hesitation in saying, that he is entirely destitute of the slightest claim to be believed upon his oath.

They have come to this conclusion, not only from the testimony of respectable witnesses, going to establish the general infamy of his character, but from the total disregard for truth which he manifested during the progress of his examination, and the numerous contradictions in which he involved himself, whilst giving in his testimony in the presence of the committee.

Without attempting to detail the numerous instances in which it is apparent to the committee, that he has sworn to willful and deliberate falsehoods, they have confined themselves to parts of his testimony,

which demand a separate and distinct consideration on other grounds.

On his first examination he produced a letter, written by Major Vandeventer to him, dated the 7th of August, 1818; commencing with the following mutilated sentence. "I am very sorry that the ——— are concerned in the contract, will not agree to admit George on the terms you have stated." The letter then goes on to state that the writer, (Vandeventer) had informed Major Cooper, his father-in-law, that there was one other person concerned in the contract, whose name was not to be mentioned, and the letter seems to be designed to prevail upon Mr. Cooper to become one of the sureties for the fulfillment of the contract, without the condition on which it appears, he was insisting—that his son George should have one fourth of the contract. Mix states, that this letter was obliterated when he received it and that he does not know, what were the words that have been erased. The committee are decidedly of opinion, that the erasure was made by Mix, for the purpose of throwing a mystery over the matter, and of exciting suspicion that the person alluded to in the part obliterated was Mr. Calhoun.

That the obliteration was not made by the writer of the letter is clear, from several obvious considerations. If he had been so desirous to conceal the words erased, the obvious and natural course would have been, to have omitted them altogether, instead of first writing them down, and then making an erasure that rendered the sentence unintelligible.

Another circumstance that tends to satisfy the committee that the erasure was made by Mix, is, the manifest difference between the ink with which the letter is written, and that with which the erasure is made, and the equally striking resemblance between the ink used in making the erasure in question, and that used in making other erasures in the same letter, which Mix acknowledges were made by himself. It is obvious to the committee, that the word "the" is left unobliterated immediately preceding the erasure, in order to raise a suspicion that the word "Secretary," or "Secretary of War," occupied the space which followed: but, not understanding the rules of grammar, which, otherwise, is an ingenious device, has left visible the words "who are concerned," immediately after the erasure, from which it is evident that the definite article preceding the erasure must have agreed, not with "Secretary," but with some common substantive in the plural number, such as "the other gentlemen," "the rest of the gentlemen" according to the explanation given by Major Vandeventer. This explanation of the words obliterated, which is almost self-evident, conclusively shows, that Vandeventer could have no motive to make the obliteration, and as clearly shows the base motives by which Mix must have been actuated in making it.

If, to these circumstances, we add the oath of Major Vandeventer, that he did not make the erasure, the fact that Mix did, is established by a conclusive weight of evidence.

On his first examination, Mix stated, that, previous to the 13th of April, 1821, he presented to Mr. Calhoun, among other papers explanatory of his claims, a letter from Major Vandeventer to him, (Mix,) written whilst they were both in the city of New York, dated the 1st of April, 1821, and containing a copy of a confidential letter which Vandeventer had that morning written from New York to

Mr. Calhoun. In the first instance, Mix stated to the committee that he could not recollect the contents of the confidential letter, further than that it informed Mr. Calhoun that Mix had been brought to terms, and would consent to the transfer to Goldsborough. He afterwards, during the same examination, stated that it contained something about Vandeventer's going abroad upon a foreign mission. A member of the committee perceiving that he had a paper in his hand, to which he occasionally referred, asked if that was a copy of the letter in question. He said that it was not a correct copy, but that he had two others at home, one of which was correct, or nearly so. On being requested to give up the paper he held in his hand, he refused, stating it was too incorrect to be exhibited as a copy. The next day he produced the two other alleged copies, together with the one he had refused to give up the day before. On being asked which of the three was the most correct copy, he said he could not tell, but stated that they were all copied from the original while it was in his possession. He now stated that he lost the letter in the Department of War, five or six months or a year before Mr. Calhoun left it.

He further stated, that Mr. Calhoun, in the presence of General Macomb and Captain Smith, of the Engineer Corps, took the bundle of papers, laid them on his table before him, and said he would attend to them. That he (Mix,) retired, but returned from five to ten minutes, and wrote a note to Mr. Calhoun from the audience room, requesting either to see him or have his papers returned. That the bundle was presented to him by the Messenger, and on examining it, he perceived that the letter of the 1st of April, 1821, was missing; that he immediately went into Mr. Calhoun's room and stated the fact that a paper was missing, upon which Mr. Calhoun called Major Vandeventer and asked him if he knew any thing of it. Major Vandeventer answered promptly, no; and Mr. Calhoun, looking sternly, first at Vandeventer and then at Mix, said he knew nothing of it.

On examining the three copies, they are all found to agree tolerably well in substance, but differ, both in the arrangement and construction of the sentence, and in the words used to express the same idea. The composition is evidently that of an illiterate man, who does not understand the rules of grammatical construction.

Major Vandeventer denies unequivocally that he ever wrote such a letter to Mr. Calhoun, and also states, that on the occasion alluded to by Mix when he states the loss of the letter in the Department of War, he had nothing further to do with the bundle of papers than to take them from Mr. Calhoun's table, in compliance with his order, and deliver them to the Messenger at the door, to be handed by him to Mr. Mix. He also states, that the bundle appeared not to have been opened at all, and Captain Smith also says, that Mr. Calhoun was engaged in official business with him, during the whole time the papers remained there.

The committee have no hesitation in pronouncing these alleged copies of a confidential letter from Major Vandeventer to Mr. Calhoun, to be gross fabrications, and that the whole story about receiving such a letter from Vandeventer, and losing it in the Department of War, is a tissue of falsehoods throughout.

To say nothing of Mix's character, and the postive denial of Vandeventer, both as to the fact of writing such a letter, and as to the

fact of taking it out of the bundle, in the Department of War, the story is in itself so improbable, and contains so many internal evidences of fabrication, that the committee feel bound to reject the papers presented, as forgeries.

It appears that Major Vandeventer had gone to New York to prevail upon Mix to consent to the transfer to Goldsborough, and had succeeded in that object, by personal communication. It is quite likely, therefore, that he used all the arguments he could suggest, in the conversations he had with Mix on the subject, previous to obtaining his consent; and it is particularly to be presumed, that, if he had any thing confidential, he would have communicated it verbally, and not in writing. Nothing can be more unnatural and improbable upon the face of it, than that he would have formally reduced to writing, and sent to a man who was in the same city with him, confidential matter, which he must have previously stated in conversation, if the whole be not a fabrication. In addition to the improbability of the story itself, the papers presented as copies of the confidential letter, have internal evidences of their having been fabricated by Mix. He swears that they were all taken from the original whilst in his possession. If he had merely taken copies from the original, it would have been much easier to take a true copy than an incorrect one, and all the objects of copying would be defeated by not making the copy accurate. Now it is found that all the three copies taken, as he says, from the same original, differ from each other, in the construction, composition, and arrangement of the sentences.

But the most conclusive badge of forgery stamped upon the papers themselves, is their composition. They are evidently composed by an illiterate man, who does not understand the art of writing good English, and corresponds, in this respect, with the general character of Mix's composition. On the contrary, from the letters of Major Vandeventer, it is obvious that he writes correctly and grammatically. Moreover, it is highly improbable, in the nature of things, that Mix should have taken three separate copies, unless we suppose he had a foresight of its loss, and even if that had been the case, he would have taken one correct copy, instead of three incorrect ones. The story relative to the loss of the original, is equally improbable, and is accompanied by palpable contradictions. He first stated that he lost it previous to the 13th of April, 1821, and afterwards that it was five or six months or a year before Mr. Calhoun left the Department of War. That he should have left the papers with Mr. Calhoun to be deliberately examined and returned, and asked for them in five or ten minutes, can only be accounted for upon the supposition that his object, from the beginning, was to give a plausible face to the story he was inventing.

The whole of his evidence relative to this letter is contradictory and suspicious. He stated, in the first instance, that one of the copies was nearly correct, but that the one he then had with him was so inaccruate that he would not present it. The next day, when he produced all three of the copies, he could not tell which was the most accurate, or whether the one which he had refused to give up, as being too inaccurate, was less accurate than the rest. That copy, in fact, contains all that the others contain, and is at least equally as full as they are.

The next portion of the testimony of Mix which the Committee think proper to notice separately, is the letter of Major Vandeventer, of the 17th of October, 1820, which he produced on his second examination, with the accompanying testimony given by him as to the execution of the second bond. Major Vandeventer had stated that the second bond was executed a short time after the first, to wit: some time in the early part of the Fall of 1818.

Mix produced this letter of the 17th of October, 1820, written by Vandeventer to him at New York, in which Mix is requested to "attend to the bond." Seizing upon this expression in Vandeventer's letter, to give color to his story, he swears that the bond was executed in New York about the date of the letter, and that the reference in that letter was to the executing of the bond. After repeatedly swearing to this fact, in answer to several questions, he was asked if he distinctly recollected to have signed the bond, and to have seen the sureties sign it, in the latter part of 1820. To this he answered, that he distinctly recollected signing the bond, but not in the Fall of 1820. He then admitted that the second bond was executed a short time after the first. Major Vandeventer states, that the request in the letter of 17th of October, 1820, about the bond, referred to the procurement of the certificate of the Recorder as to the sufficiency of the securities; and General Swift swears, that the second bond was lodged in the Engineer Department in the Fall of 1818, before he left the office of Chief Engineer. It is evident, therefore, that the whole of Mix's testimony, relative to the execution of the second bond in 1820, is wantonly and maliciously false, and intended to discredit Vandeventer.

The last piece of the testimony of Elijah Mix, upon which the committee deem it necessary to pronounce a separate and specific opinion, is the letter of Major Vandeventer of the 3d of August, 1818, with the accompanying explanations. His letter was produced at the close of his second examination, after he had repeatedly stated that he had no other letters of Vandeventer in his possession. The letter was multilated in several places by cutting out words, and as these mutilations render the letter unintelligible, to a certain extent, the committee feel it their duty to express their opinion, both as to the person who made them, and as to the object for which they were made. They have no hesitation in saying they were made by Mix, for the purpose of exciting suspicion against Mr. Calhoun, and that he is not to be credited when he says it was done by Vandeventer. That the House may have the means of estimating the character of this witness, the committee have thought it expedient to state briefly and distinctly the circumstances connected with this part of his testimony. Near the close of his last examination, he voluntarily stated to the committee, that since his first examination Major Vendeventer had come to him and requested to know whether he could find the letter of the 3d of August, stating that he desired permission to cut out or erase certain words that were in it. That he, Mix, found the letter the next day, and carried it to Vandeventer, at the Department of War, who requested him not to speak about it there, for that they were watched and would be overheard, and proposed to go to the house of Mix that night to converse with him on the subject; that Vandeventer came to his house accordingly, and prevailed upon him, by importunity, to permit the letter to be mutilated, and that it was

mutilated accordingly, by Vandeventer. In answer to repeated questions seeking to ascertain the words cut out, he always answered that he did not know any thing of them; yet stated that the words cut out in two separate places were, he believed, the same.

Major Vandeventer, on being recalled, stated that he had never seen the letter in question since he wrote it: that Mix never had been to see him at the Department of War, since his first examination.

Independently of the established infamy of Mix's character, and the positive denial of Major Vandeventer, this story has all the characteristics of a fabrication. Nothing is more improbable than that Major Vandeventer should have placed himself completely in the power of an enemy who was using every effort to destroy his character; and if he had ever done so, he would rather have obtained possession of the letter and destroyed it, than have left it in the hands of his enemy, just so far mutilated as to excite suspicion, and no further. For it is to be remarked that the word "the" is artfully left immediately preceding two or three of the excisions, with the view, no doubt, of making the impression that the word "Secretary" existed in the space cut out; though Mix repeatedly said that he did not know what were the words cut out. The committee, therefore, cannot entertain a doubt that the mutilations in the letter were made by Mix.

This contract, though formed on the 25th of July, 1818, between General J. G. Swift, Chief Engineer, on the part of the United States, and Elijah Mix, for himself, for the delivery of one hundred and fifty thousand perches of stone at the Rip Raps, in Hampton Roads, was, soon afterwards, divided into four parts, as will be shown by the letters of Major Vandeventer, bearing date the 3d and 7th of August, 1818, in the manner following: One-fourth part to Mix, one-fourth part to Vandeventer, one-fourth part to Jennings, and one-fourth part to a person whose name was to be kept secret.

The only explanation on this part of the subject which it is in the power of the committee to give, is, that they believe the erasures and excisions in the letters of the 3d of August, 1818, and the 17th of October, 1820, contained the words "the General," or "General Swift," as at the time of writing them, Major Vandeventer believed General Swift was concerned in the contract; which impression he now swears was made by the representations of Mix, and was retained until pending the investigation in 1822, when the General made oath that he never had been interested in that contract. Mr. Jennings also swears, that he was informed by Mix, that General Swift was interested in his contract. Mix also admits that he might have told Vandeventer so.

Immediately after this contract was closed, a bond was given for the fulfilment of its conditions, in the sum of twenty thousand dollars, dated the 5th of August, 1818, and signed by Elijah Mix, George Cooper, Samuel Cooper, and James Oakley; sealed and delivered in presence of John Martin and Simon Hillyer. To which is attached the following certificate of the Recorder of New York:

"The sureties having been by me duly sworn, I do hereby approve of them, as good and sufficient.

New York, 5th August, 1818. R. RIKER."

Upon this bond's being received at the Engineer Department, an advance of ten thousand dollars upon the contract was made to Mix,

by a draft upon the Branch Bank of the United States at New York. After this period, it was discovered that there were two errors in the bond: first, that it was for the delivery of one hundred thousand perch of stone, instead of one hundred and fifty thousand, which the contract called for; next, that the name of George Cooper was placed in the bond, as one of the contractors, when Mix alone was the contractor.

Some time after the date of this bond, it was cancelled, and one formed to suit the provisions of the contract, in all particulars, and was forwarded to the Engineer Department, which second bond was dated the fifth of August, 1818, the same day on which the first was dated. At what precise period this bond was received at the Engineer Department is not known; but if the testimony of General Swift and Major Vandeventer is correct, it must have been early in the Fall of 1818.

The sum of ten thousand dollars was drawn from the Treasury, it is supposed, upon a verbal requisition, as there is nothing written upon the subject; this however, previous to the date of this transaction, was sometimes the case, as appears from the testimony of General Swift, and from the communication of the Secretary of the Department of War, to the Committee, dated the 10th day of February, 1927.

The Committee think it further necessary to state, that the certificate of the Recorder of New York, which was attached to the first, or the cancelled bond, is not attached to the second or new bond; but that when a copy of this bond was sent to a committee of the House, in the year 1822, the copy of the certificate of the old, was attached to the new bond, and certified by an officer to be a true copy. The manner in which this irregularity happened, is accounted for in the testimony of Captain Smith. It does not appear in any part of this inquiry, that the United States sustained any injury, although there were some irregularities.

After taking all the testimony which could be had, calculated to throw light on the subject, the Committee feel it their duty to state to the House, that there is nothing in the evidence warranting a belief, or that tends to induce even the slightest suspicion, that Mr. Calhoun was, either directly or indirectly, concerned in any contract made with the Department of War, whilst he was Secretary of that Department, or that he participated in the profits of any such contract, or that he connived at any such participation, in any of his subordinate officers; and that, in their opinion, there are no grounds for any farther proceedings.

Report of the Committee on the Judiciary, 42d Congress, 1873, on Inquiry as to Impeachment in Credit Mobilier Testimony (Regarding Schuyler Colfax, Vice President of the United States)

HOUSE OF REPRESENTATIVES

42d Cong., 3d sess. Report No. 81

INQUIRY AS TO IMPEACHMENT IN CREDIT MOBILIER TESTIMONY

FEBRUARY 24, 1873.—Ordered to be printed

Mr. B. F. BUTLER, from the Committee on the Judiciary, submitted the following

REPORT

The Committee on the Judiciary, to which was referred the resolution of the House passed February 20, 1873, in the words following:

Resolved, That the testimony taken by the committee of this House of which Mr. Poland, of Vermont, is chairman, be referred to the Committee on the Judiciary, with instructions to inquire whether anything in such testimony warrants articles of impeachment of any officer of the United States not a member of this House, or makes it proper that further investigations should be ordered in his case—

having fully considered the matter, pray leave to submit the following report:

It is apparent that this resolution brings before the House subjects of the gravest moment, involving most important considerations of fact and law thereto applicable. There can be no more delicate and sometimes painful duty devolved upon the House of Representatives and no higher prerogative is given to it by the Constitution than its power to be exercised as the grand inquest of all the nation by presenting articles of impeachment against civil officers of the Government. The very fact that one is accused who has so far possessed the confidence of his fellow-citizens the Executive, as to have had the interest of the Government confided to his charge as a civil officer of the United States, brings always before the House derelictions of duty, which, if found, involves consequences to the individual, as well as to the country, of the most serious character. Wherefore, your committee have entered upon this subject with the intent to give it the fullest deliberation possible to us, in the waning hours of the session, and for that purpose they have deliberated upon it in special sessions.

The resolution it will be observed refers to your committee "the testimony taken by the committee of this House of which Mr. Poland is chairman, with instructions to inquire whether anything in such testimony warrants articles of impeachment of any officer of the United States *not* a member of this House, or makes it proper that further investigation should be ordered in his case."

The question first presented is the conduct of what civil officers of the United States is brought into question by this testimony?

Your committee take leave to observe that a member of the House of Representatives is not an officer of the United States to whom the constitutional remedy of impeachment applies. This was long ago decided in Blount's case by the Senate of the United States where an attempt was made to impeach him because of alleged offense. Your committee find but two civil officers of the class liable to impeachment whose acts are called in question by the testimony submitted to us. One, the Vice-President of the United States, the other, Mr. Brooks, late Government director of the Union Pacific Railroad, who was an officer provided for by law, and appointed by the President. The first is still in office; the second has long since ceased to be such officer.

The case of Mr. Brooks, by the terms of the resolution, does not seem to be before us, as he is now a member of the House. If there were any doubt upon that subject your committee would resolve it by asking instruction of the House upon that point; but the fact that the conduct of Mr. Brooks in this regard was at the time of the passage of the resolution, and now is before the House upon a report of another committee, recommending his expulsion from the House because of the transactions set forth in the evidence referred to us, would seem to furnish a conclusive reason for the exception made in this case, and determine all doubts upon the matter. Wherefore your committee have given no further consideration to the evidence in that behalf.

For the purpose of applying the precedents and principles of law which regulate the presentation and trials of impeachment, your committee have found it convenient, in the case of the Vice-President, to assume, without expressing any opinion upon the facts to be found therein that the evidence proves all that can be possibly claimed to be inferred from it because of his being a holder directly or indirectly, and receiving the profits thereof of the stock of a corporation known as the Credit Mobilier of America, while a member of Congress. Giving, therefore, as in case of a demurrer to evidence, every possible intendment against Mr. Colfax, it would seem that it might be claimed from the evidence than that in the winter of 1867–'68 he became the owner by purchase, at par and interest on that value, of certain stock in the Credit Mobilier Company from Oakes Ames, when that stock was known to both to be worth very much more than par, and that he received the profits or dividends while Ames held the stock and still holds the same in trust for him, although the beneficial interest in the stock, if not the legal title, remains in Mr. Colfax down to-day. That during the sessions of Congress of 1867–'68 and 1868–'69, while holding such interest in the stock, Mr. Colfax, as a member of the House of Representatives and its Speaker, presided over its deliberations. During which session certain matters of legislation in which his personal interest as such stockholder were involved, were attempted to be advantageously or injuriously affected by legislative action.

The Credit Mobilier of America and its connection with the Union Pacific Railroad, and the conjoint interests of the stockholders of both, have become so far matters of public notoriety, that your committee do not deem it necessary to go into any recital of its history in order to an understanding of their report. It may however, be convenient to have on record, if this report should ever be drawn into precedent, that the Credit Mobilier was a State corporation, organized by the principal stockholders of the Union Pacific Road to receive from themselves the contract of building that road, which had obtained by legislative grant large endowments of lands and bonds of the United States to be held in trust only for the construction and equipment of the road, large amounts of which, to a considerable number of millions of dollars, the stockholders of the Pacific Road, through the intervention of the Credit Mobilier and other devices had divided among themselves and confederates as pretended profits of building the road, while, in fact, they took to their own individual profit and use these very large sums belonging to the Government of the United States, and intrusted to them for a specific use only, in violation of that trust. Drawing such inferences as a jury might from the evidence if unexplained, it may be claimed that the stock was sold to Mr. Colfax to influence him as a member and Speaker of the House, and that it did so influence his action in favor of the Union Pacific Road, and incidentally in his own favor as a stock and bond holder in both companies.

Your committee lay aside for the purposes of this report anything which might be presented by the accused by way of mitigation of the facts, or which might extenuate in any degree the supposed guilt of the transaction, because we have desired, in examining the question submitted to us, to assume the facts as clearly and broadly against the accused as any inference from the evidence could possibly justify.

Assuming, then, for this purpose, the facts above stated to be proven, several questions of law meet your committee upon the threshold of the inquiry with which they are charged, "whether anything in such testimony warrants articles of impeachment against" Mr. Colfax as a civil officer.

It is not in dispute that Mr. Colfax became interested in the Credit Mobilier stock before he was elected Vice-President, and whatever were the motives that impelled the transaction they were expected to operate upon him only as a member of the House. Upon the question whether a bribe given to a civil officer to influence his conduct as such officer is an impeachable offense your committee can have no doubt, as it is made such by the express words of the Constitution.

But we are to consider, taking the harshest construction of the evidence, whether the receipt of a bribe by a person who afterward becomes a civil officer of the United States, even while holding another official position, is an act upon which an impeachment can be grounded to subject him to removal from an office which he afterwards holds. To elucidate this we first turn to the *precedents*.

Your committee find that in all the cases of impeachment or attempted impeachment under our Constitution, there is no instance where the accusation was not in regard to an act done or omitted to be done while the officer was in office. In every case it has been heretofore considered material that the articles of impeachment should allege in substance that, being such officer, and while in the exercise

of the duties of his office, the accused committed the acts of alleged inculpation.

In the earliest case of impeachment by the House, that of Judge Pickering, of New Hampshire, the accusation was not even for official acts or misconduct, but he was held impeachable by both House and Senate because of his habits of intoxication while in office. But the gravamen of complaint in that case was that those habits and their effect went with him and affected him in the performance of his official duties.

The case of Judge Chase, which brought out, in the prosecution and defense, all the legal learning and ability of the most brilliant bar of our country, was founded wholly upon alleged acts of malfeasance and misfeasance while actually sitting as a judge.

The case of Judge Peck was for an alleged improper order upon the bench to imprison Mr. Lawless for contempt of court.

In the more recent case of the judge of the eastern district of Tennessee, the accusation was that he abandoned his duties and took part in the rebellion while he was judge, and that official act alone was imputed to him as the offense.

In the still more recent case of a late President of the United States the acts were all imputed to him as such officer of the United States, and the committee who prepared the articles of impeachment were careful to allege each act charged upon him as being done in the exercise of his office.

Your committee have looked with some care to the precedents of impeachment under State constitutions, which are generally framed upon the model of the Constitution of the United States in this regard, and they are not aware of any case wherein an act has been held to be impeachable, or impeachment even attempted, because of it, unless that act so alleged to have been done was in the course of official duty in the office held by the accused, to remove him from which the constitutional remedy was proposed to be applied.

The very recent cases of Judges Barnard and McCunn, of New York, may be claimed to be an exception to this statement in some of the specifications under the articles presented; and, if so, they are the only cases of even limited exception thereto, and of the legal value of that action taken under the state of high political excitement in which those cases were conducted, as precedents the House will judge. To your committee they would seem to serve as warnings, not as guides.

Going back to the Parliament of England, from whose system of parliamentary and common law we have drawn all the principles which have heretofore governed the House and Senate in matters of impeachment, we find no case since the rights of the subject and principles of law and justice have become established, wherein a like rule is not followed.

Your committee are not unmindful that under the claim of omnipotent power by the Parliament of England to make laws, without any substantial negative on the part of the executive, in times of high party feeling the power of impeachment, residing in the Commons, has been used as a punitive power as well as a remedial one, and, in some instances, has extended to offenses alleged to have been committed while the officer was holding another office. But your commit-

tee would also call attention to the fact that in some cases impeachment was used as a method of punishing a subject who held no office at all.

In short, when the Commons of England held the power as against the executive, they punished the king's favorites by impeachment, while the Stuarts held the power as against the Commons, they punished the favorites of the people by the Star Chamber. Our Constitution, in the judgment of the committee, has furnished a safeguard against both of these sources of oppression. Both were well known and considered by our fathers in framing the Constitution. Turning to the debates, meager as they are, it will appear that apprehension was felt that impeachment might be used against the citizen as a punitive power, and therefore words strictly guarding the extent to which the judgment might operate find place in that charter, enacting that the punishment of crime should be left to the ordinary tribunals of justice.

Finding so nearly an invariable current of precedent and authority, your committee next turned to see in how far the rule drawn from precedent accords with the plain and immutable principles of law and justice, and also in how far this rule seems to be necessary to shield the officer from what might happen again, as it has happened before, parliamentary oppression under the pressure of high party and other excitement, as well as to protect the rights of the constituency as to an elective office from being deprived of the services of their officer by his removal by impeachment because of alleged crimes or misdemeanors committed by such officer before the people had chosen him to serve them, and which the electors well might have held not to have been a disqualification of the officer, if such charges had been made against him before the election.

Your committee, therefore, are led to inquire, what is the nature and what the objects of impeachment under our Constitution?

Are they punitive or remedial? Or, in other words, is impeachment a constitutional remedy for removing obnoxious persons from office, and preventing their again filling office, or a power given for punishing an officer, while he is an officer, for some crime alleged to have been committed by him before he was such officer? Your committee are very strongly inclined to the opinion that impeachment was intended by the framers of the Constitution to be wholly remedial and not punitive, except as an incident to the judgment, because we find that the Constitution limits the judgment in impeachment by strongly restrictive words:

> Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States.

If such judgment is a punishment for an alleged high crime and misdemeanor, then why does the same article provide for the punishment of the accused a second time for the same offense? Because the words we have quoted are followed by the provision:

> But the party convicted shall, nevertheless, be subject to indictment, trial, judgment, and punishment according to law.

This, therefore, would leave the party who had been removed from office and disqualified from holding office by the judgment of impeachment, if that is a punishment for his crime, to be the second time pun-

ished for the same offense, which is contrary to natural justice, against Magna Carta, and is most positively forbidden by the fifth article of amendment to the Constitution.

This article also throws some further light on this subject, because in its nervous language it enacts that

> No person shall be held to answer for a capital or otherwise infamous crime, unless upon presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger.

Nor does it appear that this view is affected by the exception in section two, article three, of the Constitution, that the trial of all crimes, except in cases of impeachment, shall be by jury; this exception being necessary only to make the instrument consistent in all its parts with itself, as it had already provided that the impeached could be tried by jury for his crime.

Again, we find impeachment to be remedial in this, that it only provides as a further consequence disqualification for office, by which the evil is cured; that thereafter the Government may not have an officer who has so far forgotten his obligations to his official oath, and to his duty as a citizen, as to have been removed from office for high crimes and misdemeanors, again, by vote of the electors or appointment by the Executive, put in place of honor or trust.

We are also inclined to believe that proceedings of impeachment were intended to be remedial and not punitive, because we have already seen that if punitive at all an entirely inadequate punishment has been provided by the judgment; because the very highest offenses are triable by impeachment, such as treason and bribery, and the sentence may be only removal from an office whose term extends for a few days only, as in the case under consideration.

Again, we are brought to the conclusion that proceedings of impeachment are remedial and not punitive, because, in the case of Judge Pickering, before referred to, impeached for habitual intoxication, the officer was condemned because he became incapacitated for the performance of the duties of his office, and we find that impeachment is the only means known to our Constitution by which a civil officer of the United States elected by the people, or a judge appointed by the Executive, can be removed from office. And certainly habitual intoxication, while it may not be a crime at common law, or by statute, in a private person, may readily enough seem to be a very high crime and misdemeanor in a high civil officer, wholly incapacitating him from performing all his duties; so much so as to be made by the articles of war a ground for removing an officer from the military service.

Again, your committee are inclined to believe that impeachment is not punitive, because, although an officer may have been tried and convicted of a high crime, yet he may be impeached for that very crime as a remedy for public mischief, and thus, in the converse of the proposition above stated, be twice punished for the same offense.

If the conclusions to which your committee have arrived in this regard are correct, it will readily be seen that the remedial proceedings of impeachment should only be applied to high crimes and misdemeanors committed while in office, and which alone affect the officer in discharge of his duties as such, whatever may have been their effect

upon him as a man, for impeachment touches the office only and qualifications for the office, and not the man himself.

It will be seen from a few illustrations that it hardly could have been the intendment of the Constitution that an officer could be impeached for a crime committed by him before his entry into the office from which he is to be removed because, if this were so, there is no constitutional, and, thus far, no legal limitation as to the time during which he may be held so amenable to such impeachment.

One may have committed a high misdemeanor in his early youth, repented it, outlived it, or may have been pardoned, and, in the language of the law, by that pardon "made as white as snow," and yet, without limitation, years afterwards may be impeached for that crime and deprived of an office by him afterward held, which he has filled to the entire satisfaction of all good men. Indeed, impeachment may in this way be used as a means of removing from the possibility of election a popular candidate whom the people desire to elect to the highest office within their gift, if an opposed House of Representatives chose to impeach for a high misdemeanor of many years' standing and present that to the Senate, who, upon finding the fact, are bound to give judgment, or, if not bound, might be willing to give judgment of disqualification from office forever, from the effect of which judgment no power under the Constitution could relieve; for cases of impeachment are expressly excepted, and no law could avail, nor even the unanimous election of the whole people could give absolution.

Your committee are not unmindful that the report of the learned committee of the House made upon the testimony which has been referred to our consideration, has, in the course of its reasonings, likened the cause for which a member may be expelled to the cause for which an impeachment would lie, and argue that "the close analogy between this power and the power of impeachment is deserving of consideration, upon the question whether the House may expel a member for acts done by him before his election."

If this analogy is as perfect as that committee evidently supposes it to be from the stress of argument which they impose upon it, then it becomes our duty carefully to examine the precedents in case of expulsion to ascertain the nature of that constitutional power vested in both Houses of Congress and the class of offenses upon which it may operate, and what, if any, distinction there may be between the consequences following a judgment in impeachment and a vote of expulsion.

That committee thereupon assert "it has never been contended that the power to impeach for any causes enumerated," i.e., treason, bribery, or other high crimes, "was intended to be restricted to those which might occur after appointment to civil office."

Your committee have been unable, from their investigation, to find warrant for this assertion. We have already shown that all the precedents under the Constitution show impeachments to have been for acts done in the very office from which the accused was sought to be removed. We are unaware that there is any case to the contrary in the later decisions in England, or in any States of the Union, and we grieve that the committee, for whom we have so high a respect, have not seen fit to give authority to the House for this so grave and important a proposition of constitutional laws.

Knowing the accurate learning and exhaustive research of that committee, and the long time which they have had this matter under consideration, the Committee on the Judiciary feel quite sure that if any such case in precedent could have been found it would have been stated in support of a proposition of such moment. In the more limited knowledge of your committee, and in the little time they have had to give to this investigation, we have been unable to find any authority or precedents for so broad an assertion of unquestioned power. And your committee take leave to suppose that the immense labors of the committee on the Credit Mobilier in their investigation alone must have permitted them to enunciate a proposition for which it would seem to be difficult to find either precedents or authority.

And we are emboldened on our opinion upon this point, because we do not fail to observe that the learned committee in the analogy which they draw between impeachment and expulsion have not adverted to, but have overlooked in their exposition of the subject the very wide distinction of the effect of proceedings by impeachment and the effect of expulsion of a member for whatever cause.

That constitutional distinction is this: That impeachment may disqualify the impeached from ever after holding office, while expulsion never has been held, except under a statute of England long since fallen into disuse, by which alone the case of Wilkes was for a time attempted to be justified in a limited degree to have such effect. The expelled member may be, and has been, frequently, re-elected after expulsion. The impeached officer never can be elected or appointed to office, after impeachment and a full judgment upon the finding of the fact.

Considering therefore that that committee have overlooked so important a difference, we are permitted to believe that they may not have carefully observed other differences between expulsion and impeachment, which will show the analogy which they have drawn in their argument may aid our own conclusion. Your committee feel that this analogy, whatever it may be, strengthens our argument that an officer may not be impeached for an act done before his election to office, because before we heard the report of the learned committee on Credit Mobilier we had not been led to doubt that no man could or ought to be expelled for any act done by him before his election as a member of Congress.

Our first reason for not doubting upon this point, which we desire to recall to the House and the country, is the plain words of the Constitution, which seem to us clearly to indicate that the power of expulsion is a protective, not a punitive provision of the Constitution. It is found in section 5 of the first article:

> Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Expel for what? For disorderly behavior, *i. e.*, for that behavior which renders him unfit to do his duties as a member of the House, or that present condition of mind or body which makes it unsafe or improper for the House to have him in it? We submit, with some confidence, that the House might expel an insane man, because it might not be safe or convenient for the House to have him within the legislative hall. They can also clearly expel a man for disorderly proceedings in the body, or for such acts outside of the body as render it at the time

manifestly improper for him to be in the House. But your committee are constrained to believe that the power of expelling a member for some alleged crime, committed it may be years before his election, is not within the constitutional prerogative of the House.

We do not overlook the argument presented by the learned committee, upon whose report we are observing, by the phrase:

> **Every consideration of justice and sound policy would seem to require that the public interests be secured and those chosen to be their guardians be free from pollution of high crimes, no matter at what time that pollution had attached.**

But the answer seems to us an obvious one that the Constitution has given to the House of Representatives no constitutional power over such considerations of "justice and sound policy" as a qualification in representation. On the contrary, the Constitution has given this power to another and higher tribunal, to wit, the constituency of the member. Every intendment of our form of government would seem to point to that. This is a Government of the people, which assumes that they are the best judges of the social, intellectual, and moral qualifications of their Representatives whom they are to choose, not anybody else to choose for them; and we, therefore, find in the people's Constitution and frame of government they have, in the very first article and second section, determined that "the House of Representatives shall be composed of members chosen every second year by the people of the States," not by Representatives chosen for them at the will and caprice of members of Congress from other States according to the notions of the "necessities of self-preservation and self-purification" which might suggest themselves to the reason or caprice of the members from other States in any process of purgation or purification which two-thirds of the members of either House may "deem necessary" to prevent bringing "the body into contempt and disgrace."

Your committee are further emboldened to take this view of this very important constitutional question, because they find that in the same section it is provided what shall be the qualifications of a Representative of the people, so chosen by the people themselves. On this it is solemnly enacted, unchanged during the life of the nation, that "No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen."

Your committee believe that there is no man or body of men who can add to or take away one jot or title of these qualifications. The enumeration of such specified qualifications necessarily excludes every other. It is respectfully submitted that it is nowhere provided that the House of Representatives shall consist of such members as are left after the process of "purgation and purification" shall have been exercised for the public safety, such as may be "deemed necessary" by any majority of the House. The power itself seems to us too dangerous, the claim of power too exaggerated, to be confided in any body of men; and, therefore, most wisely retained in the people themselves, by the express words of the Constitution.

One need not have a lively imagination to divine how, if that power of "purgation and purification" can be used as a two-third majority shall "deem the public safety requires" so as to absorb all other powers or branches of the Government, and it may be the rights and powers

of the people themselves. For example, the election of President of the United States in certain contingencies, which have more than once arisen in our history, is to be exercised by the House of Representatives voting by States; and in one of those very instances—in the case of the contest between Jefferson and Burr—a single Representative in a single State determined that contest. How easy to change that vote, and the election of the President of the whole people, by the use of this process of "purgation and purification," under the plea of the public safety, which has been the foundation of the throne of every tyrant and the justification of every usurper and dictator!

We can foresee also this possible, nay, probable, danger from the "purgation," by a majority of the House of the Representatives from Nebraska, Nevada, Kansas, Oregon, Florida, and Delaware, on the ground that has been sometimes stated here by Representatives from the larger States, that they are "rotten boroughs," too small to be made States, and thus the vote of six States out of the thirty-seven would be thrown out in a presidential election by States; and this claim that those States are too small to be States would furnish a ready excuse when such an excuse is desired to accomplish a political end, to say nothing of the use of this power to expel a single member from one or more of the balanced States where one majority in the delegation would turn the election of a President and Vice President, under the claim of purgation and purification—for public safety.

And the learned committee seems to us to have been equally unfortunate in finding precedents for this claim of power of expulsion of a member for acts done before his election, and as a member of the House.

The committee have cited but two precedents in that behalf—one the case of John Smith, a member of the Senate from the State of Ohio, from which case they quote only the somewhat rhetorical report of Mr. Adams, in part these words:

> The power of expelling a member for misconduct results on the principles of common sense, from the interests of the nations that the high trust of legislation shall be invested in pure hands.

The case of Smith, however, was an allegation that, while a Senator, during the very term at which he was held to answer, he had been complicated in the alleged treason of Aaron Burr. It is difficult to see how that can be cited as authority, as to a crime committed before the accused was a member. That case was not before the Senate. It is observable that the learned committee forget to cite the resolution of expulsion which concludes Mr. Adam's report, and shows the facts in the following words:

> That John Smith, a Senator from the State of Ohio, by participation in the conspiracy of Aaron Burr against the peace, union, and liberties of the people of the United States, has been guilty of conduct incompatible with his duty and station as a Senator of the United States, and that he be, and therefore, is, expelled from the Senate of the United States.

And further, during the discussion no Senator claimed that Mr. Smith could have been expelled for any act done by him before his election. But, on the contrary, Mr. Hillhouse, the able Senator from Connecticut, characterizes the report of Mr. Adams as "one containing principles which I can never sanction by my vote; principles which would plant a dagger in the bosom of civil liberty."

We also take leave to suggest that the learned committee might have given, in their report, a little more prominence to the case of Humphrey Marshall, of Kentucky, which they only casually mention, wherein the

same Senate refused to take cognizance of the charge of perjury as a ground of expulsion, because the imputed offense had been committed before the election of the Senator.

In their only other citation your committee are happy to find that they draw their inspiration from the same source with the learned committee on Credit Mobilier, which cites the case of John Wilkes as establishing the doctrine that the House of Commons, of England, by the common lex parliamentaria, may expel a member for acts committed before he was a member of that house. Your committee had come to an entirely different conclusion upon this case. They had supposed, if anything was settled in the case of John Wilkes, it was that such act of expulsion was "contrary to the liberties of the Commons of England." It certainly cannot be held an authority for the proposition that a member may be expelled for acts done before he was a member of the body, because the several acts of John Wilkes for which he was expelled were done after his election to that same session of Parliament to which he was elected and reelected. But *à fortiori*, because Wilkes was sustained by every lover of the principles of freedom, and the acts of the House of Commons in his case have always been cited as an instance of the tyranny of parliamentary bodies.

Your committee had believed, until they read this report, that since the vote of the House of Commons, under the lead of the liberals of England, had blotted out the offensive record (by ordering it to be expunged from the journal, "as subversive of the rights of the whole body of the electors of this kingdom") of the proceedings of a body led by the same ministry who made war upon American rights and liberties and conducted the aggressions which produced the American Revolution, the conduct of such a ministry would never find a defender, much less in a committee of freemen, to cite it as a precedent for the action of a constitutional representative body of a free people.

Your committee believed and still do believe, and therefore aver, that the case of Wilkes was the cause of the limitations upon the qualifications of members, put into our Constitution, and the guarded power of expulsion therein given to both Houses. The case of Wilkes was as familiar to our revolutionary fathers when they framed our Government as Credit Mobilier is to us. They had seen and felt the effects of parliamentary oppression, and they guarded themselves sedulously from it in their constitution of Government.

Nor are your committee shaken in our opinion by the reasoning of that report, that the difference of Wilkes's case, to distinguish it from the case they had under advisement is, that Wilkes's was only a case of a political offense, to wit, libel, and therefore not *malum in se;* because we are brought to contemplate, when that distinction is raised, what might be the condition of some members of the present House of Representatives, in the opinion of other members of this House, and probably some one of that learned committee itself. It will be conceded that there is no higher crime than treason known to a government of laws. It has always been visited by the direct punishment, and in the country from which we received the body of our laws the traitor was not allowed to be buried. Dismembered and disemboweled, he saw his entrails burned before his eyes while yet living, and his head was put upon a pike, in its decay grinning terror to like evil-doers, and his blood was held attainted to the latest generation, so that no pure drop could

descend to his posterity. Yet in the present House of Representatives there are men of whom some of the other members may be of opinion that they committed treason against our Government some ten or twelve years since, and might claim that one cause of the election of some of them was that their constituencies knew that they had committed such treason, sympathized with them in it, and chose them as their representatives because of that sympathy; and we of the House of Representatives would be on our part obliged to admit that, in order that they might be our associates, we removed constitutional disabilities to permit them to sit with us by virtue of that election. Therefore, for this reason, your committee might find itself compelled to dissent from the proposition stated in that report, that "it is hardly a case to be supposed that any constituency, with a full knowledge of a man's guilt or moral turpitude, will elect him." That depends upon the definition which the constituency gives to the act done as to its guilty quality.

We must remember that this power of expulsion has been most frequently used for political purposes, and may be so again. Not many years ago the House of Representatives witnessed a motion for expulsion of the "old man eloquent," once a President of the United States, as "tainted with crime," because he presented a petition for the abolition of slavery. Nay, more a movement for expulsion, changed to a vote of censure, passed by 125 to 60, against Joshua R. Giddings, of Ohio, as a tainted man, unfit for association with his fellow-members, because he presented a series of resolutions declaring that some African negroes, who, having endured the horrors of the middle passage in a slave-ship, had the natural and inherent right to rise upon their captors and oppressors at sea, and regain their liberty taken from them by fraud and force.

No life can be so blameless, no services so exalted, no action so just as always to guard the man against the blasts of passion and prejudice which sometimes sweep over a deliberative assembly.

What, then, becomes of the doctrine put forward in that report, that the right of this process of purgation and purification must be maintained to prevent those tainted by crime from sitting with us; or, as pressed in that report, "that it seems to us absurd to say an election has given a man political absolution for an offense which was unknown to his constituents?"

The offense of which we have spoken was known, not only to the constituents, but to the House, but an election has followed, notwithstanding.

But the learned committee further declare, as a reason why no fixed rule of law should be adopted by the House in cases of expulsion, as follows: "That no rule, however narrow and limited," can prevent exercise of this power of purgation and purification, if two-thirds of House shall see fit to expel a man because they do not like his religious or political principles or without any reason at all. They have no power, and there is no remedy, except by an appeal to the people."

The minds of your committee very much reluct at such a doctrine. We deny the power, that is, the legal power; while we admit the brute force. We deny the right, and there can be no legal power where there is no legal right.

It is for us now to make the precedent that shall restrain bad men in bad times from an exercise of an assumed wrongful power. The only

safety, either for the constituency or the Representative, must be found in a steady line of precedents guiding the action of the House in the matter of expulsion, founded on principles of justice and legal rights carefully restrained within the limits of constitutional law. Nay, "who shall vote as a precedent for any exercise of this claimed power of purification and purgation?" May not the next House of Representatives, composed in two-thirds of its members of republicans of the most pronounced type, under a precedent established by the report of the learned committee, if sanctioned by the House, come back at the next session and undertake the work of purgation and purification from the House of men whom they may believe committed treasonable acts ten years ago? And they will find no legal impediment; for pardon or removal of disabilities does not extend to cases of impeachment by express constitutional exception, and the learned committee insist that the causes justifying impeachment and expulsion are inseparable. Who, then, will dare assert that for offenses committed ten years ago, yea, five years, or one year ago, before the election of a member, the House has power to expel at its caprice, under a constitutional provision which declares "the House may punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member?"

The case of Matteson, cited by the learned committee, it seems to your committee is peculiarly unfortunate to sustain the postulate. But Matteson's case is in so many respects like that under consideration, that it deserves more than the passing notice that the report gives it.

Matteson had been engaged in a case of bribery, and had been re-elected the charge had been made during the re-election and had been denied; and in the last days of the short session, before he was to take his seat in the next House, a resolution of expulsion was brought against him for the crime of being engaged in bribery while a member of, and for slandering the then present House. Before a vote was taken upon the resolutions, he sent in his resignation, so that the resolution of expulsion was laid upon the table, while the other two resolutions finding him guilty of the crime were passed.

At the session of the next Congress another resolution of expulsion was introduced for the same cause, and in the same words, but was antagonized because the act was done while Matteson was a member of a former Congress, and after the fullest discussion, was laid on the table by the decisive vote of 96 ayes to 69 nays, in a House where there were such parliamentarians as Campbell, Covode, Winter Davis, Dawes, Farnsworth, Giddings, Grow, Harlan, Olin, Pike, Seward, John Sherman Wade, Walbridge, and Washburn, voting in the affirmative, in a case where the guilty act was proved and admitted. So that we dissent from the conclusion of the learned committee, that this case of Matteson furnishes no precedent because, as "the whole subject was ended by being laid on the table," it is impossible to say what was decided by the House.

We find ourselves, therefore, from the entire lack of precedents, and upon the reason of the case, compelled to differ in the fullest manner from the doctrine of that report in regard to purification and purgation, and because, among other reasons, your committee cannot well see how the fact of the knowledge of the constituency, that their representative has heretofore committed a crime, can prevent his "presence

bringing odium and reproach upon the body of which he is a member," which would attach to it because of the same crimes, if his constituents did not know them at the time of his election. It seems to us the impure man would need purification and purgation in equal degree irrespective of the knowledge of his constituents.

Our opinion upon the whole matter, therefore, is that the right of representation is the right of the constituency, and not that of the representative; and so long as he does nothing which is disorderly or renders him unfit to be in the House while a member thereof, that except for the safety of the House, or the members thereof, or for its own protection, the House has no right or legal constitutional jurisdiction or power to expel the member. We see no constitutional warrant for his expulsion upon any other ground, and especially not upon the ground of purgation and purification as set forth in the report of the learned committee, against which your committee must earnestly and respectfully protest.

Your committee do not feel themselves called upon to discuss in this connection the legal consequences following from the doctrine of continuation of the offense in a man once receiving a bribe, because if it may be laid with a *continuando* at all the offense, it must continue to affect him ever after, and therefore, having once taken a bribe, he is always deemed to be under the effect of it, for the reason that we are inclined to believe that at some time the effect of the bribe might have spent its force, and it would hardly be a safe rule of legal action to undertake to determine whether that would not happen in five years and might happen in ten. Certainly such considerations would not apply to one who had given a bribe, because the virtue thereof all went out of him when he parted with his money, and there was nothing left continuing in him save the loss of it.

For the reasons so hastily stated, and many more which might be adduced, your committee conclude that both the impeaching power bestowed upon the two Houses by the Constitution, and the power of expulsion, are remedial only, and not punitive, so as to extend to all crimes at all times, and are not to be used in any constitutional sense or right for the purpose of punishing any man for a crime committed before he becomes a member of the House, or in case of a civil officer, as just cause of impeachment; but we agree the analogy stated by the learned committee on Credit Mobilier is in so far perfect. Both are alike remedial, neither punitive.

We have, therefore, come to the opinion that, so far as receiving and holding an interest in the Credit Mobilier stock is concerned, there is nothing in the testimony submitted to us which would warrant impeachment in the case of the Vice President.

In view of all the circumstances, your committee do not deem that we are now required to make any further inquiry, under the resolution referred to us, and therefore report back the same, and ask to be discharged from the further consideration thereof, and that the same lie on the table.

JNO. A. BINGHAM.
BENJ. F. BUTLER.
CHAS. A. ELDREDGE.
J. A. PETERS.
L. D. SHOEMAKER.
D. W. VOORHEES.

I dissent from the report, but I concur in the recommendation to discharge the committee for want of time to make further investigation, and for the reasons expressed in views submitted herewith.

CLARKSON N. POTTER.

FEBRUARY 24, 1873.

