JOURNAL

OF THE

SENATE OF MINNESOTA,

SITTING AS A

HIGH COURT OF IMPEACHMENT,

FOR THE TRIAL OF

HON. E. ST. JULIEN COX,

JUDGE OF THE NINTH JUDICIAL DISTRICT.

VOL. I.

PRINTED BY AUTHORITY.

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1882.

MANAGERS

ON THE PART OF THE HOUSE OF REPRESENTATIVES.

HON. HENRY G. HICKS.
HON. JAMES SMITH, JR.
HON. O. B. GOULD.
HON. A. C. DUNN.
HON. G. W. PUTNAM.
HON. W. J. IVES.
HON. L. W. COLLINS.

ATTORNEYS FOR RESPONDENT.

LORENZO ALLIS, Esq., St. Paul, Minn.
JOHN B. BRISBIN, Esq., St. Paul, Minn.
WALTER H. SANBORN, Esq., St. Paul, Minn.
J. W. ARCTANDER, Esq., Wilmar, Minn.
C. K. DAVIS, Esq., St. Paul, Minn.

OFFICERS OF THE COURT.

PRESIDENT—HON. C A. GILMAN.
CLERK—S. P. JENNISON.
SERGEANT-AT-ARMS—W. H. MELLEN.
ASST. SERGEANT-AT-ARMS—C. M. REESE.
STENOGRAPHIC REPORTER—GEO. N. HILLMAN.
" " JOS. E. LYONS.
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May 191

JOURNAL OF THE SENATE.

FIRST DAY.

ST. PAUL, Friday, Nov. 4th, 1881.

During the afternoon session of the Senate, the following communication was received from a committee of the House of Representatives:

MR. PRESIDENT:—We have a communication from the House of Representatives to make to the Senate relative to the impeachment of E. St. Julien Cox, Judge of the 9th judicial district.

The House of Representatives, then appeared at the bar of the Senate, and before the Senate, in the name of the House of Representatives, and of the whole people of the State of Minnesota, did impeach E. St. Julien Cox, Judge of the ninth judicial district of the State of Minnesota, of corrupt conduct in office, and of crimes and misdemeanors in office, notified the Senate, that in due time such House would exhibit to the Senate particular articles of impeachment against the said E. St. Julien Cox, Judge as aforesaid, and make good the same; and demanded that the Senate take order for the appearance of said E. St. Julien Cox to answer said impeachment.

The House of Representatives having retired, Mr. Castle offered the following resolution:

Resolved, That the message from the House of Representatives in relation to the impeachment of E. St. Julien Cox, Judge of the ninth judicial district be and the same is referred to the committee on judiciary.

Which was adopted.

Mr. Pillsbury offered the following resolution:

Resolved, That a committee of three be appointed by the President to inform his excellency the Governor, that the House of Representatives has on this day appeared before the bar of this Senate, and notified this Senate that said House has impeached E. St. Julien Cox, Judge of the ninth judicial district, of crimes and misdemeanors in office, and that in due time such House will exhibit to this Senate, particular articles of impeachment against the said E. St. Julien Cox.

Which was adopted.

And the President appointed as the committee under the foregoing resolution, Senators Pillsbury, Campbell and Wheat.

SECOND DAY.

ST. PAUL, Friday Nov. 11, 1881.

Mr. J. B. Gilfillan, from the judiciary committee, made the following report in the matter of the impeachment of E. St. Julien Cox, Judge of the ninth judicial district, State of Minnesota :

The judiciary committee in pursuance of the resolution of the Senate of November 4th, which reads as follows :

Resolved, That the message from the House of Representatives, in relation to the impeachment of E. St. Julien Cox, Judge of the ninth judicial district be, and the same is referred to the committee on judiciary, and who were thereby appointed to take into consideration the impeachment, at the bar of the Senate, by the House of Representatives, of E. St. Julien Cox, Judge of the ninth judicial district of the State of Minnesota, have considered the subject, and respectfully submit the following report which they recommend to be adopted, and that the Secretary of the Senate be directed to notify the House of Representatives of the same.

Whereas, The House of Representatives on the 4th day of November, 1881, at the bar of the Senate, did impeach E. St. Julien Cox, of the ninth judicial district, of the State of Minnesota, of corrupt conduct in office and of crimes and misdemeanors in office, and informed the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same, and likewise demanded that the Senate take order for the appearance of said E. St. Julien Cox to answer said impeachment, therefore,

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

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

Rules of procedure and practice in the Senate, preliminary to sitting as a court of impeachment.

Rule 1. 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.

Rule 2. 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, to wit :

" All persons are commanded to keep silence on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the State of Minnesota articles of impeachment against ——."

After which the articles shall be exhibited and read, and then the presiding officer of the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Rep-

resentatives, and said articles of impeachment shall be filed with the Secretary of the Senate and by him certified to the high court of impeachment, when organized.

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

THIRD DAY.

ST. PAUL, Thursday, Nov. 17, 1881.

AFTERNOON SESSION.

The following message was received from the House of Representatives:

MR. PRESIDENT:—I am directed by the House of Representatives to notify the honorable Senate that the House of Representatives have adopted particular articles of impeachment against E. St. Julien Cox, Judge of the district court of the State of Minnesota, in and for the ninth judicial district; that the House of Representatives has also appointed as a board of managers to conduct said impeachment before the Senate, the following members of the House, viz.:

Hon. Henry G. Hicks,
Hon. James Smith, Jr.,
Hon. O. B. Gould,
Hon. A. C. Dunn,
Hon. G. W. Putnam,
Hon. W. J. Ives,
Hon. L. W. Collins.

That the articles of impeachment adopted by the House of Representatives have been delivered to the said board of managers, and said board instructed by the House to present the same to the honorable Senate.

J. R. HOWARD,
Chief Clerk House of Representatives.

The following message was received from the House of Representatives:

HOUSE OF REPRESENTATIVES, Nov. 17, 1881.

MR. PRESIDENT:—I am directed to transmit to the Senate the following transcript of the record of the House of November 16th, inst., relative to the matter of the impeachment of the Hon. E. St. Julien Cox, judge of the ninth judicial district of the State of Minnesota.

J. R. HOWARD,
Chief Clerk House of Representatives.

Messrs. Hicks, Jas. Smith, Jr., Dunn, Gould, Putnam, Ives and Collins the board of managers appointed by the House of Representatives to pre-

sent and prosecute articles of impeachment against E. St. Julien Cox, judge of the District Court in and for the ninth judicial district of the State of Minnesota, then appeared at the bar of the Senate, and presented the following communication, which was read by the secretary:

MR. PRESIDENT:—The board of managers appointed by the House of Representatives, to present to the honorable Senate, particular articles of impeachment against E. St. Julien Cox, as Judge of the District Court of the State of Minnesota, and to conduct the trial thereunder, are, by order of the House of Representatives, ready at the bar of the Senate, whenever it may be the pleasure of your honorable body, to present particular articles of impeachment against said E. St. Julien Cox.

Mr. J. B. Gilfillan offered the following resolution :

Resolved, That the Senate will proceed to organize as a High Court of Impeachment, to consider the impeachment of E. St. Julien Cox, judge of the ninth judicial district of Minnesota, on Thursday, the 17th day of November, 1881, at 4 o'clock P. M., at which time the oath or affirmation required by the constitution for the trial of impeachments will be administered by a Justice of the Supreme Court, or in his absence, by the President of the Senate, as the presiding officer thereof, sitting as a court of impeachment, to each member of the Senate sitting as a court of impeachment, so that the Senate, sitting as aforesaid, will, at the time aforesaid, receive the managers of the House of Representatives;

Which was adopted. and,

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

Mr. Gilfillan, J. B., offered the following resolution :

Resolved, That a Committee of three be appointed by the President of the Senate, to invite one of the Justices of the Supreme Court to meet the Senate on November 17th, 1881, at 4 o'clock, P. M., for the purpose of administering the proper oaths for the organization of the Senate as a High Court of Impeachment.

Which was adopted.

And the President appointed Senators Gilfillan, J. B., Beman and Mealey as such committee.

The hour of 4 o'clock having arrived,

On motion of Mr. Gilfillan, J. B., the Senate then resolved itself into a court of impeachment.

And the President directed the Sergeant-at-Arms to make the following proclamation :

Which was done.

"*Hear ye! Hear ye!*

" All persons are commanded to keep silent on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the State of Minnesota, articles of impeachment against E. St. Julien Cox, judge of the 9th judicial district of the State of Minnesota,"

After which the articles of impeachment were exhibited by the managers and read by the Secretary of the Senate, as follows, to wit:

ARTICLES OF IMPEACHMENT.

Articles exhibited by the House of Representatives in the name of themselves, and of all the people of the State of Minnesota, against E. St. Julien Cox, judge of the ninth judicial district, in maintenance and support of their impeachment against him for crimes and misdemeanors in office.

ARTICLE I.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office and of the constitution and laws of the State of Minnesota, at the county of Martin, in said State, to-wit: On the 22d day of January, A. D. 1878, and on divers days between that day and the 5th day of February, A. D. 1878, acting as and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and there pending in the District Court of Martin county, and did then and there preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE II.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Waseca, in said State, to-wit: On the 24th day of March, A. D. 1879, and divers days between that day and the 7th day of April, A. D. 1879, acting as, and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and therein pending in the District Court of said Waseca county, and did then and there preside as such judge at the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him from the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with

decency and decorum, faithfully and impartially and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof, he, the said E. St. Julien Cox, there and then was guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE III.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge and in violation of his oath of office and of the constitution and laws of the State of Minnesota, at the county of Brown, in said State, to-wit: On the 12th day of June, A. D. 1879, and on divers days between that day and the 25th day of said June, acting as and exercising the power of such judge, did enter upon the trial of certain causes and the examination and disposition of other matters and things then and therein pending in the district court of Brown county, and did then and there preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of the said office with decency and decorum, faithfully and impartially and according to his best learning, judgment and discretion to the great disgrace of the administration of public justice and to the evil example of persons in office, by reason whereof the said E. St. Julien Cox was then and there guilty of misbehavior in office and of crimes and misdemeanors in office.

ARTICLE IV.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office and of the constitution and laws of the State of Minnesota, at the county of Nicollet, in said State, to-wit: On the 5th day of August, A. D. 1879, acting as and exercising the powers of such judge, did enter upon the trial of certain causes and the examination and disposition of other matters and things then and therein pending in the district court of said Nicollet county, and did then and there preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office, with decency and decorum, faithfully and impartially and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, then and there was guilty of misbehavior in office and of crimes and misdemeanors in office.

ARTICLE V.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Nicollet, in said State, to-wit: On the 13th day of October, A. D. 1879, acting as and exercising the powers of such judge, did then and there examine and dispose of matters and things then and therein pending before him as such judge, and did consider and act upon matters and things then and therein pending before him as such judge, to-wit: Certifying and approving a certain case in a certain action which had theretofore been tried before him as such judge, in which one Albrecht was plaintiff and one Long was defendant, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE VI.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Nicollet, in said state, to wit: On the 10th day of November, A. D. 1879, acting as and exercising the powers of such judge, did enter upon the trial of certain causes and examination, and disposition of other matters and things then and therein pending in the district court of said Nicollet county, and did then and there preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office and of crimes and misdemeanors in office.

ARTICLE VII.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office and

of the constitution and laws of the State of Minnesota, at the county of Nicollet, in said State, to-wit: On the 10th day of December, A. D. 1879, acting as and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and therein pending in the district court of said Nicollet county, and did then and there preside as such judge, in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE VIII.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of the constitution and laws of the State of Minnesota, at the county of Brown, in said State, to-wit: On the 1st day of May, A. D. 1880, and on divers days between that day and the 20th day of said May, acting as and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and therein pending in the district court of said Brown county, and did then and there preside as such judge, in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding on matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE IX.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Blue Earth, in said State, to-wit: On the 5th day of June, A. D. 1880, and on divers days between that day and the 10th day of said June, acting as and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things, then and there pending in the district court of Blue Earth

county, and did then and there preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julian Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office, with decency and decorum, faithfully and impartially, and according to his best learning, and judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office and of crimes and misdemeanors in office.

ARTICLE X.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his said oath of office, and of the constitution and laws of the State of Minnesota, at the county of Lyon, in said State, to-wit: On the 2nd day of May, A. D. 1881, acting as and exercising the powers of such judge, did enter upon the trial of certain causes and the examination and disposition of other matters and things then and therein pending in the district court of said Lyon county, and did then and there preside as such judge, in the trial, examination, and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him from the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior of office, and of crimes and misdemeanors in office.

ARTICLE XI.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Nicollet, in said State, to wit: On the 5th day of May, A. D. 1881, acting as and exercising the powers of such judge, did enter upon the trial of certain causes and the examination and disposition of other matters and things then and therein pending in the district court of said Nicollet county, and did then and there preside as such judge in the trial, ex-

amination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof, he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XII.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district of the State of Minnesota, unmindful of his duties as such judge, and in violation of his oath of office and of the constitution and laws of the State of Minnesota, at the county of Renville, in said State, to-wit: On the 24th day of May, A. D. 1881, and on divers days between that day and the 31st day of said May, acting as, and exercising the powers of such judge, did enter upon the trial of certain causes and the examination and disposition of other matters and things then and therein pending in the district court of said Renville county, and did then and there preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof, he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XIII.

That E. St. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, having duly appointed a special term of said district court, to be held at New Ulm, in Brown county, on the 12th day of June, A. D. 1881, for the hearing and determining of certain matters and things then pending in said court, to be heard and determined before him, the said Cox, as judge of said court, being wholly unmindful of his duties as such judge, and in violation of his oath of office and of the constitution and laws of the State of Minnesota, did, on or about the 12th day of June, A. D. 1881, at the county of Nicollet, by the immoderate and intemperate use of intoxicating liquors, become intoxicated, and thereby incapacitated and dis-

qualified for holding such term of court, and did, by reason of such intoxication, wholly neglect to hold such term of court, or to provide for its being held by another judge, and did wholly neglect to be and appear at said special term to the great damage of suitors and litigants at said term of court, and to the disgrace of the administration of public justice, by reason whereof the said E. St. Julien Cox was and is guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XIV.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office and the constitution and laws of the State of Minnesota, at the county of Lincoln, in said State, to-wit: On the 14th day of June, A. D. 1881, and on divers days between that day and the 21st day of said June, acting as and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and therein pending in the district court of said Lincoln county, and did then and there preside as such judge in the trial examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XV.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such a judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Lyon, in said State, on the 21st day of June, A. D. 1881, and on divers days between that day and the 30th day of said June, acting as, and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and therein pending in the district court of said Lyon county, and did and then preside as such judge in the trial, examination and disposition thereof while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him from the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office, with decency and decorum, faithfully and

impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XVI.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Nicollet, in said State, to-wit: On the 20th day of August, A. D. 1881, acting as and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and therein pending in the district court of said Nicollet county, and did then and there preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and of the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XVII.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at divers and sundry other times and places in the State of Minnesota, not enumerated in any of the foregoing articles, from the 4th day of January, A. D. 1878, to the 15th day of October, A. D. 1881, acting as, and exercising the powers of such judge, did enter upon the trial of causes and the examination and disposition of other matters and things before him as such judge, for trial, examination and disposition, and did at such times and places preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him from the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially and

according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof, he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XVIII.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, has been in said state from and since the 30th day of March, in the year 1878, and now is guilty of the offence of habitual drunkenness, whereby he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XIX.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and of the dignity of his office, and in violation of the constitution and laws of the State of Minnesota, did, at the county of Ramsey, in said State, to-wit: On the 14th day of October, A. D. 1881, demean himself in a lewd and disgraceful manner, in this, that he did then and there resort to a house of ill-fame, kept for the purposes of prostitution, in company with a prostitute whose name is unknow to the House of Representatives, and did then and there, lewdly and lasciviously cohabit and associate with said woman, whereby he, the said E. St. Julien Cox, was guilty of a misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XX.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, and for the ninth judicial district, unmindful of his duties as such judge, and of the dignity and proprieties of his said office, and in violation of the laws of the State of Minnesota, did at divers times since the 4th day of January, A. D. 1878, at sundry places in the said State, demean himself in a lewd and disgraceful manner in this, that he, the said E. St. Julien Cox, did then and there frequent houses of ill-fame, and consort with harlots, whereby he, the said E. St. Julien Cox, has brought himself and his high office into disrepute, to the manifest injury of the morals of the youth and good citizens of the State of Minnesota, and disgrace of the administration of justice, and is thereby guilty of misbehavior in office; and of misdemeanors in office.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter, any future articles or other accusation or impeachment against the said E. St. Julien Cox, and also of replying to his answers which he shall make under the said articles, or any of them, and of offering proof to all and every of the aforesaid articles, and to all and every other articles, impeachment or accusation which shall be exhibited by them as the case shall require, do demand that the said E. St. Julien Cox 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.

And on motion of Mr. Gilfillan J. B., the Chief Justice of the Supreme Court, the Hon. James Gilfillan then administered the following oath to the President of the Senate :

You do solemnly swear that in the matter of the impeachment of E. St. Julien Cox, judge of the district court of the ninth judicial district, for the State of Minnesota, you will do justice according to law and the evidence, so help you God.

After which the same oath was administered to each of the Senators, except Senators Clement, Lawrence and Peterson, who were absent.

Mr. Gilfillan C. D., offered the following resolution :

Resolved, That John B. Brisbin, Esq., Lorenzo Allis, Esq., Walter H. Sanborn, Esq., and J. W. Arctander, Esq., counsellors at law, be admitted to this court as attorneys on behalf of the respondent.

Which, on motion, was laid on the table.

The following communication was received and read :

St. Paul, Nov. 17th, 1881.

To the Honorable the High Court of Impeachment of the State of Minnesota :

I have the honor to request that John B. Brisbin, Lorenzo Allis, W. H. Sanborn and J. W. Arctander be entered upon the journal of the court as counsel in my behalf, with a respectful request that an additional name may be allowed to be added if so advised.

Very respectfully
Your ob't serv't,
E. St. Julien Cox,
Respondent.

The following communication was received by the Senate :

We have the honor to appear as counsel for E. St. Julien Cox, judge of the ninth judicial district, against whom articles of impeachment have been preferred by the House of Representatives, and we respect-

fully request that our appearance may be entered on the journal of the court.

J. B. BRISBIN,
LORENZO ALLIS,
W. H. SANBORN,
J. W. ARCTANDER.

Senator Castle moved that John B. Brisbin, Lorenzo Allis, W. H. Sanborn and J. W. Arctander be entered upon the journal of the court as counsel for the accused, and that said counsel are invited to seats at the bar of the Senate.

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

Which motion prevailed.

And the President appointed as such committee, Senators Gilfillan J. B., Perkins and Hinds.

Mr. Macdonald offered the following resolution:

Resolved. That the President of the Court appoint five Senators whose duty it shall be to nominate all officers of the High Court of Impeachment, subject to the approval of the Senate.

Which was adopted.

And the President appointed Senators Macdonald, Perkins, Langdon, Simmons and Peterson as such committee.

On motion of Mr. Gilfillan J. B., the senate acting as a court of impeachment, then adjourned until 11 o'clock to-morrow morning.

FOURTH DAY.

ST. PAUL, Friday, Nov. 18th, 1881.

The President announced that the time had arrived for the special order, to wit: The organization of the High Court of Impeachment.

On motion of Mr. Gilfillan C. D., a call of the Senate was ordered, and the roll being called the following Senators answered to their names:

Messrs. Aaker, Adams, Bonniwell, Buck C. F., Buck D., Campbell, Case, Castle, Clement, Crooks, Gilfillan C. D., Gilfillan J. B., Howard, Johnson F. I., Johnson R. B., Johnson A. M., Langdon, Lawrence, Macdonald, McCrea, McLaughlin, Mealey, Miller, Morrison, Officer, Perkins, Peterson, Pillsbury, Powers, Rice, Schaller, Shaleen, Simmons, Tiffany, Wheat, White, Wilkins and Wilson.

On motion of Mr. Buck C. F., Senator Beman was excused from attendance on account of sickness.

Senators Clement, Lawrence and Peterson, who were absent yesterday, then appeared and took the following oath, administered by the President :

You do solemnly swear that in the matter of the impeachment of E. St. Julien Cox, Judge of the District Court for the ninth judicial district for the State of Minnesota, you will do justice according to law and the evidence, so help you God.

Mr. Macdonald from the special committee, appointed to nominate officers for the Senate sitting as a High Court of Impeachment, respectfully submit the following nominations :

Clerk—S. P. Jennison.
Sergeant-at-Arms—W. H. Mellen.
Assistant Sergeant-at-Arms—C. M. Reese.
Reporters—G. N. Hillman and Joseph E. Lyons. Said reporters to receive thirty-five (35) cents per folio for taking full reports of proceedings, testimony and arguments, transcribing the same, reading proof and performing all other work incident to the duties of stenographic reporters in like cases.
Postmaster—A. H. Bertram.
Page—Forest Orton.

Mr. Castle moved the adoption of the report of the committee.

The roll being called on its adoption, there were yeas 39, and nays none, as follows :

Those who voted in the affirmative were—

Messrs. Aaker, Adams, Bonniwell, Buck C. F., Buck D., Campbell, Case, Clement, Crooks, Gilfillan C. D., Gilfillan J. B., Hinds, Howard, Johnson F. I., Johnson R. B., Johnson A. M., Langdon, Lawrence, Macdonald, McCormick, McCrea, McLaughlin, Mealey, Miller, Morrison, Officer, Perkins, Peterson, Pillsbury, Powers, Rice, Schaller, Shaleen, Simmons, Tiffany, Wheat, White, Wilkins and Wilson.

So the report of the committee was adopted.

And—
S. P. Jennison for Clerk.
W. H. Mellen for Sergeant-at-Arms.
C. M. Reese for Assistant Sergeant-at-Arms.
G. N. Hillman and Joseph E. Lyons for reporters.
A. H. Bertram for Postmaster, and
Forest Orton for Page.

Each having received the unanimous vote of the Senate, were declared to have been duly elected the respective officers of the High Court of Impeachment.

Mr. Gilfillan J. B., from the special committee appointed to prepare rules for the government of the High Court of Impeachment, submitted the following report of rules :

RULES OF THE SENATE SITTING AS A HIGH COURT OF IMPEACHMENT.

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

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

State of Minnesota—ss.

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

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

[Here insert the Articles.]

And did 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 State of Minnesota, sitting as a court of impeachment, at their chamber in St. Paul, on the ——— day of ———, then and there to answer to the said articles of impeachment, and then and there to abide by, obey and perform such orders and judgments as the Senate of the State of Minnesota, sitting as aforesaid, shall make in the premises, according to the constitution and laws of the State of Minnesota.

Hereof fail not.

Witness. ——— ———

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

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

Attest:

.....

Secretary.

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

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

State of Minnesota—ss.

The State of Minnesota to ——— ———, greeting.

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

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

Witness:

.....

Lieutenant Governor of the state of Minnesota, and president of the Senate thereof, and of said court of impeachment.

At St. Paul the.....day of.....in the year of our Lord.....

Attest:

.....

Secretary.

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

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

Such subpoena shall be substantially in the following form:

State of Minnesota.—ss.

The State of Minnesota to..... Greeting:

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

Witness:

.....

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

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

Which shall be signed by the Secretary of the court.

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

State of Minnesota.—ss.

To the Sergeant-at-Arms of the court of impeachment or any of his assistants:

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

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

....

Secretary of the said court.

The committee further recommend the adoption of the following resolutions:

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

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

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

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

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

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

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

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

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

10th. The presiding officer shall have power to issue, by himself or by the secretary, all orders, mandates, writs and precepts authorized, by the rules of the Senate, sitting as a court of impeachment, and to make and enforce such other regulations and orders in the premises as the court may authorize and provide.

11th. The Senate, sitting as aforesaid, shall have power to compel 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, or 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 court, may employ such aid and assistance as may be necessary to enforce, execute and carry into effect the lawful orders, mandates, writ and precepts of the Senate.

12th. Counsel for the parties shall be admitted to appear and be heard upon impeachment.

13th. All motions made by the parties or their counsel, shall be addressed to the presiding officer, and if he or any Senator shall require it, they shall be committed to writing, and read at the secretary's desk.

14th. If the court shall at any time fail to sit for the consideration of articles of impeachment, on the day or hour fixed therefor, the court may by an order, to be adopted without debate, fix a day and hour for resuming such consideration.

15th. Upon filing, by the respondent of a plea or answer to any article of impeachment exhibited by the House of Representatives controverting the matters in such articles set forth, or any of the same, the cause shall be deemed at issue as to such articles, without any replecation to such plea or answer by or on the part of the House of Representatives, and without any formal joinder of issue, and upon filing by the respondent of a demurrer, to any such article, issue of law shall be deemed to be fully joined therein without any formal joinder in demurrer, by or on the part of the House of Representatives.

16th. That the court will examine only three witnesses, respectively, on behalf of the prosecution and defence to ascertain any fact.

17th. The committee further recommend that the above rules if adopted, be ordered printed, and a copy furnished to each member of the court, and to each of the managers, and to each of the counsel for the respondent.

Mr. Castle moved that the report of rules be acted on item by item.

Which motion prevailed.

And the Secretary then proceeded to read each rule, and they were each respectively adopted, except the rule limiting the number of witnesses to three.

Mr. Gilfillan C. D., moved to amend the rule as to number of witnesses as follows:

The number of witnesses permitted by the court shall be five on the part of the prosecution, and a like number on the part of the defence to each article of impeachment, unless otherwise ordered by the court.

Pending the motion, Mr. Castle offered the following resolution:

Which was adopted.

Resolved, That should they desire the managers and counsel for the accused may be heard upon the adoption of the rule printing the number of witnesses.

And the question recurring upon the amendment of Mr. Gilfillan C. D.

Mr. Castle moved that the rule in relation to the number of witnesses be laid on the table.

Which motion did not prevail.

And the vote being taken on the amendment, it was adopted.

And on motion, the rule, as amended by Mr. Gilfillan C. D., was adopted.

And the final rule was then adopted.

Mr. Gilfillan C. D., moved the following resolution:

Resolved, That three Senators be appointed as committee on expenses and accounts, and that they be authorized to fix the compensation for all services required, except in case of the reporter, and to make a report thereof to the court for their approval or rejection.

Which was adopted.

Mr. Macdonald offered the following resolution:

Resolved, That this court, when it adjourn, do adjourn until the second Tuesday in January, 1882, at 12 o'clock noon, at this chamber, at which time the court will proceed with the trial of the articles of impeachment.

Mr. Buck moved to amend by substituting the first Tuesday in February.

Mr. Johnson A. M., moved to amend the amendment by substituting first Tuesday of January, 1882, as the time to which the court will adjourn.

The question being taken on the amendment of Mr. Johnson A. M.,

The yeas and nays were demanded and ordered,

And the roll being called, there yeas 11, and nays 19, as follows:

Those who voted in the affirmative were—

Messrs. Case, Castle, Gilfillan C. D., Gilfillan J. B., Johnson A. M., Lawrance, Powers, Rice, Shaleen, Tiffany and Wheat.

Those who voted in the negative were—

Messrs. Buck D., Campbell, Clement, Hinds, Howard, Johnson F. I.,

Johnson R. B., Langdon, Macdonald, McCrea, Mealey, Miller, Officer, Perkins, Peterson, Schaller, White, Wilkins and Wilson.

So the amendment was lost.

And the vote being taken the resolution of Mr. Macdonald, it was adopted.

On motion the vote whereby the resolution of Mr. Macdonald was adopted, fixing the time to which the court of impeachment adjourn, was reconsidered, and the resolution was referred to Senators Hinds and Gilfillan for consideration.

On motion, the court of impeachment adjourned until three o'clock P. M.

AFTERNOON SESSION.

The hour of 3 o'clock having arrived, the Senate resolved itself into a High Court of Impeachment.

The President appointed as the committee to admit all the accounts of the court of impeachment under the resolution of Mr. Gilfillan C. D., Senators Gilfillan C. D., Officer and Campbell.

Mr. Hinds, from the special committee, made the following report:

The committee to whom was referred the resolutions relating to adjournment of the court, report a substitute for the same, and recommend the adoption of the substitute, as follows:

Ordered, That this court, when it adjourn to-day, adjourn to the 13th day of December, 1881, at 10 o'clock A. M., to hear such preliminary examinations or objections to the articles of impeachment as may be interposed by the respondent, and such other matters as may properly come before the court, and that when it then adjourn, and for the purpose of the trial of the impeachment, the court will adjourn until the second Tuesday in January, A. D. 1882, at 10 o'clock in the forenoon.

Which report was adopted.

Mr. Hinds offered the following order:

Ordered that the summons provided for by the rules of the court be issued to the respondent, E. St. Julien Cox, judge of the ninth judicial district of the State of Minnesota, returnable at ten o'clock A. M., on the 13th day of December, 1881.

Which was adopted.

Mr. Gilfillan offered the following order:

Ordered, That counsel for respondent be required to submit to the board of managers, the specification of their objections to the articles of impeachment at the expiration of twenty days from the service of their summons upon the respondent.

Which was adopted.

On motion, the High Court of Impeachment then adjourned.

FIFTH DAY.

ST. PAUL, Dec. 13, 1881.

The Senate was called to order by the President, pursuant to adjournment.

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

Messrs. Bonniwell, Buck C. F., Case, Castle, Clement, Crooks, Gilfillan C. D., Howard, Johnson F. I., Johnson R. B., Johnson A. M., McCormick, Morrison, Officer, Rice, Schaller, Wheat and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, judge of the ninth judicial district, upon articles of impeachment exhibited against him by the House of Representatives.

A quorum not being present, Senator GILFILLAN moved a call of the Senate.

The following Senators answered to their names:

Messrs. Bonniwell, Buck C. F., Case, Castle, Clement, Crooks, Gilfillan C. D., Howard, Johnson F. I., Johnson R. B., Johnson A. M., McCormick, Morrison, Officer, Powers, Rice, Schaller, Wheat and Wilson.

The oath of office was administered to C. M. Reese, assistant sergeant-at-arms, and G. N. Hillman, stenographic reporter, as follows:

"You and each of you do solemnly swear to support the constitution of the United States and the constitution of the State of Minnesota, and faithfully discharge the duties of your several offices to the best of your ability. So help you God."

Senator RICE. There are a number of senators in town who are not present, and I move that the sergeant-at-arms be instructed to notify such senators that the court is about to organize, and to bring in such absentees.

The PRESIDENT. The President would inform the senator that such order has already been given.

Senators Aaker, Campbell, Powers and Shaleen having appeared, further proceedings under the call were dispensed with, and the roll being called, the following senators were present and answered to their names:

Messrs. Aaker, Bonniwell, Buck C. F., Campbell, Case, Castle, Clement, Crooks, Gilfillan C. D., Howard, Johnson F. I., Johnson R. B., Johnson A. M., McCormick, Morrison, Officer, Powers, Rice, Schaller, Shaleen, Wheat and Wilson.

Proclamation was made by the sergeant-at-arms in the following form:

Hear ye! hear ye!

All persons are commanded to keep silent on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the State of Minnesota, articles of impeachment against E. St. Julien Cox, judge of the ninth judicial district of the State of Minnesota.

Senator BUCK. Mr. President: Senator Beman is in very bad health and wished to be excused from sitting as a member of this court for the present.

The PRESIDENT. Unless objection is heard Senator Beman will be so excused.

The Honorable managers on the part of the House, Messrs. Hicks, Gould, Smith, Dunn, Ives and Putnam, appeared and were conducted to seats assigned them.

Senator CROOKS offered the following resolution:

Resolved. That the President of the Senate be and is hereby

requested to appoint a Chaplain of the Senate, to officiate during the term of impeachment now under consideration before the Senate.

Senator RICE gave notice of debate and the resolution went over under the rules of the Senate.

Senator BONNIWELL offered the following resolution:

Resolved, That the Secretary of the Senate be, and he is hereby requested and authorized to purchase or rent for the use of the Senate fifty-five suitable chairs.

The roll being called on its adoption, there were yeas 21, and nays 1, as follows:

Those who voted in the affirmative were:

Messrs. Aaker, Bonniwell, Buck C. F., Campbell, Case, Castle, Clement, Crooks, Gilfillan C. D., Howard, Johnson F. I., Johnson R. B., Johnson A. M., Morrison, Officer, Powers, Rice, Schaller, Schaleen, Wheat and Wilson.

Mr McCormick voted in the negative.

So the resolution was adopted.

On motion of Senator CROOKS, the Senate sitting as a court of impeachment took a recess until 2 o'clock P. M.

AFTERNOON SESSION.

The PRESIDENT. In order to ascertain the number of Senators present, the Clerk will again call the roll.

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

Messrs. Aaker, Buck, D., Campbell, Case, Castle, Clement, Crooks, Gilfillan C. D., Hinds, Howard, Johnson F. I., Johnson R. B., Johnson A. M., Lawrance, Mealey, Miller, Morrison, Officer, Peterson, Powers, Schaller, Schaleen, Tiffany, Wheat and Wilson.

Mr. manager SMITH. Mr. President, I suppose in order that the record may be correct, the return of process, &c., should be read and noted. I don't know exactly what the practice is.

The PRESIDENT. The following statement is presented by the clerk relative to the qualification of the Clerk and the Sergeant-at-arms, and it will be made a part of the record.

The official oaths of the undersigned, as secretary and of W. H. Mellen as sergeant-at-arms of the Senate, sitting as a court of impeachment, were taken and subscribed before Hon. J. Gilfillan, chief justice, on the 19th day of November, 1881, and said oaths in writing were on that day filed in the office of the Secretary of State.

S. P. JENNISON,
Secretary of Senate.

The PRESIDENT. The return of service of the articles of impeachment by the sergeant-at-arms; also the admission of service by the respondent, will be read by the clerk and placed on file.

The CLERK: The writ of summons was issued on the 19th of November, 1881, in the form prescribed in the rules of the court, witnessed by C. A. Gillman as lieutenant-governor of the State of Minnesota, president of the Senate thereof, and of the court of impeachment and attested by the Secretary of the Senate. The precept, endorsed upon the summons was in the form prescribed by the rules adopted by the court.

The writ precept and return of the sergeant-at-arms is as follows:

[WRIT OF SUMMONS.]

STATE OF MINNESOTA—ss.

The Senate of Minnesota to E. St. Julien Cox, judge of the district court of the State of Minnesota, in and for the ninth judicial district: GREETING.

Whereas, The House of Representatives of the State of Minnesota did on the 18th day of November A. D., 1881, exhibit to the Senate, articles of impeachment against you, the said E. St. Julien Cox, judge as aforesaid, in words following:

ARTICLES OF IMPEACHMENT.

Articles exhibited by the House of Representatives in the name of themselves, and of all the people of the State of Minnesota, against E. St. Julien Cox, judge of the ninth judical district, in maintenance and support of their impeachment against him for crimes and misdemeanors in office.

ARTICLE I.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office and of the constitution and laws of the State of Minnesota, at the county of Martin, in said State, to-wit: On the 22d day of January, A. D. 1878, and on divers days between that day and the 5th day of February, A. D. 1878, acting as and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and there pending in the District Court of Martin county, and did then and there preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof, he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE II.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Waseca, in said State, to-wit: On the 24th day of March, A. D. 1879, and divers days between that day and the 7th day or April, A. D. 1879, acting as, and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other mat-

ters and things then and therein pending in the District Court of said Waseca county, and did there and then preside as such judge at the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him from the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof, he, the said E. St. Julien Cox, there and then was guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE III.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge and in violation of his oath of office and of the constitution and laws of the State of Minnesota, at the county of Brown, in said State, to-wit: On the 12th day of June A. D. 1879, and on divers days between that day and the 25th day of said June, acting as and exercising the power of such judge, did enter upon the trial of certain causes and the examination and disposition of other matters and things then and therein pending in the district court of Brown county, and did then and there preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially and according to his best learning, judgment and discretion to the great disgrace of the administration of public justice and to the evil example of persons in office, by reason whereof the said E. St. Julien Cox was then and there guilty of misbehavior in office and of crimes and misdemeanors in office.

ARTICLE IV.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office and of the constitution and laws of the State of Minnesota, at the county of Nicollet, in said State, to-wit: On the 5th day of August, A. D. 1879 acting as and exercising the powers of such judge, did enter upon the trial of certain causes and the examination and disposition of other matters and things then and therein pending in the district court of said Nicollet county, and did then and there preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent

and unable to discharge the duties of his said office, with decency and decorum, faithfully and impartially and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, then and there was guilty of misbehavior in office and of crimes and misdemeanors in office.

ARTICLE V.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Nicollet, in said State, to-wit: On the 13th day of October, A. D. 1879, acting as and exercising the powers of such judge, did then and there examine and disprove of matters and things then and therein pending before him as such judge, and did consider and act upon matters and things then and therein pending before him as such judge, to-wit: Certifying and approving a certain case in a certain action which had theretofore been tried before him as such judge, in which one Albrecht was plaintiff and one Long was defendant, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE VI.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the state of Minnesota, at the county of Nicollet, in said state, to wit: On the 10th day of November, A. D. 1879, acting as and exercising the powers of such judge, did enter upon the trial of certain causes and examination, and disposition of other matters and things then and therein pending in the district court of said Nicollet county, and did then and there preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office and of crimes and misdemeanors in office.

ARTICLE VII.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office and of the constitution and laws of the State of Minnesota, at the county of Nicollet, in said State, to-wit: On the 10th day of December, A. D. 1879, acting as and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and therein pending in the district court of said Nicollet county, and did then and there preside as such judge, in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE VIII.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of the constitution and laws of the State of Minnesota, at the county of Brown, in said State, to-wit: On the 1st day of May, A. D. 1880, and on divers days between that day and the 20th day of said May, acting as and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and therein pending in the district court of said Brown county, and did then and there preside as such judge, in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding on matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE IX.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Blue

Earth, in said State, to-wit: On the 5th day of June, A. D. 1880, and on divers days between that day and the 10th day of said June, acting as and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things, then and there pending in the district court of said Blue Earth county, and did then and there preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office, with decency and decorum, faithfully and impartially, and according to his best learning, and judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office and of crimes and misdemeanors in office.

ARTICLE X.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his said oath of office, and of the constitution and laws of the State of Minnesota, at the county of Lyon, in said State, to-wit: On the 2nd day of May, A. D. 1881, acting as and exercising the powers of such judge, did enter upon the trial of certain causes and the examination and disposition of other matters and things then and therein pending in the district court of said Lyon county, and did then and there preside as such judge, in the trial, examination, and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him from the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XI.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, undmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Nicollet, in said State, to wit: On the 5th day of May, A. D. 1881, acting as and exercising the powers of such judge, did enter upon the trial of certain causes and the examination and disposition of other matters and things then and therein pending in the district court of said Nicollet county, and did then and there preside as such judge in the trial, ex-

amination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof, he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XII.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district of the State of Minnesota, unmindful of his duties as such judge, and in violation of his oath of office and of the constitution and laws of the State of Minnesota, at the county of Renville, in said State, to-wit: On the 24th day of May, A. D. 1881, and on divers days between that day and the 31st day of said May, acting as, and exercising the powers of such judge, did enter upon the trial of certain causes and the examination and disposition of other matters and things then and therein pending in the district court of said Renville county, and did then and there preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof, he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XIII.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, having duly appointed a special term of said district court, to be held at New Ulm, in Brown county, on the 12th day of June, A. D. 1881, for the hearing and determining of certain matters and things then pending in said court, to be heard and determined before him, the said Cox, as judge of said court, being wholly unmindful of his duties as such judge, and in violation of his oath of office and of the constitution and laws of the State of Minnesota, did, on or about the 12th day of June, A. D. 1881, at the county of Nicollet, by the immoderate and intemperate use of intoxicating liquors, become intoxicated, and thereby incapacitated and disqualified for holding such term of court, and did, by reason of such intoxication, wholly neglect to hold said term of court, or to provide for its being held by another judge, and did wholly neglect to be and appear

at said special term to the great damage of suitors and litigants at said term of court, and to the disgrace of the administration of public justice, by reason whereof the said E. St. Julien Cox was and is guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XIV.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office and the constitution and laws of the State of Minnesota, at the county of Lincoln, in said State, to-wit: On the 14th day of June, A. D. 1881, and on divers days between that day and the 21st day of said June, acting as and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and therein pending in the district court of said Lincoln county, and did then and there preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XV.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Lyon, in said State, on the 21st day of June, A. D. 1881, and on divers days between that day and the 30th day of said June, acting as, and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and therein pending in the district court of said Lyon county, and did and then preside as such judge in the trial, examination and disposition thereof while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him from the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office, with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XVI.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Nicolet, in said State, to-wit: On the 20th day of August, A. D. 1881, acting as and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and therein pending in the district court of said Nicollet county, and did then and there preside as such judge, in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and of the evil example of persons in office, by reason whereof, he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XVII.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at divers and sundry other times and places in the State of Minnesota, not enumerated in any of the foregoing articles, from the 4th day of January A. D. 1878, to the 15th day of October, A. D. 1881, acting as, and exercising the powers of such judge, did enter upon the trial of causes and the examination and disposition of other matters and things before him as such judge, for trial, examination and disposition, and did at such times and places preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him from the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof, he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XVIII.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, has been in said State

from and since the 30th day of March, in the year 1878, and now is guilty of the offence of habitual drunkenness, whereby he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XIX.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and of the dignity of his office, and in violation of the constitution and laws of the State of Minnesota, did, at the county of Ramsey, in said State, to-wit: On the 14th day of October, A. D. 1881, demean himself in a lewd an disgraceful manner, in this, that he did then and there resort to a house of ill-fame, kept for the purposes of prostitution, in company with a prostitute whose name is unknown to the House of Representatives, and did then and there, lewdly and lasciviously cohabit and asssociate with said woman, whereby he, the said E. St. Julien Cox, was guilty of a misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XX.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, and for the ninth judicial district, unmindful of his duties as such judge, and of the dignity and proprieties of his said office, and in violation of the laws of the State of Minnesota, did at divers times, since the 4th day of January, A. D. 1878, at sundry places in the said State, demean himself in a lewd and disgraceful manner in this, that he, the said E. St. Julien Cox, did then and there frequent houses of ill-fame, and consort with harlots, whereby he, the said E. St. Julien Cox, has brought himself and his high office into disrepute, to the manifest injury of the morals of the youth and good citizens of the State of Minnesota, and disgrace of the administration of justice, and is thereby guilty of misbehavior in office, and of misdemeanors in office.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter, any future articles or other accusation or impeachment against the said E. St. Julien Cox, and also of replying to his answers which he shall make under the said articles, or any of them, and of offering proof to all and every of the aforesaid articles, and to all and every other articles, impeachment or accusation which shall be exhibited by them as the case shall require, do demand that the said E. St. Julien Cox 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.

And did demand that you, the said E. St. Julien Cox, judge as aforesaid should be put to answer the accusation as set forth in said articles and that such proceeding, examinations, trials and judgments might be thereupon had as are agreeable to law and justice:

You, the said E. St. Julien Cox, judge as aforesaid are therefore hereby summoned to be and appear before the Senate of the State of Minnesota, sitting as a court of impeachment at their chamber in St. Paul on

the 13th day of December, A. D. 1881, at 10 o'clock in the forenoon, then and there to answer to the said articles of impeachment, and then and there to abide by, obey and perform such orders and judgments as the Senate of the State of Minnesota, sitting as aforesaid, shall make in the premises according to the constitution and laws of the State of Minnesota. Hereof fail not.

Witness, C. A. GILMAN,

Lieutenant Governor of the State of Minnesota and President of the Senate thereof, and of the court of impeachment at St. Paul this 19th day of November, A. D. 1881.

Attest: S. P. JENNISON,

Secretary of the Senate and of the court of impeachment.

State of Minnesota,—ss:

The State of Minnesota to W. H. Mellen, Sergeant-at-arms of the Senate and of the court of impeachment—greeting:

You are hereby commanded to deliver and leave with E. St. Julien Cox, judge of the district court of the ninth judicial district of the State of Minnesota, if to be found, a true and attested copy of the within writ of summons, together with a copy of this precept, showing him both, or in case he cannot with convenience be found, you are to leave true and attested copies of the said summons and precept at his usual place of residence, and whichsoever may you perform the service let it be done at least twenty 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, endorsed on or before the appearance day mentioned in said writ of summons.

Witness. C. A. GILMAN.

Lieutenant Governor of the State of Minnesota, and President of the Senate thereof and of said court of impeachment at St. Paul, this 19th day of November, A. D. 1881.

Attest:

S. P. JENNISON,
Secretary of the Senate and Court.

State of Minnesota.—ss.

I, W. H. Mellen, Sergeant-at-Arms of the Senate of the State of Minnesota, sitting as a court of impeachment for the trial of E. St. Julien Cox, judge of the ninth judicial district, upon the impeachment of the House of Representatives of said State, do hereby certify and return, that at St. Peter in the county of Nicollet, in this State, at 8 o'clock in the forenoon on the 22d day of November A. D. 1881, I served the within writ of summons upon the said E. St. Julien Cox personally, by then and there delivering to and leaving with him, the said E. St. Julien Cox, a duly authenticated copy of the said summons and articles of impeachment, and of the precept thereupon endorsed.

Witness my hand, on this 22nd day of November A. D. 1881.

W. H. MELLEN,

Sergeant-at-Arms of the Senate of the State of Minnesota, sitting as a court of impeachment.

Subscribed and sworn to before me this 13th day of December A. D. 1881.

C. A. GILMAN,

Lieut. Gov. and President of the High Court of Impeachment.

The CLERK. The admission of service was as follows:

State of Minnesota, }
County of Nicollet. }

I, E. St. Julien Cox, the respondent in the within and annexed summons, articles and precepts, do hereby acknowledge and accept personal service of the same by copy duly served at St. Peter, in said State, this 22nd day of November, A. D. 1881.

(Signed.) E. ST. JULIEN COX,
Judge of 9th Dist. of Minnesota.

The CLERK. Mr. President:—At the time the articles of impeachment were presented to the Senate of the State of Minnesota, they were read before the organization, the same articles appeared in the proceedings of the House, and under the law, or rule, which says no communication of length shall be entered upon the journal, they were omitted from the senate journal at that time. Unless otherwise directed, the writ of summons which includes the articles will go in the official journal of this date, and there the articles will be found, together with the precept, endorsed, the officer's return of service, and the admission of the respondent of personal service, completing the record in that way.