I concur in the conclusions of the foregoing report so far as the same have reference to the question of impeachment. I do not feel called upon, by the resolution submitted by the House to this committee, to express any opinion in regard to the power of the House to expel for acts committed before election, and express no opinion in relation thereto.

J. M. WILSON.

"Impeachment for 'High Crimes and Misdemeanors'", Raoul Berger

IMPEACHMENT FOR "HIGH CRIMES AND MISDEMEANORS"**

RAOUL BERGER*

When Congressman Gerald R. Ford proposed in April, 1970, the impeachment of Justice William O. Douglas and asserted that an "impeachable offense" is what the House, with the concurrence of the Senate, "considers [it] to be," [1] he laid claim to an illimitable power that rings strangely in American ears. For illimitable power is alien to a Constitution that was designed to fence all power about.[2]

Article II, § 4 of the Constitution provides that

> [t]he President, Vice President and all civil officers of the United States shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other High Crimes and Misdemeanors . . . .

Despite a plethora of discussion, the scope of the power thus conferred has not received adequate analysis.[3] Many questions remain unanswered. Did the Framers intend to confer unlimited power to

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[1] "What, then, is an impeachable offense? The only honest answer is that an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history; conviction results from whatever offense or offenses two-thirds of the other body considers to be sufficiently serious to require removal of the accused from office. . . . there are few fixed principles among the handful of precedents." 116 Cong. Rec., H 3113–14 (daily ed. April 15, 1970).

[2] James Iredell, "mastermind" of the North Carolina Ratification convention, 2 G. Bancroft, History of the Formation of the Constitution of the United States of America 348 (1882), and later a Justice of the Supreme Court, stated in an address published in 1786 respecting the formation of the North Carolina constitution,

> It was, of course, to be considered how to impose restrictions on the legislature . . . [to] guard against the abuse of unlimited power, which was not to be trusted, without the most imminent danger, to any man or body of men on earth. We had not only been sickened and disgusted for years with the high and almost impious language from Great Britain, of the omnipotent power of the British Parliament, but had severely smarted under its effects. We . . . should have been guilty of . . . the grossest folly, if in the same moment when we spurned at the *insolvent despotism* of Great Britain, we had established a *despotic* power among ourselves.

2 G. McRee, Life and Correspondence of James Iredell 145–46 (1857–1858). The Colonists were unceasingly concerned with the aggressiveness of power, "its endlessly propulsive tendency to expand itself beyond legitimate boundaries." Its "necessary victim," they thought, "was liberty, or law, or right." B. Bailyn, The Ideological Origins of the American Revolution 56–57 (1967) (hereinafter cited as Bailyn). Fear of the Congress led to repeated assurances in the conventions that it was adequately "fenced" about. R. Berger, Congress v. The Supreme Court 8–15 (1969) (hereinafter cited as Congress v. Court).

In the oft-quoted words of Jefferson: "173 despots would surely be as oppressive as one . . . An *elective despotism* was not the government we fought for." 3 Jefferson, Writings 222–24 (P. Ford ed. 1892). Madison quoted these remarks in The Federalist No. 48, at 324 (Modern Lib. ed. 1937) (hereinafter cited as The Federalist). For similar expressions by other Founders, *see* Congress v. Court, *supra* 8–15, 34–35.

[3] Professor Kurland said with respect to removal of judges, "There is more literature than learning." Kurland, *The Constitution and the Tenure of Federal Judges: Some Notes From History*, 36 U. Chi. L. Rev. 665, 668 (1969).

impeach? Do the words "high crimes and misdemeanors" presuppose conduct punishable by the general criminal law, an indictable crime? Does the Constitution contemplate that inpeachment shall be a criminal proceeding in any sense? Criminal or not, do the words "high crimes and misdemeanors" have ascertainable limits? If they have such limits, is an impeachment and conviction outside these limits reviewable by the courts? Impeachment is too important in the Constitutional scheme to be left to the politicians; and we need to look beyond the Senate's own precedents to the roots and constitutional history of impeachment.

To understand what the Framers had in mind we must begin with English law, for nowhere did they more evidently take off from that law than in drafting the impeachment provisions. The very terms "impeachment," "treason, bribery, or other high crimes and misdemeanors" were lifted bodily from the English law. The age-old division of functions which assigned the role of prosecutor to the Commons while the Lords sat in judgment was the "model" of the parallel division of functions between the House of Representatives and the Senate.[4] Aware, in the words of James Wilson, that "numerous and dangerous excrescences" had disfigured the English law of treason, the Framers delimited and defined treason and thereby, as Wilson told the Pennsylvania Ratification Convention, put it beyond the power of Congress to "extend the crime and punishment of treason."[5] They banned the related bill of attainder and corruption of blood;[6] they replaced an unimpeachable King with an impeachable President; and, profiting from Charles II's pardon of the Earl of Danby,[7] they withheld from the President power to pardon an impeached officer.[8] And of far-reaching importance, they separated impeachment from subsequent criminal prosecution so that political passions no longer could sweep an accused to his death. As the Framers proceeded in the task of adapting impeachment to the American scene, the common law was for them indeed a "brooding omnipresence."[9]

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[4] The Federalist, *supra* note 2, No. 65 (A. Hamilton), at 425.

[5] 2 Wilson, Works 663 (R. McCloskey ed. 1967); (hereinafter cited as Wilson); 2 J. Elliot, Debates in the Several State Conventions on Adoption of the Constitution 469 (2d ed. 1836) (hereinafter cited as Elliot).

[6] U.S. Const. art. I, § 9(3); art. III, § 3(2). For discussion of bills of attainder, see Z. Chafee, Three Human Rights in the Constitution 90 *et seq.* (1956) (hereinafter cited as Chafee); J. Bellamy, The Law of Treason in England in the Later Middle Ages 177–205 (1970).

[7] In the midst of his impeachment proceeding, the Earl of Danby produced a pardon from the King. The incident is recounted in Chafee, *supra* note 6, at 129–33. The Commons were outraged for, as Sir Francis Winnington, former Solicitor-General, said, "An impeachment is of no purpose when a pardon shall stop our mouths." 11 Howell's State Trials 751, 755 (1809) (thereinafter cited as Howell). In 1700 the Act of Settlement, 12 & 13 Will. III, ch. 2, § 3, barred the pleading of a pardon to an impeachment, but not a pardon issued after conviction. 1 J. Chitty, Criminal Law 763 (5th Amer. Ed. 1847).

[8] U.S. Const. art. II, § 2(1).

[9] Bayard's great statement on behalf of the Managers in the Blount impeachment (1797) deserves to be remembered:

> On this subject, the Convention proceeded in the same manner it is manifest they did in many other cases. They considered the object of their legislation as a known thing, having a previous definite existence. Thus existing, their work was solely to mould it into a suitable shape . . . . And, therefore, . . . it remains at common law, with the variance only of the positive provisions of the Constitution . . . . That law was familiar to all those who framed the Constitution. Its institutions furnished the principles of jurisprudence in most of the States. . . . The members of the south would never have agreed to receive the local institutions of the north, as the common law of the States. But the first source from which all the colonies originally derived the principles of their law, was the only point of resort to which it could be expected that all would have recourse. We accordingly find many terms which cannot be understood, and many regulations which cannot be executed without the aid of the common law of England.

F. Wharton, State Trials of the United States 264 (1849). As Harper asked in the same trial, where else shall we "search, but in the common law . . . for the nature and extent of the power of impeachment, which our Constitution has borrowed from that law?"

The view that impeachment must rest upon a violation of existing criminal law [10] has the imprimatur of Blackstone; and impeachment, he stated, "is a prosecution of the already known and established law.[11] His successor as Vinerian lecturer, Richard Wooddeson,[12] said that impeachments "are not framed to alter the law, but to carry it into more effectual execution"; they "are founded and proceed upon the law in being." [13] On the eve of President Andrew Johnson's impeachment, Professor Theodore Dwight put the matter more forcibly: "The decided weight of authority is, that no impeachment will lie except for a true crime . . . a breach of the common or statute law, which . . . would be the subject of indictment. . . ." [14]

It is quite clear that this view has not won the assent of the Senate, for in a succession of "guilty" verdicts it has tacitly "settled" that impeachment lies for non-indictable offenses.[15] Let the impeachment of District Judge Halsted Ritter in 1936 serve as an example. Ritter was convinced under article 7 of the articles of impeachment, which

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Id. at 299. Ingersoll, Counsel for Blount, agreed that "Ideas derived from English jurisprudence are ingrafted into all our Constitutions. Hence the propriety of reasoning by analogy from the books of the law." *Id.* at 292.

[10] This argument was developed and repeatedly pressed in the English treason impeachments which turned on the effect of the great treason statute, 25 Edw. III. Chapter I in my forthcoming book will be devoted to the treason cases.

No comparable statute purported to define "high crimes and misdemeanors" either in England or the United States: and I found no English impeachment for "high crimes and misdemeanors" in which it was held that the impeachment must fail for lack of an indictable crime. *But see* note 41 *infra.*

[11] 4 W. Blackstone, Commentaries on the Laws of England 259 (1765) (hereinafter cited as Blackstone).

[12] 2 R. Wooddeson, Laws of England 619 (1792) (hereinafter cited as Wooddeson) devoted a chapter to impeachment, which he thought the first "methodical compilation . . . on this subject." These were the Vinerian Lectures, commencing in 1777. He was much cited in this country, *see, e.g.,* Jefferson, A Manual of Parliamentary Practice (1803), reprinted in Senate Manual (55th Cong. 1899) 150–53; The Trial of Judge Alexander Addison 128n, App. 8 (1803); impeachment of Justice Samuel Chase, 14 Annals of Cong. 505, 607 (1805); 1 J. Story, Commentaries on the Constitution of the United States, 582n, 585n (5th ed. 1905) (hereinafter cited as Story).

[13] 2 Wooddeson, *supra* note 12, at 611–12.

[14] Dwight, *Trial by Impeachment,* 6 Am. L. Reg. (N.S.) 257, 264 (1867). And, he continued, "It is asserted, without fear of successful contradiction, both upon authority and principle, notwithstanding a few isolated instances apparently to the contrary, that no impeachment can be had where the King's Bench would not have held that a crime had been committed. . . ." *Id.* He relied chiefly on the treason cases, *supra* note 10. Chafee, *supra* note 6, at 148, stated, "so far as I know the Senate has faithfully adhered to the criminal character of impeachments when trying members of the Cabinet and judges."

[15] For a summary of the early cases, see Lawrence, *The Law of Impeachment,* 6 Am. L. Reg. (N.S.) 667–75 (1867). Among them were district judge John Pickering (1804), insane and habitually drunk, who entered orders contrary to statute, refused to allow appeal, appeared in court in a state of total intoxication. A. Simpson, A Treatise on Federal Impeachments 192–94 (1916) (hereinafter cited as Simpson); Robert W. Archbald (1912), judge of the Commerce Court, who corruptly influenced a litigant before him to sell property to him and the like. *Id.* at 207–13.

On the other hand, Justice Samuel Chase was acquitted after a trial in which the indispensability of an indictable crime was strenuously argued, 14 Annals of Cong. 116 (1805). Charles Warren apparently concluded that the acquittal constituted an endorsement of that argument. 1 C. Warren, The Supreme Court in United States History 293 (1922) (hereinafter cited as Warren). But I would agree with Henry Adams that "the acquittal of Chase decided no point of law except his innocence of high crimes and misdemeanors." 2 H. Adams, History of the United States 243–44 n. 77 (rep. ed. 1962). *See also,* Lillich, *The Chase Impeachment,* 4 Amer. J. Leg. Hist. 49, 72 (1960). In great part the debate centered on legal rulings in trials over Justice Chase had presided. Certainly the earlier impeachment of Pickering and the later impeachments of Archbald and Ritter did not proceed for indictable crimes.

Chief Justice Taft said, in an address to the American Bar Association in 1913, "By the liberal interpretation of the term 'high misdemeanors' which the Senate has given there is now no difficulty in securing the removal of a judge for any reason that shows him unfit." Otis, *A Proposed Tribunal: Is It Constitutional?* 7 Kan. City L. Rev. 3, 22 (1938) (hereinafter cited as Otis). So too, C. Hughes, The Supreme Court of the United States 19 (1928), stated "According to the weight of opinion, impeachable offenses include, not merely acts that are indictable, but serious misbehavior which may be considered as coming within the category of high crimes and misdemeanors." Most commentators are in accord: W. Rawle, A View of the Constitution of the United States 273 (2d ed. 1829); Story, *supra* note 12, at § 800; 2 G. Curtis, History of the Constitution of the United States 260–62 (1858); Simpson, *supra,* at 41–45; Otis, *supra,* at 33; Potts, *Impeachment as a Remedy,* 12 St. Louis L. Rev. 15, 23–26 (1927); ten Broek, *Partisan Politics and Federal Judgeship Impeachment Since 1903,* 23 Minn. L. Rev. 185, 193–94 (1938).

charged that he had received large gifts from substantial property-holders in his district, though it was not alleged that they had cases pending before him. The charge was that he "was guilty of mishebavior and of high crimes and misdemeanors in office," and that the consequence of his action "as an individual and such judge, is to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice therein, and to the prejudice of public respect and confidence in the Federal judiciary and to render him unfit to serve as such judge." Hatton Sumners, Chairman of the House Judiciary Committee, who was perhaps the leading Manager of the impeachment for the House, emphasized, "We do not assume the responsibility . . . of proving that the respondent . . . is guilty of a crime as that term is known to criminal jurisprudence. We do assume the responsibility of bringing before you a case, proven facts, the reasonable and probable consequences of which are to cause people to doubt the integrity of the respondent presiding as a judge. . . ." By its judgment of guilty the Senate ratified that claim.[16]

To derive from the undeniably criminal terminology of the impeachment and associated provisions the proposition that impeachment may be based on non-criminal conduct is somewhat startling,[17] and one may therefore be indulged in the inquiry whether the convictions by the Senate have constitutional warrant. And if impeachment be in fact the sole avenue for removal of judges, we ought to know more about its elements and scope than can be derived from the cryptic Senate verdicts of "guilty" or "not guilty." The historian, as Plucknett said, "is left heir to the lawyer's unsolved conundrums." [18]

I. IMPEACHMENT AND INDICTABLE CRIMES

Because "crimes and misdemeanors" are familiar terms of criminal law,[19] it is tempting to conclude that "high crimes and misdemeanors" are simply ordinary crimes and misdemeanors raised to the *n*th degree. Apparently this is what Christian had in mind when, in a note to Blackston, he explained that when used in impeachments the words "high crimes . . . have no definite signification, but are used merely to give greater solemnity to the charge." [20] In this he went astray. The

[16] 80 Cong. Rec. 5385, 5606, 5469 (1936).

[17] So seasoned a scholar as Charles Warren said of the Chase proceedings, "Its gravest aspect lay in the theory which the Republican leaders in the House has adopted, that impeachment was not a criminal proceeding but only a method of removal, the ground for which need not be a crime or misdemeanor as these terms were commonly understood." I Warren, *supra* note 15, at 293. On the other hand, Henry Adams earlier stated that a conclusion restricting impeachment "to misdemeanors, indictable at law" is "not to be resisted if the words of the Constitution were to be understood in a legal sense," but he considered that "Such a rule would have made impeachment worthless for many cases where it was most likely to be needed; for comparatively few violations of official duty, however fatal to the State, could be brought within this definition." Adams, *supra* note 15, at 223. He thought it an absurdity that "unless a judge committed some indictable offense the people were powerless to protect themselves." *Id.* at 155–56.

[18] Plucknett, *Impeachment and Attainder*, Royal Hist. Soc. (5th Ser. v. 3, 1953) 145, 155. Senator George Wharton Pepper boldly stated at the Bar of the Supreme Court, "When this great tribunal declares the law we all bow to it; but history remains history, in spite of judicial utterances upon the subject." Myers v. United States, 272 U.S. 52, 79 (1926). Or as Justice Frankfurter said, "legal history still has its claims." Federal Power Commn. v. Natural Gas Pipe Line Co., 315 U.S. 575, 609 (1942) (concurring opinion).

[19] Blackstone stated that "Crimes and misdemeanors . . . properly speaking, are more synonymous terms, 4 Blackstone *supra* note 11, at 5, but he was speaking far too loosely, for crimes comprise both felonies and misdemeanors. Felonies were anciently punishable by death, *Id.* at 94, "while smaller faults, and omissions of less consequence [than offenses "of a deeper and more atrocious dye"] are comprised under the gentler name of 'misdemeanors' only." *Id.* at 5.

[20] Christian's note to 4 Blackstone, *supra* note 11, at 5.

phrase "high crimes and misdemeanors" is first met not in an ordinary criminal proceeding but in an impeachment, that of the Earl of Suffolk in 1388.[21] Impeachment itself was conceived because the objects of impeachment, for one reason or another, were beyond the reach of ordinary criminal redress. It was "essentially a political weapon," [22] an outgrowth of the fact that from an early date the King and his Council were the "court for great men and great causes." [23] Before the Commons assumed the role of accuser, late in the reign of Edward III, of those charged with "high treason or other high crimes and misdemeanors" against the State, private persons had been wont to turn to the Crown to institute proceedings before the High Court of Parliament when they were aggrieved by officers of the Crown in "high trust and power, and against whom they had no other redress than by application to Parliament." Such officers were persons of the "highest rank and favour with the Crown" or they were "in judicial or executive offices, whose elevated station placed them above the reach of complaint from private individuals." Before long the Commons became the prosecutor of the "highest and most powerful offenders against the State." [24] And in 1388 the Peers categorically asserted exclusive jurisdiction to try a peer for a high crime against the realm in the landmark proceedings against the Earl of Suffolk, and this not by the common law but by the course of Parliament.[25] The House of Lords was reminded of this history by Serjeant Pengelly during the impeachment of Lord Chancellor Macclesfield in 1725:

> your lordships are now exercising a power of judicature, reserved in the original frame of the English constitution, for the punishment of offences of a public nature, which may affect the nation; as well in instances, where the inferior courts have no power to punish the crimes committed by the ordinary rules of justice; as in cases within the jurisdiction of the courts of Westminster-hall, where the person offending is by his degree, raised above the apprehension of danger, from a prosecution carried on in the more usual course of justice; and whose exalted station requires the united accusation of all the Commons . . .[26]

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[21] Howell, *supra* note 7, at 89, 91; Simpson, *supra* note 15, at 86.

[22] Clarke, *The Origin of Impeachment*, in Oxford Essays in Medieval History 164, 185 (1934).

For its subsequent use in the struggle to make ministers of the Crown accountable to Parliament, *see* text accompanying notes 192–99, *infra*.

[23] 1 W. Holdsworth, History of English Law 380 (3d ed. 1922).

[24] 4 J. Hatsell, Precedents of the Proceedings of the House of Commons 63 (1796) (hereinafter cited as Hatsell). Notwithstanding his definition of impeachment as a prosecution of the "already known and established law" (text accompanying note 11 *supra*), Blackstone stated that an administrator of "public affairs may infringe the rights of the people, and be guilty of such crimes, as the ordinary magistrate either dares not or cannot punish," for which situation impeachment furnishes the remedy. 4 Blackstone *supra* note 11, at 260–61. Roberts explains that though "medieval kings could prevent the prosecution of their servants in the ordinary courts of the land, three of them, Edward III, Richard II, and Henry VI, could not *prevent the impeachment of their ministers in Parliament*. C. Roberts, The Growth of Responsible Government in Stuart England 7 (1966) (hereinafter cited as Roberts). Clarke, *supra* note 22, at 166, proffers another explanation: in the 14th century there was a steadily increasing demand for satisfaction of wrongs done by the king's servants" which led to redress by "proceedings against the Crown, outside the common law." "To devise a routine procedure for the trial of the king's ministers was perhaps the crowning achievement of Parliament in the fourteenth century." *Id.* at 188. In the early 17th century, says a recent English historian, impeachment was seen merely courts of law could solve." J. Kenyon, The Stuart Constitution 1603–1688, 93. (1966). as a "practical means of dealing with an immediate problem which none of the normal courts of law could solve." J. Kenyon, The Stuart Constitution 1603–1688, 93. (1966). *See also* Plucknett, *State Trials Under Richard II*, Royal Hist. Soc. (5th Ser. v. 2, 1952) 159–71.

[25] The Lords declared "That in so high a crime . . . perpetrated by persons who are peers . . . the cause cannot be tried elsewhere but in parliament, nor by any other law or court except that of parliament," distinguishing the "process or order used in inferior courts . . . [only] intrusted with the execution of the ancient laws and customs of the realm, and the Ordinances and establishments of parliament" from the "laws and course of parliament" by which the Lords would decide. 1 Howell, *supra* note 7, at 113.

[26] 16 *Id.* at 1330. Almost fifty years later this was the lesson drawn from the State Trials by John Adams: "without this high jurisdiction it was thought impossible to defend the

When the phrase "high crimes and misdemeanors" is first met in the impeachment of the Earl of Suffolk in 1388, there was in fact no such crime as a "misdemeanor." Lesser crimes were prosecuted as "trespasses" well into the 16th Century, and only then were "trespasses" supplanted by "misdeameanors" as a category of ordinary crimes.[27] As "trespasses" itself suggests, "misdemeanor" derived from torts or private wrongs; and Fitzjames Stephen stated in 1863 that "prosecutions for misdemeanor are to the Crown what actions for wrongs are to private persons." [28] In addition, therefore, to the gap of 150 years that separates "misdemeanor" from "high misdemeanors" there is a sharp functional division between the two. "High crimes and misdemeanors," as will appear, were a category of *political* crimes against the states,[29] whereas "misdemeanor" described criminal sanctions for *private* wrongs. An intuitive sense of the difference is exhibited in the development of English law, for though "misdemeanor" entered into the ordinary criminal law, it did not become the criterion of "high misdemeanor" in the Parliamentary law of impeachment.[30] Nor did either "high crimes" or "high misdemeanors" find their way into the general criminal law of England.[31] As late as 1757 Blackstone could say that, "The first and principal [high misdemeanor] is the *mal-administration* of such high officers, as are in the public trust and employment. This is usually punished by the method of parliamentary impeachment." Other high misdemeanors, he stated, are contempts against the king's prerogative, against his person and government, against his title, "not amounting to treason," in a word, "political crimes." [32] Treason is plainly a "politcal" crime, an offense against the State; so too bribery of an officer attempts to corrupt administration of the State. Indeed, early in the common law bribery "was sometimes viewed as High Treason." [33] Later Hawkins referred to "great Bribes . . . and . . . other such like Misdemeanors"; and Parliament itself regarded bribery as a "high crime and misdeameanor." [34] In addition to this identification of bribery, first with "high treason" and then with "misdemeanor," the association, as a matter of construction, of "other high crimes and misdemeanors" with "treason, bribery," which

constitution against princes, nobles, and great ministers, who might commit high crimes and misdemeanors which no other authority would be powerful enough to prevent or punish." 2 Adams, Works 330 (1850).

[27] 2 Holdsworth, *supra* note 23, at 357, 365 (4th ed. 1936); 3 *Id.* at 263 n.1 (1st ed. 1909); 4 *Id.* at 512 (1924). *See also* T. Plucknett, Concise History of the Common Law 458–59 (5th ed. 1956); *cf.* J. Stephen, The Criminal Law of England 58 (1863) (hereinafter cited as Stephen).

[28] Stephen, *supra* note 27, at 60.

[29] For England, *see* text accompanying notes 32–35, 37–38, 62–91; for United States, *see* text accompanying notes 111–12, 133 and note 112 *infra*.

[30] Appreciation of the difference was later exhibited by Governor Johnston in the North Carolina convention: "If an officer commits an offense against an individual, he is amenable to the courts of law. If he commits crimes against the state, he may be indicted and punished. Impeachment only extends to high crimes and misdemeanors in a public office. It is a mode of trial pointed out for great misdemeanors against the public." 4 Elliot, *supra* note 5, at 48. See similar remarks by James Wilson, text accompanying note 112 *infra*.

In a fairly extensive reading of English impeachment cases, I found no argument, with the possible exception of the *Macclesfield* case, *infra* note 41, that a "high crime and misdemeanor" was or was not made out because it was or was not a misdemeanor at common law.

[31] At least I could turn up no instance in a search of the texts of Holdsworth, Russell, Stephen, Chitty, Viner, Bacon and Comyns.

[32] 4 Blackstone, *supra* note 11, at 121–123. Since the word "political" also appears in "political weapon," it needs to be noted that the latter describes the use of impeachment by Parliament to make ministers accountable to it whereas "political crimes" describes misconduct in office as distinguished from ordinary crimes.

[33] 1 W. Hawkins, Pleas of the Crown, Ch. 67, § 6 at 169 (1716).

[34] *Id.* Ch. 67, § 7, at 170; 4 J. Campbell(Lives of the Lord Chancellors 55 (3d ed. 1849).

are unmistakably "political" crimes, lends them a similar connotation under the maxim *noscitur a sociis.*[35]

In sum, "high crimes and misdemeanors" appear to be words of art confined to impeachments, without roots in the ordinary criminal law, and which, so far as I could discover, had no relation to whether an indictment would lie in the particular circumstances.[36] For this Wooddeson himself furnishes collateral evidence when he states that impeachments are framed to execute the law where it is "not easily discerned in the ordinary course of jurisdiction by reason of the peculiar quality of the alleged crimes." [37] What lends a "peculiar" quality to these crimes is the fact that they are not encompassed by criminal statutes or, for that matter, by the common law cases, as his own illustrations disclose:

> . . . if the judges mislead their sovereign by unconstitutional opinions, . . . where a lord chancellor has been thought to put the seal to an ignominious treaty, . . . a privy councillor to propound or support pernicious and dishonourable measures, or a confidential adviser of his sovereign to obtain exorbitant grants . . . these imputations have properly occasioned impeachments; because it is apparent how little the ordinary tribunals are calculated to take cognizance of such officers, or to investigate and reform the general polity of the state.[38]

One would search in vain for a statute that made it a crime to render an "unconstitutional" opinion, or to obtain large grants such as an over-indulgent sovereign was wont to make to a spoiled favorite, *e.g.* the Duke of Buckingham.[39] And there are no common law cases which declare such acts to be criminal if only because the circumstances involved great ministers who were in the Parliamentary preserve.

The cases which declared misconduct in office to be criminal are not to the contrary. Misconduct in office is first met as a common law crime late in the 17th Century,[40] but the crime was apparently confined to lesser officials who were almost never the subjects of impeachment. No case turned up in my search of the Abridgments in which a Minister had been indicted for misconduct in office; and one may fairly con-

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[35] Neal v. Clark, 95 U.S. 704, 708–09 (1877).

[36] The Solicitor General reminded the Lords in the trial of Lord Arundel (1678) that the "trial of a Peer in Parliament is more ancient than by indictment." Hatsell, *supra* note 24 at 141n.

In the 14th century redress for "wrongs done by the king's servants" was outside the sphere of the common law." Parliament was dissatisfied with the niceties of an indictment and a "system which served to shelter offenders who were either highly placed or guilty of offenses beyond the plain man's understanding." Clarke, *supra* note 22, at 166, 173. *See also* note 24 *supra.* The analogy of trial by Parliament to "Trial upon indictment," remarks Plucknett, was "clearly" not obvious to the 14th century lawyer. Plucknett, *The Impeachments of 1376,* Royal Hist. Soc. 153 (5th Ser. v. 1, 1951). In Grantham v. Gordon, 24 Eng. Rep. 539, 541, 1 Peere Williams 612, 616 (1719), the court stated, "impeachments in Parliament differed from indictments, and might be justified by the law and course of Parliament." Wooddeson, *supra* note 12, at 606, suggests that this refers solely to matters of procedure, a matter by no means clear. But my own study of the treason impeachments convinced me that the hotly debated issue was whether the power of Parliament extended to retrospective declarations of treason, *i.e.* substantive law. In the 14th century treason cases, Parliament laid claim to "a supreme jurisdiction, in the exercise of which it was bound by none of the law and rules which restricted the *power* and regulated the procedure of the other courts." (emphasis added). Rezneck, *The Early History of the Parliamentary Declaration of Treason,* 42 Eng. Hist. Rev. 497, 510 (1927). Chapter I in my forthcoming book will be devoted to the treason cases.

[37] 2 Wooddeson, *supra* note 12, at 611–12.

[38] *Id.* at 602–03.

[39] *See* Article 12 of the articles of impeachment of the Duke of Buckingham, 2 Howell, *supra* note 7, at 1307, 1316–1318; Simpson, *supra* note 15, at 101–04.

[40] "If a man be made an officer by Act of Parliament, and misbehave himself in his office, he is indictable for it at common law; and any publick officer is indictable for misbehavior in his office." Anonymous, 87 Eng. Rep. 853, 6 Mod. 96 (1704). *See also* Regina v. Wyat, 91 Eng. Rep. 331, 1 Salk. 380 (1706) (neglect of duty); Rex & Regina v. Barlow, 91 Eng. Rep. 516, 2 Salk. 609 (1694); Rex v. Davis, 96 Eng. Rep. 839; Sayer 163 (1754).

clude that indictability was not the test of impeachment of a minister.[41] Nor was it the test of impeachment of a Justice, Caesar Rodney could justly twit counsel for Justice Chase with not having "adduced a single case where a judge of one of their [England] superior courts has been indicted for any malconduct in office," and "defy them to show an example of the kind," [42] for Martin had in truth failed to make out the contrary.[43] In part, this may be traced to the fact that the Justices were a very small "elite group," originally a part of the King's entourage who accompanied him on his travels, only later came to rest at Westminster Hall,[44] and like the Ministers of the King were deemed triable only by the Lords.[45] In part, the continuing absence of such indictments may be due to over-broad dicta of judicial immunity uttered by Coke in *Floyd v. Barker*. That was a private action against a Judge of Assize for conspiring to injure the plaintiff, and it was held that neither such a judge, nor "any other judge . . . of record" could be charged for "that which he did openly in Court as Judge." His conduct could not be drawn in question "at the suit of the parties" nor, said Coke by way of dictum, "before any other Judge at the suit of the

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[41] The treason cases do not, in my view, shake this proposition. *See* note 10 *supra*. For his assertion that impeachment requires an indictable crime, Dwight, *supra* note 14, at 266–67, also invoked two English cases which proceeded for "high crimes and misdemeanors." In the first, Lord Chancellor Macclesfield was charged in 1725 with the sale of offices of Master of Chancery against the "laws and statutes" of this realm, 16 Howell, *supra* note 7, at 770–75, but it no more follows that impeachment lies only for violations of statute than it would follow that "high misdemeanors" are not impeachable because one case proceeded for high treason. Nevertheless, though Lord Campbell later commented that "There can be no doubt that the sale of all offices touching the administration of justice (with a strange exception in favor of Common Law Judges) was forbidden by the statute of Edward VI," 4 Campbell, *supra* note 34, at 536–37, the issue was strenuously argued, and in my judgment remains subject to considerable doubt, which would require an extensive excursus to set forth.

Let it suffice that Sergeant Pengelly, sensible of the weight of the argument for Macclesfield, stated in rebuttal that

> if the misdemeanors of which the Earl impeached stands accused, were not crimes by the ordinary rules of law in inferior courts, as they have been made out to be; yet they would be offenses of a public nature, against the welfare of the subject, and the common good of the kingdom, committed by the highest officer of justice, and . . . would demand the exercise of the extraordinary jurisdiction vested in your judicature for the public safety, by virtue whereof your lordships can inflict that degree and kind of punishment which no other Court can impose.

16 Howell, *supra* note 7, at 1360. That the Lords proceeded under their own broad power rather than either statute or common law is again inferable from their rejection of "a friendly motion . . . that the opinion of the Judges be asked, 'whether the sale of an office that hath relation to the administration be an offence against the common law?'" 4 Campbell, *supra* note 34, at 534, a question that suggests doubt whether the statute applied.

The second Dwight citation, the impeachment of Lord Melville in 1805, involved the charge that as Treasurer of the Navy, Melville permitted the use of navy moneys for other purposes. The Lords sought the opinion of the judges upon three questions, the nature of which adequately appears from the answers. First, the judges stated that the lodging of navy moneys in a private bank for the purpose of paying assigned bills "upon the Treasurer" was not a crime. Second, they stated that money may not be withdrawn by the Treasurer for the purpose of deposit in a private bank, but if such "intermediate deposit . . . is made, bona fide, as the means . . . of more conveniently applying the money to navy services" such withdrawal was lawful. Third, they stated that the Treasurer might lawfully apply navy funds "to any other use whatsoever, public or private, without express authority to do so." 29 Howell, *supra* note 7, at 1468–71. Melville was acquitted. *Id.* at 1482. In light of what Hallam called an "undisputed principle," that "supplies granted by Parliament, are only to be expended for particular objects specified by itself," note 73, *infra*, the third answer is inexplicable, particularly in its blessing for use of Navy money for "private" purposes. Perhaps the explanation lies in the practicalities: at the time of the trial the alleged offense was 24 years old; the Commons itself had been badly split—" his impeachment was only carried in the House of Commons by the deciding vote of the Speaker; the Members voting 216 for and 216 against, the younger Pitt, then Prime Minister, doing all in his power to defeat the impeachment." Then too, Melville had resigned his post as First Lord of the Admiralty as soon as his conduct had been arraigned in the Commons, 29 Howell, *supra*, note 7 at 55 so that the proceeding smacked of beating a dead horse. Simpson *supra*, note 15, 39–40. At best, the Melville acquittal is but one against a string of convictions for "high crimes and misdemeanors" which plainly fell short of indictable offenses.

[42] 14 Annals of Cong., 599–600 (1805) (Gale & Seaton ed. 1852); the point had earlier been made by Representative Campbell *id.* at 343.

[43] For Martin, see *id.* at 434–35. *See* Appendix A *infra*, for analysis of Martin's citations.

[44] J. Dawson, Oracles of the Law 1–2 (1968).

[45] See text accompanying notes 23–26 *supra*, and text accompanying note 52 *infra*.

King." Although Coke put to one side the case of a judge who had conspired "out of court" as "extra-judicial," although he leaned heavily on the sanctity of the record—"records are of so high a nature, that for their very sublimity they import verity in themselves"—he undercut his circumspection by saying that "for any surmise of corruption" the judge should be answerable only "before the King himself." [46] Complaint should be made to Parliament, later said Chief Justice Vaughan, for "corrupt and dishonest judgments," [47] a view reaffirmed still later by Chief Justice Wilmot.[48]

Coke's "verity of the record" was translated into a rule that no indictment of a judge could be allowed to "defeat the record," a phrase anticipated by Fitzherbert's "it seemeth he might be indicated for taking of money . . . which doth not destroy and defeat the Record." [49] One might therefore expect to find indictments against high court Justices for bribery, particularly because statutes had from earliest times penalized judicial bribery,[50] indeed for a long time the offense was criminal only when judges and judicial officers were involved.[51] But here too I found no indictments against Justices of the high courts. Two of the earliest cases, of Chief Justice Hengham (1289) and Chief Justice Thorpe (1349), which antedate the use of impeachments, were brought before the Lords,[52] as was then customary in the case of high officers of the Crown. Broad statements by Hawkins and others that bribery was punishable by fine and imprisonment will be found to refer to impeachments,[53] as when Lord Chancellor Bacon was charged with bribery.[54]

While the protection of "the Superior Courts is absolute and universal," said Chief Justic Grey in 1764, "with respect to the Inferior

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[46] 77 Eng. Rep. 1305–1307, 12 Co. 23–25 (Star Chamber 1608).

[47] Bushell's Case, 124 Eng. Rep. 1006, 1008, Vaughan 135, 139, (1673).

[48] Rex v. Almon, 97 Eng. Rep. 94, 101; Wilm. 243, 259 (1765). See also Hammond v. Howell, 86 Eng. Rep. 1035, 1036–37, 2 Mod. 218, 220–21 (1678) (per Hale, C. J.). In an extensive review of the cases, Taafe v. Downs (1813), published as a note to Calder v. Halkett, 13 Eng. Rep. 16, 23, 3 Mod. P.C. 37, 48 (1839) concluded that the judges of the superior courts are "only answerable for their judicial conduct in the high Court of Parliament."

[49] A. Fitzherbert, Natura Brevium 243 (Eng. trans. 1652), 605 (hereinafter cited as Fitzherbert).

[50] It is one of the curiosa of history that these statutes were probably ineffective, so that Stephen justifiably states that there is "no statute against" bribery, but that "it has ever been an offence against common law." 3 J. Stephen, A History of the Criminal Law of England 250 (1883). The statutes will be discussed in an Appendix of my forthcoming book.

[51] Bribery, stated E. Coke, 3 Institutes 147, is "only committed by him that hath a judicial place . . . ." ; and see 1 Hawkins, *supra* note 33, at ch. 67, §§ 1, 2, at 168.

[52] 1 Campbell, Lives of the Chief Justices of England, at 76, 91–92 (Amer. ed. 1874).

[53] 1 Hawkins, *supra* note 33, at Ch. 67, § 7 at 170. Among Hawkins citations is J. Rushworth, Historical Collections, Pt. 1, fol. 31 (1659), which deals with the impeachment of Bacon for bribery. Jenkins 162, 145 Eng. Rep. 104 (Exch. Ch. undated), states that "if a judge of record takes bribes, he shall be indicted for it," citing Fitzherbert, *supra* note 49, at 243, 8 Hen. VI, c. 12, and 27 Edw. III. Fitzherbert cites no case for the statement that in a case which does not "defeat the record" "it seemeth" the offense is indictable. 8 Hen. VI, c. 12(3) makes the stealing of a judicial record by a "Clerk or other person," indictable, the judges to hear such cases; but Coke, 3 Inst. 72, states that "This act does not extend to any judge of the court." Nothing contained in 27 Edw. III has any bearing on the indictment of a judge for bribery.

[54] 2 Howell, *supra* note 7, at 1087–88. Apparently the current shifted in the 19th century. When Sir Jonah Barrington, Judge of the High Court of Admiralty in Ireland, was under investigation by the Commons, his counsel Denman, later Chief Justice, urged that a criminal information "could have been filed." The Solicitor General explained that no criminal prosecution was instituted because of the "advanced age and . . . many infirmities" of the judge. 24 Parl't'y. Debates 966 (Hansard, N.S. 1830). Holdsworth stated that the offices of the judges of the High Court who hold during good behavior, "may, it is said, be determined for want of good behavior without an address to the Crown, either by scire facias . . . criminal information or impeachment." In Part VI, 6 Halsbury, Laws of England 609 (Hailsham ed. 1932) (This section on "Constitutional Law" is attributed to Holdsworth on the page preceding the Table of Contents.)

[courts], it is only while they act within their jurisdiction." [55] Lesser judges, and among that category were some we should scarcely recognize as such today—e.g. censors of the College of Physicians, a coroner [56]—were prosecutable for acts done outside their jurisdiction.[57] Even when they acted within their jurisdiction, lesser judges were punishable at the suit of the King if they acted corruptly,[58] and if what they did was illegal, they were indictable "without the addition of any corrupt motives," despite the presence of jurisdiction.[59] Additionally they were punishable by Attachment. King's Bench, said Bacon's *Abridgment*, "exercises a Superintendency over all inferiour Courts, and may grant an attachment against the Judges of such Courts for oppressive, unjust, or irregular Practice, contrary to the obvious Rules of natural justice." [60] Such conduct was viewed as a contempt; and Chief Justice, Holt recalled that "The Mayor of Hereford was laid by the heels for sitting in judgment in a cause where he himself was lessor of the plaintiff in ejectment [and "gave judgment for his own lessee"] though he by the Charter was the sole Judge of the Court." [61] Thus it results that Justices, who were *not* the subject of indictment were impeachable and in fact impeached, whereas the indictable lesser judges, so far as I could find, were not impeached. What the Framers might have made of this dichotomy is hereafter discussed.

A. The Scope of "High Crimes and Misdemeanors"

Although English impeachments did not require an indictable crime they were nonetheless criminal proceedings because conviction was punishable by death, imprisonment or heavy fine. The impeachable offense, however, was not a statutory or ordinary common law crime but a crime by "the course of Parliament," the *lex Parliamentaria.* The appended charges drawn from impeachment cases disclose that impeachable misconduct was patently not "criminal" in the ordinary sense; they furnish a guide to the "course of Parliament"; and they give content to the phrase "high crimes and misdemeanors."

> Chancellor Michael de la Pole, Earl of Suffolk (1388) (high crimes and misdemeanors): applied appropriated funds to purposes other than those specified.[62]
>
> Duke of Suffolk (1450) (treason and high crimes and misdemeanors): procured offices for persons who were unfit and unworthy of them; delayed justice by stopping writs of ap-

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[55] Miller v. Seare, 96 Eng. Rep. 673, 675, 2 Bl. W. 1141, 1145 (1764); *cf.* Calder v. Halkett, 13 Eng. Rep. 12, 15, 3 Moo. P.C. 28, 35 (1839).

[56] Groenvelt v. Burwell, 91 Eng. Rep. 343, 1 Salk. 396 (1701) (censors "are Judges of Record because they can fine and imprison."); "The Court of the Coroner is a Court of Record of which the Coroner is the Judge." Garnett v. Ferrant, 108 Eng. Rep. 576, 581, 6 B. & C. 611, 625 (1827); *cf.* Ashby v. White, 87 Eng. Rep. 810, 811, 6 Mod. 46–47 (1704) (vote counting sheriff is "quasi a judge").

[57] Rex v. Jones, 95 Eng. Rep. 462, 1 Wils. K.B. 7 (1743); *cf.* King v. Holland & Forster, 90 Eng. Rep. 1324, 1 Term. R. 692 (1787).

[58] 2 Hawkins, *supra* note 33, ch. 13, § 20, at 85. In 1827 Tenterden, C. J. stated, "Corruption is quite another matter; so, also, are neglect of duty and misconduct in it. For these, I trust, there is and always will be some due course of punishment by public prosecution." Garnett v. Ferrand, 108 Eng. Rep. 576, 582, 6 B. & C. 611, 626 (1827).

[59] King v. Saintsbury, 100 Eng. Rep. 1113, 1117, 4 T.R. 450, 457 (1791).

[60] 3 M. Bacon, Abridgment, "Offices & Officers" (N) 744 (3d ed. 1768).

[61] Anonymous, 91 Eng. Rep. 343, 1 Salk 396 (1699); Anonymous, 91 Eng. Rep. 180, 1 Salk. 201 (1702).

[62] 1 Howell, *supra* note 7, at 89, 98, Item 3. In each of the listed cases, the charge or charges are selected from a larger group.

peal (private criminal prosecutions) for the deaths of complainants' husbands.[63]

Attorney General Yelverton (1621) (high crimes and misdemeanors): committed persons for refusal to enter into bonds before he had authority so to require; commencing but not prosecuting suits.[64]

Lord Treasurer Middlesex (1624) (high crimes and misdemeanors): allowed the office of Ordnance to go unrepaired though money was appropriated for that purpose; allowed contracts for greatly needed powder to lapse for want of payment.[65]

Duke of Buckingham (1626) (misdemeanors, misprisions, offenses and crimes): though young and inexperienced, he procured offices for himself, thereby blocking the deserving; neglected as Great Admiral to safeguard the seas; procured titles of Honor to his mother, brothers, kindred, and allies.[66]

Justice Berkley (1637) (treason and other great misdeameanors): reviled and threatened the grand jury for presenting the removal of the communion table in All Saints Church; on the trial of an indictment, he "did much discourage" complainants' counsel . . . and did "overrule the cause for matter of law." [67]

Sir Richard Gurney, Lord Mayor of London (1642) (high crimes and misdemeanors): thwarted Parliament's order to store arms and ammunition in storehouses.[68]

Viscount Mordaunt (1666) (high crimes and misdemeanors): prevented Tayleur from standing for election as a burgess to serve in Parliament; caused his illegal arrest and detention.[69]

Peter Pett, Commissioner of the Navy (1668) (high crimes and misdemeanors): negligent preparation for the Dutch invasion; loss of a ship through neglect to bring it to mooring.[70]

Chief Justice North (1680) (high crimes and misdismeanors): assisted the Attorney General in drawing a proclamation to suppress petitions to the King to call a Parliament.[71]

Chief Justice Scroggs (1680) (treason and high misdemeanors): discharged grand jury before they made their presentment, thereby obstructing the presentment of many Papists; arbitrarily granted general warrants in blank.[72]

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[63] 4 Hatsell, *supra* note 24, at 60n. Several treason charges are included because charges that fell short of treason might yet amount to misdemeanor. Charles I, attempting to save Strafford from the deadly charge of treason, told the assembled Lords and Commons, "I cannot condemn him of High-Treason; yet I cannot say I can clear him of Misdemeanor . . . for matter of Misdemeanor, I am so clear in that . . . that I do think my Lord of Strafford is not fit hereafter to serve Me or the Commonwealth in any place of trust . . ." 8 J. Rushworth, Historical Collections, 734 (1721) (hereinafter cited as Rushworth).

[64] 2 Howell, *supra* note 7, at 1136–37, Articles 1 and 6.

[65] *Id.* at 1183, 1239.

[66] *Id.* at 1307, 1308, 1310, 1316, Articles 1, 4 and 11.

[67] 3 *id.* at 1283, 1287, 1288, Item 9.

[68] 4 *id.* at 159, 162–63, Article 4.

[69] 6 *id.* at 785, 7–19, 89, Articles 1 and 5.

[70] 6 *id.* at 865, 866, 867, Articles 1 and 5.

[71] Hatsell, *supra* note 24, at 115–116.

[72] Originally Scroggs was charged only with "high Misdemeanors," among them browbeating witnesses, prejudicing the jury against them by disparaging remarks. 8 Howell, *supra* note 7, at 163–69, Articles 2 and 3. The charges were enlarged to "High Treason and other great Crimes and Misdemeanors," *id.* at 197.

Sir Edward Seymour (1680) (high crimes and misdemeanors): applied appropriated funds to public purposes other than those specified.[73]

Duke of Leeds (1695) (high crimes and misdemeanors): as president of Privy Council accepted 5500 guineas from the East India Company to procure a charter of confirmation.[74]

In addition to the foregoing, there is the familiar summary by Wooddeson, paraphrased by Story in his discussion of impeachment:[75]

> lord chancellors and judges and other magistrates have not only been impeached for bribery, and acting grossly contrary to the duties of their office, but for misleading their sovereign by unconstitutional opinions and for attempts to subvert the fundamental laws, and introduce arbitrary power. So where a lord chancellor has been thought to have put the great seal to an ignominious treaty;[76] a lord admiral to have neglected the safeguard of the sea;[77] an ambassador to have betrayed his trust; a privy councillor to have propounded or supported pernicious or dishonorable measures;[78] or as confidential adviser to his sovereign to have obtained exorbitant grants or incompatible employments;[79] these have all been deemed impeachable offenses.

The foregoing examples by no means exhaust the list which might be adduced to illustrate that English impeachments proceeded for misconduct that was not "criminal" in the sense of the general criminal law.[80]

These charges fulfill an even more important purpose, for they also serve to delineate the outlines of "high crimes and misdemeanors." They are reducible to intelligible categories: misapplication of funds (Earl of Suffolk, Seymour), abuse of official power (Duke of Suffolk,

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[73] *Id.* at 127–32, Article 1. This impeachment and that of the Duke of Suffolk, discussed in the text accompanying note 63 *supra* are of special interest in light of a recent law prohibiting use of appropriated funds for introduction of American troops into Cambodia. Special Foreign Assistance Act Pub. L. No. 91–652, § 6(b) (Jan. 1, 1971). After 1665, remarks Hallam, it became an "undisputed principle" that "supplies granted by parliament, are only to be expended for particular objects specified by itself. . . ." 2 H. Hallam, Constitutional History of England 357 (1884). That principle, I suggest, found expression in our own Constitution: art. I, § 9(7) provides that "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Should Congress bar the use of appropriated funds for employment of all forces in Cambodia the use of such funds for that purpose by the Secretary of Defense would be contrary to law, unless the powers of the President as "Commander in Chief" of the armed forces override the express provision of art. I, § 9(7).

Blackstone stated that impeachment was provided so "that no man shall dare to assist the crown in contradiction to the laws of the land." 1 Blackstone, *supra* note 11, at 244. Hamilton regarded impeachment as "a bridle upon the executive servants of the government." The Federalist *supra* note 2, No. 65 at 425 "an essential check in the hands of [the legislative body] upon the encroachment of the executive." *Id.* No. 66, at 430. *See also* text accompanying note 169 *infra*. Chief Justice Chase asked in Mississippi v. Johnson, 71 U.S. (4 Wall.) 475, 501 (1867), if the President "refuses to execute the acts of Congress . . . may not the House of Representatives impeach the President for such refusal?" The answer should not be different were the President to shelter a member of his cabinet who acted in defiance of an appropriation bill. See note 235 *infra*.

[74] Howell, *supra* note 7, at 1263, 1269, Article 1.

[75] 1 Story, *supra* note 12, at § 800; 2 Wooddeson, *supra* note 12, at 602. In some of these cases the charge was treason.

[76] Lord Chancellor Somers sealed the Partition Treaties at the King's command. 4 Campbell, *supra* note 34, at 142; Roberts, *supra* note 24, at 311 (high crimes and misdemeanors).

[77] Duke of Buckingham as Great Admiral, 2 Howell, *supra* note 7, at 1267, 1307, 1310, Art. 4 (1626) (misdemeanor).

[78] *See* text accompanying note 91 *infra*. "The author of *The Method of the Proceedings in the Houses of Lords and Commons in Cases of Impeachment for High Treason* (3d ed. 1715) observed 'That almost in every considerable and legal impeachment since Charles the First, the giving of "evil advice" to the Prince has been the foundation of the accusation and has bore hardest upon the person accused.'" Roberts, *supra* note 24, at 396 n. 1.

[79] Duke of Buckingham, 2 Howell, *supra* note 7, at 1308, Art. 1. So too, the Duke of Suffolk was impeached for advising the grant of a peerage to the husband of his niece, for procuring offices for persons who were unfit and unworthy of them. 4 Hatsell, *supra* note 24, at 59–60 (treason).

[80] Other charges of similar import may be found in Simpson's convenient summary of English impeachments, *supra* note 15, at 81–190.

Buckingham, Berkley, Yelverton, Mordaunt, Scroggs), negect of duty (Buckingham, Pett),[81] encroachment on or contempts of Parliament's prerogatives (Gurney, North, the "Ship Money Tax" opinions).[82] Then there are a group of charges which may be gathered under the rubric "corruption," as when Lord Treasurer Middlesex was charged with "Corruption, shadowed under pretext of a New Year's-Gift . . ."; and with "using the power of his place, and countenance of the king's service, to wrest [from certain persons] a lease and estate of great value."[83] So too, Middlesex, and much earlier the Earl of Suffolk, were charged with obtaining property from the King for less than its value;[84] Buckingham, Danby, the Earl of Arlington, Earl of Orford, Lord Somers and Lord Halifax were charged with procuring large gifts from the King to themselves;[85] Buckingham, Sir William Penn, Seymour, and Orford were charged with conversion of public property;[86] and Lord Chancellor Macclesfield was charged with the sale of public offices.[87] Lord Halifax was accused of "opening a way to all manner of corrupt practices in the future management of the revenues" by appointing his brother to an office which was designed to be a check on his own, the profits to be held in trust for Halifax.[88] There were charges of betrayal of trust, as when Buckingham put valuable ships within the grasp of the French,[89] and when Orford weakened the navy while invasion threatened.[90] And there were charges against Orford, Somers, Halifax, Viscount Bolingbroke, the Earl of Strafford, and the Earl of Oxford of giving pernicious advice to the Crown.[91] Broadly speaking these categories may be taken to outline the boundaries of the phrase "high crimes and misdemeanors" at the time the Constitution was adopted.[92] The importance of these categories for

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[81] The Earl of Orford was charged in 1701 with neglect of duty in that he permitted French ships to return safely to their harbors. 14 Howell, *supra* note 7, at 241, 243–44, Article 8.

[82] Justice Berkley and other Justices were impeached for uttering opinions that Charles I could obtain "Ship Money Taxes" without resort to Parliament. 3 *id.* at 1283, 1285–86 (1637), Articles 4–7. *See also* note 176 *infra*, and the impeachment of Sir Thomas Gardiner, Recorder of London, 4 *id.* at 167–68, Article 1 (1642). Other encroachments may be exemplified by Gardiner's efforts to hinder the calling of Parliament, Article 5, and his threats against those who sought to petition Parliament, Article 6, *Id.* at 169; and by Sir Richard Halford's resistance to arrest under a warrant of Parliament. *Id.* at 171 (1642).

[83] Id. at 1228, 1199 (1624). There is also a charge of corruption in that Middlesex bought assets conveyed by the King for the benefit of creditors at much less than their value. *Id.* at 1232–44.

[84] *Id.* at 1230; Suffolk. 1 *id.* at 89, 91 (1388), Article 1.

[85] Buckingham, 2 *id.* at 1307, 1316, 1318 (1626), Article 12; Arlington, 6 *id.* at 1053, 1055 (1674), Article 2; Danby, 11 *id.* at 599, 626 (1678), Article 6; Orford, 14 *id.* at 241 (1701), Article 1; Somers, *Id.* at 250, 255–58 (1701), Article 8; Halifax, *id.* at 293–96 (1701), Articles 1 and 3.

[86] Buckingham, 2 *id.* at 1307, 1311–12 (1626), Article 5; Penn, 6 *id.* at 873–74 (1668), Articles 1–3; Seymour, 8 *id.* at 127, 136–37 (1680), Article 4; Orford, 14 *id.* at 241–42 (1701), Articles 2–4.

[87] *See* note 41 *supra*.

[88] 14 Howell, *supra* note 7, at 293, 296–97 (1701), Article 5.

[89] 2 *id.* at 1307, 1313–14 (1626), Article 7.

[90] 14 *id.* at 241, 243 (1701), Article 6. *See also* charges of betrayal of trust against the Earl of Arlington, 6 *id.* at 1053, 1056 (1674), Article 3.

[91] Orford, 14 *id.* at 241, 244 (1701), Article 9; Somers, *id.* at 250, 253, Article 1; Halifax, *id.* at 293, 297–98 Article 6; Bolingbroke, 15 *id.* at 994, 997 (1715), Article 2; Strafford, *id.* at 1013, 1023–24 (1715), Article 6; Oxford, *id.* at 1045, 1063–66 (1717), Articles 2 and 3. Additionally Bolingbroke and Oxford were charged with high treason. *See* note 78 *supra*.

In the North Carolina convention, James Iredell noted that the King could not be reached, and that "[e]verything . . . that the King does, must be done by some advice, and the advisor is of course answerable." 4 Elliott, *supra* note 5, at 109.

[92] Mention must be made of impeachment charges for out-of-court misconduct, a subject that would spill over the confines of an already over-long article and that will be the subject of a separate chapter in my forthcoming book.

Setting aside several cases in which no charges exist, several impeachment of non-officers, and some combined charges of "high treason and high crimes and misdemeanors" which stress traitorous conduct, there were in all eighteen impeachments for high crimes and misdemeanors listed by Simpson in what purports to be a complete list of impeachments. Simpson, *supra* note 15, at 81–100.

American law rests not alone on the fact that when the Framers employed language having a common law meaning, it was expected that those terms would be given their common law content,[93] but because they were aware that the phrase had a "limited," "technical meaning." [94]

Today impeachment and severe punishment for giving "bad advice" seems extravagant. It was part of the struggle to make Ministers accountable to the Parliament rather than the King, to punish them for espousing policies disliked by the Parliament. And it was rooted in a deep distaste for "favorites," understandable enough when one views the luckless adventures upon which Buckingham, for example, had embarked the nation.[95] When Oxford, Bolingbroke and Strafford were impeached (1715) [96] for giving "bad advice" to the King, the Commons "really sought to condemn policies which they believed pernicious to the realm," [97] the negotiation of a separate "treacherous peace," the Treaty of Utrecht.[98] The nation, said Trevelyan, "little liked the secret negotiations with France behind the backs of the allies . . . the disgrace of Marlborough, and the withdrawal of the British armies from the field in the face of the enemy." [99]

Not all of the cited impeachments eventuated in verdicts of guilty by the House of Lords. Some did result in convictions; [100] in some cases the accused was saved by the intervention of the King, who prorogued or dissolved Parliament. The odious Scroggs was thus rescued by the abrupt dissolution of Parliament, as were Mordaunt, Seymour and Buckingham. Is the impeachment of Buckingham robbed of precedential value because it was thwarted by a foolishly obstinate King who was beating his own path to the scaffold? [101] On a number of occasions the Commons stayed its hand, as when Chief Justice Kelynge grovelled in abject apology before its bar; [102] or when it referred the trial of the Earl of Orrery to the criminal courts,[103] evidence that it did not auto-

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[93] *See* text accompanying note 161 and notes 161, 162 *infra*.

[94] *See* text accompanying notes 158–60 *infra*.

[95] This dissolute Duke of Buckingham, whose "boundless influence over both James I and Charles I was one of the greatest calamities which ever hit the English throne," Chafee, *supra* note 6, at 46, illustrates why, in the words of Macaulay, "favorites have always been highly odious" in England. 2 Macaulay, Essays 817 (G. Trevelyan ed. 1890). His "utter inefficiency for the high position he occupied" was beyond question. S. R. Gardiner, History of England under James I and Charles I, quoted Chafee, *supra* note 6, at 108. He abused his office to obtain titles of honor for his mother, brothers and kindred, text accompanying note 66 *supra*; he sought to promote a match between Charles I and the Spanish Infanta, which the English people "clearly saw, would lead to Spanish heirs and Catholic Kings who would endeavour to undo the work of Elizabeth." G. Trevelyan, Illustrated History of England 388–89 (1956) (hereinafter cited as Trevelyan). When that dangerous project broke down, he embarked upon a series of war-like expeditions that resulted in a row of "disasters disgraceful" to English arms, and worse yet, "led to unparliamentary taxation, billeting, arbitrary imprisonment and martial law over civilians." *Id.* at 389.

[96] Oxford, 15 Howell, *supra* note 7, at 1045 (1717); Bolingbroke, *id.* at 994 (1715); Strafford, *id.* at 1013 1715.

[97] Roberts, *supra* note 24, at 395.

[98] *Id.* at 385.

[99] Trevelyan, *supra* note 95, at 499; W. Churchill, Marlborough, His Life and Times 890 (abr. ed. 1968) (hereinafter cited as Churchill), states, "Forty years later, William Pitt . . . feeling the odium which still clung to England and infected her every public pledge, pronounced the stern judgment that 'Utrecht was an indelible reproach to the last generation.'"

[100] Earl of Suffolk, text accompanying note 62 *supra*; Lord Treasurer Middlesex, text accompanying note 65 *supra*; Sir Richard Gurney, text accompanying note 68 *supra*; the Duke of Suffolk was banished by the King. 1 HOWELL, *supra* note 7, at 271, 274–75 (1451).

[101] Scroggs, 8 HOWELL, *supra* note 7, at 216; Mordaunt, 6 *id.*, at 806; Seymour, 8 *id.* at 162; Buckingham, 2 *id.* at 1446–47. In Buckingham's case, "Charles preferred to invite a challenge to his sole control of executive power than to surrender a favourite." Roberts, *supra* note 24, at 441.

[102] 2 J. Campbell, Lives of the Chief Justices of England 170 (Amer. ed. 1874) (hereinafter cited as Campbell, Chief Justices); Churchill, *supra* note 99, at 861. So too, the Commons turned down a proposal to impeach the Duke of Leeds, Lord Treasurer. 4 Hatsell, *supra* note 24, at 235n.

[103] 6 Howell, *supra* note 7, at 913, 920 (1669).

matically grind out impeachments. If the House of Lords did not always see eye to eye with the Commons, it was not so much because the Lords were worthier sentinels of the law [104] as because of factional differences that arose from time to time.[105] In a moment untroubled by political agitation, the Lords noted that impeachments by the Commons "are the groans of the people . . . and carry with them a greater supposition of guilt than any other accusation. . . ." [106] For the most part the Lords parted company with the Commons in cases that proceeded "for blood," "high treason," and such acquittals do not cast doubt on the charges of "high crimes and misdemeanors" here collected.

B. The American Scene

Article II, § 4 of the Constitution provides that,

> The President, Vice President and all civil officers of the United States shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other High Crimes and Misdemeanors . . .

The path by which the Framers arrived at this language is traceable in the records of the Convention.[107] Initially impeachment was to be based upon "malpractice or neglect of duty." in the Committee on Detail this became "treason bribery or corruption," and was then reduced by the Committee of Eleven to "treason or bribery." When Mason suggested on the floor of the Convention the addition of "maladministration," Madison remarked that it was "so vague," whereupon Mason substituted "high crimes and misdemeanors" which was adopted without demur.[108] The special nature of "high misdemeanors" had already been recognized by the Convention. As reported by the Committee on Detail, article XV provided that a fugitive from justice

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[104] For example, it has been indicated that the Commons moved from the impeachment of the Earl of Strafford, 3 *id.* at 380–81 (1640), to a bill of attainder, because the issue of guilt was for the Lords "a judicial question, which must be legally proved." J. Tanner, English Constitutional Conflicts of the Seventeenth Century 94–95 (1928). Notwithstanding that the impeachment and attainder both proceeded from all but identical grounds—Strafford "endeavoured to subvert the fundamental laws and government . . . and instead thereof, to introduce an arbitrary and tyrannical government against law"—3 Howell, *supra* note 7, at 1480; *cf. id.* at 1518; 8 Rushworth, *supra* note 63, at 8, 661, 666, 678, 681, 756, the Lords joined in the bill of attainder, a legislative condemnation to death. It does the Lords little credit to attribute to them a readiness to acquit after a full-dress trial only to turn about and join in a legislative lynching, whereby, Lord Campbell later said, "the forms of law and the principles of justice might more easily be violated." 2 Campbell, Chief Justices, *supra* note 102, at 117.

[105] 2 Wooddeson, *supra* note 12, at 620, concluded that impeachments "have been too often misguided by personal and factious animosities, and productive of alarming dissensions between two branches of the legislature."

[106] 4 Hatsell, *supra* note 24, at 343, 333, 342.

As Trevelyan noted of the Long Parliament—the cradle of English liberties—"it was the Commons who led, and the Lords who followed." Trevelyan, *supra* note 95, at 401.

The pioneer Wooddeson, and Story, who followed in his path, included impeachments that did not eventuate in convictions to illustrate the scope of the power. *See* Somers, text accompanying note 76 *supra*; Buckingham, text accompanying notes 79, 86 *supra*; the impeachment of Orford, Oxford et al. for giving pernicious advice, text accompanying note 78 *supra*; and note 91 (in the Virginia convention, Corbin and Pendleton considered that the giving of "bad advice" was impeachable, text accompanying note 170 *infra*); the obtention of exorbitant grants from the King, Buckingham, text accompanying note 79 *supra*; and Danby, et al., text accompanying note 85 *supra*.

[107] In this enterprise, both the Colonial materials and the early State constitutions played a very small role. For the Colonial materials, see M. Clarke, Parliamentary Privilege in the American Colonies 3943 (1943); the State constitutional provisions are discussed in Ziskind, *Judicial Tenure in the American Constitution: English and American Precedents*, 1969 Sup. Ct. Rev. 138147. *See also* G. Wood, The Creation of the American Republic, 1776–1787, 142 (1969); Berger, *Impeachment of Judges and "Good Behavior" Tenure*, 79 Yale L.J. 1475, 1492–96, 1512 (1970)

[108] 1 M. Farrand, The Records of the Federal Convention of 1787, 230 (1911) (hereinafter cited as Farrand); 2 Farrand, 84, 172, 186, 495, 550, 545. In his Philadelphia Lectures (1791), Justice Wilson, who had been a leading Framer, referred to "malversation in office, or what are called high misdemeanors." 1 Wilson, *supra* note 5, at 426.

charged with "treason, felony or high misdemeanor," should be returned to the State from which he had fled. In the Convention, "the words 'high misdemeanor' were struck out, and 'other crime' inserted, in order to comprehend all proper cases; it being doubtful whether 'high misdemeanor' had not a technical meaning too limited," [109] limited, inferably, to an impeachable offense as distinguished from a misdemeanor ordinarily coupled with a felony in criminal law. But for a few early statutes directed at "political" crimes,[110] "high crimes" found no place in the criminal law of this country. Like Blackstone, James Wilson referred to "malversation in office, or what are called high misdemeanors." [111] Impeachments, he states, "and offenses and offenders impeachable, come not, in those descriptions, within the sphere of ordinary jurisprudence. They are founded on different principles, are governed by different maxims, and are directed to different objects. . . ." Again, "impeachments are confined to political characters, to political crimes and misdeameanors, and to political punishments." [112]

Indictability of judges in English law, as we have seen, posed a special problem. Assuming that the learning pulled together above [113] was available to the Framers,[114] and that they had occasion to collate the authorities or did so out of scholarly curiosity, they would have found that lesser judges were held to strict account criminally, whereas Justices of the High Courts, according to dicta uttered by judges of great distinction, were deemed accountable only to Parliament. Since the Justices were not indictable and since they had been impeached, the Framers might conclude that indictability was not the test of their impeachment.[115] The federal judges were from the outset more numerous than the early English Justices,[116] and more widely dispersed than the Justices settled in Westminster Hall,[117] with whom

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[109] 2 Farrand, *supra* note 108 at 174, 443. This confirms that the word "high" in "high crimes and misdemeanors" modifies both "crimes and misdemeanors." *See also* King's remarks, *id.* at 348; Blackstone's definition of "high misdemeanor," discussed in the text accompanying note 32, *supra*; Wilson, *supra* note 108. Initially Scroggs, C.J. was charged with "high misdemeanors," then with high treason. 8 Howell, *supra* note 7, at 163, 197 (1680). See also note 111 *infra*.

[110] Statutory "high misdemeanors": Act of June 5, 1794, ch. 50 § 1, 1 Stat. 381–82 (1861), acceptance by a citizen of a commission to serve a foreign state; Alien & Sedition Act, Act of June 14, 1798, ch. 74, 1 Stat. 596, unlawful combination to oppose measures of government; Act of January 30, 1799, ch. 1, 1 Stat. 613, correspondence by citizens with foreign government in order to influence its measures in disputes with United States.

The practice of law by a federal judge, and his failure to reside at the place required by law were made "high misdemeanors" 28 U.S.C. §§ 1, 373, Jud. Code 1, 258 (1911).

[111] 1 Wilson, *supra* note 5, at 426. In 1797 Senator William Blount was expelled by the Senate for a "high misdemeanor entirely inconsistent with his public trust and duty as a Senator." Wharton, *supra* note 9, at 202.

[112] 1 Wilson, *supra* note 5, at 324, 426. Story approved Bayard's statement that "impeachment is a proceeding purely of a political nature. It is not so much designed to punish an offender as to secure the state against gross official demeanors. It touches neither his person nor his property, but simply divests him of his political capacity," *i.e.*, to hold office. Story, *supra* note 12, at § 803. Bayard made virtually the same statement in 1797 in the Blount impeachment, *see* text accompanying note 149 *infra*.

In the Virginia Convention Mason presumably noticed the distinction. After animadverting on the provisions that the Senators try themselves for impeachable crimes, he inquired, "in what court the members of the government were to be tried for the commission of indictable offences, or injuries to individuals," 3 Elliot, *supra* note 5, at 402, distinguishing between impeachment for crimes against the State and indictment for "injuries to individuals."

[113] *See* text accompanying notes 42–61 *supra*.

[114] *Cf.* Goebel, *Ex Parte Cleo*, 54 Colum. L. Rev. 450, 455 (1954).

[115] *Cf.* dictum of Justice Field in Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 350 (1872).

[116] Chapter 20, § 1 of the Judiciary Act of 1789, 1 Stat. 72–73, [Ch. 20] provided for a Chief Justice and five Associate Justices; §§ 2 and 3 provided for thirteen district judges.

[117] For centuries the Justices of the High Courts—Common Pleas, Kings Bench, Exchequer—numbered seven or eight. As late as 1800, "the permanent judges of the central courts of common law and Chancery, all taken together, rarely exceeded fifteen." J. Dawson, The Oracles of the Law 2–3 (1968).

they were not altogether assimilable; but still less were they to be classed with the minor English judges who *were* indictable. It can hardly be postulated, however, that the Framers would demand a more stringent standard of impeachment, indictability for district judges, than for Supreme Court Justices.

In the United States the problem is further complicated by the doctrine that there is no federal common law of crimes, so that to constitute a "high crime or misdemeanor," it has been maintained, there must be a statute which creates an indictable crime.[118] One of the components of impeachment, "treason," is defined in the Constitution; "bribery" is not.[119] The Framers were content to look to the common law for a definition of bribery. So too, when the Convention adopted Mason's substitution of "high crimes and misdemeanors" for the "vague" "maladministration" he had at first suggested, the Framers inferably had the English cases in mind as giving content to the phrase.[120] A striking assumption by the Founders that English law would be applicable is exhibited by the First Congress' prohibition of resort to "benefit of clergy" as an exemption from capital punishment, an exemption first afforded by the common law to the clergy and then to such of the laity as could read.[121] Then too, the doctrine that there was no federal common law of crimes was a child of a later time. Professor Leonard Levy justly states that "All the early cases, excepting one in which the court split,[122] are on the side of the proposition that there was a federal common law of crimes." [123] According to Chief Justice Taft, six Justices and two Chief Justices of the Supreme Court shared his view, two of whom, Justices Wilson and Paterson were Framers,[124] presumably attuned to the thinking of the Convention.

The Supreme Court, to be sure, reversed this current of opinion in 1812,[125] but there is little warrant for the conclusion that as the Framers, 25 years earlier, drafted the impeachment provisions they intended to circumscribe them by an as yet unborn limitation.

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[118] As "there are under the laws of the United States no common law crimes, but only those which are contrary to some positive statutory rule, there can be no impeachment except for a violation of a law of congress . . . English precedents concerning *impeachable crimes* are consequently not applicable." Dwight, supra note 14, at 268–269.

[119] In the Act of April 30, 1970, ch. 9, § 21 1 Stat. 117, Congress following the common law definition of bribery, made punishable acceptance by a judge of money "or any other bribe" to influence his judgment in a pending case.

[120] *See* note 161 *infra*.

[121] M. Radin, Anglo-American Legal History 230–31 (1936); Act of April 30, 1790, ch. 9 § 31, 1 Stat. 119.

[122] In that case, United States v. Worrall, 2 U.S. (2 Dallas) 384 (1798), Justice Chase held there is no federal common law of crimes; District Judge Peters was of the contrary opinion. Said Levy, "Chase's opinion remained unique until it was later adopted by the Supreme Court in 1812." L. Levy, Legacy of Supression 241 (1960).

[123] L. Levy, *supra* note 122, at 239.

[124] In *Ex Parte* Grossman, 267 U.S. 87, 114–15 (1925), Chief Justice Taft stated, "It is not too much to say that, immediately after the ratification of the Constitution, the power and jurisdiction of federal courts to indict and prosecute common laws crimes within the scope of federal judicial power was thought to exist by most of the then members of this Court," among them Chief Justice Jay, and Wilson and Iredell, JJ. Taft also quotes Charles Warren to the effect that "in the early years of the Court, Chief Justice Ellsworth and Justices Cushing, Paterson and Washington had also delivered opinions or charges of the same tenor. Justice Wilson and Paterson were members of the Constitutional Convention . . . ." *Id.* at 115. Ellsworth and Iredell were leading proponents of ratification in the Connecticut and North Carolina conventions respectively, and presumably had an informed opinion. See the encomium of Wharton on the early opinions as reflecting the "united opinion of the day." F. Wharton, Criminal Law 121 (6th ed. 1868).

[125] United States v. Hudson & Goodwin, 11 U.S. (7 Cranch) 32 (1812). "[O]ur inquiry concerns the standard prevailing at the time of the adoption of the Constitution, not a score or more years later." United States v. Barnett, 376 U.S. 681, 693 (1964). For the view that the case was politically inspired see W. Crosskey, Politics and the Constitution 770–84 (1953).

Both Rawle and Story rejected the limitation on the ground that it would "render the power of impeachment a nullity . . . until Congress pass laws, declaring what shall constitute the other 'high crimes and misdemeanors'." [126] Theoretically it was open to Congress immediately to enact a complete Code of impeachable offenses, and given room for leisurely analysis it might have perceived that the English precedents were reducible to manageable categories.[127] But the Congress was engaged in weightier tasks, in erecting a novel structure of government, in fleshing out the bare bones of the Constitution. The meager role that criminal legislation played in this endeavor may be gathered from the negligible handful of criminal statutes that were enacted by a succession of early Congresses. Whatever the merits of the no-federal-common law-crimes doctrine, the Senate, itself the tribunal for impeachments, has not embraced it, as its Delphic verdicts of guilty in the absence of statutory offenses indicate.[128] Nor has the Congress, the alter ego of the Senate as impeachment tribunal and the House as Grand Inquest, ever felt called upon to supply a Code of impeachable offenses, a tacit judgment that it does not deem such a Code necessary. These verdicts and that judgment seem to me to rest upon a sound historical basis.

Finally, a significant contrast exhibited by the terms of the impeachment provisions needs to be taken into account. Article I, § 3(7), provides

> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification . . . but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

The phrase "according to law" was omitted from article II, § 4,

> The President, Vice President, and all civil officers . . . shall be removed from Office on Impeachment for, and Conviction of Treason, Bribery, or other High Crimes and Misdemeanors.

That omission, when contrasted with the association of "indictments" and "according to law" in § 3, can be read to indicate an intention to demarcate criminal trials under traditional *criminal law* from impeachments which had been triable under the "course of Parliament," in order to insure that the measure of impeachable conduct would not be the criterion of punishment following conviction upon indictment. Conversely, indictment "according to law" was not to furnish the test of the curative removal from office by impeachment. Indictability, it is safe to say, was not made the measure of impeachment.

1. Is Impeachment a Criminal Proceeding?

A more arresting question, and one that has not received the attention it deserves, is whether the Constitutional impeachment provisions,

[126] Rawle, *supra* note 15, at 273; Story, *supra* note 12, at § 798. For an earlier critique of the view that there was a federal common law of crime, see 1 Tucker's Blackstone, App. (part I). 378 (1803) (hereinafter cited as Tucker).

[127] *See* text accompanying notes 82–92 *supra*. I would therefore differ with Story's statement that "political offenses are of so various and complex a character, so utterly incapable of being defined or classified, that the task of positive legislation would be impracticable, if it were not almost absurb to attempt it. Story, *supra* note 12, § 797.

Nevertheless, Congress has never undertaken the task. So too, although authorized by article I, § 8(10) "To define and punish piracies and felonies committed on the high seas," Congress left the task to the courts. The Act of March 3, 1819, c. 77, § 5, 3 Stat. 513–14 (1846), provides a death penalty for one who is found "on the high seas [to] commit the crime of piracy, as defined by the law of nations." Thus it was left to the courts to select from the "law of nations." Again, "From 1799 to the present, Congress has made no definitive statement concerning grand jury powers." United States v. Cox, 342 F.2d 167, 186 (5th Cir. 1965) (Wisdom, J., concurring).

[128] *See* note 15 and text accompanying notes 15, 16 *supra*.

particularly when viewed in the context of the fifth and sixth amendments, set up a criminal proceeding at all. Undoubtedly English impeachments were criminal, though by the *lex parliamentaria*, because conviction could be followed by death, imprisonment or heavy fine. Our impeachment provisions may seem to point in the direction of criminality because they employ criminal terminology. For example, article II, § 4, provides for removal from office on "conviction of treason, bribery, or other high crimes and misdemeanors." Article III, § 2(3) provides that, "The trial of all crimes, except in cases of impeachment, shall be by jury." And article II, § 2(1), empowers the President to "grant pardons for offenses against the United States, except in cases of impeachment"; and the function of a pardon is to exempt from punishment for a crime.[129] Then there are the references by the Founders to impeachment in terms of punishment.[130] But article I, § 3(7), earlier quoted, sharply separates "removal from office" from subsequent punishment after indictment, in contrast to the English practice which wedded criminal punishment and removal in one proceeding. From the text of the Constitution there emerges a leading purpose: partisan passions should no longer give rise to political executions.[131] Removal would enable the government to replace an unfit officer with a proper person, a measure essential to maintenance of efficient government,[132] leaving "punishment" to a later and separate criminal proceeding. Anomalies remain and will be discussed: why the pardon, why the exemption from "trial" of all crimes by jury; but the starting point, to borrow from Story, is that impeachment is

> a proceeding purely of a political nature. It is not so much designed to punish an offender as to secure the state against gross official misdemeanors. It touches neither his person nor his property, but simply divests him of his political capacity,[133]

that is, it disqualifies him to hold office.

In a statement which anticipated Story, James Wilson came close to saying that the problem posed by double jeopardy is met by reading impeachment in non-criminal terms:

> Impeachments . . . come not . . . within the sphere of ordinary jurisprudence. They are founded on different principles; are governed by different maxims, and are directed to different objects; for this reason, the trial and punishment of an offense on impeachment, is no bar to a trial [and punishment] of the same offense at common law.[134]

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[129] United States v. Wilson, 32 U.S. (7 Pet.) 150, 159 (1833). So too, the "word 'offense' in its usual sense means a crime or misdemeanor, a branch of the criminal law." United States v. Krebs, 104 F. Supp. 670 (D. Neb. 1951); Dillner Transfer Co. v. Int'l Brotherhood, 94 F. Supp. 491, 492 n.2 (W.D. Pa. 1950); *cf.* Moore v. Illinois, 55 U.S. (4 How. 13, 19–20 (1852).

[130] McKean at the Pennsylvania Ratification Convention, 2 Elliot, *supra* note 5, at 538; Iredell at the North Carolina Ratification Convention, 4 *id* at 32; Maclaine, *id.* at 34; Boudinot in the Annals of Cong. 375 (Gales & Seaton ed. 1834) (print bearing running page title "History of Congress") (hereinafter cited as Ann. Cong.); Livermore, *id* at 478 (conviction of some crime); Hartley, *id.* at 480.

[131] As Vice President, Jefferson noted that "history shows, that in England, impeachment has been an engine more of passion than of justice." Wharton, *supra* note 9, at 315n.

[132] Long ago Hawkins said, "nothing can be more just than that he, who either neglects or refuses to answer the end for which his office was ordained, should give way to others, who are both able and willing to take care of it." It is "very reasonable," he continued, "That he who so far neglects a publick Office, as plainly to appear to take no manner of care of it, should rather be immediately displaced, than that the Publick be in danger of suffering that Damage which cannot but be expected some Time or other from his Negligence." 1 Hawkins, *supra* note 33, Ch. 66 § 1, at 167–68.

[133] Story, *supra* note 12, at § 803. Story borrowed this from the remarks of Congressman Bayard in the Blount proceedings. *See* text accompanying note 149 *infra*.

[134] 1 Wilson, *supra* note 5, at 324. The townspeople of Sutton criticized the proposed Massachusetts constitution of 1780 on the ground that impeachment involved double

In a word, the separation of removal from criminal prosecution poses the problem of double jeopardy unless the removal proceedings is read in non-criminal terms. If impeachment is not criminal, it may be asked, why was it deemed necessary to have a saving clause for subsequent indictment and punishment? Possibly the saving clause was designed to preclude an inference from the unmistakable criminal nature of the English impeachment that an impeachment could be pleaded in bar to a subsequent criminal prosecution, an excess of caution.[135] To read impeachment in criminal terms is to raise a constitutional doubt whether a subsequent indictment and trial offends against the fifth amendment ban of double jeopardy, a doubt which the courts are under a duty to avoid.[136]

Although Wilson tacitly assumed that but for the non-criminal nature of impeachment double jeopardy would apply, at common law *autre fois acquit* and *autre fois convict* were confined to jeopardy of life.[137] The fifth amendment also provides, "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb"; and early district courts therefore excluded "mere misdemeanors," and even an "infamous and severely punishable offense," from its protective scope.[138] But the Supreme Court, in 1873, noting *inter alia* that Chitty had dropped "life and limb" and substituted "placed in peril of legal penalties upon the same accusation," concluded that the "constitutional provision must be applied in all cases . . . ." [139] To the extent that impeachment retains a residual punitive aura, it may be compared to deportation, which is attended by very painful consequences, but which, the Supreme Court held, "is not a punishment for a crime . . . . It is but a method of enforcing the return to his own country of an alien who has not complied with the conditions" laid down for his residence,[140] precisely as impeachment is designed to remove an unfit officer for the good of the government.

Another problem is presented by the sixth amendment,

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury . . .

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jeopardy, because the impeached official could subsequently be tried in a court of law. O. Handlin & M. Handlin, The Popular Sources of Political Authority: Documents on the Massachusetts Constitution of 1780, 286 (1966).

[135] In The Federalist, *supra* note 2, No. 65, at 426, Hamilton asks, "Would it be proper that the persons, who had disposed of his fame and his most valuable rights as a citizen in one trial, should, in another trial, for the same offence be also the disposers of his life and his fortune?" But the House of Lords had long decided both issues in one trial, and I see no impropriety in dividing the issues for two trials before the same tribunal. Courts frequently hear civil cases which may be damaging to the defendant's reputation and then turn to the criminal side to try charges arising from the same facts.

[136] Richmond Screw Anchor Co. v. United States, 275 U.S. 331, 346 (1928); United States v. Jim Fuey Moy, 241 U.S. 394, 401 (1916).

[137] 2 Hawkins, *supra* noe 33, Ch. 36, § 10, at 377; 4 Blackstone, *supra* note 11, at 335-36.

[138] United States v. Gibert, 25 F. Cas. 1287, 1296–1297 (No. 15, 204) (C. Ct. Mass. 1834), per Story, Cir. .; United States v. Keen, 26 F. Cas. 686, 687 (No. 15, 510) (C. Ct. Ind. 1839).

[139] *Ex Parte* Lange, 85 U.S. (18 Wall.) 163, 172–73 (1873). Judge Friendly stated, "The Fifth Amendment guarantees that when the government has proceeded to judgment on a certain fact situation, there can be no further prosecution of that fact situation alone." United States v. Sabella, 272 F.2d 206, 212 (2d Cir. 1959). *See also* Abbate 1. United States, 359 U.S. 187, 196–98 (1959) (Brennan, J. concurring).

Is there inconsistency in principle in declining to read back into the impeachment provisions the later formulated "no federal common law crimes" doctrine while reading "life and limb" in the later and broader judicial fashion? First, James Wilson understood the removal provisions to be non-criminal and consequently considered the double jeopardy principle to be inapplicable. Second, the impeachment provisions conferred upon Congress an essential curative removal power which a subsequently *self-limiting* judicial doctrine, "no federal common law crimes," cannot curtail. Third, over the years Congress has tacitly considered the doctrine inapplicable to its impeachment function. The guarantee against double jeopardy, on the other hand, is for the benefit of the individual; it does not purport to cut down an essential power conferred upon one of the branches, and like other constitutional guarantees, *e.g.*, due process, has been broadened over the years.

[140] Fong Yue Ting v. United States, 149 U.S. 698, 730 (1893).

If impeachment be deemed a "criminal prosecution," it is difficult to escape the requirement of trial by jury. Earlier, article III, § 2(3) had expressely exempted impeachment from the jury "Trial of all Crimes"; and with that exemption before them, the draftsmen of the sixth amendment extended trial by jury to "all criminal prosecutions," without exception, thereby exhibiting an intention to withdraw the former exception.[141] Either we must conclude that the Founders felt no need to exempt impeachment from the sixth amendment because they did not consider it a "criminal prosecution," or that jury trial is required if impeachment be in fact a "criminal prosecution." One who would make "all" mean less than "all" has the burden of proving why the ordinary meaning should not prevail.[142] Speaking in another context of the article III and sixth amendment jury trial provisions, the Supreme Court said, "If there be any conflict between these two provisions, the one found in the amendment must control, under the well-understood rule that the last expression of the will of the lawmaker prevails over the earlier one." [143] If impeachment be deemed criminal in nature, the problem is not to be solved by reading an exception from "criminal prosecution" into the sixth amendment. The companion fifth amendment clause, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces," shows that the draftsmen knew well enough how to carve out exceptions. It is not for us to interpolate exceptions that they withheld. No need exists to read "exceptions" into the sixth amendment if impeachment is regarded merely as a removal procedure rather than a criminal trial, as the structure of the article I, § 3(7) impeachment provision itself indicates. And if, contrary to my view, impeachment is indeed a criminal proceeding, the task of reading an exception into the amendment is not for the Senate but for the Supreme Court.

Simpson tells us that the point "that criminal impeachments should be tried by a jury" was "made and overruled in the Blount impeachment," [144] but he does less than justice to the facts. True, Jefferson, then Vice President, noted that a motion would be made to incorporate in a proposed bill for regulating impeachments in the Senate, "a clause for the introduction of juries into these trials." (Compare the paragraph in the Constitution which says, that all crimes,

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[141] Simpson, *supra* note 15, at 34, states that the "use of the word 'crimes' in Article III . . . tells for neither side of the controversy, for the reason that inasmuch as the proceedings in impeachment are a trial, and that a 'trial' may be for a 'crime,' it was necessary therein to exclude 'impeachments' in order to avoid the implication, which otherwise might arise, that criminal impeachments should be tried by a jury. . . ." But the exclusion of jury trial for impeachment posits that it proceeds for a "crime."

[142] Hart, *Book Review*, 67 Harv. L. Rev. 1456, 1465 (1954).

Simpson, *supra* note 15, at 66, dismisses the impact of the sixth amendment on the ground that it was adopted to secure jury trials "in the ordinary civil and criminal suits." He is plainly mistaken as to "criminal suits," for express provision had already been made by Article III, § 2(3) for the "trial of all crimes, except in cases of impeachment . . . by jury," and it was that provision that triggered the drive for the seventh amendment provision for jury trial in civil cases. For citations, see Berger, *Impeachment of Judges and "Good Behavior" Tenure*, 79 Yale L.J. 1475, 1489–90 (1970). Although that concern was preponderant, it was not necessarily exclusive. Provision for "ordinary" civil suits did not require a departure from the exception made for "cases of impeachment" in article III in favor of the all-inclusive "In all criminal Prosecutions" of the sixth amendment. Moreover, as the debate in North Carolina revealed in the very context of impeachment, there was distrust of Congress "dangerous latitude of construction"; *See* text accompanying note 301 *infra*. On the eve of the first impeachment, Jefferson thought the sixth amendment relevant to impeachment trials, *see* text accompanying note 145 *infra*. All this, of course, on the debatable assumption that impeachment envisaged a "criminal prosecution."

[143] Schick v. United States, 195 U.S. 65, 68 (1904).

[144] Simpson, *supra* note 15, at 34.

except in cases of impeachment, shall be by jury, with the eighth amendment [the sixth], which says, that in *all* criminal prosecutions, the trial shall be by jury.) There is no expectation of carrying this, because the division in the Senate is of two to one . . . ." [145] Apparently the motion failed,[146] but this by no means disposes of the issue. Many months after failure of the motion [147] Blount filed what was in effect a plea to the jurisdiction, based on three points: 1) a right to trial by jury under the sixth amendment; 2) a Senator is not a "civil officer" within the meaning of the impeachment provision; and 3) he was not charged with malconduct in office,[148] but with actions in his private capacity. Opening for the Managers of the prosecution, Congressman Bayard halfheartedly argued that from the jury-trial claim "it must necessarily follow that the whole of their [the Senate] judicial authority is abolished . . . ." But he himself recognized that it was not at all a "necessary" deduction when he made his final observation on the point,

> impeachment is a proceeding purely of a political nature. It is not so much designed to punish an offender, as to secure the State. It touches neither his person nor his property, but simply divests him of his political capacity [office].[149]

In short, lacking punishment or impact on life or property, the proceeding was not the trial of a "crime," and hence the judicial authority of the Senate could be maintained and exercised. For whatever reason, Dallas, counsel for Blount, did not argue the jury-trial point but confined himself to the other two.[150] The Senate was persuaded by the plea "that this court ought not to hold jurisdiction," [151] a statement that, as regards the jury-trial point, is to say the least equivocal. Virtual abandonment of that point on argument removed the necessity of ruling on it; and the Senate ruling is compatible with Bayard's argument that impeachment is unaffected by the sixth amendment because it is a non-criminal proceeding.[152]

Yet another difficulty arises, from article II, § 2 provision that excepts impeachments from the Presidential power to "grant pardons for offenses." Blackstone treats "offenses" as virtually synonymous with "crimes",[153] and a pardon comes into play to exempt from punishment for a crime.[154] Let me attempt an explanation for this confusing cross-

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[145] Wharton, *supra* note 9, at 314–315n. Parenthetically, Jefferson confirms my reading of the sixth amendment if impeachment be indeed criminal.

[146] *Cf. id.* at 315n.

[147] The motion was made in February, 1798, *id.* at 315–315n; the trial opened in December, *id.* at 259.

[148] *Id.* at 260. The most serious charge was that Blount had conspired to launch a military expedition to wrest Florida and Louisiana from Spain and to deliver it to England. *Id.* at 253. Before the impeachment, the Senate, by a vote of 25 to 1, expelled him as "guilty of a high misdemeanor, entirely inconsistent with his public trust and duty as a Senator." *Id.* at 251–52.

[149] *Id.* at 262–63.

[150] *Id.* at 262–63. Closing for the Managers, Harper followed suit and confined himself to those two points. *Id.* at 296.

[151] *Id.* at 316.

[152] Subsequent convictions by the Senate show that it does not regard the jury-trial requirement as a bar.

[153] 4 Blackstone, *supra* note 11, at *5 *et seq. See also* W. Russell, *Crimes and Misdemeanors* 58 (1819), and note 129 *supra*.

[154] *See* note 129 *supra*. Simpson, *supra* note 15, at 34, stated, "The only inference that can be fairly drawn from the use of the word 'offenses' in Article II, Section 2, instead of the word 'crimes,' is that it was recognized that there were 'offenses against the United States' which were not crimes, and all those, including fines, penalties, and forfeitures, could be pardoned by the President; but for 'offenses' resulting in a conviction upon impeachment, the President was not to be permitted to pardon." Apparently Simpson considers that impeachment is grounded upon an "offense" that is not a crime, *see also id*, at 32–37, 40–41.

Like Simpson, I consider that the American impeachment process is not criminal, but I can not as easily deprive "offenses" of its normal "criminal" connotations. *See*

current. The Framers had the English practice constantly before their eyes; doubtless they were aware that the Act of Settlement (1700) foreclosed the plea of pardon to an impeachment, though it remained open to the King to issue a pardon after conviction.[155] Here was a flaw to be avoided, and it is quite possible that the Framers did not pause to think though the impact of this exception upon the division they had instituted between impeachment and subsequent indictment. Since the Framers were following the English pattern in important respects, it was the counsel of prudence to bar a pardon after impeachment and conviction, notwithstanding that the separation of removal from subsequent indictment had rendered it unnecessary.[156] In the crowded effort to erect an unprecedented structure of government, the Framers might well have overlooked some lack of harmony in detail. Marks of haste are apparent on the face of the instrument, *e.g.* the provision which enables Congress to punish treason is not found in article I, the legislative article, but in the judicial article III; the provision for impeachment of judges is inferentially included in the article II, executive article, phase "all civil officers." Words like "offense," "convict," "high crimes" had been employed in the English impeachment process; and a thorough-going attempt to clarify the non-penal aspect of removal would have required the Framers to coin a fresh and different vocabulary, perhaps an insuperable task in all the circumstances. They were content to furnish practical answers to manifest problems, to prevent, for example, a Presidential pardon from undoing the impeachment of a Presidential favorite. One need not be completely persuaded by such explanations and yet prefer them to the difficulties presented by the double jeopardy and trial by jury amendments. It is not given to the historian retrospectively to impose a tidy scheme upon the unruly facts; he must be content to take account of anomalies and to resolve ambiguity by making what appears to be the best available choice.

2. The Limits of "High Crimes and Misdemeanors"

Pressing for the impeachment of Justice Douglas, Congressman Ford, it will be recalled, asserted that an "impeachable offense" is whatever House and Senate jointly "consider [it] to be."[157] The Records make quite plain that the Framers, far from meaning to confer illimitable power to impeach and convict, intended to confer a *limited* power.

Before Mason moved to add "maladministration" to "Treason, bribery," he explained that,

> Treason as defined in the Constitution will not reach many great and dangerous offenses. Hastings is not guilty of Trea-

note 129 *supra;* text accompanying note 153 *infra.* Simpson furnished no evidence for the assignment of a double meaning to "offenses," no explanation why penalties such as "fines and forfeitures" should be excluded from the norms of criminal sanctions. Where they were clearly "civil" in nature, the likelihood that a "pardon" would come into question was remote. The exemption of impeachment, in a word, is not explicable on the Simpson analysis.

[155] Act of Settlement, 12 & 13 Will. III, c. 2, § 3 (1700); 1 Chitty, *supra* note 7, at 763; *see also* note 7 *supra.*

[156] Another instance of superabundant caution is the prohibition of the bar to suspension of the writ of habeas corpus, article 1, § 9(1), which arguably was unnecessary given the prevailing view that the Constitution created a government of enumerated and limited powers. *See* Berger, *Congressional Inquiry v. Executive Privilege,* 12 U.C.L.A. L. Rev. 1044, 1075–76 (1965). The point was raised by Tredwell in the New York Ratification Convention. 2 Elliott, *supra* note 5, at 398–99.

[157] *See* note 1 *supra.*

> son. Attempts to subvert the Constitution may not be Treason as above defined . . . it is the more necessary to extend the power of impeachments.[158]

Thus Mason proposed to "extend the power of impeachment" to reach "great and dangerous offenses," "attempts to subvert the Constitution," by adding "maladministration." But Madison demurred because "so vague a term [as maladministration] will be equivalent to a tenure during the pleasure of the Senate," and "high crimes and misdemeanors" was accepted in its place. Manifestly, this substitution was made for the purpose of limiting, not expanding the initial Mason proposal.[159] Earlier the Convention had rejected "high misdemeanors" in another context because it "had a technical meaning too limited," [160] so that adoption of "high crimes and misdemeanors" exhibits an intent to embrace the "limited," "technical meaning" of the words for purposes of impeachment. That consequence would attach in any event, for use of a technical term, "fully ascertained by the common or civil law" would require reference to that law "for its precise meaning." [161] If "high crimes and misdemeanors" had an ascertainable content at the time the Constitution was adopted—as was the fact—that content furnishes the boundaries of the power. It is no more open to Congress to stray beyond those boundaries than it is to include in the companion word "bribery" an offense such as "robbery" which had a quite different common law connotation.[162] The design of the Framers to confer

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[158] 2 Farrand, *supra* note 108, at 550.

[159] *Id.* Earlier, Mason had said in the Convention that the President as well as his coadjutors should be punished "when great crimes were committed." *Id.* at 65.

[160] *See* text accompanying note 109 *supra*.

[161] United States v. Jones, 26 F. Cas. 653, 655 (No. 15, 494) (C. Ct. Pa. 1813) (per Justice Bushrod Washington). Chief Justice Marshall said of the word "robbery" in a statute, that "it must be understood in the sense in which it is recognized and defined at common law." United States v. Palmer, 16 U.S. (3 Wheat.) 610, 630 (1818). So too, "the word 'jury' and the words 'trial by jury' were placed in the Constitution . . . with reference to the meaning affixed to them in the law as it was in this country and in England at the adoption of the Constitution." Thompson v. Utah, 170 U.S. 343, 344 (1898).

This was the common view, as is illustrated by Jefferson's transmittal of a draft of a Virginia criminal code to George Wythe, in which he explained that he sought to preserve "the very words of the established law, wherever their meaning had been sanctioned by judicial decisions or rendered technical by usage," in order, as he added in a subsequent "Note," to give no occasion for new questions by new expressions." Quote in Hurst, *Treason in the United States*, 53 Harv. L. Rev. 226, 253–54 (1944).

It is reasonable to infer that the Framers were familiar with English impeachment trials. As early as 1734, William Smith, in an opinion rendered to the New York Assembly, quoted Article 3 of the Clarendon impeachment. Quoted, J. Smith, Cases & Materials on Development of Legal Institutions 440, 442 (1965). Several colonial libraries in New York had various collections of the State Trials. P. Hamlin, Legal Education in Colonial New York 188, 193, 196 (1939). For his *Manual of Parliamentary Practice* (1801), reprinted in the Senate Manual (55th Cong. 1899) 61–153 Vice President Jefferson combed the debates in Parliament and the State Trials. For impeachment materials, see *id.* at 149–153. In a letter to the Boston Gazette, January 4, 1768, Josiah Quincy, Jr. directed attention to the scope of impeachment in England and to the impeachment of leading English statesmen across the centuries, drawing on Selden's Jur. Parl.; Rushworth's Collections; the Lords' Journal. Quincy, Massachusetts Reports, 1761–1772 580–84 (1865).