Mr. Manager HICKS. In the reading of the return of the officer, I did not notice that he certifies to the fact of the service of the articles upon the respondent, I understood that it simply referred to the summons. I desire to know if that is correct.

The CLERK:—The writ of summons includes as a part of itself, the articles. They are recited at length in that part of the writ.

Mr. Manager HICKS:—Mr. President:—I desire to state that if the officer is able to make his returns that he served the articles, it should be so amended as to show that fact, for the reason that the constitution requires a copy of the articles of impeachment to be served upon the respondent. It is not a matter which the respondent can waive. It is a constitutional provision applicable to this court, that it shall not proceed until a copy of the articles has been served, at least twenty days.

Mr. Manager SMITH. What he wants to do is to amend the return.

The PRESIDENT. If it is the pleasure of the court the return will be so amended, so as to mention the fact of the service of the articles of impeachment in connection with the summons.

Mr. ALLIS. The officer has to amend.

Mr. Manager HICKS. If he is not able to amend it, then we want to know that fact. If it please the court it is a jurisdictional question.

The PRESIDENT. The chair will hear any argument that may be desired to be presented upon that point.

Mr. Manager SMITH. If the Sergeant-at-Arms asks to amend his return that will be sufficient.

Senator CROOKS. We can't hear here.

Mr. Manager SMITH. What I was saying was merely this: that the Sergeant-at-Arms can amend his return if he desires and that will correct the record and make it proper.

Mr. Manager COLLINS. I would suggest that the Sergeant-at-Arms can make a wholly new return; that there is no question of amendment about it. Let him make a new return showing that the articles of impeachment were duly served.

The CLERK. Mr. President, the Sergeant-at-Arms brought this draft of the return which is in pencil and offered it to me in the first place. It is offered now to the managers and the court. It was in his opinion

sufficient. If it is not sufficient, he wants to make it in legal form. It might be said that it is not yet made. It is in pencil; it is a draft or form, which when agreed upon by those who are counsel for the State, will be endorsed as required upon the original paper, a copy of which he has served.

Mr. Manager SMITH. The form is correct as I take it, except that the words should be inserted that the articles were also served with the summons.

The CLERK. He has now inserted these words, so that it makes it read "I served the within writ of summons upon the said E. St. Julien Cox, personally, by then and there delivering to and leaving with him, the said E. St. Julien Cox, a duly authenticated copy of the said summons and articles of impeachment."

Mr. Manager SMITH. And also "the articles of impeachment"?

The CLERK. "And of the precept thereupon endorsed."

Mr. Manager HICKS. That return will be satisfactory to the Board of Managers. We now ask that in accordance with the precedents in cases of this kind, the Sergeant-at-Arms make oath in the presence of the court to the return he has made.

The PRESIDENT. Will the Sergeant-at-Arms please step forward.

The Sergeant-at-Arms then came forward to the Clerk's desk and took and subscribed the proper oath.

The return of the officer, as amended, is as follows:

"State of Minnesota.—ss.

I, W. H. Mellen, Sergeant-at-Arms of the Senate of the State of Minnesota, sitting as a court of impeachment for the trial of E. St. Julien Cox, judge of the ninth judicial district, upon the impeachment of the House of Representatives of said State, do hereby certify and return that at St. Peter in the county of Nicollet, in this State, at 8 o'clock in the forenoon, on the 22nd day of November, A. D. 1881, I served the within writ of summons upon the said E. St. Julien Cox, personally, by then and there delivering to and leaving with him, the said E. St. Julien Cox, a duly authenticated copy of the said summons and articles of impeachment and of the precept thereupon endorsed.

Witness my hand, on this 22nd day of November, A. D. 1881.

(Signed.) W. H. MELLEN,

Seargant-at-Arms of the Senate of the State of Minnesota, sitting as a Court of Impeachment.

Subscribed and sworn to before me this 13th day of December, A. D. 1881.

C. A. GILMAN,

Lieut. Gov. and Prest. of the High Court of Impeachment.

THE PRESIDENT. What is the further pleasure of the counsel?

Mr. Manager HICKS. Mr. President, we suggest it would be proper at this time for the respondent to answer or to make such objections to the articles as he shall be advised is right in the premises.

Mr. ALLIS. Mr. President and Senators, the respondent interposes the following demurrer. The demurrer was handed up to the Clerk.

Mr. ALLIS. We ask that it be read.

THE PRESIDENT. The Clerk will read the demurrer.

THE CLERK. (Reading.)

STATE OF MINNESOTA,—In the matter of the impeachment of E. St. Julien Cox, Judge of the Ninth Judicial District.

And now comes E. St. Julien Cox, the respondent herein, and reserving the right of further answering thereto, should he be so advised, demurs to the said articles of impeachment, and each and every of them, on the following grounds, to-wit:

First. That the facts stated in said articles do not constitute corrupt conduct in office, nor any crime, or crimes or misdemeanors in office.

Second. That the said articles, and each and every of them, do not charge this respondent with corrupt conduct in office, nor with any crime or crimes or misdemeanor or misdemeanors in office.

Third. That in and by said articles and each, and every of them, this respondent is not charged with any offence or matter for which he can be held to answer by and before this court.

And furthermore this respondent demurs to the 17th, 18th and 20th of said articles, and each of them, on the further and particular ground that the facts and charges therein set forth are not stated with sufficient distinctness, definiteness and certainty, to enable or require this respondent to answer the same.

Wherefore this respondent prays judgment and that he may be dismissed and discharged from said premises in said articles specified.

JOHN B. BRISBIN,
LORENZO ALLIS,
WALTER H. SANBORN,
JOHN W. ARCTANDER,
Attorneys for Respondent.

Endorsed.

Due personal service of the within demurrer acknowledged the 8th day of December, 1881.

HENRY G. HICKS,
Chairman Board of Managers, on the part of the H. R.

Filed in Senate, Dec. 13, 1881.

S. P. JENNISON.

The PRESIDENT. Do the counsel for the respondent desire to sustain the demurrer by oral argument?

Mr. ALLIS. Yes, sir.

Mr. ALLIS, of counsel for the respondent, then proceeded to address the court as follows:

MR. PRESIDENT AND SENATORS: I desire to say that I am under the necessity, in consequence of the absence of one of the counsel, of asking a little indulgence from this body. The argument upon this demurrer was assigned to Mr. Sanborn and myself, and Mr. Sanborn has made some preparation in the matter, and desires, of course, to be heard. He will have to be present during the argument. I expect that he will make the closing argument on this demurrer.

Unfortunately, before these impeachment articles were adopted, or this order was made for meeting to-day, Mr. Sanborn had made a prior engagement which was unknown to the counsel here, as he was not present,—an engagement that cannot be changed. He had already arranged to try an important patent case before Judge McCrary, who has come here to hear it, and in which counsel from abroad are engaged. The case was commenced yesterday, and he cannot, at best, conclude it before to-morrow evening.

It is necessary for the interest of the respondent in this case, as these

questions here require quite an extensive examination and discussion, that he should be present; and I regret very much to ask any indulgence on the part of the Senators, as I know they have come from a distance, but I do not see how it can be avoided in justice to the respondent.

I would also state that the time for preparation has been exceedingly short. We were unable to obtain any copies of these articles until a week ago last Saturday morning; in fact they were not printed complete until the evening before, so that we have only had the articles of impeachment in such shape that they could be used,—in fact have not had them at all,—until ten days ago to-day, and to-day is also the first day which, under the rules and the order of this body, we could interpose our plea. The twenty days expired yesterday, hence this honorable body will see that the asking of a little indulgence on our part is not particularly "straining a point." Notwithstanding this, we would go on with the argument if we possibly could, for, if Mr. Sanborn could possibly disengage himself from his patent case in the United States court, he would have done so. But you understand the nature of those cases,—his case was set down for trial some months ago, or several weeks ago,—long before these impeachment articles were exhibited,—and Judge McCrary, one of the judges of the United States Circuit Court, has come here to hold court, and counsel from abroad have also come here to try that case; and the trial was entered upon yesterday and will be concluded as soon as possible,—I hope to-morrow night.

I would ask, therefore, that an adjournment be had until Thursday or Friday morning, according to the pleasure of the Senate. I hope we shall be able to go on Thursday morning. That is a little soon—he might be delayed, still I think we could probably go on if it made any difference to this tribunal whether it was Thursday or Friday, that is, day after to-morrow.

One of my associates suggests to me that there is barely a quorum present in this body. (To the Clerk). How many are there?

The CLERK. Twenty-three.

Mr. ALLIS. Twenty-three; perhaps there would be more present by that time. It is very desirable that we should have the ear of every Senator that is expecting to vote upon this question upon this discussion. We regard it as very important. The counsel for the respondent in this case sincerely regard their position as one that cannot be shaken; and therefore we are anxious, not only that the counsel shall be present, to have a full discussion, but, so far as possible, that all the Senators that participate in this trial shall also be here.

It is also suggested to me to call the attention of this tribunal to the fact that it is very important to have the Senators all here to pass upon this question, because the vote upon this question may substantially determine the question. At all events, supposing that the vote upon this demurrer should not be sufficient, technically, to sustain the demurrer, yet if it were so large as to show that there could be no conviction, it might be somewhat embarrassing for the consideration of the Senators. It is very important, it seems to me, that we should have a full Senate upon this question,—as full as we should if we were about going to judgment, and as full as we should if we were about hearing the case after all the evidence is in. In fact, it is the same thing. This demurrer simply admits the allegations to be true as stated, for the purpose of this demurrer, and then we say that there is no offense committed, that there can be no conviction and that we are entitled to judgment. Now,

to pass upon that question requires exactly the same forms and the same number of Senators as it would to pass upon it after hearing the evidence. I think we will lose nothing by such an adjournment in the end. We will then have a full body here, and I respectfully ask, therefore, that an adjournment be had until Thursday or Friday morning,—but not earlier than Thursday,—at the pleasure of the Senate. We should prefer, of course, Friday morning, because it would be a little more certain that Mr. Sanborn would be through, at the same time, if the members of this body feel that that is too long an adjournment, we will make every effort to go on Thursday morning.

The PRESIDENT. Do the honorable managers wish to be heard upon the question of adjournment?

Mr. Manager DUNN. On behalf of the board of managers I have to say that while personally and individually we would be very much pleased to coincide with the counsel for the respondent so far as the courtesies of the occasion might require, yet deeming that we are here in the performance of a public duty, on behalf of the people of the State, and a portion of that duty is to avoid all unnecessary delays, whereby needless expense may be entailed upon the people. We have counseled together and deem it our duty to suggest at least our objections to this continuance or adjournment.

The counsel for the respondent puts the question to the Senate somewhat in this form, rather overlooking the mere matter of courtesy, on account of the absence of one of the counsel. He suggests that they are somewhat taken by surprise in that they have not had a copy of these articles of impeachment with which to deal and to frame their demurrer until within the past very few days.

Now Mr. President, and Gentlemen of the Senate, it will not be controverted that at the last meeting of this court as a court of impeachment, it was resolved that this adjournment should be had until this date for the purpose of enabling respondent, if he should be so advised, to interpose such legal objections as he might be advised to make to these articles of impeachment and that they might be heard at this time, prior to the assembling of the court for the hearing of the facts of the case, if the facts should ever necessarily be inquired into after having heard the argument upon the demurrer. Acting upon that presumption the board of managers have prepared themselves, anticipating perhaps the line of argument that would be used, and have come into court prepared to argue the demurrer which has been interposed here, in accordance with a rule of the Senate, we have been placed in possession of a copy of the demurrer, within the twenty days required, and we have prepared ourselves for the purpose of meeting it.

Therefore I say, Mr. President, That while we would be perfectly willing as a board of managers and as simply attorneys to manage a case for a client to concede to the counsel in the absence of Mr. Sanborn, their associate, an adjournment of this kind, yet we cannot consent to it occupying the position we do here before the people, and as the attorneys for the people in this matter.

The counsel states, as matter of argument, and as a reason why they are not prepared to argue this at this time, that Mr. Sanborn, their associate counsel, had, prior to this impeachment, prior to the filing of these articles of impeachment, made this previous engagement before Judge McCrary, which was to come on Tuesday. It strikes me that if that was the fact, some one of the other of the associate counsel ought to have

prepared himself to have met this argument; that that ought not really to be a make-weight upon the matter of a continuance, because one of the counsel has virtually placed himself outside of the possibility of making the argument by having made an engagement before he was retained to defend in this matter,—that therefore they are not prepared to argue the demurrer. We are willing and anxious on the part of the State to go on with that argument to-day; and I would suggest that inasmuch as my friend Mr. Allis, counsel for the respondent, states that Mr. Sanborn is to make the closing argument on this demurrer, perhaps the Senate can hear the argument that may be made to-day by Mr. Allis himself, as I understand he is one of the counsel who is prepared upon this point, and that Mr. Sanborn's argument may not be reached until to-morrow.

MR. ALLIS. Mr. Sanborn wont be here to-morrow. He has got to be present during the argument, and he cannot then be present and take part in it.

Mr. Manager DUNN. The objection here is that if we wait for Mr. Sanborn this Senate will not get at any business, so far as the hearing of this demurrer is concerned until probably Saturday, or perhaps not until next week, if we take an adjournment until Friday or until such day as he may be able to be here.

While, as I said before, we would like to concede this matter to the counsel for the respondent, yet we cannot do it, acting as we do for the people of the State.

Mr. BRISBIN. Mr. President, and Senators, by reference to the Journal of November 18th, I find Mr. Gilfillan offered the following order, which was adopted: "Ordered, that counsel for respondent be required to submit to the board of managers the specification of their objections to the articles of impeachment at the expiration of twenty days from the service of their summons upon their respondent."

I refer to this for the purpose of showing to this court the fact that we have not been making haste slowly but have been making haste rapidly, in order to arrive at the commencement of what we hope will be a speedy determination of these important questions involved here.

Our plea is only filed to-day; the twenty days expired yesterday. As a matter of courtesy, in consonance with the disposition which we have entertained from the start, and in correspondence with the wishes of the respondent here, we have handed to the honorable managers a copy of our plea,—the plea which has been filed to-day,—and have advised them of our points, thus enabling them to prepare themselves to meet the position we have taken. This was not only contrary to what were the necessities of the case, but I apprehend the courtesies of the occasion would not have demanded this of us. I refer to this, therefore, for the purpose of showing that we want to facilitate and not to retard the consideration of these important questions; and the spirit which has prompted us in making this concession, I apprehend will be discovered by this court throughout the entire conduct of the respondent in this investigation.

But again, it seems to me, may it please the President and Senators that there is an insuperable legal objection to going on to-day by reason of the fact that we have not a full attendance of the members of this Senate. By the roll call of the clerk it appears that there are only twenty-three or twenty-four senators present. As a matter of law, in order to constitute a court, there must be two-thirds of this Senate present.

It would hardly be consistent, it seems to me, for this case to proceed before the present body of men. Suppose that the respondent has no defense on the merits. The demurrer here, as my associate has suggested, admits the truth of the facts *pro hac vice*, but questions their sufficiency in the law, therefore, this court deciding that the demurrer was not well taken,—we having no defense on the facts,—could this court as constituted to-day declare a judgment against us? No. Because the constitution prohibits that and says that the judgment must be rendered by two-thirds of the members of the Senate.

Senator D. BUCK. Will the gentleman allow me to read him that provision of the constitution? I think the gentleman is mistaken.

Mr. BRISBIN. Well, two-thirds of the members present?

Senator D. BUCK. Yes, sir.

Mr. BRISBIN. I will read the provision as handed to me by Mr Manager Hicks: Article 4, Sec. 14. "The House of Representatives shall have the sole power of impeachment, through a concurrence of a majority of all the members elected to seats therein. All impeachments shall be tried by the Senate; and when sitting for that purpose, the Senators shall be upon oath or affirmation to do justice according to law and evidence. *No person shall be convicted without the concurrence of two-thirds of the members present.*"

I stand corrected and humiliate myself before the court, but it is obvious, it is obvious to the court, from the verbiage of section 14, which has just been handed to me, that it was the intention of the framers of that instrument that a man should not be deprived of what is more sacred to him than life—his right to hold office under our system of government—except by a concurrence of two-thirds of the members. I speak of course, not with reference to the literal text of the section referred to but I refer to the spirit of provisions of this character which the wisdom of the framers of the constitutions of the several States and of the constitution of the United States has made to prevail. The very reason of these provisions is the vast importance of the questions involved.

Now, speaking outside of the suggestions already made, it is anticipated, I apprehend, that there will be a comparatively full Senate, on account of the interest that all good citizens as well as all conscientious Senators feel to participate in the trial and determination of questions of as much importance as these. For that reason it would hardly seem consistent with the morals of the occasion—I speak of legal morals—to have this discussion commenced in the presence of this paucity of members, when it is expected that there will be a full or nearly a full Senate.

I repeat the suggestion which I made at the outset, we have manifested a disposition to progress as fast as the needs and the necessities of the conditions which have been imposed upon us would permit. We are not asking for delay, and we pledge ourselves as counselors that no unnecessary delay will be made by us, but every facility offered, as far as concerns us, to progress to the end with all possible dispatch.

Mr. ALLIS. Mr. President and Senators: I desire just to make a single suggestion in connection with this matter, and it is this: This demurrer presents an issue of law upon which we wish to be heard. It is due to the respondent of course that he should be heard, and all he wants is a hearing. His counsel are not prepared to present these questions to this body this afternoon. I am not even ready myself: I have not brought

my authorities, not supposing there would be any pressure of this matter at this time. I should have to go to my office and collect my authorities and have my books produced here, even if I were to go on with the argument myself, and should not substantially be ready until to-morrow morning. Now, it is important that Mr. Sanborn should be here as he has made preparation in connection with myself to sustain this demurrer. We had to divide the work in this case as well as we could, and the arrangement had to be made in accordance, and as far as practicable, of course, with the professional engagements of the parties, we could make no other convenient division of the labor except that Mr. Sanborn and myself should undertake to sustain this demurrer. That is a part of his duty. He will make one of the arguments; and in order that just as little inconvenience as possible should occur, I suggested that he make the closing argument, I making the opening, so that if he should not be able to be present at the very moment when we should meet on Thursday morning, he would get around after a short time probably and be able to hear the argument of the learned managers and would then be ready to make the closing argument. But of course he will have to be present. He ought to be present during the whole argument. He desires and expects to be psesent; and I think we can go on with the argument Thursday morning, and I hardly think this honorable tribunal will feel like forcing the respondent to a hearing before he is ready, especially as there has been no unnecessary or unreasonable or unexampled delay—up to the present moment there has not been an hour's delay. It is only within the last half hour that you have had jurisdiction of the respondent in this case. We were under no obligation under these rules. It appears to me to serve a copy of our demurrer upon the managers, but according to a verbal understanding that it should be presented to them five days before this day, we were careful to send them such a copy. We did not expect we were waiving any of our rights by so doing at all, but we were endeavoring to treat them with the utmost courtesy and to show to this tribunal that we did not propose to avail ourselves of any technicalities or to embarrass them in any way. Now what we desire, and what I am very sure the Senators will give us, is an adjournment at least until day after to-morrow morning at 10 o'clock, in order that two of the counsel who desire to be heard upon this demurrer, may be here. I think it would be a very unusual and remarkable thing if so reasonable a continuance under those circumstances should not be granted by this court, and I am not without some surprise that there should be any opposition to it on the part of the board of managers, I did not come here this afternoon anticipating any, if I had, I might have brought my authorities and books to be ready to go on with the argument, but I did not really anticipate that there would be any expectation of going on with the argument this afternoon, especially after an application had been made such as we have made, for a short continuance in order to enable counsel to be present.

Again, I remind the President and Senators that up to this moment we have not asked for ten minutes' delay, now we ask until day after to-morrow morning before we are heard.

Mr. Manager DUNN, Mr. President: On behalf of the board of managers I simply wish to say, that we do not interpose any captious objections at all to this continuance. It is not for that purpose that we protest and object, but we object as a matter of duty on behalf the people of the State. I do not propose at this time to enter into any argument

as to the whys and wherefores of this continuance. It is a matter for the Senators to weigh the reasons for and the reasons against. The board of managers simply content themselves with making their objection, leaving the matter to the Senate to determine.

Senator CROOKS. Unless the board of mangers object, I would make a motion, to the effect that this court do now adjourn to Thursday morning at ten o'clock.

Senator CASTLE. Won't the Senator from Ramsey make the motion that when the Senate do adjourn it adjourn to ten o'clock, Thursday morning.

Senator CROOKS. I accept the amendment of the Senator from Washington.

Senator D. BUCK. I would like to say a few words upon that motion before we adjourn here to-day. Some of the Senators desired to put this matter of hearing at a different date, from to-day. They had business in court; they were not accommodated, they had to adjourn the business which they had in court,—put it over. And now counsel come in here and ask that 41 Senators shall concede to the wish of one of the attorneys here to enable him to go on and try a patent-right case. I think it is asking too much of this Senate to adjourn for that purpose They have had 20 days in which to prepare this case, and it was the duty of that attorney to attend to this case and make proper preparations and to come in here and try it, or else employ other attorneys. They have got three very able attorneys here to-day, and they have not been preoccupied, it seems, so but what they can come here; and I for one object to postponing this case until day after to-morrow. It is a matter that they ought to be prepared for.

The counsel says that this is the first time that we have had jurisdiction over this respondent. I do not so understand it. I understand that when we served the articles of impeachment upon him we had jurisdiction. It is not necessary for them to come into this court in order for us to have jurisdiction of this case. We can proceed and try in an impeachment case whether the respondent is present or not. That is the rule laid down by the authorities that treat upon these questions. He may even resign; then we still have jurisdiction, so far as to go on and try the case and say whether or not he should not be disqualified from holding office further. It is asking too much to put this case off under these circumstances. I am, for one, opposed to this adjournment.

Senator CROOKS. Mr. President, I think a further reason why this adjourment should be had is this: on a call of the Senate this morning there was but one member of the Senate,—Senator Beman,—for whom an excuse was asked for non-attendance; and it is reasonable to suppose that the other Senators may and will be here attending to their duties by Thursday morning. They can all be reached by the Senate if necessary, and should be reached, and called here. We have power to bring them here and that power should be exercised, both in justice to the State, the people of the State, and to the respondent. And I trust that an adjournment will take place. I think it is best that the argument should be heard before as full a Senate as possible. It may be the short way out of a long trial. I trust that the Senators will agree upon this motion for an adjournment for this reason. One Senator has been excused to-day and other Senators ought to be here, and undoubtedly will be here.

Senator D. BUCK. I was not aware before that one member of a court had a right to go out and bring in another member of the court. The

majority of the Senate has, when acting as a Senate, but I never knew before of a part of the judges sending out and compelling the balance of the court to come in. It may be law but I was not aware of it.

Senator WILSON. I would offer an amendment to the amendment of the gentleman from Washington,—that we adjourn until to-morrow morning at 10 o'clock, and that in the meantime Mr. Allis be requested to gather up his books and documents and give his argument to the court to-morrow.

Senator D. BUCK. I second that motion.

Senator A. M. JOHNSON. I would ask the counsel whether that would accommodate them,—whether it would really meet the ends of justice.

Mr. ALLIS. It would not, because Mr. Sanborn could not be here. Anybody can see that it is as necessary for the associate counsel to be here as it is for the counsel who is speaking.

The PRESIDENT. Senator Wilson moves to amend the amendment of the motion to adjourn so that when the Senate do adjourn it adjourn until to-morrow morning at 10 o'clock. Are the Senate ready for the question?

Senator CROOKS. I call for the yeas and nays.

The Senate called for the yeas and nays.

The Clerk called the roll, and there were yeas 10, and nays 16, as follows:

Yeas—Buck, Campbell, Case, Johnson F. I., Johnson R. B., Lawrance, McCormick, Tiffany, Wheat and Wilson.

Nays—Aaker, Castle, Clement, Crooks, Gilfillan C. D., Hinds, Howard, Johnson A. M., Mealey, Miller, Morrison, Officer, Peterson, Powers, Schaller and Schaleen.

So the motion to amend was lost.

The PRESIDENT. The Clerk will call the roll upon the motion of Senator Crooks.

The Clerk called the roll, whereupon there were yeas 16, and nays 9.

Those who voted in the affirmative were—

Messrs. Aaker, Castle, Clement, Crooks, Gilfillan C. D., Hinds, Howard, Johnson A. M., Mealey, Miller, Morrison, Officer, Peterson, Powers, Shaller and Shalleen.

Those who voted in the negative were—

Messrs. Buck D., Campbell, Case, Johnson F. I., Johnson R. B., McCormick, Tiffany, Wheat and Wilson.

So the motion prevailed.

Senator CASTLE offered the following resolution which was adopted:

Resolved, That the members of this court, constituting the judiciary committee of the Senate, be and are hereby instructed to prepare and report such additional and further rules and regulations as may be necessary for the government of the court in this trial.

Senator CASTLE. I would say, Mr. President, that the rules already adopted by this court, were evidently framed simply with reference to the preliminary proceedings in the case. The actual trial of the case, the examination of witnesses, the order of debate, and the rules and regulations generally appertaining to such a trial are not provided for by the general Senate rules and are not reached by the rules already adopted. I therefore move the adoption of the resolution.

The resolution was adopted.

Mr. C. D. GILFILLAN offered the following resolution—

Resolved, That there be printed 100 copies of the daily proceedings of

the court, and that 400 volumes of the proceedings in the impeachment and trial thereof of Judge Cox, and that there be bound of such proceedings one copy for the use of each member and officer of the Senate, and 100 copies for the use of the law library.

Senator GILFILLAN. Mr. President, I offer this resolution now because it is necessary for the public printer to know how many copies of the daily record or journals he shall issue. It strikes me that 100 copies would be sufficient for the purposes of the trial. The second section of that resolution contemplates the publication in permanent and volume form of the report of the trial. I understand that it is necessary to have the number definitely fixed now because, from day to day, as they print the journal, they also print the extra number of copies to form the permanent record; and that if it is done now it saves the State the expense of double compensation. I have copied the number to be printed from the report of Judge Page's case, that being the number we fixed upon in that case, and it appears to me to be a reasonable number. I move the adoption of the resolution.

Senator CAMPBELL. Mr. President, I have an amendment to the resolution, it is to include the board of managers and counsel for respondent in the number for whom copies shall be bound.

Senator GILFILLAN. I have no objection to the amendment.

The resolution was then adopted as amended.

Senator CROOKS. If there is no farther business, I move that the court do now adjourn.

The motion prevailed.

SIXTH DAY.

ST. PAUL, Minnesota, Dec. 15th, 1881.

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

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

Messrs. Aaker, Adams, Bonniwell, Buck C. F., Case, Castle, Crooks, Gilfillan C. D., Howard, Johnson A. M., Johnson R. B., Macdonald, McLaughlin, Miller, Morrison, Officer, Perkins, Peterson, Powers, Rice, Shalleen, Tiffany, Wheat, White and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, judge of the ninth judicial district, upon articles of impeachment exhibited against him by the House of Representatives.

The oath was then administered by the President to J. E. Lyons, one of the official stenographers of the Senate, sitting as a court of impeachment, as follows:

You do solemnly swear that you will support the constitution of the United States and of the State of Minnesota, and faithfully perform the duties of your office to the best of your judgment and ability, so help you God.

The PRESIDENT. During the sitting of the Senate as a court of impeachment, the Sergeant-at-arms will preserve the best possible order,

and see that there is no communication in the lobby, and as little moving about as possible.

Are there any motions or resolutions to be offered in regard to the proceedings or any other business to be transacted preliminary to the listening to argument of the counsel?

Senator GILFILLAN C. D., from the committee on expense and accounts, submits the following, which will be read by the Clerk.

The Clerk then read the resolution, which was as follows:

The committee on expense and accounts to whom was referr ed the matter of the compensation for all services required by the court, except that of the stenographic reporters, do respectfully report, that they have considered the subject, and recommend the adoption of the following :

The compensation of witnesses on the part of the prosecution and defense shall be two dollars per day; the time to commence when they are sworn and cease when they leave the witness stand, and that they be allowed one day's time in addition thereto while coming to the trial, and a like time in returning therefrom, and six cents per mile for the necessary distance traveled in going to and returning from the place of trial.

The compensation of the Sergeant and Assistant Sergeant-at-Arms shall be five dollars per day and the necessary traveling expenses, exclusive of his boarding account.

The compensation of the Clerk shall be ten dollars per day.

The compensation of the Postmaster shall be five dollars per day.

The compensation of the person who shall keep clean the court room shall be two dollars per day.

The PRESIDENT. There being no objection the report of the committee will be considered as adopted.

Are there any further motions, resolutions or reports?

Senator GILFILLAN, C. D., offers the following resolution which will be read.

The Clerk then read the resolution, which was as follows :

Resolved, That the time allowed to the counsel on the part of the accused in the argument in the support of the demurrer shall be six hours, and a like period of time on the part of the prosecution in the argument in opposition to the demurrer.

The PRESIDENT. The question is upon the adoption of the resolution.

Senator CROOKS. I would like to have the resolution read again.

The PRESIDENT. The resolution will be again read for the information of the Senate and the counsel.

The resolution was then re-read.

The PRESIDENT. Pending the question of the adoption of this resolution, are there any remarks either by Senators or by counsel.

Senator CASTLE. I hardly think it is desirable to have an arbitrary rule of this kind. I know myself how embarrassing it is, particularly when associated with other gentlemen who are also to speak upon the same subject, to be hampered in the way of the limitation of time. I presume that the time given will be ample, still it may not be. This may be a question of some importance, and may go to the scope or effect of this whole question of impeachment. I hardly think it desirable to say to these gentlemen you shall have just so long and no longer to present your views. It seems to me it is hardly fair. I had almost said hardly courteous. I move that the resolution lie upon the table,—No! I won't do that, because that will cut off debate, but I certainly hope the resolution will not be adopted.

Senator GILFILLAN C. D. Mr. President:—It is very common in courts for the judges to give notice to the counsel upon each side as to the time that will be permitted to them to argue the questions involved in the case. Whenever it is desirable, or supposed to be desirable, to regulate that matter, justice would seem to require that it should be done in the first instance, so that all parties may govern themselves accordingly. Now, it occurred to me, in reading over the demurrer to the articles that six hours time ought to be ample for each of these parties to maintain their points.

It is desirable, I suppose upon the part of every Senator here, that these proceedings should be as speedy as possible, consistent with a proper respect for justice. There is not a Senator upon this floor, I apprehend, but that whose time is valuable, and who makes a great personal sacrifice in attending this court. I presume every Senator is willing to do it; but I think that no Senator will want to stay here one moment longer than the justice of this case requires; and in that view, for the purpose of enabling these parties to regulate their line of argument to the time specified, I have introduced this resolution. I have known cases,—one case particularly occurred in the State of Wisconsin where they spoke three days on a side. Now, it may have been a great thing, and did make the reputation of the attorneys, but it was an expensive proceeding on the part of the State, and I don't believe, and it was generally conceded there, that it did not advance the cause of justice one particle. It does seem to me that six hours of solid argument upon each side of the case will bring to light all that there is in it, and I prefer 12 hours rather than a week or two weeks for the disposal of these preliminary questions.

Senator WILSON. Mr. President, perhaps it would be well, before we are called upon to vote upon this question to know what the attorneys for the respondent and the managers themselves think of this. So far as I am concerned I should guess two hours apiece on each side ought to be enough; but if they feel that they *know*, after having been over the ground, that that is not enough, I for one, should feel like deferring to their judgment in the matter, because really my judgment is not worth much in a case of this kind. I feel as if, as a matter of economy, we ought to get through this part of our business as soon as possible, and get at something else. While I do not want to say to the men on each side of this question, you must say all you can say in so long, and all that you can not say inside of that period must be ruled out and left unsaid. It is a matter in which I would like to have the judgment of the managers and the attorneys for the respondent before I vote upon the question.

The PRESIDENT. Counsel have the opportunity to express themselves upon this question if they so desire.

Mr. ALLIS. Mr. President, six hours would be sufficient for the respondent's counsel to present his points upon this case.

Mr. Manager HICKS. I am instructed by the board of managers, to say that they are satisfied with the time limited in the resolution.

Mr. BRISBIN. Mr. President, I was inattentive to the reading of the resolution. This applies especially to the argument of the demurrer, does it not?

The PRESIDENT. Yes sir.

The resolution was then adopted.

The PRESIDENT. Are there any further motions, resolutions or re-

marks to be made prior to the commencement of the argument of the counsel?

The following communication is received from ex-Gov. C. K. Davis, which will be read by the Clerk.

The communication was then read by the Clerk, as follows:

I hereby appear as one of counsel for respondent in the matter of the impeachment of E. St. Julien Cox, judge of ninth judicial district, for alleged crimes and misdemeanors, and ask that my appearance as such counsel may be noted in the records of the High Court of Impeachment.

Respectfully,

C. K. DAVIS.

The PRESIDENT. The appearance of Hon. C. K. Davis will be properly noted by the Clerk.

Mr. ALLIS. Mr. President: I will now endeavor, with as much brevity and succinctness as the nature of the case will permit, to present to this court the reasons that have induced the counsel for the respondent in this case to interpose a demurrer to these articles of impeachment. You understand, of course, the nature of this demurrer. The first three grounds stated in the demurrer are merely different forms of statement of what is intended to be, and what is, the same ground, to avoid any technical objections to the mode in which it is stated. It amounts to this—that admitting all the allegations that are stated in the articles of impeachment to be true, there has been by this respondent no offence committed of which this court can take cognizance. The second objection of the demurrer is taken especially to the 17th, 18th and 20th articles upon what I think will strike you as a very obvious ground, that they do not state any offence with sufficiency; that is, they do not state it in such a manner that, in the nature of things, the person accused thereof is enabled, or required to answer it.

I shall not spend much time in discussing, when I get to it, this portion of the demurrer, because the objection is obvious, is well recognized in every court of justice, and, I apprehend that your common sense, as well as your knowledge of the principles of law involved, will be sufficient to guide you to a correct determination of the question that is presented. I think there will be no question, and I hardly think the learned managers will differ with us in regard to these three articles, that no person accused of an offence whether by indictment, by information, or by impeachment, can be, should be, or ever was, where the common law prevailed, called upon to answer charges, so vague, so general, so indefinite as are these.

But I will recur now to the main question, namely, admitting every allegation contained in these articles of impeachment to be precisely true, has there been any offense committed of which this court has cognizance?

Not, Mr. President, whether there has been any breach of good morals or good taste or whether there has been any offence against the rules of religion, or the regulations of good society,—whether there has been any misconduct or shameful conduct—that question, really, so far as the jurisdiction of this tribunal is concerned, is of very small consequence, comparatively speaking. The question is whether there has been stated here an offence which under the constitution and laws of this State, this court can properly be convened to try.

Now let me say right here, in justice to the respondent, who occupies a very high position in this community before the people, who is learned in the law, a man of culture and education, and standing—let me say

right here that this demurrer has been interposed not at his instance but upon the judgment of his counsel.

Now, as you might well expect, feeling as he evidently does, whether justly or unjustly, I do not know, except as I am assured by him, perfectly confident of disproving every material allegation of fact in these articles, he is eager, as he assures me, to join issue on these allegations and to meet evidence with evidence, not only for the purpose of disproving these allegations, but for the purpose of vindicating himself in public opinion. Now that is laudible in him; it is proper in him; that is the way he feels. Whether you have jurisdiction of this offense or not, he feels, of course, that those allegations standing there, not disproved, have a tendency to degrade him in public estimation, and he is anxious to clear himself from these charges and from any suspicion of them. And so far as his personal standing in the community is concerned, his personal feelings, his whole personel as involved in this case, are concerned, it would probably be better that this should be done; but it seemed to the counsel for the respondent in this case that there was a question involved here which was of greater importance to the public weal, than even the personal convenience and reputation of the respondent.

Perhaps it may have occurred to you that this demurrer has been interposed after the fashion prevalent in criminal courts. I assure you that no such views actuated the counsel in this case. We were aware of the character of the tribunal before whom our client is arraigned; we were aware of the character of the tribunal which had been convened to try these charges. And we had no idea of exhibiting here any technicalities or practices employed in criminal courts. We have interposed this demurrer because we were convinced that whatever be the nature of the offences charged in these articles, however shameful, if true, however disgraceful they may be, as affecting a judge of high position in the community, nevertheless, there is not one charge made here which it was ever the intention of the framers of our constitution should be submitted to this tribunal. Now if this be so, I thought, we all thought in justice to you here, that you should not be compelled to wade through the evidence in this case, spend days here in hearing and reviewing testimony and then at the end of the time to find out that you had been considering matters relating to issues of which you have no cognizance.

But it was not alone because it seemed to us that this court ought not to be thus employed, if we were confident, as we were, that our position was right; it was not alone in justice to you and to save your time and to free you from unnecessary labor, that we did this; but we also had in view the public weal, the public welfare, the integrity and independence of the judiciary. These things must not be forgotten, and in reality they are of vastly more importance than any personal question which is involved in this case can possibly be. You are aware that there has been for the last quarter or half a century a growing disposition to wield this weapon of impeachment and for what? For promoting the public weal? For the purpose of punishing those offenses, for the punishment of which this remedy was designed, and for which it has always professedly been used? Not at all. It has, as you know, been made, by the accusing power in our country, both under the federal and state governments, the weapon of political venom with which unscrupulous politicians have endeavored to wreak vengence upon or work the destruction of their political enemies.

Now, thanks to these courts themselves, that is to the Senates, there has as yet been no flagrant instances of conviction. Fortunately these courts themselves have administered the law with substantial correctness and with substantial justice; but there is constantly, as you must be aware, in this country, a growing tendency on the part of the Houses of Representatives of the different states, and of the federal government, whenever they encounter an officer who stands in the way of their cherished political schemes, if they can find any excuse in the bitterness of their passion to make an accusation which will cause his impeachment, to do so.

By the merest accident to-day, we are prevented and saved from looking back with shame and humiliation to the impeachment of the President of the United States which was endeavored to be procured some years ago. Whatever may have been the feelings at that time, there certainly would be no difference of opinion to-day had that impeachment been successful as to the disreputable character of the proceedings. By the firmness of a few members of that Senate, who comprehended the importance of the questions which were before them, we were saved from an application of the power of impeachment which was illegal, unconstitutional, and which, if successful, would have been disgraceful and most shameful. We are now in the very beginning of our political career as a state. It seemed to us that it was important, in the consideration of questions of this kind, affecting your jurisdiction, that you should give the matter at the very threshold proper consideration and serious thought, that you might set here a proper precedent, for the guidance of future senates and future legislatures. Because, just as often as the House of Representatives find the wielding of this power of impeachment successful, just so often will they exercise it, until, sooner or later, of course, they will reach a point at which it will be necessary for this court to arrest them.

This has been the history of impeachment since the 14th century. The House of Commons always did the same thing,—always using the power of impeachment to dethrone and destroy the political enemies of its leaders; and it is only owing to the firmness of the House of Lords and to the fact that they have always had twelve judges there to whom every legal question of difficulty was submitted, and who decided it according to law, and by whom the Lords were governed, that the House of Lords present so very few instances where the designs of the leaders of the House of Commons in their impeachments, were successful.

Now it is just as important that this body, at the beginning almost of our political career, should lay down and establish proper rules with reference to the matter of its jurisdiction, as it has ever been in the Senate of the United States or in the House of Lords in England.

Let me call your attention to a fact of which perhaps very few persons here may be aware, and of which I was not aware myself until quite recently and until I came to investigate this matter, that at the beginning of this century in Ohio and in Rhode Island judges of the highest character and position were actually impeached because they declared certain laws unconstitutional and void I call your attention to this fact to show how important it is to be deliberate upon this subject and to establih proper precedents. Of course these judges were acquitted, but the House of Representatives accused them. In the State of Rhode Island, in 1786, the legislature passed a most extraordinary law, as it would seem to you now, and the judges of the Supreme Court declared

it void because it violated the charter of that Colony, and afterwards, upon the convening of the legislature, they were impeached.

In Ohio they impeached two judges because they held a law to be unconstitutional. And, in order that you can see the point of my remarks and the manner in which these questions arise,—the prejudices, the passions and the feelings that goad people on in such cases, I will state briefly the circumstances under which the law was passed in the state of Rhode Island, and you will see how important it is that the correct rule should always be administered in these cases to the end that when there is a blind and vicious public movement, it may be arrested by the proper tribunal. It was right after the war of the revolution, when money was very scarce; the state of Rhode Island organized a paper money bank, the bills of which, payable in some fourteen years, and declared it to be legal tender, were to be loaned to the property holders according to the amount of their taxable property. As you may suppose when they attempted to use this money, it at once depreciated and would not circulate, except at a great discount. They convened the legislature again and declared it to be a penal offense for any body to refuse this paper money, the first offense being punishable by a fine of £100, and the second by a greatly increased penalty. It so happened that somebody who wanted to buy some meat of a butcher offered him this money in payment, and he refused to take it, for which refusal the butcher was indicted. The case went before the Supreme Court and, as you may well suppose,—as nobody would doubt in our day,—the law was declared void as being in violation of the charter of rights of Rhode Island.

The same thing, as I have said, happened in Ohio, after the organization of the present general government and after the admission of Ohio into the Union. It is now a daily occurrence for the Supreme Court that sits in this building, and for the Supreme Court of the United States, and for every Court in the land, to declare laws passed by the legislature, and by congress, to be unconstitutional. I call your attention to this to show the importance of being cautious and deliberate, and especially so, where the independence and integrity of the judiciary are concerned. If these legislatures had been permitted to maintain such a principle as that the courts could not correct their legislation, or declare it to be in violation of the constitution, the organic law, there would be no use or effect in having an organic law; there would be no protection for a citizen under the bill of rights. You see the importance, then, especially where the independence of the judiciary is concerned, of exercising the powers of this court with the utmost circumspection and caution. Indeed, you are well aware that there has been great repugnance everywhere the common law has prevailed, in this country and in England, to allowing even the *indictment* of a judge for any offense; because the power was liable to be used under circumstances which might affect his independence and his integrity as a judge.

Much more might be said in this behalf; but I make these preliminary remarks in order to direct your attention to the fact that underneath the question which is presented for your consideration to-day, and which is raised by this demurrer, are questions of vastly greater significance and moment than any personal considerations that are involved affecting the respondent in this case. It is of the gravest importance that you should be sure that you have jurisdiction of the case presented in these articles of impeachment, if you are to exercise such jurisdiction. And it is of equal importance if you have not jurisdiction, if the consti-

tution does not confer upon you cognizance of these matters, that you should cautiously refuse to take cognizance thereof in order that the proper precedent may be established in the premises at this early day in this commonwealth. You understand that justice does not fail, because you may be unable to take cognizance of an offense. The jurisdiction of this tribunal, as a court of impeachment, is exceptional, both in respect of the persons over whom it has jurisdiction, and in respect of the offenses of which it has cognizance. There is no difficulty of course, about the punishment of offenders, whoever they may be, by and before the ordinary courts of law. There is nothing then for this court to be anxious about, in case you shall find that your jurisdiction does not extend to cases of this kind. The offender in all cases can be taken care of. The question for you to determine is whether this is one of the cases, admitting the facts to be as alleged, of which the constitution intended that you should take cognizance. The correct determination of that question is of infinitely more importance to the people of this commonwealth, and to you and to us all, than is the decision of any question involved in this matter so far as it concerns the respondent alone. And it is for that reason that we were desirous, and thought it to be our duty to bring this question before you, and to urge upon you, its most careful consideration *in limine litis*; because we were confident, ourselves, that there is no case here over which this court has any jurisdiction, or of the issues of which it may properly take cognizance.

Mr. President, what is your jurisdiction? Let us, if possible, endeavor to get at the very bottom of this matter in a dispassionate and judicial manner. You are doubtless familiar with it, but it is well enough to bring to your mind the exact language of the constitution, under which all the power you have in this case is derived. In the first place, I call your attention to the fact that you have jurisdiction only of a very few persons; and, in the next place, of only a very limited number of offenses.

"The Governor, Secretary of State, Treasurer, Auditor and Attorney General,"—five executive officers—"and the Judges of the Supreme court and of the District courts," are the only persons in this State that can be tried by this tribunal. You are aware, that is a jurisdiction very different from what the House of Lords in England exercised in cases of impeachment. They can try any subject, whether an officer or private citizen; and in case of conviction administer full punishment. I want to call your attention to this particularly, because, in considering the authorities and the arguments in this case, you must not lose sight of the fact that while the nature of the jurisdiction of impeachment and the mode of trial, and the character of the offenses that can be tried, are the same here as they are under the common law of England, before the House of Lords, yet, jurisdiction, as to the punishment, and as to the persons, has been very much curtailed in this country, and especially under the constitution of this State. Here there are only five executive officers, and the judges of the supreme court and the district courts that can be impeached.

And here permit me to call your attention briefly to one argument often used in cases of this kind. It is said: "you confess, for the purposes of your demurrer, that the respondent has committed the acts alleged in these articles: What will you do to one who violates all sense of propriety and decorum in this way? What are you going to do with him?"

Well, there are various ways of disposing of offenders without straining the constitutional powers of any judicial, civil or political body or person. There are. in the first place, various remedies to be prosecuted in the various courts of law; then, again, there is the remedy of public opinion; and there is the remedy of the ballot box. It is obvious that there are a great many offenses of a public nature which a judge in this State or any other State, may commit, which disturb you when you hear of them, which offend you, when you behold them, and for which you may think he ought to be deprived of his office; but nevertheless they are not the kind of offenses of which it was intended that this court should have cognizance.

I have called your attention to the fact that the only judges over which this court has any jurisdiction are the judges of the Supreme and district courts. The constitution authorizes the creation of inferior courts, and the legislature, in pursuance of that provision of the constitution, has created inferior courts, which are now in existence. There is the municipal court of this city, which is one of considerable jurisdiction. They have a municipal court in Minneapolis. And there used to be a court of common pleas both here and in Minneapolis. These common pleas courts had the same jurisdiction as the district courts. The judges of those courts could not be tried before this tribunal; although it is just as important that they should be punished for their offenses, as far as the public interest and the public weal are concerned, as the judges of the district courts. It is sufficient that the framers of the constitution thought that the power to try and punish these judges ought not to be conferred on this tribunal; not that they should go unpunished, but that the power of punishing them should not be given to this court. The organic law makers were jealous of extending the power of impeachment, and very properly so. In the light that the history of the courts of impeachment in this country and Europe, throws upon the subject it was very natural and reasonable that the framers of our constitution should look with jealousy upon the extension of the power of impeachment, and seek to keep it within proper limits. The consequence was that they restricted the right of impeachment to a very few officers, while as to those, they have conferred, as I think I shall show you, the power of impeachment for exactly the same offenses as those which, today, are impeachable before the House of Lords.

What are the offenses which can be tried before this court? They are, "Corrupt conduct in office," and "crimes and misdemeanors." These are exactly the same that the common law of England has established as the offenses for which persons may be impeached before the House of Lords. What are crimes and misdemeanors? They are indictable offenses! It is well settled, as I think you will see, that no crime is impeachable, unless it be also indictable. I think that this proposition, (and it is a very important one for your consideration) can be established beyond peradventure. No crime, no offense is impeachable unless it be indictable. And here allow me to call your attention to the fact, that the constitution of the United States, and the constitutions of the several states, as well as of our own, confirm this view by the very language used. Now mark, that in England, you could not only impeach, as you can here, for offenses that were indictable, but you could impeach *anybody*, and you could punish them completely. When the framers of the federal constitution came to introduce the power of impeachment into the constitution of the United States, they limited the

right of impeachment to public officers; and they limited the punishment to removal from office, and disqualification for holding office. And all the states have followed their example. Now you see what their view was. It was to give to the impeaching power, the high court of impeachment, the right to try officers for the official phase of their offenses; to try their offenses so far (and no farther) as they were committed *under color of office*, and to limit the punishment to removal from office, and, if necessary, to disqualification for holding office in the future. The punishment was intended to be, and was, *official*, to meet their official crimes. At the same time, notwithstanding that convictions for crimes committed under color of office might be had through the exercise of this power of impeachment, they reserved to the ordinary tribunals, the trial and punishment of the *man* in his individual capacity and as a citizen. Mark now the language:

"The Governor, Secretary of State, Treasurer, Auditor, Attorney General, and the judges of the Supreme Court and the district courts, may be impeached for corrupt conduct in office, or for crimes and misdemeanors; but judgment in such cases shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit in this State."

Now, mark what follows:

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

Substantially the same language is used in that behalf in the constitution of the United States, and, I believe in the constitution of every State of this Union.

There is some difference in regard to offenses for which the officers may be tried, but they all limit the punishment as it is limited here, and reserve the right to punish the same offender before the ordinary tribunals by indictment.

What do we gather from this? We gather, in the first place, that in transferring the impeaching power from England into this country, the founders of our institutions thought it was not well that this power should not extend to other persons than officers (in this State it is confined to a very few officers,) and that it should not extend beyond punishing the *official* aspect of their offenses, leaving the personal aspect, their responsibility as citizens, to be answered for before the ordinary tribunals. But mark this: It says, punishment by "indictment;" as though the framers of the constitution had no doubt that anybody who could be impeached as an officer, could also be indicted as a citizen; that the two modes of trial and impeachment went together; that there was no such thing, and would be, during all time to come, no such thing as impeaching an officer for an offense which he did not commit under color of office, and for which, as a citizen, he would not also be subject to indictment.

Mr. President, this is an exceedingly important point, and I assure you that the weight of authority is overwhelmingly in favor of the proposition, that no offense is impeachable which is not indictable, and that is the meaning of the words, "crimes and misdemeanors." They mean indictable offenses.

I am aware that occasionally, in the heat of passion and in the partizanship of writers, there have appeared a few persons who have con-

tended otherwise, and who have pointed to the list of impeachments in England from the 14th century down to the last impeachment, which was about seventy-five years ago, (I think about 1805,) as furnishing instances where persons were impeached for offenses other than indictable crimes.

But I assure you that if you examine these cases critically, you will find they do not sustain that view. Professor Dwight (who reviewed these cases, and whose article upon the subject of impeachment, I shall furnish to you,) Judge Story, Judge Rawle and Daniel Webster, have very clearly announced the doctrine to be overwhelmingly the other way. And you will find another thing, that if you look through the whole list of impeachments before the House of Lords (I have them here in volume 5, of Comyn's Digest, to which I refer you, at pages 304—306,) and note the causes for which they were had, in every instance, when any question has ever been raised as to the causes being indictable offenses, it is a case of alleged political misconduct where some officer of high standing has, or has been claimed to have exercised the functions of his office, *corruptly*. For instance, take the case which looks to us, nowadays, very ridiculous, where a Prime Minister was impeached for giving medicine to the King! You can at once see the theory of that impeachment, viz: That it was dangerous, and treasonable, to allow the Ministers of the government and political managers of the country, standing so near the person of the King, to give medicine to him. I do not know whether this was an indictable offense at the common law or not. But there are many similar cases where the offenses charged were undoubtedly also indictable at common law. And in every instance you will see that, whether or not, the offense charged was indictable, it was at all events a case, of corrupt conduct in office. So in regard to the Admiral of the fleet who was once impeached for not properly protecting the costs. That was corrupt conduct in office. It may also be indictable. Professor Dwight says all these offenses were indictable. You must remember, in considering those cases, that there are many instances where the House of Commons, during political excitement in England, preferred charges which the House of Lords refused to entertain, and which the Lords refused to consider on the express ground that the charges presented no crime known to the law—no indictable offense.

As a matter of course, the Houses of Representatives in this country, and the House of Commons in England, may and probably will, as the accusing power, frequently charge persons with offenses which are not indictable and hence not impeachable. We insist that the House of Representatives has done so in the instance before you. We insist that the House of Representatives have presented articles of impeachment against the respondent in this case, before this body, for offenses which are not impeachable and of which you have therefore no cognizance. That is the question which we are now trying to present for your consideration, and upon which we wish and hope to invoke your favorable judgment.

I may state, here, so that you can fully understand and see the drift of my present remarks, that I propose, when I get to it, to show conclusively that none of the offenses charged in these articles, are indictable under the statutes of this State or at common law. I think I shall be quite successful in doing so. I desire, therefore, before I get to that, that you should go to the bottom of the question now under considera-

tion, and satisfy yourselves, beyond any doubt, what the law is upon the question that I am now discussing. I desire that we shall get upon a rocky foundation here; one that we shall see is irrefragable. I shall, although it is always tedious to the listener, as well as tiresome to the speaker, to read you a few paragraphs from Judge Story's commentaries; because it is very important, since you may not have a great deal of time to investigate this matter personally, that you shall perceive that I am not misstating, in the least, the doctrine upon this subject.

The proposition which I am endeavoring to maintain, and which I desire to have you fully apprehend is this: that every offense which is impeachable, every offense for which any one can be impeached before this tribunal, is also indictable; and that if it be not indictable it is not impeachable. But, more than this: you should understand right here, (because the arguments upon these questions will necessarily be somewhat blended together) that only those indictable offenses which are committed *under color of office*, that is, in the administration of office, are impeachable. First, no crime or offense is impeachable, unless it be indictable. Second, no indictable crime is impeachable, in this country, unless it is committed in the administration of office,—"under color of office," as the authorities phrase it.

To illustrate: Suppose the respondent in this case should obstruct the highway in front of his residence, or elsewhere, in the town in which he lives. He has committed an offense at common law, for which he can be indicted. Would it not be quite ridiculous to impeach him and to remove him from the office of judge, because he had committed a nuisance in the highway. I desire that you should get this distinction into your minds. It is entirely familiar to the members of this honorable body who are lawyers. and, perhaps to many others, that obstructing the highway, and numerous other offenses of that kind, are indictable at common law. But how ridiculous it would be to impeach a judge for an offense of that sort, which could not possibly have any bearing upon his official conduct. I mention this, an extreme instance, perhaps, for illustration; but in theory it is no different from any other individual offense, as adultery, burglary and other offenses which are indictable, but which are not impeachable, for the simple reason that they have no official phase or bearing, and for the further simple reason that they are necessarily committed by the offenders as individuals and not as officers. None of those offenses, however disgraceful, which are altogether committed by the offenders in their individual capacity and relations, can be regarded as committed in the administration of office; and the ordinary tribunals are ample for the vindication of right, and the punishment of wrong, in all such cases. We do not need a court of impeachment to try a judge, or any other officer, for obstructing a street, for burglary, for murder, for theft or any other like offense. We need a court of impeachment to try and punish judges, and the other enumerated officers, for indictable offenses, when they commit those indictable offenses in the administration of their offices. That is what we need, and all that we need; and I assure you that, in my judgment, it is exceedingly important that you should take care to restrict the exercise of your powers clearly within the limits imposed by the constitution.

Let us see now what Judge Story says upon the subject:

Mr. Manager HICKS. Do you read from Story on the constitution?

Mr. ALLIS. I do, sir.

"The fourth section of the second article is 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."

Mr. Manager HICKS: Pardon me, Mr. Allis, but will you give me the page from which you are reading?

Mr. ALLIS: I read from page 547, section 789 and following.

Before I read this, in order that we may better understand it, permit me to call your attention, for a moment, to the circumstances attending the adoption of this article, very briefly: In the first place, in 1777, before the establishment of the present Union, the state of New York adopted a constitution which was drawn by Mr. Jay, one of the most eminent jurists of his day, and, as you are aware, the first chief justice of the United States. In drawing that constitution, Mr. Jay, in his article on impeachment, used the words "venal and corrupt conduct" in office as a cause for which impeachment could be made; and he established, for the first time, if I remember correctly, the precedent of confining it to the official aspect of the crime, and of reserving to the ordinary tribunals, the right of indictment for the personal, or citizen side of the same offense. I call your attention particularly to this, in connection with the corresponding provisions in our own constitution. When the constitution of the United States was adopted, Mr. Madison is said to have had this constitution of New York before him as a model; and it would appear that he had from the instances in which he has copied it verbatim. But he made some alterations, and, among others, he made an alteration in this very provision. Instead of "venal and corrupt conduct," he inserted the words, "treason, bribery, and other high crimes and misdemeanors." Now, I think, that I have here, a portion of the debate upon the adoption of that constitution. Let us see *why* this was done. This is from the Madison papers:

The clause referring to the Senate, the trial of impeachment against the President for treason and bribery was taken up.

Colonel MASON. Why is the provision restrained to treason and bribery? 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. As bills of attainder, which have saved the British constitution, are forbidden, it is the more necessary to extend the power of impeachment.

He moved to add after "bribery," "maladministration."

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

Colonel MASON withdrew "maladministration," and substituted "other high crimes and misdemeanors against the State."

Mr. Madison, it is to be presumed, had deliberately left out "venal and corrupt conduct" as being subject to the same objection as "maladministration;" and he enumerated two offenses, "treason and bribery," as the only two offenses which it was worth while to designate in direct terms, and then used, for all other cases, the well known and settled terms "high crimes and misdemeanors." I need hardly say to this body, what I suppose all of you know, that it is now well settled that there is no practical meaning to the word "*high*." "High crimes and misdemeanors" does not mean anything more, or anything less than "crimes and misdemeanors." The word only adds a little rhetorical dignity or emphasis to the phrase. I ought to call your attention to the fact that in process of time, and before it came to us, the word "high" was dropped and instead

of "high crimes and misdemeanors," the words "corrupt conduct in office and crimes and misdemeanors" were used in that provision, so as to cover any doubt in regard to the offenses over which the House of Lords had entertained jurisdiction. There has been, I frankly admit *some*, but not a very great difference of opinion as to whether the House of Lords had taken cognizance of any offenses which were not "crimes and misdemeanors." But, I say that, while I think the authorities are overwhelmingly in favor of the proposition that they had not done so, there is yet no pretence, by anybody, that they had ever exercised jurisdiction over any offenses except "high crimes and misdemeanors," unless they were offenses which clearly come under the designation used in our constitution, "corrupt conduct in office."

I will now read from Judge Story's Commentaries:

"From this clause it appears, that the remedy by impeachment is strictly confined to civil officers of the United States, including the president and vice-president. In this respect it differs materially from the law and practice of Great Britain. In that kingdom, all the king's subjects, whether peers or commoners, are impeachable in parliament; though it is asserted that commoners cannot now be impeached for capital offenses, but for misdemeanors only? Such kind of misdeeds, however, as particularly injure the commonwealth by the abuse of high offices of trust, are the most proper and have been the most usual grounds for this kind of prosecution in parliament."

After tracing the history of impeachment briefly, Judge Story goes on to inquire what are impeachable offenses; and as that is the question which is now before you, I shall respectfully ask you to regard attentively what Judge Story says:

The next inquiry is, what are impeachable offenses? They are "treason, bribery, or other high crimes and misdemeanors." For the definition of treason resort may be had to the constitution itself; but for the definition of bribery, resort is naturally and necessarily had to the common law; for that, as the common basis of our jurisprudence, can alone furnish the proper exposition of the nature and limits of this offense. The only practical question is, what are to be deemed high crimes and misdemeanors? Now, neither the constitution nor any statute of the United States has in any manner defined any crimes, except treason and bribery, to be high crimes and misdemeanors, and as such impeachable. In what manner, then are they to be ascertained? 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, 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, that by the constitution is so impeachable. It must not only be an offense, but a *high* crime and misdemeanor. Besides, there are many most flagrant offenses, which, by the statutes of the United States, are punishable only, when committed in special places, and within peculiar jurisdictions, as for instance, on the high seas, or in forts, navy yards and arsenals ceded to the United States. Suppose the offense is committed in some other, than these privileged places, or under circumstances not reached by any statute of the United States, would it be impeachable?

The Senate will understand, of course, that some of these remarks (I cannot very well separate them) are not applicable to a *state*, because, in the states the common law prevails; but the point of the distinction is that, so far as offenses against the United States are concerned, there was

no common law, and that there were no offenses against the United States, except statutory offenses. That part of Judge Story's discussion is not, of course, applicable to this case, because there is no question here, but that, in this State as in every other state, the basis of the jurisprudence is the common law; and where there is no statute, specially declaring or defining offenses, we must look to the common law, and if the common law does not declare an act to be an offense, then it is not an offense.

I read from section 797:

> Again, there are many offenses, purely political, which have been held to be within the reach of the parliamentary impeachments, not one of which is in the slightest manner alluded to in our statute-book. And, indeed, 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 absurd to attempt it. What, for instance, could positive legislation do in cases of impeachment like the charges against Warren Hastings, in 1788?

Now, here is the point:

> Resort, then, must be had either to parliamentary practice, and the common law, in order to ascertain what are high crimes and misdemeanors; or the whole subject must be left to the arbitrary discretion of the Senate for the time being. The latter is so incompatible with the genius of our institutions, that no lawyer or statesman would be inclined to countenance so absolute a despotism of opinion and practice, which might make that a crime at one time, or in one person, which would be deemed innocent at another time, or in another person. The only safe guide in such cases must be the common law, which is the guardian at once of private rights and public liberties.

There are other authorities here to which I shall refer you, which show, in the clearest manner, that this body, and every other body of this kind, must administer the common law, where there is no statutory law, and that all your proceedings must be conducted, and the whole trial had, in accordance with the existing law; that while there is no higher tribunal to review your deliberations and conclusions, yet you are theoretically, as you will doubtless be, practically, as much under the direction and the guidance of the law of the land as the Supreme Court is.

I continue my citation from Judge Story:

> And however much it may fall in with the political theories of certain statesmen and jurists, to deny the existence of a common law belonging to and applicable to the nation in ordinary cases, no one has, as yet been bold enough to assert, that the power of impeachment is limited to offenses positively defined in the statute-book of the Union, as impeachable high crimes and misdemeanors.
>
> The doctrine, indeed, would be truly alarming, that the common law did not regulate, interpret, and control the powers and duties of the court of impeachment. What, otherwise, would become of the rules of evidence, the legal notions of crimes, and the application of principles of public or municipal jurisprudence to the charges against the accused? It would be a most extraordinary anomaly, that while every citizen of every state, originally composing the Union, would be entitled to the common law, as his birthright, and at once his protector and guide; as a citizen of the Union, or an officer of the Union, he would be subjected to no law, to no principles, to no rules of evidence. It is the boast of English jurisprudence, and without it the power of impeachment would be an intolerable grievance, that in trials by impeachment the law differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments prevail.

Further on he says in section 799:

It seems, then, to be the settled doctrine of the high court of impeachment, that though the common law cannot be a foundation of a jurisdiction not given by the constitution or laws, that jurisdiction, when given, attaches, and is to be exercised according to the rules of the common law; and that what are and what are not high crimes and misdemeanors is to be ascertained by a recurrence to "the great basis of American jurisprudence."

Now, here is a section that applies to some of the controverted questions of jurisdiction. It is section 800, and I shall call your particular attention to it, because in it he refers to the history of impeachment in England, and you will see in his enumeration of the cases of impeachment there what I have already stated to you to be the result of my own investigations of the subject:

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 the lord chancelior 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 counsellor 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.

You see now that what I told you is entirely correct. Every one of the offenses here enumerated which are not indictable at common law, if there are any such, are plainly cases of what was claimed at the time to be "corrupt conduct in office," and consequently are precisely covered by the provisions of our constitution. I shall show to the Senate by the best authorities, that even in those things which come under the head of "corrupt conduct in office," there is no impeachable offense which is not indictable; but for our purposes here to-day, it is sufficient that we show that there are no offenses which are impeachable before the House of Lords in England, that would not be covered by the designations of "corrupt conduct in office," or "crimes and misdemeanors."

We now come to section 801, which covers another of the propositions I have presented to you, and that is that not even indictable crimes are impeachable unless they are perpetrated under color of office.

Another enquiry, growing out of this subject, is whether, under the constitution, any acts are impeachable, except such as are committed under color of office; and whether the party can be impeached therefor, after he has ceased to hold office. A learned commentator seems to have taken it for granted that the liability to impeachment extends to all, who have been, as well as to all, who are in public office.

The commentator here referred to is Judge Rawle.

Upon the other point his language is as follows: "The legitimate causes of impeachment have been already briefly noticed. They can have reference only to public character, and official duty. The words of the text are, "treason, bribery, and other high crimes and misdemeanors." The treason contemplated must be against the United States. In general, those offenses, which may be committed equally by a private person, as a public officer, are not the subjects of impeachment. Murder, burglary, robbery, and indeed all offenses not immediately connected with office, except the two expressly mentioned, are left to the ordinary course of judicial proceedings, and neither house can regularly inquire into them, except for the purpose of expelling a member."

We have here the united voices of Judge Story and of Judge Rawle in support of our proposition, for Judge Story is quoting with approval from Judge Rawle's commentaries on the constitution of the United States.

Mr. President: I desire now to trespass, for a few minutes, upon your patience, to read to you some paragraphs from an article written by Professor Dwight,—in fact, a lecture of Professor Dwight, before the Columbia law school in New York City,—which cover this whole question. You all know who Professor Dwight is. He has been for many years a professor in the Columbia law school, and is one of the most eminent jurists of the day. This article was written some years ago, and, although he makes no allusion to the fact, was, I suppose, suggested by the proceedings upon the impeachment of President Johnson. The impeachment, and the debates arising out of it, had suggested to him the propriety, and the necessity of the further discussion and examination of this subject. And I ask the close and careful attention of the members of this body—in as much as it is somewhat difficult to read or to speak in this room,—to what Professor Dwight says, because he states every proposition with remarkable clearness, with the greatest accuracy and I think with the strictest impartiality. He had no partisan or political motives to subserve; he was simply a professor in the law school. I read from volume 6 of the American Law Register, page 258:

When a criminal act has been committed, it may evidently be regarded in three aspects: First, the injury to the individual or his family may be considered; second, the wrong to the executive officer charged with the administration of the laws may be looked at; and, third, the mind may dwell upon the general wrong done to the State or "the people" as we say in modern times. This view was early taken in the common law; the injury to the individual was redressed by a proceeding called an appeal; the injury to the king, by a process called an indictment; the wrong to the entire nation by a proceeding termed impeachment. In process of time the injury to the individual came to be regarded as a private and not as a public wrong, so that in the progress of the law there remained two great criminal proceedings—indictment and impeachment.

* * * * * * * *

It will tend to a cleaner understanding of our subject if the resemblances and contrasts of an indictment and impeachment be carefully pointed out. An indictment is a presentment in writing by a body of men not less in number than twelve nor more than twenty-three, of crimes committed within their own county. This presentment is made in an ordinary court of justice, e. g., the King's Bench. Its only effect is to pronounce the opinion of a majority of these men (grand jury) that there is apparent reason to believe that there has been a criminal violation of the law of the land by the person against whom the indictment is found. He is therefore arrested, and either held in custody or required to find sufficient security to await his trial. Notwithstanding his indictment, the law still presumes his innocence, and takes no action against him except that which is necessary to secure his attendance at the trial, Anything more than this, any deprivation of property, any forfeiture of his civil rights, while the indictment is pend-

ing is wholly opposed to the genius and spirit of the common law. The indictment in due course of law is brought on to trial before an assigned term of the criminal court. The case must now be presented to a trial jury presided over by a judge. The government who has in charge the criminal must, notwithstanding the indictment, overcome the presumption of the prisoner's innocence: and only by the superiority of its proofs can a verdict be obtained against the prisoner. When judgment is entered upon the verdict, for the first time commence the penalties and forfeitures of the law. The convicted criminal may lose his property, his liberty, or life, as the result of the proceeding. It is thus seen that an indictment is nothing more than a method of trial established to introduce solemnity, deliberation, and caution into judicial proceedings. It pre-supposes the existence and definition of crimes. It is a method of trial, and nothing more.

If we now recur to an impeachment, it will be found that it, too, is a presentment by a body of men that a crime has been committed. It is no longer a presentment by a small member of twenty-three men, but of the entire House of Commons, representing the state which is supposed to have been injured. It, too, is made in writing under the name of Articles of Impeachment. The tribunal before whom the articles are brought is a court of justice, not the ordinary court, it is true, but still a court composed of the members of the House of Lords. It may entertain a presentment for any crime whether it be a felony or misdemeanor, whether it be committed by a peer or commoner, and may attach to conviction the ordinary punishments.

That the House of Lords can do, but we cannot do it in this country.

As a matter of course, an impeachment is not confined to a particular county, as an indictment is, but the House of Commons may present cases arising anywhere within their jurisdiction. For this reason, impeachments were sometimes resorted to, because if treason were committed in Scotland or Ireland by an Englishman, though it might not be triable in an ordinary criminal court in England, as it was not committed in an English county, it is still under the jurisdiction of the House of Lords. Thus, Lord Loval, who, while in Scotland, was concerned in the rebellion of 1745, was impeached, as he had committed no overt act of treason in England so as to bring the case before an English jury; 5 Campbell's Lord Chancellors 106. His co-conspirators in England were indicted and not impeached.

The effect of an impeachment, like that of an indictment, is simply that there is apparent reason to believe that there has been a criminal violation of the laws by the individual impeached. He may in proper cases be arrested and held in custody or required to give security. The law still presumes his innocence, and can do no more than to take such steps as may be necessary to render his attendance at the trial certain. The trial must be conducted in accordance with the rules of evidence observed in the ordinary courts: the person impeached can only be convicted of a crime known to the law;

But not of one manufactured by the accusing body, or even by the court of impeachment.

The person impeached can only be convicted of a crime known to the law; the punishment follows that attached to the same crime by the ordinary courts. Forfeiture of rights can only occur after conviction. Impeachments, like indictments, are methods of procedure in criminal cases and nothing more.

* * * * * * *

When the United States Constitution was framed, trial by impeachment was fully developed. It was not, however, adopted in that instrument as a regular mode of criminal procedure, to be employed in lieu of an indictment.

Heretofore, you understand, the author has been speaking of impeachment as it existed in England.

It was made a means of trial of a crime so far as it had a political bearing. It is used as a means of depriving officers of their offices, and of disqualifying them from holding such positions in the future. Still it is requisite that a crime should be committed as a basis for the accusation.

Will the members of this court please not to forget that the fact which I desire here to call to your minds, is that no *crime*, as we claim, is charged in these artieles of impeachment.

The constitution provides, in substance, that the offense, so far as it has a purely criminal aspect, shall be tried in the ordinary courts, while so far as it affects the official character, it shall be the subject of impeachment.

That is a correct statement of this matter.

Though the English theory and procedure still substantially continue, impeachment in our law has a comparatively narrow scope. The House of Representatives, in analogy to the English House of Commons, has the exclusive power of impeachment, and the judicial power is vested in the Senate, in analogy to its deposit in the House of Lords.

We come now to the consideration of the question: What crimes are the subject of impeachment? This is especially the question that I am urging upon your attention. Prof. Dwight says:

Upon this topic it is important to make two inquiries: First, what were the subjects under the English law which could be tried by impeachment? Second, what cases under our system can be tried in this manner. In examining the first question, it must be conceded that the judgments of the courts are not absolutely uniform. This could hardly be expected, both because there is no system of appeal by means of which authoritative precedents could be established, and because the House of Lords has been at times impelled by faction or overborne by importunity or overawed by fear. The weight of authority is therefore to be followed. So said the great Selden, in a speech which he made as one of the committee of the House in the impeachment of Ratcliff. "It were better to examine this matter according to the rules and foundations of this House than to rest upon scattered instances." 4 How. S. T. 47. The decided weight of authority is, that no impeachment will lie except for a true crime, or, in other words, for a breach of the common or statute law, which, if committed within any county of England, would be the subject of indictment or information.

Here is something so important that you will excuse me if I read the last sentence once more.

The decided weight of authority is, that no impeachment will lie except for a true crime, or, in other words, for a breach of the common or statute law, which, if committed within any county of England would be the subject of indictment or information.

This proposition is plainly inferred from the doctrine already established, that impeachment is simply a method of procedure. It presupposes the existence of the crime for the redress of which a trial is instituted. What would have been the check upon the most arbitrary action of the House of Lords, if it might decide the existence of a common law crime without reference to already settled rules. This tribunal was only rarely called to act—during the reign of the Tudor family its functions were entirely suspended. The rules of the common law courts were in daily discussion and exercise. The fundamental distinction between felonies and misdemeanors were fully recognized by the House of Lords in cases of impeachment. 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.

You will please remember that proposition—which is the one we are endeavoring to establish before you—that no impeachment can be had except in cases where the King's Bench would hold that a crime had been committed.

There are no doubt extreme cases favoring an opposite view. Thus the Duke of Richmond was impeached in 1641, among other frivolous charges, on the ground that he had proposed an adjournment while a member of the House of Lords. The commons were so offended with him for attempting to check the enactment of a bill which they had much at heart, that they accompanied the impeachment with a petition to the king to remove the duke from all offices of public trust, in which petition the Lords refused to join: 4 How. S. T. 120. This is but the excess of the lower house, resolved that no obstacle shall stand in the way of the shortest path to its destined goal. In early times a quarrel between great noblemen excited the interest of the public to such an extent, that the matter was brought up for disposition in Parliament In such a feud between the Bishop of Winchester and the Duke of Gloucester (A. D. 1451,) there was a formal award of acquittal of the party accused, and the "Lords enjoined them to be firm friends for the future, and by such inducements wrought upon them that they shook hands, and parted with all outward signs of love and agreement * * which gave a mighty satisfaction to all people:" 1 How. S. T. 152. Perhaps no more ingenious plan has been devised to settle the strifes of embittered politicians, since while it soothes the spirit it secures notoriety. A strong instance of the exercise of a broad power of impeachment is found in the last charge of a series made by the Commons against one of the worthless judges of Charles II's reign, Ch. J. Scroggs.

Mr. President: I ask your particular attention to this, because we have here word for word one of the articles of impeachment against this Scroggs, the chief justice of Charles II, acknowledged by everybody to be a worthless person. He was, however, never tried.

Its words are: "Whereas, said W. Scroggs being advanced to be chief justice of the Court of King's Bench, ought by a sober, grave and virtuous conversation, to have given a good example to the King's liege people, and to demean himself answerable to the dignity of so eminent a station; yet he, the said Sir W. Scroggs, on the contrary, by his frequent and notorious excesses and debaucheries, and his profane and atheistical discourses, doth daily affront Almighty God, dishonor his Majesty, give countenance and encouragement to all manner of vice and wickedness, and bring the highest scandal on the public justice of the Kingdom." This was an article in an impeachment for high treason! The articles were never tried, so that they only serve to show how far the doctrine of "constructive treason" may be pushed by ingenious committees: 13 Lord's Journals, 737. The danger of a loose construction of the judicial power of a legislative body was most strikingly shown when the House of Commons, during the revolution, in consequence of the abolition of the House of Lords, had centered within it both the power of impeachment and the power of trial.

At the trial of James Naylor, an insane ranter, who would now be sent to a lunatic asylum, there was a large minority voting to put him to death for blasphemy. The majority prevailed by deciding to whip him, set him in the pillory, bore his tongue through with a hot iron, and to confine him in Bridewell at hard labor. Undoubtedly some cases which at the present time seem inexplicable on any sound theory, depended on a construction of statutes now forgotten, or upon a violation of official oaths, or a perverted application of legal rules to instances not properly governed by them. Thus, a prominent citizen of London was impeached for presenting a petition to Parliament, which now seems quite harmless; but it was asserted to be a sedetious libel, and consequently criminal: 4 How. S. T., 152.

You will see, Mr. President, that in all these cases in England, which do not present what to us appear to be clearly indictable offenses, yet when we get back to the facts, they were claimed at the time to be indictable; like, for instance, the petition mentioned here which it was claimed was a seditious libel, and consequently indictable, which, as this author says, appears to persons now-a-days to be quite innocent, and the like of which is perhaps a matter of everyday occurrence in our newspapers.

While the irregular cases upon the subject are few, the rule that a true crime must have been committed, is settled beyond dispute. This is clearly shown by the way in which the House of Commons, when flushed with power or chafed with indignation, rebel against it. Over and over again they assert that the great statute of 25 Edw. III, defining treason, is not applicable to trial by impeachment. They plausibly mentioned that the statute was only for the courts of ordinary criminal justice, and that the statute itself applied a different rule to trial by impeachment. But the law was settled after the most extended and prolonged discussion in favor of the doctrine that the court of impeachment must administer the same law as the criminal court; 12 How. S. T., 1213; 6 Id., 346.

I beg you, Mr. President, to remember that.

"But the law was settled after the most extended and prolonged discussion in favor of the doctrine that the court of impeachment must administer the same law as the criminal court. Thus the Earl of Orrery was not tried in A. D., 1669, as the offense charged was thought not sufficient to constitute treason, and the case was directed to be heard in a court of law. 6 How. S. T. 917. The stringency of these rules often led the Houses, when under excitement, to pass bills of attainder. They could enact that an obnoxious person was guilty, if they could not prove his offense. This course was resorted to in the well known case of the Earl of Strafford. So, too, when the Earl of Clarendon, in Charles II.'s time could not be successfully impeached, the King intended to bring him before the court of the Lord High Stewart, which could be organized so as to secure a conviction. 3 Campbell's Lord Chancellors 243–4, Lond. ed. 1848. The later and most authoritative decisions are clear to this effect. In the impeachment of the Earl of Macclesfield, who was a great lawyer and at one time Lord Chancellor, the case was put exclusively on such criminality as is the subject of an indictment. It was argued that he had violated the statute of 6 Ed. VI., c. 16, concerning the administration of justice, while he rested his defense on the fact that it was not criminal for a judge to receive presents either by common or statute law. The decision of this case against Mercclesfield is criticise by Lord Mahen and others, but is defended by Campbell, on the ground that the statute of Ed. VI. was violated. 16 How. S. T. 823; 4 Camp. Lord Chan. 536.

We would be very apt to impeach a judge now-a-days for receiving presents from suitors, without any special statute on the subject.

This is one of the best considered cases on the subject, and preceded the formation of our constitution by only a few years. The last case of impeachment in England, that of Lord Melville in 1806, for malversation in office, is very instructive. The question was put to the judges whether the acts with which he was charged were unlawful so as to be the subject of information or indictment. It having been decided that they were not, Lord Melville was acquitted: 39 How. S. T. 1470. These last two decisions, made when there was an entire absence of party feeling and the court acted throughout with judicial impartiality, deservedly outweigh scores of instances, if they could be produced, which have occurred in the heat and frenzy of a revolution. The court in general relies with close dependence upon the opinion of the common law judges on the law of crime and criminal evidence, often exacting their continuous attendance to the detriment of other public business. The text writers and leading jurists are of the same opinion. Says Woodson; "The trial differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments prevail. For impeachments are not framed to alter the law, but to carry it into more effectual execution where it might be obstructed by the influence of too powerful delinquents or not easily discerned in the courts of ordinary jurisdiction by reason of the peculiar quality of the alleged crimes. The judgment thereof is to be such as is warranted by legal principles or precedents." Lectures, vol. 2, p. 611. So Cushing in his "Law and Practice of Legislative Assemblies," says: "The proceedings are conducted substantially as they are upon common judicial trials as to the admission or rejection of testimony, the examination and cross-examination of witnesses; and the legal doctrines as to crimes and misdemeanors:" Sec. 2569. Lord Chancellor Cowper, in an impeachment case not long before our revolution (A. D. 1715,) said: "Though one of your Lord-

ships supposes this impeachment to be out of the ordinary and common course of law and justice, it is yet as much a course of proceeding according to the common law as any other whatever. If you had been indicted, the indictment must have been removed and brought before the House of Lords, Parliament sitting. In that case it is true, you had been accused by the grand jury of one county; in the present, the whole body of the commons of Great Britain by their representatives are your accusers:"

The framers of the New York constitution of A. D. 1777, held this view, for they couple together in the same sentence, impeachments and indictment, as though they were only modes of trial. "In every trial on impeachment or indictment for crimes or misdemeanors, the party impeached or indicted shall be allowed counsel, as in civil actions."—Art. 34. I have dwelt the longer on this point because many seem to think that a public officer can be impeached for a mere act of indecorum. On the contrary, he must have committed a true crime, not against the law of England, but against the law of the United States.

The author is here speaking of impeachment under the constitution of the United States.

I hope that this honorable body will critically remark the closing words here of this learned writer:

I have dwelt the longer upon this point because many seem to think that a public officer can be impeached for a mere act of indecorum. On the contrary, he must have committed a true crime. * * * *

As impeachment is nothing but a mode of trial, the constitution only adopts it 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

I have a few more paragraphs to read from Prof. Dwight's article. The closing of his article presents some considerations which we might all, perhaps, listen to with advantage.

It is clear however, that the process of impeachment often greatly disappoints those who resort to it. At the outset the "pomp and circumstance" of the trial flatter the vanity of the managers by attracting to them the attention of the public. But the tediousness of the proceedings soon dissipates the interest which depends merely upon the novelty of the occasion. Unexpected difficulties are met with; new events amuse or excite the public. The court is bound by precedents, and must proceed in accordance with law. At the end, the few are convicted and the many acquitted. It has been noticed that many of those who have employed this means to ruin their enemies have themselves, in the mutations of politics, been the victims of similar proceedings. This point was so forcibly stated by Lord Carnarvon in the only speech which he ever made in Parliament, (A. D. 1678) that I cannot forbear a quotation. The Earl of Danby (Sir Thomas Osborne) was then before the court: "My lords, I understand but little of Latin, but a good deal of English, and not a little of English history, from which I have learned the mischiefs of such kind of prosecutions as these, and the ill fate of the prosecutors. I could bring many instances, and those ancient, but, my lords, I shall go no further than the latter end of Queen Elizabeth's reign, at which time the Earl of Essex was run down by Sir Walter Raleigh. My Lord Bacon, he ran down Sir Walter Raleigh, and your lordship knows, what became of my Lord Bacon. The Duke of Buckingham, he ran down my Lord Bacon and your lordships know, what happened to the Duke of Buckingham. Sir Thomas Wentworth, afterwards Earl of Strafford, ran down the Duke of Buckingham, and you all know what became of him. Sir Harry Vane, he ran down the Earl of Strafford, and your lordships know what became of Sir Harry Vane. Chancellor Hyde, (Lord Clarendon) ran down Sir Harry Vane, and your lordships know what became of the Chancellor. Sir Thomas Osborne, now Earl of Danby, ran down Chancellor Hyde, but what will become of the Earl of Danby, your lordships best can tell. But let me see that man that dare run the Earl of Danby down, and we shall soon see what will become of him." 11 Howell, S. T. 632, 633.

This most effective little speech, saved for the time being, the Earl of Danby from a commitment. What would be the effect of political impeachments upon

our system of government, it is difficult to say. All analogy leads to the conclusion that they should be avoided until the last extremity, and that the trial should be preceded by the unmistakable verdict of the people. There is profound wisdom in the remark of that sound and calm lawyer, Sergeant Maynard, that the trial and condemnation of one man at common law will work more upon people than ten impeachments: 12 Howell, S. T., 1212. It is the weakness of a political tribunal that, whether justly or not, it labors under the imputation of being moulded by faction, while it is the strength of a common-law court that every presumption is made by public opinion in favor of its justices and impartiality.

I will read you a single paragraph, and then I have done with my quotations on this question, from Daniel Webster. I shall have occasion to read further from this distinguished authority upon another point, hereafter. But upon *this* point, that a person can only be impeached for an indictable crime, a crime known to the law. I will now read a single paragraph from Daniel Webster's great speech in defense of Judge Prescott, who was a probate judge in Massachusetts and was impeached for taking an illegal fee, and for some other things,—holding court under unlawful circumstances, etc. I shall have occasion to quote a few more paragraphs from the same speech upon another point of this demurrer.

In the next place, the matter of the charge must be the breech of some known and standing law; the violation of some positive duty. . If our constitutions of government have not secured this, they have done very little, indeed, for the security of civil liberty. "Here are two points," said a distinguished statesman, "on which the whole of the liberty of every individual depends; the one, the trial by jury; the other, a maxim arising out of the elements of justice itself, that no man shall, under any pretence whatever, be tried upon anything but a known law." These two great points our constitutions have endeavored to establish; and the constitution of this commonwealth, in particular, has provisions upon this subject as full and ample as can be expressed in the language in which that constitution is written.

Right in this connection, while it occurs to me, let me call your attention to what has been suggested by the previous remarks of Daniel Webster on the trial of Judge Prescott. It is necessary for you to exercise a little caution in investigating the cases of impeachment that have occurred in different portions of this country, as the provisions of the different state constitutions are not quite uniform. For instance, in Massachusetts, the words "maladministration in office" are used; the very word that Mr. Madison had so much objection to. You will see at once that "maladministration in office" is not the same thing as "corrupt conduct in office." There may be other instances, in other constitutions, to which your attention will be called before this matter is disposed of. Maladministration in office, of course, in the constitution of Massachusetts, was put in *ex industria*. They desired to give the court of Impeachment jurisdiction of such cases; but "maladministration in office" may arise from incapacity, incompetency, neglect and various causes other than corrupt conduct. We have, in our constitution, the words "corrupt conduct in office," and so they have in many other States, That, of course, means the exercise of the judicial or other functions of the office, not only to wrong ends, but with corrupt motives; whereas maladministration may, as I have said, be simply the result of incapacity, incompetency, neglect, or something of that nature. It ought to be punished, undoubtedly. You can make laws to punish it. We *have* laws in this State to punish it. But it is only "corrupt conduct in

office, as I have already stated, means corrupt *official* conduct, intentionally committed for the purpose of doing wrong. I do not understand that this question is before this body in this case. I do not understand that corrupt conduct as here charged against the respondent. Certainly, there are no allegations which would support it ; because there is no conduct, no *official* conduct charged, which could, in any way, be construed to be the result of corrupt motives and which, in itself, was wrong. For instance, it is not pretended that the respondent in this case ever made a decision for reward, or from any improper influence, or for any improper object or purpose ; or ever exercised any of the functions of his office corruptly, or for any wrong end, or from any wrong motive. So, not only are there no facts stated here which would amount to corrupt conduct in office, but I presume it is not intended to charge, or intimate, anything of the kind against the respondent here.

As I have already pointed out to you, the words "corrupt conduct in office" in our constitution, will cover every conceivable case which has ever arisen in England, over which the House of Lords have ever, for a moment, attempted to exercise jurisdiction as a court of impeachment, which does not come under the designation of "crimes and misdemeanors," or which was not for indictable offenses. That is enough for our purpose here. You will understand that there is no doubt at all that the term "crimes and misdemeanors," as employed in our constitution, and in the constitution of the United States, and the whole jurisprudence of this country, and of England, means indictable offenses. So that, so far as the words "crimes and misdemeanors" are concerned—the only words which, under the allegations in this case, you have to consider—there ought to be no doubt in your minds as to their meaning. The differences which have occurred, and which Professor Dwight discusses, have all arisen in regard to certain other offenses for which persons were impeached before the House of Lords, which it has been claimed were not indictable offenses at common law, or by statute, but which were instances of political or official misconduct in high office, and which Professor Dwight claims (and others have denied) were, nevertheless, indictable ; but which I insist, and I am sure you will agree with me when you come to examine them, would at all events, come under the appellation in our constitution, of "corrupt conduct in office."

Upon motion of Senator C. F. BUCK, the Senate at this point took a recess until half past two.

AFTERNOON SESSION.

2:30 P. M.

The PRESIDENT. The Senate will please come to order.

A. H. BERTRAM was duly sworn as postmaster.

The PRESIDENT. If there is no business to be transacted before the counsel resumes, his argument may proceed.

Mr. ALLIS. Mr. President, in endeavoring to point out to you, during the argument which I have been addressing to you this morning, the proper construction of our constitutional provision relative to impeachments, I made an omission of an authority, or rather of a fact, to which I now desire to call your attention, which will aid us in arriving at the proper construction of Article 13 of our constitution. I hardly think it is necessary, however, to seek any interpretation, outside of the language of the article itself, to determine its obvious purpose

and meaning. But it is always proper, and to some degree effectual, to seek aid in the interpretation of instruments of this kind from the acts and debates of the convention which adopted them. There is, perhaps, in the nature of things, no other construction that *can* be given to the 13th article of our constitution, than the one for which I contended this morning, which is a strict construction of it. That is to say, we must go upon the ground that this tribunal is an exceptional tribunal, so far as it is made the means of the administration of justice and of law; that the power of trying criminals by impeachment is strictly limited, both with regard to the persons who are amenable to jurisdiction of this tribunal and with regard to the offenses for which those persons may be tried. The individuals are enumerated: "The Governor, the Secretary of State, the Treasurer, the Auditor, the Attorney General, and the judges of the Supreme Court, and the judges of the district courts. No other public officers and no other judges, no matter what may be their jurisdiction, except the judges of the Supreme Court and the judges of the district court, are amenable to this tribunal for any offenses whatever, committed under any circumstances whatever.

It is apparent, then, from this very article, and from the very language in which it is couched that it was not intended to give you a very extended jurisdiction. For that reason, I desired to urge upon your attention, this morning, the fact that in determining not only the persons but the offenses of which you take jurisdiction, you could not pass beyond the well settled meaning of the terms employed. It so happens that this view of the case is very much enforced by a reference to the proceedings had in one of the conventions—you remember that we had a double convention—which took part in the adoption of this constitution. What I refer to took place while this very article of the instrument was then before them. We had the five sections of this article of the constitution presented by report, mainly as we now have them, and the one we have now more particularly under consideration, exactly, I believe, as it is at present; and there was another section reported which was rejected, and which I will read to you. It is as follows:

For reasonable cause which shall not be sufficient ground for the impeachment of a judge, the governor shall remove him on a concurrent resolution of two thirds of the members elected to each house of the legislature; but the cause for which such removal is required shall be stated at length in such resolution.

There is a provision which it was proposed to incorporate into our constitution, which gave the legislature very extended power in the matter of the removal of judges beyond what is given to the legislature by the power of impeachment. As you are aware that provision was rejected, for we do not find it in the instrument at present.

I call your attention to this because it aids us in interpreting article 13 as it exists to-day; because the mind least trained in judicial learning and in judicial interpretation can perceive that the rejection of the proposed section, the action of the convention thus directly upon it, shows to us that there was no intention of extending the jurisdiction of the legislature in the premises.

It emphasizes the interpretation which I was endeavoring to impress upon the minds of this body during the morning, as the proper one, and can leave no question as to the correctness of the views which I then expressed. You are not to enlarge your jurisdiction. It is, to be sure, the part of a good judge in equity to amplify and extend his jurisdiction be-

cause those tribunals are established for the general administration of the laws between man and man. This body is not constituted for the general administration of justice, or the general punishment of crime; but it is instituted to punish certain enumerated public officers (and, of course, that enumeration excludes every other person,) for certain specified offenses, committed under color of office; and if you have any doubt about your jurisdiction it is just as much your duty, being altogether a criminal court, to give the person accused the benefit of *that* doubt as of any other doubt. And it is of the utmost importance, it seems to me for the reasons which I have detailed at length this morning, that there should be no straining on your part of your jurisdiction; not, as I said, so much because of its material consequence to this respondent, as in the interest of the public, and of the public weal, and that there may be no improper precedent established here; that now, in the beginning of our political career as a State, only a sound rule shall be established in this regard, one that does not at all tend in the direction of public passion or public caprice, but one that is based upon a solid foundation of truth and of law, so that in the future there shall be no reference to this body, and to this occasion, for a precedent to sustain improper or unlawful action on the part of your successors, or on the part of the great accusing body, the House of Representatives.

I have, I think, sufficiently shown that our constitution in regard to impeachments covers precisely the ground which has always been occupied by the House of Lords; that whatever offenses have ever been brought before the House of Lords in England by impeachment, which are not embraced within the terms "crimes and misdemeanors" in our constitution are certainly covered by the terms "corrupt conduct in office" found in that instrument. But I have endeavored to show you from Prof. Dwight, and other eminent authorities, that there is no crime, no offense, which is ever brought by impeachment before the House of Lords, which is not an indictable offense. I think that proposition is a clear one; but I have also pointed out to you that so far as these proceedingi are concerned, so far as the case that is now before you is concerned, it is not necessary to settle that question definitely, for the reason which I stated this morning, that if you looked over the list of impeachments before the House of Lords, and if you find there any case of impeachment which it is claimed by any of these authorities—these few authorities which Prof. Dwight points out—will not come under the designation of indictable offenses or under the terms "crimes and misdemeanors," you will find that it relates to the official or political conduct of officers on great occasions, where their conduct was claimed, at all events, to be corrupt conduct in office, and that it is therefore fully covered by the terms of our constitution.