Of the fifty-five members of the Federal Convention, "Four had studied in the Inner Temple, five in the Middle Temple. . . ." Hughes, *supra* note 15, at 11. And it is not to be presumed that they were ignorant of the famous State Trials. *See also* note 170 *infra*. Ross justly remarks, "The history of Seventeenth Century England—the Long Parliament, the Puritan Revolution, the 'Glorious Revolution', all that was no closed book to Eighteenth century Americans . . ." Ros, *"Good Behavior" of Federal Judges*, 12 U. Kan. City L. Rev. 119, 122 (1944). *See also* Bailyn, *supra* note 2; note 170 *infra*.

[162] As Story stated, "The doctrine, indeed would be truly alarming that the common law did not regulate, interpret, and control the powers and duties of the court of impeachment. . . . If the common law has no existence as to the Union as a rule or guide, the whole proceedings are completely at the abritrary pleasure of the government and its functionaries. . . ." Story, *supra* note 12, at § 798. Since, he said, "high crimes and misdemeanors" are not defined by any statute of the United States (nor, it may be added, by any English statute), "Resort, then, must be had either to parliamentary practice and the common law, in order to ascertain what are high crimes and misdemeanors, on the whole subject must be left to the arbitrary discretion of the Senate . . ." *Id.* §§ 796, 798. *Cf.* Marshall, C.J. in United States v. Wilson, 32 U.S. (7 Pet. 150, 159 (1833).

a limited power is confirmed by their rejection of removal by Address which knew no limits.[163]

Even so, some uneasiness apparently was excited by the breadth of the power, for there were repeated assurances that impeachment was meant only for "great offenses," "great misdemeanors." James Iredell, later to be a Supreme Court Justice, told the North Carolina Convention that the "occasion for its exercise [impeachment] will arise from acts of great injury to the community. . . ." [164] Impeachment, said Governor Johnston in that Convention, "is a mode of trial pointed out for great misdemeanors against the public." [165] From James Wilson's expression of hope in the Pennsylvania Convention that impeachments "will seldom happen," [166] it is inferable that he too was concerned only with serious misconduct. In this the Founders were but reflecting English sentiment, as was well put by Solicitor General, later Lord Chancellor, Somers, who stated in Parliament in 1691, "The power of Impeachment ought to be, like Goliath's sword, kept in the temple, and not used but on great occassions." [167]

The peaks of the English practice were evidently familiar to the Founders. In the Federal Convention George Mason said "corruption" would be impeachable; Governeur Morris agreed that "corruption and some few other offenses" ought to be impeachable. Madison added that protection against the "negligence or perfidy of the Chief Magistrate" were "indispensable." The President, said Madison, "might pervert his administration into a scheme of peculation or oppression. He might betray his trust to a foreign power." Morris added that he "may be bribed . . . to betray his trust," and recalled that "Charles II was bribed by Louis XIV." [168]

In the Virginia Ratification Convention Madison stated that "if the President be connected, in any suspicious manner with any person, and there be grounds to believe that he will shelter him" he may be impeached. He also stated that, "Were the President to commit anything so atrocious as to summon only a few States [*i.e.* Senators to consider a treaty]" he would be impeached for a "misdemeanor." [169] Corbin and Pendleton considered the giving of "bad advice" impeachable.[170] In North Carolina Iredell said, "I suppose the only instances,

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[163] 2 Farrand *supra* note 108, at 428. Speaking of the Act of Settlement (1700), Todd properly remarks that the removal by Address "is, in fact, a qualification or exception from, the words creating a tenure during good behavior and not an incident or legal conequence thereof." The power "may be invoked upon occasions when the misbehavior complained of would not constitute a legal breach of the conditions on which the office is held," i.e. when they would not amount to "misbehavior" in law. A. Todd, Parliamentary Government, 193 (Walpole ed. 1892). The terms of the Act confirm his construction: "Judges' Commissions [to] be made *Kuamidu se bene gesserint . . . but* upon the Address of both House of Parliament it may be lawful to remove them." 12 & 13 Will. III, c. 2, § 3 (emphasis supplied). For further discussion, see Berger, *Impeachment of Judges and "Good Behavior" Tenure*, 79 Yale L.J. 1475, 1500–01 (1970).

[164] 4 Elliot, *supra* note 5, at 113.

[165] *Id.* at 48. In the Federal Convention Mason said impeachment was to be for "great crimes." 2 Farrand, *supra* note 108, at 65.

[166] 2 Elliot, *supra* note 5, at 513.

[167] 5 New Parl't'y. Hist. 678 (1691). His view was immediately paraphrased by Attorney General Treby, later Chief Justice of Common Pleas: "Impeachments are seldom used, as not fit on common occasions. . . ." *Id.* So too, when the impeachment of the Earl of Orrery was proposed, Sir Thomas Clifford said he "would not have the sword of this House of Impeachments be blunted upon offenses of this nature . . . Would have impeachments of this nature upon great and considerable occasions." The Commons voted that the accusation "be left to be prosecuted at law." 6 Howell, *supra* note 7, at 918, 919, 920 (1669). In this country Story said that impeachments is "intended for occasional and extraordinary cases, where a superior power, acting for the whole people, is put into operation to protect their rights and to rescue their liberties from violation." 1 Story, *supra* note 12, at § 751.

[168] 2 Farrand, *supra* note 108, at 68–69. For the bribes Louis paid to Charles, which came out in the impeachment of Danby, see Chafee, *supra* note 6, at 120.

[169] 3 Elliot, *supra* note 5, at 498, 500.

[170] Corbin noted in Virginia that a British minister who advises an "abuse of this royal prerogative" is impeachable. 3 Elliot, *supra* note 5, at 516. In South Carolina, Pendleton

in which the President would be liable to impeachment, would be where he had received a bribe, or had acted from some corrupt motive or other." [171] General C. C. Pinckney said in South Carolina that those are impeachable "who behave amiss, or betray their public trust." An abuse of trust by the President, there said Edward Rutledge, was impeachable.[172] The net effect of these remarks, it seems to me, is to preclude resort to impeachment for petty misconduct. Such is also the implication of Hamilton's reference to "[T]he awful discretion which a court of impeachment must necessarily have, to doom to honor or to infamy the most confidential and the most distinguished character of the community. . . ." [173] He was not thinking of a sledgehammer to crush a fly. Senate power, then, was not designed to be unlimited; rather as Story said, "what are and what are not high crimes and misdemeanors is to be ascertained by a recurrence to English law." [174]

One case of impeachable conduct in England mentioned by Story, the rendering of unconstitutional opinions,[175] merits special notice. The subservient judges of Charles I had held that the "Ship-Money Tax" was constitutional,[176] a judgment rejected by an outraged Commons, which later impeached the judges.[177] Under our Constitution, however, the determination whether a measure is constitutional was left to the final determination of the judiciary. James Wilson flatly rejected the suggestion, made in the Pennsylvania Ratification Convention in order to cast doubt on the security which he had stressed was provided by an independent judiciary, that

> judges are to be impeached because they decide an act null and void, that was made in defiance of the Constitution? What House of Representatives would dare to impeach, or Senate to commit, judges for the performance of their duty.[178]

A similar statement was made by Gerry; [179] and that conclusion is inherent in the very nature of judicial review. Once it is granted that

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noted that "in England . . . ministers that advised illegal measures were liable to impeachment, for advising the king." 4 *id.*, at 268; *see also* statement of Iredell, note 91 *supra*.

[171] 4 *id.* Elliot, *supra* note 5, at 126; *see also* text accompanying note 163 *supra*.

[172] 4 Elliot, *supra* note 5, at 276, 281.

[173] The Federalist, *supra* note 2, No. 65 (A. Hamilton), at 426.

Apparently Story, *supra* note 12, at § 786, conceived of removal by impeachment "upon the mere ground of political usurpation or malversation in office, admitting of endless varieties, from the slightest guilt up to the most flagrant corruption." But he did not explain his "slightest guilt" nor take note of the assurances in the several conventions, including the history of the adoption of "high crimes and misdemeanors." Nor did he seek to reconcile it with his statement in § 751, quoted note 167 *supra*.

[174] Story, *supra* note 12, at § 799.

[175] *See* text accompanying note 76 *supra*.

[176] The Ship-Money Tax, originally levied on the great seaport towns to provide ships, was extended by Charles I to inland towns as a means of raising money without resort to Parliament. Chief Justice Finch, by one form of pressure or another, "had made certain of the opinions of the judges before the king had formally put his case." 6 Holdsworth, *supra* note 23, 52n (1924); T. Taswell-Langmaid, English Constitutional History 517 (9th ed. 1929); E. Haynes, Selection and Tenure of Judges 60 (1944). The Ship Money Case, the King v. John Hampden, is reported in 3 Howell, *supra* note 7, at 825 (1637). *See* Clarendon's comment on Finch, *id.* 835n; *see also* Hatsell, *supra* note 24, at 127.

[177] The Commons called the judges to account for their opinions, 3 Howell *supra* note 7, at 1260; Finch's solicitation was stressed *id.* at 1264; the legality of the opinion was challenged, *id.* at 1263, 1266, 1268; the judgment was declared void by the Lords, *id.* at 1300, and the judges were impeached, id. at 1283, 1301. The core of Justice Berkley's impeachment, *see* text accompanying note 63 *supra*, was his participation in the Ship-Money matters. *See* Articles 5–7, and 8. Howell, *supra* note 7, at 1285–87. He was fined 20,000 pounds and made incapable of any place in the judicature. 4 Hatsell, *supra* note 24, at 173n.

[178] 2 Elliot, *supra* note 5, at 478.

[179] *Gerry*, 1 Ann. Cong. *supra* note 130, at 537. In New Hampshire the Court had declared the "Ten Pound Act" unconstitutional, and although the Representatives by a 44 to 14 vote then declared the Act constitutional, they approved by a vote of 56 to 21 a Committee report that the judges were "not Impeachable for Maladministration as their conduct [was] justified by the constitutional" of New Hampshire. 2 W. Crosskey, Politics and the Constitution in the History of the United States 970 (1953).

judges were empowered to declare an Act void that is not "in pursuance" of the Constitution, it defeats the Framers' purpose to conclude that they authorized Congress to impeach judges for rendering such decisions.[180]

Mention only can be made of several associated problems: does out-of-court conduct which damages confidence in the administration of justice constitute a "great offense?" Are the examples of official misconduct, i.e. misconduct in office, cited by the Founders merely illustrative or preclusive and intended to repudiate the branch of English practice which dealt with out-of-court misconduct? Must we view rejection of removal "at the pleasure of Congress" as a bar to removal for just cause? For example, did Judge Ritter's acceptance of substantial gifts from wealthy residents of his district [181] constitute a "great offense?" Had litigation of the donors been pending before him, acceptance of the gifts would have amounted to bribery. Substantial gifts in the absence of pending cases are a step removed, but they raise the question: why did divers donors shower the judge with gifts. It was not sheer coincidence which caused them to break out in a rash of generosity and to select this precise individual as the object of their benefactions. Is it unreasonable to infer that they expected to influence his judgment in future cases in which men of property may expect to be involved? Judge Ritter received these gifts by reason of his office, and the Senate could fairly infer, in the words of a charge against Lord Treasurer Middlesex that this was "Corruption shadowed under pretext of a New Year's Gift. . . ." [182] If, unlike Middlesex, Ritter did not use "the power of his place . . . to wrest" these gifts from the donors, it is justly inferable that "the power of his place" was the sole inducement thereto.[183] And as in the case of Lord Halifax, his acceptance of those gifts "open[ed] a way to all manner of corrupt practices." [184]

Instead of engaging in such refinements the Senate convicted Ritter on the charge that his offense was "to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice therein, and to the prejudice of public respect and confidence in the Federal judiciary. . . ." [185] For this there was a precedent in the charge that Chief Justice Scroggs, by his "notorious excess and debaucheries" brought "the highest scandal on the public justice of the kingdom." [186] Vast powers, greater than those entrusted to English judges, were granted to our courts. Unlike English judges, it is given to them to set aside legislation enacted by the representatives of the people. Their judgments, going from time to time to issues that divide the nation, depend on acceptance by the people, acceptance which in large part derives from the respect the judiciary, and in particular the Supreme Court, has enjoyed. Judicial

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[180] *Cf.* Congress v. Court, *supra* note 2, at 289–96.

[181] *See* text accompanying note 16 *supra*.

[182] Hark to Middlesex' own explanation: one Jacobs told him "That the Farmers of the Petty Farms [of wine, who sought governmental relief from Middlesex. 2 Howell, *supra* note 7, 1197] . . . did intend, to present him with a tun of wine, for a new year's gift. The Lord Treasurer then answered him merrily, That other Lord Treasurers had been better respected by those farmers, and that he would have none of their wines and shortly after, Bernard Hyde brought him 100 [pounds] for a new year's gift only, and for no other cause." *Id.* at 1206.

[183] *See* text accompanying note 83 *supra*.

[184] *See* text accompanying note 88 *supra*.

[185] 80 Cong. Rec. 5606 (1936): *see also* text accompanying note 16 *supra*.

[186] Article 8, 8 Howell, *supra* note 7, at 163, 200 (1680).

misconduct which vitiates that respect saps an important foundation of our government.[187] Although Ritter's misconduct did not constitute the "high treason" with which Scroggs was charged, it may well be regarded as a "great offense" within the compass of "high crimes and misdemeanors."[188] But this is a matter that requires more extensive investigation than is possible within the scope of this article.

II. THE ROLE OF POLITICS—MOTIVATION OF THE FRAMERS

In a comment on the Resolution for the impeachment of Justice Douglas introduced in the House on April 16, 1970, by Representative Gerald R. Ford, Milton Viorst states,

> 110 sponsors of the anti-Douglas resolution are all conservative Republicans and Dixiecrats. This seems persuasive evidence in support of the hypothesis which virtually everyone in Washington accepts: that the undertaking seeks not simply to impeach William Orville Douglas but to discredit the liberalism inherent in the domestic programs of Democratic Administrations since the New Deal . . .[189]

Representative Ford all but conceded that his Resolution was in retaliation for the Senate's rejection of two of President Nixon's nominees to the Supreme Court.[190] 'Twas ever thus; impeachment was "essentially a political weapon" from its inception in 1388;[191] and so it continued to be when it was revived in the reign of James I in order to bring his corrupt and oppressive ministers to heel.[192] But where the object of Jacobean impeachments had been the "reformation of abuses and not the venting of private spleen or party hatreds";[193] where the impeachment of the Earl of Strafford had been designed to break the back of Charles I's absolutist pretensions,[194] the moving force after the Restoration came to be party intrigue in a factional struggle for

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[187] *Compare* this *with* the words of Lord Chancellor Erskine in the proceedings respecting Justice Luke Fox (wherein article of impeachment had been filed by the House of Commons with the House of Lords, and where the possibility of removal by Address to the King was under discussion): "The true question . . . had Mr. Justice Fox, by his misconduct, conduced to the degradation of our free government and constitution." 7 Parl't'y. Debates 768 (1806).

In one of the earliest American impeachments, that of Judge Francis Hopkinson in 1780, the Supreme Executive Council of Pennsylvania stated "we conceive it to be indelicate for a Judge to accept presents from persons who frequently have business before him tho' no cause be then depending. . . ." And it stated that it was of "highest importance . . . that the people should have a confidence in the integrity of the Judges." Hogan, Pennsylvania State Trials 58–59 (1795). Hopkinson was acquitted on factual grounds, and the tribunal resolved doubts in his favor, as is fitting in such case.

[188] 8 Howell, *supra* note 7, at 197.

Chief Justice Taft, commenting on the impeachment of Judge Archbald, who had entered into advantageous deals with persons who had cases pending before him, stated in an address before the American Bar Association in 1913 that the conviction was

> most useful in demonstrating to all incumbents of the federal bench that they must be careful in their conduct outside of court as well as in the court itself, and that they must not use the prestige of their official position, directly or indirectly, to secure personal benefit.

ABA 36th Annual Report 431, quoted in Simpson, *supra* note 15, at 59–60.

[189] Viorst, *Bill Douglas Has Never Stopped Fighting the Bullies of Yakima*, N.Y. Times Magazine, June 14, 1970 at 8, 32.

[190] Facing up to the view of his Resolution as "retaliation for the rejection by the other body of two nominees for the Supreme Court, Judge Haynsworth and Judge Carswell," Ford said, "In a narrow sense, no. . . . But in a larger sense, I do not think there can be two standards for membership on the Supreme Court, one for Mr. Justice Fortas [who, Ford implies, resigned under pressure], another for Mr. Justice Douglas." 116 Cong. Rec. H. 3118–19 (daily ed. Apr. 15, 1970).

[191] Clarke, *supra* note 22, at 184.

[192] Roberts, *supra* note 24, at 23–28. *See* Jefferson's comments, *supra* note 131.

[193] Roberts, *supra* note 24, at 32.

[194] Trevelyan, *supra* note 95 at 403–04.

power.[195] From an "appeal to the nation against wicked ministers," [196] impeachment was transformed into a clumsy means of striking at unpopular policies,[197] manifestly "political," and it was then supplanted by an Address of the Parliament to the King, which came to be regarded as a vote of censure and no confidence; [198] and thus by degrees ministerial accountability of the ministers to the Parliament was achieved.[199] While the Convention was sitting in Philadelphia the spectacular trial of Warren Hastings, spear-headed by Edmund Burke, the paladin of American liberty, was underway. Hear Macaulay on the Hastings impeachment:

> Whatever confidence may be placed in the decision of the Peers on an appeal arising out of ordinary litigation, it is certain that no man has the least confidence in their impartiality, when a great public functionary, charged with a great state crime, is brought to their bar. They are all politicians. There is hardly one among them whose vote on an impeachment may not be confidently predicted before a witness has been examined.[200]

Impeachment did not change color in this country. When John Adams proposed in 1774 to impeach, and the Massachusetts Assembly filed charges against, the Justices because they had declined to renounce royal salaries in place of those theretofore paid by the Assembly's appropriation, what was this but political? [201] In the Convention Charles Pinckney warned that Congress, "under the influence of heat and faction," would "throw [the President] out of office," [202] a prophecy which barely fell short of realization 80 years later when the conviction of Andrew Johnson was narrowly defeated.[203] Explaining impeachment to the People who were being asked to adopt the Constitution, Hamilton stated that the prosecution of impeachments "will seldom fail to agitate the passions of the whole community, and to divide it into parties, more or less friendly or inimical, to the accused. In many cases, it will connect itself with the pre-existing factions . . . and in such cases there will always be the greatest danger, that the decision will be regulated more by the comparative strength of the parties, than by the real demonstrations of innocence or guilt." [204]

From the outset, the impeachment of the insane Judge Pickering in 1804 became a political football.[205] The Federalists were entrenched

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[195] Roberts, *supra* note 24, at 182.

[196] *Id.* at 220.

[197] *Id.* at 218, 380.

[198] *Id.* at 244, 267, 360.

[199] The story is fully recounted by Roberts, *supra* note 24; the point had earlier been made by Holdsworth, as noted by Chafee, *supra* note 6, at 111; Dougherty, *Inherent Limitations Upon Impeachment*, 23 Yale L.J. 60, 69 (1913).

[200] Quoted in Dougherty, *supra* note 199, at 69. In the Impeachment of President Johnson, "Prejudgment on the part of most Senators . . . was brazenly announced." J. Kennedy; Profiles In Courage 133 (1961).

[201] Johnson, *William Cushing*, in 1 The Justices of the United States Supreme Court 57–58 (L. Friedman & F. Israel ed. 1969), 2 Adams, *supra* note 26, at 329–31.

[202] 2 Farrand, *supra* note 108, at 551.

[203] Senators who sought to vote according to the dictates of conscience rather than of politics were subjected to intolerable pressure, and some were later hounded out of office. J. Marke, Vignettes of Legal History 141–68 (1965); J. Kennedy, *supra* note 200, at 126, 133, 135–42.

[204] The Federalist, *supra* note 2, No. 65 (A. Hamilton), at 424.

[205] A. Beveridge, The Life of John Marshall 164–67 (1919). Pickering was convicted "by a strictly partisan vote." *Id.* at 167. Dumas Malone states that "Members of the Judge's own party strongly opposed his resignation for purely political reasons." 4 D. Malone, Jefferson and His Time 463 (1970) (hereinafter cited as Malone).

in the Judiciary which was practically an arm of the party;[206] judges, as in the case of Justice Samuel Chase, were making intemperate attacks on the Jefferson administration in harangues to the Grand Jury;[207] and it is little wonder that the infuriated Jeffersonians launched an impeachment of Chase. The Federalists "supported Chase completely in every test," and with the help of a group of Jeffersonians whom John Randolph, leader of the impeachment, had alienated by his opposition to a judicious compromise of the Yazoo claims,[208] saved Chase from richly deserved retribution. In a study of the role of partisan politics in the impeachment of judges since 1903, ten Broek found a correlation between votes and party affiliations; at times the voting split along party lines.[209] The impeachment of Judge Ritter in 1936 is thus described by Gerald Ford: "Judge Ritter was a transplanted conservative Colorado Republican appointed to the Federal bench in solidly Democratic Florida by President Coolidge. He was convicted by a coalition of liberal Republicans, New Deal Democrats, and Farmer-Labor and Progressive Party Senators in what might be called the northwestern strategy of that era."[210] Notwithstanding, it may be added, Representative Ford unhesitatingly borrowed the explanatory utterances of several Senators in that proceeding for his own proposal to impeach Justice Douglas.

In evaluating the uses of impeachment, therefore, we should not close our eyes to its political inception and continued political coloration, even in the cases of the English Justices who had offended the Parliament by assisting the king to carry out detested policies.[211] The drawing of political lines goes to the *motivation* behind the given impeachment; and here we need to recall that in the great English impeachments the charges were often the sheerest facade for a politically motivated proceeding. But be the motivation what it may, in this country impeachment must proceed within the confines of "high crimes and misdemeanors" as they had taken form in 1787. The fact that the Founders further emphasized that impeachment was framed for "great offenses," "great misdemeanors," may well be attributable to their desire to reduce the impact of factionalism. The critical focus should therefore be not on political animus, for that is the nature of the beast, but on whether Congress is proceeding within the limits of "high crimes and misdemeanors."

Congressman Ford, to be sure, maintains that the impeachment process was meant to enforce the tenure for "good behavior," a more elastic phrase which permits removal for misbehavior; and in addition to the several quotations from the Ritter case he could have quoted still other and earlier remarks to the same effect. But my own study has convinced me that "good behavior" was a doctrine entirely separate from "high crimes and misdemeanors"; that it had its own enforcement machinery, in no wise allied to impeachment; that in

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[206] The "national judiciary, [a little earlier] one hundred per cent Federalist, amounted to an arm of that party." 4 Malone, *supra* note 205, at 458.

[207] 1 Warren, *supra* note 15, at 274–76. For example, "Chief Justice Dana of Massachusetts in a charge to the Grand Jury denounced the Vice-President [Jefferson] and the minority in Congress as 'apostles of atheism and anarchy, bloodshed and plunder'." *Id.* at 275.

[208] 4 Malone, *supra* note 205, at 479–80. A chapter of my forthcoming book will be devoted to the Chase trial.

[209] *See* ten Broek, *supra* note 15, at 193–94. *See also* Potts, *supra* note 15, at 35–36.

[210] 116 Cong. Rec. H. 3114 (daily ed. Apr. 15, 1970).

[211] *See* notes 176, 177 *supra*.

England impeachment proceeded solely for "high crimes and misdemeanors," not for a breach of "good behavior"; that almost all of the evidence in the Convention excludes an intention to wed the two. For this I have elsewhere set forth the extensive proof.[212] Here it must suffice to say only that a Convention which rejected Mason's "maladministration" as "so vague" and replaced it with the "limited," "technical" "high crimes and misdemeanors" hardly intended to pump into "high crimes and misdemeanors" all that is included in the equally "vague" "misbehavior."

Why, one asks, did the Framers take up this faction-ridden mechanism which, long before the Hastings trial, had seen its best days. For with the achievement of ministerial accountability to Parliament early in the 18th Century, the prime purpose of impeachment had been accomplished and thenceforth it found but infrequent use.[213] Then too, the successful struggle for ministerial accountability to Parliament was not really relevant to a system which set up three separate, independent departments, and made Cabinet members responsible to the President, not to Congress.[214] Professor Chafee considered that

> The British situation is obvious to us, but it was not obvious to the men who framed our Constitution. . . . They thought of the King as the Chief Executive and replaced him by the President. . . . You cannot get rid of a King by a hostile vote in the legislature, and perhaps their minds stopped there. The importance of a majority vote in Parliament for getting rid of the King's main advisers was overlooked.[215]

There was no confusion on this score. Governor Morris reminded the Convention that the President "is not the King, but the prime Minister,"[216] and that in England the prime Minister was "the real King."[217] Iredell adverted to the maxim that the King can do no wrong and exulted in the "happier" American provision which made the President himself triable.[218] Thus they made sure to reach the topmost executive by impeachment. Nor did the Framers overlook "the importance of a majority vote in the Parliament for getting rid of the King's main advisers." In setting up an independent President who was to serve for a term, and in making cabinet officers a part of the Executive branch, the Framers surely were aware that a mere vote of no confidence could not, as in England, topple a Secretary.[219]

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[212] Berger, *Impeachment of Judges and "Good Behavior" Tenure*, 79 YALE L.J. 1475 (1970).

[213] Holdsworth remarks that between 1621 "and 1715 there were fifty cases of impeachments brought to trial. Since that date there have been only four." I Holdsworth, *supra* note 23, at 382. *See also* Roberts, *supra* note 24, at 413. For 18th century impeachments, see *id.* 380 n.1.

[214] For example, U.S. Const. art. II, § 2 provides that the President "may require the Opinion, in writing, of the principal Officer in each of the Executive Departments, upon any Subject relating to the Duties of their respective Offices."

[215] Chafee, *supra* note 6, at 141.

[216] 2 Farrand, *supra* note 108, at 69.

[217] *Id.* at 104.

[218] 4 Elliot, *supra* note 5, at 109. *See also* Nicholas and Corbin the Virginia Convention, 3 *id.* at 17, 516.

[219] Consider Butler's remark in the Convention on May 30th, when Randolph proposed three separate departments, that he had "opposed the grant of powers to Congs. [under the Articles of Confederation], heretofore, because the whole power was vested in one body. The proposed distribution of the powers into different bodies changes the case. . . ." 1 Farrand, *supra* note 108, at 34. That Congress, Butler surely knew, appointed the Secretary of Foreign Affairs. And the suggestion, rejected by the Convention, that the national legislature appoint the President, 2 *id.* 56–58, again indicates some awareness that the Prime Minister owed his office to Parliament. The Framers knew the English practice and consciously diverged from it. *Cf.* Madison, 2 *id.* at 56.

Indeed they rejected legislative removal by Address of judges, members of another independent branch.[220] It was because the separation of powers left no room for removal by a vote of no confidence that impeachment was adopted as a safety-valve, a security against an oppressive or corrupt President and his sheltered ministers.

Like the Colonists before them, the Founders were haunted by the threat to liberty of illimitable greed for power.[221] Before them marched the shade of despotic Kings;[222] they were familiar with absolutists Stuart claims; and many dreaded that a single Executive might tend to monarchy.[223] Franklin asked, "What was the practice before this where the Chief Magistrate rendered himself obnoxious? Why recourse was had to assissination. . . ."[224] Impeachment was preferable. Fear of Presidential abuses prevailed over frequent objections that impeachment threatened his independence.[225] "No point," said Mason, "is of more importance than that the right of impeachment should be continued."[226]

This may seem strange in light of Madison's warning that all power tended to be drawn into the "Legislative vortex."[227] It is true that the Framers had come to fear legislative excesses as a result of the State post-1776 experience;[228] and they fenced the Congress about with a number of restraints, *e.g.* a Presidential veto and judicial review. But the Colonial Assemblies had been the darling of the Colonists, elected by themselves, not thrust upon them by a distant King as were judges and Governors.[229] At the end of the Colonial period

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[220] 2 *id.* 428–29.

[221] *See* Bailyn, *supra* note 2; cf. Congress v. Court, *supra* note 2, at 8–14. Speaking of the earlier State constitution, Professor Gordon Wood stated, "Nothing indicates better how thoroughly Americans were imbued with Whig apprehensions of misapplied ruling power than their rather unthinking adoption of this ancient English procedure enabling 'the grand inquest of the Colony', the representatives of the people, to pull 'overgrown criminals who are above the reach of ordinary justice' to the ground." G. Wood, *supra* note 107, at 141.

The records of the Federal and Ratification Conventions indicate that the adoption of impeachment was anything but "unthinking." The objective of the Founders, I suggest, was that outlined by an English barrister in 1791, who, writing a century after achievement of ministerial accountability, adverted to the "obvious" and "great" "advantage, which Impeachments afford, as a check and terror to bad Ministers," and cited as "an additional reason why it ought to be cherished by Englishmen . . . that it furnishes the most effectual preservative against the corrupt administration of justice. . . . That Ministers are not now violating the principles of the Constitution, or that the administration of justice is now free from the slightest stain or suspicion of corruption, furnishes no reason for abolishing this mode of trial, for it is impossible to know, how much the security, with which we now enjoy our Constitution and Liberties, and how much of the satisfaction, with which we now confide in these unsuspected characters, that now grace the seats of justice, may be derived from the existence of this very institution. . . ." Quoted 4 Hatsell, *supra* note 24, at 69–70n, 253n. The Founders were very much aware of the lessons of the past. See text accompanying notes 4–9 *supra*, 222–32, 236–37 *infra*; and note 170 *infra*.

[222] *Compare* this *with* John Dickinson's review of Charles I's reign, quoted in Bailyn, *supra* note 2, at 145; James Alexander's criticism of the despotic Charles I in Alexander, A Brief Narrative of the Case and Trial of John Peter Zenger 28 (S. Katz ed. 1963); a reference to James I's claim to make judges who were subservient to his will, Pennsylvania Gazette, Nov. 10–17, 1737, quoted in *id.* at 181, 184; and a recital that Charles II "had entered into a secret league with France to render himself absolute, and enslave his subjects," *Id.* at 188.

[223] 1 Farrand, *supra* note 108, at 66, 83, 90, 96, 101, 113, 119, 152, 425; 2 *id.* 35–36, 101, 278, 513, 632, 640. In the North Carolina convention, which rejected the Constitution, Rawlin Lowndes said, "as to our changing from a republic to a monarchy, it was what everybody must naturally expect. How easy the transition! No difficulty in finding a king: the President was the man proper for the appointment." 4 Elliot *supra* note 5, at 311.

[224] 2 Farrand, *supra* note 108, at 65.

[225] *Id.* at 64–69.

[226] *Id.* at 65.

[227] *Id.* at 35; *see also* The Federalist *supra* note 2, No. 48 (J. Madison), at 322.

[228] Congress v. Court, *supra* note 2, at 10–12, 82, 182.

[229] Thus it was that James Wilson explained the predilection for the legislature. 1 Wilson, *supra* note 5, at 292–93. The persistence of this feeling may be gathered from his admonition in 1791 that it was time to regard Executive and judges equally with the legislature as representatives of the people. Id. at 293. Warning against the danger of legislative tyranny, Madison remarked that the "founders of our republics . . . seem never

the prevalent belief, said Corwin, was that "'the executive magistracy' was the natural enemy, the legislative assembly the natural friend of liberty. . . ."[230] To the radical Whig mind, a potent influence on Colonial thinking, "the most insidious and powerful weapon of eighteenth century despotism" was the "power of appointment to offices." The Executive, it was feared, could fasten his grip on the community by placemen scattered strategically over the nation.[231] Such suspicions died hard, and when a choice had to be made the Framers preferred the Congress to the President, for as Madison explained in the Federalist, "In republican government, the legislative authority necessarily predominates."[232]

One thing is clear: in the impeachment debate the Convention was almost exclusively concerned with the President.[233] The extent to which the President occupied the center of the stage may be gathered from the fact that the addition to the impeachment clause of "the Vice President and all Civil officers" only took place on September 8th, shortly before the Convention adjourned.[234] But the Founders were also fearful of the ministers and favorites whom Kings had refused to remove,[235] and they dwelt repeatedly on the need of power to oust corrupt or oppressive ministers whom the President might seek to shelter. "Few ministers," said Nicholas in the Virginia Convention, "will ever run the risk of being impeached, when they know the King cannot protect them by a pardon,"[236] and how much less against impeachment itself. No friend of the Constitution, Patrick Henry deplored the absence of "blocks and gibbets . . . those necessary instruments of justice." But he too looked to impeachment; Blackstone, he said, "tells you that the minister who will sacrifice the interest of the nation is subject to parliamentary impeachment. This has been ever found to be effectual."[237]

In our time impeachment of judges has become the predominant preoccupation, but we shall misconceive impeachment if we fail to grasp that to the Framers impeachment of judges was decidedly peripheral. It was only caught up in a last-minute interpolation in arti-

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for a moment to have turned their eyes from the danger to liberty, from the overgrown and all-grasping prerogative of an hereditary magistrate. . . ." The Federalist, *supra* note 2, No. 48 (J. Madison), at 322.

[230] E. Corwin, The President, Office and Powers 5–6 (4th rev. ed. 1957).

[231] Wood, *supra* note 106, at 143; *see also* Bailyn, *supra* note 2, at 102–03.

[232] The Federalist, supra note 2, No. 51 (J. Madison), at 338. In the preceding sentence Madison stated, "it is not possible to give to each department an equal power of self-defense." Justice Brandeis referred to the deep-seated conviction of the English and American people that they "must look to representatives assemblies for protection of their liberties." Myers v. United States, 272 U.S. 52, 177, 294–95 (1926) (dissenting opinion; J. Holmes concurring). But I would not intimate that Congress was given unlimited power over the President. To the contrary, the power was carefully hedged about. *See* text accompanying notes 278–80 *infra*.

[233] 2 Farrand, *supra* note 108, at 64–69; *see also* text accompanying notes 167–71 *supra*.

[234] 2 Farrand, *supra* note 108, at 552.

[235] The Founders' concern with removal of "favorites" emerges most clearly in the First Congress. Madison stated, It is very possible that an officer who may not incur the displeasure of the President may be guilty of actions that ought to forfeit his place. The power of this House may reach him by means of an impeachment, and he may be removed even against the will of the President.

1 Ann. Cong., *supra* note 130, at 372. He made the point again *id.* at 498. *See also* text accompanying note 168 *supra*. Baldwin, also a Framer, put the matter more sharply: a from his place . . ." 1 Ann. Cong., *supra* note 130, at 558. "It is this clause," said Elias Boudinot, "which guards the rights of the House, and enables them to pull down an improper officer, although he should be supported by all the power of the Executive." *Id.* at 468. Similar remarks were made by Benson, *id.* at 382; Livermore, *id.* at 478; Lawrence, *id.* at 377, 482 and Goodhue, *id.* at 534. This nagging fear of "favorites" illustrates that the Founders had studied the lessons of 17th century English experience. *See* note 95 *supra*.

[236] 3 Elliot, *supra* note 5, at 17.

[237] *Id.* at 512.

cle II, the executive article, when to the impeachment of the President was added without explanation "Vice President and all civil officers." That story, the effect of the judicial tenure for "good behavior," its relation, if any, to impeachment, the alleged exclusivity of the impeachment provisions for the removal of judges upon misconduct, is too lengthy for rehearsal here. One may doubt whether the considerations which fed apprehensiveness of the President and his favorites had any play with respect to judges who, because of their life-time tenure, conferred in order to insure judicial independence,[238] would now have no inducement to become tools of unpopular Presidential policy.[239] And one may wonder whether the persistence of partisan influence on judicial impeachments would have disappointed the hopes of the Founders who sought to set them apart from "every successive tide of party."[240]

III. JUDICIAL REVIEW

"The Constitution," said Charles Evans Hughes, "is what the judges say it is."[241] If "treason, bribery, and other high crimes and misdemeanors" likewise are what the Senate says they are, Congressman Gerald Ford did not err in asserting that "impeachable offenses" are what House and Senate jointly "consider [them] to be."[242] From Story onwards it has been thought that in the domain of impeachment the Senate has the last word;[243] that even the issue whether the charged misconduct constituted an impeachable offense is unreviewable because the trial of impeachments is confided to the Senate alone.[244] This view has the weighty approval of Professor Wechsler:

> Who . . . would contend that civil courts may properly review a judgment of impeachment when article I, section 3 declares that the 'sole Power to try' is in the Senate? That any proper trial of an impeachment may present issues of the most important constitutional dimension . . . is simply immaterial in this connection.

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[238] *Cf.* Congress v. Court, *supra* note 2, at 117–19. St. George Tucker referred in 1803 to that "preeminent integrity which amidst surrounding corruption, beams with genuine lustre from the English courts of judicature," 1 Tucker, *supra* note 126, at App. 356, a result of secure tenure.

[239] Madison said in the Virginia Convention, "Were I to select a power which might be given with confidence, it would be the judicial power." 3 Elliot, *supra* note 5, at 535; Congress v. Court, *supra* note 2, at 185–86.

[240] 1 Wilson, *supra* note 5, at 297. Writing in England in 1791, a barrister noted that impeachment "has been employed with less mixture of vindictive, or unwarrantable motives, when directed to this object ["corrupt administration of justice"] than when its terrors have been levelled against Favourites and Ministers." Quoted 4 Hatsell, *supra* note 24, at 70n, 253n.

[241] 1 M. Pusey, Charles Evans Hughes 204 (1951). This was uttered in 1907 during an address made in Elmira, New York. Later Hughes explained, "The inference that I was picturing, Constitutional interpretation by the courts as a matter of judicial caprice . . . was farthest from my thought."

[242] Note 1 *supra*.

[243] With respect to impeachment, said Story, "the true exposition of the Constitution" is a matter, "the final decision of which may reasonably be left to the high tribunal constituting the court of impeachment when the occasion shall arise." 1 Story, *supra* note 12, §§ 802, 805. *See also* Rawle, *supra* note 15, at 219; Ross, *supra* note 161, at 125–26.

[244] In Ritter v. United States, 84 Ct. Cl. 293 (1936), *cert. denied* 300 U.S. 668 (1937), the court dismissed a suit wherein an impeached judge contended that the Senate had exceeded its jurisdiction in trying him on charges which did not constitute impeachable offenses under the Constitution, saying that the provision which conferred upon the Senate "the sole power to try all impeachments" (U.S. Const. art. I, § 3), meant that "no other tribunal should have any jurisdiction of the cases tried under the provisions with reference to impeachment." 84 Ct. Cl. at 296.

> What is explicit in the trial of an impeachment or, to take another case, the seating or expulsion of a Senator or Representative, may well be found in others.[245]

On one branch of his assertion, the "seating" of a Representative, Professor Wechsler has since been repudiated by the Supreme Court in *Powell v. McCormack*,[246] which reviewed and set aside the exclusion of Congressman Adam Clayton Powell from the House for serious misconduct. That decision calls for reconsideration of the scope of the Senate's "sole power to try" impeachments.

At issue in *Powell* were article I, § 2(2) which describes three qualifications which a Representative must meet, and Article I, § 5(1) which provides that "Each House shall be the judge of the . . . qualifications of its own members." In a suit against the Speaker of the House, Powell maintained that the exclusion was unconstitutional because exclusion was limited to the requirements of age, citizenship and residence contained in article I, § 2.[247] The House invoked the article I, § 5 provision empowering it to "judge the . . . qualifications of its own members," and went on to "note that under Art. I, § 3, the Senate has the 'sole power' to try all impeachments." And it argued that "these delegations (to 'judge,' to 'punish' and to 'try') to the Legislative Branch are explicit grants of 'judicial power' to the Congress and constitute specific exceptions to the general mandate of Art. III that the 'judicial power' shall be vested in the federal courts." In consequence, the House maintained, the Court could do no "more than to declare its lack of jurisdiction, to proceed." [248] The Court rejected the contention [249] and found the "political question" turned on an inquiry whether the claimed power had been committed to the House by the Constitution.[250]

The Court began with the established proposition that "it is the province and duty of the judicial department to determine . . . whether the powers of any branch of the government . . . have been exercised in conformity to the Constitution; and if they have not to treat their acts as null and void." [251] And it concluded that "in judging the qualifications of its members Congress is limited to the standing qualifications prescribed in the Constitution." Consequently "the House was without power to exclude [Powell] from its membership" on grounds of misconduct.[252] In other words, the power to "judge" does not permit the Senate to add to the Constitutional "qualifications." The point was admirably made by Senator Murdock in the debate on the unsuccessful attempt to exclude Senator William Langer in 1941: "Whoever heard the word 'judge' used as meaning the power to add to what already is the law." [253] The Senate, he stated, has no right "to add to the qualifications" enumerated in the Constitution;

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[245] Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 Harv. L. Rev. 1, 8 (1959).

[246] 395 U.S. 486 (1969). The Committee reported that Powell "had wrongfully diverted House funds for the use of others and himself; and that he had made false reports on expenditures of foreign currency to the Committee on Hous Administration." *Id.* at 492.

For further discussion of this case, see, *Symposium: Comments on Powell v. McCormack*, 17 U.C.L.A. L. Rev. 1 et seq. (1969).

[247] 395 U.S. at 489.

[248] *Id.* at 513–14.

[249] *Id.* at 514.

[250] *Id.* at 519–21.

[251] *Id.* at 506.

[252] *Id.* at 550.

[253] *Id.* at 557. The Court was quoting from 88 Cong.. Rec. 2474 (1942).

and, said Justice Douglas, concurring in *Powell v. McCormack*, "Senator Murdock stated the correct constitutional principle governing the present case." [254] Like the three qualifications of article I, § 2 (age, resident and citizenship) to which exclusion is limited, impeachment, by article II, § 4, is confined to three grounds, "treason, bribery, or other high crimes and misdemeanors," which circumscribe the Senate's "sole power to try impeachments." The "sole power to try impeachments" does not enlarge these three grounds. For the "power to try" is limited by the power to "convict," and by the express terms of article II, § 4, only "on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors" may the President "be removed."

A threshold question is whether a misconstruction of "treason," for example, is the equivalent of adding a fourth category, as was "misconduct" in *Powell*. Let us test the analogy. The Senate may convict for "treason"; by article III, § 3, "treason" is defined as levying war against the United States or giving aid and comfort to its enemies. Suppose that the Senate convicts the President of treason on the ground that he attempted to subvert the Constitution, a favorite formula of Parliament.[255] Whether this be labelled as a "construction" or a "factual determination," it plainly amounts to an attempt to add an omitted category to the Constitutional definition.[256] When Mason suggested the addition to "Treason, bribery" of the word "maladministration," he explained to the Convention that "Treason . . . will not reach many great and dangerous offenses . . . Attempts to subvert the Constitution may not be treason as above defined." [257] And James Wilson stated in the Pennsylvania Ratification Convention, "it has not been left to the legislature to extend the crime and punishment of treason so far as they thought proper." [258] To impeach for "treason" on grounds that are outside the Constitutional definition, therefore, lies beyond the powers conferred. Nor does a free-wheeling Senatorial power to expand the common-law definition of "bribery" stand any better.[259]

The phrase "high crimes and misdemeanors" is not as sharply defined as "treason" or "bribery," but it did have an ascertainable content in the English practice.[260] If the phrase leaves more latitude for judgment to the Senate, this is still not equivalent to unbridled discretion. For the last thing intended by the Framers was to leave the Senate free to declare any conduct whatsoever a "high crime and misdemeanor." Madison rejected "maladministration" because "so vague a term will be equivalent to a tenure during the pleasure of the Senate"; [261] and "high crimes and misdemeanors" was adopted in its place

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[254] 395 U.S. at 559.

[255] *Cf.* Wilson's remarks, text accompanying note 5 *supra*. It "will not do to say that the argument is drawn from extremes. Constitutional provisions are based on the possibilities of extremes." General Oil Co. v. Crain, 209 U.S. 211, 226–27 (1908).

[256] Consequently the Court's reservation in *Powell* of the issue whether under the "political question" doctrine review would be barred of "the House's factual determination that a member did not meet one of the qualifications," 395 U.S. at 521 n.42, is not apposite.

[257] 2 Farrand, *supra* note 108, at 550.

[258] 2 Elliot, *supra* note 5, at 469.

[259] Compare this with note 161 and accompanying text supra.

[260] *See* text accompanying notes 81–97 *supra*. The alternative, as Story stressed, was to leave "the whole proceeding . . . completely at the arbitrary pleasure" of the Congress. Note 162 *supra*. *See also* 1 Story, *supra* note 12, § 799.

[261] 2 Farrand, *supra* note 108, at 550.

with knowledge that it had a "technical," "limited meaning," a meaning to be sought by recurrence to English practice.[262]

It may be objected that this analysis is too pat, that the three categories of *Powell*, "age, citizenship and residence," are quite clear, whereas "high crimes and misdemeanors" lack definite contours, that the Court would have no standards, no criteria whereby to settle the boundaries of the power thus conferred. The problem of "standards" was vastly greater in *Baker v. Carr*, the "reapportionment" case, where there were no precedents whatever to serve as guidelines, yet despite the "enormously difficult problem of working out standards for utilizing the equal protection provision in the apportionment cases" the Supreme Court entered the field.[263] The "standards" problem posed by "high crimes and misdemeanors" is very considerably less; the English practice if imprecise may yet be reduced to recognizable categories that serve as an outline such as was altogether lacking in "reapportionment."

When the constitutional boundaries of a power are in issue, the problem of "criteria," I suggest, is not really apposite. The "lack of criteria" test derives from *Luther v. Borden*, which arose out of the Dorr Rebellion in Rhode Island. In the aftermath "two groups laid competing claims to recognition as the lawful government," invoking the guarantee of a republican form of government.[264] The Court dwelt on the practical and evidentiary difficulties of determining whether the Rhode Island government sponsored by the Dorr faction was adopted by the "authorized" voters.[265] In substance, the Court refused to become involved in factual findings in a "political" struggle for power between competing State factions. Even so, it took care to differentiate and reserve

> the high power . . . of passing judgment upon the acts . . . of the legislative and executive branches of federal government, and of determining *whether they are beyond the limits of power* marked out for them respectively by the Constitution.[266]

In the performance of this function the Court has undertaken massive tasks of interpretation without any standards to guide it, as *Baker v. Carr* illustrates, and as the related path of case law pricking out the boundaries between State and federal powers under the "commerce clause,' for example, again demonstrates.[267]

Another criterion of "political question," in the words of Justice Frankfurter, is the difficulty of "finding appropriate modes of relief." [268] A Court which did not boggle at the refractory remedial dif-

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[262] *See* text accompanying notes 158–166 *supra*.

[263] 369 U.S. 186 (1962). The quotation is from Emerson. *Malapportionment and Judicial Review*, 72 Yale L.J. 64, 65 (1962).

[264] 48 U.S. (7 How.) 1 (1849). The Court explained this at 369 U.S. 218.

[265] 48 U.S. (7 How.) at 41–42 *Cf.* Coleman v. Miller, 307 U.S. 433, 453–54 (1939).

[266] 48 U.S. (7 How.) at 47 (emphasis added).

[267] Justice Douglas remarked. "Adjudication is often perplexing and complicated. An evample of the extreme complexity of the task can be seen in a decree apportioning water among several states. . . . The constitutional guide is often vague, as the decisions under the Due Process and Commerce Clauses show." 369 U.S. at 245.

[268] 369 U.S. at 278 (dissenting opinion).

ficulties [269] posed by reapportionment [270] should not shy from entering a decree, in a suit to recover salary or in a quo warranto, ordering payment of the salary or restoration of the suitor to office.

The "political question" doctrine, in my judgment, has been seriously undermined by *Baker v. Carr* and *Powell v. McCormack*. That doctrine is a self-denying judicial construct without roots in constitutional history. No mention is made in the debates of the Framers and the Ratifiers that "political questions" should be excluded from the ambit of judicial review. Constitutional questions are inescapably "political." [271] In at least one pre-1787 case, *Commonwealth v. Caton*,[272] Judge George Wythe took for granted the justiciability of a dispute between the Virginia Senate and the House of Delegates. That dispute lay at the bottom of an appeal from a conviction for treason; and Wythe unhesitatingly assimilated the duty "to protect one branch of the legislature, and, consequently, the whole community, against the usurpations of the other," to the judicial duty to protect "a solitary individual against the rapacity of the sovereign." It speaks volumes on whether a dispute between difference branches of government was deemed justiciable in 1782 that so eminent a scholar and jurist should not have experienced the slightest qualm on that score.