We have no case before us now of corrupt conduct in office; therefore we need not trouble ourselves with the definition of those terms; at least I so understand it. I do not think that the learned managers in this case claim that the respondent here was ever guilty of any corrupt conduct in office. I pointed out to you this morning that those words mean not only wrongful conduct committed in the exercise of the office, but committed also with a corrupt motive and for a corrupt purpose. No such thing, I believe, is claimed in this case. Certainly no facts that are alleged would approximate toward establishing any corrupt conduct in office. We are left, therefore, Mr. President, without the necessity of reconciling the difference that exists between a few of the authorities,

and the great body of them, to which you had your attention called this morning.

The only terms then in our constitution requiring present consideration are "crimes and misdemeanors," and the only question before you is whether the facts alleged in the articles of impeachment in this case, constitute either a "crime" or "misdemeanor." That is the only question here, except this, which perhaps applies to one of the articles, whether if there be a misdemeanor committed, it has been committed under color of office. I have shown you from the most eminent sources of authority this morning, that only such offenses as are indictable are impeachable, and that only such indictable offenses are impeachable as are committed under color of office. As I illustrated it to you this morning, the respondent in this case cannot be impeached because he obstructs the highway before his house, although that is an indictable offense at common law. And so with a large number of cases, which will occur to you, of the same class; offenses which are indictable at common law as well as by statute, but which have no official significance or character or effect. You will see at once, that it is not in accordance with the spirit of our constitution, or of any of the state constitutions, or of the Federal constitution, that this court should have jurisdiction over offenses which in no manner affect the office. I pointed out to you this morning that the changes in this regard which had been introduced into the use of impeachment as it had existed in England, by the framers of our constitutions, were made *ex industria*; that it was the clear and obvious intention of our organic law makers to confine this court and like courts. to the trial of the enumerated offenses when they had been committed under color of office, because they have limited the punishment to removal from office, and to disqualification for holding office in the future.

They have made the penalty to the officer wholly official, at the same time reserving the punishment of the individual for the ordinary tribunals, by indictment, thinking, evidently, it was better to leave the punishment of all crimes, so far as practicable, to the ordinary courts. I pointed out to you another significant fact in this connection, that the framers of our constitutions from the beginning, had assumed, apparently, that every offense which was impeachable was also indictable, because, while they provide for the trial and punishment of the officer by impeachment, they require in every instance that he as an individual shall answer for the same offense by indictment.

But I will weary you no longer with the consideration of this question, a question, however, of the very greatest importance.

The next question is, whether any indictable offense is charged in these articles; whether any misdemeanor or crime has been alleged; because it is not pretended, I presume, that corrupt conduct in office is charged. These articles of impeachment set forth certain facts and charges. They allege that on certain occasions the respondent in this case was intoxicated while sitting upon the bench.

I have omitted to recur to a rule of interpretation here, to which it is necessary to call your attention in this matter, and which must not be forgotten. The words embraced in the constitution must, of course, be interpreted according to the jurisprudence of the time when the constitution was adopted. If there were statutes in existence at that time that will aid us in the interpreation, we must refer to them, if not, we have to resort to the common law. This court has jurdisdiction over cer-

tain enumerated persons for the purpose of trying and punishing them for corrupt conduct in office, and for crimes and misdemeanors. Leaving out of view for the present, for reasons already stated, corrupt conduct in office, let us inquire: What were crimes and misdemeanors at the time of the adoption of our constitution. Because, whatever were crimes and misdemeanors then, are, so far as the jurisdiction of this court is concerned, crimes and misdemeanors now. It is not possible, as you must readily perceive, for the legislature to enlarge or restrain the meaning of the constitution, or of any of its provisions or terms. If that could be done you will see at once that we might as well have no constitution, because under one pretense or another the legislature would sooner or later enlarge or curtail every term and provision in it.

The words "crimes and misdemeanors" have a well defined meaning wherever the common law prevails. They are as well understood, as the word "indictment," or the word "information;" and, as the authorities I read you this morning, teach us, impeachment is merely a mode of procedure. This court then merely administers in a different mode the criminal law so far as the constitution has conferred criminal jurisdiction upon it. You are not to administer it according to your own pleasure. You are not to decide questions according to your own wills. You have to administer *the law*. You have to conduct your inquiries and your investigations, make your decisions and render your judgment according to the law of the land *as it is*. You do not make that; you do not make the rules of evidence; you do not make any laws, or any rules, except those necessary to carry on the trial; you *administer* them and you can no more change them at your own pleasure than the supreme court or the district courts can. It is your business and your duty to administer, just as the supreme court would, do the law as you find it. What is a crime or misdemeanor is to be determined, in this court, by what was a crime or misdemeanor when those terms were introduced into the constitution. I do not know, as this is a very important inquiry practically, although, it is important that you should keep in view the correct rule in the premises, for I do not find, so far as the questions before you now may be effected, that there has been any change in your jurisdiction during the time that has elapsed since the adoption of the constitution. But when these provisions were introduced into our constitution, there was no statute in our State making drunkenness a misdemeanor, either in private or in public, on or off the bench. I assure you that you will find what I tell you to be strictly true. Nor was drunkenness at that time nor was it ever, a misdemeanor or an indictable offense at common law. There were, as there are to-day, and as there has always been, police regulations on the subject, whereby persons guilty of being drunk in public were punished by police magistrates or justices of the peace.

But it was an offense against the municipality, an offense against police regulations, for which the offender was punished. It was not an offense against the state; it was not a crime; it was not a misdemeanor; it was not indictable. There has never been an hour since the formation of this State when drunkenness was an offense for which an indictment could be found, and never has there been an attempt to make it such an offense. Nor has it, as I have said, ever been a crime or misdemeanor at common law, nor is it one to-day. If you will look through the statutes you will find that at this moment there is no such crime or misdemeanor. There is not to-day in our statutes any provision which de-

clares drunkenness to be an indictable offense. It is not an offense again the state; it never has been. I will say also that there is no provisio in our constitution, nor rule of common law, (for I suppose there may b an attempt to draw the distinction) which makes drunkenness on th bench or in an office an indictable offense. I wish to be entirely fair i this matter. There are in a very recent edition of criminal law, by M Wharton, three or four lines, not found, however, in the earlier edition of his work, which say that drunkenness in a public officer while i the execution of his office, is an indictable offense. It is the only plac where I have been able to find such a declaration, and he refers to tw authorities in support of it. Those two authorities are not in the library They are in Virginia and Pennsylvania *nisi prius* reports of a very earl date. One is the case of a grand juror, and the other is the case of a jus tice of the peace, and they depend obviously, (although I could not ver ify it as the books are not here) upon some provision of the statutes i existence at the time in those states. One, I say, was the case of grand-juror who was drunk in the grand jury room, and the other th case of a justice of the peace. Exactly what circumstances were con nected with the commission of the offenses in those cases, I could no ascertain, because I could not find the report. I have made a very ex tended search and I am unable to find any other than those two case which do not sustain my position. You know that if drunkenness in public officer were an indictable crime at common law there would b some instances of it; but not an instance is to be found in the Englis reports. There would also be instances of it in the reports of some o the other states. As a matter of fact in Massachusetts drunkenness ha been made an indictable offense. Drunkenness in an officer may hav been made an indictable offense by statute in some of the states, but i was not so by the common law. But there is no such statute in thi State, and it matters not to us what the other states have done in thi regard by statute. The statutes of Virginia and Pennsylvania, and o New Hampshire and Massachusetts, do not prevail in this State. Th common law, however, does prevail here except in so far as it has bee modified by our statutes. We have no statute and have never had statute making drunkenness on or off the bench, an indictable offense.

I am well aware, that in the state of New Hampshire, for a great many years, drunkenness was an indictable offense by statute. I do not know that it is so now, but, for a great many years, it was. There are no many states in which there is any such statutory provision. No such provision, as I said, ever existed in England. No such rule of the com mon law ever prevailed. Never by the common law was drunkenness either upon the bench or in private or in public, indictable. Drunkard to be sure, have been indicted as common nuisances, just as vagrants, and tramps, are sometimes indicted when there is a statute authorizing such indictments. I do not understand that there is any statute in this stat authorizing the indictment of drunkards as common nuisances. I do not understand that if there was, it has been attempted to impeach the respondent is this case as a common nuisance or that it will be pretended that the respondent, in this case, is indictable as a common nuisance. Again, I assert, and I am sure my proposition cannot be controverted,— and if it can be, I am anxious to see where the authorities come from— that drunkenness was never an indictable offense at common law, and has never been an indictable offense by the statutes of this state.

I further say that there is no common law and no other kind of law—

except, perhaps, in some few States where there is a statute to that effect—which makes drunkenness in an officer, during the execution of his duty, an indictable offense. There is no such common law and there is no such statutory law in this State.

In this connection, Mr. President, I desire to call your attention to a couple of provisions in our statutes, the construction and the purpose of which are obvious. But I call your attention to them because I do not know what claim the other side intend to make for them; but I think they entirely support the proposition that I am endeavoring to urge upon you. Here is a statute that was passed in 1878. Now, may it please this court, mark my position. I am talking about what offenses are indictable, not what offenses ought to be punished in a proper way. I am trying to show you what offenses are indictable, for the purpose of showing you exactly what is your jurisdiction, and of what offenses you have cognizance, not presuming that you will suppose for a moment that the administration of justice in the land is going to suffer because this High Court of Impeachment, created with special powers, and for special purposes, cannot take jurisdiction of this offense. There are plenty of courts to take cognizance of every offense of which this court has no jurisdiction, and, of course, when you decide that you have no jurisdiction over a particular offense, you also decide that the ordinary courts of law have jurisdiction. That is all there is to it.

Here is a provision that is peculiar; I do not know exactly what it was intended to accomplish. The language is clear enough, and, after all, the provision does not make drunkenness, or even habitual drunkenness, a crime or an offense. It is a proper provision; that is, it is proper that such power should exist somewhere most certainly. You must not understand that I am here to palliate or excuse drunkenness or intoxication either in the individual or in an officer. I am not proposing to do anything of the kind. What I desire is that if any person has committed an offense, if the respondent in this case has committed the offense of drunkenness with which he is charged, he be punished by the tribunal which has jurisdiction of the case and according to law as any other citizen would be punished; and, if that be not sufficient, let the people, when they reach him at the ballot-box, repudiate him as a judge. But I do not want to strain the jurisdiction of this tribunal; I do not want to turn this court into a police court, for the purpose of punishing the offenses of judges, or other officers, or citizens, or to punish breaches of good morals, or of decorum, or those offenses which the police judge punishes by imposing a fine of a few dollars, or a few shillings. We want nothing of that kind; we want no straining of the great powers of impeachment, so valuable to the liberties of the people so long as they are properly and lawfully exercised, but so dangerous when extended beyond their legitimate limits. Most assuredly you do not want to enlarge the functions of your court, for the purpose of trying offenses against police and municipal ordinances; and you can not desire to take jurisdiction of such offenses unless it is plainly made your duty to do so. I read now from the statute of 1878:

"The habitual drunkenness of any person holding office under the constitution "or laws of this State shall be good cause for removal from office by the authority "and in the manner provided by law."

This does not declare drunkenness to be a crime; it does not make

drunkenness indictable; it is simply a provision by which habitual drunkenness is made the cause for the removal of any officer by the proper tribunal; but it cannot have any application to this body, because this body does not derive its powers nor any portion of them from the statutes of the State. This provision, therefore, must apply to other modes of removal from office than that by impeachment. You are, of course, aware that our statutes provide for the removal of other officers and for other offenses than those enumerated in this article of the constitution. There are numerous officers that may be removed from their offices if they fail in their duty, but in these cases the legislature has devolved upon other tribunals the power of removal and has assumed that such power must necessarily be exercised by other tribunals, because it is a power of removal given by the legislature, and the legislature cannot confer upon you any power to remove anybody. You get your power, all that you have or can have in the premises, necessarily from the constitution, the same source from which the legislature gets all its powers and authority. I certainly need not dwell upon a point so perfectly familiar to every legal mind, and which is doubtless sufficiently familiar to you all. You can see at a glance that it would be most extraordinary if the legislature could enlarge or restrict the provisions of the constitution; if it could confer jurisdiction upon you or take jurisdiction from you; and this becomes the more apparent, when we recur to another provision of the constitution, which, as you are aware, secures to everybody, except in cases of impeachment, the right to answer for his offenses on an indictment of a grand jury.

Let me read this provision to you. It is in the bill of rights, and for centuries has been considered of the utmost importance, but has become so familiar to us that we now hardly appreciate it. It originated in England however, and was the result of ages of fierce contest:

"No person shall be held to answer for a criminal offense unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by a justice of the peace, or arising in the army or navy, or in the militia, when in actual service in time of war or public danger."

You will see that the provisions of our constitution are especially pointed and effective so far as the protection and security of individual rights and privileges are concerned; and that trial by jury is the great protection which it secures to every citizen, no matter whether of high or low degree. You will therefore, readily perceive that this court being a special and exceptional tribunal, outside of the ordinary courts of the land, and being a court before which crimes are not prosecuted by indictment but by impeachment, there is no possibility of extending its powers as to the subject matter over which it has jurisdiction, by any legislative act. You get all your powers from the constitution.

I do not suppose the legislature intended any extension of your powers. I do not know what position the learned managers will take respecting the act of 1878; but it is the only instance in our statutes where drunkenness, habitual or otherwise, is declared to be a cause for anything, unless, possibly, it is made an excuse for criminal offenses in certain cases. This is the only provision which looks towards the punishment of drunkenness as an offense and this simply makes habitual drunkenness a sufficient cause for the removal of the offender from office. It does not declare it to be a crime, a misdemeanor, an offense indictable or of any grade.

There is another provision of our statutes—nothing about drunkenness—to which I wish to call the attention of this court in anticipation of any possible interpretation that may be claimed for it adverse to the proposition which I have been advancing.

Section 8, of chapter 91, on page 879, of Young's statutes reads:

> When any duty is enjoined by law upon any public officer or upon any person holding any office of public trust or employment, every willful neglect to perform such duty, and every misbehavior in office, where no special provision is made for the punishment of such delinquency or malfeasance, is a misdemeanor punishable by fine or imprisonment.

This provision sustains entirely the position which I have been maintaining; because "where no special provision is made for the punishment of such delinquency or malfeasance" it provides a punishment.

It is a very proper and necessary provision. But it applies, as you see, to only those offenses for the punishment of which there is no other provision. It supplements the other statutes, that is all. It applies where no special provision is made for the punishment of such delinquency or malfeasance. For the punishment of crimes and misdemeanors by and before this tribunal there is, of course, a special provision made, so that this section can have no application to them. It clearly can have no application to any case over which this court has jurisdiction, for in all these cases special provision is made for the punishment of the offenses.

Mr. President, I do not know of any other provision in our statutes that has any bearing, directly or indirectly, upon the question under consideration. Certainly, these two provisions do not bear against us; and there is no other provision, and never has been any other provision, which makes drunkenness, in or out of office, indictable. If drunkenness, then, is not indictable, if it is not a misdemeanor or crime, it follows, necessarily, that the respondent in this case cannot be impeached for it; for not being indictable, it is not triable before this tribunal. The respondent may be tried and punished like other individuals, but he cannot be tried by this court, because this court has no jurisdiction or cognizance of the offense charged.

I will now refer briefly to the other offenses charged in these articles, lewd conduct and fornication. Without detaining you to enquire whether these be indictable offenses or not, at common law or by statute, I simply call your attention to the authorities which I have read to you to-day, and to the obvious fact that, in the nature of things, these are not offenses which can be committed under color of office, or in the execution of the functions of an office; and consequently they are not the subject of impeachment. This is what Judge Story and Prof. Dwight and the other authorities which I have cited have told you. Impeachment will not lie for such crimes as these or for burglary, theft or anything of that kind, because they have no official character or effect. And suppose you could try a person here, for instance a judge, for alleged lewdness or fornication, say in cohabiting with prostitutes, upon what tenure would judges hold their offices in times of public excitement, or in the midst of their political enemies? Suppose that some mammoth corporation, or some monster combination or ring were endeavoring to push through some cherished but corrupt and dangerous scheme in the country, and an incorruptible judge stood firmly in the way of the execution of their purposes, and that he could be impeached for lewdness,

in cohabiting with prostitutes, by what kind of tenure would that judg hold his office? Especially in our day and generation, when money i apparently invested in such schemes precisely as it might be, in legit imate enterprises—just so much being employed as is necessary to carry the project to its successful accomplishment. We are allowed in this cas five witnesses on each side to each article. Do you doubt that, in such a case as I have supposed, if it should be thought necessary, five or even ten persons could be suborned, for the paltry consideration of a few dollars to falsely swear that the accused judge had cohabited with them? Are the judges of our land to hold their offices on such feeble tenure as that, in such times as we live in and in the face of the daily and habitual employment by the great rings, combinations and syndicates of our day, of such *methods* as I have referred to?

I refer to this merely to illustrate the great importance of your strict and firm adherence to the law and precedents as established, and applicable in the premises.

Let these never be bent to the influence of caprice or passion or prejudice, or popular clamor, or to considerations of temporary expediency. Set no precedent, I beg of you, which in future times may operate injuriously to our institutions, especially to the judiciary. Remember it took ages in England to establish the independence of the judges as it exists there to-day. The fight went on there for years and years against the encroachments of the executive. Now no danger is threatened from that direction; it comes at present rather from the other extreme—the passions and caprices of the people; but chiefly from the great combinations of capital, power and influence, peculiar to our time. It is from that source, to-day, that the menace and danger come to our judiciary; and it is better, far better, if we shall even somtimes overlook altogether the occasional peccadilloes of our judges, than that we should do anything to unsettle the tenure by which they hold their office, or to weaken the independence which they may feel in the exercise of it. Let us hope that we shall never have, in this State, a judiciary that will tremble before the legislature, executive or any other power. Let us, as we value, love and cherish our institutions and civil polity, do our utmost to maintain and uphold the independence and integrity of the judiciary, the only sure bulwark to-day of our liberties and of our institutions, as our fathers left them to us. It is fortunate, I think, that this court, under our constitution has no jurisdiction of a case of impeachment for an offense not connected with the exercise of the functions of an office; no jurisdiction of an offense committed by a judge entirely apart from the administration of his office. Let the ordinary tribunals, I beg of you, inquire into his offenses, if any he has committed, when they are not connected with the administration of his office.

If the respondent in this case frequents houses of ill-fame, if he consorts with lewd women, if he commits adultry or fornication, or, for that matter, burglarly and theft, let the courts of law take cognizance of the matter. Let the grand jury of the county in which he is said to have committed the offenses make inquiry into these charges. If this respondent has been guilty of *any* of these offenses, let him be punished by all means; but let it be done by the tribunal which has lawful cognizance of the matter. Let us not call upon the High Court of Impeachment of this State, whose jurisdiction has been so jealously and carefully limited by the framers of our constitution, to do the work of grand jurors and of police magistrates.

I need not press this matter, I am sure, further upon your attention. I believe I have taken more than my measure of the time. I have but a few words to add. I will say nothing more upon the question involved in the first three grounds presented by the demurrer; that is to say, that there is no impeachable offense charged here in any of these articles, because an impeachable offense must be an indictable offense, and must have been committed under color of office; and there is charged here no indictable offense nor offense committed under color of office.

Let me now call your attention, in closing, to the seventeenth, the eighteenth and twentieth of these articles, which it seems to me, and I say it with the greatest respect for the person who drew them, probably in great haste, never should have been inserted. No human being can answer to allegations so vague as these are. You can have no hesitation, I apprehend,—and I need not take much of your time in dwelling upon the question involved here—in sustaining the demurrer as to these three articles. If you will bear with me a few minutes longer I shall be done.

With regard to the right of every one accused of an offense to have the facts constituting the alleged offense, set forth specifically and with distinct and definite certainty, as to time and place, and every material incident, I will read to you a iew paragraphs from the speech of Daniel Webster in defense of Judge Prescott, to which I have already had occasion to refer you. Daniel Webster, as we all know, was a man possessed of a remarkably clear comprehension of all legal principles, especially of constitutional principles. He was called, as you all remember, "the great expounder" of the constitution, and his speeches upon the construction of that instrument are universally quoted as authority by the highest courts in the country. There is no doubt that he has stated the law correctly here.

One of the charges against Judge Prescott was that he had taken illegal fees.

Another charge was that he had held court at improper times. Mr. Webster says:

> And the first inquiry is, whether any misconduct or maladministration in office is sufficiently charged upon the respondent in any of them (articles of impeachment).

I will have to call your attention again to the use of the word "maladministration" in the constitution of Massachusetts where this offense was tried. This word is not used in our constitution, nor in the constitution of the United States; and is probably used in a very few states besides Massachusetts. But it has a different and much more extended meaning than the words "corrupt conduct in office" as I have already pointed out, and as you will readily see. This prosecution was under the constitution of Massachusetts, however, and the officer was subject, in consequence, to its provisions. This is not material for any purpose for which I am now reading this citation, except that I desire you shall not be misled by the use of this term.

> And the first inquiry is, whether any misconduct or maladministration in office is sufficiently charged upon the respondent in any of them, (articles of impeachment.) To decide this question, it is neccssary to inquire, what is the law governing impeachment; and by what rule questions arising in such proceedings are to be determined. My learned colleague, who has preceded me, has gone very extensively into this part of the case. I have little to add, and I shall not detain you by repetition. I take it, sir, that this is a court; that the respondent is brought here to be tried.

That was the Senate of Massachusetts, setting, as you do to-day, as a high court or impeachment.

That you are his judges, and that the rule of your decision is to be found in the constitution and the law. If this be not so, my time is misspent in speaking here, and yours, also, in listening to me. Upon any topics of expediency or policy, upon a question of what may be best upon the whole, upon a great part of those considerations with which the leading manager opened his case, I have not a word to say. If this be a court, and the respondent on his trial before it; if he is to be tried, and can only be tried, for some offense known to the constitution and the law, and if evidence against him can be produced only according to the ordinary rules, then, indeed, counsel may possibly be of service to him. But if other considerations such as have been plainly announced are to prevail, and that were known, counsel owe no duty to their client, which could compel them to a totally fruitless effort for his defense. I take it for granted, however, sir, that this court feels itself bound by the constitution and the law; and I shall therefore proceed to inquire whether these articles, or any of them, are sustained by the constitution and the law.

I call your special attention to these words of this great expounder of the constitution, because it is often said, and you have probably heard it frequently, that this court is a law to itself; that it can do just as it pleases. You are no more a law unto yourself than is the Supreme Court or District Court. You are under the solemn obligation of an oath, to administer justice *according to law*. And you are under the same obligations, and for the time being, occupy the same position in the exercise of your jurisdiction that the Supreme Court or district courts do.

Webster says further:

"I take it to be clear that an impeachment is a prosecution for the violation of existing laws and that the offenses in cases of impeachment must be set forth substantially in the same manner as in indictments."

Remember that. It will aid you materially in determing the question now under consideration.

I say *substantially*, for there may be in indictments certain technical requisitions which are not necessary to be regarded in impeachments. The constitution has given this body the power of trying impeachments without defining what an impeachment is, and therefore necessarily introducing, with the term itself, its actual and received definition and the character and incidents which belong to it. An impeachment, it is well known, is a judicial proceeding. It is a *trial*, and conviction in that trial is to be followed by forfeiture and punishment. Hence the authorities instruct us that the rules of procedure are substantially the same as prevail in other criminal proceedings. There is, on this occasion, no manner of discretion in this court, any more than there is, in other cases, in a judge or a juror.

Mark that please. I repeat it:

The rules of procedure are substantially the same as prevail in other criminal proceedings. There is, on this occasion, no manner of discretion in this court, any more than there is, in other cases, in a judge or a juror. It is a question of law and evidence. Nor is there, in regard to the evidence, any more latitude than on trials for murder, or any other crime, in the courts of law. Rules of evidence are rules of law, and their observance on this occasion can no more be dispensed with than any other rule of law. Whatever may be imagined to the contrary, it will commonly be found that a disregard of the ordinary rules of evidence is but the harbinger of injustice. Tribunals which do not regard those rules seldom regard any other; and those who make free with what the law has ordained respect-

ing evidence, generally find an apology for making free also with what is ordained respecting other things. They who admit or reject evidence according to no other rule than their own good pleasure, generally decide everything else by the same rule. This being then a judicial proceeding, the requisite is, that the respondent's offense *should be fully and plainly, substantially and formally described to him.* This is the express requisition of the constitution Whatever is necessary to be proved must be alleged; and it must be alleged with ordinary and reasonable certainty. I have already said that there may be necessary in indictments certain technical niceties which are not necessary in cases of impeachment. There are, for example, certain things necessary to be stated, in strictness, in indictments, which, nevertheless, it is not necessary to prove precisely as stated.

For instance, an indictment must set forth, among other things, the particular day when the offense is alleged to have been committed; but it need not be proved to have been committed on that particular day. It has been holden in the case of an impeachment that it is sufficient to state the commission of the offense to have been on or about a particular day. Such was the decision in Lord Winton's case as may be seen in 4 Hatsell's Precedents 297. In that case the respondent, being convicted, made a motion to arrest the judgment on the ground that "the impeachment was insufficient for that the time of committing the high treason is not therein laid with sufficient certainty." The principal facts charged in that case were laid to have been committed "on or about the month of September, October or November last and the taking of Preston, and the battle there, which are among the acts of treason were laid to be done about the 9th, 10th, 11th, 12th or 13th of November last."

A question was put to the judges, "whether in an indictment for treason or felony, it be necessary to allege some certain date upon which the fact is supposed to have been committed, or if it be only alleged in an indictment that the crime was committed on or about a certain day whether that would be sufficient." And the judges answered that it is necessary that there should be a certain day laid in the indictment, and that to allege that the fact was committed on or about a certain day would not be sufficient. The judges were next asked, if a certain day be alleged in an indictment, it be neccssary, on trial, to prove the fact to be committed on that day; andthey answered, that it is not necessary. And thereupon, the Lords resolved that the impeachment was sufficiently certain in point of time.

That is to say, they held that there was not the same strictness required in alleging an offense in an impeachment as in an indictment; that you need not allege in an impeachment any more than you are required to prove; that in an indictment, although you are required to allege all the facts with entire certainty, you need not prove them exactly as they are alleged; and, generally, that in an impeachment, if the allegations are as certain as the proofs required it will be sufficient.

This case furnishes a good illustration of the rule which I think is reasonable and well founded, that whatever is to be proved must be stated, and that no more need be stated.

This is exactly our position, but the difficulty is that in these three articles *nothing* is stated with definiteness and certainty or in such a manner as to enable the respondent to meet evidence with evidence at the trial.

In the next place, the matter of the charge must be the breech of some known and standing law; the violation of some positive duty. If our constitutions of government have not secured this they have done very little indeed for the security of civil liberty. "There are two points," said a distinguished statesman, "on which the whole of the liberty of every individual depends; one, trial by jury; the other, a maxim arising out of the elements of justice itself, that no man shall, under any pretext whatever, be tried upon anything but a known law." These two great points our constitution have endeavored to establish, and the constitution of this commonwealth in particular, has provisions on this subject as full and ample as can be expressed in the language in which that constitution is written.

Allow me then, sir, on these rules and principles to inquire into the legal sufficiency of the charges contained in the first article.

And first, as to the illegality of the time or place of holding the court, I beg to know what there is stated in the article to show that illegality. What fact is alleged on which the managers now rely? Not one. Illegality itself is not a fact, but an inference of law, drawn by the managers on facts known or supposed to be known by them, but not stated in the charge, nor, until the present moment, made known to anybody else. We hear them now contending that these courts were illegal, for the following reasons, which they say are true, as facts, viz.:

First. That the Register was absent.

Second. That the Register had no notice to be present.

Third. That parties had not notice to be present.

Now not one of these is stated in the article. No one fact or circumstance now relied upon in making a case against the defendant is stated in the charge. Was he not entitled to know, I beg to ask, what was to be proved against him? If it was to be contended that persons were absent from those courts who ought to have been present, or that parties had no notice, ought not the respondent to be informed that he might encounter evidence by evidence and be prepared to disprove what would be attempted to be proved?

This charge, sir, I maintain is wholly and entirely insufficient. It is a mere nullity. If it were an indictment in the courts of law it would be quashed, not for want of formality or technical accuracy but for want of substance in the charge. I venture to say there is not a court in the country, from the highest to the lowest, in which such a charge woud be thought sufficient to warrant a judgment.

But the article in that case was no worse than the articles in the case before you to which we have specially objected. I have before me here—but I will not detain you by reading it. I simply refer you to it—an extract from the proceedings on the impeachment of Lord Clarendon in England. There the same question arose in regard to the indefiniteness of the allegations; and it was held that a person could not be arrested and held to answer an impeacnment unless the specifications were of such a certain and definite character that he might make answer to them according to law. That was the ruling by a resolution adopted by the House of Lords, and that is, undoubtedly, the rule everywhere; precisely the same rule, as Webster points out, that obtains in the matter of indictments. The allegations must be sufficiently certain, distinct and definite, as to time, place, and circumstances, to enable the accused to answer them and to disprove them—meeting evidence by evidence. A general allegation of drunkenness or lewdness extending over a long period of time without the specification of the instances or even of a single instance is so manifestly bad as to require no argument or authority.

These three articles are obviously insufficient; not imperfect, as Mr. Webster well puts it, because technically deficient, but because they are defective in substance. They do not charge an offense which the respondent in this case can, by any possibility, meet. How is he going to disprove the charge of habitual drunkenness extending over a number of years? How is he going to establish his innocence of this charge? By bringing the whole community, the people of the whole district in which he holds court, and in which he is seen from day to day, to testify? How can he know or anticipate what evidence the managers propose to introduce before you? How can he meet that evidence by evidence?

These considerations are equally applicable,—indeed they apply with greatly increased emphasis and force,—to the general charge of lewdness extending over a period of several years, contained in these articles.

How is it possible for the respondent to meet this charge? Usually drunkenness is practiced in the open day; lewdness in the dark. How can a person accused of such an offense make answer to the accusation, without being informed of any specification? To require any one to do so would be to the last degree unreasonable and unjust, as well as a most palpable and gross violation of a well recognized and fundamental principle and rule of the criminal and common law.

I do not think I need urge the points of this demurrer upon you any further. The last point as to the uncertainty and insufficiency of these three articles, must be patent to you when you read them. It will surely be so to every lawyer who occupies a seat in this body.

With regard to the charges of intoxication, whether on or off the bench, I have shown you, I think, clearly—and if you will undertake a critical examination of the law you will find that my statements in this regard are correct—that drunkenness has never been an indictable offense in this State and was not, at the time our constitution was adopted; and, not being an indictable offense it is not a crime or misdemeanor and hence is not impeachable. In regard to the charge of fornication, I have sufficiently demonstrated from the authorities, as well as from reason, that even if that be an indictable offense, it is not an offense which in the nature of things can be committed under color of office and consequently it is not impeachable.

In other words, I think I have shown you conclusively that no offense is impeachable that is not indictable, and that no offense is impeachable unless it be committed under color of office; and that no such offense is charged in these articles.

With these remarks, I shall submit to you on my part this demurrer—thanking you for the patience and attention with which you have listened to me during the long argument I have had the honor to address to you.

The PRESIDENT. Do the counsel for the respondent desire to occupy now any more of the time which has been allotted to them?

Senator CASTLE. Mr. President, I would ask when the printed copies of the demurrer are to be received. We have no knowledge of them except from what has been read here.

The PRESIDENT. Copies were distributed on the last day of the session.

Senator CASTLE. There were no copies distributed, Mr. Chairman, to my knowledge.

The PRESIDENT. The chair is informed that copies were distributed.

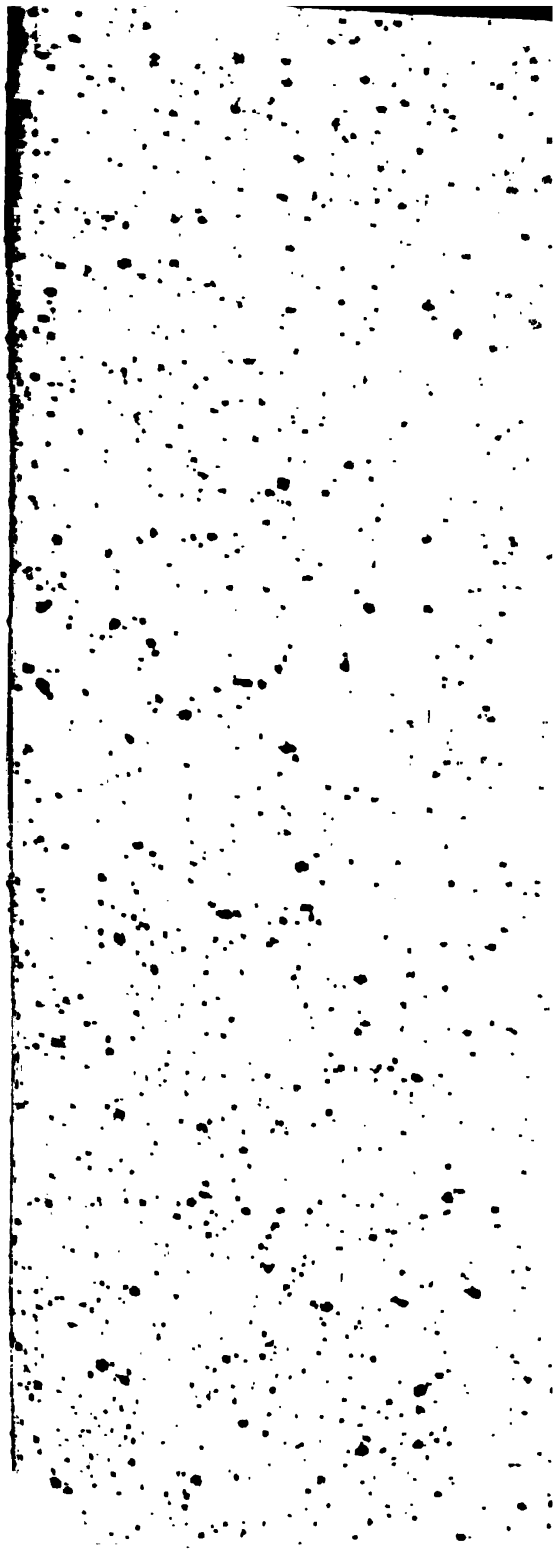
The CLERK. A proof of the journal of yesterday was sent here by the printer this morning for revision, and was returned less than an hour ago. The printed copies will be ready to-morrow morning.

Mr. BRISBIN. I do not know, Mr. President, that I understood fully what the chair said a moment ago, about the completion of the argument upon the part of the respondent. Will the chair be so good as to repeat its former remarks.

The PRESIDENT. The chair inquires whether the counsel desired now to use any more of the time allotted to them.

Mr. ALLIS. I think not. Our expectation was that Mr. Sanborn would close the argument. We have the opening and the closing, I believe.

Mr. Manager HICKS. That is true, so far as the reply is concerned.



The managers desire to ask the honorable counsel whether they are through with their objections in chief. If we conform to the ordinary rules of trial courts, their reply would be simply an answer to whatever new matter might be adduced upon the part of the managers.

Mr. ALLIS. We will reserve the remainder of what we have to say until the closing argument.

Senator CROOKS. Mr. President, I move that when the Senate adjourns it adjourn until to-morrow morning at ten o'clock; and if there is no reason to the contrary, I move that we now adjourn.

Senator C. F. BUCK. Allow me to suggest to the gentlemen, the propriety of fixing the hour to which the Senate is to adjourn to-morrow morning at nine instead of ten o'clock.

Senator C. F. MACDONALD. Yes; make it nine o'clock.

Senator C. F. BUCK. I move then, as an amendment, that when the Senate adjourns, it adjourn until to-morrow morning at nine o'clock.

Senator CROOKS. I accept the amendment offered by the Senator from Blue Earth, to that portion of my motion which was intended to fix the hour at which the Senate would meet to-morrow; but I desire, at the present time, to withdraw my motion to adjourn now.

Mr. Manager HICKS. May I ask the courtesy of the Senate for a moment, while I ask the president, and, through him, the honorable counsel for the respondent, whether all the authorities upon which they expect to rely in this demurrer have been cited. It is our wish, and we think our right, that they should be cited at this time before we reply. We therefore desire to ask that question, through the President, of the honorable counsel.

Mr. ALLIS. I referred to those which I used this morning as I went along; but I will hand you a list of them, if you like, before the morning session.

The PRESIDENT. There was a motion made with reference to adjournment which will leave this matter open.

Mr. Manager HICKS. I understood that a motion was made to adjourn.

The PRESIDENT. No, sir; that motion has not been made.

Senator CROOKS. I withdrew that motion.

The PRESIDENT. Do you wish to have the motion put as to the time of adjournment?

Senator CROOKS. Yes, sir; I accepted the amendment of the Senator from Blue Earth.

The motion of Senator Crooks that when the Senate adjourns, it adjourn until to-morrow morning at nine o'clock, was put by the President and unanimously adopted.

The PRESIDENT. The matter previously under discussion will now be considered.

Mr. Manager HICKS. Mr. President, we simply renew our request to be furnished with the authorities to be cited by the counsel for the respondent in this matter before we commence our argument.

Mr. ALLIS. I cited those that I used as I went along. I had no brief of them, and I have just informed the honorable manager that we would hand him a list of our authorities in the morning. We have no list now. I had a mere memorandum of them. I intended to give them as I went along, but I may have failed to do so in some instances.

Mr. Manager HICKS. The counsel does not seem to apprehend the point I make. The managers desire to be made acquainted with all the

authorities that are to be cited by the learned counsel for the respondent in support of the proposition announced by the gentlemen on this floor to-day. We desire this information before we proceed to discuss the matter from our point of view.

Mr. ALLIS. I do not know what my associates may have, sir. I cited my authorities in the order in which I read them during my argument.

Mr. Manager HICKS. If my request is not to be complied with, we shall claim the right to reply to such new authorities as shall be cited by the counsel in their closing argument.

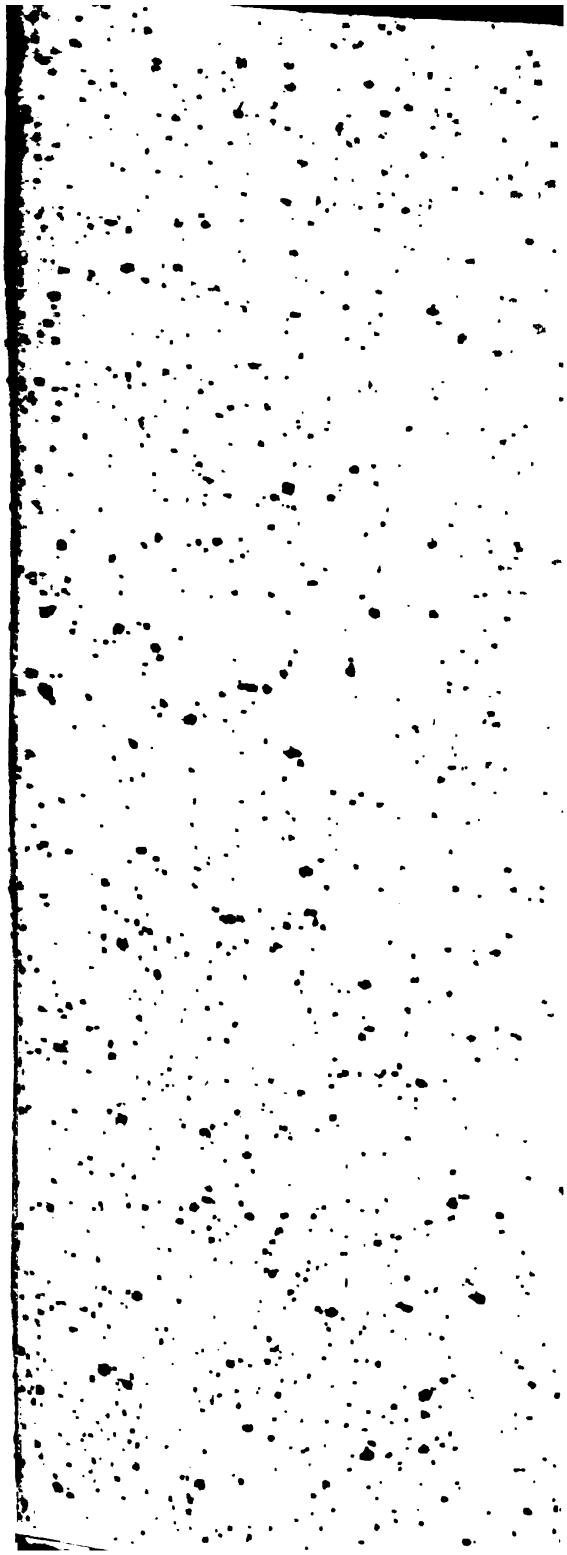
Senator C. F. BUCK. I move you, Mr. President, that the respondent's counsel be directed to furnish the authorities cited by them, to the honorable managers by to-morrow morning at nine o'clock, and that no authority shall be allowed to be read by them unless a citation to the same shall have been previously furnished within a reasonable time to the board of managers.

Mr. SANBORN. Mr. President and Senators. If the Senate will allow me I would like to say a word in regard to that motion. The learned counsel who has just closed has given to the managers every authority which he has used upon the argument, and which he intends to use. There are but very few authorities, that I know of, which have not been cited by the learned counsel. I am ready to cite to the learned counsel at the present time every one of the authorities with which I am acquainted, and will do so in the morning, under the motion; but if, subsequent to this time, we should find some authority which would be of some benefit to the court and to the counsel in determining the questions which have now arisen, we should desire in closing this case to have the privilege of reading and citing those authorities to the court. It is possible that we shall find none other; but, if we should find some, we do not want by our silence to be cut off from the privilege of applying to you, Mr. President and Honorable Senators, for the privilege of presenting those authorities upon the reply.

Mr. Manager HICKS. Mr. President I desire to say simply this: The counsel on behalf of the respondent have enunciated here what they claim to be certain principles of law, and in support of those principles have cited certain authorities. It is simply fair, it is simply in accordance with the customs of every court, that they complete their argument in chief before we are called upon to answer it, and that their argument be accompanied by a citation of the law and the authorities upon which they rely. Of course, to an exceptionable instance like the one to which the honorable counsel for the respondent has just named, there would be no objection, provided we were given an opportunity, if we desired, to reply. We simply desire, before we commence the argument of this case, to know upon what law the honorable counsel for the respondent rely to sustain the propositions which have been advanced before the Senate to-day. To that we think we are entitled by fairness, and by the rules which govern all courts and ought to obtain here. One thing further, it would be a matter of convenience to myself personally, if the Senate could at this time, or within a short time, adjourn until to-morrow morning at nine o'clock; and, if such hour is fixed, it would certainly be desirable that the authorities be furnished us at least an hour earlier than that.

Senator CROOKS. Then I would suggest ten o'clock.

Mr. Manager HICKS. I care nothing about the authorities already



cited, but I desire to learn what additional authorities are to be presented.

Mr. PRESIDENT. The opportunity will undoubtedly be accorded to the Honorable Managers for the State to reply to any proposition or citation of authority that may be advanced before the argument is closed. There may be a question, however, whether counsel for the state shall proceed now to reply to the arguments which have already been adduced, when they may afterwards find it nesessary to reply to farther argument and farther citations on the part of the respondent.

Mr. Manager COLLINS. I think the matter can be arranged without much farther talk. There are but a few authorities which the counsel desires to cite, and he says he can furnish them in five minutes.

Mr. Manager HICKS. That will be entirely satisfactory.

Senator C. F. BUCK. I understand then that counsel have arranged between themselves in regard to the matter. It will be much more satisfactory to the Senate to have them do so. They understand very well what is proper to be done in the case; and if I am correct, and it will be satisfactory to the counsel, I will withdraw the motion which I made a short time ago.

The PRESIDENT. I think it will be satisfactory.

Senator C. F. BUCK. It is understood very well. Suppose that the managers should also furnish the other side with the authorities which they expect to use. If they will agree to do that I will withdraw my motion. The rule is well settled and there ought to be no time spent over it.

Mr. Manager HICKS. I think we can do so, sir.

The PRESIDENT. The motion then will be withdrawn.

Mr. ALLIS. There is one authority which I see that I have overlooked, and to which a gentleman has just called my attention. They are somewhat important, though, I confess, I forgot even to mention them. The 2nd and 3rd volumes of Chitty's Criminal Law and Precedents contain the most elaborate and complete list of precedents for indictments in existence, and, among them all there is no indictment to be found for drunkenness.

Senator C. F. BUCK. Are the authorities printed?

Mr. ALLIS. No, sir.

Senator C. F. BUCK. Well, I think some of the members of the Senate would like the authorities to look over.

Mr. ALLIS. We could get them printed, I suppose.

Senator C. F. BUCK. If you have them printed I should be glad to see them.

Mr. ALLIS. We could furnish them, I suppose, or copies of them; but I desire particularly, as I had overlooked it, to call the attention of the Senate to these two volumes containing precedents for indictments for every conceivable crime that is indictable; because there is not a case to be found of indictment for drunkenness, or drunkenness in office.

Senator CROOKS. If there is no objection, I move that we now adjourn.

Senator CAMPBELL. Mr. President, I desire to say that we have already lost two days in the matter of this argument, and that many of us have left our business in such condition that it will be absolutely necessary to leave here Saturday morning in order to arrive at our homes in proper season. At first, the impression very generally prevailed

that the argument would not last longer than two days, and our arrangements for coming here were made with that understanding.

As I have said, two days have already been spent for the accommodation of one side of the case, and as at least some of us will be obliged to leave here Saturday morning, the Senate may find itself at that time, if the argument is not then finished, without a quorum, and be unable to proceed.

Senator MACDONALD. I move, Mr. President, that the argument be proceeded with.

Mr. Manager HICKS. It would certainly be very gratifying to me if the Senate would adjourn at this time to 9 o'clock in the morning, and permit me to proceed with my argument at that time. I think we can finish the whole matter to-morrow.

Senator CAMPBELL. I shall be satisfied if you can finish to-morrow.

Mr. Manager HICKS. I think I am safe in saying that we shall get in our six hours and still leave abundant time to the other side.

Senator CROOKS. Is there any further debate on the motion to adjourn?

The President having put the motion, the ayes and noes were called for, as follows:

The roll being called, there were yeas 8, and nays 19, as follows:

Those who voted in the affirmative were—

Messrs. Adams, Bonniwell, Buck C. F., Crooks, Howard, Johnson F I., Shalleen and Simmons.

Those wo voted in the negative were—

Messrs. Aaker, Buck D., Campbell, Case, Hinds, Johnson R. B., Macdonald, McCormick, McLaughlin, Mealey, Miller, Morrison, Perkins, Powers, Rice, Tiffany, Wheat, White and Wilson.

Senator A. M. Johnson and Senator Miller afterwards changed their votes to No.

And so the motion was lost.

Senator CAMPBELL. I now move that counsel proceed with the argument.

Mr. Manager HICKS. It will probably take twenty minutes to get our books here, and we desire to ask the Senate for a recess of that length.

Senator C. F. BUCK. Mr. President, I move that we take a recess until 8 o'clock.

Senator CAMPBELL. I second the motion.

Senator C. F. BUCK. I know how much there is to do when one has to make a speech, and sympathizing with the gentleman in his present position, I move that we take a recess until eight o'clock, this evening.

Senator CAMPBELL. I move to amend by making it 7:30.

Senator C. F. BUCK. I accept the gentleman's amendment.

The motion having been put by the President, the yeas and nays were called for, with the following result:

The roll being called, there yeas 22, and nays 8, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Buck C. F., Buck D., Campbell, Case, Castle, Gilfillan C. D., Hinds, Johnson A. M., Macdonald, McCormick, McLaughlin, Mealey, Miller, Morrison, Perkins, Powers, Simmons, Tiffany, Wheat, White and Wilson.

Those who voted in the negative were—

Messrs. Adams, Bonniwell, Crooks, Howard, Johnson F. I., Johnson R. B., Rice, and Shalleen.

And so the motion prevailed.

EVENING SESSION.

7:30 P. M.

The PRESIDENT. The Senate will please come to order.

Mr. Manager HICKS. Do I understand the President to say there is a quorum present?

The PRESIDENT. Yes, sir, the Senate is ready to hear the Managers.

Mr. Manager HICKS. Mr. President, I approach the duty before me with no slight misgiving. The subject before the Senate at this time, is a very grave one, to the consideration of which, it seems to me, no man, however talented, would come without diffidence. One of the judges of the district court of this State has been impeached by the House of Representatives, at the bar of this Senate, for crimes and misdemeanors. The respondent has appeared, and, by his counsel, interposed a demurrer to the articles of impeachment, upon the ground that the facts therein stated do not constitute a crime or misdemeanor, and that therefore the articles do not charge the respondent with any impeachable offense, nor with any offense of which this Senate, sitting as a court, has jurisdiction.

It seems proper then, Mr. President, that we should first examine this question of jurisdiction, which has been raised by demurrer, and ascertain, if possible, what are the powers and duties of the Senate in the premises; first, as to whether the Senate has jurisdiction of the person of the respondent; and, in the second place, whether it has jurisdiction of the subject matter of the articles, or, in other words, whether the artiles charge the respondent with an impeachable offense.

The very able counsel for the respondent has told you to day, notwithstanding, for the purposes of this argument, the respondent stands confessedly guilty of each and every act charged in the several articles of impeachment, that no offense is alleged to have been committed against the commonwealth, because, forsooth, no indictable crime is charged in the articles. This is the assertion made, but, with all due deference to the learned counsel, it does not appear to have been demonstrated.

Upon reading Article 13 of our State constitution, you will observe that it refers to a particular subject, that of impeachment, and removal from office.

The caption itself indicates that these were kindred subjects in the minds of the framers of our constitution. By reading the first section of the article, the object for which this court of impeachment was established, and the jurisdiction of the court, both as to persons and subject matter, will fully appear; and although it has once been read in your hearing to-day, I will take the liberty of again calling your particular attention to it.

It reads:

"The Governor, Secretary of State, Treasurer, Auditor, Attorney General, and the judges of the Supreme and District courts may be impeached for corrupt conduct in office, or for crimes and misdemeanors, but judgment in such case shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit in this State. The party convicted thereof shall nevertheless, be liable and subject to indictment, trial, judgment and punishment according to law."

From this section we learn that the powers of this court are simply the right of trying the officers therein named, for the offenses of corrupt conduct in office, and crimes and misdemeanors, for the sole purpose of removing and disqualifying such officers as may be found guilty of those offenses.

The learned counsel for the respondent who addressed you to-day, intimated that you should be very careful as to your jurisdiction, because, as he alleged, only a few officers were named in this section. Gentlemen, it would make no difference if only *one* officer were named in this section. When you come to take into consideration the question of jurisdiction of the person, the only question for you to consider is, whether the officer whom you are trying here to-day is one of the officers named in section 1 of article 13. The respondent named in each of the articles is charged as being a judge of the district court of this State. This fact stands admitted by the demurrer. He is one of the officers named in this section of the constitution, and therefore your jurisdiction as to his person is complete. The only further question before you for inquiry then is, do these several articles of impeachment, to which the respondent has pleaded guilty for the purposes of this argument, charge him with corrupt conduct in office, or with crimes and misdemeanors?

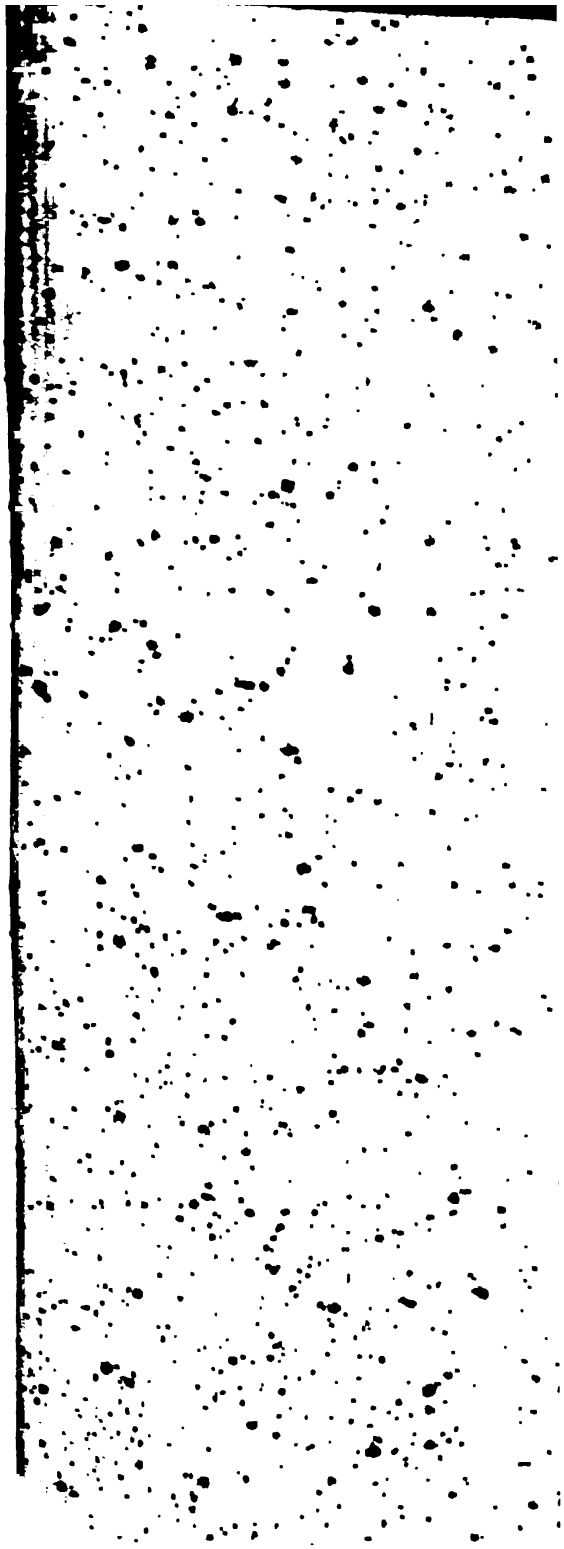
The articles under consideration do not charge, and were not intended to charge the respondent with corrupt conduct in office. They simply charge him with crimes and misdemeanors.

Mr. ALLIS: "In office" is the language.

Mr. Manager HICKS: My friend, the learned counsel for the respondent, who has addressed you to-day, says that they charge the respondent with crimes and misdemeanors *in office*. That point may as well be discussed here as at any future time. The two words, "in office," it is true, do occur in each of the articles; but they are entitled to no place there. They are mere verbiage, mere surplusage, and I assure you, Mr. President, were never placed there with my consent, except that being in a minority, I was compelled to consent to the wishes of the majority.

The only offenses known to the constitution, of which you, as a court of impeachment, can take cognizance are "corrupt conduct in office," and "crimes and misdemeanors." The words "in office" do not occur in the constitution, except in connection with "corrupt conduct;" they are not necessary to constitute the offense charged, and may be treated as mere surplusage in the articles. The learned counsel for the respondent in discussing how you should determine what acts are crimes and misdemeanors, has read to you at great length from the article of Professor Dwight, in the VI American Law Register, to substantiate his broad proposition, that no offense is impeachable which is not indictable. In this position he is supported by the mere *ipsi dixit* of Prof. Dwight. The statement is one which is unsupported by any author, authority, case or jurist in this country until the year 1866. Were I alone in controverting the principle laid down by respondent's counsel and Prof. Dwight, that no offense is impeachable unless it is indictable, I should do so with modest diffidence. But the position of the managers in this controversy is sustained by many of the ablest lawyers and jurists of this country.

It has been said that "the federal constitution is not an instrument of definition, but only of enumeration." This is also true of our State constitution, particularly in the article now under consideration. It does not define either one of the three offenses named therein. It simply enumerates them, and leaves it to this court, to say what is the definition



of each term therein employed; and what acts shall constitute "corrupt conduct in office," and what "acts," "crimes" and "misdemeanors." We admit that one of the principles by which you are to be guided in your deliberations upon this question, in defining these terms in the constitution, is the common law; and by the common law we mean the common law of England, as it existed at the time of the American revolution, as modified by the English statutes, passed prior thereto, so far as it is consistent with our constitution, applicable to our situation, and not repealed by our laws. This common law will be one of your guides in determining what acts in a public officer constitute crimes and misdemeanors. But there is also another guide which should be more implicitly followed, only because its directions are more certain. I refer to the statute law of this State, and particularly those statutes which were in force in the territory of Minnesota at the time of the adoption of our constitution, and to which the framers of that instrument may well be presumed to have had constant reference.

Conceding then, that the respondent is one of the officers named in article 13, and that therefore you have complete jurisdiction of his person, the only further question is as I have said, whether the acts charged in the several articles of impeachment constitute a crime or a misdemeanor. We maintain, Mr. President, and I speak now of the first sixteen articles; other members of the board of managers will address you upon the others, as well as further upon these—the first sixteen articles, we maintain, charge the respondent with crimes and misdemeanors both by the common law, and by the statute law of this State. Allow me in passing to call your attention to the fact that the first twelve articles and articles 14, 15 and 16 are substantially alike, except as to the change of time and place, when and where the offense is alleged to have been committed. Article 13 differs in this: That the respondent is not therein charged with having been intoxicated while in the discharge of his duty, or upon the bench, or while engaged in the trial of causes; but is charged with having duly appointed a term of court to be held in Brown county on a certain day, and then with having become intoxicated upon that day, and thereby neglecting attendance upon such term. The offense therein charged is somewhat different from the offenses charged in the fifteen articles to which I shall refer. We maintain, Mr. President, that the fifteen articles before specified charge the respondent with the following crimes and misdemeanors:

First.—Open and notorious drunkenness.

Second.—Violation of his oath of office.

Third.—Misbehavior in office, viz.: Drunkenness while in the discharge of the duties of his office.

Fourth.—Neglect of duty.

And that article 13 charges the respondent with the last three offenses named.

Desiring to call your particular attention to the language of these articles, I will read article 1.

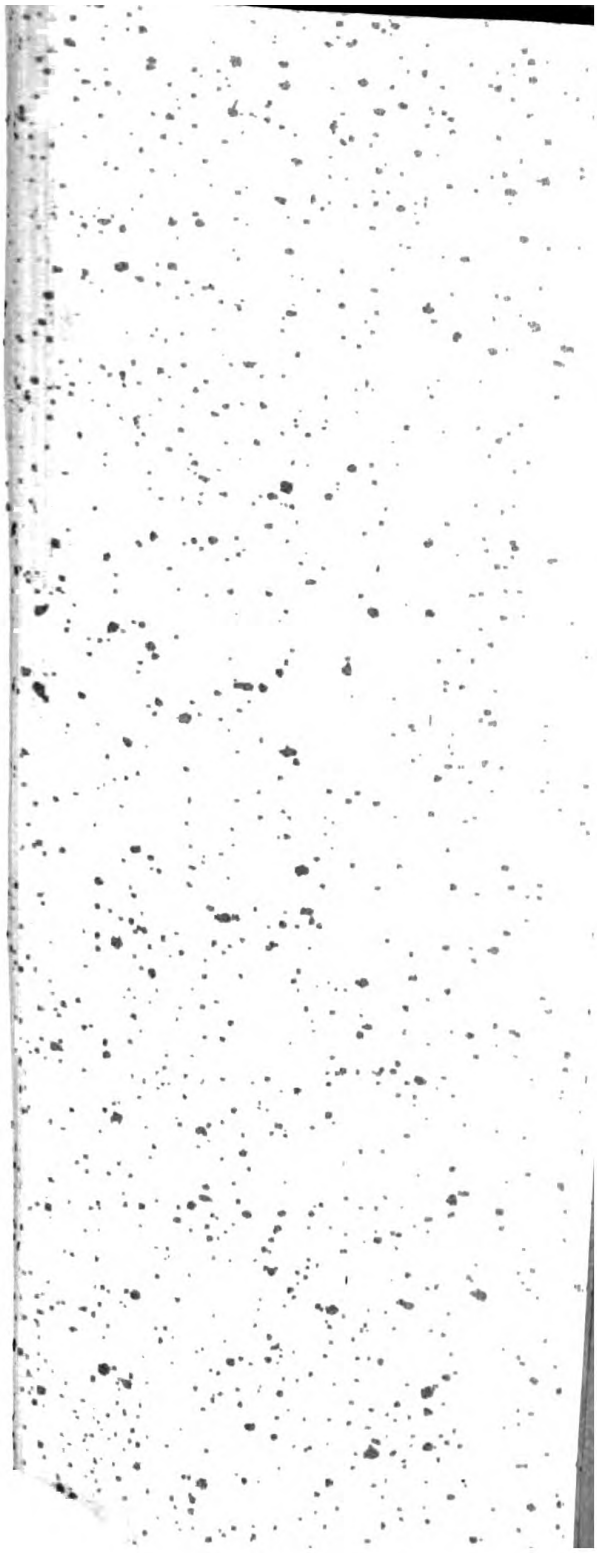
That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office and of the constitution and laws of the State of Minnesota, at the county of Martin, in said State, to-wit: On the 22d day of January, A. D. 1878, and on divers days between that day and the 5th day of February, A. D. 1878, acting as and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other

matters and things then and there pending in the district court of Martin county, and did then and there preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof, he, thesaid E St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

Let us see what these offenses are, which the respondent comes in here and for the purposes of this argument by his counsel, says are true. The word "intoxication" occurs. That word is a term synonymous with drunkenness. It is so defined by Webster, by Abbott, in his law dictionary; and in the 47th Vermont. It is so defined in many decisions to which I might refer, and I presume this definition will not be disputed by the respondent. The words intoxication and drunkenness are synonymous terms. The charge is that this respondent was, on the day named, in Martin county, presiding as a judge of the district court, while in a state of drunkenness. Mr. President, the district court is a place where the public congregate, where they have a right to congregate. It would be very unusual to hold a district court in any other than an open place. Why, Mr. President and gentlemen, if any man, who is amenable to the laws of Minnesota, had in a state of intoxication, stepped into that court room where E. St. Julien Cox, the respondent, was presiding as judge, he would have been guilty of "intoxication in a public place;" of "open and notorious drunkenness." How much more open and notorious is it for the respondent, the man who presides as judge upon the bench, the dispenser of justice, the officer who holds the fortunes, the honor and the lives of his fellow citizens in his discretion—how much more open and notorious for him to sit there dispensing justice in a state of intoxication.

It cannot, it seems to me, be disputed that each of these articles, charge the respondent with being in a state of "open and notorious drunkenness" in a public place.

The articles also charge the respondent with a violation of his oath of office. Four years ago next January, in the Opera House in this city, at the inauguration of the State officers, in the presence of the legislature and a vast concourse of citizens assembled, to witness the inaugural ceremonies, in striking contrast to the quiet and unostentatious manner in which judges of the district court usually take the oath of office, this respondent came forward, and lifting up his hand toward Heaven, calling upon Almighty God for help, solemnly made oath, that he would perform the duties of his office faithfully and impartially, and according to his best learning, judgment and discretion. Is there any senator in this court who does not readily understand that a judge who goes upon the bench in the intoxicated condition which we have charged here upon the respondent, is disqualified for the exercise of his best learning, judgment and discretion, in matters and things then before him? We charge that he has done this voluntarily. Mark you the words: We say he *voluntarily* makes himself drunk by the excessive and immoderate use of intoxicating liquors, and then presides as judge upon the bench. Is not this a violation of the solemn oath which he has taken before Almighty God to perform the duties of his office faithfully



and impartially and according to his best learning, judgment and discretion? And is it possible that a drunken judge can always have his best learning, judgment and discretion at his command?

Further, Mr. President, we charge the respondent, by these articles, with misbehavior in office. That drunkenness upon the bench, or in the discharge of judicial duties, is a misbehavior in office, we shall be able to substantiate both by common law, and the statute law of this State; although it seems like wasting words to demonstrate this proposition,—this axiom, I might call it,—before this court. And finally, we charge the respondent, in each of the articles, with neglect of duty; and we shall be able to show you that in treating of the common law, writers have classed the offense of drunkenness in an officer as a neglect of duty. I now propose to prove, by authorities, that each of the four offenses charged in the articles, are crimes and misdemeanors and, therefore, impeachable offenses.

It has been conceded by respondent's counsel, and is unquestionably true, that the same nicety and accuracy is not required in articles of impeachment as in indictments. I may add also, that it is no objection to these articles that we are able to find in each four distinct offenses. It often occurs in indictments, that in charging one offense, another is necessarily included. You can not charge the crime of murder or robbery without also charging an assault; the lesser crime is included in the greater. And so, while we have set forth the facts in these articles, that charge the respondent with being in a state of intoxication while in the discharge of judicial duties, each of the four offenses to which we have alluded, are, of necessity, *ex vi termini*, included in the charge.

Before citing authorities to show that the four offenses charged in these articles are impeachable offenses, I desire first to discuss the proposition advanced here to-day, that no offense is impeachable which is not indictable—either at common law, or under the statute. One word more as to the common law; and I wish I were able to state it as clearly and as pointedly, as I believe it is capable of being stated. What is this common law by which the gentleman says you are bound and by which we admit that you are to be guided, in defining crimes and misdemeanors? Why, it is that unalterable principle of right, which is the ground work not only of the English jurisprudence but of our own. Where do you find it? In the decisions of courts. Of what courts? Not only of the common law courts, but of the courts of impeachment. And if the gentleman in his statement that no offense is an impeachable offense except that which is indictable at common law, will include in his common law the common law of impeachments, we shall stand very nearly on the same ground. The common law has been developed at different times, and in different places, under different circumstances and by different courts. It is now, as it ever has been, a thing of growth, continually expanding to meet the wants of an advancing civilization. Not that the underflying principles ever change. They are immutable. But the courts who declare this common law, are constantly applying its immutable principles to some new state of facts, and declaring what the common law is concerning such new state of facts, by the law of analogy. The mere fact that you find no declaration of what the common law is upon a certain subject in our own State, is no reason that it does not exist. It may remain dormant, but never dies, except by statutory enactment. As an example, the common law right of distress existed in this State for more than twenty years before it was declared by our courts;

and yet, during that time, not one person in a hundred, outside the legal profession, had any knowledge of the fact. And as the district and Supreme Courts had the undoubted power to announce the existence of that common law right of distress, so you, gentlemen of the Senate, sitting here as a court of impeachment, have the same undoubted power to decide what acts constitute a crime and misdemeanor under our constitution, and if you do not find the terms defined by our statute, you may go to the fountain head, the common law, for precedents to govern you in your decision. And if you do not find precisely the same state of facts as a precedent there, as one of the courts of this State, you have the right, reasoning by the law of analogy, to declare what the common law is concerning the subject matter now before you. You are, in other words, one of the courts which are to make the common law of the future; and in the years yet to come, in the political history of Minnesota, the record of your decision upon this demurrer, will be of vital importance in determining the law of sobriety, so far as it relates to public officers. And if, in your deliberations, you are unable to find a precedent, in the name of justice and common decency, make one.

To this extremity however, I apprehend you will not be forced to go. Whatever your decision may be, will, for the time being, be the law. That is, it will become a precedent. It may not be law for all time, because other courts of impeachment following you, will have the same right to go to the fountain head and declare what the law concerning this state of facts really is. It will remain for you, however, to be judged by future generations, and by future courts, as to whether you have pronounced the law, or simply made that the rule in this case which is neither law nor right.

Why, the honorable counsel said this morning that this impeachment was simply a method of procedure for the punishment of crime. Of course he simply adopted in that, as I understand, the language of Prof. Dwight, in the article to which he alluded, and from which he read.

Mr. ALLIS. And the language of Daniel Webster.

Mr. Manager HICKS. Yes, sir, of Daniel Webster; but in a case where the jury, viz.: the Senate of Massachusetts, said by their verdict that Daniel Webster's law and facts were both bad; for Judge Pickering, the officer on trial, was convicted in the very case in which the speech of Webster, read to you this forenoon by respondents' counsel, was made.

Upon this point under discussion I will now read from the American Law Register, from an article by Judge Lawrence, formerly of Ohio, a jurist who learned his law at the bar and on the bench, and not by theory in teaching. He says, vol. VI, p. 644:

> It is absurd to say that impeachment is here a mode of procedure for the punishment of crime, when the constitution declares its object to be removal from and disqualification to hold office, and that "the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law, for his crimes." Subject to these modifications, and adopting the recognized rule, that the constitution should be construed so as to be equal to the occasions for its exercise, and 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.

But this power is not subject to these abuses in this country. The proper limitations have been thrown around it by the constitution itself.

In discussing the question as to what offenses are impeachable, and whether necessarily indictable, Judge Lawrence further says, on page 645 :

But it is not material whether the words "treason, bribery, or other high crimes and misdemeanors" confer, or limit, jurisdiction, or only prescribe an imperative punishment as to officers or a class of cases, since every act which by parliamentary usage is impeachable is defined a "high crime or misdemeanor;" and these are the words of the British Constitution which describes impeachable conduct.

Again on page 646 :

"When, therefore, Blackstone says, that 'an impeachment before the Lords by the commons of Great Britain in parliament, is a prosecution of the already-known and established law, and has been frequently put in practice,' he must be understood to refer to the 'established' parliamentary; not common municipal law, as administered in the ordinary courts, for it was the former that had been frequently put in practice."

* * * * * * *

"The framers of our constitution looking to the impeachment trials of England, and to the centers on parliamentary and common law, and to the constitution and usages of our own States said that no act of parliament, or of any State Legislature, ever undertook to define an impeachable crime. They said 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. They said that the High Court of Impeachment took jurisdiction of cases where *no indictable crime had been committed* in many instances, and there were then, as there yet are, 'two parallel modes of reaching' some, but not all, offenders, one by impeachment, the other by indictment."

Again on page 647 he says :

"All this is supported by the elementary writers, both English and American, on parliamentary and common law; by the English and American usages in cases of impeachment; by the opinions of the framers of the constitution; by contemporaneous construction, all uncontradicted by any author, authority, case, or jurist, for more than three-quarters of a century after the adoption of the constitution. The authorities are abundant to show that the phrase 'high crimes and misdemeanors' as used in the British and our constitution, are not limited to crimes defined by statute or as recognized at common law. Christian, who may be supposed to have understood the British Constitution when he wrote, says: 'When the words high crimes and misdemeanors are used in prosecutions by impeachment, the words high crimes have no definite signification, but are used merely to give greater solemnity to the charge.' Woodson, whose lectures were read at Oxford in 1777, declared that impeachment extended to cases of which the ordinary courts had no jurisdiction. He says: 'Magistrates and officers * * 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.' And he proceeds to say, the remedy is by impeachment."

English history presents many examples of this kind. Indeed, the word "misdemeanor" has a common law, a parliamentary, and a popular sense. In the parliamentary sense, as applied to the officers, it means "mal-administration" or "misconduct," not necessarily indictable, not only in England, but in the United States.

Demeanor is conduct, and he is guilty of misdemeanor who misdemeans or misconducts.

The counsel, in his argument, has cited from Curtis. This writer also cites from Curtis as follows : He says : "These general views," referring to those that I have read, "are supported by all elementary writers without exception, up to the last year." This article was written in 1867. "The last year," was the year in which the article of Prof. Dwight was written, from which the learned counsel for the respondent read at great length this morning ; and this writer makes that exception.

Again I read from Judge Lawrence's article, on page 655:

Curtis, in the History of the Constitution, says: "Although an impeachment may involve an inquiry, whether a crime against any positive law has been committed, yet it is not necessarily a trial for crime, nor is there any necessity, in the case of crimes committed by public officers, for the institution of any special proceeding for the infliction of the punishment prescribed by the laws, since they, like all other persons, are amenable to the ordinary jurisdiction of the courts of justice, in respect of offenses against positive law. 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 where no offense against positive law has been committed, as where the individual has from immorality or imbecility or maladministration become unfit to exercise the office.

What clearer case than this, where a judge comes in here, and by his counsel, pleads guilty to the charge that for sixteen times in three years he has been upon the bench of the district court of this State, engaged in the trial of causes that involve the property, the honor, and perhaps, the lives of citizens of this State, in a state of drunkenness!

I will read again the last lines:

But a cause for removal from office may exist where no offense against positive law has been committed, as where the individual has from immorality or imbecility, or maladministration, become unfit to exercise the office. The rules by which an impeachment is to be determined, are therefore peculiar, and are not fully embraced by those principles or provisions of law which courts of ordinary jurisdiction are required to administer.

I ask the indulgence of the Senate for reading at such length from this article. I am, however, in this following a precedent of one of the ablest counsellors in America, who, upon the trial of the most important impeachment case in this country, did himself the honor to incorporate in his brief this whole article from which I read. I call your attention, gentlemen of the Senate, to the fact that instead of being the mere *ipsi dixit* of the writer, you will find the statements fully corroborated by authorities; the cases cited frequently taking much more room than the statements made by the writer; while the converse is true of the article of Prof. Dwight, to which the learned counsel refers, as you will observe by reading it. They are both contained in the same volume.

Judge Lawrence further says, on page 658:

It would certainly seem clear that impeachments are not necessarily limited to acts indictable by statute or common law, and that it would be impossible for human prescience or foresight to define, in advance, by statute, the necessary subjects of impeachments. The constitution contemplated no such absurd possibility. It may be said there is danger in leaving to the Senate a power so undefined. It was because of the danger that the power has been limited, as it has, in the constitution, and experience has shown that the limitation is more than sufficient. The whole system of common law crimes, as it exists in England, and in almost every State in the Union, is the result of a judicial power equally undefined. The system of impeachment is to be governed by the great general principles of right, and it is less probable that the Senate will depart from this than that the whole legislature would in the enactment of a law, or than courts in the establishment of the common law.

Says this writer, further, on page 666:

There are many breaches of trust not amounting to felonies, yet so monstrous as to render those guilty of them totally unfit for office.

Nor is it always necessary that an act to be impeachable must violate a positive law. There are many misdemeanors in violation of official oaths, and of duty, alike shocking to the moral sense of mankind and repugnant to the pure administration of office, that may violate no positive law.

After thus laying down and commenting upon the general principles relating to impeachment, this writer takes up the cases of impeachment which have been tried by the Senate of the United States.

The first to which we will refer, was the case of Timothy Pickering, a district judge for the State of New Hampshire, who was impeached upon four several charges, the fourth of which is as follows:

I read from page 669, Vol. VI, Am. Law Reg., note 4.

That Judge Pickering being a man of loose morals and intemperate habits, on 11th and 12th November 1802, did appear on the bench of his court for the purpose of administering justice, in a state of total intoxication produced by inebriating liquors and did then and there frequently and in a most profane and indecent manner invoke the name of the Supreme Being.

Under the law as laid down to you by the counsel for the respondent this forenoon, that man was guilty of no indictable offense, and yet some how the Senate of the United States, when they tried him upon those charges, notwithstanding that both the Senators from his own State voted against conviction, seemed to be impressed with the idea that drunkenness, while upon the bench, was an impeachable offense, was such a "high crime and misdemeanor" as to subject that man to punishment, and he was accordingly convicted of the offense and removal from office.

Mr. ALLIS. He was charged with other offenses.

Mr. Manager HICKS. He *was* charged with other offenses, but he was *convicted* upon *all four* of the charges. I could not, Mr. President, avoid remarking the decency and decorum with which that judge acted after he had been impeached. I could not help noting the manner in which his son regarded the offense which the father had committed. That judge did not go to the Senate of the United States, sitting as a court of impeachment, and admit that the facts charged against him were true, but that they did not constitute an indictable offense. No! be it said to the credit of that judge, he buried his face in his hands, and, sent his son before the Senate of the United States with the plea that his father was insane, and I think it better for the honor of the country that any judge of the district court of this or any other State should plead the excuse of insanity rather than come into a high court of impeachment and admit, even for the sake of argument, that the facts as charged in these articles are true.

Judge Lawrence, in speaking of the case of Judge Pickering, who was convicted upon each of the four several articles of impeachment, before the Senate, and removed from office in March 1804, says, p. 669:

This case proves that a violation of law of a particular character, and drunkenness and profanity on the bench, are each impeachable high crimes and misdemeanors. In this case the defense of insanity was made and supported by evidence. The case does not show the opinion of Senators on this evidence. But if the insanity was regarded as proved, this case shows that a criminal intent is not necessary to constitute an impeachable high crime and misdemeanor, but that the power of impeachment may be interposed to protect the public against the misconduct of an insane officer.

Take, then, either horn of the dilemma that you please, I have read the evidence in the case, in the annals of congress, very carefully, and I was thoroughly and honestly impressed with the idea that this defense of insanity was an excuse. I think it will so impress any member of this court who will take the time to read it. But, be that as it may, in any event it is a parliamentary precedent for this impeachment, because either Judge Pickering was convicted of drunkenness on the bench, or he was convicted and removed from office for insanity. And if he was insane, he certainly could not have committed an indictable offense. So, Mr. President, I repeat that this court can take either side of that case which they choose. It makes no difference upon which point it was decided. It certainly was decided as to the fourth article that it does not, under the law as laid down by respondent's counsel, take an indictable offense to make an impeachable offense.

Mr. ALLIS. Can a judge be removed, by this court, in this State, under our constitution for insanity?

Mr. Manager HICKS. I think so. However, that question is not here. We have this authority just cited so far as it applies. That I may not forget the point made by the learned counsel for the respondent, before I close I desire to call the attention of the Senate, at this time, to one statement which I understood him to make, to the effect that if a man had committed an impeachable offense it must have been done under color of office, and that, therefore, were he to commit a crime outside of the functions of his office, he could not be impeached by this court. Let us see to what this philosophy will lead us. We will suppose that one of the judges of the district court of this State has committed the crime of larceny. I dislike even to suppose such a state of facts, but I am not sure that I may not as well suppose that a judge would commit the crime of larceny as that he would go upon the bench in a state of intoxication. Let us suppose, for instance, that he goes to the state of Iowa to commit the offense; that he is tried and convicted under the laws of Iowa; that he is sent to the penitentiary there, and that he has yet six years of his term of office to serve upon the bench of this State. Does the learned counsel for the respondent, or does this Senate believe, for one moment, that this honorable body could not impeach that judge for high crimes and misdemeanors, and remove him from office? There is no other power under the constitution by which he can be removed. He must be removed by impeachment. And it seems to me to be a complete answer to the gentleman's proposition which is apparent upon its face This court simply deals with officers as officers. It simply says, under and by virtue of the laws and the evidences that may be produced before it, that an officer is not fit to hold his office. It has nothing to do with the punishment of crime. It can neither touch his person, his property nor his life. You have nothing to do with either. If an officer is found guilty of the most heinous offense that can be charged before this or any court, all you can do, for the limit is prescribed by the constitution, is simply to dismiss from office and prevent him from ever holding office again.

Mr. ALLIS. If a judge is sent to the penitentiary, does not his office immediately become vacant?

Mr. Manager HICKS. By what law is the office vacant? The judge is elected for seven years, and there is no possibility of its becoming vacant. The law does not declare it so. It is a provision of the consti-

tution that he shall hold office seven years, and the Senate and House of Representatives together cannot make it shorter.

Mr. ALLIS. If he dies he makes it shorter.

Mr. Manager HICKS. Oh! That of necessity creates a vacancy.

Mr. ALLIS. And whether he dies civilly or naturally, makes no difference. If he goes to the penitentiary, there is a civil death.

Mr. Manager HICKS. The gentleman has asked me this question, whether you can impeach a judge if he becomes insane? What can you do with him? Can you elect his successor before his office is vacant? He is civilly dead. One of the honorable managers has just called my attention to an authority in regard to insanity. This author, Judge Lawrence, says he can be removed by impeachment for insanity, and the reason given is that every judicial act of an insane man would be a misdemeanor in office.

Mr. ALLIS. The act of an insane man would not be animated by any motive; and I do not see how it could be a misdemeanor.

Mr. Manager HICKS. I have answered that point before, and further, the motive is lacking in this very case of neglect. Neglect in office does not need a motive, as I will demonstrate from the common law, shortly. But I return to the history of the impeachment as affecting the question of the necessity of charging an indictable offense.

I read from page 670:

The next case is that of Samuel Chase, an associate justice of the Supreme Court of the United States. In that case it was insisted for the accused that "no judge can be impeached and removed from office for any act or offense for which he could not be indicted," either by statute or common law. But this was denied with convincing argument, and was practically abandoned by the defense.

The writer makes the citation here to Chase's trial, page 255.

* * * * * * *

In 1830, James H. Peck, judge of the United States District Court for Missouri, was impeached by the House of Representatives for imprisoning and suspending from practice an attorney of his court. The argument for the prosecution alluded to the proposition stated in Chase's trial, "that a judge cannot be impeached for any offense which is not indictable;" but the counsel for the accused repudiated any such doctrine as a ground of defense. Mr. Wirt did not hazard his reputation by any such claim. Peck was not convicted.

The case of West. W. Humphreys, judge of the United States District Court for the district of Tennessee, proceeded on the ground that an officer was impeachable without having committed a statutory or common-law offense. In fact, the charge of advocating secession was a crime of which half the leading politicians of the South had been guilty for many years. In the seven articles of impeachment against him, two may be said to charge treason; and it may be claimed that one good article will sustain a conviction, by way of analogy to the doctrine that one good account in an indictment, notwithstanding the presence of bad ones, will sustain a sentence. But even this is not a law in England. But there is no analogy. The Senate, by a separate vote on each article, specifically passed on the sufficiency of each article to constitute an impeachable offense, while a jury passes generally on all of the accounts of an indictment. And it is to be observed that the report of the judiciary committee, recommending impeachment, did not charge treason or other indictable crime. Nor was there evidence of any.

Senator CROOKS. What was the date of that?

Mr. Manager HICKS. Of the impeachment of Judge Humphreys? I think, if my memory serves me right, it was in 1862.

Mr. ALLIS. Yes; and he was charged with treason in connection with the South and convicted of it too.

Mr. Manager HICKS. I am reading all these articles. The charge was for advocating public treason in a speech in Nashville, December 9th, 1860.

Senator CROOKS. The date is all I care for.

Mr. Manager HICKS. My recollection is that the date of the trial was 1862.

* * * * * * *

Judge Anderson was impeached in Pennsylvania in 1802, and his defense was that he had committed no act indictable at common law? But the Senate almost unanimously convicted him utterly repudiating that as a defense.

* * * * * * *

Among the cases tried with great learning and ability there, is that of James Prescott, who was convicted before the Senate.

* * * * * * *

In 1821, Prescott, judge of probate, was impeached before the Senate of Massachusetts. The 12th article charged that Ware was guardian of Birch, a *non compos mentis*; that Grout, one of the overseers of the poor, had some controversy with the guardian as to some property of the ward, not involved in the account; that the judge, as attorney, advised the parties, and charged, and was paid $5 by the guardian therefor; that the judge interlined this item in the account which had been previously sworn to, and settled the account allowing this item: Prescott's trial 189. The law did not prohibit judges from acting as attorneys in matters not coming before their court. It was objected by the defense that this was not an offense indictable, and so not impeachable; that especially was this so in Massachusetts, since the constitution authorized a removal upon the address of both houses of the legislature for any course, and left impeachment against "officers for misconduct or maladministration in their offices." But one of the managers said in substance; "We stand here on no statute, on no particular law of the commonwealth; there is none for such a case We stand here upon the broad principles of the common law—of common justice

* * * * * * *

Such conduct is disgraceful and contrary to the usages of all civilized nations. * * We have shown the conduct of the respondent * * to have been grossly improper and mischievous in its tendency; this is quite enough; he has rendered himself unworthy of office, and therefore ought to be impeached and removed."

And he was impeached and was removed.

Mr. ALLIS. Those sentiments Webster was replying to in what I read this morning.

Mr. Manager HICKS. This able writer, after having discussed all the important impeachments by the Senate of the United States, and many of State Senates, arrives at this result, and mark the wording of it:

The result is, that an impeachable high crime or misdemeanor is 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 duty, by an act committed or omitted, or, without violating a positive law, by the abuse of discretionary powers from improper motives or for an improper purpose.

It does seem to me, Mr. President, that in that one sentence is summed up a thorough definition of crimes and misdemeanors as they are to be regarded by this court of impeachment.

Judge Story was cited this morning with regard to impeachable offenses; and, speaking of this matter of impeachment to which I desire to call the attention of the Senate further, he says:

If the true spirit of the constitution is consulted, it would seem difficult to ar-

rive at any other conclusion than of its fitness. It is designed as a method of national inquest into the conduct of public men. If such is the design, who can so properly be the inquisitors for the nation as the representatives of the people themselves? They must be presumed to be watchful of the interests, alive to the sympathies, and ready to redress the grievances of the people. If it is made their duty to bring official delinquents to justice, they can scarcely fail of performing it without public denunciation and political desertion, on the part of their constituents.

Judge Story, in discussing further this question of impeachment, although his work was written subsequent to the adoption of the constitution, goes back in point of time, and endeavors to discover why impeachments was left to the Senate rather than to the court or to a special tribunal constituted for that particular purpose. This statement may explain some of his language which I shall read hereafter.

The question is not so much whether any intermixture is allowable, as whether the intermixture of the authority to try impeachments with the other functions of the Senate is salutary and useful Now some of these functions constitute a sound reason for the investment of the power in this branch. The offenses, which the power of impeachment is designed principally to reach, are those of a political or of a judicial character. They are not those which lie within the scope of the ordinary municipal jurisprudence of a country They are founded on different principles, are governed by different maxims; are directed to different objects; and require different remedies from those which ordinarily apply to crimes.

Now, further, as to what are impeachable offenses, according to Mr. Story.

In the first place the nature of the functions to be performed. The offenses, to which the power of impeachment has been and is ordinarily applied as a remedy: are of a political character. Not but that crimes of a strictly legal character fall within the scope of the power, (for, as we shall presently see, treason, bribery, and other high crimes and misdemeanors, are expressly within it,) but that it has a more enlarged operation, and reaches, what are aptly termed, political offenses, growing out of personal misconduct, or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office.

Mark you here, Judge Story says, that it does not exclude crimes; that it must necessarily include them; but that it goes beyond this and reaches, as he says, personal misbehavior. Speaking further, he says:

Where, indeed, those acts fall within the character of known crimes at common law, or by positive statute, there is little difficulty in the duty, because the rule is known, and equally applies to all persons in and out of office, and the facts are to be tried by a jury, according to the habitual course of investigation in common cases. The remark of Mr. Woodeson on this subject is equally just and appropriate. After having enumerated some of the cases, in which impeachments have been tried for political offenses, he adds, that from these "it is apparent how little the ordinary tribunals are calculated to take cognizance of such offenses, or to investigate and reform the general polity of the State."

It is the general polity of the State then, that you are to investigate and reform by your impeachment. Further, in sec. 786, in speaking of the reason why the Senate should have cognizance of these impeachable offenses or matters of impeachment, rather than to a court of law, he says:

What could be more embarrassing than for a court of law to pronounce for a removal upon the mere ground of political usurpation, or malversation in offices

admitting of endless varieties, from the slightest guilt up to the most flagrant corruption.

Why he says the courts are not the proper place to try these, I repeat it:

What could be more embarrassing, than for a court of law to pronounce for a removal 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.

He says then that the courts of impeachment have cognizance of these crimes—these malversations in office, from the slightest guilt up to the most flagrant corruption. Malversation it is unnecessary to add means misconduct

The other section that I desire to call the attention of the Senate to, was read, I believe, by the honorable counsel for the respondent, this morning. But I desire to call your attention to one or two sections that it seemed to me, were not fully understood by all the senators from the reading from it. I read from the first part:

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.

Mark you that, from an examination of parliamentary history, we are to be governed by the common parliamentary law as much as by any other part of the common law. In my reading from this article I omit a portion which is not material. Farther, he says;

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.

Let us see what these others are, that are founded in the most salutary public justice, "such as impeachments for malversations and neglect in office." "Malversation" means simply "misconduct" in office. Mark you, after citing these trivial offenses, to which the learned counsel for the respondent, this morning referred, such as giving medicine to the king, which might have been impeachable, and which may have been a greater offense than we, in our present civilization, can appreciate. Judge Story says, but others were founded in the most salutary public justice, such as impeachment for malversation and neglect in office."

By one of the ablest judges of this country, by one of the ablest writers of this country, upon constitutional law, I think we have clearly shown that other offenses are crimes and misdemeanors besides those which are indictable. Judge Lawrence has clearly enunciated it, and proved it by the authority of half dozen different cases that he has cited. Judge Story, in nearly every one of those sections I have read, tells you that you are not confined to statutory or common law offenses.

But, Mr. President, notwithstanding, we contend that we are not obliged to charge the respondent in this case with an indictable offense at

common law or under the statute, we are now prepared, as we believe, and ready to show to this court, that Judge Cox has committed an indictable offense, both at common law and under the statute.

I think it will be conceded, if it has not already been conceded by the counsel for the respondent, that whatever was a crime or misdemeanor, either by statute law or by common law, at the time of the adoption of our constitution, is certainly an impeachable offense. The counsel read the section to which I am about to call your attention, and I desire to read it again a little slower, perhaps, than counsel read it. I refer to section eight, of chapter ninety-one; and I desire to call the particular attention of the Senate to the fact that this section was a part of the statute law of the territory as early as 1852. You will find that it was copied from Wisconsin, and is a mere reiteration of the common law. It does not enunciate a new principle, but is a reiteration of the common law as it was at the time it was enacted:

> Where any duty is enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful neglect to perform such duty, and every misbehavior in office, where no such provision is made for the punishment of such delinquency or malfeasance, is a misdemeanor, punishable by fine or imprisonment."

"Where no such provision is made for the punishment of such delinquency or malfeasance." Where in the statute book do you find a special punishment provided for a judge who will go upon the bench of the district court of this State to administer justice in a state of intoxication?

Mr. ALLIS. You say the constitution provided for it by impeachment. Is not that your position?

Mr. Manager HICKS. Certainly.

Mr. ALLIS. Then there is a special remedy.

Mr. Manager HICKS. Generally it provided for it, but not specially, because it does not make it special by name; drunkenness on the bench is not specially named in the constitution nor in the statute. The constitution is a document of enumeration, not of definition. The constitution simply says "crimes and misdemeanors," and leaves the court of impeachment to define their meaning, and the statute specifically says that a misbehavior is a misdemeanor. You will notice that at the end of every one of these sections, we have charged the respondent with being guilty of a "misbehavior in office," and we have referred to that statute, whereby he is guilty of "misdemeanors."

As all the members of this court are not practicing lawyers, they will pardon me if I call their attention to the "crimes" in the phrase "crimes and misdemeanors," and to the definition of it. We are so habituated to the use of the word "crime" as signifying an offense more heinous, higher than misdemeanor, that I desire to call your attention to the technical definiton of the word "crime." "Crime" is defined as an offense, for which the law awards punishment I read from Heard's Criminal Law, page 1; and in order that I might make no mistake in my definition, I have jotted it down. "Under the definition of crimes, all offenses of a public nature, that is, all such acts or attempts as tend to a breach of the community, are indictable." Also, Wharton's American Criminal Law: "A wrong which public policy requires to be prosecuted by the State is an indictable offense."

This is substantially the same definition. Now the word "crime," includes every offense against the State. This is subdivided into two classes: felonies, and misdemeanors. Felonies are those offenses which are punishable by capital punishment, or which are or may be, in the discretion of the court, punished by imprisonment in the state's prison; and all other crimes are misdemeanors.

Senator CASTLE. What section of Wharton is that, Colonel?

Mr. Manager HICKS. What I have just stated is our statute law.

Senator CASTLE. I mean to inquire from what section of Wharton you have been reading.

Mr. Manager HICKS. From section 14, vol. 1, of the eighth edition 1880, with the foot notes.

These articles also charge the respondent with a statutory offense, because they charge him with having violated his oath of office which is prescribed by statute. It is the last act which makes him an officer. I have before adverted to that and will not at this time refer to it further.