No case thus far has held that a legislative-executive conflict is non-justiciable. On the contrary, the Supreme Court has already acted "as umpire between Congress and the president" [273] in *Myers v. United States*,[274] and *United States v. Lovett*.[275] In *Myers* the Court permitted the Attorney General to attack a Congressionally enacted statute that limited the President's removal power; and as Justice Frankfurter remarked, "on the Court's special invitation Senator George Wharton Pepper, of Pennsylvania, presented the position of Congress [in opposition to the Attorney General] at the bar of this Court." [276] In *United States v. Lovett*, which involved a statute designed to force certain agencies to discharge respondents, the argument of counsel for Congress [277] was rejected that

> since Congress under the Constitution has complete control over appropriations a challenge to the measure's constitution-

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[269] Professor Bickel points out that "the decisive factor in *Colgrove* could not well have been the difficulty or uncertainty that might attend enforcement of a judicial decree. A judicial system that swallowed *Brown v. Board of Education* and *Cooper v. Aaron* could hardly strain at *Colegrove v. Green* or *Baker v. Carr*." Bickel, *The Durability of Colegrove v. Green*, 72 Yale L.J. 39, 40 (1962). The Court itself acknowledged in *Brown v. Board of Education*, 347 U.S. 483, 495 (1954), that "the formulation of decrees in these cases presents problems of considerable complexity."

[270] Emerson, *supra* note 263, at 75–78. *Cf.* Sindler, *Baker v. Carr: How to "Sear the Conscience of Legislators*, 72 Yale L.J. 23, 32–38 (1962).

[271] "From the beginning the Court had to resolve what were essentially political issues—the accommodation between the states and the central government." F. Frankfurter & J. Landis, The Business of the Supreme Court 318 (1928). It needs to be borne in mind that a "Constitution is a political instrument. It deals with government and governmental powers . . . . It is not a question whether the considerations are political, for nearly every consideration arising from the Constitution can be so described . . . ." Melbourne v. Commonwealth of Australia, 74 Commw. L. Rep. 31, 82 (1947) (per Dixon, J.). This had been anticipated by de Tocqueville: "The American judge is brought into the political arena independently of his own will . . . The political question which he is called upon to resolve is connected with the interest of the suitors and he cannot refuse to decide it without abdicating the duties of his post." 1 A. De Tocqueville, Democracy in America 101 (1899).

[272] 4 Call. 5, 8 (Va. 1782).

[273] Nathanson, The Supreme Court as a Unit of National Government: Herein of Separation of Powers and Political Questions, 6 J. Pub. L. 331, 332 (1957). In the Congressional debate on the President's "removal" power, Elbridge Gerry, one of the Framers, said that "Judges are the Constitutional umpires on such questions." 1 Ann. Cong., *supra* note 130, at 473.

[274] 272 U.S. 52 (1926).

[275] 328 U.S. 303, 312 (1946).

[276] Wiener v. United States, 357 U.S. 349, 353 (1958).

[277] 328 U.S. at 304.

> ality does not present a justiciable question in the courts, but is merely a political issue over which Congress has final say.[278]

In form, to be sure, both *Myers* and *Lovett* were private suits for recovery of salary, but in fact these were vigorous contests between Congress and the President. And in the teeth of a Congressional attempt to deprive the Supreme Court of jurisdiction to review a provision curtailing the effect of a Presidential pardon, the Court held in *United States v. Klein* that the provision "impairs the executive authority," [279] thus jumping into a political thicket with both feet. If the central "power" issue was "political," the curse was not removed because it was presented in a "private" litigation. "Some arbiter," said Justice Jackson, "is almost indispensable when power is . . . balanced between different branches, as the legislative and executive . . . . Each unit cannot be left to judge the limits of its own power." [280] The courts, said *Baker v. Carr*, "cannot reject as 'no law suit' a bona fide controversy as to whether some action denominated 'political' exceeds constitutional authority." [281] For, said Chief Justice White in another "political question" case, it is the "ever present duty" of the courts "to enforce and uphold the applicable provisions of the Constitution as to each and every exercise of governmental power." [282]

Another argument against judicial review of impeachment is that the power to "try" and to issue a "judgment," article I, § 3(7), is itself "judicial" and, in consequence the Court may not substitute its "judicial power" for that of the Senate. On this view, there is an exception from article III, § 2, which provides that "The judicial power shall extend to *all* cases . . . arising under this Constitution." Rather than carve out an exception from this all-encompassing grant, I would suggest an accommodation, to read the "sole power to *try* all impeachments" as a grant of trial jurisdiction, for there is good reason to conclude that in 1787 the word "try" connoted a trial rather than an appeal.[283] Thereby effect would be given both to the Senate's

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[278] *Id.* at 313, 314. Nathanson, *supra* note 273, at 337, says that *United States* v. *Lovett* "in one sense . . . was a protection of the executive power over personnel against unwarranted intrusions by Congress." *See also* 328 U.S. at 312. The Court found no "need" to decide whether the statute was an "unconstitutional encroachment on executive power. . . ." *Id.* at 307.

In Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952), the President had directed the Secretary of Commerce to seize and operate most of the nation's steel mills on the ground that a strike called by the steel union would jeopardize the continued production of steel, which was indispensable to the national defense. The seizure was held invalid because Congress had "refused to adopt that method of settling labor disputes," *Id.* at 586, 602, 603, 657, and because, in the words of Justice Jackson (concurring), the President "invaded the jurisdiction of Congress." *Id.* at 660.

[279] 80 U.S. (13 Wall) 128, 145, 148 (1871).

[280] R. Jackson, The Struggle for Judicial Supremacy (1941). Justice Frankfurter said that "The judiciary may, as this case proves, have to intervene in determining where the authority lies as between the democratic forces in our scheme of government," i.e. between Congress and the President. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 597 (1952) (concurring).

[281] 369 U.S. at 217, 230. *Compare* with text accompanying note 278 *supra*.

[282] Pacific States Tel. & Tel. Co. v. Oregon, 223 U.S. 118, 150 (1912).

[283] The related word "trial" was defined by Blackstone as "the examination of matters of fact in issue," 3 Blackstone, *supra* note 11, at 330. Probably this was too narrow, for it had earlier been deemed to include the trial of issues of law, J. Rastall, *Trial* in Les Termes de la Ley (London, ed 1742). But that it was thought of as the initial determination appears from Dr. Johnson's Dictionary of the English Language: "*Trial* is used in law for the examination of all causes. . . . the trial is the issue, which is tried upon the inditement. . . ." The affinity between "tried (try) and "trial" is woven through the old examples cited under "trial" and "try" in the Oxford English Dictionary.

True. Gouverneur Morris stated that the Supreme Court "was to try the President after the trial of the impeachment, 2 Farrand, *supra* note 108, at 500, but this was an uninformed layman's loose use of legal terms, for the Court would not try the criminal charges but only hear an appeal therefrom. Hamilton, explaining the choice of the Senate as tribunal, also said "Would it be proper that the person who disposed of his fame . . . in one [impeachment] trial, should, in another trial, for the same offense, be also the disposers of

power "to try" and to the Court's appellate jurisdiction under "all cases . . . arising under this Constitution," *i.e.* questions of law, of constitutionality, as distinguished from questions of fact settled by the trier of the facts.[284] Such an accommodation harmonizes with the *Powell* holding that the article I, § 5(1) provision "Each House shall be the *Judge* of the . . . Qualifications of its own Members" did not bar inquiry into action in excess of jurisdiction. Surely the power to "try" is not more comprehensive or final than the power to "judge";[285] nor is protection of the other branches from wrongful Congressional onslaughts more intrusive than review of the "qualifications of [the House's] own Members."

Perhaps the most formidable argument against judicial review may be based on the fact that the trial of impeachments was originally entrusted to the Supreme Court but was at length transferred to the Senate over the objectives of Charles Pinckney and Madison.[286] Gouverneur Morris explained that the reason for the change was that the Supreme Court "was to try the President after the trial of the impeachment."[287] At a later point, he added, "no other tribunal than the Senate could be trusted. The Supreme Court were too few in number and might be warped or corrupted. . . ."[288] So too, Roger Sherman "regarded the Supreme Court as improper to try the President because the judges would be appointed by him."[289] These views were expanded by Hamilton in No. 65 of The Federalist. He emphasized that whereas the Senate would be "unawed" by the fact that the House lodged charges, it was doubtful whether the Supreme Court would be "endowed with so evident a portion of fortitude" to execute "so difficult a task."[290] But he himself later explained in Federalist No. 78 that judicial tenure was made secure in order that the courts would have the "fortitude" to set aside unconstitutional statutes enacted by *both* Houses and endorsed by the President.[291] Such decisions would engender no little political excitement. It was the part of wisdom to shield the Court from the heat of a trial crackling with political lightning; but the trial by the Senate would draw much of the lightning; and as the lawyers among the Founders knew from their own law practice, appellate tribunals generally do not operate in a super-heated atmosphere.

This is not to say that the prospect of reviewing an impeachment as passion-laden as that of President Andrew Johnson might not

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his life and his fortune." The Federalist, *supra* note 2, No. 65, at 426. Hamilton was too practiced a lawyer to confuse a trial and an appeal, and one may deduce that he was employing short-hand for the quick grasp by laymen, rather than attempting to alter the accepted meaning of the term "try."

[284] As Elbridge Gerry said in the First Congress, "Why should we construe any part of the Constitution in such a manner as to destroy its essential principles when a more consonant construction can be obtained? 1 Ann. Cong., *supra* note 130, at 473.

[285] In Powell v. McCormack, the House analogized its exclusion power to the power "to try all impeachments," and characterized both as "explicit grants of 'judicial power' to the Congress [which] constitute specific exceptions" to the article III grant of "judicial power" to the courts. 395 U.S. at 513.

[286] 1 Farrand, *supra* note 108, at 22; 2 *d.* at 186, 493, 547. For the Madison objection, see *id.* at 551, 612; Edmund Randolph also objected, *id.* at 563.

Charles Pinckney warned the Convention that the two Houses would combine against the president "under the influence of heat and faction," 2 *id.* at 551, a prophecy later realized in the impeachment of Andrew Johnson.

[287] *Id.* at 500.

[288] *Id.* at 551. But compare Morris' remarks note 308 *infra*.

[289] 2 Farrand, *supra* note 108, 551.

[290] The Federalist, *supra* note 2, No. 65, at 425.

[291] *Id.* No. 78, at 507–09. This was a main objective of judicial independence, for there had been pre-1787 threats of impeachment against state judges who had declared statutes unconstitutional. See Congress v. Court, *supra* note 2, at 42–43, 117–19.

give the Court pause. At that point the prestige of the Court, badly tarnished by the *Dred Scott* decision, was at its nadir,[292] and any attempt at judicial intervention might well have invited harsh reprisals by the inflamed Reconstruction Congress. But in the intervening century the Court has been restored to its high position in the regard and loyalty of the American people—witness the reaction to President Franklin Roosevelt's "Court-Packing Plan" notwithstanding popular discontent with the Court's anti-New Deal decisions [293]—and vindictive reprisals by the Congress would be almost unthinkable. If there be indeed power to review impeachments in excess of jurisdiction, we may expect of the Court the fortitude exhibited by the aged Chief Justice Taney when Lincoln's suspension of habeas corpus was brought before him at the outbreak of the Civil War.[294] Then too, the far more frequent impeachments of lesser figures, e.g. district judges, would be unlikely to whip up a storm of such dimensions as might a direct confrontation between President and Congress. If we are to test judicial review by practical considerations, let the focus be not on the solitary Johnson impeachment but on the humdrum impeachments of small-fry district judges, the usual fare. At best such considerations are prudential, a counsel of judicial self-restraint rather than a denial of jurisdiction to declare that Constitutional bounds have been transgressed.

Another Hamilton argument drawn from Morris was that it would be improper for one and the same tribunal to hear both the impeachment and the criminal prosecution.[295] Historically, however, the House of Lords tried both issues, i.e. removal and criminal punishment, in the same proceeding, whereas the Supreme Court would hear appeals on two different records of trials by two different triers of fact, the Senate and a jury, attended by all the limitations that surround such review. For me, the Hamilton arguments have an air of *post hoc* rationalization. A preference for the Senate based upon the Sherman-Morris fear of judicial corruptibility or Hamilton's fear that the Court would lack fortitude is hardly reconcilable with representations made to secure judicial tenure or the wide-spread confidence in the judiciary as contrasted with pervasive distrust of Congress.

Whatever the effect of the Morris-Sherman-Hamilton remarks, their force seems to me counteracted by relevant representations made in the Ratification Conventions; and as Jefferson and Madison emphasized, the meaning of the Constitution is to be sought in the explanations made to those who adopted it.[296] There the fear of

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[292] The "grave injury that the Court sustained through its decision has been universally recognized. Its action was a public calamity. . . ." The "widespread and bitter attacks upon the judges who joined in the decision undermined confidence in the Court." C. Hughes, The Supreme Court of the United States 50 (1928).

[293] *See* Congress v. Court, *supra* note 2, at 291–92.

[294] A military officer seized a citizen upon "vague charges" and conveyed his prisoner to Fort McHenry. The commanding officer rejected service of a writ of habeas corpus and stated that the President had authorized him to suspend the writ at his discretion. Taney held that only Congress could suspend the writ, and stated, "my duty was too plain to be mistaken. I have exercised all the power which the constitution and laws confer upon me, but that power has been resisted by a force too strong for me to overcome." Ex parte Merryman, 17 F. Cas. 151, 153 (No. 9,487) (C. Ct. Md. 1861).

[295] The Federalist, *supra* note 2, No. 65, at 426.

[296] For Madison, the meaning of the Constitution was to be looked for "in the State Conventions which accepted and ratified the Constitution." quoted in C. Warren, Congress, the Constitution and the Supreme Court 67 n. (1925). As President, Jefferson declared that he read the Constitution in accordance with the "meaning contemplated *by the plain understanding of the people at the time of its adoption*—a meaning to be found in the explanation of those who advocated it." Quoted in 4 Elliot, supra note 5,

Congressional excesses found its sharpest expression, and proponents of adoption repeatedly assured the Ratifiers that Congress was "fenced" about with "limits," that judicial review would confine Congress within bounds.[297] To be sure, no express mention of judicial review was made with respect to impeachment, but the same may be said of other equally important functions. "To what quarter," asked John Marshall in the Virginia Convention, "will you look for protection from infringement on the constitution, if . . . not . . . to the judiciary? There is no other body that can afford such protection." [298] Such remarks were made by others in the Virginia and other Conventions.[299] It was never intended that Congress should be the final judge of the boundaries of its own powers.[300] Not an inkling is to be found in the Records of the Ratification Conventions that the area of impeachment was to constitute an exception, that in this area Congress was left free to roam at will. To the contrary, when Archibald Maclaine sought in the North Carolina Convention, by construction of the impeachment power, to allay certain fears expressed by Timothy Bloodworth, Bloodworth commented, "I do not distrust him, but I distrust them [Congress]. I wish to leave no latitude of construction." And Joseph Taylor, speaking to Congress' power to impeach, stated that the Senators are "one of the branches of power [i.e., Congress] which we dread under this Constitution." [301] So intense was such distrust that North Carolina rejected the Constitution notwithstanding it had been ratified by ten States.[302] In no Convention was a claim of illimitable power made with respect to any function of Congress. Astonishment would have greeted a claim that the structure so carefully reared upon the separation of powers could be shaken to bits whenever Congress chose to resort to an unlimited power of impeachment. To the contrary, there was a constant drumfire of warnings against Congressional oppression.[303] Bearing in mind that ratification was touch and go,[304] I daresay that had such claims been made ratification would have foundered.[305]

Although impeachment was chiefly designed to check Executive abuses and oppressions [306] there was no thought of delivering either the President or the judiciary to the unbounded discretion of Con-

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at 446. For Madison, *see also* 9 Writings of Jams Madison 191, 372 (G. Hunt ed. 1900–10), and 3 Farrand, *supra* note 108, at 518, letter of December, 1831. For Jefferson, *see also* 3 *id.* at 534.

[297] The citations are collected in Congress v. Court, *supra* note 2, at 12–16, 124–29, 131–34, 136–40.

[298] 3 Elliot, *supra* note 5, at 553–54.

[299] *See* note 297 *supra*.

[300] After his remarks in Federalist, *supra* note 2, No. 65, Hamilton himself stated in No. 78, at 506, that it

> cannot be the natural presumption" that the "legislative body are themselves the constitutional judges of their own powers. . . . It is far more rational to suppose that the courts were designed . . . to keep the [legislature] within the limits assigned to their authority.

See also Congress 1. Court, *supra* note 2, at 186–87.

[301] 4 Elliot, *supra* note 5, at 50, 33.

[302] Congress v. Court, *supra* note 2, at 131–32.

[303] *See* note 297 *supra*.

[304] There were narrow majorities in Virginia, Massachusetts, New Hampshire and New York. Congress v. Court, *supra* note 2, at 17–18.

[305] As Alexander White of Virginia stated in the First Congress during the course of the "removal" debate, insisting that the federal government must adhere to the limits described in the Constitution:

> This was the ground on which the friends of the Government supported the Constitution . . . it could not have been supported on any other. If this principle had not been successfully maintained by its advocates in the convention of the State from which I came, the Constitution could never have been ratified.

1 Ann. Cong., *supra* note 130, at 515.

[306] *Cf.* text accompanying notes 167–71 *supra; see also* 2 Farrand, *supra* note 108, at 64–69; *cf.* 1 *id.* at 78, 85, 91, 230, 247; 2 *id.* at 61, 116, 172, 185–86, 495, 499.

gress. This is attested by the Framers' rejection of the unfettered removal by Address,[307] by their rejection of "maladministration" because that was "so vague" as to leave tenure "at the pleasure" of the Senate,[308] and by substitution of "high crimes and misdemeanors: with knowledge that it had a "technical," "limited meaning." Nothing less than a limited power of impeachment would have satisfied the opposition who regarded impeachment as a threat to Presidential independence.[309] Impeachment, be it remembered, was a carefully limited exception to the separation of powers,[310] tolerable only if exercised strictly within bounds. "Limits" on Congress determined by Congress itself would be no limits at all.[311]

To this it may be answered that just as the ultimate guarantee that the judiciary will not step out of bounds is the self-restraint of the Court, so the Senate too must be trusted to exercise self-restraint. It is one thing, however, to expect self-restraint of judges schooled to disciplined, dispassionate judgment, and not subject to the gusts of faction, and something else again to expect self-restraint of a body predominantly political in character and which both in England and in the United States has been unable to shake off political considerations when sitting in judgment.[312] Self-restraint could be relied upon with respect to the judiciary because, in the words of Hamilton, they "have neither FORCE nor WILL, but merely judgment," and were "therefore the least dangerous to the political rights of the Constitution." [313] But the vast power to prescribe the rules under which we live, to initiate action, as is the case even in impeachment, cast Congress in a very different role, one of which there was pervasive distrust. The fact is that the Ratifiers feared Congress and trusted judges. Said Madison in the Virginia Convention, "Were I to select a power which might be given with confidence it would be the judicial power," [314] a sentiment echoed by others in the several conventions.[315] The courts, said Hamilton in the Federalist, were "the bulwarks of a limited constitution against legislative encroachments," [316] a statement anticipated

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[307] 2 Farrand, *supra* note 108 at 428, 429; *see also* Berger, *Impeachment of Judges and "Good Behavior" Tenure*, 79 Yale L.J. 1475, 1500–02 (1970).

[308] *See* text accompanying note 158 *supra*. In a discussion of the "removal" power in the First Congress, William Smith emphasised that "It would be improper that [judges] should depend on this House for the degree of permanency which is essential to secure the integrity of judges." 1 Ann. Cong., *supra* note 130, at 508. *See also* John Lawrence. *Id. at* 377. Judge, said James Wilson, could not be "made to depend on every gust of fashion which might prevail in the two branches of our Government." 2 Farrand 429. *Cf.* The Federalist, *supra* note 2, at 509; Congress v. Court, *supra* note 2, at 117–119.

George Mason "opposed decidedly making the Executive the mere creatures of the Legislature as a violation of the fundamental principle of good government." 1 Farrand 86. In the Convention, Gouverneur Morris at first feared that impeachment "will render the Executive dependent on those who are to impeach," 2 Farrand 65; and when he was at last convinced of the necessity of impeachment, he stated that in making the President amenable to justice, "we should take care to provide some mode that will not make him dependent on the legislature." *Id.* at 69. *See also* Charles Pinckney, *id.* at 66; Rufus King, *id.* at 67: Edmund Randolph, *id.;* Madison, *id.* at 551.

[309] *See* note 308 *supra*.

[310] In the First Congress Elias Boudinot stated that impeachment was one of the "exceptions to a principle," *i.e.* to the separation of powers. 1 Ann. Cong., *supra* note 130, at 527. *Compare* this *with* George Mason, note 308 *supra; see also* Michael Stone, 1 Ann. Cong., *supra* note 130, at 564–65.

[311] *See* note 300 *supra*.

[312] *See* text accompanying notes 189–211 *supra*.

[313] The Federalist, *supra* note 2, No. 78, at 505.

[314] 3 Elliot, *supra* note 5, 535.

[315] Patrick Henry, who wished to "see Congressional oppression crushed in embryo," declared it "the highest encomium of this country, that the acts of the legislature, if unconstitutional are liable to be opposed by the judiciary." 4 *id.* at 546, 325. *See also* the remarks of John Marshall, text accompanying note 298 *supra;* note 297 *supra;* and Congress v. Court, *supra* note 2, at 186–88.

[316] The Federalist, *supra* note 2, No. 78, at 508.

by Jefferson.[317] In recommending adoption of the Bill of Rights, Madison stated in the First Congress that the courts would be "an impenetrable bulwark against every assumption of power in the Legislative and Executive." [318]

Constitutional limits, as *Powell v. McCormack* again reminds us, are subject to judicial enforcement; and I would urge that judicial review of impeachments is required to protect the other branches from Congress' arbitrary will. It is hardly likely that the Framers, so devoted to "checks and balances," who so painstakingly piled one check of Congress on another,[319] would reject a crucial check at the nerve center of the separation of powers. They scarcely contemplated that their wise precautions must crumble when Congress dons its "judicial" hat, that then Congress would be free to shake the other branches to their very foundations. Before we swallow such consequences, the intention of the Framers to insulate Congressional transgressions of the "limits" they imposed upon impeachment should be proved, not casually assumed. The Constitution, said the Supreme Court, condemns "all arbitrary exercise of power"; [320] "there is no place in our constitutional system for the exercise of arbitrary power." [321] The "sole power to try" affords no more exemption from that doctrine than does the sole power to legislate which, it needs no citation, does not extend to arbitrary acts.

Finally, assume that the "sole power to try" conferred insulation from review, it must yield to the subsequent Fifth Amendment provision that "No person" shall "be deprived of life, liberty, or property without due process of law. . . ." If the Constitution does in fact place limits upon the power of impeachment, action beyond those limits is without "due process of law" in its primal sense:

> when the great barons of England wrung from King John . . . the concession that neither their lives nor their property should be disposed of by the crown, except as provided by the law of the land, they meant by "law of the land" the ancient and customary laws of the English people. . . .[322]

In our system the place of the "ancient and customary laws" was taken by the Constitution; and injurious action not authorized by the Constitution is therefore contrary to the "law of the land" and is forbidden by the due process clause. "Due process" has been epitomized by the Court as the "protection of the individual against arbitrary action." [323] One who enters government service does not cease to be a "person" within the fifth amendment; and an impeachment for offenses outside the Constitutional authorization would deny him the protection afforded by "due process." It would be passing strange to conclude that a citizen may invoke the judicial "bulwark" against a $20 fine,[324] but not against an unconstitutional impeachment, re-

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[317] In 1787, when Jefferson welcomed the "check" which a Bill of Rights "puts in the hands of the judiciary," he added, "This is a body, which if rendered independent . . . merits confidence for their learning and integrity." 5 The Writings of Thomas Jefferson 31 (P. Ford ed. 1892–1899).

[318] 1 Ann. Cong., *supra* note 130, at 439.

[319] *See* Congress v. Court, *supra* note 2, at 20–21.

[320] ICC v. Louisville & N.R.R., 227 U.S. 88, 91 (1913).

[321] Garfield v. United States *ex rel* Goldsby, 211 U.S. 249, 262, *supra* note 2, (1908); Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886); and *see* Berger, *Administrative Arbitrariness: A Synthesis*, 78 Yale L.J. 965, 980–81 (1969).

[322] Davidson v. New Orleans, 96 U.S. 97, 102 (1877).

[323] Ohio Bell Tel. Co. v. Public Serv. Comm'n., 301 U.S. 292, 302 (1937).

[324] Frank v. Maryland, 359 U.S. 360 (1959).

moval from and perpetual disqualification to hold federal office. Here protection of the individual coincides with preservation of the separation of powers, and the interests of the assaulted branch, as Judge George Wythe perceived, are one with the interest of "the whole community." Those interests counsel us to give full scope to the "strong American bias in favor of a judicial determination of constitutional and legal issues,"[325] and to deny insulation from review of impeachments in defiance of Constitutional bounds.

IV. CONCLUSION

In England impeachment for "high crimes and misdemeanors" did not require proof of an indictable crime, although the penalties of death or imprisonment made impeachments "criminal," but this was under the "course of Parliament" as distinguished from the ordinary statutory or common law crimes. The Framers, however, completely separated the impeachment-removal proceedings from a subsequent indictment and criminal trial. Thereby they indicated that impeachment was not to be a criminal proceeding, a view that the double jeopardy amendment and the sixth amendment provision for trial by jury "in all criminal prosecutions" caution us to adopt. History, in short, does not require indictability as the basis for impeachment.

The Framers were almost exclusively concerned with fashioning "a bridle" upon the Executive; and fear of "encroachments of the executive"[326] led the Framers to swallow the possibility that factional strife would continue to color impeachment.[327] But the Framers had no intention of delivering the President to the untrammeled will of Congress; they confined impeachment within the technical, "limited" terms of the common law—"treason, bribery, or other high crimes and misdemeanors." Although the removal of judges was decidedly peripheral to concern with executive encroachments, being governed by the same language it is subject to the same limits. Finally, Constitutional limits, as *Powell v. McCormack* reminds us, are subject to judicial enforcement, the more so in the case of impeachment, because the other branches can not be left to the arbitrary will of the Congress.

Whether or not judicial review is available for a conviction on impeachment, Congress should avoid possible Constitutional confrontations. And a decent regard for the design of the Founders should constrain the Senate to disclaim unlimited power,[328] and to act within the confines contemplated by the Founders. When Congress impeaches and convicts in disregard of those bounds, it is guilty of an abuse of its power which posterity, if not the Court, will condemn. No member of Congress should lightly invite a judgment such as branded the impeachment of President Andrew Johnson as "one of the most disgraceful episodes in our history."[329] Congress should have before it the admonition of Edmund Burke with respect to a mooted impeachment: "We stand in a position very honorable to ourselves

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[325] Jaffe, *Standing to Secure Judicial Review: Public Actions*, 74 Harv. L. Rev. 1265, 1302 (1961).

[326] The Federalist, *supra* note 2, at 425, 430.

[327] Charles Pinckney reminded the Convention that the two Houses would combine against the President "under the influence of heat and faction." 2 Farrand, *supra* note 108, at 551, as the impeachment of President Andrew Johnson later demonstrated.

[328] *See* note 2 *supra*.

[329] S. Morrison, The Oxford History of the American People 721 (1965).

and very useful to our country, if we do not abuse the trust that is placed in us."[330] Let impeachment be, not a mere means of venting party spleen, but rather, as it was for Burke, "that great guardian of the purity of the Constitution."[331]

APPENDIX

Indictability of Judges

In order to sustain his argument in the Chase impeachment proceedings that impeachment demanded an indictable crime, Luther Martin, leading counsel for Chase, maintained that judges were indictable for violation of their official duties. He dismissed Floyd v. Barker, text accompanying note 46 *supra*, out of hand because "the reasons there assigned, however correct they might be as to the judges in England, can have no possible application to the judges of the United States." 14 Ann. Cong. 434. Nevertheless, American law accepted Coke; in 1810, five years after Martin spoke, Chancellor Kent held that the Coke doctrine "has a deep root in the common law"; and took note of Coke's statement that no judge may be questioned for a judgment given, "either at the suit of a party, or of the king." Yates v. Lansing, 5 Johns. 282, 291, 293. In 1867, Lawrence, who sought to lay a predicate for the impending Andrew Johnson impeachment, wrote, "It is a rule of the common law that judges of record are freed from all presentations whatever except in Parliament, where they may be punished for anything done by them in such courts as judges." Lawrence, *supra* note 15, at 664. Bradley v. Fisher, 12 Wall. (80 U.S.) 335, 350 (1871). It became accepted doctrine that judges enjoyed immunity from *private* suits for actions in their judicial capacity.

But Martin leaned more heavily on Viner's statement that "A justice cannot rase a record, nor imbecile [embezzle?] it." 14 Ann. Conn. 435. Viner cited Brooke's Corone, which in turn cited 2 Rich. III, 9, 10. No such statute appears in the Statutes of the Realm or Statutes at Large; but a cognate statute is 8 Rich. II, cap. 4: if any judge is convicted "of the false entering of pleas, rasing [erasure] of Rolls and changing of verdicts . . . before the King and his Council . . . he shall be punished by Fine and Ransom [a treble fine, Jenkins 162, 145 E.R. 104 (undated)]." This was a statute of 1385, at a time when great ministers and the Justices were tried before the "King and his Council," so that one may question whether the statute contemplated an indictment. *See* text accompanying notes 22–26 *supra*.

In Martin's quotation, Viner made two further points. First, a judge cannot "file an indictment which is not found." Apparently this refers to Rex v. March, 3 Mod. 66, 87 E 79, Rep. 42 (1603), wherein a Mayor who was also coroner and seemingly acted in a quasi-judicial capacity, had inserted additional names in an indictment after it had been found, and was therefore himself held guilty upon a subsequent information. This was punishment of a lesser judge, who was treated differently from a Justice of the higher courts. *See* text accompanying notes 55–59 *supra*. Second, Martin quoted Viner's statement that a judge cannot "give judgment of death where the law does not give it." Jenkins relates that this happened in a manor court, again a lesser court, and that the Star Chamber decided that the judge should "be fined and imprisoned and lose his office." Jenkins 162, 145 E.R. 104 (undated). Indictments were not employed by the Star Chamber, *see* E. Jenks, A Short History of English Law 147 (2d ed. 1920).

Martin (14 Ann. Cong. 435) also quoted 1 Hawkins, ch. 69 [actually ch. 67] § 6, to the effect that bribery in a judge is "punishable, not only with forfeiture of the offender's office of justice, but also with fine and imprisonment." Hawkins' marginal citation to 1 Rushworth's Collections at 131, deals with the impeachment of Lord Bacon. Indeed, Hawkins himself stated that the law "free the Judges of all Courts of Record from all Prosecutions whatsoever, except in the Parliament, for anything done by them openly in such Court as Judges." Id. ch. 72, § 6.

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[330] Quoted in Topp, *supra* note 160, at 194.

[331] 1 E. Burke, The Works of Edmund Burke 397 (Boston ed. 1839) (emphasis in original).

"The Scope of the Impeachment Power", Paul S. Fenton

THE SCOPE OF THE IMPEACHMENT POWER*

PAUL S. FENTON**

INTRODUCTION

Article II, section 4 of the Federal Constitution provides that "[t]he President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." Since the adoption of the Constitution, congressional investigation of possible impeachable misconduct has been ordered in sixty-five cases, of which fifty-three involved federal judges.[1] As a result of twelve of these investigations—nine concerning federal judges—articles of impeachment were voted by the House.[2] Seven of the twelve respondents in these proceedings were acquitted,[3] one resigned just before the commencement of his trial by the Senate,[4] and four—all of whom were federal judges—were convicted by the Senate.[5]

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[1] J. Borkin, The Corrupt Judge 219–58 (1962); 3 Hinds, Precedents of the House of Representatives of the United States 644–1034 (1907) [hereinafter cited as Hinds]; 6 Cannon's Precedents of the House of Representatives of the United States 684–796 [hereinafter cited as Cannon's]; sources cited in the Appendix. One case not mentioned in any of these sources is that of Associate Justice William O. Douglas, who was attacked in 1953 for issuing a stay of execution in connection with the Rosenberg espionage trial; the proceedings never developed beyond a day of hearings held by the House Judiciary Committee.

[2] The twelve are William Blount, John Pickering, Samuel Chase, James Peck, West Humphreys, Andrew Johnson, William Belknap, Charles Swayne, Robert Archbald, George English, Harold Louderback and Halsted Ritter. All but Blount, Johnson and Belknap were federal judges. The charges involved in these twelve cases and their disposition are set out in the Appendix.

A thirteenth official, Judge Mark Delahay, was impeached in 1873 by the House, but the case was discontinued before articles of impeachment could be drawn. Hinds, supra note 1, at 1008–11.

Those cases not resulting in impeachment being voted by the House were disposed of in a variety of ways. In a substantial number of cases, the subject of the inquiry resigned, which invariably caused the proceedings to be discontinued. In the majority of the remaining cases the investigatory committee (which, with a single exception since it was established in 1813, has been the House Judiciary Committee or a subcommittee thereof in the case of charges against a federal judge) dropped the investigation without filing a report or filed a report recommending against impeachment. There have also been at least seven cases where the majority report stated that the facts did not warrant impeachment but censured the individual concerned or condemned his conduct; in three of these seven cases the minority report recommended impeachment. The investigatory committee recommended impeachment on twenty occasions. There was one occasion where the House voted not to impeach notwithstanding a recommendation to do so by the committee, and only one instance—that of Judge Louderback in 1933 (who was ultimately acquitted by the Senate)—where the House voted an impeachment in the face of a contrary recommendation by the majority report of the investigatory committee. *See* sources cited in note 1 *supra*.

[3] Blount, Chase, Peck, Johnson, Belknap, Swayne and Louderback.

[4] Judge English.

[5] Pickering, Humphreys, Archbald and Ritter.

Of central concern in each of these controversies has been the issue of what constitutes an impeachable offense. Since the high court of impeachment—the Senate—issues no written opinions to accompany its decisions,[6] the standard of impeachable conduct has never been definitively resolved. This article will focus on the standards of impeachable conduct as reflected in the phrase "high crimes and misdemeanors," with attention to the historical background of the law of impeachment, in order to construe the sweep of this controversial clause in our Constitution.

THE HISTORICAL STANDARD

Analysis of the scope of the impeachment power has often begun with the theory that since the framers of the Constitution adopted the phrase "high crimes and misdemeanors" from the English practice, its definition was intended to be taken from the law of England at the time of adoption of the Constitution.[7] By this reasoning, no conduct would be impeachable under the Constitution unless it was impeachable in England in 1787.

Although the English practice is undoubtedly of substantial value in construing the impeachment clause, to accept this precedent as an inflexible and unchanging standard would be a grave error. Contemporary constitutional analysis correctly calls for a flexible approach to interpretation. A constitution "is necessarily adopted for the future, perhaps a remote future, . . . and those who adopt it cannot be presumed to have thought it was to be applied only to the then existing conditions, rather than to similar conditions certain to rise . . ."[8] Just as "the things for which people could be impeached in Great Britain shifted and changed with the shifting and changing judgment and legislation of the times,"[9] so the definition of an impeachable offense has not remained constant in this country. We turn, then, to the various factors that have dominated the discussion of impeachment standards.

UNDESIRABLE POLITICAL VIEWS

The impeachment by the House and subsequent acquittal by the Senate of Justice Samuel Chase in 1804–05 has been widely construed as a restraint on the use of the impeachment process to oust a judge or justice whose political views or judicial opinions are not to the liking of the political party in power.

The prosecution was based on the theory that "impeachment is nothing more than an inquiry by the two Houses of Congress whether the office of a public man might not be better filled by another" and that

[6] On occasion, individual senators will file opinions in the Congressional Record after a conviction, as was done by several senators in the Ritter case. These opinions are unofficial, however; there is never a formal opinion which speaks for the court of impeachment itself.

[7] "Whatever crimes and misdemeanors were the subjects of impeachment in England prior to the adoption of our Constitution, and as understood by its framers, are, therefore, subjects of impeachment before the Senate of the United States . . . ." Brief filed by Mr. Manager Henry W. Palmer on February 23, 1905, in the Swayne impeachment. 3 Hinds, supra note 1, at 340; accord, Brief for respondent in the Swayne impeachment, filed February 22, 1905, cited in id. at 323–25. But cf. id. at 344–45.

[8] Simpson, Federal Impeachments, 64 U. Pa. L. Rev. 651, 677 (1916).

[9] Final argument on February 25, 1905, of Mr. Manager David A. De Armond in the Swayne impeachment, 3 Hinds, supra note 1, at 358.

removal by impeachment was nothing more than a declaration by Congress to this effect: You hold dangerous opinions, and if you are suffered to carry them into effect you will work the destruction of the nation. We want your offices, for the purpose of giving them to men who will fill them better.[10]

The defense, on the other hand, contended that "in order to sustain an impeachment, an offense must be proved upon the respondent which would support an indictment." [11]

The Senate's acquittal of Justice Chase in effect disavowed the prosecution's theory of impeachment, despite the ambiguous general verdict on both the facts and the law. The Republican partisans of Jefferson were forced to abandon their attempt at wholesale removal of Federalist judges through the impeachment process.

At the time of the Fortas crisis in 1969, Senator Sam Ervin, commenting on the Chase impeachment, noted that

> [t]he precedent established was that judges could be impeached only for violations of law, and not for their political views or for decisions they handed down while on the bench. This precedent is a foundation stone of the independence of the Supreme Court. While the Court is not and never should be immune from criticism for its decisions, it should remain safe from retribution based upon partisan politics.[12]

MISBEHAVIOR

Since federal judges hold office "during good behavior," [13] it has been suggested that "misbehavior" properly defines the bounds of "high crimes and misdemeanors," or even that lack of good behavior constitutes an independent standard for impeachment, apart from whatever standard may be dictated by the impeachment clause.[14] This position is bottomed, to some extent, on the much disputed premise that impeachment is the sole method of removing federal judges from office.[15] Were this the case, then the only way to give

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[10] Senator Giles, as recorded in the diary of John Quincy Adams. 1 Memoirs of John Quincy Adams 321–22 (1874).

[11] Joseph Hopkinson, speaking in oral argument before the Senate. 11 American State Trials 306 (J. Lawson ed. 1919). See Lillich, The Chase Impeachment, 4 Am. J. Legal Hist. 49 (1960).

[12] 115 Cong. Rec. 12,208 (1969). Partisanship has, nonetheless, played a considerable role in many subsequent impeachment proceedings. For a discussion of partisanship in the more recent impeachments see Ten Broek, *Partisan Politics and Federal Judgeship Impeachment since 1903*, 23 Minn. L. Rev. 165 (1939).

[13] U.S. Const. art. III, § 1.

[14] *See, e.g.*, final argument of Mr. Manager George W. Norris on January 9, 1913, in the Archbald impeachment. 6 Cannon's, *supra* note 1, at 649–50; Memorandum Opinions of Senators Borah, LaFollette, Frazier, Shipstead, Thomas and McAdoo in the Ritter impeachment, Proceedings of the United States Senate in the Trial of Impeachment of Halsted L. Ritter. S. Doc. No. 200, 74th Cong., 2d Sess. 644–47, 658 (1936) [hereinafter cited as Ritter Proceedings].

In its report recommending the impeachment of Judge English in 1926, the House Committee on the Judiciary concluded that the good behavior clause was to be accorded considerable weight:

> A civil officer may have behaved in public so as to bring disgrace upon himself and shame upon the country and he would continue to do this until his name became a public stench and yet might not be subject to indictment under any law of the United States, but he certainly could be impeached. Otherwise the public would in this and kindred cases be beyond the protection intended by the Constitution. When the Constitution says a judge shall hold office during good behavior it means that he shall not hold it when his behavior ceases to be good behavior.

H.R. Rep. No. 653, 69th Cong., 1st Sess. 10 (1926).

[15] The problems surrounding proposals for mandatory retirement of judges and justices, including the question of whether article III federal judges can constitutionally be involuntarily removed from office by means other than impeachment, will not be discussed here. There is, however, considerable literature on this subject. See *e.g.*, Chandler v. Judicial Council of the Tenth Circuit of the United States, 398 U.S.

meaning to the good behavior clause would be either to incorporate it into the impeachment clause or to elevate it to the status of a second means of impeachment.[16] It is argued, however, that the "good behavior" clause is more aptly described by its other appellation—the "judicial tenure" cause—on the theory that it does not constitute a standard for impeachability, but merely states that federal judges hold office for life unless removed under some other provision of the Constitution.

For a number of reasons the impeachment clause, rather than the good behavior clause, should control.[17] If lack of good behavior were the standard for impeachability of federal judges, presumably a different standard would have to apply to civil officers other than judges, since the good behavior clause applies only to article III judges. Secondly, under the English practice at the time the Constitution was adopted, "good behavior" referred not to grounds for removal, but rather to the concept of lifetime tenure. Finally, it can be argued that if the word "misdemeanor" includes misbehavior, there is no reason for the drafters to have constructed the "good behavior" clause, unless it be for a purpose other than setting an impeachment standard.

It is interesting to note that the articles in each of the eight impeachments through 1905 were styled Articles of Impeachment for "high crimes and misdemeanors."[18] During this period, it was apparently the feeling of the House of Representatives that the impeachment power lay solely within the impeachment clause. Subsequent to 1905, however, the House departed from this strict construction. In all of the four later impeachments the phrase "high crimes and misdemeanors" was removed from the introductory clause. Except for four articles in the Ritter case,[19] the word "misbehavior" was used in all of the individual articles of impeachment, sometimes with the phrase "high crimes and misdemeanors" or simply "misdemeanors." Presumably, the use of the term "misbehavior" indicates a reliance on the judicial tenure clause as an impeachment standard.

The phraseology of articles of impeachment, however, should be accorded little weight if the intent of the framers of the Constitution is clear. The proceedings of the Constitutional Convention do indicate an intention to limit the grounds for impeachment to those con-

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74 (1970); *Constitutionality of a Statutory Alternative to Impeachment*. 115 Cong. Rec. 14,912 (1969); Davis, *The Chandler Incident and Problems of Judicial Removal*, 19 Stan. L. Rev. 488 (1967); Kurland, *The Constitution and the Tenure of Federal Judges: Some Notes from History*. 36 U. Chi. L. Rev. 665 (1969); Shartel, *Federal Judges—Appointment, Supervision and Removal—Some Possibilities under the Constitution*, 28 Mich. L. Rev. 870 (1930); Stolz, *Disciplining Federal Judges: Is Impeachment Hopeless?*, 57 Calif. L. Rev. 659 (1969); Legislation, 20 Vand. L. Rev. 723 (1967).

[16] To say that the judicial tenure shall be limited to good behavior in one section of the Federal Constitution and then contend that the section of the Constitution immediately preceding that has destroyed its force and effect and has left the Federal Government without any machinery to . . . take jurisdiction of acts which constitute misbehavior but are not criminal, is to treat the words "during good behavior" as surplusage. Such an interpretation violates all rules of construction.

Final argument of Mr. Manager Paul Howland, January 9, 1913, in the Archbald impeachment, 6 Cannon's, *supra* note 1, at 643.

[17] *See* Simpson, *supra* note 8, at 806–08.

[18] *See* sources cited in the Appendix *infra*. In the case of Judge Peck, the term used was "high misdemeanors."

[19] Articles 3, 4, 5 & 6. *See* Appendix *infra*. Article 7, on which Judge Ritter was convicted, charged "misbehavior . . . and high crimes and misdemeanors in office." The articles on which Judge Archbald, the only other person impeached and convicted in the 20th century, was convicted—articles 1, 3, 4, 5 & 13—all charged "misbehavior in office" or "misbehavior as . . . judge," as well as either "high crimes and misdemeanors in office," or simply "misdemeanors in office." *See* Appendix *infra*.

tained in article II, section 4. On August 27, 1787, an amendment was offered to the "good behavior" clause[20] which sought to insert the proviso "that they [federal judges] may be removed by the Executive on the application [of] the Senate and House of Representatives."[21] Mr. Randolph opposed the motion "as weakening too much the independence of the Judges." Mr. Wilson commented that "[t]he Judges would be in a bad situation if made to depend on every gust of faction which might prevail in the two branches of our Government." By a vote of 7 to 1 (with 3 absent) the states voted to reject the amendment.[22] The delegates did, however, subsequently attach such a judicial removal provision to the impeachment clause, which had originally been drafted so as to apply only to the President. On September 8, 1787, the following was added to the impeachment clause: "The Vice-President and other Civil officers of the United States shall be removed from office on impeachment and conviction *as aforesaid*."[23]

The likelihood that the words "as aforesaid" indicate an intent to adopt for federal judges the same standard of impeachable offense as applies to the President is underscored by the fact that immediately prior to the adoption of this provision the Convention had debated the appropriate standard to be used in the impeachment clause and expressly rejected the vaguer term "maladministration" in favor of "high crimes and misdemeanors."[24] The standards of article II, section 4 were thus carried over from the original presidential impeachment provision, which had been extended to apply to all "other civil officers,"—clearly including judges. The Constitutional Convention, therefore, quite clearly rejected the dual standard of "misbehavior" for judges and "high crimes and misdemeanors" for other federal officials.

In short, both logic and history indicate that the judicial tenure clause relates only to the tenure of federal judges, negating the proposition that their term of office is limited to a term of years. The power of removal, together with the appropriate standard, are therefore contained solely in the impeachment clause.[25]

INDICTABLE OFFENSES

In the almost 200-year history of impeachments under the Constitution, the most closely debated legal issue has consistently been whether impeachment is limited to offenses indictable under the criminal law—or at least to offenses which constitute crimes—or whether the word "misdemeanors" in the impeachment clause extends

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[20] "The Judges of the Supreme Court, and of the Inferior Courts, shall hold their offices during good behavior." Art. XI, § 2, as reported by the Committee on Detail on August 6, 1787. 2 The Records of the Federal Convention of 1787, 186 (M. Farrand ed. 1911) [hereinafter cited as Farrand]. This clause was carried over unchanged into the final draft of the Constitution and now appears in article III, § 1.

[21] 2 Farrand, *supra* note 20, at 428.

[22] *Id.* at 429.

[23] *Id.* at 552 (emphasis added).

[24] *Id.* at 550.

[25] This is not to say that the proper standard is not lack of good behavior or misbehavior, or something on that order, but merely that if this is the standard it must be arrived at by construing the impeachment clause. If the result of such a construction turned out to be lack of good behavior, the similarity of such standard to the phraseology of the good behavior clause would be coincidental rather than causative. For a view directly to the contrary—that the relationship is causative rather than coincidental—see the statement of Mr. Manager George W. Norris in final argument on January 9, 1913, in the Archbald impeachment, 6 Cannon's, *supra* note 1, at 649–50.

to noncriminal misconduct as well. While the authorities are divided on this question, the majority clearly favors the broader definition.[26] That this conclusion is the better view follows from a logical analysis of the impeachment clause, the English precedents, the debates in the Constitutional Convention and the history of impeachments under the Constitution.

ANALYSIS OF THE IMPEACHMENT CLAUSE

If the phrase "high crimes and misdemeanors" is considered by itself, dissociated from any historical background and from all other clauses of the Constitution, the word "misdemeanors" cannot logically be limited to its meaning in the criminal law—that is, all crimes which do not amount to felonies.