I now propose to establish that the offense of open and notorious drunkenness is a misdemeanor offense at common law, nowithstanding the assertion of the gentleman, the honorable counsel, who spoke this morning, and I refer you first to Cooley's Blackstone, page 41.

All crimes ought, therefore, to be estimated merely according to the mischiefs which they produce in civil society, and, of consequence, private views or breach of mere absolute duties, which man is bound to perform, considered only as an individual are not, cannot be the object of any municipal law, any further than by their evil example, or other pernicious effects, they may prejudice the community, and thereby become a specious of public crime. Thus the vice of drunkenness.

It does not say "open drunkenness," but simply "the vice of drunkenness."

If committed privately and alone, is beyond the knowledge, and, of course, beyond the reach of public tribunals; but if committed publicly, in the face of the world, its evil example makes it liable to temporal censure.

Senator C. F. BUCK. Is not that founded no an English statute?

Mr. ALLIS. Yes, sir. On an ecclesiastical statute.

Mr. Manager HICKS. That may be, but I call the attention of the counsel to that statute.

Senator C. F. BUCK. What I want to ascertain is whether this English statute was or was not passed before the settlement.

Mr. Manager HICKS. It was passed before the organization of this country.

Senator C. F. BUCK. That is what I wanted to enquire.

Mr. Manager HICKS. It became a part of our common law by reason of having been on our statutes prior to the revolution.

Mr. ALLIS. That was not an indictable offense. It was an offense punishable before a justice of the peace.

Mr. Manager HICKS. It did not say it was.

Mr. ALLIS. It does, if you look at the original source of it. You cannot find such a statute passed prior to the revolution.

Mr. Manager HICKS. I am arguing that this is misdemeanor at common law, not that it was indictable, and I will show further how Blackstone regarded it. He regarded it as a crime or misdemeanor. Mark

you, gentlemen, you are the sole judges of what constitutes a crime or misdemeanor, and from your decision there is no appeal.

Senator C. F. BUCK. Does Blackstone say that it was so at common law, or is that the effect of an English statute?

Mr. ALLIS. Blackstone does not say so.

Mr. Manager HICKS. I will read all he says upon the point:

All crimes ought, therefore, to be estimated merely according to the mischief which they produce, in civil society, and of consequence private vices or breach of mere absolute duties, which man is bound to perform, considered only as an individual, are not, cannot be, the object of any municipal law, any further than by their evil example, or other pernicious effect, they may prejudice the community, and thereby be a species of public crime. Thus the vice of drunkenness, if committed privately and alone, is beyond the knowledge, and of course, beyond the reach of public tribunals, but if committed publicly, in the face of the world, its evil example makes it liable to temporal censures. The vice of lying, which consists (abstractly taken) in a criminal violation of truth, and therefore, in any shape, is derogatory from sound morality, is not, however, taken notice of by our law, unless it occurs that some public inconvenience, as spreading false news, or some social injury, as slander and malicious prosecution, for which a private recompense is given. And yet drunkenness and malevolent lying, are in *foro conscientia*, as thoroughly criminal when they are not, as when they are, attended by public inconvenience. The only difference is, that both public and private vices are subject to the vengeance of eternal justice, and public vices are besides liable to the temporal punishments of human tribunals.

Mr. ALLIS. You can find no statute in England that punishes drunkenness, except before a justice of the peace, or as a petty crime.

Mr. Manager HICKS. If the gentleman is arguing the question, I will stop until he gets through.

Mr. ALLIS. I do not mean to annoy you by my interruptions.

Mr. Manager SMITH. I call the attention of the Senate to the fact that we did not interrupt the gentleman.

Mr. ALLIS. I have a right to correct the counsel when he claims that is the common law.

Mr. Manager HICKS. There is no reference on the page, either by note or otherwise, to any statute.

Senator C. F. BUCK. I understand that the old editions refer to a statute.

Mr. Manager HICKS. I might, however call the attention of the senate and of the counsel to this fact, that in England many offenses at common law were afterwards made offenses by statute. It does not matter about their having been offenses at common law as they were subsequently made offenses by the statute.

I cite here another section which does refer to the statute which the gentleman alludes to:

Drunkenness is also punished by statute 4, Iac. I, C. 5, with the forfeiture of 5s.

That was prior to the adoption of our National Constitution; and therefore, it became a part of the common law of this country, that it was a misdemeanor.

Mr. ALLIS. A case for a justice of the peace.

Mr. Manager HICKS. It does not say justice of the peace.

Mr. ALLIS. Well, the statute does, as you will find if you will take the trouble to look at it.

Mr. Manager HICKS. Well, let that go. It does not make any difference if it is by a justice of the peace. A justice of the peace punishes a great many misdemeanors. I read now from Wharton's Criminal Law, volume 2, sec. 1583:

It is an indictable offense for a public officer voluntarily to be drunk when in the discharge of his duties. No harm may come to the public from his misconduct, but he has put himself in a position from which much harm might result, and for so doing he is amenable to penal justice.

Senator C. F. BUCK. Does that refer to the statute?

Mr. Manager HICKS. No; it refers to Penn vs. Keffer, Addison 290. I think that is a Pennsylvania common law case. And to the Commonwealth vs. Alexander, 4 Hen. and Mun. 522.

Mr. ALLIS. That is a Virginia case. Both of them refer to the statute.

Mr. Manager HICKS. I desire also to call the attention of the court to the case of Tipton vs. The State, 2nd Yerger, 10 Tennessee Reports, page 541.

The indictment in this case charged "that Reuben Tipton, on the second day of August in the year of our Lord, one thousand eight hundred and thirty, at Maryville, in the county of Blount, aforesaid, and on divers other days before that time, was open and notoriously drunk—to the disturbance of the public peace, to the great injury of the public morals of the good citizens of the State, and to the evil example of all others, etc., and against the peace and dignity of the State."

The jury found the defendant guilty in manner and form upon the bill of indictment; upon which the following reasons in arrest of judgment were filed:

First. Because the indictment does not charge the offense to have been committed with force of arms. Second. Because the indictment does not charge that the defendant was a common drunkard and a nuisance to society.

The court held these reasons insufficient to arrest the judgment, and rendered judgment for a fine of five dollars and the cost against defendant, from which judgment he prosecuted an appeal in the nature of a writ of error to this court.

The following is the opinion of the court delivered by Judge Whyte:

As to the first reason why the judgment should be arrested.

That does not touch this case.

As to the second reason in arrest of judgment, that the indictment does not charge the defendant was a common drunkard and a nuisance to society, it cannot prevail. The assignment of this error is in effect substantially the same with the charge in the indictment, for the indictment does not charge a single act of drunkenness alone, but repeated acts of the like kind. It charges "that he, the said Reuben Tipton, on the second day of August, 1830, and on divers other days before that time, was openly and notoriously drunk" This shows that the offense was a common thing with the defendant. But it is argued that a man may be drunk as often as he pleases in his own house, which is only a private injury to himself, and in which the public is not concerned. Suppose this reasoning were admissable, the indictment negatives its application in the present case, for the charge is that the defendant was drunk, openly and notoriously, to the disturbance of the public peace, and to the great injury of the public morals of the good citizens of the State. Can it be said this conduct is not an injury to the public, and an evil example? The contrary but too often appears, and that too either accompanied with or followed by fatal consequences.

The pernicious influence of an evil example is plain to every reflecting mind, and the powerful influence of this vice upon society, not only in its effects upon the relations of private life, but also as being the origin, the fomenter, and the

promoter of the greater portion of the public crime of the country proves it to be what it is, an indictable offense. The judgment of the circuit court was correct and must be affirmed.

There was no statute about that. It was the common law. I read now from Smith vs. the State, 1st Humphries, 20 Tennessee, page 396. Judge Green delivered the opinion of the courts :

It is objected that the defendant was put upon his trial upon the presentment of a grand jury instead of an indictment. This practice has been so long followed in this State that it is now too late to question its legality, although it may not be sanctioned by established principles.

It is next insisted that the presentment is bad because it charges the defendant with one act of drunkenness only. It is laid down in Blackstone's Commentaries that sobriety in public is a duty that every man owes to the community.

Mark you, this is quoted as common law. He quotes from Blackstone, and not from the statute:

It is therefore an offense to good morals, for a man to be publicly drunk, and for this offense he may be indicted.

But it is further insisted that the crime is not sufficiently described in this presentment.

That is simply with regard to the manner of describing the offense.

From the case of the State against Figures Smith, 3d Haskell, page 466 :

The State appeals in error from a judgment of the circuit court of Wilson county, quashing a presentment for drunkenness. The presentment is in form as follows: "The grand jurors for the State of Tennessee, good lawful men, duly elected, empanelled, sworn and charged to inquire for the body of the county of Wilson aforesaid, upon their oath aforesaid, present that Figures Smith, on the 23d day of January, in the year of our Lord, eighteen hundred and seventy-one, in the county of Wilson aforesaid, was unlawfully, willfully and infamously drunk in a public place, to-wit: in the town of Lebanon, in the said county of Wilson, on the said twenty-third day of January, in the year of our Lord, eighteen hundred and seventy-one, and on divers other times and places, to the evil example of divers good citizens then and there assembled, and against the peace and dignity of the State."

Prior to the act of 1842, c. 94, it has been uniformly held by this court, that a single act of public drunkenness, from the use of intoxicating liquors, was an indictable offense at common law.

Thus it was said by a learned Judge: "It is laid down in Blackstone that sobriety in public is a duty that every man owes to the community. It is, therefore, an offense to good morals for a man to be publicly drunk, and for this offense he may be indicted." Smith vs. The State, 1 Hum. 399. And the reasons of the law are thus strongly stated by Judge Whyte in an early case. The pernicious influence of an evil example is plain to every reflecting mind, and the powerful influence of this vice upon society, not only in its effect, upon the relation of private life but also as being the origin, the fomenter and the promoter of the greater portion of the public crime of the county, proves it to be what it is, an indictable offense " Tipton vs. State, 2 Yer. 543. But this doctrine of the common law was abrogated by the act of 1842, c. 94, and by the explanatory act of 1844, c. 981 by which indictments or presentments for single acts of drunkenness are forbidden, unless the party when so drunk, shall commit some other offense against the law. It will be observed, that these acts are not carried into the code; and all public and general laws passed prior to the code are, by it, expressly repealed: Code, sec. 41. The principle, of the common law, therefore, which made a simple act of public drunkenness indictable, is revived and is in full force in this state. No subsequent act has revived the acts referred to; but the legislature, at the session next succeeding

the adoption of the code, enacted that it shall not be imperative upon grand jurors to make presentments for a single act of drunkenness Act 1859-60, c. 10. This leaves it discretionary with that body to make such presentments whenever, in its judgment, the good of society demands it. We hold the presentment in this case to be a good one.

I am citing from two different editions of Wharton, and we found some little variation in the numbering of the sections of the different books. Section 1432 of 2nd Wharton's Eight edition, (which is the last edition, and the sections of which do not correspond to the former editions) reads as follows:

Any public exhibition of gross and wanton indecency is in like manner a nuisance. Hence it is indictable to indulge in habitual, open and notorious lewdness; to permit defendants (in old times slaves) to roam the streets in a state of nakedness; to openly and notoriously haunt houses of ill-fame; to use habitually indecent or profane language in the presence of passers by, and the public generally; to parade stud horses through a city, letting them out to mares on the public street, and to be addicted to public and notorious drunkenness.

Senator C. F. BUCK. Suppose the judge does not do that while he is exercising any of his duties of his office, what have you then to say to him? Suppose he gets drunk in some private place while not assuming to discharge the duties of his office?

Mr. Manager HICKS. The articles cover that, they say "open and notorious drunkenness."

Senator BUCK. What I want to know is whether you can punish a judge for it.

Mr. Manager HICKS. I think so, under our charges.

Senator C. F. BUCK. Is it because of his official position? I want to hear you a little more fully upon that point. Suppose he commits some act in the public street while not engaged in the performance of his official duty, can he be charged and punished by this tribunal for that?

Mr. Manager HICKS. In the first place we have charged him only in one case with such a crime; that is, with charge of habitual drunkenness.

Senator C. F. BUCK. I do not know whether you attempt to confuse the point or to discuss it further. I would like to hear you upon that one article of the general charge.

Mr. Manager HICKS. Another member of the board of managers will discuss that charge. I simply state here that it is an offense indictable at common law, according to the decisions I have just read, to be addicted to public and notorious drunkenness.

I read also from Bishop on statutory crimes, section 969:

"Also it has been held that a grand juror is indictable at common law for getting drunk when on duty, thereby disqualifying himself for the discharge of the office of grand juror. The same proposition doubtless applies to other officers on the general ground of a misbehavior in respect to their office.,"

Mark the language:

"The same proposition doubtless applies to other officers on the general ground of a misbehavior in respect to their office."

Senator WILSON. Mr. President, I would like to ask the honorable manager, Col. Hicks, through you, whether he proposes to close his argument to-night.

Mr. Manager HICKS. I shall consume considerable additional time.

Senator CROOKS. I hope the honorable manager will be allowed to proceed. It is still early in the evening, and we have yet plenty of time.

Senator WILSON. I desire to say to this court that in order to reach here this morning in time for the opening, I was obliged to leave my bed at 3 o'clock; that we have had three sessions to-day, and that there certainly will be time to-morrow, for each party to occupy the six hours allotted by the Senate, without borrowing further from to-night. Speaking for myself, I feel like taking a little rest before I hear more of the argument.

Senator CROOKS. Suppose, sir, that we go on for half an hour longer?

Senator WILSON. Well, if it is thought best.

Senator CROOKS. I would like to insist upon it.

Senator WILSON. But it seems to me that according to the rules adopted this morning, we can get through to-morrow.

Senator CROOKS. Possibly, but I think we might advantageously sit half an hour longer this evening.

Senator WILSON. To test the sense of the Senate, I move that we now adjourn until to-morrow morning at nine o'clock.

Senator W. M. CAMPBELL. I call the attention of the Senator to the fact that by a previous motion, the hour to which the Senate will adjourn to-morrow morning has already been fixed at nine o'clock.

The motion having been put by the President, the ayes and noes were called for.

The roll being called, there were yeas 9, and nays 16, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Howard, Johnson F. I., Johnson R. B., Mealey, Miller, Rice, Shalleen and Wilson.

Those who voted in the negative were—

Messrs. Buck D., Campbell, Case, Castle, Crooks, Gilfillan C. D., Hinds, Johnson A. M., Macdonald, McCormick, McLaughlin, Officer, Perkins, Powers, Tiffany and Wheat.

And so the motion was lost.

Mr. PRESIDENT. The manager will proceed with his argument. Perhaps it will be well for the chair to say at this point that interruption by opposing counsel are liable to disturb the course of argument which has been planned by counsel, who are entitled to proceed without interruption. It is, of course, competent for members of the court to interrupt counsel for the purpose of obtaining information, but the interruptions of opposing counsel should not be so indulged in as to disturb counsel who may be speaking.

Mr. Manager HICKS. In support of the proposition that the offenses named constitute misbehavior in office at common law as well as by statute, I read from 1st Russell on Crimes, page 78. As this Senate is to define what a misdemeanor or a crime is as well by statute as by common law, and, as has been laid down by the honorable counsel for the respondent, this was one method or was *the* method, and we accepted it as one, of determining the question. I read as follows:

> The word misdemeanor, in its usual acceptation, is applied to all crimes and offenses for which the law has not provided a particular name; and they may be punished, according to the degree of the offense, by fine or imprisonment, or both. A misdemeanor is, in truth any crime less than a felony; and the word is

generally used in contradistinction to felony; misdemeanor comprehending al lindictable offenses, which do not amount to felony, as perjury, batteries, libels and public nuisances. Misdemeanors have been sometimes termed misprisions; indeed, the word misprisions, in its larger sense, is used to signify every considerable misdemeanor which has not a certain name given to it in the law; and it is said that a misprision is contained in every treason or felony whatsoever, and that one who is guilty of felony or treason may be proceeded against for a misprision only, if the king please.

Further, and in the following section:

It is clear that all felonies, and all kinds of inferior crimes of a public nature, as misprisions, and all other contempts, all disturbances of the peace, oppressions, misbehavior by public officers and all other misdemeanors whatsoever, of a public evil example, against the common law may be indicted.

I read also from 1st Solkeld, an English report, page 380, in the case of the king against Bembridge, 24th George, 3:

That a person holding a public office * * * is amenable to the law of every part of his conduct, and obnoxious to punishment for not faithfully discharging it.

That is the end of the decision. In the decision proper, under the second head, page 380, he says:

Where an officer neglects a duty incumbent upon him either by the common law or statute, he may for his default be indicted.

I read from 2nd Wharton's Criminal Law, (8th edition) section 1571:

To subject the superior officers of government upon whose uninterrupted presence at the helm the safety of the State depends to indictment for misconduct in office would be injurious to the body politic; and consequently, in such cases, impeachment is the sole instrument of penal revision. The principal applies to executive officers of the government so far as such officers are clothed with discretion, to the legislature, and, clearly, to the judges of all the courts of record, so far as concerns their judicial as distinguished from their ordinary acts.

Mr. Senator WILSON. I call the attention of the Senate to the fact that there is not a quorum present.

The PRESIDENT. It appearing that there is not a quorum present, either a call for absent members or a motion for an adjournment will be in order.

Senator WILSON moved to adjourn, and the motion was carried.

SEVENTH DAY.

ST. PAUL, MINN., Dec. 16, 1881.

The Senate met at 9 o'clock A. M., and was called to order by the President.

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

Messrs. Aaker, Adams, Bonniwell, Buck D., Campbell, Case, Castle, Crooks, Gilfillan C. D., Hinds, Johnson A. M., Johnson F. I., Macdonald, McCormick, McLaughlin, Mealey, Miller, Morrison, Officer, Powers, Rice, Shalleen Tiffany, Wheat, White and Wilson.

The Senate sitting for the trial of E. St. Julien Cox, judge of the ninth judicial district, upon articles of impeachment exhibited against him by the House of Representatives.

The Sergeant-at-Arms having made proclamation,

The Managers appointed by the House to Representatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. James Smith, Jr., Hon. O. B. Gould, Hon. A. C. Dunn, Hon. G. W. Putnam, Hon. W. J. Ives and Hon. L. W. Collins, entered the Senate chamber and took the seats assigned them.

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

The PRESIDENT. The chair has received a letter from Senator McCrea, stating that he is detained at home by reason of sickness in his family, and asks to be excused from attendance on the court of impeachment. He will therefore be considered as excused from attendance.

Senator MACDONALD. Is that for this session.

The PRESIDENT. Yes, he is excused from attendance at this sitting. Are there any motions or resolutions to be presented before the counsel for the State proceed with the argument? There being none, the honorable Manager, Mr. Hicks, will proceed with his argument.

Mr. Manager HICKS. I do not propose to trespass upon the time of the court but a very few minutes in closing this argument. I desire to call attention to the fact that the writer, to whom the honorable counsel for the respondent frequently referred yesterday Prof. Dwight, admits the fact that the violation of the oath of office, is a subject of impeachment. At the bottom of page 263, sixth American Law Register, in discussing the crimes for which impeachment may be maintained, he says:

> In examining the first question, it must be conceded that the judgments of the courts are not absolutely uniform. This could hardly be expected, both because there is no system of appeal by means of which authoritative precedents could be established, and because the House of Lords has been at times impelled by faction, or overborne by importunity, or overawed by fear.

On page 265, he says:

> Undoubtedly some cases, which at the present time appear inexplicable on any sound theory, depended on a constructing of statutes now forgotten, or upon a violation of official oaths or a perverted application of legal rules to instances not properly governed by them.

He doesnot deny that the violation of official oaths may be the sub-

ject of impeachment. He simply alludes to these inexplicable cases to which he has referred, as being grounded upon statutes now forgotten, claiming that nothing but that which was an offense against the statute law was an impeachable offense.

Mr. Chairman, we think now, (of course other authorities will be cited by the honorable managers who will follow me) that we have fairly sustained the propositions which we laid down in the commencement, that the allegations in each and every of the fifteen articles to which I have alluded, accuse the respondent here, both by the statute law of this state and by common law, or certainly by one or the other, of the offenses of open and notorious drunkenness, misbehavior in office, violation of his oath of office and neglect of duty, having, as we think, fully substantiated those points by the authorities, I shall simply review a few of the statements which the honorable counsel for the respondent made, and then close.

The honorable counsel citing from Prof. Dwight in support of his proposition "that none but an indictable crime is the subject of impeachment" cites certain passages following, on page 254.

He may not have cited all of these, but some of them he certainly did. I cite from the same authority, page 264. I remember that he read this: "The weight of authority is therefore to be followed."

"The decided weight of authority is that no impeachment will lie except for a true crime; not for an indictable crime but for "a true crime," "or, in other words, for a breach of the common or statute law." As if he could wish to make it more explicit; that is he means to state that a "true crime" is a breach of the common or statute law, "which if committed within any county of England would be the subject of indictment or information."

Page 266. "While the irregular cases upon this subject are few, the rule that a true crime must have been committed is settled beyond dispute." Not that an indictable crime must have been committed, but simply "*a true crime.*"

Further, page 268: I desire to call attention to another fact laid down by this writer: "I have dwelt the longer on this point because many seem to think that a public officer can be impeached for a mere act of indecorum. On the contrary, he must have committed a *true crime* not against the law of England but against the law of the United States."

The honorable counsel would seem to infer in the way he read that section to the court, that the language attributed here in the sixteen articles, merely accused respondent in this action of an indecorum. Has any member of this court a young son, ten to fifteen years of age, that he has ever taken with him into any of the public places of this country, the courts, the churches, or the schools? has any member of this court any doubt but that lad walking into the district court and being told by his father that he was in a district court of the State of Minnesota—a court to try men for crime—a court to decide on the rights of citizens—that lad seeing the judge upon the bench drunk would not turn when he left the room and say "papa is that right?" If an offense, which to a lad of ten or fifteen years, would seem wrong does not impress itself upon the minds of each and every member of this court as wrong, if they do not declare it to be a wrong by their verdict upon the decision of this demurrer, then I am mistaken with regard to the ideas of right and justice which this court entertains.

The honorable counsel for the respondent was pleased to insinuate in

his opening address, that which was insinuated by a writer from whom he quoted that these matters of impeachment were usually matters into which partisan prejudices largely entered. Mr. President, I am sorry to say that in the history of impeachment in too many instances indeed, such feelings have actuated the prosecution; but, Mr. President, in this case there comes no enemy of the respondent here with money to employ counsel to prosecute him, as has been done in almost every case in my memory in the State courts. No newspaper press throughout the State dogs this respondent and seeks to drive him from the bench.

Further, Mr. President, I feel it my duty to say—and a privilege to say, under the circumstances, so far as I myself am concerned,—I come to this task with a judgment which is unperverted by any partizanship, and that I believe would permit me to sit as a judge or juror in the trial of this cause. I have heard no feeling or expression of ill-will towards this respondent. I believe, Mr. President, in response to the insinuations of the counsel, that every member of the board of managers—every member of that honorable House of Representatives, which they represent on this floor, are actuated simply by a sense of duty. We come here, and we ask you particularly in this instance, that you do not give a verdict to sustain this demurrer. Why? Will you send the respondent in this case back to the ninth judicial district; will you by that verdict, tell the people of the ninth judicial district, the people of the State of Minnesota—the people for all coming time—that a judge may go upon the bench of the district court of the State of Minnesota, sixteen times in thirty-two months, in a state of intoxication? Will you wrong this respondent by giving him no right to come before this Senate and show that he is not guilty? It would be a disgrace to the civilization of Minnesota that this man should be sent back, admitting these charges to be true, and you here, a court having the same right to declare the common law of this land, that any court in this State, or any court in this country has—to say that these facts are not in violation of the common law. Why, gentlemen, the warmest friend of the respondent would do him a wrong by giving a verdict in what is apparently his favor. I was glad to hear the counsel say that this demurrer was not urged by the respondent; that it was a legal, technical plea that had been brought in here and advised *by* his counsel; and that the respondent did not come here, Mr. President, and say to this court: "I have been guilty of this and I ask you by your verdict upon the demurrer, to say that I may go back to the ninth judicial district, and be drunk upon the bench, and every day of the year, and still it is not a violation of the common or statute law of the State of Minnesota." No friend of the respondent would dare to ask this thing, looking at it in its true light; and gentlemen, you will look at this not in the light of friend or enemy, but you sit here as the judges of the law of this country. You are judges now, but posterity will be *your* judges; and as I expect your verdict will be that it is not the common law of Minnesota, or statute law, that a man may sit upon the bench of any of the district courts of this State in a state of intoxication, so will the verdict of posterity be that you have declared the law aright.

Mr. President, there are two other members of the board of managers who desire to speak upon this matter, who have further, and perhaps stronger authorities than those I have cited; and I therefore give way that they have ample time for so doing.

Mr. Manager Gould then addressed the Senate as follows:

MR. PRESIDENT AND SENATORS :—No man who comes to the performance of an important duty affecting the welfare of the State, with a proper sense of the responsibility which the occasion devolves upon him, can fail to regret the limitations which nature and his opportunities have imposed upon his understanding and abilities. He will be deeply solicitous that the public welfare shall not suffer by reason of the insufficiency of his own powers and efforts, and will sincerely wish for a larger capacity for usefulness. In the presence of this august tribunal, charged in part by the people of the commonwealth with the conduct of this important State trial I am profoundly sensible of my inability to manage so great a trust with that prudence and sagacity, which, as a citizen, I might desire should be brought to its performance.

My misgivings, however, are greatly relieved when I reflect upon the character of the tribunal before which I appear. We are each and all citizens of the same State, having a common pride in her history and progress and a like solicitude that her laws, institutions and policy shall be wisely conceived and honestly, intelligently and soberly administered. We are all officers of the State, bound by our oaths and by our convictions of duty, each in his place, so to preform the functions pertaining to our several stations, as shall best subserve the public good.

It is a fortunate circumstance that the questions arising on an impeachment are not altogether new to the Senate and the people of the State. Only a few years have elapsed since the Senate had under consideration the subject of impeachment in a well contested case wherein the law pertaining thereto was very fully and learnedly considered and presented in arguments of managers and counsel of unusual force and clearness.

Mr. President, you, as one of the managers in the Page impeachment, did much to clear the way for the present. I see also in the Senate one of your able associates on that occasion who presented a lucid and convincing exposition of the law and theory of impeachments. I see before me likewise senators who occupied seats in this body at that time, and who having then given this subject careful consideration, are the better prepared for the duties at the present hour. Thus the road has been blazed out before us—the pioneers have done much to remove the obstacle, from our present pathway.

Attorneys sometimes magnify their office and the importance of their case; and it occurs to me, Mr. President and Senators, that in matters of impeachment such has been too often the case. I have a theory with regard to the subject of impeachment—and I shall not ask you to follow me in that theory any further than it commends itself to your sound judgment and discretion—I have a theory, that under our American system of government, a proceeding by impeachment is simply a means by which the people are enabled to remove unworthy and incompetent officers, that is all there is of it. Such being the object to be accomplished, it is simply a question of constitutional provision as to where that power shall be placed. So far as our State government is concerned, with the exception of a few officers mentioned by the distinguished counsel for the respondent, all other officers are removable by the Governor. Has anybody ever heard it alleged that the Governor was a police court, or "two-dollar-and-a-half magistrate," as was suggested by the counsel here, simply because it was within his power to remove an incompetent officer? Is it alleged here that the Governor, by reason of the power to remove officers, has become a court? Who has ever heard any such claim as that made, or any such position as that

taken? And if the Governor can remove the clerk of this man's court by his mere *ipse dixit* because that clerk, forsooth, is drunken and incompetent, does it make this Senate any more a court because we propose to remove the judge for the same cause? Why is the Senate of the State of Minnesota called upon to act in this matter instead of the Governor? Why does it occur that certain officers, including the judges of the supreme and district courts, the Attorney General, Auditor, Treasurer, Governor and Lieutenant Governor are to be removed on impeachment, instead of being removed by the Governor or some other officer? I know of no reason, Senators, no reason but the fact that their offices are more important and that in some cases the tenure of office is a good deal longer, in some States of the Union. The Supreme Court, under their constitutions, may take a district judge from the bench, and consign him to the position of a private citizen, for just this offense. In some States it is done upon the recommendation of both houses of the legislature. And so in the various States we find different means by which the body politic is enabled to rid itself of an official incubus.

Now it is magnifying this tribunal, it is magnifying the powers and duties of this Senate unduly, it is magnifying the powers and duties of counsel to come here and claim that this Senate sits here upon the trial of an impeachment in the same capacity and with the same powers as the House of Lords in England; such, gentlemen, cannot be borne out by the facts. The House of Lords of England is a court in the proper sense of that term. It has jurisdiction in criminal proceedings and in equity and admiralty, and is in all essential respects a court; but you are not a court in any such sense as that. You represent the political interests of this great people, in your capacity as legislators; and sitting here as the Senate of Minnesota, it is competent for you, upon the request of the House of Representatives, to hear charges against officers of this State, and to remove them because of political offenses, and when I use the term political, I am not to be understood as meaning partizan; I use the word "political" in its broader acceptation, as relating to the public interest.

Now, I desire to call your attention to the statutes of Minnesota, relative to removal from office. And I say here and now, that this is simply a proceeding to *remove from office, not to punish* anybody. You have no authority to punish.

If you are a criminal court "a two-dollar-and-a-half magistrate" as the gentleman has been pleased to insinuate, why did you not arrest this man, why have you not arrested him? If he should not come here in response to your summons, would you not go on and try him? Would you not go on and examine these charges against him just the same, and return your verdict, if he never appeared in the court at all? Where is his recognizance for his appearance here? Where is his right of challenge? Has he challenged any man here for bias? What are you going to do with him provided you find these charges are true? Are you going to punish him? Where are you going to commit him? How much are you going to fine him? Why, it is perfectly apparent that you can do none of these things; all you can do is to assist the people of the ninth judicial district in getting rid of a drunken judge. That is your purpose here, that is the object of impeachment in this case.

We will suppose that it was the clerk of his court. Turn to the statutes and you will find in chapter 9:

The Governor may remove from office any clerk of the supreme or disirict court, judge of probate, court commissioner, sheriff, coroner, auditor, register of deeds, county attorney or county commissioner, any collector or receiver of public moneys appointed by the Legislature, or by the Governor by and with the advice and consent of the Senate or of both branches of the Legislature, whenever it appears to him that either of such officers have been guilty of malfeasance or nonfeasance in the performance of his official duties, first giving to such officer a copy of the charges against him and an opportunity to be heard in his defense.

Now we will suppose the clerk of the court in Nicollet county was guilty of gross and habitual intoxication unfitting him for the duties of his office. What would you do? Why, simply make complaint to the Governor, and thereupon the Governor would give the party an opportunity to appear in his defense, and if the Governor found that the charges were substantially true, he would oust him, and that would be the end of it. That don't make the Governor *a court* or a *police magistrate*, but it does make the Governor, what he is, and what he should be,—and what this Senate is, and what it should be,—a protector of the rights of the people against incompetent and unworthy officers.

The view I now express with regard to the character of this tribunal is further fortified by the terms of the constitution itself, the powers of government are divided by this constitution into three, in the nature of governments there are three departments; and whether the constitution states so or not they divide themselves naturally into three departments, to-wit: the Executive, the Legislative and the Judicial, so says the constitution and so says the nature of things. Then the constitution goes on to say in article 6:

The *judicial power* of the state shall be vested in a supreme court, district court, courts of probate, justices of the peace, and such other courts, inferior to the supreme court, as the Legislatnre may from time to time establish by a two-thirds vote.

There the *judicial power* is vested. It is in the courts. Not only in the supreme court, but certain inferior courts; it is not in the Senate. You have no judicial powers under that constitution. You are not exercising judicial powers here, you are exercising simply *political powers*; you are simply acting here in behalf of the people who have elected you and on the representation of the larger branch of the legislature, you are here to investigate whether any cause exists for the removal of this officer. Such then I think is the character of this court, if you call it a court—this Senate, sitting as a Senate,—for the constitution nowhere calls you a court. Such, I conceive to be the objects to be attained, to-wti: The removal of unworthy officers.

We present here a very peculiar spectacle: forty-one men elected for their learning, probity and distinction among their fellow men assembled to hear counsel for hours, and sit here and deliberate upon what? What is before you here? Why, you are simply to deliberate as to whether a man who drags the judicial ermnie of this State through the mire and filth of drunkenness and pollution throughout the State from one end to the other is fit to be a judge. That is the question you are here to decide to-day. If I should meet either one of you Senators in private and describe to you what is alleged against this man, or ask you in private whether or no you thought such a man as that should be a judge of a district court of the State of Minnesota, you would either take me for an escaped lunatic or resent my inquiry as an insult to your

understanding. And yet, in your official capacities, forty-one distinguished men of this State sit here and hear argument of counsel for 12 hours to discover whether a man who will do these things is fit to be a judge. That is the attitude in which we stand here to-day.

Now, gentlemen, I desire to read to you some authorities. Many have been read; I will call your attention to still others, concerning the nature and character of impeachment, and its purposes and objects. And the first authority to which I shall call your attention is Pomeroy on the constitution,—one of the latest, as well as one of the ablest writers that has ever written upon the subject of the constitution. The edition of this work from which I read, is the edition of 1879. It is subsequent to the article by Prof. Dwight, and to the article by Judge Lawrence, to which reference has been made, and subsequent to all that discussion which ensued upon or preceded the impeachment of Johnson. I wish to call your attention, for a few moments, to what Mr. Pomeroy says, and I shall ask the Senate to endorse nothing which I may say here unless either by its reason it commends itself to your judgment or I have the authorities of eminent men in the profession to sustain what I say.

It is contended here by respondent's counsel that no offense is an impeachable crime or misdemeanor except such as are either contrary to express statutes or which were crimes and misdemeanors at common law. They seem to be sustained in this view by the article from the pen of Prof. Dwight in 6th American Law Review. That article is however entirely overthrown by the argument of Judge Lawrence in the same volume which has already been read in your hearing.

From what I am about to read you will see that Mr. Pomeroy gives the weight of his authority to the theory suggested by Judge Lawrence.

I read from "Pomeroy on the Constitution," page 482, sec. 717 et seq.

I read at length as you may not all have access to this work.

What are the lawful grounds of an impeachment? Two answers have been given to this question, resting upon two opposed theories of construction. One theory, maintained with great ability, both upon principle and authority, by a large school of public writers, confines the operation of the impeachment clauses within very narrow limits. According to it, an impeachment can only be preferred against an officer of the United States on account of some indictable offense which he has committed. Assuming this general doctrine to be correct, and taking into account the further special rule that all crimes against the United States must be statutory, the final conclusion is reached, that the officer must have been guilty of an offense which had been made indictable by positive law of Congress. This law must have been passed prior to the commission of the criminal act, because a statute subsequent thereto declaring the act penal, and imposing a punishment, would be an *ex post facto* law, and obnoxious to express inhibitions of the constitution.

The course of reasoning which supports the theory and leads to this result, consist of two branches. The first branch of the argument is not based upon any peculiar phraseology of the constitution, but upon the general nature of impeachment as a method of criminal procedure known to the English law. It may be condensed as follows: The House of Representatives have the same powers to present, and the Senate to try an offender, that are held by the British commons and Lords,—these and no greater attributes are conferred in the word "impeachment" it is settled in England that an impeachment is only regular and lawful as a mode of presenting, trying and convicting for an indictable offense, the Houses of Congress are therefore limited in the same manner; finally, as there are no common law crimes against the United States but only those created and defined by some statute of Congress, the president, vice-president, and all civil officers can only be impeached on account of some act which had been declared an indictable offense by a law of the national legislature.

The second branch of the argument is based upon the peculiar phraseology of

the constitution. It may be considered as follows: officers can be impeached only for "treason, bribery, and other high crimes and misdemeanors;" the phrase "high crimes and misdemeanors" is to be taken in a strict technical sense and is equivalent to "felony" or "misdemeanors" which are words of art embracing all indictable offenses and no more; therefore the ground of an impeachment must be an act which Congress has made a "felony" or a "a misdemeanor" in its positive criminal code.

Thus he states the theory of Prof. Dwight and others, and then continues as follows:

"The second theory does not confine the House of Representatives as the accuser, or the Senate as the triers, within such narrow limits It regards the process of impeachment as the important personal sanction by which the observance of official duties is secured, as the very key-stone by which the arch of constitutional powers is held in place. As the punishment to be inflicted has reference solely to the offender's official position, so the acts for which that punishment was deemed appropriate must have reference, directly or inferentially, to the offender's official duties and functions. Wherever the president, or vice-president, or any civil officer has knowingly and intentionally violated the express terms of the constitution, or of a statute which charged him with an official duty to be performed without a discretion, and wherever a discretion being left, within the bounds of which he has an ample choice, he exercises that discretion in a wilful and corrupt manner, or even in a rash and headstrong manner, unmindful of the ruinous consequences which his acts must produce, he is impeachable; and it makes no difference whether the act has been declared a felony or a misdemeanor by the criminal legislation of Congress, or was regarded as such by the common law of England. Indeed, in this view the officer might be impeachable for very many breaches of public duty which it would be impossible to treat as ordinary crimes, and to define in the statute book as indictable offenses. Thus the president has a power to grant pardons uncontrolled and uncontrollable by Congress; every pardon which he issues is valid, whatever be his motive and intent. It will be absolutely impossible for the legislature to make the conferring a pardon in any specified case or manner a crime for which an indictment would lie."

The same would be true with regard to the Governor.

"But it cannot be denied that the president, although not bribed, might exercise this function in a manner which would destroy the efficacy of the criminal law, and evince a design on his part to subvert the very foundations of justice. For such acts he would be impeachable. Again: The president has the sole power to carry on negotiations with foreign governments. Congress may not dictate to him or restrain him, much less make any kind of diplomatic intercourse on his part an indictable offense. But by a rash, headstrong, wilful course of negotiation, carried on against the best and plainest interests of the country, although without any traitorous design, he might plunge the nation into a most unnecessary and disastrous war. For such an act he would be impeachable again. The president, as commander-in-chief, has the sole power to wage war. Congress may not dictate to him the campaigns, marches, sieges, battles, retreats, much less make any method of conducting the hostilities an indictable offense. But if his conduct was something more than a mere mistake in the exercise of his discretion, although not an adhering to the enemies of the United States, giving them aid and comfort, he might, by a stubborn and wilful presistence in his plans after their failure had demonstrated their futility, bring defeat, disgrace and ruin upon his country. For such an act he would be impeachable. Many more instances might be given, but these are sufficient for illustration."

"These two theories will now be subjected to a brief examination, and considerations will be suggested which seem to support the latter, and to give it a preference over the one first stated. A fallacy which often enters into discussions upon the meaning of language, is the tacit or open assumption that two alternatives alone are possible; that if one extreme is rejected, the very opposite of this position must be admitted. The fallacy is shown in the present case. It may be said, it is said, that if the House be not restricted to indictable crimes, they may impeach whenever caprice may choose. They may impeach for a mere difference of opinion. This

argument *ab inconvenienti*, though often resorted to, is of little value. The possible abuse of power is no valid objection to the existence of the power. The constitution is full of grants which may be abused; wherever there is a discretion, there may be abuse. Indeed it was because discretion must be given, and is liable to abuse, that the convention and the people, after exhausting all the checks of a tripartite government and of frequent elections, inserted the particular and most compulsive sanction of impeachment. The theories stated may be examined by the aid of such authoritative precedents as have been established in the course of our political history, and upon principle independent of positive authority."

"As far as the House of Representatives and the Senate have already acted, under the impeachment clauses, their proceedings have been directly opposed to the first theory, and in strict accordance with the second. It must be remembered that if the argument for a restrictive interpretation be valid for any purpose, it proves that an impeachment is only lawful when the officer has been guilty of a statutory offense against the United States. To say that he may be impeached for an act which would be indictable by the English common law, though not made so by the legislation of congress, is to surrender the whole position. If the House may prefer charges for conduct which is not penal by the law of the United States, but is criminal by that of England, they are of course, entirely untrammeled. The legislation of another nation, whether statutory or unwritten, cannot be a rule of conduct for the United States government, cannot be the measure of its powers. How then does the fact stand? The House has preferred an impeachment in five cases. The first was dismissed by the Senate on the preliminary objection that the respondent was not a civil officer. The other four were tried on the merits. In two instances the accused was convicted, and in two was acquitted. In three of these cases not a charge was made in the articles of impeachment presented by the House, which imputed an indictable statutory crime to the respondent; most of the charges did not even impute a common law misdemeanor; all, with perhaps a single exception, alleged a willful or corrupt violation of official duty. In the fourth case the offense was treason.

Then, in a note, he gives the several cases; first, the case of Judge Pickering, who was tried for drunkenness, convicted and removed.

He then proceeds:

"But we are to inquire which of these theories is in most complete harmony with the general principles of constitutional construction. The two branches of the argument which support the first, lead to the same conclusion, and although somewhat different in form, are in fact identical. Each is built upon a single premise, and if this be incorrect, the whole falls with it. The first mode of statement rests upon the assumption that impeachment under the constitution means the same as impeachment by the English law, and that the Houses of Congress have only the authority in the matter held by the Houses of Parliament. The second mode of statement re ts upon the assumption that "high crimes and misdemeanors" is to be taken in a strict technical sense as a phrase of the English law equivalent to "felonies and misdemeanors," and that the words are not merely indicative and descriptive of general classes of acts."

"This whole theory is therefore another illustration of the constant tendency among political writers and statesmen to argue from the British constitution to our own, without any regard to the fundamentally different ideas upon which they ar e based, and the fundamentally different methods by which these ideas are made practical. The powers of Congress are measured by those of Parliament, the powers of the President, by those of the crown. The principle that words having a technical meaning in the English jurisprudence as it stood when our organic law was framed, are to receive the same and no greater meaning, if found in the constitution, has been advocated in every political and forensic contest which has arisen since the organization of the government. This principle, as far as it purports to embody a general rule of interpretation, has been repeatedly repudiated by the judiciary and by the political departments. Thus Congress has given to the words "admirality" and "bankruptcy" a far broader signification than belonged to them by the English law when the constitution was adopted, and the courts have approved the legislative construction. The true rule would seem to be this: where words having a well known technical sense by the English law are used in the constitution, and these words are the keys of clauses which protect

the private rights and liberties of the people, and especially of clauses which impose direct restraints upon the government in respect of such rights and liberties, and the technical sense itself is necessary for the complete protection of the individual citizen, the signification must still be retained in any interpretation of those provisions. But, on the other hand, where words which had a technical meaning by the English law, are used in clauses which relate to the general functions of legislation and of administration, and to the political organization and powers of the government, such a sense must be attributed to them as will best carry out the design of the whole organic law, whether that signification be broader or narrower than the one which had received the sanction of English Parliament and courts.

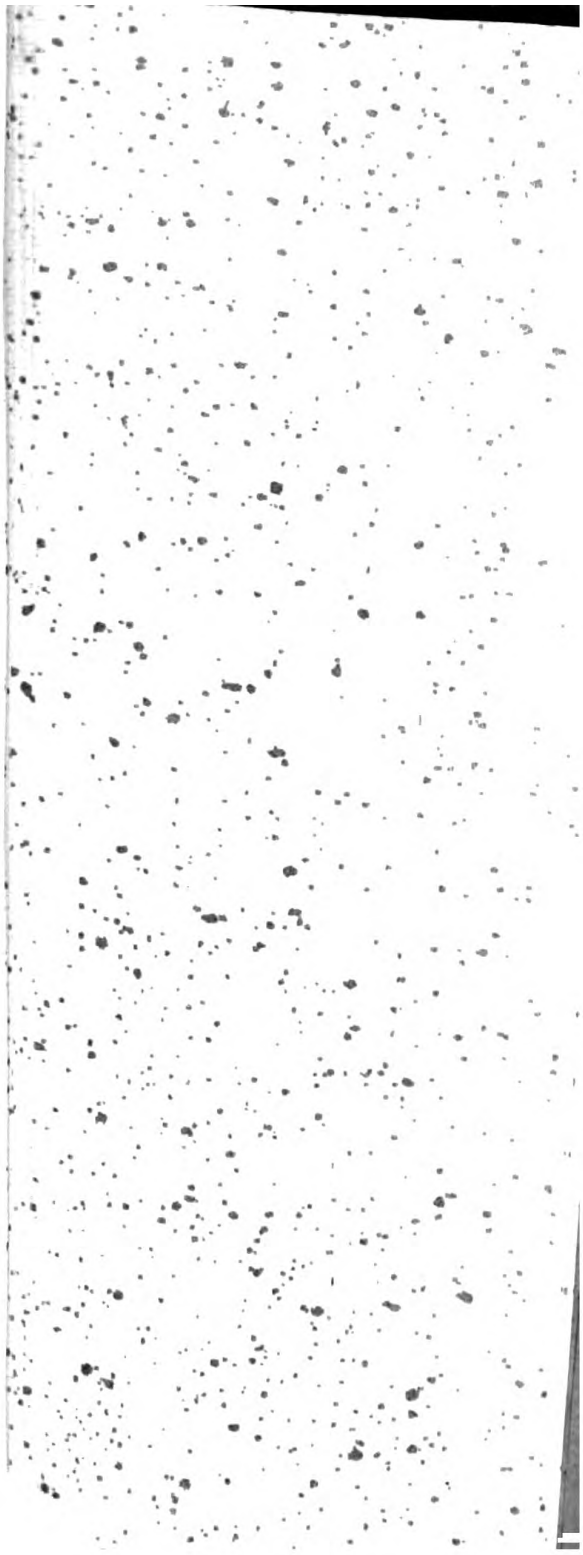
"Applying this criterion, we must reject the interpretation which makes impeachment under the constitution co-extensive only with impeachment as it practically exists in England. The word is borrowed, the procedure is imitated, and no more. The object and end of the process are far different. We must adopt the second and more enlarged theory, because it is in strict harmony with the general design of the organic law, and because it alone will effectively protect the rights and liberties of the people against the unlawful encroachments of power, narrow the scope of impeachment, and the restraint over the acts of rulers is lessened. If any fact respecting the constitution is incontrovertible, it is that the convention which framed, and the people who adopted it, while providing a government sufficiently stable and strong, intended to deprive all officers, from the highest to the lowest, of any opportunity to violate a public duty, to enlarge their authority, and thus to encroach gradually or suddenly upon the liberties of the citizen."

I now read from section 725.

The same considerations will apply with equal force to that branch of the argument which is based upon the phrase "high crimes and misdemeanors." Even had the words been "felonies and misdemeanors" we should not be obliged to take them in a strict technical sense; they would be susceptible of a more general meaning descriptive of classes of wrongful acts, of violations of official duty punishable through the means of impeachment. But in fact the language used cannot be reconciled with the assumed technical interpretation. The phrase "high crimes and midemeanors" seems to have been left purposely vague; the words point out the general character of the acts as unlawful; the context and the whole design of the impeachment clauses show that these acts were to be official, and the unlawfulness was to consist in a violation of public duty which might or might not have been made an ordinary indictable offense.

These views are strengthened by a reference to the practical results which would follow from the restriction of impeachment to those offenses that had been made indictable. Such a construction would remove from this sanction its chief compulsive efficacy. The importance of the impeaching power consists, not in its effects upon subordinate ministerial officers, but in the check which it places upon the president and the judges. They must be clothed with an ample discretion. The danger to be apprehended is from an abuse of this discretion. But at this very point, where the danger exists, and where the protection should be certain, the president and the judiciary are beyond the reach of congressional legislation. Congress cannot, by any laws penal or otherwise, interfere with the exercise of a discretion conferred by the constitution. Even had the legislature been clothed with express authority to define and punish crimes generally, they could not make criminal any kind of act which the constitution permits the president or the judges to do and subject these individuals to indictment therefor. But in fact the express authority of congress to define and punish crimes is very limited. If the offense for which the proceeding may be instituted, must be made indictable by statute, impeachment thus becomes absolutely nugatory against those officers and in those cases where it is most needed as a restraint upon the violations of public duty.

I desire to read, also (upon this same subject of the character of impeachment and its purposes,) from the opinion delivered by Charles Sumner in the case of the impeachment of Johnson. Whatever we may think of Charles Sumner as a statesman—some of us may approve of



his course and some not,—I think there is no one who will dispute his ability, or question his knowledge of constitutional law. In this instance he was acting under the solemnity of an oath, upon the trial of a great cause, the most important impeachment trial which has ever occurred in this country. I will read some extracts from what he says upon that case. It is found in the third volume of the impeachment of Andrew Johnson. I will read from page 248.

Before entering upon the consideration of the formal accusation, instituted by the House of Representatives of the United States in their own name and in the name of all of the people thereof. it is important to understand the nature of the proceeding; and here on the threshold we encounter the effort of the apologists who have sought in every way to confound this great constitutional trial with an ordinary case at *nisi prius* and to win for the criminal president an *Old Baily* acquittal, where, on some quibble the prisoner is allowed to go without day. From beginning to end this has been painfully apparent, thus degrading the trial and baffling justice. Point by point has been pressed, sometimes by counsel and sometimes even by Senators, leaving the substantial merits untouched, as if on a solemn occasion like this, involving the safety of the republic, there could be any other question.

The first effort was to call the Senate, sitting for the trial of impeachment, a court and not a Senate. Ordinarily names are of little consequence, but it cannot be doubted that this appellation has been made the starting point for those technicalities which are so proverbial in courts. Constantly we have been reminded of what is called our judicial character and of the supplementary oath we have taken, as if a senator were not always under oath, and as if other things within the sphere of his duties were not equally judicial in character. Out of this plausable assumption has come that fine-spun thread which lawyers know so well how to weave.

The whole mystification disappears when we look at our constitution, which in no way speaks of impeachment as judicial in character, and in no way speaks of the Senate as a court. On the contrary it uses positive language, inconsistent with this assumption and all its pretended consequences. On this head there can be no doubt.

By the constitution it is expressly provided, that "*the judicial power* shall be vested in one supreme court and in such inferior courts as the Congress may from time to time ordain and establish," thus positively excluding the Senate from any exercise of "the judicial power." And yet this same constitution provides that "the Senate shall have the sole power to try all impeachments." In the face of these plain texts it is impossible not to conclude that in trying impeachments Senators exercise a function which is not regarded by the constitution as "judicial," or, in other words, as subject to the ordinary conditions of judicial power. Call it senatorial or political, it is a power by itself and subject to its own conditions.

Nor can any adverse conclusion be drawn from the unauthorized designation of court, which has been foisted into our proceedings. This term is very expansive, and sometimes very insignificant. In Europe it means the household of a prince. In Massachusetts it is still applied to the legislature of the State, which is known as the General Court. If applied to the Senate it must be interpreted by the constitution, and cannot be made in any respect a source of power or a constraint.

There is another provision of the constitution which testifies still further, and, if possible, more completely. It is the limitation of the judgment in cases of impeachment, making it political, and nothing else. It is not in the nature of punishment but in the nature of protection to the republic. It is confined to removal from office, and disqualification; but, as if aware that this was no punishment, the constitution further provides that this judgment shall be no impediment to indictment, trial, judgment and punishment "according to law," thus again is the distinction declared between an impeachment and a proceeding according to law.

In that respect there is no difference between the federal constitution and our own. A man whom the governor may see fit to remove from office may still, notwithstanding that removal, be indicted, tried and punished in the courts the same as though he were a private citizen.

The first, which is political, belongs to the Senate, which is a political body, the latter, which is judicial, belongs to the courts, which are judicial bodies. The Senate removes from office; the courts punish. I am not alone in drawing this distinction. It is well known to all who have studied the subject. Early in our history it was put forth by the distinguished Mr. Bayard of Delaware, the father of Senators, in the case of Blount, and it is adopted by no less an authority than our highest commentator, Judge Story, who was as much disposed as anybody to amplify the judicial power. In speaking of this text, he says that impeachment "is not so much designed to punish the offender as to secure the State against gross official misdemeanors; that it touches neither his person nor his property, but simply divests him of his political capacity." All this seems to have been forgotten by certain apologists on the present trial, who, assuming that impeachment was a proceeding "according to law," have treated the Senate to the technicalities of the law, to say nothing of the law's delay.

As we discern the true character of impeachment under our constitution, we shall be constrained to confess that it is a political proceeding before a political body, with political purposes; that it is founded on political offenses, proper for the consideration of a political body and subject to a political judgment only. Even in cases of treason and bribery, the judgment is political, and nothing more. If I were to sum up in one word, the object of impeachment under our constitution, meaning that which it has especially in view, and to which it is practically limited, I should say *expulsion from office*.

That is the question now before this Senate. I have, to some extent, covered the ground stated by the honorable counsel for the respondent, that, to be a cause of impeachment, the offense alleged must be indictable. But to answer that more fully, I wish to state this, which I think will be borne out by the facts and by the law, that if the counsel's position is correct, and if it be true as the counsel says, that to be an impeachable offense it must be an indictable offense,—I say that even upon, that definition and upon that ground it comes clearly within the rule of the case at bar. The counsel's position is that an impeachable offense must be a misdemeanor either under the statute or at common law as those terms are understood in courts of law. Let us now take up the common law first and find out what are misdemeanors at the common law. And, by the way, we may, as a sort of prelude to that, examine a little as to what the common law is. The common law is simply the customs of the people. The common law is said to be unwritten. It is unwritten in a great measure. The common law is said to be the great inheritance of the American people, and you find it in nearly all the states of the union, but you do not find it the same in every state. Your supreme court here is making common law almost every day of its sessions. A controversy arises between two men; one says this is common law, and the other says the contrary is the law. They dispute as to what the common law is; they argue their case in court, and one presents one theory of the common law and the other another; and finally the supreme court says which is right, and what the court says becomes the common law; that *is* common law; common sense,—common usage among the people. Now, you, as a Senate, sitting here, may make the common law with regard to impeachment. It is for you to say here and now under your official oaths whether the offense, as charged in this case, is an offense against the customs and the manners, the religion and the habits of the people of Minnesota. And if you say so, that is the common law here, and I say it is the common law here now, and is a common law wherever in England or America people honor probity and manly character in the discharge of official duties. There is a common law relating to notes and bills, there is a common law relating to crimes, there is a common law relating to admiralty,

there is a common law for all branches of jurisprudence, and there is a common law relating to impeachments, and you here in your decision upon this case are to make the common law, or decide what is the common law of Minnesota upon the subject of drunkenness in office.

The counsel says that to be impeachable the offense charged must be a common law or statutory offense; and I say that on that basis we are still within the purview of his definition. Now, at common law, what is, generally speaking, a misdemeanor? I read from Russell on Crimes, marginal page 80, 9th edition, vol. 1.

"It is clear that all felonies, and all kinds of inferior crimes of a public nature as misprisions, and all other contempts, all disturbances of the peace, oppressions, misbehavior by public officers, and all other misdemeanors whatsoever of a public evil example against the common law may be indicted, and it seems to be an established principle.

Now mark this language, for here is one of the most concise and yet perfect definitions of misdemeanors at common law that I have found anywhere in the books:

"And it seems to be an established principle, *that whatever openly outrages decency and is injurious to public morals is a misdemeanor at common law.*"

Now that is what a misdemeanor is at common law. Need I ask this Senate whether, under these articles of impeachment, we charge this man, whom the people have exalted to a high judicial office, with a misdemeanor at common law? He is charged with having, on sixteen different occasions, within three years—appeared upon the bench of his district or adjoining districts, in the capacity of judge, while in a state of gross intoxication, unfitting him for the discharge of his public duties.

Does that constitute an offense against good morals and public decency? Who does not feel, as he walks along the streets of this or any other city, and meets one of his fellow men degraded with drunkenness, lying in the ditch, or staggering along the way that decency is shocked by that public exhibition? But if an humble citizen, on the streets of St. Paul, commits an act of indecency by being publicly drunk, what shall we say, and what language can picture the enormity of that offense when a high judicial officer, in whose hands rest the lives, liberties, the raputation and the property of 45,000 pepole, appears upon the bench of his district in a state of gross intoxication. Why, sir, it is perfectly idle to say that such a thing as that is not an offense against common decency and common law.

I desire to quote from Blackstone upon this point. He says, page 42, Book IV:

Thus the vice of drunkenness, if committed privately and alone, is beyond the knowledge, and, of course, beyond the reach of human tribunals; but, if committed publicly, in the face of the world, its evil example makes it liable to temporal censures.

Again on the same page:

Drunkenness and malevolent lying are *in foro conscientiae* as thoroughly criminal when they are not, as when they are attended with public inconvenience. The only difference is that both public and private vices are subject to the vengeance of ternal justice; and public vices are besides liable to the temporal punishments of human tribunals.

Again on page 121:

Misprisions, which are merely positive, are generally denominated contempts or *high misdemeanors;* of which the *first and principal* is the mal-administration of such high officers, as are in public trust and employment. *This is usually punished by the method of parliamentary impeachment* wherein such penalties, short of death, are inflicted, as to the wisdom of the House of Peers shall seem proper, consisting usually of banishment, imprisonment, fines or *perpetual disability*.

Of course, under our system none but officers can be impeached and the punishment is restricted to removal from office and disqualification. I now cite Archbold, 1st vol, p. 2:

The word misdemeanor, in its ordinary acceptation, is applied to all those crimes, whether of commission or omission for which the law has not provided a particular name.

I now read to the court from 25th Missouri, case of *State vs. Appling*, p. 315,—on the general subject of what is a misdemeanor. This was an indictment for the use of obscene language in public. I read from the opinion:

The only question in this case is raised upon the indictment. The defendant was convicted and judgment rendered against him for the fine; he moved in arrest of judgment; his motion being overruled he appealed to this court. The indictment is not good under any of the provisions in our criminal code; but we consider the offense therein charged to be an offense indictable at common law, and that the indictment is good as a common law indictment. The charge is "that the defendant did, on the 25th of August, A D. 1856, at the county of Laclede, in a certain large assembly of males and females in said county, and in the hearing of said assembly of persons unlawfully, wickedly and scandalously, use vulgar, obscene and indecent language, by then and there asking some of the males, etc., [here the questions are inserted in the indictment, which are too vulgar to be inserted in this opinion,] and was then and there guilty of open and notorious acts of public indecency, grossly scandalous to the manifest corruption of the morals of said assembly, contrary," &c.

We have no statute punishing a person for the use of vulgar, indecent and obscene words in public. There has not been an attempt to legislate on this particular offense. It is an offense at common law, because it was against good morals —against public decency. Russell in his Treaties on Crimes, (1st vol. p. 46,) says: "and it seems to be an established principle that whatever openly outrages decency and is injurious to public morals is a misdemeanor at common law." "The common law" said Judge White, in the case of Greshan & Ligan vs. the State, 2 Yerger, "is the guardian of the morals of the people and their protection against offenses notoriously against public decency and good morals." Blackstone lays it down that "any grossly scandalous and public indecency is indictable and punishable in the temporal courts by fine and imprisonment," (4 Black. Com. 41.") It was held in the case of Bell vs. The State, 1 Swan, 42, that "the utterance of obscene words in public, being a gross violation of public decency and good morals, is indictable; and in a prosecution for the utterance of obscene language in public, it is not necessary that the words should be proven exactly as charged to have been spoken. Many cases have been held indictable as being *contra bonos mores*" (4 Black. Com. 41.) "All indecent exposure of one's person to the public view, and it may be laid down in equal terms that all such acts and conduct as are of a nature to corrupt the public morals or to outrage the sense of public decency are indictable, whether committed by words or acts." (4 Black. Com 65, note.)

Our respect for the chastity of the records of our court will not suffer the outrageously vulgar words that were spoken and sung by the defendant in this case, in the hearing of both males and females, to be put on the records. But we have never had to examine the records of our inferior tribunals to find words more shocking to one's sense of decency than those charged and proved in this case.

I now read from the case of the Commonwealth vs. Sharpless, 2 Sergeant & Rawles Penn. Rep., p. 100:

This is an indictment against Jessie Sharpless and others, for exhibiting an indecent picture to divers persons for money. The defendants consented that a verdict should go against them, and afterwards moved in arrest of judgment, for several reasons.

First. That the matter laid in the indictment is not an indictable offense." It was denied, in the first place, that even a public exhibition of an indecent picture was indictable; but supposing it to be so, it was insisted, that this indictment contained no charge of a public exhibition. In England there are some acts of immorality, such as adultery, of which the ecclesiastical courts have taken cognizance from very ancient times, and in such cases, although they tended to the corruption of the public morals, the temporal courts have not assumed jurisdiction This occasioned some uncertainty in the law; some difficulty in discriminating between the offenses punishable in the temporal and ecclesiastical courts. Although there was no ground for this distinction in a country like ours, where there was no ecclesiastical jurisdiction, yet the common law principle was supposed to be in force and to get rid of it, punishments were inflicted by act of Assembly. There is no act punishing the offense charged against the defendants, and therefore, the case must be decided upon the *principles of the common law.*

That actions of public indecency were always indictable, as tending to corrupt the public morals, I have no doubt; because, even in the profligate reign of Charles II, Sir Charles Sedley was punished by imprisonment and heavy fine, for standing naked in a balcony, in a public part of the city of London. It is true, that, besides this shameful exhibition, it is mentioned in some of the reports of that case, that he threw down bottles, containing offensive liquor, among the people; but we have the highest authority for saying, that the most criminal part of his conduct, and that which principally drew upon him the vengeance of the law, was the exposure of his person. For this I refer to the opinion of the judges in the *Queen vs. Curl*, (2 Str. 792.) Lord Mansfield, in the King vs. Sir Francis Blake, Deleval et al, 3 Burr. 1438; and of Blackstone, in the fourth volume of his Commentaries, page 64. Neither is there any doubt, that the publication of an indecent book is indictable, although it was once doubted by the court of King's Bench, in the Queen vs. Reed, (in the sixth year of Queen Anne;) but the authority for that case was destroyed. upon great consideration, in the King vs. Curl (1 Geo. 2,) 2 Str. 788. The law was in Curl's case, established upon true principles. *What tended to corrupt society was held to be a breach of the peace and punishable by indictment. The courts are guardians of the public morals, and therefore, have jurisdiction in such case. Hence it follows that an offense may be punishable, if in its nature and by its example it tends to the corruption of morals; although it be not committed in public.*

I have upon my brief a number of cases, the most of which, however, have been read by the honorable manager who has preceded me. I desire, however, to call your attention to 2 Wharton which is to the effect substantially that drunkenness in a public officer, while in the discharge of his duty, is an indictable offense at common law. That is laid down in the last edition of Wharton, published last year.

I have, likewise, here, the authorities referred to in support of that doctrine, laid down by Wharton, to which I will call your attention.

Here was an indictment in the State of Pennsylvania. It is reported in Addison's reports, page 290. "This was an indictment against one of the grand jurors (on the presentment of the rest) for that he being sworn, etc.," not regarding his oath nor the good of the country and the office of a juror, but holding the same in contempt, on the 22d of December, 1795, during the sitting of the grand jury, on business given them in charge, did misbehave himself in the office of a juror, and abuse the trust put in him, by intoxicating himself with strong liquor and disqualifying himself for the discharge of the office of a juror.

PRESIDENT. If the incapacity arose from natural infirmity, or unavoidable accident, you ought to acquit. But if it was voluntary you ought to convict.

The intention with which the intoxication was produced, whether with a direct view to disqualify or not, is not essential to the conviction. For it was his duty, not only not to disqualify himself, but to take reasonable care to preserve himself in a state fit for doing his duty.

If it be an indictable offense for one of the twenty-three grand jurors to be drunk while on duty, how much more so must it be for the presiding judge.

Here is another case in Virginia. In Virginia, the mother of presidents, the home of Jefferson. It is an old case, arising when that State reared presidents. I read from Commonwealth vs. Alexander, 4 Henning & Munford, 522. This was in the Supreme Court of Appeals:

This was an adjourned case from the district court of Haymarket, upon an information and verdict against John Alexander, a justice of the peace in the county of Loudown, for taking his seat "on the bench of said county court, and acting as a justice and member of the court then and there sitting, in giving his vote upon a judicial question and examination at the time depending in the said court, and in signing the minutes of its proceedings as presiding justice thereof, while he, the said John Alexander, was in a state of intoxication from the drinking of spirituous liquors which rendered him incompetent to the discharge of his duty with decency, decorum and discretion, and disqualified him from a fair and full exercise of his understanding in matters and things, at the time and place last mentioned, judicially brought before him to the great disgrace of the administration of public justice and to the evil example of persons in authority; whereby the said John Alexander was guilty of misbehavior in his office of justice of the peace in and for said county of Loudown against the peace and dignity of the commonwealth

The jury found the defendant guilty and amerced him in the sum of fifty dollars. On the motion of the attorney for the Commonwealth for a judgment against the defendant for the amount of the amercement, and also for judgment that the defendant *be removed from his office* of justice of the peace for the county of Loudown, the distcict court on doubting whether it had authority to *remove* the defendant from his office aforesaid and also whether evidence could be exhibited to the court, after the discharging the jury before whom the issue was tried, to prove the general ill conduct and maladministration of the defendant in his said office, thereby to show him to be a proper object for *removal* adjourned the case to the general court for the novelty and difficulty of said questions.

And now at a general court holden at the capitol in the city of Richmond, on the 13th day of June, 1808, the following opinion was entered on the points submitted:

"It is the *unanimous* opinion of the court, that judgment of a motion from the office of justice of the peace ought to be rendered against the said John Alexander, and that no further testimony is admissible before the district court."

The views expressed in these cases are supported by Mr. Wharton in his work on American Criminal Law, where he says in Sec. 1583, edition of 1880:

"It is an indictable offense for a public officer voluntarily to be drunk when in discharge of his duties. No harm may come to the public from

his misconduct, but he has put himself in a position from which much harm might result, and for so doing he is amendable to penal justice."

Mr. Manager GOULD here requested a short intermission, which, being granted, the Senate proceeded as follows:

Senator GILFILLAN, C. D., offered the following resolution:

Resolved, That the report on mileage adopted by the Senate at the extra session of 1881 be adopted as the mileage of the members of the court of impeachment, and that each Senator be entitled to and receive the same per diem and mileage as during the extra session of 1881.

The roll being called, there were yeas 31, and nays none, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Adams, Buck C. F., Buck D., Campbell, Case, Castle, Crooks, Gilfillan C. D., Hinds, Howard, Johnson A. M., Johnson F. I., Langdon, Macdonald, McCormick, McLaughlin, Mealey, Miller, Morrison, Officer, Perkins, Peterson, Powers, Rice, Shalleen, Simmons, Tiffany, Wheat, White and Wilson.

So the resolution was adopted.

Senator Gilfillan C. D., offered the following resolution:

Resolved, That C. A. Anderson be employed to keep in a cleanly condition the court room and other rooms used in connection therewith, at a compensation not to exceed two dollars per day.

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

Mr. Manager GOULD. At the time of the interruption, I was discussing whether the offenses charged here were offenses under the common law, and I shall say but little more on that subject. I think the authorities I have read are sufficient Such offenses are indictable at common law, and therefore within the definition laid down by the gentleman—Mr. Allis—but he says that, although these may be indictable offenses, they are not official offenses; that an offense must be indictable either at common law or under the statute, and in addition thereto it must be something connected with the office; and that whereas drunkenness and debauchery are not connected with the office and are not a part of the official duties of the office, therefore, a judge cannot be impeached for those offenses. I think that it is not worth while to take up the time of the Senate in discussing a proposition which seems to have so little merit in it. It seems impossible that a man of the years and experience of the distinguished counsel can be sincere in saying that where a man is so broken down by the use of intoxicating liquors as not to know anything about his duty, that he is suitable to occupy the bench, that he is fit and in condition to discharge the duties of a judge, and besides the absurdity of the proposition in and of itself, the counsel is refuted by the authorities upon the subject, for the first case of conviction in the United States under impeachment was a conviction for being intoxicated upon the bench; it was decided, too, by the very men who assisted in the formation of the Government; it was decided at a time when the constitutional provisions, both as to impeachments and as to all other offenses, were fresh in the minds of the public men of the country; so that in neither principle nor by authority is he justified in the assertion that no man can be impeached for an offense which is not connected with the discharge of his official duties; but in this case it is connected with the discharge of his official duties. The allegation in these articles is that while in this condition, to-wit: In a drunken condition he *actually sat upon the trial of causes*, attempting the performance

of official duties when he was incompetent to their performance. It *was* connected with his official duties; it affeted his judicial acts; it had its influence upon the conduct of the business then and there pending before him. It is of the utmost importance that a man who has to decide great and important cases have the intellect clear; it is important that a man who sits in a high judicial position shall exercise before the community in which he daily goes in and out at least reasonable circumspection, that he shall be a man who shall command the respect of that community. What regard, I would ask, can the criminal classes of this country have in the decision of a judge who goes reeling along the streets and ascends the judicial bench in such a state that he can hardly climb to that exalted altitude? It is impossible that the judicial functions can be exercised with any degree of force or carry with them any degree of respect among the people of high or low degree if the man from whose mouth proceed opinions is himself so muddled that he cannot give a coherant utterance to his thoughts. It *is* connected with his judicial life; it *is* an offense; it affects his judicial duties to be drunk. His judicial duties pertain not alone to the mere dicision of cases, but his example in the community is of importance. If what the counsel says is true, this man may take the position of a judge in his district in a state of drunken imbecility and take upon the bench beside him his harlot and sit there in the face and eyes of the community without punishment because there is no statute law and no common law that you can indict him for it, and the offense is not an official, the argument of the counsel would go to establish that such a thing could be permitted with impunity in a Christian and civilized community? Gentlemen it is impossible, it must be impossible that this Senate can for a moment entertain an idea that a man can do such things and go unwhipped of justice. It is too monstrous a proposition to commend itself for a moment to the mind of any intelligent and honest man.

Now, gentlemen, I will read a few lines from Mr. Cooley on Ttorts' page 408. I read this to show what is, in the estimation of this exemplary, honest and able judge, the duties of a judge,—what in his judgment is proper behavior. He is discussing the question of the liability of the judge for his official actions generally. He says, (Cooley on Torts, page 408):

> But where the judge is really deserving of condemnation a prosecution at the instance of the State, is a much more effectual method of bringing him to account than the private suit. A want of integrity, a failure to apply his judgment to the case before him, a reckless or malicious disposition to delay or defeat justice may exist and be perfectly capable of being shown, and yet not be made so apparent by the facts of any particular case that, in a trial confined to those facts, he should be condemned. It may require the facts of many cases to establish the fault; it may be necessary to show the official action for years. Where an officer is impeached, the whole official career is or may be gone into; in that case, one delinquency after another is perhaps shown. Each tends to characterize the other, and the whole will enable the triers to form a just opinion of the official integrity. But in a private suit, the party would be confined to the facts of his own case. It is against inflexible rules that one man should be allowed to base a recovery for his own benefit on a wrong done to another, and could it be permitted. The person first wronged, and whose right to redress would be as complete as any, would lose this advantage by the very fact that he stood first in the line of injured persons.
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> Whenever, therefore, the State confers judicial powers upon an individual, it confers them with full immunity from private suits. In effect, the State says to the officer that these duties are confided to his judgment; that he is to exercise

his judgment fully, freely, and without favor, and he may exercise it without fear; that the duties concern individuals, but they concern more especially, the welfare of the State and the peace and happiness of society; that if he shall fail in a faithful discharge of them, he shall be called to account as a criminal; but in order that he may not be annoyed, disturbed and impeded in the performance of these high functions, a dissatisfied individual shall not be suffered to call in question his official action in a suit for damages. This is what the State, speaking by the mouth of the common law, says to the judicial officer.

That closes what I have to say upon the subject of this being an offense at common law. I now wish to call your attention, for a few moments to the question of whether this is an offense under the statute. and I call your attention to the section which has already been twice read in your hearing, section 8 of chapter 91 of the statutes:

Where any duty is enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful neglect to perform such duty, and every misbehavior in office, where no special provision is made for the punishment of such delinquency or malfeasance, is a misdemeanor punishable by fine and imprisonment.

That was the language of the law when the constitution of this State was adopted. It makes *misbehavior* in office a *misdemeanor*. I have already stated that I think it unnecessary to urge upon the attention of this Senate the fact that drunkenness and vice in a judicial officer of a public and notorious character is *misbehavior in office*. If so, then it is a misdemeanor, not only at common law, but it is a misdemeanor under that old statute that has stood upon the statute books of this State since we became a State, when we were a territory and even when we were a part of the territory of Wisconsin.

Again: another section of the statute to-wit:

Section 13 of chapter 9 provides that:

The habitual drunkenness of any person holding office under the constitution or laws of this State, shall be good cause for the removal from office by the authority, and in the manner provided by law.

As I stated at the outset, there are two modes by which officers can be removed, that is to say there is a mode by which certain officers can be removed and another method by which other officers can be removed. The process of impeachment, as I argued at the outset, is simply a process by which officers are to be removed from office; and it is therefore an authority for their removal, and impeachment is the manner provided by law, for such removal.

The Legislature in its wisdom has said that a man who is habitually drunk, may be removed from office either by the Governor or by the Senate, for that is virtually what this section provides: "That it shall be sufficient cause for removal." So we take the gentleman upon his own ground, (which ground, however, we do not admit to be true), that is we do not think we are confined to those grounds, but taking the ground that the gentleman himself has laid down, that there must be an offense against the statute or common law before you can impeach, even upon that narrow ground is not the accused in this case amenable to impeachment under the articles presented? We await with confidence the answer of the Senate to this question.

The PRESIDENT. Have the honorable managers further remarks to make?

Mr. Manager DUNN. MR. President and gentlemen of the Senate: The matter that is engaging the attention of the Senate at this time is one of great gravity; it is one of great importance both to the State of Minnesota and to the respondent, the judge of the ninth judicial district In approaching this subject and in addressing this Senate for the few moments that I shall occupy your time, I must say that I feel great embarrassment; but still, having a duty imposed upon me by the House of Representatives of this State—a duty to represent in their name and on behalf of the people of this State, to the Senate of the State of Minnesota, charges affecting the purity and integrity, the honesty and the uprightness of a judge of the district court of the State of Minnesota,—I say, having that duty imposed upon me by the House of Representatives, I am impelled to the performance of that duty regardless of any personal feelings.

I have no personal feelings in this matter nor do I entertain any personal feelings of hostility toward the respondent in this case. I believe, that I am the only one of the managers, on behalf of the State, that has had the pleasure of the acquaintance of the respondent for the last, say, 20 or 25 years. I well remember, Mr. President and Senators, that he and I together, dating away back in the days when Minnesota was a territory, before she had assumed the garb of statehood, before she had undertaken to travel alone in the pathway of nations, both of us in the young morning of life struggling as it were in the Minnesota valley for a position in this State, which we knew had a great outcome and a great future, both endeavoring to write our names high up on the scroll of fame and honor. We were both young, vigorous and active, and each, I think, had at heart the honor of this then young and growing commonwealth. That acquaintance has gone on from that day to this, and entertaining as I do those kindly feelings common to humanity and which I ought to feel toward the respondent in this case, I say far be it from me, by a single improper word of mine or by any unwarranted act of mine, to give any greater impetus to the steel that must at this moment be entering the heart of my friend the respondent in this case. I would not, if I could—I ought not, at all events—but, Mr. President, these feelings must be hushed—these friendly and kindly feelings that actuate human nature—and a duty must be performed regardless of consequences. I shall not attempt in the few moments that I shall speak at this time, to enter into the general details of the allegations of this indictment or impeachment, they have been dwelt upon at lenghth by my learned brethern who have preceded me in this management, I have been assigned simply to the duty of endeavoring to clear up some of the mists that have been thrown around three of these articles of impeachment by the learned counsel for the respondent who has addressed this Senate, I refer to articles 17, 18 and 20.

At the outset, Mr. President and gentlemen, let us inquire what is a demurrer. From the little research that I have been able to make, I have not been able to find a single case where a demurrer, strictly speaking, known among lawyers as such, has been interposed in an impeachment trial. It is the first time in the history of impeachments, in our State and Nation, when a respondent comes into court and interposes what is termed in the law a technical demurrer; that is to say, that he admits the charges as alleged against him, and simply says: "What of

it?" When he admits that he did all of those acts which the House Representatives have charged him with doing, and simply, admittin those facts, declares that they constitute no impeachable offense. It the first time, and the board of managers might, for want of preceden upon this matter, have insisted that this demurrer be not heard at th time, but that it wait and take its chance at the bar of this Senate whe you should be called upon to record your votes upon the guilt or inn cence of this respondent, after having heard the proofs.

The theory that I adopt is in a great measure, that of my learned asso ciate, Mr. Manager Gould, who has last addressed this honarable bod that you are not a court, in the common acceptation of that term, that i to say, you are not a court of general jurisdiction. You are a court i one sense, that is you are a court to hear and determine, but with ver limited powers and limited jurisdiction. Therefore, we might, with a consistency have insisted that the rules relative to the argument of de murrers had no application before this tribunal, that they had no righ to be heard here. But, Mr. President and gentlemen, I say here in my place as a manager of this impeachment trial, that if these charge that have been alleged against this respondent, will not, in the face of technical demurrer, admitting their truth but denying the legal conclu sions flowing from them, if they will not stand the test of the vote o this Senate, acting upon their oaths, as members of this high court o impeachment, that a further trial upon the evidence would be a mer waste of time and money, and the House of Representatives ought t stand humiliated before the State of Minnesota, for having imposed upo this Senate the task of hearing evidence upon charges which will no bear the simple scrutiny of admission in the first place of the fact, and of a denial of their legal effect. So I say, with that view of the case, we have been willing to argue this demurrer here and now, and to submit to a test vote upon these legal objections as decisive of this case.

Then, Mr. President and Senators, I shall not, as I stated, undertake to argue this case upon its merits; because it needs no argument. The merits of the case, so far as the commission of the offenses are concerned, are admitted. We need no argument to show that a person who has permitted his brain to become clouded with intoxicating drinks is not a fit person to discriminate carefully between the nice points which must naturally arise in the courts of justice. It is a matter apparent to every man. We might have brought the works of medical jurisprudence here to fortify that statement, but it is not necessary to waste time.

The principle objections raised to articles 17, 18 and 20, are, that they are vague, indefinite and uncertain, and that the respondent ought not to be put to answer upon these charges, because, forsooth, he may not be able to plead an acquittal in bar of some further charge,—because he may not be able to produce evidence to rebut the evidence that may be brought by the managers,—because he is not put upon his guard, and because he has not been given warning of what particular acts will be brought before this Senate by the evidence. Now, Mr. President and Senators, I wish to take up first, the charge in the 18th article; and that is, of habitual drunkenness. And, in answer to a question which was put by the honorable Senator from Blue Earth, (Mr. Buck,) to my colleague, Mr. Manager Hicks.

The 18th article reads as follows:

That E. St. Julien Cox, being a judge of the district court of the State of Min-

nesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, has been in said State from and since the 30th day of March, in the year 1878, and now is guilty of the offense of habitual drunkenness."

There can be no objection to the first part of that article, it is strictly in form. Counsel can take no exception whatever to it. The only exception that they can take to it is as to the following words: That "he has been in said state from and since the 30th day of March, in the year 1878, and now is, guilty of the offense of habitual drunkenness."

Now, Mr. President and Senators, testing that article by the rules prevailing in the courts of our land as to the necessity for certainty in indictments, in my judgment, the article would be sufficient even if it were presented as an indictment in a court of general jurisdiction for that offense, and I think the authorities will bear me out in that assumption.

Habitual drunkenness is a state of being. It has no particular day of commencing; no particular day of ending. It is what is termed in the law, a continuing act. It cannot, with precision, be laid upon a certain day; it might be laid upon a certain day and proof might be given of acts which have formed a habit from that time down to a certain other time, or running through a long period of time, but it is not necessary that those acts shall be given which constitute a man an habitual drunkard. It is simply necessary to allege in the language of the statute that "A. B. is an habitual drunkard," or, as in the language of some states that "A. B. is a common drunkard;" or, in an indictment for a common scold, "is a common scold."

Now I propose to read one of the authorities upon that point and submit the matter to the Senate without further argument; because I believe an authority or two directly in point, will have more effect than all the managers can do in this case if they were to "talk" forever, I will read from Bishop on Statutory Crimes, Section 979:

Something has already been said on this subject in these pages, in discussions of other offenses of a continuing nature. There in a Massachusetts case, the form of the complaint was, that, on a day named, the defendant "was and is" a common drunkard, "having been at divers days and times since" that day "drunk and intoxicated by the voluntary and excessive use of intoxicating liquors," it was held that drunkenness only on a single day was charged. Plainly this was correct; for only a single day was stated with the requisite certainty. But it was further held, that, on this form of allegation, the evidence of drunkenness should have been confined to a single day. The adjudication, upon the latter point, is plainly enough in accord with a peculiar doctrine of the Massachusetts court, relating to this class of questions, but it cannot be sustained on general principles as held by courts elsewhere. As this offense is in the nature continuing from day to day, a peculiar act, so to speak, of being a common drunkard, may in law be constituted out of a series of minor acts, which minor acts may be committed on different days. There being no impossibility of law that all may really occur on one day, the allegation of a single day is sufficient; and, time not being of the essence of the offence, one of the minor and constituent acts may be proved as the one day and another as of another day, and so on. This is the general, the sound, and the just doctrine.

Now I have one single authority in the State of Texas, that I propose to read, upon this subject. It is the case of Trigg vs. the State, reported in 49th Texas reports, page 660:

"This proceeding was instituted in the district court by a petition signed by V.

C. Giles, and a number of other citizens of Travis county, asking the removal of appellant, Bingham Trigg, from the office of county attorney, to which he had been elected at the general election in February, 1876, and which he then—to-wit on the 18th of April, 1877, was holding; and setting forth as grounds for his removal, among other things not pertinent to the matter, two grounds, which were, that since his said election he had been guilty of habitual drunkenness and official misconduct. It was instituted under Section 24 of Article 5 of the constitution of 1876."

It seems in Texas they have advanced so far in the line of civilization and morality, that they have got this doctrine, that habitual drunkenness is a cause for removal from office incorporated into their constitution.

"It was instituted under Section 24 of Article 5 of the constitution of 1876, which reads as follows: 'County judges, county attorneys, clerks of the district court, justices of the peace, constables, and other county officers, may be removed by the judges of the district courts for incompetency, official misconduct, habitual drunkenness, or other causes defined by law, upon the cause thereof being set forth in writing, and the finding of its truth by a jury.'"

Now one of the objections to this charge was that the offence was not sufficiently stated. The charge was in the very language of the statute; that he was "guilty of habitual drunkenness and official misconduct."

"The petition, filed the 18th of April, 1877, represents that Bingham Trigg, was elected county attorney for the county of Travis at the general election held in Fubruary, 1876; that he was duly qualified as such, and is now acting in such capacity; and asks his removal for the causes set forth. Then follows the charge of habitual drunkenness, as follows, to-wit: 'Your petitioners now allege, and charge the fact to be, that since the election of Bingham Trigg to the office of county attorney as aforesaid, he has been guilty of habitual drunkenness.'"

Now this was a case, Senators, that was tried in court with all the technicalities which are thrown around proceedings in courts of general jurisdiction, with all the presumptions that surround a defendant both upon question of law and questions of fact, to be resolved in his favor. It was not before a court of limited jurisdiction, as is this body,—a Senate,—but before a court of general jurisdiction—the Supreme and District Courts of Texas. The charge simply alleged that Bingham Trigg, since his election to the office of county attorney "has been guilty of habitual drunkenness." To which is added, "both in public and private places, and to such an extent as to incapacitate him from the performance of the duties of his high and responsible position."

That is the charge. There are no days stated there at what time he began to be an habitual drunkard; there is nothing set forth in that charge as to how many times he has been drunk, in order to infer the fact that he has, by a number of times having been drunk, finally arrived at that stage in his history, when he can possibly and probably be called an habitual drunkard. It is simply a naked, bold assertion in the language of the statute,—just as we have alleged it here in our article of impeachment—that he is guilty of the offense of habitual drunkenness. Now the court say, (answering the objections of counsel:)

"Other allegations are made about his having been put in the calaboose, and being tried before the mayor, and being arrested by the police officers and shooting pistols, and assaulting some one, and other such things, all of which are wholly impertinent to this charge."

"They are impertinent and unnecessary, and should have been expunged, because, in the contemplation of the provision of the constitution invoked for his removal from office. If he was guilty of habitual drunkenness, he was thereby unfitted to hold said office, irrespective of its effects upon his capacity to discharge his official duties, or upon his moral character or conduct in public and private, as an individual in the community, however efficient his official capacity or innocent in his conduct, or the reverse in either, he might have been, were matters wholly immaterial and out of place in the charge of habitual drunkenness, which is itself sufficient ground for removal."

My friend, counsellor Allis, in his argument upon this very point, insisted that a judge might be drunk, that he might be habitually drunk, and yet it was no ground for his removal; because he might be drunk and still be an upright, inflexible judge, of great integrity upon other matters, but this court in Texas—formed under a constitution which provides that habitual drunkenness should be a ground for removal from office,—takes an entirely different view and says:

> However efficient in his official capacity or innocent in his conduct or the reverse, in either he may have been, were wholly immaterial and out of place in the charge of habitual drunkenness which is itself sufficient ground for removal. They might be used in evidence to show the degree of, or the want of it, but not otherwise.
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> This is not a trial to inflict punishment for an offense, but to ascertain a fact: Habitual drunkenness, if found, the constitution has declared to be in and of itself a sufficient ground of unfitness for such office.

Now, there is a decision, which I claim, gentlemen of the Senate, upon that point of habitual drunkenness—and the constitution of this court is of more moment and more weight than all the opinions that Daniel Webster and Charles Sumner and all those other lawyers that have argued matters of this kind either upon one side or the other of the case, that have been read in our hearing; because that opinion comes from a judicial bench that has no interest one way or the other either in the punishment or the acquittal of that defendant. It is a non-prejudiced, unbiased, impartial decision from a court of high standing, as to what is habitual drunkenness; or rather as to the allegation necessary to produce before a court of impeachment or any other court upon a charge of habitual drunkenness.

Our statute has been read in your hearing which provides that habitual drunkenness of any officer holding office under the constitution or laws of this State, shall be a sufficient ground for his removal from office by the authority and in the manner provided by law. Taking for granted, as I think this Senate must take for granted, that you are simply to inquire as to whether there are grounds sufficient alleged against this respondent that he should be removed from office, that statute certainly has a binding effect.

The counsel stated in his argument that the legislature could not enlarge the powers of this Senate; they could not abridge the powers of this Senate, they could make no change whatever in the fundamental law so as to effect a person who was elected under the constitution, to give greater powers to the Senate, or to detract from the powers already given.

Now the legislature have assumed to do no such thing. They have attempted to say in their judgment what is a sufficient ground for a re-

moval from office; they have, as it were, interpreted the word misdemeanor; they have said that habitual drunkenness shall be sufficient ground for his removal.

It is not necessary to enter into any discussion, as to the whys and wherefores of the passage of that little act of 1878. Some of the Senators upon this floor may have been members of the legislature that passed it. I will not advert to it any further than simply to call to mind that there was a necessity for the act in 1878, and that the necessity for the act has been made patent and is to-day patent by these proceedings.

Now my friend, the Senator from Blue Earth, (Mr. Buck,) asked Mr. Manager Hicks a question as to the habitual drunkenness of a judge upon the streets, everywhere, all around,—whether this is applicable to him or whether he must have been drunk upon the bench. I will endeavor to answer that question. A district judge is always upon the bench. He has, always to be ready to bring into play those qualities of learning, those qualities of judgment with which nature, study and opportunity have fitted and endowed him.

Our statute provides, page 745, that "in addition to the general and special terms provided by law, the district court is *always open* for the transaction of business;" The judge cannot lie down upon his bed to slumber at night, but he is liable to be called up by some litigant having business before that court. The judge cannot go in to take his noonday meal but what some attorney or counselor is liable to come to his elbow and say: "Here, your honor, I have a client in the jail of Ramsey county,—I have a client incarcerated unlawfully in the jail of Nicollet county,—I have a client here or there, that has business before this court and I demand, sir, your hearing at this time." It does not lie in his heart to say "no" because, in the language of the statute, which he has sworn to uphold and support, "in addition to the general terms the district court is always open for the transaction of all business, for the entry of judgments, of decrees, of orders of course, and all such orders as have been granted by the court or judges, or for the hearing and determination of all matters brought before the court or judge." He cannot lock himself up to a defense of that kind,—that he has a right to play the wanton,—that he has a right to indulge in debauchery;—at his own time to do these acts which the impeachment articles charge him with,—and then claim that he did it outside his office and when he was not in the exercise of the duties of that office. The State has clothed him with the sacred garments of a judge in order that the suitors and the litigants of this State shall have the opportunity and privilege of having their rights secured to them and their wrongs redressed; and has declared that he shall be at all times ready and willing to discharge the duties of his office according to the best of his judgment, learning and discretion. Not only has the State clothed him with these powers, but he has sworn that he would so discharge them. And yet the respondent comes here, gentlemen, and admits that during all this time he has been guilty of habitual drunkenness, and insists there is no offense charged.

Now, as to these other articles, 17 and 20. What do we find in article 17? Leaving out the preamble of the article it says:

That at divers and sundry other times and places in the State of Minnesota, not enumerated in any of the foregoing articles, from the 4th day of January, A. D. 1878, to the 15th of October, 1881. Now mark the language; "not enumerated in any of the foregoing articles."

Within your jurisdiction,—not in Iowa,—not in any of our sister states or territories,—but

Within the State of Minnesota, from the 4th day of January, 1878, to the 15th day of October, A. D. 1881, acting as, and exercising the powers of such judge, did enter upon the trial of causes and the examination and disposition of other matters and things before him as such judge for trial, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors.

The objection to that article, I understand, as a lawyer, is, that it is indefinite and uncertain; that while the managers have charged him in sixteen separate and distinct instances with direct violation of his official oath, direct instances in which he entered upon official duties that here we intend to group in the whole state, from the commencement of his judicial career down to the finding of these articles of impeachment; and because, forsooth, we do that, they are vague and indefinite and uncertain and the respondent ought not to be put to answer.

This is simply an allegation that during his whole judicial career down to the time of the finding of these articles, at every term of court he has been guilty of these "peccadilloes," (I will use the word of the counsel for the respondent) these *little peccadilloes* that are found in this article. The respondent claims that he cannot answer that charge. I put it to the common sense of every Senator upon this floor: If he cannot answer that charge,—that he has not been guilty at other places, why then the charge will perhaps be amended. But is claimed that money is going to be used. That large corporations,—(I recollect the little insinuation that the counsel threw out,—we heard it somewhat in the other end of this capitol when these articles were being framed,) that some large corporation that had immense interests at stake in the ninth judicial district might, by the use of money, desire to get rid of a stern, incorruptible, inflexible judge, and get some pliant tool of their own, elevated to the "wool sack" and that their money might be used for the purpose of driving the iron into the soul of this respondent, to secure his conviction and removal from office. I do not think the insinuation was well grounded; I do not think it has any foundation in fact,—at least I know of none, and I think I can speak for this board of managers, that they know of none.

If this respondent was not and has not been guilty as charged in that allegation,—at other times than at these sixteen times,—certainly this Senate will hardly think that the State of Minnesota will suborn witnesses to prove it—that they are going to induce men to commit perjury to prove it—that money is to be used for the purpose of bringing in unwilling parties or swift witnesses, as the case may be, to prove these facts; not at all.