Following the doctrine that each word in the Constitution must be given meaning and none can be discarded as superfluous,[27] a separate and independent meaning must be found for the term "misdemeanors," as distinguished from the term "crimes." Since "crimes" encompasses misdemeanors in the sense of non-felony criminal offenses,[28] the term "misdemeanors" must be construed to include noncriminal misconduct

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[26] That the Managers on the part of the House in the American impeachments have consistently urged the broad view and that counsel for respondents have argued that impeachable offenses be limited to crimes is not surprising. For example, the House Committee on the Judiciary, in its report recommending the impeachment of Judge English in 1926 concluded:

Although frequently debated, and the negative advocated by some high authorities, it is now, we believe, considered that impeachment is not confined alone to acts which are forbidden by the Constitution or Federal statutes. The better sustained and modern view is that the provision for impeachment in the Constitution applies not only to high crimes and misdemeanors as those words were understood at common law but also acts which are not defined as criminal and made subject to indictment, and also to those which affect the public welfare.

H.R. Rep. No. 653, 69th Cong., 1st Sess. 9–10 (1926).

With respect to more neutral observers, however, the list of authorities favoring the broad view is not unimpressive. One such authority states:

The cases . . . seem to establish that impeachment is not a mere mode of procedure for the punishment of indictable crimes; that the phrase "high crimes and misdemeanors" . . . includes not only crimes for which an indictment may be brought, but grave political offenses, corruptions, maladministration, or neglect of duty involving moral turpitude, arbitrary and oppressive conduct, and even gross improprieties, by judges and high officers of state, although such offenses be not of a character to render the offender liable to indictment either at common law or under any statute.

15 American and English Encyclopedia of Law 1067–68 (2d ed. 1900).

It is interesting to note that this authority defines impeachment to extend to "maladministration," which was expressly rejected by the Constitutional Convention.

2 Farrand, *supra* note 20, at 550.

[27] In expounding the Constitution of the United States, every word must have its due force, and appropriate meaning: for it is evident from the whole instrument, that no word was unnecessarily used or needlessly added . . . . No word in the instrument, therefore, can be rejected as superfluous and unmeaning.

Holmes v. Jennison, 39 U.S. (14 Pet.) 540, 570–71 (1840).

[28] That the word "crimes" includes misdemeanors in the criminal law sense is clear. Black's Law Dictionary 444 (4th ed. 1951) defines "crime" as a "positive or negative act in violation of penal law . . . . 'Crime' and 'misdemeanor,' properly speaking, are synonymous terms; though in common usage 'crime' is made to denote such offenses as are of a deeper and more atrocious dye."

To illustrate the intention of the Constitutional Convention with regard to the definition of "crime," one might examine article IV, § 2, of the Constitution, which provides: "A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime." The Supreme Court, construing this clause in Kentucky v. Dennison, 65 U.S. (24 How.) 66, 99 (1860), held that "[t]he word 'crime' of itself includes every offense, from the highest to the lowest in the grade of offenses, and includes what are called 'misdemeanors,' as well as treason and felony." *Accord, Ex parte* Reggel, 114 U.S. 642, 649–50 (1885).

It is interesting to note that an earlier version in the Constitutional Convention of the phrase "treason, felony or other crime" in article IV, § 2, took the form of "treason, felony or high misdemeanor." Art XV, Report of the Committee of Detail, Aug. 6, 1787, 2 Farrand, *supra* note 20, at 187–88. This supports the proposition that "crime" includes "misdemeanor." Yet it might also be cited to demonstrate, contrary to the argument made in the text, that since "high misdemeanor" in this early draft of article IV, § 2, refers to criminal conduct, it also denotes criminal conduct when it appears in the impeachment clause, article II, § 4.

if it is to have any independent meaning. As one commentator has put it, "the word 'crimes' was used to negative the thought that the only criminal offenses for which an impeachment would lie were 'treason' and 'bribery'; and the word 'misdemeanors' was used to negate the thought that only 'crimes' were impeachable." [29]

It is interesting to note that Congress did not make bribery a federal crime until three years after the Constitution was drafted in 1787.[30] If bribery was not a federal crime at the time of the drafting of the Constitution, then presumably "*other* high crimes and misdemeanors" would include offenses which are not federal crimes.

Bribery was, however, a crime in the various states, either by statute or common law. It might therefore be argued that "other high crimes and misdemeanors" refers to offenses against the criminal law of either the federal government or the states. On the other hand, it could be argued that it is not in keeping with the structure of our federal system, as embodied in the supremacy clause and in the Constitution generally, to allow the scope of the impeachment power to be delineated by the enactments of the various state legislatures.

ENGLISH PRECEDENTS

The phrase "high crimes and misdemeanors" was taken directly from the English parliamentary common law, where it had become surrounded by a substantial body of interpretive case law. Since this clause is a term of art, the normal canons of construction require that we look to its source in England for guidance as to its application under our Constitution.[31]

An examination of the history of impeachment in England reveals that a significant number of impeachments were based on noncriminal misconduct, and that in some cases the charges were essentially political in nature:

> Thus, persons have been impeached for giving bad counsel to the king, advising a prejudicial peace, enticing the king to act against the advice of Parliament, purchasing offices, giving medicine to the king without the advice of physicians, preventing other persons from giving counsel to the king except in their presence . . . Thus, lord chancellors and judges and other magistrates have not only been impeached for bribery, and acting grossly contrary to the duties of their office, but for misleading their sovereign by unconstitutional opinions, and for attempts to subvert the fundamental laws and introduce arbitrary power.[32]

One commentator cites ten impeachments in which "high crimes and misdemeanors" were charged but in which the offenses were not in-

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[29] Simpson, *supra* note 8, at 679.

[30] Act of Apr. 30, 1790, ch. 9, § 21, 1 Stat. 117.

[31] The debates of the Constitutional Convention indicate that the delegates were aware of the development of the law of impeachment in England. *See, e.g.*, comments of Dr. Franklin and Mr. Gouveneur Morris, 2 Farrand, *supra* note 20, at 67–69.

[32] 1 J. Story, Commentaries on the Constitution of the United States 585 (5th ed. 1891). For a discussion of the English impeachment cases see 4 J. Hatsell, Precedents of Proceedings in the House of Commons 56 *et seq.* (1818) [hereinafter cited as Hatsell]; Hinds, *supra*, note 1, at 331–34; 2 R. Wooddesson, A Systematical View of the Laws of England 596 (Lecture XL 1792); Yankwich, *Impeachment of Civil Officers Under the Federal Constitution*, 26 Geo. L.J. 849, 853–56 (1938).

dictable.[33] Another cites several cases in which English judges were impeached for giving "extrajudicial opinions and misinterpreting the law." [34] While there is some authority to the contrary,[35] the predominant view, therefore, is that under the English practice impeachment will lie for noncriminal, as well as criminal, misconduct.

DELIBERATION OF THE CONSTITUTIONAL CONVENTION

That the debates and actions of the Constitutional Convention surrounding the adoption of article II, section 4, should be considered in attempting to fathom the meaning of the impeachment clause is clear. What is less certain is how these deliberations should be interpreted.

Shortly after the Convention convened on May 29, 1787, the Committee of the Whole agreed that the President should be "removable on impeachment and conviction of malpractice or neglect of duty." [36] The Convention agreed on July 20 that the Executive should be impeachable [37] and approved the language of this provision on July 26.[38] The Committee of Detail [39] reported a draft constitution on August 6, which provided that the President might be "removed from his office on impeachment by the House of Representatives, and conviction in the Supreme Court, of treason, bribery or corruption." [40] On September 4, the Committee of Eleven [41] reported an impeachment provision limited to "treason or bribery." [42]

On September 8, Colonel Mason commented that "[t]reason as defined in the Constitution will not reach many great and dangerous

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[33] Simpson, *supra* note 8, at 682. The author concludes that "there is nothing . . . in the English practice which otherwise limits that construction [of the phrase "high crimes and misdemeanors"] and hence it must be held to mean other than criminal misdemeanors." *Id.* at 686. It is interesting to note that this same commentator, in oral argument before the Senate as counsel for the respondent in the Archbald impeachment three years earlier, took a rather different view:

"[T]he question arises which of the English precedents are you going to accept, in view of the fact that some hold that an impeachable offense need not be an indictable one, and others hold a precisely antagonistic view. Are you going back to the days when a man was impeached simply because he happened to have been put in office by those who have themselves just been turned out? If that is the view you are going to accept then perhaps every four years in this country there will be a wholesale slaughter. But if you are going to accept the best precedents which appear upon the English reports, and especially those down near to the time when the Constitution of the United States was adopted, then those best precedents show that, except for an indictable offense, no impeachment would lie under the laws of England. 6 Cannon's, *supra* note 1, at 646."

[34] 4 Hatsell, *supra* note 32, at 76.

[35] One such authority is quite direct:

"It is asserted, without fear of successful contradiction, both upon authority and principle, notwithstanding a few isolated instances apparently to the contrary, that no impeachment can be had where the King's Bench would not have held that a crime had been committed, had the case been properly before it.

"Dwight, *Trial by Impeachment*, 15 Am. L. Reg. 257, 264 (1867). This statement was intended by its author to be applicable to American, as well as English, impeachments. Dwight cites the case of Lord Melville, who was charged with wrongfully (but not corruptly) spending public funds without proper authority as Treasurer of the Navy, as an example of an acquittal due to the lack of an indictable crime. *Id.* at 267. *See also* Simpson, *supra* note 8, at 684–86. Of course, an acquittal cannot be determinative of any legal principle in any definitive sense since there is no separate ruling on the facts and the law."

[36] 1 Farrand, *supra* note 20, at 78.

[37] 2 Farrand, *supra* note 20, at 69.

[38] *Id.* at 116.

[39] On July 23, 1787, "the proceedings of the Convention for the establishment of a national government, except what respects the Supreme Executive" were referred to a 5-man body, known as the "Committee of Detail," "for the purpose of reporting a Constitution conformably to the proceedings aforesaid." *Id.* at 85, 97.

[40] *Id.* at 185–86.

[41] The Convention on August 31 referred "such parts of the Constitution as have been postponed, and such parts of reports as have not been acted on to a Committee of a Member from each State," known as the "Committee of Eleven." *Id.* at 473.

[42] "He [the President] shall be removed from his office on impeachment by the House of Representatives, and the conviction by the Senate, for treason or bribery . . ." *Id.* at 495.

offenses" and moved to add "or maladministration" after "bribery." Upon the objection of Madison that "[s]o vague a term would be equivalent to a tenure during the pleasure of the Senate," Mason withdrew "maladministration" and substituted "or other high crimes and misdemeanors against the State," and the Convention voted 8 to 3 to adopt this phrase.[43] The words "United States" were then substituted for "State."[44] The Convention also voted to extend the impeachment sanction to the Vice President and other civil officers.[45]

In its report of September 12, the Committee of Style and Arrangement deleted the words "against the United States,"[46] and the Convention accepted this change when it agreed to the Constitution as amended on September 15.[47] No further changes were made in the impeachment clause, which now covered "treason, bribery or other high crimes and misdemeanors," prior to the adoption of the Constitution in final form on September 17, 1787.

From this recounting it appears that, prior to the adoption of the phrase "high crimes and misdemeanors," each time the Convention spoke as a whole it opted for a broad definition of impeachable offenses covering noncriminal as well as criminal misconduct. While the standard chosen by the Committee of Eleven—"treason or bribery"—and, most probably, that reported by the Committee of Detail—"treason, bribery or corruption"—are limited to criminal conduct, it should be emphasized that in these instances it was not the Convention as a whole which was speaking, but merely a committee thereof. From the post-Convention comments by its participants, as well as those by other authorities, it appears that these prior versions of the impeachment clause, together with the accompanying debates, indicate an intent on the part of the framers to include noncriminal misconduct within the catalog of impeachable offenses.[48] Even though "high crimes and misdemeanors" is construed to include some noncriminal misconduct, the fact that "maladministration" was deemed too vague and "high crimes and misdemeanors" was substituted in its place indicates, of course, that the latter clause must be construed more narrowly than the former.

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[43] *Id.* at 545, 550.
[44] *Id.* at 551–52.
[45] *Id.* at 552.
[46] *Id.* at 600.
[47] *Id.* at 633.
[48] [I]n the many excellent and exhaustive briefs prepared by counsel for respondents in our impeachment proceedings, some of which were tried while members of the convention which framed the Constitution still lived, there is no assertion that any member of that convention had expressed the opinion that impeachment was only intended to cover indictable offenses. A somewhat careful independent examination fails to disclose any such statement . . . .
Simpson, *supra* note 8, at 690–91. Simpson cites Luther Martin, who was a member of the Convention but later argued against its adoption, as the sole exception. As counsel for the respondent in the Chase impeachment, Martin contended that impeachment would lie only for indictable offenses. 3 Hinds, *supra* note 1, at 762–63. There are several instances of post-Convention statements by the participants, however, which define the scope of an impeachable offense more broadly than that of an indictable crime. For example, Hamilton was of the view that impeachment will lie for "those offenses which proceed from the misconduct of public men, or in other words, from the abuse or violation of some public trust." The Federalist No. 65, at 490 (J. Hamilton ed. 1866) (A. Hamilton). During a speech in Congress on June 16, 1789, on the bill to establish a Department of Foreign Affairs, Madison said that the President would be impeachable for "an act of maladministration" such as the "wanton removal of meritorious officers." 4 Elliot's Debates 380 (2d ed. 1937). Parenthetically, it should be noted that the phrase "high crimes and misdemeanors" was adopted after Madison had objected, successfully, to "maladministration" as being too vague.

An examination of the impeachment proceedings brought under the Federal Constitution indicates that impeachment may be invoked for serious noncriminal misconduct, as well as for criminal offenses.[49] Generalizations are difficult to draw, however, since few cases are available for analysis. The impeachments which failed of conviction are of relatively little value as precedent for purposes of this analysis. The close intermixture of fact and law makes it difficult to determine whether the Senate voted to acquit because the evidence was insufficient to support the allegations in the articles, or because the acts alleged in the articles, even if true, did not constitute impeachable offenses as a matter of law. Thus, if the articles of impeachment against a respondent who is acquitted contain elements of noncriminal misconduct, this would not establish that such activities do not fall within the impeachment power.

Even the four impeachments resulting in conviction[50] are less helpful than might appear at first glance. The impeachments of Judge Pickering and Judge Humphreys were not defended. Of the two contested cases, convictions were obtained on only five of thirteen articles in the case of Judge Archbald and on only one of seven articles in the case of Judge Ritter. Moreover, the value of the Ritter case as precedent is seriously diminished by the ambiguity created by his conviction on an article which essentially incorporated by reference the six articles on which he had been acquitted.

The result, then, is that the hard core of case law on federal impeachments consists of the five articles on which Archbald was convicted, surrounded by a penumbra consisting of the Pickering, Humphreys and Ritter cases. Accordingly, we must examine these four impeachments, placing emphasis on Judge Archbald's case.

The impeachment of Judge Pickering in 1803–04, was the first such proceeding to succeed and was quite clearly based, at least in part, on noncriminal misconduct. The first three articles involved a series of flagrant errors on the part of the judge in his conduct of a case. Articles 1 and 3 constituted violations of federal statutory law, but none of the first three articles constituted a criminal offense.[51]

It would be difficult to establish that any of the articles on which Judge Humphreys was impeached and convicted in 1862 are noncriminal, since all seven articles contain at least a flavor of treason, which the Consitution defines as follows: "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."[52] Articles 3 and 4 alleged that the respondent aided the war effort of the Confederacy. Article 1, making a speech declaring the right of secession and inciting

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[49] While the impeachment provisions of the various states are not directly in point they are instructive. For example, article V, § 5, of the Nebraska Constitution provides that all civil officers of the state may be impeached for "any misdemeanor in office." In State v. Hastings, 37 Neb. 96, 114, 55 N.W. 774, 780 (1893), the court rejected "the doctrine that an impeachable offense is necessarily an indictable offense" as "too narrow."

[50] *See* text accompanying notes 3–5 *supra*.

[51] Article 4, however, charged open and notorious drunkenness and public blasphemy on the bench, which were probably punishable as misdemeanors at common law. Presumably, such conduct would violate the applicable state and local ordinances on disturbing the peace.

[52] U.S. Const. art. III, § 3. *See* Act of Apr. 30, 1790, 1 Stat. 112, which tracks the constitutional definition of treason and provides the death penalty therefor.

rebellion, and article 2, advocating secession, go well beyond the limits of protected free speech. Articles 5, 6 and 7 alleged in effect that Humphreys turned his court into a Confederate court which enforced the laws of the Confederacy and required allegiance to it. This allegation may or may not be sufficient to support a charge of treason, depending on whether it constitutes conduct "adhering to their [the United States'] enemies."

The question of treason aside, the conduct alleged in articles 2 through 4 appears also to constitute violations of a criminal statute dealing with various forms of seditious conspiracy.[53] Acts specifically proscribed by this statute are charged in article 3—levying war against the United States—and article 4—opposing by force the authority of the United States government. Article 2—advocating secession with intent to subvert the authority of the United States—appears to fall, though less directly, within the provisions of the statute applicable to articles 3 and 4. Article 2 also comes within the proscription against preventing the execution of the laws of the United States by force, which would, of course, inevitably result from secession.

At least some of the first six articles in the Ritter impeachment in 1933–36 alleged criminal offenses.[54] However, Judge Ritter was convicted only on article 7 which alleged that he had brought his court into disrepute and rendered himself unfit to serve as a federal judge by the conduct alleged in the first six articles.[55]

There are basically two theories by which this seemingly strange result can be rationalized. The first theory is that although none of the specific acts of misconduct, standing alone, warranted impeachment, all of the offenses taken in the aggregate were sufficient.[56] Under this theory, the substance of articles 1 through 6 is incorporated into article 7, which then includes criminal offenses. The weakness of this line of

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[53] Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if two or more persons within any State or Territory of the United States shall conspire together to overthrow, or to put down, or to destroy by force, the Government of the United States, or to levy war against the United States, or to oppose by force the authority of the Government of the United States; or by force to prevent, hinder, or delay the execution of any law of the United States; or by force to seize, take, or possess any property of the United States against the will or contrary to the authority of the United States; or by force, or intimidation, or threat to prevent any person from accepting or holding any office, or trust, or place of confidence, under the United States; each and every person so offending shall be guilty of a high crime. . . .

Act of July 31, 1861, ch. 33, 12 Stat. 284.

Articles 2, 3 & 4 refer to the respondent's activities in 1861 & 1862: this statute was adopted July 31, 1861. Since one element of proof for a conviction is the presence of a conspiracy, it should be noted that each of the three articles alleges that the respondent acted in concert with others, and in fact article 4 specifically alleges a conspiracy. It also is of interest that a violation is labeled a "high crime," perhaps for the specific purpose of making clear that the crime involved was of a serious enough nature to be impeachable.

[54] Articles 5 & 6 alleged tax evasion and articles 3 & 4 alleged that the respondent practiced law while on the bench, a "high misdemeanor." Act of Mar. 3, 1911, ch. 231, § 258, 36 Stat. 1161, *as amended* 28 U.S.C. § 454 (1964). Article 1 alleged the receiving of a kickback out of the fee paid to his former law partner whom the judge had appointed as a receiver, and article 2 charged participating in a champertous proceeding intended in part to create the fees described in article 1. These might also be criminal violations if all the elements contained in the federal bribery statute (cited in note 64 *infra*), Act of Mar. 3, 1909, ch. 321, § 132, 35 Stat. 1112, such as the requisite intent, could be shown.

[55] After the vote was announced, a point of order was made that respondent was not guilty under article 7 because he had been acquitted of all the charges to which it referred by the action of the Senate with respect to articles 1–6. The point of order was overruled, the chair holding that article 7 contained the "separate charge" of "general misbehavior." 80 Cong. Rec. 5606 (1936).

The contention that his acquittal on articles 1–6 precluded his conviction on article 7 was advanced by Judge Ritter in a suit to recover his salary, but the Court of Claims rejected the suit for lack of jurisdiction in the courts to review the actions of the Senate in impeachment proceedings. Ritter v. United States, 84 Ct. Cl. 293, 300 (1936), *cert. denied*, 300 U.S. 668 (1937).

[56] Ten Broek, *supra* note 12, at 203.

reasoning is that article 7 does not specifically allege again the charges contained in the first six articles, but alleges only that the respondent brought his court into disrepute. The conduct detailed in articles 1 through 6 is cited only as the cause of such disrepute, not as an allegation proper.

The second theory is based on the effect of the conduct, rather than on the acts themselves:

> This ruling definitely lays down the principle that even though upon specific changes amounting to legal violations the impeaching body finds the accused not guilty, it may, nevertheless, find that his conduct in these very matters was such as to bring his office into disrepute and order his removal upon that ground.[57]

This result is analogous to the procedure generally followed with respect to the professions. Thus a lawyer may be disbarred, even after being acquitted of a criminal charge involving the conduct in question, on the theory that the purpose of the disbarment is to protect the public and the profession.[58] Presumably, a different result in the two proceedings can be reached because the burden of proof is higher for the criminal proceeding.[59]

In any event, under the second theory, which is probably the more plausible of the two,[60] article 7 would be construed not to contain any allegations of criminal misconduct.

In the Archbald impeachment of 1912–13, the thirteen articles essentially charged influence peddling—the use of the respondent's position as judge to influence litigants before his court to make deals favorable to friends. In return, the judge would typically be given a share of the profits without having to invest any money. Judge Archbald was convicted on articles 1, 3, 4, 5 and 13. In articles 1 and 3 the deals involved litigants before his court, while article 5 dealt only with a potential litigant. Article 4 alleged improper conduct by the respondent as a judge in having ex parte communications with one party in a suit without the knowledge of the other party or the other judges sitting on the case. This article did not, however, allege any personal gain for the respondent. Article 13 was an omnibus summary of Archbald's influence peddling, resulting in personal monetary gain from deals involving both actual and potential litigants before his court and from fees given for compromising litigation before the Interstate Commerce Commission.[61]

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[57] Yankwich, *supra* note 32, at 858; *accord*, Memorandum Opinion of Senator Austin in the Ritter Proceedings, *supra* note 14, at 650.

[58] Yankwich, *supra* note 32, at 858–59.

[59] The effort to analogize impeachment with disbarment, however, runs afoul of the oft-expressed theory that impeachment is in the nature of a criminal proceeding. Thus, article II, § 2, of the Constitution gives the President power to grant pardons "for offenses against the United States, except in cases of impeachment." Article III, § 2, grants a right to a jury trial for "all *crimes*, except cases of impeachment" (emphasis added).

[60] In the view of one commentator, political factors, rather than the merits of the case, were determinative of the outcome. Although the respondent was a district court judge, dissatisfaction of liberal New Deal Democrats with a conservative Supreme Court was not unrelated to the proceedings. Ten Broek, *supra* note 12, at 198–204.

[61] Article 13 differs from article 7 in the Ritter impeachment in that the substance of the allegations in article 13 is specific misbehavior, rather than bringing of disgrace on the respondent's court. In the opinion of one commentator,

> [I]t seems fair to conclude from the vote on the thirteenth article that judges are impeachable for a general course of misbehavior embracing a series of acts that are subversive of judicial probity or propriety chiefly because of the persistency with which they are committed. This is not to be understood as a holding that many legal naughts may,

The authorities consistently conclude that none of the five articles on which Archbald was convicted constitutes an indictable offense.[62] This assessment is probably correct with respect to article 4, which alleged misconduct in the course of judicial proceedings that is essentially in the same category with respect to criminality as the charges in the first three articles in the Pickering impeachment. As to articles 1, 3, 5 and 13, however, one must consider the relevant criminal statutes in force when the actions complained of took place.[63] For example, section 132 of the Criminal Code of 1909 makes it a crime for a federal judge to accept anything of value "with the intent to be influenced thereby" in any matter pending before him.[64] This section would appear to apply to articles 1, 3 and 13,[65] except that these articles nowhere allege an intent on Archbald's part to allow his judicial opinions to be influenced in return for the transactions he arranged. While the requisite intent might be inferred from the facts alleged, it can also be argued that Archbald merely held himself out as subject to being influenced but in fact never intended to be so influenced.

Perhaps the question of an intent to be influenced could be avoided under section 85 of the Criminal Code, an extortion statute extending to "[e]very officer . . . of the United States." [66] Even if the respondent never intended to be influenced, this statute might apply to articles 1, 3, 5 and 13 to the extent that he held himself out as being prepared to visit adverse consequences upon those who did not cooperate.

Finally, Judge Archbald's activities in compromising litigation before the Interstate Commerce Commission, as alleged in article 13,

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collectively, become a legal unit, but rather that a continuation of transactions which are not seriously irregular when standing alone may become component elements of a system of misconduct sufficient to support an impeachment.

Brown, *The Impeachment of the Federal Judiciary*, 26 Harv. L. Rev. 684, 703–04 (1913).

[62] W. Carpenter, Judicial Tenure in the United States 147 (1918); Simpson, *supra* note 8, at 687; Yankwich, *supra* note 32, at 856. One writer has commented that it was "doubtful" that any of the five articles charged an indictable offense. Ten Broek, *supra* note 12, at 193.

[63] Following the usual practice, none of the articles in the Archbald impeachment specifically charged respondent with a crime. This is not determinative, however, of whether the facts alleged in the articles would be sufficient as a matter of law to constitute a criminal offense.

[64] Whoever, being a judge of the United States, shall in anyway accept or receive any sum of money, or other bribe, present, or reward, or any promise, contract, obligation, gift, or security for the payment of money, or for the delivery or conveyance of anything of value, with the intent to be influenced thereby in any opinion, judgment, or decree in any suit, controversy, matter, or cause pending before him, or because of any such opinion, ruling, decision, judgment, or decree, shall be fined not more than twenty thousand dollars, or imprisoned not more than fifteen years, or both; and shall be forever disqualified to hold any office of honor, trust, or profit under the United States.

Act of March 4, 1909, ch. 321, § 132, 35 Stat. 1112.

It might be noted, parenthetically, that since a federal judge convicted under § 132 would be "forever disqualified to hold any office of honor . . . under the United States," Congress, on at least this one occasion, has taken the position that federal judges can be removed by means other than impeachment. This is, of course, softened somewhat by the fact that bribery is explicitly mentioned as a basis for impeachment in the impeachment clause.

[65] Article 5 would not be covered since it involved only *potential* litigants in the respondent's court, whereas § 132 requires intent by the judge to be influenced in a matter "pending before him." However, § 117 of the Criminal Code, Act of Mar. 4, 1909, ch. 321, 35 Stat. 1109–10, a bribery statute similar to § 132, extends to intent to be influenced as to matters "which may by law be brought before him" in the future. Section 117 applies to an "officer of the United States" and there is some authority that this includes federal judges. United States v. Germaine, 99 U.S. 508, 509–10 (1878).

[66] Every officer, clerk, agent, or employee of the United States, and every person representing himself to be or assuming to act as such officer, clerk, agent or employee, who, under color of his office, clerkship, agency, or employment, or under color of his pretended or assumed office, clerkship, agency, or employment, is guilty of extortion, and every person who shall attempt any act which if performed would make him guilty of extortion, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

Act of Mar. 4, 1909, ch. 321, § 85, 35 Stat. 1104.

might constitute the practice of law by a federal judge, which was proscribed in 1812 and is arguably a crime.[67]

The foregoing discussion shows that at least some of the activities for which American federal judges have been impeached and convicted are not criminal offenses. This fact, in conjunction with the internal logic of the language of the impeachment clause, the English precedents and the debates in the Constitutional Convention, indicates that the impeachment remedy is not limited to criminal offenses.

OFFICIAL MISCONDUCT

It has often been suggested that the impeachment power does not extend to misconduct by a public official outside of his official position. The defense in the Swayne impeachment, for example, argued that, with respect to judges, impeachment should be limited to misconduct committed on the bench:

> In English and American parliamentary and constitutional law the judicial misconduct which rises to the dignity of a high crime and misdemeanor must consist of judicial acts performed with an evil or wicked intent, by a judge while administering justice in a court, either between private persons or between a private person and the government of the State. All personal misconduct of a judge occurring during his tenure of office and not coming within that category must be classed among the offenses for which a judge may be removed by address, a method of removal which the framers of our Federal Constitution refused to embody therein.[68]

The strongest argument against this position is that criminal conduct, no matter how serious, would not be grounds for impeachment if

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[67] 28 U.S.C. §454 (1964) (based on Act of December 18, 1812, ch. 5, 2 Stat. 788). It can be argued most persuasively, however, that this is not a criminal statute since no penalty is prescribed for violations. This argument is strengthened by the fact that the only apparent reason for denominating the offense a "high misdemeanor" was to make it subject to the impeachment power. Yet the phrase "misdemeanor," as used in the impeachment clause, is not limited to criminal misconduct.

[68] Brief for the respondent, submitted February 22, 1905, 3 Hinds, *supra* note 1, at 336. One commentator, writing eight years later, took a contrary position, but only to the extent that respondent's conduct brought his office into disrepute:

To determine whether or not an act or a course of conduct is sufficient in law to support an impeachment, resort must be had to the eternal principles of right, applied to public propriety and civic morality. The offense must be prejudicial to the public interest and it must flow from a willful intent, or a reckless disregard of duty, to justify the invocation of the remedy. It must act directly or by reflected influence react upon the welfare of the state. It may constitute an intentional violation of positive law, or it may be an official dereliction of commission or omission, a serious breach of moral obligation, or other gross impropriety of personal conduct which, in its natural consequences, tends to bring an office into contempt and disrepute.

While the offense must be committed during incumbency in office, it need not necessarily be committed under color of office. An act or a course of misbehavior which renders scandalous the personal life of a public officer shakes the confidence of the people in his administration of the public affairs, and thus impairs his official usefulness, although it may not directly affect his official integrity or otherwise incapacitate him properly to perform his ascribed functions.

Brown, *supra* note 61, at 691–92.

Mr. Brown, as Special Investigator and Assistant to the Attorney General of the United States, prepared for the Attorney General a report on Judge Archbald's activities, which was later transmitted to the House, that in effect recommended impeachment.

The prosecution in the Archbald case made the flat statement that "[i]t is not essential that an offense should be committed in an official capacity in order that it may come within the purview of the constitutional provisions relating to impeachments." and went on to denote as impeachable "[a]ny conduct on the part of a judge which reflects on his integrity as a man or his fitness to perform the judicial functions." Brief submitted by Mr. Manager Henry D. Clayton in the Archbald impeachment, 1 Proceedings of the Senate and the House of Representatives in the Trial of Impeachment of Robert W. Archbald, S. Doc. No. 1140, 62d Cong., 2d Sess. 1061–62 (1913) [hereinafter cited as Archbald Proceedings]; *accord*, Simpson, *supra* note 8, at 805. (Mr. Simpson, as indicated previously, was later transmitted to the House, that in effect recommended impeachment.)

committed outside the scope of the respondent's official duties.[69] This argument is neutralized if one accepts Congressman McCloskey's recent assertion that acceptable judicial conduct is "conduct which complies with judicial ethics while on the bench and with the criminal and civil laws while off the bench." [70]

The idea is not a new one. Counsel for respondent in the Swayne impeachment proceedings argued that "personal misconduct of an English judge off the bench has never furnished the ground for impeachment." [71] An examination of the English impeachment cases lends suport to this statement.[72]

The proceedings of the Constitutional Convention have some bearing on the question. On September 8, 1787, the Convention substituted for "maladministration" the phrase "high crimes and misdemeanors against the State." [73] The words "United States" were then substituted for "State," "in order to remove ambiguity." [74] The Committee on Style and Arrangement deleted "against the United States" in its report of September 12, 1787,[75] and the Convention adopted this change without debate on September 15, 1787.[76]

Had the phrase "against the United States" not been deleted, the impeachment clause would clearly be limited to violations of federal criminal or civil laws and official misconduct. The change, however, was most probably a technical one, designed to remove surplusage. The framers having adopted the phrase "high crimes and misdemeanors" from the English practice, which appears to have limited impeachment to official misconduct, the addition of "against the State" or "against the United States" was unnecessary.[77] This explanation is further supported by the nature of the committee that made the change, and by the lack of debate with which the Convention accepted it.

Greater insight can be gained by an examination of the twelve American impeachments, with emphasis on the four convictions, to determine what part, if any, noncriminal, unofficial conduct has played.[78]

The first impeachment, that of Senator William Blount in 1797–99, involved the alleged incitement of two Indian tribes to mount a military expedition against neighboring Spanish territory and cap-

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[69] *See, e.g.*, concluding argument of Mr. Manager James B. Perkins in the Swayne impeachment proceedings, Feb. 24, 1905, 3 Hinds, *supra* note 1, at 328.

[70] 116 Cong. Rec. H. 3326, H. 3328 (daily ed. April 21, 1970) (Statement by Honorable Paul N. McCloskey, Jr.).

[71] Final argument of Mr. John M. Thurston, Feb. 25, 1905, 3 Hinds, *supra* note 1, at 327.

Excepting bribery there is no case in the parliamentary law of England which gives color to the idea that the personal misconduct of a judge, in matters outside of his administration of the law in a court of justice, was ever considered or charged to constitute a high crime and misdemeanor.

Brief for respondent in Swayne impeachment, filed February 22, 1905, *id.* at 334.

[72] *See* 4 Hatsell, *supra* note 32, at 56 *et seq.*; 3 Hinds, *supra* note 1, at 331–34; Yankwich, *supra* note 32, at 853–56.

[73] 2 Farrand, *supra* note 20, at 550.

[74] *Id.* at 551. Counsel for respondent in the Swayne impeachment argued that if a federal judge could be impeached for "a crime committed as an individual against a State law," he would be left "at the mercy of a local condition, inimical as it might be to the Federal Constitution." 3 Hinds, *supra* note 1, at 327. Counsel did not cite the substitution of "United States" for "State" by the Convention as a basis for his position.

[75] 2 Farrand, *supra* note 20, at 600.

[76] *See id.* at 604–33.

[77] "In the final draft the words 'against the State' were omitted, doubtless as surplusage . . . ." Van Nest, *Impeachable Offenses under the Constitution of the United States*, 16 Am. L. Rev. 798, 804 (1882).

[78] *See generally* 6 Cannon's *supra* note 1; 3 Hinds, *supra* note 1; Archbald Proceedings, *supra* note 68; Ritter Proceedings, *supra* note 14. The charges are outlined in greater detail in the Appendix *infra*.

ture it for Great Britain. Four of the five articles, which dealt separately with the various means used by the respondent to further his scheme, alleged violations of the "laws" of the United States.[79] This is, at the very least, a reference to violations of civil law, such as the treaty between the United States and Spain referred to in article 2, and may involve criminal violations as well.

The charges on which Judge Pickering was impeached and convicted in 1803–04 all clearly involved official misconduct. The first three articles alleged grossly erroneous rulings on questions of law, while article 4 involved the respondent's personal decorum (drunkenness and profanity) while performing his official duties in court.[80]

Justice Chase (1804–05) was charged solely with misconduct while acting in his official capacity. The first six articles involved improper rulings in two criminal trials, while the last two articles dealt with abuses in connection with the respondent's statements to grand juries.[81]

The single article of impeachment exhibited against Judge Peck (1826–31), dealing with the respondent's abuse of the contempt power in connection with an attorney who had argued a case before him, similarly involved misconduct on the bench.[82]

Judge Humphreys was impeached and convicted in 1862 on charges each of which encompassed either criminal violations or official misconduct, or both. Articles 1 and 2 (urging secession from the Union) and articles 3 and 4 (assisting the Confederate war effort) appear to fall within the constitutional definition of treason.[83] Articles 2 through 4 most probably come within the conspiracy statute passed by Congress in 1861.[84] Article 1 alleged that the respondent violated his oath of office, apparently a form of official misconduct. Articles 5 through 7 alleged that the respondent used his official position and his court to support the Confederacy.[85]

In the impeachment of President Johnson (1866–68), the charges revolved around the respondent's attempts to remove his Secretary of War from office (articles 1 through 9, 11) and certain of the respondent's speeches in which he was highly critical of Congress (articles 10 and 11). Each of the articles dealing with the effort to oust the War Secretary cited at least one federal statute alleged to have been violated by the respondent. In addition, all of the actions in question were taken by the respondent in his official capacity as President. The charges involving the respondent's speeches alleged not only that such language was inflammatory and reflected badly on the Congress, but that the thrust of at least one speech was to attack the validity of congressional legislation and deny that it was binding

[79] S. Jour. No. 2, 435–37 (1798); 3 Hinds, *supra* note 1, at 644–80. Article 5 alleged only that the respondent's actions were against the "peace and interests" of the United States. The activity recited in article 5, however, was stated to be committed in furtherance of respondent's overall "criminal designs" to incite the Indian tribes to war. If this language is to be taken as characterizing the overall scheme as criminal, then certainly this article, being a component part thereof, must be characterized as criminal in nature. In any event, since the conduct enumerated in article 5 is an integral part of respondent's overall scheme, such conduct must represent a violation of at least those civil laws alleged to have been violated by such scheme.

[80] 3 Hinds, *supra* note 1, at 690–92. The conduct alleged in article 4 was probably also punishable under state or local law as a misdemeanor under disturbing the peace statutes.

[81] 3 Hinds, *supra* note 1, at 722–24.

[82] *Id.* at 786–88.

[83] *Id.* at 810–11. "Treason" is defined in the text accompanying note 52 *supra*.

[84] Act of July 31, 1861, ch. 33, 12 Stat. 284. *See* note 53 *supra* and accompanying text.

[85] *See* text following note 52 *supra*.

on the respondent.[86] The latter accusation, tied in with the charges that the respondent ignored several congressional statutes in attempting to remove his Secretary of War, implied a flouting of the principle of separation of powers and a refusal to be bound by the Constitution. This would constitute a violation of civil law and misconduct in the official capacity with which the respondent, as President, deals with the executive and legislative branches.[87]

William Belknap was impeached in 1876 for abusing his position as Secretary of War by accepting money in return for an appointment to an Army post tradership.[88] This was official misconduct, as well as bribery.

Most of the charges against Judge Swayne (1903–05) rather clearly involved either official misconduct or violation of civil or criminal law. Articles 1 through 3 alleged that excessive government monies were paid out to reimburse the respondent while he was on official business. Articles 6 and 7 (failure to reside in the respondent's judicial district) are sufficient grounds for impeachment, since they alleged a "high misdemeanor."[89] This charge, in addition, involved official misconduct, since residence in the respondent's district was required by statute for a person occupying the respondent's official position. The conduct complained of in articles 8 through 12 (abuse of the contempt power against three attorneys) took place on the bench, and therefore constituted official misconduct.

Articles 4 and 5 also involved official misconduct, but for more subtle reasons. These articles alleged that the respondent appropriated for his personal use a railroad car held by a receiver appointed by him. While the respondent took this action in his private capacity, he was able to do so only because of the leverage inherent in his official position.

All thirteen of the articles in the case of Judge Archbald, who was impeached and convicted in 1912–13,[90] alleged official misconduct. Respondent committed the offense specified in article 4 (improper ex parte communications with one party to a suit before his court) while on the bench. The offense complained of in article 12 (appointing the attorney for a railroad as jury commissioner)[91] was committed in an equally official capacity. While the other articles[92] involved conduct committed by the respondent in his private capacity, all of

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[86] 3 Hinds, *supra* note 1, at 863–69. Article 11 refers specifically to respondent's speech of August 18, 1866, quoted in article 10. Ironically, this charge does not seem to be supported by the quoted portion of the text.

[87] Since there was no question of respondent's "guilt" of the offense charged—making specified speeches—it is realistic to conclude that his acquittal indicated that the offense charged was not an impeachable one. Thus construed, the Johnson case—as does the unsuccessful Chase impeachment over half a century before—stands for the proposition that impeachment should not be used as a tool to remove from office officials with whom those in power disagree politically.

[88] 3 Hinds, *supra* note 1, at 910–14.

[89] 3 Hinds, *supra* note 1, at 960–63. 2 Stat. 788 (1812) declared it "incumbent" upon federal judges to reside within the district for which they were appointed. The statute also stated that it shall "not be lawful" for a judge to practice law. Any person offending the injunctions or prohibitions of the act was guilty of a "high misdemeanor." This definition, arguably, may have included residency violations as a high misdemeanor.

[90] 48 Cong. Rec. 8705–08 (1912); 6 Cannon's, *supra* note 1, at 684–708. The Senate voted to convict on articles 1, 3, 4, 5 & 13 only.

[91] 48 Cong. Rec. 8707 (1912). The conduct alleged in article 12 (on which article respondent was acquitted) does not on its face appear improper. If it were, however (perhaps because the railroad in question was the subject of attempted influence peddling on respondent's part, alleged in article 6), it would be official misconduct since respondent made the appointment in question in his capacity as judge.

[92] *Id.* at 8706–08 (articles 1–3, 5–11 & 13).

the allegations contained therein involve the abuse of his official position as judge for personal gain.[93] In some cases the respondent used his influence to persuade a litigant[94] or a potential litigant[95] to enter into a particular business transaction with a third party, in return for which the respondent would usually be given a financial interest. In other instances, the respondent used his position as judge to secure more direct economic benefits, either from litigants[96] or potential litigants[97] in his court.[98] Judge Archbald also was alleged to have used his influence as judge to settle a case before the Interstate Commerce Commission for a fee, where the opposing party was also a litigant in a case before his court.[99]

All of the charges against Judge English (1925–26) involved either misconduct in his official capacity on the bench or abuse of his position for personal gain, or both. Article 1 involved misconduct during disbarment proceedings, summoning state officials to appear for an imaginary case, and coercion of a jury and of the press. Articles 2 and 3 alleged that the judge operated his bankruptcy court for his personal profit and for that of a particular referee toward whom he showed undue favoritism. Article 4 outlined the respondent's use of his power to choose depository banks for bankruptcy funds to his personal financial benefit. Article 5 alleged denials of the right to counsel and to a jury trial and general mistreatment of litigants. This article also charged that the respondent attempted to use his power to appoint receivers and other officers of the court to secure the appointment of his son to like positions.[100]

One charge against Judge Louderback (1932–33) involved a violation of civil law, while all the remaining allegations were of official misconduct on the bench, designed, in some cases, to personally enrich the respondent. Article 1 outlined an elaborate scheme by which the judge established a fictitious legal residence, in violation of state law, in order to shift the venue of anticipated lawsuit and then rewarded his secret assistant in this endeavor by attempting to coerce a receiver, appointed by the respondent, to choose as his attorney a friend of said assistant. Articles 2 through 4 (appointing incompetents and personal friends as receivers and granting excessive fees) similarly involved misconduct by the respondent in his official capacity and an abuse of his position for personal benefit. Article 5 realleged the substance of the other articles and also charged unfair and arbitrary conduct by the respondent while on the bench.[101]

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[93] *Id.* at 8707. One charge in article 11, accepting money solicited by court officials appointed by the respondent, was not only an abuse of the respondent's official position for personal gain, but involved his official duties of office in that he appointed the court officials in question.

[94] *Id.* at 8706–08 (articles 1, 3 & 13). Article 13 also refers to certain persons interested in the results of litigation pending before respondent.

[95] *Id.* at 8706 (articles 5 & 6).

[96] *Id.* at 8707–08 (articles 7, 8, 9 & 13).

[97] *Id.* at 8707 (articles 10 & 11). Article 10 refers to officials who were liable to be interested in litigation coming before the respondent.

[98] For a discussion of whether some of these charges might constitute bribery or extortion, see text accompanying notes 64–66 *supra*.

[99] 48 Cong. Rec. 8706–08 (1912) (article 2). *See* text accompanying note 61 *supra*. *See also* article 13. Appendix *infra*. Respondent's activities in this regard probably amounted to the "high misdemeanor" of the practice of law by a federal judge. 28 U.S.C. § 454 (1948) (based on Act of December 18, 1812, ch. 5, 2 Stat. 788). *See* note 67 *supra* and accompanying text.

[100] 67 Cong Rec. 6283–87 (1926).

[101] 6 Cannon's *supra* note 1, at 713–16. Article 5, like article 7 in the Ritter impeachment, realleges the content of the preceding articles. While these "omnibus" articles might appear similar at first glance, the thrust of the two is quite different. Article 7 in the

The first six articles in the Ritter impeachment (1933–36) similarly charged offenses that are either official misconduct or violations of criminal or civil law. Article 1 (receiving a kickback from the fee paid to a receiver appointed by the respondent) and article 2 (participating as a judge in a champertous proceeding designed in part to create the above mentioned fee) alleged, at the very least, misconduct in the respondent's official capacity for personal profit.[102] Articles 3 and 4 alleged the "high misdemeanor" of engaging in the practice of law while on the bench,[103] which is possibly criminal and in any event impeachable.[104] The tax evasion alleged in articles 5 and 6 is, of course, a criminal violation.

While Judge Ritter was acquitted on these six articles, he was convicted on the charge of bringing his court into disrepute, through the conduct alleged in these six articles, which is neither a violation of civil nor criminal law,[105] nor is it official misconduct per se. The underlying conduct by which this was accomplished was, however, either official misconduct or violation of criminal or civil law. Article 7 must be construed accordingly.[106]

As can be seen from this recital of the charges in the twelve American impeachments, every charge in each article in all twelve cases—acquittals and convictions alike—charges either official misconduct or violation of criminal or civil law. Such a well-established and longstanding precedent, though not determinative, provides at least a strong indication of the scope of impeachable offenses. Thus, the impeachment power should exclude misconduct by the respondent in his private capacity which involves neither the conduct of his official duties, an abuse of his official position, nor a violation of criminal or civil law.

CONCLUSION

It can therefore be concluded that impeachment is not a political tool for arbitrary removal of officials; that the standard for what constitutes an impeachable offense is not based on an inflexible historical precedent or on the judicial tenure clause; that impeachment is not limited to crimes, whether indictable or otherwise; [107] and that the sanction of impeachment does not extend to noncriminal misconduct unless it involves violation of statutory law, the conduct of the respondent's official duties or an abuse of his official position.

Within these limitations, it is extremely difficult to define the proper standard for an impeachable offense in affirmative terms since the

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Ritter case cites the conduct charged in the first six articles only as the basis for a charge of bringing respondent's court into disrepute. Article 5 in the Louderback case, on the other hand, realleges the substance of the first four articles.

[102] 80 Cong. Rec. 5602–06 (1936). The conduct alleged, especially that in article 1 might also constitute bribery. *See* note 54 *supra*.

[103] 28 U.S.C. § 454 (1964) (based on Act of December 18, 1812, ch. 5, 2 Stat. 788).

[104] *See* note 67 *supra*.

[105] For the argument that article 7 incorporates the substantive allegations of articles 1–6, and therefore would allege crimes and official misconduct directly see text accompanying notes 54–56 *supra*.

[106] Thus, if the respondent brings his court into disrepute by conduct which itself could be the subject of an impeachment, this degradation of his court is an impeachable offense under the Ritter precedent. However, otherwise nonimpeachable conduct cannot be bootstrapped into an impeachable offense under the rubric of alleging that such conduct brought the respondent or his court into disrepute.

[107] One commentator is of the opinion that noncriminal misconduct is impeachable only to the extent that such conduct is of a nature that it could be made a criminal offense. Simpson, *supra* note 8, at 805, 811–12; *accord*, Brief for the Respondent in Archbald impeachment, 1 Archbald Proceedings, *supra* note 68, at 1092–1101 (argued in the alternative to the proposition that only indictable crimes are impeachable).

number of impeachments, not to mention convictions, has been far too small to form the basis of a comprehensive catalog of specific impeachable offenses.

The only generalization which can safely be made is that an impeachable offense must be serious in nature. This requirement flows from the language of the impeachment clause itself—"*high* crimes and misdemeanors," and is mandated by common sense if nothing else. While there is perhaps some authority to the contrary, it is generally accepted that the adjective "high" modifies "misdemeanors" as well as "crimes".[108] The nature of those articles of impeachment which resulted in conviction also indicates quite clearly that misconduct by a public official, be it criminal or noncriminal, must be of a serious nature to be impeachable.

While there are no clear rules as to what constitutes a serious offense, there are a number of factors which are relevant. Thus, an offense is more serious if it is a criminal violation or if it involves moral turpitude. In the words of one court,

> It may be safely asserted that where the act of official delinquency consists in the violation of some provision of the constitution or statute which is denounced as a crime or misdemeanor, or where it is a mere neglect of duty willfully done, with a corrupt intention, or where the negligence is so gross and the disregard of duty so flagrant as to warrant the inference that it was willful and corrupt, it is within the definition of a misdemeanor in office. But where it consists of a mere error of judgment or omission of duty without the element of fraud, and where the negligence is attributable to a misconception of duty rather than a willful disregard thereof, it is not impeachable, although it may be highly prejudicial to the interests of the State.[109]

Thus a minor or technical violation of the judicial canons of ethics, of the civil law or even of the criminal law would not be impeachable. The violation must be serious, as in the cases of the four American judges convicted. To conclude otherwise would be not only to fly in the face of the precedents set by the 200-year history of American impeachments, but also to undermine the efforts of the framers of the Constitution to create an independent judiciary.

Appendix: The 12 American Impeachments

1. William Blount

Position: United States Senator from Tennessee
Date: 1797–99
Charges: *Article 1.* Conspiring to carry on a military expedition against Spanish territory "in the Floridas and Louisiana . . . for the purpose of . . . conquering the same for the King of Great Britain," in violation of the laws and the obligations of neutrality of the United States.

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[108] In fact, the language of 28 U.S.C. § 454 (1964) making the practice of law by federal judges a "high misdemeanor"—a phrase otherwise foreign to the criminal law—would indicate that Congress as far back as 1812 assumed that "high" modifies "misdeameanors" and that this conduct should be denominated a "high misdemeanor" to make clear that it could form the basis of an impeachment. *See* note 67 *supra*.

[109] State v. Hastings, 37 Neb. 96, 116–17, 55 N.W. 774, 780 (1893), interpreting article V, § 5, of the Nebraska Constitution, which provides that all civil officers of the state shall be "liable to impeachment for any misdemeanor in office."

Article 2. Conspiring to incite the Creek and Cherokee Indians to warfare in furtherance of the above mentioned scheme and in violation of the laws of the United States and of a treaty between the United States and Spain.

Article 3. Attempting to diminish and destroy the influence with the Creek and Cherokee Indian tribes of the principal Federal temporary agent in the area in furtherance of respondent's above mentioned scheme and against the laws of the United States.

Article 4. Attempting to "seduce" a Federal agent stationed at a trading post in the Cherokee Indian territories into assisting respondent in his "criminal intentions and conspiracies" above mentioned, against the laws and treaties of the United States.

Article 5. Attempting to impair the confidence of the Cherokee Indians in the United States and to "create and foment discontents and disaffection among said Indians" toward the United States in relation to the process provided by treaty for determining the boundary line between the Cherokee Nation and the United States, in furtherance of respondent's above mentioned "criminal designs" to incite the Cherokees and "against the peace and interests" of the United States.

Disposition: Acquitted of all charges on the ground that a United States Senator is not a civil officer of the United States as that term is used in the impeachment clause.

Sources: S. JOUR. No. 2, 435–37 (1798); 3 HINDS, *supra* note 1, at 644–80.

2. JOHN PICKERING

Position: District Judge in the District Court for the District of New Hampshire

Date: 1803–04

Charges: *Article 1.* In the course of proceedings by the United States to condemn a ship and its cargo for violation of the customs laws, delivering the ship to the claimant after its attachment by the marshal without requiring a bond, as required by federal law.

Article 2. In the same case, refusal to hear certain testimony offered by the United States.

Article 3. In the same case, refusal to grant an appeal by the United States which was permitted by federal statute as a matter of right.

Article 4. "[B]eing a man of loose morals and intemperate habits." appearing on the bench on November 11 and 12, 1802, "in a state of intoxication . . . and there frequently, in a most profane and indecent manner, [invoking] the name of the Supreme Being."

Disposition: Respondent did not appear to defend himself, but his son appeared, alleging the insanity of his father. Respondent was convicted on each of the articles and removed from office.

Source: 3 HINDS, *supra* note 1, at 681–710.

3. SAMUEL CHASE

Position: Associate Justice, United States Supreme Court

Date: 1804–05

Charges: *Article 1.* "Highly arbitrary, oppressive, and unjust" conduct in respondent's judicial capacity at the trial of John Fries for treason, to wit: delivering an opinion on a question of law before defendant's counsel had been heard, restricting defense counsel from citing English authorities and certain statutes of the United States, and denying defendant's constitutional right to argue (through counsel) questions of law to the jury.

Article 2. "With intent to oppress and secure the conviction" of James Thompson Callender for a libel on President John Adams in a prosecution under the sedition laws, refusing to excuse a juror who wished to be excused because he had already made up his mind on the publication in question.

Article 3. In the Callendar trial, refusal to allow a certain defense witness to testify.

Article 4. "Manifest injustice, partiality, and intemperature" in the Callender trial by compelling defense counsel to submit in writing to the court questions to be asked of a certain defense witness for respondent's admission or rejection of said questions, refusal to postpone the trial until certain material witnesses could be procured, "rude and contemptuous expressions" toward defense counsel, "repeated and vexatious interruptions" of said counsel, and "an indecent solici-

tude . . . for the conviction of the accused . . . highly disgraceful to the character of a judge."

Article 5. Denial of bail to defendant in the Callender case, in violation of state law, which is made applicable by a federal statute.

Article 6. In the Callender case, violation of a provision of applicable state law which required that in non-capital cases a defendant might not be tried during the same term of court in which the grand jury returned its indictment, also made applicable by federal statute.

Article 7. Improperly attempting to induce a grand jury to indict a newspaper editor for violation of the sedition laws and refusing to discharge said grand jury when they refused to do so.

Article 8. Delivering to a grand jury "an intemperate and inflammatory political harrangue, with intent to excite the fears and resentment of said grand jury and of the good people of Maryland against their State government and constitution."

Disposition: Acquitted.

Source: 3 HINDS, *supra* note 1, at 711–71.

4. JAMES H. PECK

Position: District Judge in the District Court of Missouri

Date: 1826–31

Charges: Gross abuse of respondent's power as a judge in sentencing an attorney to 24 hours imprisonment and suspension from the bar of respondent's court for 18 months for writing and publishing a letter criticizing respondent's decision in a case in which the attorney had appeared.

Disposition: Acquitted.

Source: 3 HINDS, *supra* note 1, at 772–804.

5. WEST H. HUMPHREYS

Position: District Judge in the District Court for the District of Tennessee

Date: 1862

Charges: *Article 1.* Giving a public speech on December 29, 1860, declaring the right of secession and inciting revolt and rebellion against the United States in violation of respondent's oath of office requiring him to "discharge all the duties incumbent upon him as judge . . . agreeable to the Constitution and laws of the United States."

Article 2. Unlawfully supporting and advocating the secession of the State of Tennessee from the Union in 1861 "together with other evil-minded persons" and "with intent . . . to subvert the lawful authority and Government of the United States."

Article 3. Unlawfully, and in conjunction with other persons, aiding in the organization of an armed rebellion and the levying of war against the United States in 1861 and 1862.

Article 4. On August 1, 1861, and "divers other days" thereafter, conspiring to oppose the authority of the government of the United States by force contrary to the laws of the United States and respondent's duty as judge.

Article 5. Refusing to hold court in respondent's district as required by law.

Article 6. Specification (1): Unlawfully acting as judge of a Confederate district court and, as judge of such court, requiring a man to swear allegiance to the Confederacy.

Specification (2): As judge of such court, ordering confiscation of property belonging to United States citizens.

Specification (3): As judge of such court, causing citizens of the United States to be arrested and imprisoned because of their allegiance to the United States.

Article 7. As judge of such court, "without lawful authority and with intent to injure," causing a citizen of the United States to be arrested and imprisoned.

Disposition: Conviction on all articles, except Specification (1) of article 6. (The three specifications in article 6 were voted on separately.)

Source: 3 HINDS, *supra note* 1, *at* 805–20.

6. ANDREW JOHNSON

Position: President of the United States

Date: 1866–68

Charges: *Article 1.* Ordering the removal from office of Edwin M. Stanton, Secretary for the Department of War, in violation of the Tenure of Office Act.

Articles 2–5, 8, 11. Appointing one Lorenzo Thomas to act as Secretary of the Department of War ad interim when no vacancy in that office existed and conspiring with Thomas and other persons unknown to prevent Stanton from holding said office, without the advice and consent of the Senate and in violation of the Tenure of Office Act and other federal statutes, and with intent to unlawfully control the disbursement of moneys appropriated for the military service.

Articles 6–7. Conspiring with Thomas to seize, by force, the property of the Department of War, in violation of the Tenure of Office Act and other federal statutes.

Article 9. In furtherance of respondent's attempts to oust Secretary Stanton from office, ordering the military commander of the Department of Washington to take orders directly from respondent, in violation of an act of Congress providing that all orders relating to military operations issued by the President or Secretary of War shall be issued through the General of the Army.

Articles 10–11. Intending to set aside the rightful authority of Congress and attempting to bring the Congress into contempt and reproach by "intemperate, inflammatory, and scandalous harangues" which were highly critical of Congress and which, allegedly, denied that the legislation of Congress was valid or binding on respondent.

Disposition: Acquitted.

Source: 3 HINDS, *supra* note 1, at 821–901.

7. WILLIAM W. BELKNAP

Position: Secretary of War

Date: 1876

Charges: *Articles 1–5.* Accepting a portion of the profit of an Army post-tradership from one Caleb P. Marsh in consideration for appointing one John S. Evans, Marsh's designee, as post trader. The original arrangement was that Evans paid March $12,000 annually, out of which sum March paid $6,000 annually to respondent.

Disposition: Acquitted. (Respondent resigned just prior to the adoption of articles of impeachment by the House, but the Senate proceeded with the trial nonetheless.)

Source: 3 HINDS, *supra* note 1, at 902–47.

8. CHARLES SWAYNE

Position: District Judge in the District Court for the Northern District of Florida

Date: 1903–05

Charges: *Articles 1–3.* Rendering false claim against the government with respect to respondent's expense accounts.

Articles 4–5. Appropriating to respondent's own use, without compensating the owner, a railroad car belonging to a railroad company then in the hands of a receiver appointed by respondent.

Articles 6–7. Violating for six years the federal statute requiring a district judge to reside in his own district.

Articles 8–12. "[M]aliciously and unlawfully" adjudging three lawyers in contempt of court and imposing a fine of $10 and a prison sentence of 10 days for two of such attorneys and a prison sentence of 60 days for the third.

Disposition: Acquitted.

Source: 3 HINDS, *supra* note 1, at 948–80.

9. ROBERT W. ARCHBALD

Position: Circuit Judge in the United States Court of Appeals for the Third Circuit serving as Associate Judge of the United States Commerce Court for a four-year period by designation

Date: 1912–13

Charges: Articles 1–6 involve misconduct occurring while respondent was sitting on the Commerce Court, Articles 7–12 involve misconduct occurring previous thereto, while respondent was a judge in the District Court for the Middle District of Pennsylvania. Article 13 involves misconduct during respondent's tenure on both courts.

Article 1. In partnership with another, purchasing a culm dump, where respondent used his position as judge in a case in which the parent company of the seller was a litigant before him to induce the seller to agree to the sale.

Article 2. Using the influence of his office to effect a settlement in a case before the Interstate Commerce Commission, and being paid a fee therefor, where respondent acted on behalf of one party and the other party was a party litigant to another case before respondent in the Commerce Court.

Article 3. Securing, through use of respondent's official position, from a company, the parent company of which was involved in litigation pending before respondent's court, an agreement for respondent and his associates to lease a culm dump and ship the product exclusively over the lines of the lessor (a railroad).

Article 4. "Gross and improper conduct" in favoring an attorney for one party in a case before respondent's court by communicating secretly and exparte with said attorney to receive evidence and testimony after the completion of the trial.

Article 5. Attempting to obtain a lease agreement for a culm bank on behalf of the prospective lessee where the prospective lessor had previously declined to enter the agreement, notwithstanding that the lessor was owned by the same holding company which owned the Philadelphia and Reading Railroad Company a common carrier engaged in interstate commerce and thus potentially a future litigant before respondent's court; accepting $500 from said lessee for respondent's above described, but unsuccessful, efforts.

Article 6. Improper use of respondent's influence to induce a railroad company and a coal company to purchase certain land owned by a third party.

Article 7. Participating in an investment, in a manner particularly advantageous to respondent, with the owner of a company in litigation before respondent.

Article 8. Attempting to obtain favors—specifically the discounting of a $500 note—from the principal owner of a company engaged in litigation before respondent.

Article 9. Improperly influencing a party defendant in whose favor respondent had ruled to discount a $500 note.

Article 10. Accepting "a large sum of money" from an official of several corporations, any of which in the course of business was liable to be interested in litigation coming before respondent, and thereby bringing respondent's office into disrepute.

Article 11. Receiving in excess of $500 from various attorneys practicing in respondent's court and two court officials appointed by respondent.

Article 12. Appointing as jury commissioner the general attorney for a railroad.

Article 13. Obtaining credit from and through persons interested in litigation pending before respondent, while respondent was sitting on the District Court and also while respondent was sitting on the Commerce Court. While sitting on the Commerce Court: Carrying on a general business for speculation and profit in the purchase and sale of culm dumps and other coal property; compromising litigation before the Interstate Commerce Commission for a valuable consideration; corruptly using his influence as a judge on the Commerce Court in furtherance of the above mentioned schemes and to induce various railroads engaged in interstate commerce to enter into contracts in which respondent was financially interested. Respondent did not invest any money in consideration of any interest given him, but instead used his influence as judge with the contracting parties, many of whom were litigants in his court, and received an interest in such contracts in consideration of the use of his influence.

Disposition: Convicted on articles 1, 3, 4, 5 and 13; acquitted on other articles.

Sources: 6 CANNON'S, *supra* note 1, at 684–708; 48 CONG. REC. 8705–08 (1812).

10. GEORGE ENGLISH

Position: District Judge in the District Court for the Eastern District of Illinois

Date: 1925–26

Charges: *Article 1.* Suspending and disbarring several attorneys without charges being preferred against them, without prior notice and without permitting them to be heard; issuing and having served on the state sheriffs and state attorneys a summons to appear before respondent in an imaginary case and then denouncing such officials in abusive and profane language when they appeared; attempting to coerce the minds of jurymen by stating in open court that the defendant was guilty and threatening that if they did not so find

respondent would jail the jurymen; summoning certain members of the press to appear in court and threatening them with abusive language, including one threat of imprisonment, in order to suppress publication of certain facts concerning a disbarment proceeding.

Articles 2–3. Showing favoritism to a particular referee in bankruptcy, resulting in a combination to control and manage the court to the personal interest and profit of respondent and said referee; amending the rules of bankruptcy in respondent's judicial district for the sole purpose of furthering said combination.

Article 4. Directing that certain bankruptcy funds within the jurisdiction of respondent's court be deposited, in some instances interest free, in banks of which respondent was a depositor, stockholder and director; securing employment for respondent's son with certain banks by ordering certain bankruptcy funds deposited in such banks, in one instance on an interest free basis and in a second with the interest to be paid over to respondent's son; borrowing funds without giving security and at less than the customary rate of interest from a bank in which respondent had ordered bankruptcy funds deposited.

Article 5. Mistreating members of the bar appearing before respondent by arbitrary and tyrannical conduct; denying litigants the right to appear with counsel and defendants in criminal cases the right to trial by jury; favoritism toward a particular referee in bankruptcy; attempting to make a deal with a fellow judge whereby each would choose a particular relative of the other for certain receiverships and other appointments.

Disposition: Resigned prior to commencement of trial by Senate and proceedings discontinued at that point.

Sources: 6 CANNON'S *supra* note 1, at 778–86; 67 CONG. REC. 6283–87 (1926).

11. HAROLD LOUDERBACK

Position: District Judge in the District Court for the Northern District of California.

Date: 1932–33

Charges: *Article 1.* Discharging an equity receiver after attempting, unsuccessfully, to coerce him to appoint one Douglass Short as attorney for the receiver with promises of the allowance of large fees and threats of reduced fees; establishing a fictitious residence in violation of state law to shift the venue of a lawsuit which respondent anticipated to be filed against him; entering into a conspiracy with one Sam Leake to maintain, secretly, an actual residence in the county from which respondent was supposed to have moved in return for which respondent attempted to secure the appointment of Short, a friend of Leake, as attorney for a receiver as recited above.

Article 2. Granting "exorbitant" allowances to a receiver and an attorney, who were respondent's "personal and political friends and associates," and then refusing to order all of the assets involved in the case turned over to the state insurance commissioner, as ordered by the Circuit Court of Appeals, until all parties agreed not to contest said allowances.

Article 3. Appointing one Guy H. Gilbert as receiver knowing he was unqualified and incompetent, and refusing a hearing on the question to the parties in interest.

Article 4. Granting "on insufficient and improper application" and without proper notice to the parties the appointment as equity receiver of Guy H. Gilbert (referred to in article 3 *supra*) in a case where no receiver should have been appointed; failing to give impartial consideration to the motion to discharge such receiver; unlawfully taking jurisdiction over and approving a petition in bankruptcy of the company concerned, which petition was based solely on the improper appointment of an equity receiver by respondent, notwithstanding the pendancy of the motion to discharge said receiver; appointing as receiver in said bankruptcy proceeding the aforementioned Guy H. Gilbert.

Article 5. Conduct alleged in articles 1–4, appointment of personal and political associates of respondent (who were in some cases incompetent as well) as receivers and appraisers, and conduct on the bench "displaying a high degree of indifference" toward some parties appearing before respondent such as "to create a general condition of widespread fear and distrust and disbelief in the fairness and disinterestedness of the official actions" respondent, "to the scandal and disrepute of [respondent's] court and the administration of justice therein and

prejudicial generally to the public respect for and public confidence in the Federal judiciary."

Disposition: Acquitted.

Source: 6 CANNON'S *supra* note 1, at 709–42.

12. HALSTED L. RITTER

Position: District Judge in the District Court for the Southern District of Florida

Date: 1933–36

Charges: *Article 1.* Corruptly and unlawfully receiving $4,500 from a former law partner who paid the amount out of a $75,000 fee as a receiver, to which position he had been appointed by respondent. This fee was originally set at $15,000 by another judge, but respondent raised it to the "exorbitant" level of $75,000.

Article 2. Participating with respondent's former partner and others in a champertous undertaking designed, in part, to produce the fees described in article 1, notwithstanding the request of the plaintiff that the complaint be dismissed since it was not authorized when filed.

Article 3. Engaging in the practice of law while on the bench, in violation of federal statutory law. In this connection, respondent requested, and received, $2,000 from a client of his former law firm but without the knowledge of his former partner in said law firm.

Article 4. Practicing law while on the bench in that respondent received a fee of $7,500 for representing one J. R. Francis in several matters.

Article 5. Failure to pay income tax on $12,000 of income for 1929, including the fees referred to in articles 3 and 4.

Article 6. Failure to pay income tax on $5,300 of income for 1930, including $2,500 of the $4,500 received by respondent as described in article 1.

Article 7. "The reasonable and probable consequence of the actions or conduct of Halsted L. Ritter" enumerated in article 1–6 "since he became judge of said court, as an individual, or as such judge, is to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the Federal judiciary, and to render him unfit to continue to serve as such judge."

Disposition: Convicted on article 7; acquitted on all other articles.

Sources: RITTER PROCEEDINGS, *supra* note 14; 80 CONG. REC. 5602–06 (1936).

"Impeachment of Civil Officers Under the Federal Constitution", Leon R. Yankwich

IMPEACHMENT OF CIVIL OFFICERS UNDER THE FEDERAL CONSTITUTION*

LEON R. YANKWICH**

I

THE NATURE OF IMPEACHMENT

Impeachment is resorted to so little that when mention is made of courts, the court of impeachment is seldom adverted to. Yet in California law, the court of impeachment is given at the head of the list of courts.[1] Under the Federal Constitution, the judicial power of the United States is vested in the Supreme Court and in such inferior courts as the Congress may, from time to time "ordain and establish".[2]

The power of impeachment is, not strictly speaking, judicial power retained by the Congress. Nevertheless, the power is a most important one and when the Senate, under the mandate of the Constitution, sits in impeachment, it exercises a function of judicial character, whether we call it a court or not.

The word "impeachment", in its original sense—derived from the Latin *impedicare* (*pedica*, fetter, and *pes*, *pedem*, foot)—meant "to hinder" or "to prevent". In parliamentary usage, it acquired the meaning of accusation or charge. Late in the 16th century, the word began to acquire the meaning which it has now, to accuse a person of high crime and misdemeanor before a court of impeachment. The practice of impeachment developed with the rise of responsible government and parliamentary institutions. By some, its rise is attributed to the fact that it was thought that high officers of the Crown might avoid, through their influence, punishment unless Parliament iself was in a position to inflict punishment.

The practice, as we have it, comes from England. The earliest record of an impeachment trial in England dates back to 1376. During the reign of Edward III and some of his successors, Bills of Attainder and proceedings in the Court of the Star Chamber took the place of impeachment trials. In 1620, impeachment was revived and during

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[1] Cal. Code Civ. Proc. (Deering 1933) § 87.

[2] U.S. Const. Art. III, § 1.

the next sixty-eight years, there was an impeachment on the average of every twenty months. There has been no resort to impeachment in England since the trial of Henry Lord Viscount Melville, Treasurer of His Majesty's Navy, for misappropriation of funds in 1806, in the reign of George III.[3] Under English parliamentary practice, any person, whether a peer or a commoner, may be impeached by the House of Commons for any crime or misdemeanor.[4] By specific constitutional provision, the right of impeachment under the Federal Constitution is very limited.

II

IMPEACHMENT UNDER THE CONSTITUTION OF THE UNITED STATES

Impeachment and the procedure under it are governed by a few apparently simple provisions in the Constitution of the United States. They are:

"The House of Represenatives . . . . shall have the sole power of impeachment."[5]

"The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present."[6]

"Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law."[7]

"The President . . . . shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.[8]

"The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, reason, bribery, or other high crimes and misdemeanors."[9]

"The trial of all crimes, except in cases of impeachment, shall be by jury. . . ."[10]

One of the most significant differences between impeachement in England and in the United States appears in the designation of persons who may be impeached. First to be noted is the fact that the President is subject to impeachment. No such right existed in England as to the English sovereign. The fact has been adverted to repeatedly by our courts in discussing the nature of the presidential office. In *Langford* v. *United States*, Mr. Justice Miller wrote:

"The President, in the exercise of the executive functions, bears a nearer resemblance to the limited monarch of the English Government than any other branch of our Government, and is the only individual

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[3] Melville's case (1806), 29 Howell, State Trials (1821) 549.
[4] 22 Halsbury, Laws of England (1912) 650–651. Lord Halsbury calls impeachment "the most solemn form of trial known to English law."
[5] U.S. Const. Art. I, § 2, Cl. 5.
[6] U.S. Const. Art. I, § 3, Cl. 6.
[7] U.S. Const. Art. I, § 3, Cl. 7.
[8] U.S. Const. Art. II, § 2, Cl. 1.
[9] U.S. Const. Art. II, § 4.
[10] U.S. Const. Art. III, § 2, Cl. 3.

to whom it could possibly have any relation. It cannot apply to him, because the Constitution admits that he may do wrong, and has provided a means for his trial for wrong-doing, and his removal from office if found guilty by the proceeding of impeachment. None of the eminent counsel who defended President Johnson on his impeachment trial asserted that by law he was incapable of doing wrong, or that, if done, it could not, as in the case of the King, be imputed to him, but must be laid to the charge of the ministers who advised him." [11]

Another difference is noticeable in the fact that under English procedure, *any* person may be impeached. Under the provisions of the Constitution of the United States, only "civil officers" may be impeached. The provision is broad enough to include all officers of the United States, who hold their appointment from the national government, whether their duties be executive, administrative or judicial, or whether their position be high or low. Military or naval officers are not subject to impeachment. No attempt has ever been made to impeach one. The reason, of course, is obvious: Army and Navy officers are subject to trial and punishment according to the Military Codes. As Story once put it,

"The very nature and efficiency of military duties and discipline require this summary and exclusive jurisdiction." [12]

Judges of the courts of the United States may be impeached. Four such judges have actually been convicted after impeachment: John Pickering in 1803; W. H. Humphreys in 1862; R. W. Archbald in 1912, and Halsted L. Ritter in 1936. In 1917, articles of impeachment were voted against Judge George W. English of Illinois, but he resigned before trial. There are other instances of judges against whom impeachment proceedings were recommended by the House Committee, but were dropped when they resigned: P. K. Lawrence in 1839; J. C. Watrous in 1860; M. H. Delahy in 1872; E. Durrell in 1874, and R. Busted in 1874. In 1933, a Federal District Judge from California stood trial for impeachment. The two-thirds vote necessary to obtain conviction not having been secured on any of the five charges of misconduct directed against him and arising out of the manner of handling receiverships, he stood acquitted and retained office. On April 16, 1936, the Senate of the United States convicted Judge Halsted L. Ritter, District Judge of the Southern District of Florida, after impeachment under seven articles charging him with misbehavior in office.

So far as is known, impeachment proceedings have been begun but once in the United States against a member of the President's Cabinet. That happened in 1876 when impeachment charges for bribery were filed against William W. Belknap, Secretary of War, after he had resigned. Although his contention that he was not a "civil officer"

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[11] 101 U.S. 341, 348 (1879). Similar language was used by Chief Justice John Marshall in the trial of Burr. United States *v.* Burr, 25 Fed. Cas. No. 14,692d at 34 (C.C.D. Va. 1807).

"Of the many points of difference which exist between the first magistrate in England and the first magistrate of the United States in respect to the personal dignity conferred on them by the constitutions of their respective nations, the court will only select and mention two. It is a principle of the English constitution that the king can do no wrong, that no blame can be imputed to him, that he cannot be named in debate. By the constitution of the United States, the president, as well as any other officer of the government, may be impeached. . . ."

[12] Story, Manual of The Constitution (1886) 83. Modern writers agree with Story that Army and Navy Officers are not subject to impeachment. 3 Willoughby, The Constitution (1929) 1488, § 929; 9 Hughes, Federal Practice (1931) 621, § 7228.

and, therefore, not subject to impeachment, was overruled, he was later acquitted, presumably upon the same ground. All authorities agree that members of the Congress of the United States, not being commissioned by the President, are not "civil officers" of the United States. Only one attempt has ever been made to impeach a Senator of the United States. That was in 1797, when articles of impeachment were filed against Senator William Blount. The Senate sustained Senator Blount's objection to the jurisdiction upon the ground that he was not a "civil officer", subject to impeachment.[13]

Under the broad interpretation which has been placed upon the words "civil officer", it is quite evident that many of the civil officers who are subject to impeachment may also be removed by the President with or without the consent of the Senate.[14] Others, such as the President and Vice-President, cannot be removed otherwise. This is also true as to Judges. For, while the Constitution provides that they shall hold office during "their good behavior" [15] there is no provision in the Constitution for their removal for lack of "good behavior", except through impeachment.

III

GROUNDS FOR IMPEACHMENT

The grounds for impeachment are treason, bribery and "other high crimes and misdemeanors".[16] The words "high crimes and misdemeanors" are general. They are borrowed from English parliamentary practice. The phrases there used have been, at various times "treason, felonies and mischiefs done to our Lord, The King", "divers deceits", and, finally, in their latest form, "high crimes and misdemeanors". No definition of them has been attempted. The meaning of the two specific crimes, bribery and treason, is well established. Treason is defined in the Constitution itself as consisting "only in levying War against them, or in adhering to their enemies, giving them aid and comfort".[17] For a definition of bribery, resort is had to the common law definition which is usually given as "the voluntary giving or receiving of anything of value in corrupt payment for an official act done or to be done".[18] The Constitution gives us no clue as to what crime or misdemeanors are. However, a study of English and American precedents in impeachment cases leads to the conclusion that they cover general official misconduct. The variety of charges which have served as a basis for impeachment may be illustrated by reference to some well-known cases.

On May 20, 1620, in the reign of James I, Francis Bacon, Lord Verulam, Viscount St. Albans, Lord Chancellor of England, was impeached before the House of Lords for bribery and corruption in office. The charges against him, contained in a large number of articles consisted of receiving money and valuable objects as bribes from litigants in cases pending before him. In many instances, the

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[13] 9 Hughes, Federal Practice (1931) 621, 622, § 7228.
[14] Myers *v.* United States, 272 U.S. 52 (1926); Humphry's Executor *v.* United States, 295 U.S. 602 (1935).
[15] U.S. Const. Art. III, § 1.
[16] U.S. Const. Art. II, § 4.
[17] U.S. Const. Art. III, § 3.
[18] 9 Corpus Juris 402.

charge was made that he received bribes from both sides of the controversy. A final charge was also made that "he had given way to great extractions by servants in respect of private seals, and sealing injunctions". On April 30, 1620, Bacon admitted his guilt. He was fined 40,000 pounds. He was stripped of his peerage and his honors and sentenced to imprisonment in the Tower, at the King's pleasure. The fine was later remitted. He actually served only a few days in the Tower and was pardoned in November, 1621. That English judges, at the time, were not above corruption is evidenced by the fact that Bacon, himself, in his address to Serjeant Hutton upon becoming a Judge of the Common Pleas, saw fit to warn him against corruption with these words:

"That your hands and the hands of your hands (I mean those about you) be clean and uncorrupt from gifts, from meddling in titles, and from serving of turns, be they great ones, or small ones." Bacon, in his famous essay on judicature, set the loftiest ideals for a judge. In it he speaks of "integrity" as the portion of judges and their proper virtue and warns against improper acts by subalterns.

"The place of justice," he says, "is a hallowed place; and therefore not only the bench, but the foot pace and precincts, and purprise (close) thereof, ought to be preserved without scandal and corruption." More is the pity that a man of this type—the man who through his most important work, *Novum Organum*, or *The Advancement of Learning*, laid the foundation for the inductive method of discerning truth, and who is considered by modern historians of science as "one of the great builders who constructed the mind of the modern world" [19]—should have brought corruption to the high office of Chancellor, thus demonstrating that to study truth may not always mean to live it.

On May 13, 1624, during the reign of the same King, Lionel Cranfield, Earl of Middlesex, Lord Treasurer, was found guilty upon impeachment which charged him with bribery and extortion under color of office. He was sentenced to the loss of his offices, disqualified from holding any office, place or employment "in the state and commonwealth" and was ordered imprisoned in the Tower of London during the King's pleasure; to pay a fine of 50,000 pounds and "that he shall never sit in Parliament any more and that he shall never come within the verge of the court."

On May 8, 1626, in the reign of Charles I, articles of impeachment were voted against George, Duke, Marquis and Earl of Buckingham, Great Admiral of the Kingdom of England and Ireland, charging him with holding a plurality of offices, buying his office as an admiral, buying a wardenship, failure to guard the seas and other acts of abuse of power and extortion, including the selling of places of judicature, procuring honors for his poor kindred and his "transcendent presumption in giving physic to the King".

Parliamentary upheavals resulting in the dissolution of Parliament, and the killing of the Duke on August 23, prevented the completion of his trial upon these charges.

On November 25, 1640, during the reign of the same King, Thomas, Earl of Strafford, Lord Lieutenant of Ireland, was charged in articles

[19] Whitehead, Science and the Modern World (1925) 63.

or impeachment with various acts committed in Ireland aiming to subvert Parliamentary authority and to substitute his own arbitrary power. An old historian of the Long Parliament of England, Thomas May, has summed up the charges against him in the following quaint language:

> The first and second being much alike, concerning his ruling of Ireland, and those parts of England, where his Authority lay, in an Arbitrary way, against the fundamental Lawes of the Kingdome, which Lawes he had endeavoured to subvert. Thirdly, his retaining part of the King's Revenue, without giving a legal account. Fourthly, The abusing of his Power, to the increase and encouragement of Papists. Fifthly, That he maliciously had endeavoured to stir-up Hostility betweene England and Scotland. Sixthly, That, being Lieutenant-General of the Northerne Army, he had wilfully suffered the Scots to defeat the English at Newburne, and take Newcastle; that by such a losse and dishonour, England might be engaged in a National and irreconcileable quarrel with the Scots. Seventhly, That to preserve himselfe from questioning, he had laboured to subvert Parliaments and incense the King against them. Eighthly, and lastly, That these things were done during the time of his Authority as Deputy of Ireland, and Lieutenant-General of the Northerne Armies in England.

The King in person attended the trial and took notes. The higher aristocracy were on the side of the accused. May complains:

"The Courtiers cryed him up, and the Ladies (whose voices will carry much with some parts of the State) were exceedingly on his side."

Although the trial lasted from the twenty-second of March until the middle of April, during which time the Earl was on the stand for fifteen days, the Managers of the House of Commons finally decided on April 21, 1641, to proceed against him by Bill of Attainder. He was found guilty and executed on May 12, 1641.

Edward, Earl of Clarendon, Lord Chancellor of England, was impeached on July 10, 1633, in the reign of Charles II, on various charges. Among them were that he had tried to alienate the hearts of His Majesty's subjects from him by artificial insinuations and circulating approbrious scandals against the King, inciting jealously; that he had "wickedly" advised the King to withdraw the English garrisons out of Scotland, and to demolish the forts; that he had endeavored to alienate the affection of the King from Parliament, and that he had advised the King and secured the sale of Dunkirk to the French King. The last Article read:

"That having arrogated to himself a supreme direction of all his majesty's affairs, he hath, with a malicious and corrupt intention, prevailed to have his majesty's customs farmed at a far lower rate than others do offer, and that by persons, with some of whom he goes a share, in that and other parts of money resulting from his majesty's revenue."

Clarendon fled, so the trial could not be held. Parliament, therefore, on December 12, passed a statute banishing him.

The last impeachment of which there is a record in England, is that of Henry, Lord Viscount Melville, Treasurer of His Majesty's Navy, who was impeached for various actions of misappropriation of public funds, on April 29, 1806, in the reign of George III. He was acquitted, after a long trial, on June 12, 1806. Other instances are a judge, (Tresilian) being impeached for misleading a sovereign by rendering unconstitutional opinions; an ambassador, (Wolsey) for betraying

his trust; an advisor of the King, (Halifax) for seeking to obtain exorbitant emoluments to himself.[20]

The American precedents indicate, as do these English precedents, that the misconduct *may*, but *need not*, amount to a violation of law.

None of the eleven articles of impeachment against President Andrew Johnson, the only American President ever to face impeachment, charged a direct offense against either the Constitution or the statutes of the United States, except, perhaps, the violation of the Tenure of Office Act. Nine of the articles concerned the attempted removal of his Secretary of War and the others charged that the President, by his intemperate and inflammatory speeches, had attempted to bring into contempt the Congress of the United States. Judge John Pickering was convicted on impeachment in 1803, although no direct violation of law was charged against him. The charges were that he had released a vessel without bond, refused to hear witnesses in the case, refused to allow an appeal from his judgment; that he was intoxicated and used profanity while on the Bench. The articles of impeachment against Judge Samuel Chase charged unjudicial conduct, such as refusal to allow counsel to argue on the law to a jury, and addressing a grand jury in intemperate political language, in order to bring about an indictment under the Espionage Act. He was acquitted. Judge W. H. Humphreys was charged with treason, neglect of duty, of acting as a judge in a Confederate state and causing the wrongful arrest of citizens while so doing. Judge J. H. Peck was charged with punishing an attorney wrongfully for contempt. He was acquitted. The charges against Judge Swayne related to making wrongful claims for travelling expenses, receiving benefits from a receiver of his appointment, and punishing two attorneys wrongfully for contempt. He was acquitted. Judge R. W. Archbald was tried under five articles, none of which charged a crime. Among the most serious charges against him was the charge that he conducted a secret correspondence with a litigant concerning the merits of a case pending before him.

The impeachment proceedings against other judges, in more recent times, were grounded on misconduct which fell short of being a crime.

In the most recent impeachment—that of Judge Halsted L. Ritter of the Southern District of Florida [21]—the articles of impeachment were in substance:

> I Misbehavior and high crime and misdemeanor in office by corruptly and unlawfully accepting from his former law partner $4,500 out of the avails of a decree made by the respondent.
>
> II Misbehavior and high crime and misdemeanor in office by conspiring with his former law partner and others to continue property in litigation, promoting the conspiracy by keeping jurisdiction of a foreclosure proceeding contrary to the motion of the plaintiff in person, on the basis of interventions filed in the case, appointing as receiver a person alleged to be involved in the con-

[20] The precedents given are summarized from the following texts and authorities: Bacon's Case (1620), 2 Howell, State Trials (1809) 1087; Middlesex's Case (1624), 2 *Id.* at 1183; Buckingham's Case (1624), 2 *Id.* at 1186; Strafford's Case (1640), 3 *Id.* at 1381; May, History of the Parliament of England (1812) 59–65; Clarendon's Case (1663–1667), 6 Howell, State Trials (1810) 291. (The report of this case contains one of the most complete records of an impeachment in England and the procedure followed from beginning to end.) See also: 9 Hughes, Federal Practice (1931) 626, § 7229; Story, Commentaries on the Constitution (3d ed., 1858) § 800.

[21] Sen. Rep. No. 84, 74th Cong., 2nd Sess. (1936) 5360.

spiracy, granting exorbitant fees, and corruptly and unlawfully accepting from such fees $4,500.

III A high misdemeanor in office by practicing law contrary to the Judicial Code and accepting $2,000 from his client while it held and owned large interests in his jurisdiction, and accepting a large amount of securities from his client of a corporation organized to develop holdings within his jurisdiction.

IV A high misdemeanor in office by practicing law on another occasion contrary to the Judicial Code, and receiving for his services $7,500.

V A high misdemeanor by violating 146(b) of the Revenue Act of 1928 in not returning the above-mentioned fees in his income-tax return for the year ending December 31, 1929.

VI A high misdemeanor in office by violating 146(b) of the Revenue Act of 1928 in not returning $5,300 gross taxable income for the year ending December 31, 1930.

VII Misbehavior and high crimes and misdemeanor in office by accepting large fees and gratuities, to-wit, $7,500 from J. R. Francis on or about April 19, 1929, said J. R. Francis having large property within his territorial jurisdiction as a judge, and on, to-wit, the 4th day of April, 1929, accepting $2,000 from Mulford Realty Corporation and a large amount of the securities of Olympia Improvement Corporation, organized to develop holdings within his territorial jurisdiction. Also, "by his conduct as detailed in articles I, II, III, and IV hereof, and by his income-tax evasions, as set forth in articles V and VI hereof." [22]

Judge Ritter was acquitted on Articles I to VI, but was adjudged guilty on Article VII by a vote of 56 to 28. After the vote was announced, a point of order was made that the respondent was not guilty because Article VII is an omnibus article, the ingredients of which are contained in the others upon which he had been acquitted. The president pro tempore of the Senate, however, overruled the point of order stating:

"A point of order is made as to Article VII, in which the respondent is charged with general misbehavior. It is a separate charge from any other charge, and the point of order is overruled." [23]

He then ordered judgment entered removing Judge Ritter from office.

It is very significant that by this ruling the Senate gave sanction to the proposition that to justify removal of a judge it is not necessary that he be guilty of violation of law. So ruling, they made their own the part of Article VII which reads:

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[22] *Id.* at 5753.

[23] *Ibid.* The contention that his acquittal on the charges contained in Articles I to VI inclusive prevented his conviction on Article VII was advanced by Judge Ritter himself in the suit to recover his salary for the month of April, 1936, before the Court of Claims.

The claim was rejected upon the ground that no authority exists in any court of the United States to review or revise the action of the United States Senate in an impeachment proceeding.

The Court said:

"Our conclusion is that we have no authority to review the impeachment proceedings held in the Senate and decide whether the accusations made against the plaintiff were such that he could properly be impeached thereon, nor can we pass upon the question of whether his acquittal on the first six articles was a bar to prosecution under the seventh. In our opinion, the Senate was the sole tribunal that could take jurisdiction of the articles of impeachment presented to that body against the plaintiff and its decision is final." Ritter *v.* United States, 84 Ct. Cl. 293, 300 (1936). See State *ex. rel.* Trapp *v.* Chambers, 96 Okla. 78, 220 Pac. 890 (1928).

The Supreme Court by denying certiorari has approved the ruling Ritter *v.* United States, 300 U.S. 668 (1936).

> The reasonable and probable consequence of the actions or conduct of Halsted L. Ritter, hereunder specified or indicated in this article, since he became judge of said court, as an individual or as such judge, is to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the Federal judiciary, and to render him unfit to continue to serve as such judge.[24]

This ruling definitely lays down the principle that even though upon specific charges amounting to legal violations, the impeaching body finds the accused not guilty, it may, nevertheless, find that his conduct in these very matters was such as to bring his office into disrepute and order his removal upon that ground.

The conclusion thus reached met with vigorous opposition on the part of some of the Senators as the debates show. Nevertheless, it is consistent with the general attitude of courts in cases dealing with the professions. Courts have repeatedly held that an attorney, after aquittal of a charge of law violation, may, nevertheless, be disbarred for his conduct in the very matter of which he stood acquitted. Similar rulings have been made with regard to physicians. The basis of these rulings is that the object of the criminal prosecution is entirely distinct from the proceedings for disbarment or revocation of license—the one aiming to punish, the other to the protection of the public and the profession. These principles are applied with such uniformity in all cases that it is unnecessary to give any citations. They apply with greater force to a judicial office in which the highest rectitude is required. So that instead of seeing danger in the precedent set in the *Ritter case*, we should welcome the ruling of the Senate as notice to the judiciary that they will require compliance with the highest standards of ethical behavior upon their part. And so I agree with the summary of the case made by the Honorable William Gibbs McAdoo, Senator from California, in a memorandum which he filed in the matter:

> Good behavior, as it is used in the Constitution, exacts of a judge the highest standards of public and private rectitude. No judge can besmirch the robes he wears by relaxing these standards, by compromising them through conduct which brings reproach upon himself personally, or upon the great office he holds. No more sacred trust is committed to the bench of the United States than to keep shining with undimmed effulgence the brightest jewel in the crown of democracy—justice.
>
> However disagreeable the duty may be to those of us who constitute this great body in determining the guilt of those who are entrusted under the Constitution with the high responsibilities of judicial office, we must be as exacting in our conception of the obligations of a judicial officer as Mr. Justice Cardozo defined them when he said, in connection with fiduciaries, that they should be held "to something stricter than the morals of the market place. Not honesty alone, but the punctillio of an honor the most sensitive, is then the standard of behavior".[25]

In the only impeachments under the California Constitution involving judges, the charges did not involve violations of law. Judge James

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[24] Ibid.
[25] Meinhard *v.* Salmon, 249 N.Y. 458, 164 N.E. 545 (1928).

H. Hardy was impeached and found guilty in 1862, for using profane language out of court and expressing sympathy with the Confederate cause. In 1929, Judge Carlos S. Hardy, of the Superior Court of Los Angeles County, was impeached and acquitted. The accusations against him were:

(1) that he gave legal advice as attorney and counsellor of law to a well-known evangelist and her mother;

(2) that he aided her in fostering the belief that she had been kidnapped, while the grand jury was investigating the kidnapping;

(3) that, while a judge, he had received a sum of money in compensation for legal services;

(4) that he had sought to intimidate a witness who might be called in a criminal case arising out of the kidnapping;

(5) that in the trial of a criminal case he had caused to be numbered the seats in the courtroom and had distributed tickets for the seats to his friends.

The only other impeachments of California State officers, under the State law, were those of Henry Bates, State Treasurer, in 1857, for defrauding the State, which resulted in his conviction, and, in the same year, of G. W. Whitman, State Comptroller, upon a similar accusation, which resulted in his acquittal. Whitman, however, was suspended from his office pending trial and was never reinstated after his acquittal.

From these precedents, it is evident that the interpretation which is placed upon the words "crimes and misdemeanors" is a broad one; that persons have been impeached and found guilty for acts of misconduct, some of a personal, others of an official character—which do not amount to a crime. So much so that the Committee on Impeachment of the House of Representatives in the case of United States District Judge George W. English, stated in their report that impeachment may be based upon acts not forbidden by either the Constitution or the Federal Statutes. The Report read:

> It is now, we believe, considered that impeachment is not confined to acts which are forbidden by the Constitution or Federal statutes. The better sustained and modern view is that the provision for impeachment in the Constitution applies not only to high crimes and misdemeanors as those words were understood at common law but also acts which are not defined as criminal and made subject to indictment, and also to those which affect the public welfare. Thus an official may be impeached for offenses of a political character and for gross betrayal of public interests. Also for abuses or betrayal of trusts, for inexcusable negligence of duty, for the tyrannical abuse of power, or, as one writer puts its, for 'a breach of official duty by malfeasance or misfeasance, including conduct such as drunkenness, when habitual, or in the performance of official duties, gross indecency, profanity, obscenity, or other language used in the discharge of an official duty imposed by statute or common law'. No judge may be impeached for a wrong decision.[26]

This broad statement of the grounds for removal by impeachment, supported by precedents in our history, justifies the statement made

[26] 3 Willoughby, The Constitution of the United States (1929) 1449, 1450, § 931. See: Simpson, Jr., *Federal Impeachments* (1916) 64 U. of Pa. L. Rev. 651, 677.

in 1913 by Former President William H. Taft, who, in commenting upon the conviction after impeachment of United States Circuit Judge Robert W. Archbald, stated that judges

"must be careful in their conduct outside of court as well as in the court itself, and that they must not use the prestige of their official position, directly or indirectly, to secure personal benefits."

Elsewhere in the same address, Mr. Taft stated:

> Under the authoritative construction by the highest court of impeachment, the Senate of the United States, a high misdemeanor for which a judge may be removed in misconduct involving bad faith or wantonness or recklessness in his judicial action or the use of his official influence for ulterior purposes. . . . By the liberal interpretation of the term 'high misdemeanor' which the Senate has given, there is now no difficulty in securing the removal of a judge for any reason that shows him unfit.[27]

Under the English practice, the House of Lords may impose any punishment it sees fit. So, in addition to removal from office, imprisonment, fines, banishment have been imposed. In one case—that of Archbishop Laud—death was imposed. It is evident from this that impeachment under English law aims to punish the individual. The Federal provision, not only by the grounds of impeachment, but also by the punishment it provides, justifies the statement that the proceeding is not intended to punish the individual for wrongdoing, but merely to remove him from office for political offenses. The punishment provided in the Constitution is removal from office and disqualification from holding and enjoying any office of honor, trust or profit under the United States.[28] Conviction is not a bar to prosecution for the same acts under the criminal law.

IV

PROCEDURE ON IMPEACHMENT

By analogy to English practice a procedure has grown up which is substantially as follows:

The impeachment is instituted by the House of Representatives by the adoption of a resolution calling for the appointment of a committee to investigate charges brought against the officer. This committee may, after investigation, recommend the dismissal of the charges, or recommend the impeachment. If the resolution recommending impeachment is adopted, articles of impeachment are drawn setting forth the grounds for impeachment. Following the adoption of a resolution to impeach, the House appoints Managers to conduct the impeachment. The Senate is then informed of these facts by resolution. Upon this resolution reaching the Senate, the Senate adopts a resolution informing the House that the Senate is ready to receive the Managers appointed by the House. The latter then present themselves to the Senate, and present the articles of impeachment, reserving the right to file additional articles later. The Managers then retire. After the Senate has fixed the time for the trial, the House is informed of the fact. On the date of the trial, the Senate resolves itself into a body for trial of the impeachment. The President of the Senate presides over the court,

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[27] A. B. A. Rep. (1913) 431 *et seq.* For precedents, giving accusations against judges, see 9 Hughes, Federal Practice (1931) 631, 632; 3 Hinds, Precedents of House of Representatives (1907); and Simpson, *supra* note 26.

[28] U.S. Const. Art. I, § 3, Cl. 8.

except in case of the impeachment of the President of the United States, when the Chief Justice presides. Upon the organization of the court, the Managers appear and the trial of the case proceeds. In England, the Commons attend the trial in a body. The accused is brought before the court, and may present his demurrer or answer to the charges contained in the articles. The presentation of the evidence takes the usual order of proceedings in a court. The evidence against the accused is first presented, then evidence in defense and concluding evidence by the Managers. In the examination of witnesses and the presentation of testimony, the general rules of evidence obtainable in criminal courts apply, including the constitutional presumptions and guarantees applicable to criminal trials. After the conclusion of the evidence, there is argument, followed by deliberation by the Senate in executive session and the vote in open session.[29] A two-thirds vote is necessary for impeachment. The proceeding may be dismissed in the Senate by the House Managers. The Senate may either acquit or convict the defendant. In England, a person convicted on impeachment may be pardoned or reprieved by the Crown.[30] No pardon is permitted under the Federal Constitution.[31]

V

THE INEFFECTIVENESS OF THE REMEDY

Impeachment has fallen into disuse in England. Dicey explains this disuse by stating that the rule of law—to the observance on which the English people are so definitely committed—makes it unnecessary to resort to extraordinary remedies to enforce its obedience.[32] In the United States, it is significant that it has been used more often against judges than against other civil officers. It has been estimated that fifty percent of the impeachment proceedings were against judges.[33] It is the view of students that the acquittal of President Johnson saved the United States from what might otherwise have been a tragedy—a tragedy that might have branded as unworthy a man whom later generations have come to consider as a great patriot trying to carry on under trying circumstances. A great historical wrong was thus avoided by one vote. The background of Johnson's impeachment is now known to all. The presence of Johnson, of plebeian origin, in the Presidency was objectionable to many people. His intemperate speeches and attacks offended others. Upon the death of Lincoln, it was thought that in Johnson the reunited states had a President who would sanction extreme measures against the defeated South. Johnson, however, after becoming President, withstood the attempts of the radicals and extremists to crush the South. He sought, in his own "undiplomatic" way, to uphold the cause of those who would heal the wounds of the War, as Lincoln had desired. His reward was a trial of impeachment. The trial was presided over by Chief Justice Salmon P. Chase. It began on March 5,

[29] 9 Hughes, Federal Practice (1931) §§ 7235–7283; Story, Manual of the Constitution (1886) 87.
[30] 21 Halsbury, Laws of England (1912) 651.
[31] U.S. Const. Art. II, § 2, Cl. 1.
[32] Dicey, The Law of the Constitution (1928) 450.
[33] See: Trial of the Impeachment of Judge Carlos S. Hardy (Senate of Cal. 1929) Intro. IX.

1868, and ended on May 26, 1868. The vote was 35 for conviction and 19 for acquittal.[34]

Several State Governors have been convicted after impeachment, in recent years, Governor William Sulzer of New York in 1913, Governor James Ferguson of Texas in 1917, and Governor J. C. Walton of Oklahoma in 1923. Recurring election and the recall statutes make the removal of judges of state courts easy and resort to impeachment unnecessary. This is not the case with Federal judges. The remedy of impeachment is cumbersome and unavailable, except in extreme cases. The convictions secured were in cases which showed grave violations of those standards of probity and ethical conduct which we associate with the high office. There are other faults, however, such as arbitrariness, which as effectively destroy a judge's usefulness, as the more serious lapses which have been made the basis of impeachment.

In the case of the lower Federal courts, at least, which are the creatures of the Congress,[35] an easier method is needed to determine the fitness of an occupant to continue in office. The Constitution provides that such judges shall hold office during "good behavior". But it contains no provision defining "good behavior", or giving anyone the right to do so. It has been suggested recently that such power exists in the Congress. The suggestion is that the Congress give the Supreme Court the right to establish a test of "behavior" with power to remove Federal Judges, other than constitutional judges, when their "behavior" is no longer "good".[36]

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[34] Winston, Andrew Johnson (1928) 404–454; Bowers, The Tragic Era (1929) 143–197.

[35] U.S. Const. Art. I, § 8, Cl. 9.

[36] The proposal is that of Senator William Gibbs McAdoo of California, Chairman of the Senate Committee on Bankruptcies, Receiverships and The Administration of Justice. His statement given to the press at Los Angeles, November 12, 1935 (see Herald-Express) read in part:

"Judges of the Supreme Court and all other courts of the United States, by a provision of the Constitution, hold their offices during their 'good behavior', which ordinarily means for life. Thus a higher standard of conduct is required of the judiciary than that of other government officers, for they must not only avoid the grounds of removal as specified for all others, but must also so demean themselves that their official behavior is good.

"The supreme court is created by the Constitution and it is clear that none of its members could be attacked in any other way than by the impeachment process provided for in the Constitution itself.

"The circuit court of appeals, the district courts and all other courts of the United States are created by Congress under the authority delegated to it by the Constitution. It naturally follows that whatever Congress may do it may undo, and it would seem to be within its power to establish a method independent of the impeachment process, of inquiring into the judicial concept of the judges for those courts it has created.

"I believe it a practical application of the power of Congress, under the Constitution, to pass a law which would give to the Supreme Court, for instance, the right to take evidence upon the conduct of any judge of an inferior court, and to decide the question of his fitness to continue to act as a member of the court."

The junior Senator from California has since embodied the idea in a Bill known as Senate Bill 4527, introduced on April 23, 1936, which would establish a "high court for the trial of judicial officers" to be composed of ten judges of the Circuit Court of Appeals of the United States, ranking in point of seniority and service, one to be drawn from each circuit, together with the Chief Justice of the United States District Court of Appeals of the District of Columbia, who shall be the presiding judge or justice of the court. The jurisdiction of the court would be confined to the trial and determination of charges to be brought against judges of the inferior courts of the United States with power to remove them for misconduct or misbehavior upon quo warranto proceedings instituted before it by the Attorney General.

Defending the proposal, the Senator said, when offering the Bill:

"The procedure I have outlined would be in all respects fair to an accused judge. It would give to him the benefit of a trial in a regular court of law, sitting exclusively to determine the question of his guilt or innocence, and unencumbered and uninterrupted by other duties during the period of the trial. The procedure would be fair to the courts, because it would place in their own hands the determination of the judicial question of the guilt or innocence of a member of the judiciary. It would not impose upon them the performance of any nonjudicial task and would invoke their cooperation in a matter in which they should be supremely interested, namely, the preservation of the honor and integrity of the judicial office.

The writer of what is by many considered one of the leading essays on the subject of Federal impeachments (and to whom all subsequent writers must acknowledge their indebtedness), Mr. Alexander Simpson, Jr.,[37] argues that under the power granted the Congress, by Article I, Section 8, of the Constitution, to make laws necessary and proper for carrying into execution the powers vested in the government of the United States "or of any department or office thereof", it has the power to define what constitutes "good behavior" and to declare the office vacant after a judicial procedure designed to determine that the incumbent's behavior is no longer good. The writer states:

> It would seem that under the latter clause Congress would have power to define what constitutes "good behavior", and to provide a method for ascertaining whether or not the judges are *complying with the tenure* under which they hold, and to cause them to forfeit their offices if they are not, subject, of course, to a review by the courts of the question as to whether or not the definition wholly or partially is within the meaning of those words as used in the Constitution. By this method the question becomes a judicial one, as it should be, and the accused judge will be safeguarded in his right to hold his office exactly as he is safeguarded in all the other rights vested in him by the Constitution. That Congress has the power claimed was expressly asserted by Senator Catron in the Archbald Impeachment.[38]

In my opinion, such power could not be given without a constitutional amendment. The Constitution provides one method only for removing judicial officers, *i.e.*, by impeachment. It is true that the Congress is given power "to constitute tribunals inferior to the Supreme Court".[39] But they are not given power either to determine tenure or to provide for another method of selection, except the general one, by the President, with "the advice and consent of the Senate"[40] The original jurisdiction of the Supreme Court is fixed by the Constitution.[41] Mr. Justice Story, in a famous case decided in 1816,[42] expressed the view that the article creating and defining the judicial power of the United

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"At this point I wish to add that it is my firm conviction, after such studies as I have made of this subject, that the term 'good behavior', as used in the Constitution, is a justiciable question, and that the Congress, under the authority conferred upon it, has the power to create a tribunal to try that issue whenever it shall be raised in a proper manner.

"The procedure I am suggesting would in no way diminish or cut down the privileges or prerogatives of the Congress. The Congress would be free, whenever it so desired, to resort to the existing process of impeachment. At the same time the Congress could set in motion the alternative procedure by a majority vote of both Houses directing the Attorney-General to institute a suit under the new removal method, as I have already stated, and I merely repeat it to emphasize the point. The freedom of action of the Congress would thus in all respects be preserved." Sen. Rep. No. 84, 74th Cong., 2nd Sess. (1936) 6217.

In the House of Representatives, Chairman Hatton W. Sumner of the House Judiciary Committee, has introduced a bill which provides for the removal of judges of the courts of the United States who hold their office during good behavior, by a court consisting of three judges of the Circuit Court of Appeals designated by the Chief Justice. The Act specifically excepts judges of the United States Court of Appeals for the District of Columbia, judges of the Circuit Courts of Appeal and the Justices of the Supreme Court of the United States. (1937) 21 Journal of American Judicature Society 59.

[37] Simpson, Jr., *Federal Impeachments* (1916) 64 U. of Pa. L. Rev. 651, 803.

[38] *Id.* at § 828. See Shartel, *Retirement and Removal of Judges* (1936) 20 Journal American Judicature Society 133; McCormick, *Removal of Federal Judges* (1937), 31 Ill. L. Rev. 631, 638.

[39] U.S. Const. Art. I, § 8, Cl. 8.

[40] U.S. Const. Art. II, § 2, Cl. 2.

[41] U.S. Const. Art. III, § 2, Cl. 2.

[42] Martin *v.* Hunter's Lessee, 1 Wheat. 304 (U.S. 1816).

States is mandatory and that the Congress could not refuse to carry it into effect by declining to create the course. In the course of the opinion, he asked the question: "Could Congress *create or limit* any other tenure of judicial office?" His answer was in the negative. The passage in which these statements occur is so significant that it should be given in full. It reads:

> Such is the language of the article creating and defining the judicial power of the United States. It is the voice of the whole American people solemnly declared, in establishing one great department of that government which was, in many respects, national, and in all, supreme. It is a part of the very same instrument which was to act not merely upon individuals, but upon states; and to deprive them altogether of the exercise of some powers of sovereignty, and to restrain and regulate them in the exercise of others.
>
> Let this article be carefully weighed and considered. The language of the article throughout is manifestly designed to be mandatory upon the legislature. Its obligatory force is so imperative that Congress *could not*, without a violation of its duty, have refused to carry it into operation. The judicial power of the United States *shall be vested* (*not may be vested*) in one supreme court, and in such inferior courts as Congress may, from time to time, ordain and establish. Could Congress have lawfully refused to create a supreme court, or to *rest in it the constitutional jurisdiction?* "The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive, for their services, a compensation which shall not be diminished during their continuance in office." *Could Congress create or limit any other tenure of the judicial office? Could they refuse to pay, at stated times, the stipulated salary, or diminish it during the continuance in office?* But one answer can be given to these questions: *it must be in the negative.* The object of the constitution was to establish three great departments of government; the legislative, the executive and the judicial departments. The first was to pass laws, the second to approve and execute them, and the third to expound and enforce them. Without the latter it would be impossible to carry into effect some of the express provisions of the Constitution. How, otherwise, could crimes against the United States be tried and punished? How could causes between two states be heard and determined? The judicial power must, therefore, be vested in some court, by Congress; and to suppose that it was not an obligation binding on them, but might, at their pleasure, be omitted or declined, is to suppose that, under the sanction of the Constitution they might defeat the Constitution itself; a construction which would lead to such a result cannot be sound.[43]

The only method of removal being by conviction upon impeachment, the procedure suggested would be another method of removal, not sanctioned by the Constitution. It would also add to the original jurisdiction of the Supreme Court. Desirable though a quicker method of removal might be—especially in the case of judges of lower courts—

[43] *Id.* at 327, 328. Italics added.

the power to establish such a method does not, in my opinion, reside in the Congress. The Congress, in establishing inferior courts—under the constitutional mandate—is also under mandate to confer upon the judges appointed to administer them the constitutional tenure—that of holding "during good behavior".[44]

The tenure "during good behavior" can be terminated only upon conviction after impeachment for "high crimes and misdemeanors". The former is referable to the latter. "Good behavior" ceases to exist in an incumbent when he has committed "high crimes and misdemeanors". The fact can only be established by proof in a court of impeachment. Any other method of establishing it is clearly outside of the intendment of the constitutional provisions relating to removal of civil officers.

All students of the problem agree, however, that a change is not only desirable, but needed. Those who, moved by false conceptions of the dignity of the Federal judicial office, would oppose any change in the present method, should remember that courts are social institutions belonging to society as a whole, and that the law itself is merely a form of social control aiming to satisfy the changing needs of a changing society. Because of this, a judge may be unfit who, without being guilty of any moral obliquity, does yet, through arbitrariness or by overlooking the fact that the office he occupies is not a private, personal, life-long sinecure, but an institution established to achieve the needs of society for justice through law, fail to attain that high standard of "good behavior" which should be the ideal of the judge of an enlightened society. A great judge has written:

> The time is past in the history of the world when any living man or body of men can be set on a pedestal and decorated with a halo. True, many criticisms may be, like their authors, devoid of good taste, but better all sorts of criticism than no criticism at all. The moving waters are full of life and health; only in the still waters is stagnation and death.[45]

There is wisdom and security for a free society in such an attitude, even towards the judiciary.

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[44] See: Kentucky & I. Bridge Co. *v.* Louisville & N.R.R., 37 Fed. 567, 612. (C.C.D. Ky. 1889).

[45] Mr. Justice David J. Brewer in 15 National Corporation Report 849.

"Power of Impeachment," Congressional Quarterly Guide to the U.S. Congress

Power of Impeachment*

Impeachment is perhaps the most awesome though the least used power of Congress. In essence, it is a political action, couched in legal terminology, directed against a ranking official of the Federal Government. The House of Representatives is the prosecutor. The Senate chamber is the courtroom; and the Senate is the judge and jury. The final penalty is removal from office and disqualification from further office. There is no appeal.

Impeachment proceedings have been initiated in the House some 50 times since 1789, but only 12 cases have reached the Senate. Of these 12, two were dismissed for lack of jurisdiction, six resulted in acquittal and four ended in conviction. All of the convictions involved Federal judges: John Pickering of the district court for New Hampshire, in 1804; West H. Humphreys of the eastern, middle and western districts of Tennessee, in 1862; Robert W. Archbald of the Commerce Court, in 1913; and Halsted L. Ritter of the southern district of Florida, in 1936.

Two of the impeachments traditionally have stood out from all the rest. They involved Justice Samuel Chase of the Supreme Court in 1805 and President Andrew Johnson in 1868, the two most powerful and important Federal officials ever subjected to the process. Both were impeached by the House—Chase for partisan conduct on the bench; Johnson for violating the Tenure of Office Act—and both were acquitted by the Senate after sensational trials. Behind both impeachments lay intensely partisan politics. Chase, a Federalist, was a victim of attacks on the Supreme Court by Jeffersonian Democrats, who had planned to impeach Chief Justice John Marshall if Chase was convicted. President Johnson was a victim of Radical Republicans opposed to his reconstruction policies after the Civil War.

Purpose of Impeachment Process

Based on specific constitutional authority, the impeachment process was designed "as a method of national inquest into the conduct of public men," according to Alexander Hamilton in Federalist No. 65. The Constitution declares that impeachment proceedings may be brought against "the President, Vice President and all civil officers of the United States," without explaining who is, or is not, a "civil officer." In practice, however, the overwhelming majority of impeachment proceedings have been directed against Federal judges, who hold

*Reprinted from Guide to the Congress of the United States with the permission of *Congressional Quarterly*.

lifetime appointments "during good behavior," and cannot be removed by any other method. Nine of the 12 impeachment cases that have reached the Senate have involved Federal judges. Federal judges have figured in 33 of the approximately fifty impeachment cases that have failed to reach the Senate.

Others whose impeachment has been sought include Cabinet members, diplomats, customs collectors, a Senator and a U.S. district attorney. These officials are subject to removal by dismissal or explusion as well as by impeachment, and it seldom has been necessary to resort to full-scale impeachment proceedings to bring about their removal. Proceedings against the only Senator to be impeached, William Blount of Tennessee, were dismissed in 1799 after Blount had been expelled from the Senate in 1797. War Secretary William W. Belknap, the only Cabinet member to be tried by the Senate, was acquitted in 1876 largely because Senators questioned their authority to try Belknap, who had resigned as Secretary several months before the trial.

The House Judiciary Committee twice has ruled that certain Federal officials were not subject to impeachment. In 1833, the Committee determined that a territorial judge was not a civil officer within the meaning of the Constitution because he held office for only four years and could be removed at any time by the President. In 1926, the Committee said that a Commissioner of the District of Columbia was immune from impeachment because he was an officer of the District and not a civil officer of the United States.

Debate in Constitutional Convention

The origin of the Congressional impeachment process dates from 14th century England. Under the parliamentary system, an impeachment (indictment) was preferred by the House of Commons and decided by the House of Lords. In America, colonial governments and early state constitutions followed the British pattern of trial before the upper legislative body on charges brought by the lower house.

The Constitution on Impeachment

Following are provisions of the Constitution that deal with the Congressional power of impeachment:

The House of Representatives . . . shall have the sole power of impeachment. (Article I, section 2.)

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside. And no person shall be convicted without the concurrence of two-thirds of the Members present. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment, according to law. (Article I, section 3.)

The President . . . shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. (Article II, section 2.)

The President, Vice President and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery or other high crimes and misdemeanors. (Article II, section 4.)

The trial of all crimes, except in cases of impeachment, shall be by jury . . . . (Article III, section 2.)

Despite these precedents, a major controversy arose over the impeachment process in the Constitutional Convention. The issue was whether the Senate should try impeachments. Opposing that role for the Senate, Madison and Pinckney asserted that it would make the President too dependent on the Legislative Branch. Suggested alternative trial bodies included the "national judiciary," the Supreme Court or the assembled chief justices of state supreme courts. It was argued, however, that such bodies would be too small and perhaps even susceptible to corruption. In the end, the Senate was agreed to. Hamilton (a Senate opponent during the Convention) asked later in the Federalist: "Where else than in the Senate could have been found a tribunal sufficiently dignified, or sufficiently independent?"

A lesser issue was the definition of impeachable crimes. In the original proposals, the President was to be removed on impeachment and conviction "for mal or corrupt conduct," or for "malpractice or neglect of duty." Later, the wording was changed to "treason, bribery or corruption," and then to "treason and bribery" alone. Contending that "treason and bribery" were too narrow, George Mason proposed adding "mal-administration," but switched to "other high crimes and misdemeanors against the state" when Madison said that "mal-administration" was too broad. A final revision made impeachable crimes "treason, bribery or other high crimes and misdemeanors."

The provisions of the Constitution on impeachment were scattered through the first three articles. To the House was given the "sole power of impeachment." The Senate was given "the sole power to try all impeachments." Impeachments could be brought against "the President, Vice President, and all civil officers of the United States" for "treason, bribery or other high crimes or misdemeanors." Conviction meant "removal from office and disqualification to hold" further public office.

The first attempt to use the impeachment power was made in 1796. A petition from residents of the Northwest Territory, submitted to the House on April 25, accused Judge George Turner of the territorial supreme court of arbitrary conduct. The petition was referred briefly to a special House committee and then was referred to Atty. Gen. Charles Lee. Impeachment proceedings were dropped after Lee said, May 9, that the territorial government would prosecute Turner in the territorial courts.

Procedures in Impeachment Cases

The first impeachment proceedings, against Turner, failed to provide precedents for later impeachments. In fact, the process has been used so infrequently and under such widely varying circumstances that no uniform practice has emerged.

At various times impeachment proceedings have been initiated by the introduction of a resolution by a Member, by a letter or message from the President, by a grand jury action forwarded to the House from a territorial legislative, by a memorial setting forth charges, by a resolution authorizing a general investigation, or by a resolution reported by the House Judiciary Committee. The five cases to reach the Senate since 1900 were based on Judiciary Committee resolutions.

After submission of the charges, a Committee investigation has been undertaken. If the charges have been supported by the investigation,

the Committee has reported an impeachment resolution, which in four of the five post-1900 cases has included articles of impeachment. The impeachment resolution has been subject to adoption by majority vote. In earlier cases, the impeachment articles were drafted by a select committee named by the House Speaker or by simple resolution. Like the impeachment resolution, the articles too have been subject to adoption by majority vote.

The next step, after the House has adopted an impeachment resolution and articles of impeachment, has been selection of House managers to direct the proceedings in the Senate. House managers have been chosen by a resolution fixing the number of managers and authorizing the Speaker to appoint them, by a resolution fixing the number and making the appointments, and by ballot, with a majority vote for each candidate. Once selected, the House managers have appeared at the bar of the Senate to inform the upper house of the impending impeachment trial and to present the articles of impeachment. The Senate, in turn, has informed the House when it is ready to proceed.

The full House may attend the trial, but the House managers have been its representatives at the proceedings. Following Senate rules adopted March 2, 1868, the trial has been conducted in a fashion similar to a court trial for a criminal offense. Both sides may present witnesses and evidence, and the defendant has been allowed counsel and the right of cross-examination. If the President is on trial, the Constitution requires the Chief Justice of the Supreme Court to preside. The Constitution is silent on a presiding officer for lesser defendants, but Senate practice has been for the Vice President or the President pro tempore to preside. Procedural questions during trial have been decided by majority vote, but conviction has required, according to the Constitution, approval of two-thirds of the Senators present. A separate vote on each article is required by Senate rules, and a two-thirds vote on a single article is sufficient for conviction. Removal upon conviction is required by the Constitution, although the Senate at times has voted removal after conviction. Disqualification is not mandatory; only two of the four convictions have been accompanied by disqualification, which has been subject to a majority vote.

Controversial Question

Three major issues have dominated the history of the impeachment power: the definition of impeachable offenses, possible Senatorial conflicts of interest and alternative removal methods for Federal judges.

Impeachable Offenses. "Treason" and "bribery," as constitutionally designated impeachable crimes, have raised little debate, for treason is defined elsewhere in the Constitution and bribery is a well-defined act. "High crimes and misdemeanors," however, have been anything that the prosecution has wanted to make them. An endless debate has surrounded the phrase, pitting broad constructionists, who have viewed impeachment as a political weapon, against narrow constructionists, who have regarded impeachment as being limited to offenses indictable at common law.

The constitutional debates seemed to indicate that impeachment was to be regarded as a political weapon. Narrow constructionists quickly won a major victory, though, when Chase was acquitted, using as a

defense the argument that he had committed no indictable offense. The narrow constructionists continued to prevail when President Johnson also was acquitted on a similar defense. His lawyers argued that conviction could result only from commission of high criminal offenses against the United States.

The only two convictions to date in the 20th century suggest that the broad constructionists still have powerful arguments. The 20th century convictions removed Robert W. Archbald, associate judge of the U.S. Commerce Court, in 1913, and Halsted L. Ritter, U.S. judge for the southern district of Florida, in 1936. Archbald was convicted of soliciting for himself and for friends valuable favors from railroad companies, some of which were litigants in his court. It was conceded, however, that he had committed no indictable offense. Ritter was convicted for conduct in a receivership case which raised serious doubts about his integrity.

Ritter's was the last impeachment to reach the Senate. But the debate over impeachable offenses is certain to be revived in future Senate cases.

Conflicts of Interest. An equally controversial issue, particularly in earlier impeachment trials, concerned the partisan political interests of Senators, which raised serious doubt about their impartiality as jurors.

President Johnson's potential successor, for example, was the president pro tempore of the Senate, since there was a vacancy in the Vice Presidency. Sen. Benjamin F. Wade (R Ohio), president pro tempore, took part in the trial and voted—for conviction. On the other hand, Andrew Johnson's son-in-law, Sen. David T. Patterson (D Tenn.), also took part in the trial and voted—for acquittal.

In the Johnson trial and in others, Senators have been outspoken critics or supporters of the defendant, yet have participated in the trial and have voted on the articles. Some Senators who had held seats in the House when the articles of impeachment first came up, and had voted on them there, have failed to disqualify themselves during the trial. On occassion, intense outside lobbying for, and against, the defendant has been aimed at Senators. Senators have testified as witnesses at some trials and then voted on the articles.

Senators may request to be excused from the trial, and in recent cases Senators have disqualified themselves when possible conflicts of interest arose.

Removal of Judges. Two forces have combined in the continuing search for an alternative method of removal for Federal judges. One force has been led by Members of Congress anxious to free the Senate, faced by an enormous legislative workload, from the time-consuming process of sitting as a court of impeachment. The other force has been led by Members anxious to restrict judicial power by providing a simpler and swifter means of removal than the cumbersome and unwieldy impeachment process.

The search to date has been unsuccessful. Efforts to revise and accelerate the impeachment process have failed. So, too, have attempts to amend the Constitution to limit the tenure of Federal judges to a definite term of years. A more recent approach has been to seek legislation providing for a judicial trial and judgment of removal for Federal

judges violating "good-behavior" standards. The House passed such a bill on Oct. 22, 1941, by a 124–122 vote, but it died in the Senate.

A 1947 report by the Legislative Reference Service of the Library of Congress concluded:

"1. There is no power in the Executive or Legislative Branches of the Government to remove or limit the tenure of Supreme Court justices, or, indeed, any judges of constitutional courts, except as Congress is expressly authorized to act by impeachment for lack of good behavior. . . .

"2. Means of removal other than impeachment and limitations on tenure could be provided for by constitutional amendment. Among such methods of removal could be that of legislative address.

"3. Congress perhaps can constitutionally provide for judicial removal of Federal judges for lack of good behavior. . . . While the good behavior tenure clause never has been construed by the Supreme Court, it has been contended that the clause must be read with a view to changing needs, and that Congress, therefore, might define the term so as to allow judicial removal for any form of conduct or neglect which according to modern notions tends to corruption or inefficiency."

Attempted Impeachments

Many proposed impeachments have failed to come to a vote in the House because the defendant died or because he resigned or received another appointment, removing him from the disputed office. Among the unsuccessful impeachment attempts have been moves against two Presidents, a Vice President, two Cabinet officers, and a Supreme Court justice.

The House on Jan. 10, 1843, rejected by an 84–127 vote a resolution by Rep. John M. Botts (Henry Clay Whig Va.) to investigate the possibility of initiating impeachment proceedings against President Tyler. Tyler had become a political outcast, ostracized by both Democrats and Whigs, but impeachment apparently was too strong a measure to take against him.

A move developed in 1873 to impeach Vice President Schuyler Colfax because of his involvement in the Credit Mobilier scandal. The matter was dropped when the Judiciary Committee recommended against impeachment on the ground that Colfax had purchased his Credit Mobilier stock before becoming Vice President.

A similar move to impeach Attorney General Harry M. Daugherty in 1922 on account of his action, or lack of action, in the Teapot Dome affair was dropped in 1923 when a Congressional investigation of the scandal got under way. As the Teapot Dome investigation and a separate Justice Department study progressed, Daugherty was forced by President Coolidge to tender his resignation, March 28, 1924.

A running fight between Rep. Wright Patman (D Texas) and Secretary of the Treasury Andrew W. Mellon over Federal economic policy in the depression came to a head in 1932. Patman on Jan. 6 demanded Mellon's impeachment on the ground of conflicting financial interests. To put an end to that move, President Hoover on Feb. 5 nominated Mellon to be ambassador to Great Britan and the Senate confirmed the nomination the same day. Mellon resigned his Treasury post a week later to take on his new duties.

SENATE RULES OF PROCEDURE AND PRACTICE . . . WHEN SITTING FOR IMPEACHMENT TRIALS

Following are the major provisions of rules used by the Senate during impeachment trials. With the exception of Rule XI, which was adopted May 28, 1935, the rules have remained unchanged since their adoption March 2, 1868, for the trial of President Johnson.

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

II. When the managers of an impeachment shall be introduced at the bar of the Senate and shall signify that they are ready to exhibit articles of impeachment against any person, the Presiding Officer of the Senate shall direct the Sergeant at Arms to make proclamation . . . after which the articles shall be exhibited, and then the Presiding Officer of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

III. Upon such articles being presented to the Senate, the Senate shall, at 1 o'clock afternoon of the day (Sunday excepted) following such presentation, or sooner if ordered by the Senate, proceed to the consideration of such articles and shall continue in session from day to day (Sundays excepted) after the trial shall commence (unless otherwise ordered by the Senate) until final judgment shall be rendered, and so much longer as may, in its judgment, be needful. Before proceeding to the consideration of the articles of impeachment, the Presiding Officer shall administer the oath hereinafter provided to the members of the Senate then present and to the other members of the Senate as they shall appear, whose duty it shall be to take the same.

IV. When the President of the United States or the Vice President of the United States, upon whom the powers and duties of the office of President shall have devolved, shall be impeached, the Chief Justice of the Supreme Court of the United States shall preside; and in a case requiring the said Chief Justice to preside notice shall be given to him by the Presiding Officer of the Senate of the time and place fixed for the consideration of the articles of impeachment, as aforesaid, with a request to attend; and the said Chief Justice shall preside over the Senate during the consideration of said articles and upon the trial of the person impeached therein.

V. The Presiding Officer shall have power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, writs, and precepts authorized by these rules or by the Senate, and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide.

VI. The Senate shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments, to preserve order, and to punish in a summary way contempts of, and disobedience to, its authority, orders, mandates, writs, precepts, or judgments, and to make all lawful orders, rules, and regulations which it may deem essential or conductive to the ends of justice. And the Sergeant at Arms, under the direction of the Senate, may employ such aid and assistance as may be necessary to enforce, executive and carry into effect the lawful orders, mandates, writs, and precepts of the Senate.

VII. The Presiding Officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the Presiding Officer on the trial shall direct all the forms of proceedings while the Senate is sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the Presiding Officer on the trial may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may at his option, in the first instance, submit any such question to a vote of the members of the Senate. Upon all such questions the vote shall be without a division, unless the yeas and nays be demanded by one-fifth of the members present, when the same shall be taken.

VIII. Upon the presentation of articles of impeachment and the organization of the Senate as herein before provided, a writ of summons shall issue to the

accused, reciting said articles, and notifying him to appear before the Senate upon a day and at a place to be fixed by the Senate and named in such writ, and file his answer to said articles of impeachment, and to stand to and abide the orders and judgments of the Senate thereon; which writ shall be served by such officer or person as shall be named in the precept thereof, such number of days prior to the day fixed for such appearance as shall be named in such precept, either by the delivery of an attested copy thereof to the person accused, or if that can not conveniently be done, by leaving such copy at the last known place of abode of such person, or at his usual place of business in some conspicuous place therein; or if such service shall be, in the judgment of the Senate, impracticable, notice to the accused to appear shall be given in such other manner, by publication or otherwise, as shall be deemed just; and if the writ aforesaid shall fail of service in the manner aforesaid, the proceedings shall not thereby abate, but further service may be made in such manner as the Senate shall direct. If the accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed therefor as aforesaid, or, appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings.

IX. At 12:30 o'clock afternoon of the day appointed for the return of the summons against the person impeached, the legislative and executive business of the Senate shall be suspended, and the Secretary of the Senate shall administer an oath to the returning officer. . . . Which oath shall be entered at large on the records.

X. The person impeached shall then be called to appear and answer the articles of impeachment against him. If he appear, or any person for him, the appearance shall be recorded, stating particularly if by himself, or by agent or attorney, naming the person appearing and the capacity in which he appears. If he do not appear, either personally or by agent or attorney, the same shall be recorded.

XI. That in the tral of any impeachment the Presiding Officer of the Senate, upon the order of the Senate, shall appoint a committee of twelve Senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectively, under the rules of procedure and practice in the Senate when sitting on impeachment trials.

Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed. The committee so appointed shall report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee, and such report shall be received by the Senate and the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materially, as having been received and taken before the Senate, but nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate.

XII. At 12:30 o'clock afternoon of the day appointed for the trial of an impeachment, the legislative and executive business of the Senate shall be suspended, and the Secretary shall give notice to the House of Representatives that the Senate is ready to proceed upon the impeachment of——, in the Senate Chamber, which chamber is prepared with accommodations for the reception of the House of Representatives.

XIII. The hour of the day at which the Senate shall sit upon the trial of an impeachment shall be (unless otherwise ordered) 12 o'clock m.; and when the hour for such thing shall arrive, the Presiding Officer of the Senate shall so announce; and thereupon the Presiding Officer upon such trial shall cause proclamation to be made, and the business of the trial shall proceed. The adjournment of the Senate sitting in said trial shall not operate as an adjournment of the Senate; but on such adjournment the Senate shall resume the consideration of its legislative and executive business.

XIV. The Secretary of the Senate shall record the proceedings in cases of impeachment as in the case of legislative proceedings, and the same shall be reported in the same manner as the legislative proceedings of the Senate.

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

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

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

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

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

XX. At all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be kept open, unless the Senate shall direct the doors to be closed while deliberating upon its decisions.

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

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

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

XXIV. All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, subject, however, to the operation of Rule VII, except when the doors shall be closed for deliberation, and in that case no member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by one-fifth of the members present. The fifteen minutes herein allowed shall be for the whole deliberation on the final question, and not on the final question on each article of impeachment.

XXV. Witnesses shall be sworn. . . . Which oath shall be administered by the Secretary, or any other duly authorized person.

All process shall be served by the Sergeant at Arms of the Senate, unless otherwise ordered by the court.

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

Two depression-era attempts by Rep. Louis T. McFadden (R Pa.) to impeach President Hoover on general charges of usurping legislative powers and violating constitutional and statutory law were rejected by the House. The first attempt was tabled Dec. 13, 1932, by a 361–8 vote; the second attempt was tabled Jan. 17, 1933, by a 344–11 vote.

Associate Justice William O. Douglas of the Supreme Court has been subjected to repeated impeachment attempts. The day after Douglas granted a stay of execution to Soviet spies Julius and Ethel Rosenberg on June 16, 1953, Rep. W. M. Wheeler (D Ga.) introduced a resolution to impeach the justice. The resolution was unanimously tabled by the Judiciary Committee on July 7, after a one-day hearing at which Wheeler had been the sole witness. In 1970, two resolutions

for Douglas's impeachment were introduced in the midst of a bitter conflict between President Nixon and the Senate over Senate rejection of two Supreme Court nominations. One impeachment resolution was introduced April 15 by Rep. Andrew Jacobs Jr. (D Ind.); the other on the same day by a large bipartisan group of sponsors. Among the charges cited were possible financial conflicts similar to those that had led to Senate rejection of the Nixon nominees for the Court. A special House Judiciary Subcommittee on Dec. 3 voted 3–1 that no grounds existed for impeachment.

Impeachment Trials

Sen. William Blount. On July 3, 1797, President John Adams sent to the House and Senate a letter from Sen. William Blount (Tenn.) to James Carey, a U.S. interpreter to the Cherokee Nation of Indians. The letter told of Blount's plans to launch an attack by Indians and frontiersmen, aided by a British fleet, against Louisiana and Spanish Florida to achieve their transfer to British control. Adams' action initiated the first proceedings to result in impeachment by the House and consideration by the Senate.

In the Senate, Blount's letter was referred to a select committee, which recommended his expulsion for "a high misdemeanor, entirely inconsistent with his public trust and duty as a Senator." The Senate expelled Blount on July 8 by a 25–1 vote.

In the House, meanwhile, a special committee had recommended that Blount be impeached. The House on July 7 adopted a committee resolution impeaching Blount, and on the same day it appointed a committee to prepare articles of impeachment. On Jan. 29, 1798, the House adopted five articles accusing Blount of attempting to influence the Indians for the benefit of the British.

Senate proceedings did not begin until Dec. 17, 1798. Blount challenged the proceedings, contending that they violated his right to a trial by jury, that he was not a civil officer within the meaning of the Constitution, that he was not charged with a crime committed while a civil officer, and that courts of common law were competent to try him on the charges. On Jan. 11, 1799, the Senate by a 14–11 vote dismissed the charges for lack of jurisdiction. Citing the Senate vote, Vice President Thomas Jefferson ruled Jan. 14, that the Senate was without jurisdiction in the case, thus ending the proceedings.

Judge John Pickering. In a partisan move to oust a Federalist judge, President Jefferson on Feb. 4, 1803, sent a complaint to the House citing John Pickering, U.S. judge for the district of New Hampshire. The complaint was referred to a special committee, and on March 2 the House adopted a committee resolution impeaching the judge. A committee was appointed Oct. 20 to prepare articles of impeachment, and the House on Dec. 30 by voice vote agreed to four articles charging Pickering with irregular judicial procedures, loose morals and drunkenness. At the time of the trial by the Senate, the judge, born about 1738, was known to be insane. He did not attend the trial, which began March 8, 1804, and ended March 12, with votes of 19–7 for conviction on each of the four articles. The Senate then voted, 20–6, to remove Pickering from office, but it declined to consider disqualifying him from further office.

Justice Samuel Chase. In an equally partisan attack on another Federalist judge, the House on Jan. 7, 1804, by an 81–40 vote adopted a resolution by John Randolph (States Rights Democrat Va.) for an investigation of Samuel Chase, associate justice of the Supreme Court, and of Richard Peters, a U.S. district court judge in Pennsylvania. Ostensibly, the investigation was to study their conduct during a recent treason trial. The House dropped further action against Peters by voice vote on March 12. On the same day, by a 73–32 vote, it adopted a committee resolution to impeach Chase. A committee was appointed to draw up articles, and the House in a series of votes on Dec. 4, 1804, agreed to the articles, charging Chase with harsh and partisan conduct on the bench and with unfairness to litigants.

The trial began Feb. 9, 1805. House managers directing proceedings in the Senate included, in addition to Randolph, Caesar A. Rodney (D Del.), Joseph H. Nicholson (D Md.), Peter Early (Ga.), John Boyle (D Ky.), George W. Campbell (D Tenn.), and Christopher Clark (Jeffersonian Democrat Va.). Chase appeared in person. In addition, he was represented by four lawyers, Robert G. Harper, Luther Martin, Philip B. Key and Joseph Hopkinson. The Senate voting on March 1 failed to produce the two-thirds majority required for conviction on any of the eight articles of impeachment; "not guilty" votes outnumbered the "guilty" votes on five of the articles.

Judge James H. Peck. On Dec. 8, 1826, a memorial from a Missouri man was presented to the House and referred to the Judiciary Committee citing James H. Peck, a U.S. judge for the district of Missouri. The memorial lay dormant until Jan. 7, 1830, when the House adopted a resolution authorizing an investigation of Peck's conduct. On April 24, the House by a 123–49 vote adopted a committee resolution impeaching Peck, and later the same day it appointed a committee to prepare articles of impeachment. A single article was adopted May 1 by voice vote, charging Peck with setting an unreasonable and oppressive penalty for contempt of court. The trial stretched from Dec. 20, 1830, to Jan. 31, 1831, when 21 Senators voted for conviction and 22 for acquittal.

Judge West H. Humphreys. During the Civil War, West H. Humphreys, a U.S. judge for the east, middle and west districts of Tennessee, accepted an appointment as a Confederate judge, without resigning from his Union judicial assignment. Aware of the situation, the House on Jan. 8, 1862, by voice vote adopted a resolultion by Horace Maynard (American Tenn.) to authorize a Judiciary Committee investigation of Humphreys. On May 6 the House, also by voice vote, adopted a committee resolution impeaching Humphreys. Articles of impeachment, drafted by a committee appointed May 14, were adopted by voice vote on May 19. The articles charged Humphreys with advocating secession and accepting office as a Confederate judge. In a one-day trial on June 26, the Senate convicted Humphreys on all except one charge, removed him from office by a 38–0 vote and disqualified him from further office on a 36–0 vote.

Johnson's Impeachment and Trial

First Attempt—Radical Republicans in Congress and President Andrew Johnson carried on a running battle over postwar policy to-

ward the Confederate states. Johnson favored a lenient attitude; the Radicals favored repressive tactics. Finally on Jan. 7, 1867, two Radicals, Reps. James M. Ashley (R Ohio) and Benjamin F. Loan (Radical Mo.) introduced a pair of resolutions calling for Judiciary Committee investigations and impeachment of the President. The Committee gathered a mass of general testimony highly critical of Johnson and recommended impeachment. However, the House by a 57–108 vote Dec. 7, rejected a Committee resolution impeaching the President. The resolution was defeated primarily because no specific crime was alleged to have been committed.

Second Attempt—Radical opposition to Johnson continued to run high, and on Jan. 22, 1868, the House by a 99–31 vote adopted a resolution by Rufus P. Spalding (R Ohio) authorizing the Committee on Reconstruction to "inquire what combinations have been made or attempted to be made to obstruct the due execution of the laws. . . ." To help the Committee, the House on Feb. 10 referred to it the impeachment evidence gathered in 1867. Then on Feb. 21, 1868, Johnson formally dismissed Secretary of War Edwin M. Stanton, a leading Radical sympathizer. The dismissal violated the Tenure of Office Act of March 2, 1867, which required Senate concurrence in the removal, as well as the appointment, of certain officers, and which made violation of the Act a "high misdemeanor."

The day after Johnson moved against Stanton, the Committee on Reconstruction recommended impeachment of the President. And on Feb. 24 the House by a 128–47 vote adopted a Committee resolution impeaching Johnson, and by a 124–42 vote appointed a committee to draw up articles of impeachment. In a series of votes March 2 and 3, the House adopted the articles, charging the President with violation of the Tenure of Office Act and with attacking Congress in a series of political speeches. (*See Appendix for complete text of the articles.*)

The impeachment trial opened March 30, 1868. The managers for the House were John A. Bingham (R Ohio), George S. Boutwell (R Mass.), James F. Wilson (R Iowa), Benjamin F. Butler (R Mass.), Thomas Williams (R Pa.), John A. Logan (R Ill.) and Thaddeus Stevens (R Pa.). The President did not appear at the trial. He was represented by a team of lawyers headed by Henry Stanbery, who had resigned at Attorney General to lead the defense. Associated with Stanbery were Benjamin R. Curtis, Jeremiah S. Black, William M. Evarts, Thomas A. R. Nelson and William S. Groesbeck.

After weeks of argument and testimony, the Senate on May 16 took a test vote on Article XI, a general, catch-all charge, thought by the House managers most likely to produce a vote for conviction. The drama of the vote has become legendary. With 36 "guiltys" needed for conviction, the final count was guilty, 35, not guilty, 19. Stunned by the setback, Senate opponents of the President postponed further voting until May 26. Votes were taken then on Article II and Article III. By identical 35–19 votes Johnson was acquitted also on these articles. To head off further defeats for Johnson opponents, Sen. George H. Williams (Union Republican Oreg.) moved to adjourn *sine die*, and the motion was adopted 34–16, abruptly ending the trial.

Johnson Impeachment Votes

The Senate voted on only three of the 11 articles of impeachment against President Andrew Johnson. The President was acquitted on each article by identical

votes of 35–19, with 36 "guiltys" necessary for conviction. The roll call on the three votes follows:

Guilty: Anthony (R R.I.), Cameron (R Pa.), Cattel (R N.J.), Chandler (R Mich.), Cole (R Calif.), Conkling (Union Republican N.Y.), Conness (Union Republican Calif.), Corbett (Union Republican Ore.), Cragin (American N.H.), Drake (R Mo.), Edmunds (R Vt.), Ferry (R Conn.), Frelinghuysen (R N.J.), Harlan (R Iowa), Howard (R Mich.), Howe (Union Republican Wis.), Morgan (Union Republican N.Y.), Morrill (R Maine), Morrill (Union Republican Vt.), Morton (Union Republican Ind.), Nye (R Nev.), Patterson (R N.H.), Pomeroy (R Kan.), Ramsey (R Minn., Sherman (R Ohio), Sprague (R R.I.), Stewart (R Nev.), Sumner (R Mass.), Thayer (R Neb.), Tipton (R Neb.), Wale (R Ohio), Willey (R W. Va.), Williams (Union Republican Ore.), Wilson (R Mass.), Yates (Union Republican Ill.).

Not guilty: Bayard (D Del.), Buckalew (D Pa.), Davis (D Ky.), Dixon (R Conn.), Doolittle (R Wis.), Fessenden (R Maine), Fowler (Union Republican Tenn.), Grimes (R Iowa), Henderson (D Mo.), Hendricks (D Ind.), Johnson (D) Md.), McCreery (D Ky.), Norton (Union Conservative Minn.), Patterson (D Tenn.), Ross (R Kan.), Saulsbury (D Del.), Tarumbull (R Ill.), Van Winkle (Unionist W. Va.), Vickers (D Md.)

Other Impeachments and Trials

War Secretary William W. Belknap. Faced with widespread corruption and incompetence among high officers of the Grant Administration, the House on Jan. 14, 1876, adopted by voice vote a resolution authorizing various committees to conduct general investigations of Government departments. On March 2 the House by voice vote adopted a resolution from the Committee on Expenditures in the War Department impeaching Secretary of War William W. Belknap. Only hours earlier, Belknap had resigned, and President Grant had accepted the resignation. Despite Belknap's resignation, work by the Judiciary Committee on articles of impeachment was continued, and the House agreed to the articles on April 3. They charged Belknap with graft in connection with the appointment and retention of an Indian post trader at Fort Sill in Oklahoma.

As pre-trial maneuvering proceeded, the Senate on May 29 declared by a vote of 37–29 that it had jurisdiction over Belknap regardless of his resignation. The trial, which ran from July 6 to Aug. 1, 1876, ended in acquittal. The majority of "guilty" votes on each article (35, 36 or 37 as against a constant 25 "not guilty" votes) fell short of the two-thirds necessary for conviction. A number of Senators, explaining their positions, said they had voted against conviction on the ground that the Senate lacked jurisdiction.

Judge Charles Swayne. Rep. William B. Lamar (D Fla.) on Dec. 10, 1903, introduced a resolution, adopted by voice vote, for a Judiciary Committee investigation of Charles Swayne, U.S. judge for the northern district of Florida. Months later, the Committee recommended impeachment, and the House on Dec. 13, 1904, adopted by voice vote a Committee resolution impeaching Swayne and authorized a special committee to prepare articles of impeachment. The articles were adopted in a series of votes on Jan. 18, 1905. They charged Swayne with living outside of his district, improperly fining a lawyer for contempt, and using a private railroad car in the hands of a receiver appointed by the judge. Opening arguments in the trial began Feb. 10 The trial ended Feb. 27, when the Senate voted acquittal on all articles none was given even a simple majority for conviction.

Judge Robert W. Archbald. On May 4, 1912, the House adopted a Judiciary Committee resolution authorizing an investigation of Robert W. Archbald, associate judge of the U.S. Commerce Court. A Committee resolution impeaching Archbald and setting forth articles of impeachment was adopted by the House July 11 by a 223–1 vote. The judge was charged with using improper influence and accepting favors from litigants. The trial, which began Dec. 3, ended Jan. 13, 1913, with Archbald convicted on five of the 13 articles. The Senate on the same day removed him from office by voice vote and, by a 39–35 vote, disqualified him from further office.

Judge George W. English. A resolution asking for an investigation of George W. English, U.S. judge for the eastern district of Illinois, was introduced Jan. 13, 1925, by Rep. Harry B. Hawes (D Mo.). The House on April 1, 1926, adopted by a 306–62 vote a Judiciary Committee resolution to impeach English. The resolution also set forth the articles of impeachment, charging English with partiality, tyranny and oppression. The trial was set to begin Nov. 10, but on Nov. 4 English resigned. Instead of proceeding with the trial, as was done after Belknap's resignation, the Senate on Dec. 13 by a 70–9 vote dismissed the charges at the request of the House managers.

Judge Harold Louderback. A resolution by Rep. Fiorello H. LaGuardia (Republican Progressive N.Y.) for an investigation of Harold Louderback, U.S. judge for the northern district of California, was adopted by a voice vote of the House on June 9, 1932. The Judiciary Committee's study produced mixed results. The majority recommended censuring, but not impeaching Louderback. However, the House on Feb. 24, 1933, by a 183–142 vote adopted a minority resolution by LaGuardia impeaching the judge and specifying the articles. They accused Louderback of favoritism and conspiracy in the appointment of bankruptcy receivers. A trial that lasted from May 15 to May 24 ended in acquittal. The "not guilty" votes outnumbered the "guilty" votes on all except one of the five articles.

Judge Halsted L. Ritter. Rep. J. Mark Wilcox (D Fla.) on May 29, 1933, introduced a resolution for an investigation of Halsted L. Ritter, U.S. judge for the southern district of Florida. The resolution was adopted by a voice vote on June 1. A long delay followed. Then on March 2, 1936, the House by a 181–146 vote adopted a Judiciary Committee impeachment resolution. The articles of impeachment, contained in the resolution, charged Ritter with a variety of judicial improprieties. The trial lasted from April 6 to April 17. Although there were more "guilty" than "not guilty" votes on all except one of the first six articles, the majorities fell short of the two-thirds required for conviction. However, on the seventh article, with 56 votes necessary for conviction, the vote was 56 guilty and 28 not guilty. Thus, Ritter was convicted. He was ordered removed from office, without a vote. An order to disqualify him from further office was defeated, 0–76.