Just so about the 20th article. The 20th article charges him with the usual verbiage of demeaning himself in a lewd and disgraceful manner, in that he frequents houses of ill-fame and consorts with harlots. Now it is a well understood proposition that the frequenting of houses of ill-fame and consorting with harlots is an offense; it is an offense at common law. These books are full of authorities to that effect; I will not take your time by reading them, it is of the same class of offenses as drunkenness, it is indictable as such, and this charge in the 20th article falls under the same rules of law that the other articles do and the respondent says he cannot answer these charges. I am willing to

admit for the sake of the argument, that if this were a court of genera jurisdiction, if this were a court in which a man could be punished fo the offenses alleged in these articles, and it was necessary that he should be able to plead a conviction or acquittal in bar as to any seperate o distinct offense upon being subsequently charged, that the articles migh be open to the objection which the counsel brings against them. Bu in a court of impeachment an entirely different rule prevails, the lati tude is greater; and why is it greater? There is no attorney general there is no county attorney, the people are not represented in the lowe House except by their chosen representatives sent from the various counties; they are not necessarily represented by skilled law officers, they are not necessarily represented by skilled lawyers, (at least if they are so represented it is simply the good fortune of the people), and they are not always represented by gentlemen whose business it has been to give attention to these matters; articles of impeachment are taken up in the usual course and amid the general rush of legislative business; that same nicety and time necessary to procure and produce strictly legal indictments is not given and is not devoted and is not expected by Houses of Representatives; therefore, more latitude is allowed in these matters, as I will show you from Cushing's Manual upon that point. Mr. Cushing in his Manual relative to impeachment articles sets forth the following, and we all know that this is a sort of a Bible with all legislative bodies:

"The articles thus exhibited need not, and do not in fact pursue the strict form and accuracy of an indictment, they are sometimes quite general in the form of the allegations; but always contain, or ought to contain, so much certainty as to enable the party to put himself upon the proper defense, and also in case of an acquittal to avail himself of it as a bar to another impeachment. Additional articles may be exhibited, especially, as is commonly the case, if the right to do so has been reserved, at any stage of the prosecution."

Now, if the Judge of the ninth judicial district shall be acquitted on article 20, (which is a sweeping charge, that "he has since the 4th day of January 1878 down to the date of the filing and making of these articles of impeachment, been guilty of frequenting houses of ill-fame and consorting with harlots, and thereby brought himself and his high office into disrepute, to the manifest injury of the morals of the youth, and good citizens of the State of Minnesota and to the disgrace of the administration of justice, and is thereby guilty of misbehavior in office") if he shall be acquitted of that charge—if by your votes, when you shall come to record them, you shall say not guilty to that article,—is it not manifest to every member of this Senate, whether layman or lawyer, that if by any future Legislature he should be charged with doing these very things during those times, that he may come in and say: "Hold, I have been once tried upon this charge by the only court competent to try me, and I have been acquitted; and you, gentlemen, have no jurisdiction and ought not to take any further action in the premises?" Most certainly he could. He might plead it in bar of a further impeachment, and so with the 17th article, the same effect could be given to it, and if the same effect could be given to it, then it is plead here with all the nicety and distinctness that is necessary for its proper adjudication.

We have a precedent in the impeachment of Sherman Page, upon an article of this very kind and character; a general article, the article is known as articles 10. The order relative to what might be done under

that article in case it should ever get so far in this case, is in the following words: "ordered hereby that the respondent's motion to quash the tenth article be and the same is overruled unless the managers shall on or before the first proximo file a bill of particulars under such article ten, then no evidence shall be received."

I simply read that to show that it has been decided by this Senate that articles of this kind were not demurrable strictly, as this article has been demurred to. That objection might be taken to them, and if, in the judgment of the Senate, they require further specification, that that might be done, in the discretion of the Senate, so that if this Senate when it comes to a vote upon these two articles,—if it shall be found in their judgment that this respondent ought to be put to answer to the merits of these two articles—that then an order of that character or something similar might be made, and the management would endeavor to conform their action thereto. That does not, however, apply to article 18, which is the article of habitual drunkenness.

I desire now to call your attention and also the attention of my friend the counselor, Mr. Allis, to the case of the *Commonwealth* vs. *Alexander*, cited this morning,—to the form of the indictment. We have been at considerable pains and trouble to get that Virginia report. It is not in the state library and we have exerted ourselves to obtain it. The volume I am going to read from now is Wharton's Precedents of Indictments, at section 889. This is upon a question of an indictment—whether the action of a judge by taking his seat upon the bench in a state of intoxication was indictable, and is the indictment upon which the defendant in the case of *Commonwealth* vs. *Alexander* was tried. It has nothing to do with the line of argument I have used relative to the three articles for I have finished with them. I simply want to read this indictment:

That A., B., and C., on, and C., at, and C. did take his seat as a justice of the peace in the county of Loudon, the ninth of August, one thousand eight hundred and three, on the bench of the said county court, and act as a justice and member of the court then and there sitting, in giving his vote upon a judicial question and examination at the time depending in the said court, and in signing the minutes of its proceeding as presiding justice thereof, while he, the said A. B. was in a state of intoxication from the drinking of spiritous liquors, which rendered him incompetent to the discharge of his duty with decency, decorum and discretion, and disqualified him from a fair and full exercise of his understanding in matters and things, at the time and place last mentioned, judicially before him, to the great disgrace of the administration of public justice, and to the evil example of persons in authority; whereby the said A. B. was guilty of misbehavior in his office of justice of the peace in and for the said county of Loudon against, etc.

In the preparation of the brief by the managers, we were under a good deal of misapprehension as to whether that indictment was an indictment under the common law or an indictment under some statute of the State of Virginia,—not being able to find the report; but we found this precedent and our articles of impeachment, as will be seen, are largely taken from that as a precedent—for a similar offense. But by the report of the case, as I remember to have heard it read this morning, the indictment concludes simply, "against the peace and dignity of the commonwealth" without alleging contrary to the laws of the commonwealth, etc. And I think, that being the case, every lawyer will agree with me. It must be conclusively presumed not to have been statutory offense but was simply a common law offense, because, that was the proper and

legal way of concluding indictments which are common law offenses only.

I also find in this same work an indictment against a person for notorious drunkenness, on page 457 :

That R. T., on, etc., at, etc., and on divers other days before that time, was openly and notoriously drunk, to the disturbance of the public peace, to the great injury of the public morals of the good citizens of the State, and to the evil example, etc.

This would be similar to our charge in this article of habitual drunkenness, and similar to our charge that the respondent was drunk in a public place, to-wit : The courts of the lands. Then in the note D., the author adds :

As to the second reason in arrest of judgment, that the indictment does not charge the defendant as a common drunkard, and a nuisance to society, it cannot prevail. The assignment of this error is in effect substantially the same with the charge in the indictment, for the indictment does not charge a single act of drunkenness alone but repeated acts of a like kind. This shows that the offense was a common thing with the defendant. But it is argued that a man may be drunk as often as he pleases in his own house, which is only a private injury to himself, and in which the public is not concerned. Suppose this reason were admissible, the indictment negatives its application in the present case, for the charge is that the defendant was drunk openly and notoriously, to the disturbance of the public peace, and to the great injury of the public morals of the good citizens of the State.

There were two forms of indictment which the other side requested from Manager Hicks last night at the time of the interruption might be produced for the satisfaction of this Senate. There are two forms of indictment concerning habitual drunkenness, and, I may say, judicial drunkenness.

I may strike this Senate as somewhat strange that the decisions we have been able to find, denominating this public drunkenness as a common law offense, have been found principally in the southern states ; I admit that it struck me as being rather singular ; but that is explained to my mind by this fact, that in the northern states, more thickly settled and having more villages and cities than our southern sisters, this matter has been regulated by statute and municipal law, to a larger extent. You can scarcely find a township in the north, or a village or a city,—and I may add in the south, too, in these latter days,—but what has some statutory regulation upon the question of drunkenness. For instance, in this city of St. Paul, almost every morning you will find in the municipal court, certain parties arrested, *fined*, *convicted* and *imprisoned* for simply being *drunk*. It is an offense. It is punished by statute, in many states, punished in almost every municipality, and where there is no regulation at all, it is punishable at common law,—indictable as such even in our own State of Minnesota, because it will not be denied that the common law is and does prevail within the State of Minnesota.

Mr. President and Senators, I see I have occupied the attention of the Senate to the extent of about my allotted time. We appear here to maintain our charges against this respondent, we appear, as we notified this Senate, by resolution, we would do, to present particular articles of impeachment and to make them good by proof at such time as we were advised the Senate would be ready to hear us. We have appeared here

and we are met, not by denial of the facts but by an admission of the facts, coupled with a denial of the legal conclusions which we claim to flow from that admission; I was glad to hear from the counsel for the respondent that this demurrer was not interposed by the respondent himself; that he is not content to go upon the record as having willingly come into this court and admitted the fact that upon these 16 or 18 occasions, yes, not only these but upon every other occasion alleged, he has been guilty of the offences of which he stands charged in these impeachment articles; and yet that they are not and none of them are impeachable offences. I was glad to hear it said that that was an invention, so to speak, of the respondent's counsel, that he is not responsible for this admission. I honor the judge of the ninth judicial district for that position. It would not be fair in him to come into this court and admit these charges in this manner unless he was prepared to go out of it with the sentence of the court resting upon him if this demurrer shall be overruled, but you will find that if this demurrer shall be overruled they will be asking time to answer these charges. They will be asking a day to be set for the trial of these charges and will then come in with an entirely different style of answer. It will be a plea of not guilty as charged.

The counsel for the respondent taking the whole responsibility of this, have lifted it from the shoulders of the respondent himself. They take it upon themselves to put in this technical plea, and if it is overruled they will ask time to answer. But we, upon the part of the management have to accept it just as it stands; we have to accept it as a plea of guilty so far as the facts are concerned, that there is no offense charged and therefore the verdict of not guilty must be rendered, that is, in effect, by the sustaining of this demurrer; if this demurrer shall be overruled, he then stands convicted before this court upon his own admissions of the truth of the charges, therefore we have had to meet this argument just the same as if there were to be on further trial. We have argued this case; we have produced the authorities for the purpose of convincing this Senate that this special plea ought to be overruled and the respondent convicted and removed from office. We have endeavored to argue this matter dispassionately and without color or feeling; but if we have shown any improper warmth in this argument, if we have shown any degree of color that is inconsistent with a cold blooded discharge of duty, for one I wish to say, that any exhibition of that kind on my part is entirely a work of the head and not of the heart. I simply want to discharge my duty and desire that this Senate shall vote intelligently upon this plea and demurrer, and let the consequences fall where they may.

Mr. Manager HICKS. Mr. President, I desire the indulgence of the Senate for ten minutes further for Mr. Manager Collins to address the Senate as he wishes to make a special point upon the special plea.

Mr. Manager COLLINS. Mr. President and gentlemen of the Senate, as the counsel for the respondent has seen fit to be technical here, so far as the language of some of our specifications are concerned, I desire to call the attention of the Senate to the fact that a very great mistake has been made by the counsel for the respondent in the language of their demurrer,—a mistake which it seems to me is a somewhat remarkable one and I hardly know where to place the liability. I desire to call the attention of the Senate to this language:

And now comes E. St. Julen Cox, the respondent herein, and reserving the right of further answering thereto, should he be so advised, demurs to the said articles of impeachment, and each and every of them, on the following grounds, to-wit:

First. That the facts stated in said articles do not constitute corrupt conduct in office, nor any crime or crimes or misdemeanor or misdemeanors in office.

In this case, in order to convict of these crimes the offenses or misdemeanor, or misdemeanors in office should be proved. The words "in office" in other words, are no part of our constitution. So that, while this demurrer might be strictly true, yet it would be no answer. The most remarkable part of this demurrer, however, I find in the second and third points which are made here:

Second. That the said articles, and each and every of them, do not charge this respondent with corrupt conduct in office, nor with any crime or crimes or misdemeanor or misdemeanors in office.

Third. That in and by said articles, and each and every of them, this respondent is not charged with any offense of matter for which he can be held to answer by and before this court.

Observe the language, and we will consider the two together,—"that the said articles and each and every of them, do not charge,"—well, now, supposing they do not, but supposing one of them does,—they say that the said articles, and each and every of them, do not charge this respondent with corrupt conduct in office. It is not necessary, gentlemen, that each and every of these articles should charge an offense,—not at all; but they seem to have fallen into an error of language here. In other words, they seem not to have drawn this demurrer with the care they ordinarily would; and I apprehend that in a court of justice the demurrer, so far as these points are concerned, would not be considered for a moment, simply because they have fallen into a grave and serious error in the use of language. I claim, gentlemen, that technically speaking the only points that may be considered here so far as this demurrer is concerned are in relation to this special plea:

And furthermore this respondent demurs to the 17th, 18 and 20th of said articles, and each of them, on the further and particular ground that the facts and charges therein set forth are not stated with a sufficient distinctness, definiteness and certainty, to enable or require this respondent to answer the same.

The PRESIDENT. Have the honorable managers concluded their argument.

Mr. Manager HICKS. They have.

On motion the Senate took a recess to half past two o'clock P. M.

AFTERNOON SESSION.

The Court of Impeachment met at 2:30 P. M., pursuant to adjournment.

Mr. Manager HICKS. Mr. President, just before the close of the morning session I intimated to the court that there would probably be no further argument on the part or the managers, but at the request of the board of managers, Mr. Smith will address the Senate for a short time.

Mr. Manager SMITH. Mr. President and gentlemen of the Senate: I

did not expect to occupy any of your time in the discussion of the question that has been so elaborately argued on both sides. It has, however, been deemed advisable by my associate managers, that I should at least give some expression of my own views upon the questions arising under this demurrer; and in compliance with their wishes I propose to say only a few words, although I do not believe, in view of the full and extended discussion already had, it is necessary that I should do so. I have no wish to shirk any responsibility or fail to perform any duty assigned to me by the House of Representatives. My relations with the respondent for over twenty-five years, social and political, have been such with all charity for his failings, that if I were to consult alone my own personal feelings I should have remained silent. This prosecution however is not so much to affect as it is to affix the seal of public condemnation upon the course of conduct he has voluntarily adopted, so that such conduct shall not be longer continued by him to the disgrace of the administration of public justice and that all other persons may understand that drunkenness by a judge while in the discharge of his official duties is an offense punishable by impeachment and removal from office. I have, in connection with my colleagues, examined all the authorities bearing upon this question; most of them,—all deemed pertinent,—have been read and commented upon in your hearing. And, whilst I am satisfied that they fully sustain the legality of the several articles of impeachment I shall not take up your time in again presenting them or in commenting upon their application to the questions raised by this demurrer.

It appears to me that the only question, the real question in this case is, is drunkenness of a judge in the discharge of his public duties upon the bench a misdemeanor in office within the provisions of our statute or at common law?

Whatever injuriously affects public morals or outrages common decency is a misdemeanor at common law, punishable by fine or imprisonment. Hence habitual drunkenness and a large number of offenses have from time to time been adjudged misdemeanors. This has been done from time to time by the courts of common law as a new state of facts have arisen coming within the general rule and definition before given.

Profane swearing is a misdemeanor, but the utterance of obscene language in the presence of ladies, in a public assembly, whilst not provided for by statute, is within the common law definition of a misdemeanor and has been adjudged by the courts to be an indictable offense. And so, from time to time, precedents have been made by applying the rules of law to the new state of facts as they arise.

It was unquestionably this application of principles and rules of the common law to the state of facts and to the progressive requirements of society that induced the passage of the provisions of the section of our statute that has been read in this argument, as follows: "When any duty is enjoined by law upon any public officer, or upon any person holding any public trust or employment, every wilful neglect to perform such duty, and every misbehavor in office, when no special provision is made for the punishment of such delinquency, or malfeasance, is a misdemeanor punishable by fine and imprisonment." This provision of law is copied from the statutes of Wisconsin, in force in this territory before the adoption of our State constitution, and has been re-enacted by our State legislature and was of course in force before the time of the commission

of the offenses charged in the articles of impeachment. The clause of that act providing for the punishment of offenses "where no special provision is made for the punishment of such delinquency" is evidently inserted in view of the rules of the common law applicable to cases as they may arise. It was in view of these authorities and of the provisions of our statute that I was compelled, in the discharge of my duties as a member of the House of Representatives. to vote for the adoption of these impeachment articles. I dared not, in view of the facts charged, and the evidence adduced, have my name placed upon record as holding that offenses of the kind charged in these articles are not impeachable. In my judgment, not only the charges of drunkenness upon the bench, but the charge of habitual drunkenness are impeachable. The demurrer admits the truth of all the facts alleged in the several articles demurred to. The respondent therefore admits that in the year 1879 upon seven different occasions whilst acting as such judge he was in a state of intoxication induced by the voluntary use of intoxicating liquors; and a like number of times in the year 1881, so that he could not discharge the duties of his office as such judge faithfully and impartially and according to his best learning and discretion, as required by his oath of office. These admissions show conclusively that the offense of habitual drunkenness is established. They show that the respondent was voluntarily intoxicated, that he was upon these several occasions so intoxicated whilst acting as such judge that he could not discharge the duties of his office with dignity and decorum.

It is the duty of a judge to exercsie all his ability natural and acquired when in the discharge of his official duties. If he be disguised by liquor and his mind clouded by intemperance is he not guilty of a violation of the provisions of the statute? If he is found upon the bench intoxicated attempting to discharge his official duties, thereby bringing the administration of justice into disrepute to the evil example of all persons in office, and to the evil example of those present, can it be truthfully said that he is guilty of no offense that can be punished by impeachment? My learned friend Mr. Allis, has attempted to demonstrate by an ingenious but sophistical argument, that drunkenness upon the bench is not an indictable offense, and therefore not an impeachable one; and claims that no precedent can be found in the books giving color to any such proceeding.

If these charges are to be taken as true, as they stand confessed upon the records, is it not the duty of this Senate as a court of impeachment to overrule this demurrer, and if there be no precedent in the name of Providence is it not your duty to make one? I feel that from the lengthened discussion already had, and careful attention bestowed by the members of this court and the time occupied in the consideration of this case, that you are now ready to vote upon the questions involved and submit the case upon our part without a further consumption of your valuable time.

MR. SANBORN. Mr. President and Senators: It is with no little embarrassment that I address myself to the duty now before me, not because I do not feel that the principles which I shall seek to announce and substantiate are not the well established principles which have marked out the lines of all jurisprudence as far back as history teaches, but that in the consideration of a matter of this importance, where a fellow citizen, holding a high judicial office, is either to go forth from this trial freed from the aspersions which are cast upon him by these

charges or to be sent forth into the world forever disgraced, to live from this time forth without hope of preferment, to be shut out from all those aspirations which are dear to every honorable citizen, when I consider that this subject is now to be passed upon I feel that the abilities of any man, however eminent, are far too limited,—the knowledge of any man, however near to omniscience it may come, is insufficient, to present this matter in accordance with the magnitude of the question at stake.

It is said by the honorable managers that we stand here to-day admitting that we have committed crimes against this commonwealth. I say you *nay*, Mr President and Senators. We admit no such thing, and have never admitted it. If what we maintain be true—if the charges which are made in these several articles of impeachment be no offense cognizable by this court, and we admit that we have committed them, we do not admit that we have committed an offense. If the offenses here charged are to be tried before any other tribunal and this is not the tribunal before which they should be presented, we are not wrong, and we do no wrong either to ourselves or to the respondent when we present for your consideration the legal princpiles upon which that proposition stands and has stood generation after generation as far back as English history can be read. Those propositions, Mr. President and Senators, I am here now to maintain. If the propositions which we manitain have no foundation in fact, in principle, or in authority, why is it that you are called upon by the honorable board of managers, over and over again, by one after another, to hold that you are no court,—that you are governed by no principles of law,—that you are governed by no decisions of any court that has gone before you,—that you are governed by none of the principles of jurisprudence which go with the cases in all other courts and trials and preserve the defendant from wrong and injustice? Why is it that the honorable manager who has just taken his seat [Mr. Manager Smith] pleads with all the vehemence and eloquence of one of the most forcible members of the House of Representatives that you discard all principle and rule and *make* a precedent? Why is it that the honorable board of managers are driven to the necessity of the proposition that this honorable court must now make a precedent which has never been made before? If the legal propositions which they maintain are founded in the principles of jurisprudence and upon the decisions of the courts which have gone before us,—if they believe that they are sound in principle—if they believe that they should be abided by by this court and by the courts which shall come after us—why do they ask you now to *make* a precedent? I know not what may be in the minds of yourself Mr. President and the honorable Senators upon this floor, but when propositions of that kind in the course of a judicial proceeding are made by the prosecution, they impress forcibly upon *my* mind the proposition that there may be some difficulty about the positions of law upon which they maintain their prosecution.

The chairman of the board of managers, when he opened his case to you, announced the proposition that until the year 1866 it had never been maintained or said that none but indictable offenses at the common law could be impeached either in England or the United States, and that Professor Dwight in the memorable article which has been so commented upon here, was the first to discover the principle upon which this defense now rests itself. He maintained farther that it had always been held in all trials of impeachment, and that it was laid down by the fundamental works upon this subject, that the Senate of this State or of

the United States sitting as a court of impeachment was no court but was an inquisition to determine whether, or not, anything had been done contrary to the interests of the State. That proposition, Mr. President and Senators, is as old as the history of impeachment; it has been rehearsed and reiterated by every board of managers which has ever sought to maintain articles of which they had doubts, and has been repudiated in every trial which has ever been had in these United States where a defence was interposed by the decision of the court. Why, if the proposition that this is not a court is sound, is it, that you are required when you enter upon the discharge of your duties here in the trial of this respondent, or before you enter upon the discharge of those duties, to take an oath to try these charges impartially, according to the law and the evidence? If this be naught but the Senate,—if the memorable opinion of Charles Sumner,—great man though he was,—if that be sound law, and if the Senate, sitting here for the trial of high officers for crimes and misdemeanors and corrupt conduct in office is nothing but the Senate sitting in the ordinary course of business, why is it that a different oath is required before you enter upon the discharge of these duties? And if you are not to be governed by the law which has been laid down in the trials that have gone before you, why are you not sworn that you will hear and determine the charges which shall be presented according to your own judgment and opinion without regard to law or evidence?

The propositions which I maintain,—that this is a court,—that you are not sitting here to inquire into any offenses whatever, except those which are laid down in the constitution; and that, inquiring whether, or not, those offenses have been committed, you are to be governed by the known rules of the common law both in your procedure and in the determination of the question as to what constitutes a crime or a misdemeanor are as old as the history of impeachment. They have been maintained by counsel whenever they have come to the defense of any man charged with these high offenses. Why? Because without the protection of those propositions the court of impeachment becomes an engine of tyranny and destruction,—governed by no principle, its way marked out by no law, its decisions governed by no authority.

These propositions, say the honorable managers, were never maintained until 1866. Let us see. I read from the trial of Judge Chase, the abridgment of the debates of congress, vol. 3, page 358, if my memory serves me, this trial was had in the year 1803, and before the United States Senate. The learned counsel for the defense in that case who made the memorable defense upon these propositions of law, which the Senate sustained in their decision of the case, in his argument to the court says:

"I offer it as a position I shall rely upon in my argument, that no judge can be impeached and removed from office for any act or offense for which he could not be indicted."

That proposition first new in 1866!!!

"It must be by law an indictable offense. One of the gentlemen, indeed, who conduct this prosecution (Mr. Campbell,) contends for the reverse of this proposition, and holds that for such official acts as are the subject of impeachment, no indictment will lie or can be maintained. For, says he, it would involve us in this monstrous oppression and absurdity, that a man might be twice punished for the same offense,—once by impeachment, and then by indictment.

And that absurdity which was pointed out by that learned gentleman at that time is a part of the laws of the State of Minnesota to-day, that for any crime committed in the discharge of the duties of his office a judge may be impeached and removed from office, and the man separated from his position as judge may be afterwards tried and punished by indictment in the proper course of procedur.e

Again he says:

The power of impeachment is with the House of Representatives, but only for impeachable offenses. They are to proceed against the offense in this way when it is committed, but not to *create* the offense, and make any act criminal and impeachable at their will and pleasure. What is an offense, is a question to be decided by the constitution and the law, not by the opinion of a single branch of the legislature; and when the offense thus described by the constitution or the law has been committed, then, and not untill then, has the House of Representatives power to impeach the offender.

Again:

I maintain as a most important and indispensible principle, that no man should be criminally accused, no man can be criminally condemned, but for the violation of some known law by which he was bound to govern himself. Nothing is so necessary to justice and to safety as that the criminal code should be certain and known. Let the judge, as well as the citizen, precisely know the path he is to walk in, and what he may or may not do. Let not the sword tremble over his unconscious head, or the ground be spread with quicksands and destruction, which appear fair and harmless to the eye of the traveler. Can it be pretended there is one rule of justice for a judge and another for a private citizen; and that while the latter is protected from surprise, from the malice or caprice of any man or body of men, and can be brought into legal jeopardy only by the violation of laws before made known to him, the latter is to be exposed to punishment without knowing his offense, and the criminality or innocence of his conduct is to depend not upon the laws existing at the time, but upon the opinions of a body of men to be collected four or five years after the transaction? A judge may thus be impeached and removed from office for an act strictly legal, when done, if any House of Representatives for any indefinite time after, shall for any reason they may act upon, choose to consider such act improper and impeachable.

Again he says:

They (the managers) have contended "that an impeachment is not a criminal prosecution, but an inquiry in the nature of an inquest of office."

That is what the managers here claim.

An inquiry in the nature of an inquest of office, to ascertain whether a person holding an office be properly qualified for his situation; or, whether it may not be expedient to remove him—but if this principle be correct—if any impeachment be not indeed a criminal prosecution, but a mere inquest of office—if a conviction and removal on impeachment be indeed not a punishment, but the mere withdrawal of a favor of office granted—I ask why this formality of proceeding, this solemn apparatus of justice, this laborious investigation of facts? If the conviction of a judge on impeachment is not to depend on his guilt or innocence of some crime alleged against him, but on some reason of state policy or expediency, which may be thought by the House of Representatives and two-thirds of the Senate, to require his removal, I ask why the solemn mockery of articles alleging high crimes and misdemeanors, of a court regularly formed, of a judicial oath administered to the members, of a public examination of witnesses, and of a trial conducted in all the usual forms? Why not settle this question of expediency, as all other questions of expediency are settled, by a reference to general political considerations and in the usual mode of political discussions? No, Mr. President,

this principle of the honorable managers, so novel and so alarming: this desperate expedient resorted to as the last and only prop of a case which the honorable gentlemen feel to be unsupported by law or evidence, this forlorn hope of the prosecution, pressed into its service, after it was found that no offense against any law of the land could be proven, will not, cannot avail. Everything by which we are surrounded informs us that we are in a court of law. Everything that we have been three weeks employed in doing reminds us that we are engaged not in a mere inquiry into the fitness of an officer for the place which he holds, but in the trial of a criminal case on legal principles. And this great truth, so important to the liberties and happiness of this country, is fully established by the decisions of this honorable court. In this case on questions of evidence—decisions have been made by which this court has solemly declared, that it holds itself bound by those principles of law which govern our tribunals in ordinary cases. These decisions we accepted as a pledge, and now rely on as an assurance that this cause will be determined on no newly discovered notions of political expediency, or State policy, but upon the well settled and well known principles of law and the constitution.

Once more, at page 261 he says:

And will this honorable body, sitting not in a legislative but a judicial capacity, be called on to make a law, and to make it for a particular case which has already occurred? What, sir, is the great distinction between legislative and judicial functions? Is it not that the former is to make the law for future cases; and that the latter is to declare it as to cases which have already occurred? Is it not one of the fundamental principles of our constitution, and an essential ingredient of free government, that the legislative and judicinl powers shall be kept distinct and separate? That the power of making the general law for future cases shall never be blended in the same hands with that of declaring and applying it to particular and present cases? does not the union of these two powers in the same hands constitute the worst of despotisms? What, sir, is the peculiar and distinguishing characteristic of despotism? It consists in this, sir, that a man may be punished for an act which, when he did it, was not forbidden by law. While, on the other hand, it is the essence of freedom that no act can be treated as a crime, unless there be a precise law forbidding it at the time when it was done.

At the conclusion of that memorable argument, and after the Senate had decided upon the legal principles which were there presented, the presiding officer said:

Hence, it appears that there is not a constitutional majority of votes finding Samuel Chase, Esq., guilty, on any one article. It, therefore, becomes my duty to declare that Samuel Chase, Esq., stands acquitted of all the articles exhibited by the House of Representatives against him.

Over and over again in the progress of this case, Mr. President and Senators, have you been referred to the memorable words of Story upon the constitution and extracts from one paragraph after an other have been read in which he speaks of poltiical offences for which impeachments have been had, and you have been asked to say by your judgment upon this demurrer, what no other court, I venture to say, in this country ever has said, that you sit here not as a court, not governed by the principles of law, but in the form of an inquest of office to determine whether or not this man shall be removed from office, whether he is fit to hold office, whether it is expedient to remove him, whether he has committed a crime or not.

Now whatever judge Story may have said with reference to impeachments in England in olden time—and they were many and various and for different causes, when you go back of the revolution of 1640 or 1642—whatever he may have said about the character of those offenses and the political character of the charges which were made and tried, his

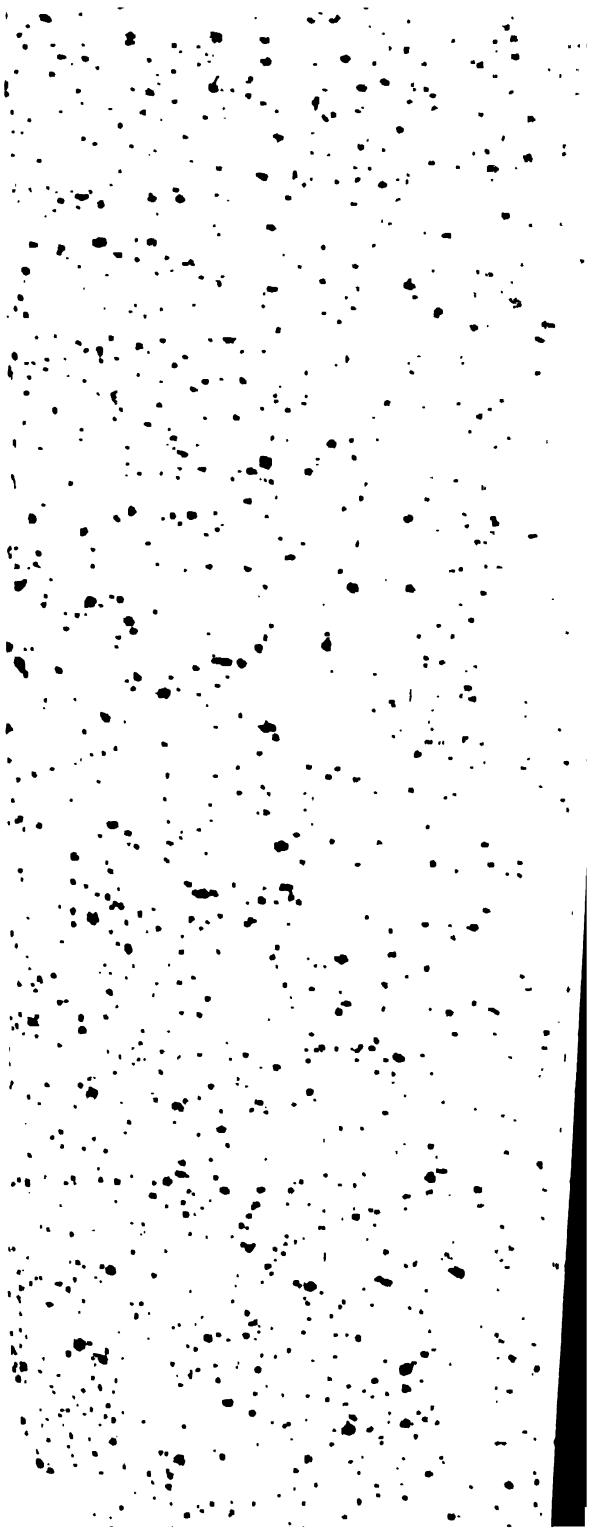
words give no uncertain sound as to the principles by which proceedings by impeachment shall be governed in this country. Here is the conclusion to which he comes as to the rules which should govern us in this proceeding and which should govern every court of impeachment in this country. In vol. 1, section 797 he says:

There are many offenses purely political, which have been held to be within the reach of parliamentary impeachments.

And when you remember the various sections which were read to you by the counsel the other day, bear in mind that those sections refer to a review of proceedings of parliament, and remember that section 797 lays down the final proposition by which he has abided and will abide as to the course of these proceedings in this country.

There are many offenses purely political, which have been held to be within the reach of parliamentary impeachments; not one of which is in the slightest manner alluded to in our statute-book. And, indeed, 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 absurd to attempt it. What, for instance, could positive legislation do in case of impeachment like the charges against Warren Hastings in 1788? Resort, then, must be had either to parliamentary practice and the common law, in order to ascertain what are high crimes and misdemeanors, or the whole subject must be left to the arbitrary discretion of the Senate for the time being. The latter is so incompatible with the genius of our institutions, that no lawyer or statesman would be inclined to countenance so absolute a despotism of opinion and practice, which might make that a crime at one time, or in one person, which would be innocent at another time, or in another person. The only safe guide in such cases must be the common law, which is the guardian at once, of private rights and public liberties. And, however much it may fall in with the political theories of certain statesmen and jurists to deny the existence of a common law belonging to and applicable to the nation in ordinary cases, no one has yet been bold enough to assert that the power of impeachment is limited to offenses positively defined in the statute-book of the union as impeachable high crimes and misdemeanors.

Mr. POMEROY, in discussing this matter, and he was read to you at some length to-day, says that there are two propositions which have been maintained in this country, but he leaves out the one material, essential, fundamental principle upon which every case of impeachment that has ever been contested in this country has been decided, and which, if he had put into his review of the cases would have solved every difficulty and made plain the paths for all future action. He says there are two theories; one that under the constitution of the United States, impeachment only can be had for those crimes and misdemeanors which have been made such by the statute, the other that impeachment may be had for any kind of a crime, malfeasance or misfeasance or action in office, which the Senate may see fit to treat as improper; and he maintains the latter view. Mr. President and gentlemen of the Senate, there is another theory—a theory which is maintained by Mr. Story,—which has been laid down by many of the most eminent jurists in this country in trials of impeachment and which has guided and controlled the decisions of the tribunals that have passed upon this subject from the inception of this Government to the present day, and that proposition is this: that the decision of the question as to what are crimes and misdemeanors under the constitution of the United States—under the constitution of this State, is to be determined by the principles of the common law, not by the narrow provisions of the statutes of the United



States in cases of impeachment before the Senate of the United States,—not by the opinions of those men who may happen to come together to decide upon any particular case—without reference to the decisions at common law, but that the definition of the offense,—the rule which shall determine whether the offense charged be a crime or misdemeanor—is to be found in the principles and the decisions of the common law, and when that proposition is announced, and the cases upon impeachment with reference to it are read, the way through all the windings is clear.

Now in determining what these crimes and misdemeanors are, and in establishing the proposition that it is only indictable crimes and misdemeanors for which impeachment can be maintained, we are to go back in the history of English jurisprudence far enough to find what, in days of deliberation, when calm judgment and reason prevailed in the deliberations of the courts that decided the question,—what in those times were the rules which governed impeachment. The precedents which shall determine in this country and in all future time whether or not an offense is a crime, a misdemeanor and a subject of impeachment are not to be taken from the days bordering on barbarism, when passion and faction led their respective hosts against each other in the political arena with all the bitterness that characterized the war of the roses in an earlier day; we are not to go back to that time I say when faction and passion not only led their hosts against each other in the political arena, with all the bitterness of those earlier wars who executed condign punishment upon the defeated, with a ferocity never equaled, save in the earlier history of English jurisprudence. Let us look for a moment at the history of impeachments in England, as we now remember it. Go back to the year 1640. In the year 1640 the Earl of Strafford was impeached before the House of Lords, for giving improper advice to the King. It was urged that for this charge he could not be convicted; and he,—in that memorable defense which has drawn tears from the eyes of subsequent generations—was heard to say there is no common or statute law in which I find this charge defined. So telling was that defense that the Lords refused to convict, and the House of Commons, driven by passion and prejudice, introduced a bill of attainder, and passed it. They *made* a precedent, not of impeachment, however, but a precedent of getting rid of an enemy by making that an offense which was not an offense at common law. In 1667, the great Earl of Clarendon was sought to be impeached. It was alleged that he had been guilty of general treason, says Mr. Hume in his history, Vol. V, p. 505:

"Immediately the charge against him was opened in the House of Commons by Mr. Seymour, afterwards Sir Edward, and consisted of 17 articles. The house without examining particulars, farther than hearing general affirmations that all would be proved, immediately voted his impeachment. Many of the articles we know to be either false or frivolous; and such as we are less acquainted with, we may fairly presume to be no better grounded. His advising the sale of Dunkirk seems the heaviest and truest part of the charge; but a mistake in judgment, allowing it to be such, where there appear no symptoms of corruption or bad intentions, it would be very hard to impute as a crime to any minister; the king's necessities, which occassioned that measure, cannot, with any appearance of reason, be charged on Clarendon; and chiefly proceeded from the over frugal maxims of the parliament itself, in not granting the proper supplies to the crown.

"When the impeachment was carried up to the peers, as it contained an accusation of treason in general, without specifying any particulars, it seemed not a sufficient ground for committing Clarendon to custody. The precedents of Strafford and Laud were not, by reason of the violence of the times, deemed a proper authority."

Thus it seems that within twenty-seven years the peers had made up their minds that prejudice and passion so dominated that the precedents of the early times were not to be considered in proceedings in impeachment then and thereafter.

In 1669 the Earl of Orrey was impeached for, upon his own authority, levying taxes upon the king's subjects and for saying that he had fifty thousand swords to compel the king to do his bidding. I mistake; he was not impeached. If my memory serves me, a petition was produced by Sir Edward Fitzharris asking that he be impeached in the House of Commons. The charges were made; the discussion was had. The point was made and urged that this was no offense under the statutes or at common law and the House of Commons voted that no articles of impeachment should be presented.

In 1695 an attempt was made by the Commons to impeach Sir John Fenwick. There was a witness whose name was Goodman, the only man who could prove the articles presented. His wife by some means induced that man to leave the realm, and when that fact was ascertained by the Commons, a bill of attainder was introduced and passed, and the head of Sir John Fenwick followed the head of many another able man of State in that country and fell on tower hill. It was the last bill of attainder in England.

In 1723 the Earl of Macclesfield was impeached for taking bribes for presentations to office. The impeachment was successful. The point was made in the House of Lords that this was not an impeachable offense because it was a violation of no statute or common law; and the answer was that the sixth of Edward VI. chap. 16, made it an offense, and therefore it was a violation of the statute law; and upon that proposition that impeachment stood and was maintained.

In 1806 Lord Melville was impeached for drawing public moneys from their proper receptacle and depositing them to his own credit in a private bank.

I read from 20th Howell, State Trials, page 1470. Now note, this was the last impeachment in England except perhaps the attempted impeachment of Queen Caroline in 1820.

The Lords being met in the chamber of parliament, the following question was put to the judges: Whether it was lawful for the treasurer of the navy, before the passing of the act, twenty-five Geo. 3d, C. 31, and more especially when by warrant from his majesty, his salary, as such treasurer as aforesaid, was augmented in full satisfaction for all wages, fees, and other profits and emoluments, to apply any sum of money entrusted to him for naval services, to any other use whatsoever, public or private, without the express authority for so doing; and whether such application by such treasurer, would have been a misdemeanor, or punishable by information or indictment,

Now the learned managers on behalf of the prosecution say that the proposition that impeachable offenses must be punishable by information or indictment was never heard of until 1866. This proposition was presented to the judges in 1806 and upon that proposition of law Lord Melville was acquitted, for the judges answered no, it was not subject of indictment or information; and no further proceedings were taken.

In 1820, if my memory serves me right, proceedings were taken for the impeachment of Queen Caroline for adultery; and in the course of those proceedings the Earl of Liverpool said: "I know of no common

or statute law which the accused has violated." It was the end of those proceedings.

Gentlemen, I come now to the consideration of the decisions and the impeachments which have been made in this country. There have been in the United States Senate, if my memory serves me, six impeachments: Senator Blount, Judge Pickering, Judge Chase, Judge Peck, Judge Humphreys, Andy Johnson. Perhaps there is another that I don't remember. Now in every one of those trials, from the beginning to the end, the proposition which I here maintain(—where there has been a defense made, mind you—) the proposition which I here maintain has been presented ; and no man has ever been convicted by the Senate of the United States unless his crime was the subject of indictment or information.

One word upon the question of Judge Pickering's case. There are two reasons, Mr. President and gentlemen of the Senate, why the case of Judge Pickering is no authority upon the question now presented for your consideration. One is, that it was an ex parte hearing and that no appearance was made upon the part of the defense. I know it is said by Judge Lawrence in that memorable article which was prepared by him for the use of the Hon. Benjamin Butler in conducting the impeachment of Andy Johnson,—an article which was likely to be judicial in its nature, which was likely when prepared for the honorable Benjamin Butler to enforce the impeachment of Andy Johnson, was likely to be impartial,—I know it is said in that article that Judge Pickering put in a plea of insanity. Now it is said in Pomeroy and in the second of Hildreth's history that there was no appearance at all ; and I prefer to take those authorities upon that proposition to that of the honorable Judge Lawrence. Besides I am informed by my associates that we have the trial of Judge Pickering, printed by authority of congress, and that in the report of that trial it appears that he did not appear at all. So we have three authorities as against the mere *ipsi dixit* of Judge Lawrence.

Mr. Manager COLLINS. There was a plea interposed by his son, but distinctly understood at the time that it was not an appearance upon the part of the respondent. There was to all intents and purposes no appearance.

Mr. SANBORN. (Resuming.) I am informed by the honorable manager, Mr. Collins, that there was a plea of insanity put in by his son but that it was understood and agreed that that should not be considered as an appearance ; and that that is the explanation.

Now the articles of impeachment against Judge Pickering were four: First, a ship was arrested for violating the revenue law. Proceedings in condemnation were held before Judge Pickering, and he was charged with releasing the ship without the production of a certificate of payment of duties and tonnage contrary to the United States statutes.

The second article charged that on the trial touching said ship he refused to hear the testimony of the witnesses produced upon the part of the United States, with the intent to defeat the just claims of the United States. The third allegation was that he refused to allow an appeal in behalf of the United States from his decree, in the case, contrary to the act of congress, intending thereby to injure the revenues of the United States. The fourth article alleged acts of personal immorality. It charged drunkenness in so public and indecent a manner, as to degrade the office of a judge and the honor and dignity of the United States.

Now when you consider, Mr. President and Senators, that there was no appearance upon the part of the defense, and that the three charges which preceded the allegation of drunkenness were sufficient to authorize his impeachment, and that after the Senate had passed upon those three articles it voted in the same way upon the fourth, I think you will agree with me that this is not an authority in favor of the learned managers in this case. Farther than that, there was a statute in the State of New Hampshire, where Judge Pickering presided, making drunkenness a public offense.

The next trial was that of Judge Peck for imprisoning an attorney for contempt; and the positions which we take here to-day were maintained by the defense in that case and he was acquitted.

Judge Chase was impeached in 1806, and his case I have already commented upon.

In 1862 Judge Humphreys was impeached for treason, for aiding the rebellion, and that impeachment was maintained.

Andy Johnson was subsequently impeached for "swinging around the circle," and that impeachment failed. The same propositions which we maintain in this case were the propositions which saved Andy Johnson. They were the positions maintained in the defense of that case and which the eminent learning and judicial decision of one or two men who in politics were opposed to him would not permit them to overthrow, and in maintaining them they acquitted the respondent.

Now Mr. President and gentlemen of the Senate, that is the history of impeachment in the United States. No judge has ever been impeached in the United States except for an offense which is indictable at the common law or for treason. In every defense which has been made before the United States Senate the propositions which we here maintain have been presented, and in every one where the crimes charged were not indictable at the common law that defense has succeeded. Now if it be true that the proposition which we maintain was laid down and established by the peers in the memorable trial of lord Melville, if it be true that in the trial of every man who has been impeached before the United States Senate from the beginning of the government to the present time wherever a defense has been made, these propositions have been presented and that in every case they have been maintained and the men acquitted save only where there has been an offense which was indictable at the common law or where a treason had been committed, I say if these things be true what shall your decision be as to the proposition which we maintain that no man can be impeached for any offense before this Senate which is not indictable at the common law.

Mr. President and gentlemen of the Senate, I desire to call your attention to an impeachment trial before the Senate of the State of Michigan where the same charges were presented as are presented in this case and where the same defense was made and where the respondent was acquitted. I read from the 42nd page of the impeachment record of Charles A. Edmonds, commissioner of the State land office, tried before the Senate of the State of Michigan:

> Article ten,—that said Charles A. Edmonds, commissioner of the State Land Office, unmindful of the dignity of his office, his duties, his oath of office, and the requirements of the laws of this state, at divers times during his official term as such commissioner, since the 5th day of July 1871, at the city of Lansing, and in other places within this State, has been drunk, or so affected by his drinking of intoxicating liquors, as to disgrace his office and unfit him for the discharge of his

official duties: and the said Charles A. Edmonds, commissioner of the State Land Office, did thus and then and there show good cause for his removal from office, under the provisions of an act entitled "an act to subject all persons holding office under the government of the State of Michigan to removal from office for druukenness, approved April 5, 1871.

Article XI hits another point in this case:

That said Charles A. Edmonds, commissioner of the State Land Office, unmindful of the dignity, high duties, and position of his office, and of the laws of this state, and the wholesome requirements of the laws of decency and morality, did, on or about the 10th day of October, 1871, at the city of Lansing, situated in the county of Ingham, at the Lansing House, commit adultery with a female whose name is unknown, he, the said Edmonds, then and there being a married man; and did also since he entered upon the duties of his said office, at divers other times and places in said Lansing, commit further and other adulteries, against the form of the statute in such case made and provided, and against the peace and dignity of the people of this State.

An answer was put in by the respondent it that case excepting to those charges upon the ground that they were not crimes and misdemeanors under the statute of the State of Michigan; the constitution o the State of Michigan reads word for word as does the constitution of the State of Minnesota,—"corrupt conduct in office" and "crimes and misde meanors:" The defense rested themselves upon the sole position that those offenses were not indictable and were therefore not impeachable. Perhaps the defense that they were not indictable was not the principal one. The further defense was that they were not offenses committed while in the discharge of official duty. Evidence was introduced by the managers in support of those charges. No evidence was introduced by the defense. They relied upon the propositions of law upon which we rely in this case, and when the vote was taken upon the tenth article the Senate voted, 27 not guilty, and none guilty; and when the vote was taken upon the eleventh article the Senate voted, 26 not guilty, and one guilty.

There have been five impeachments in the State of Massachusetts, but the authorities from the State of Massachusetts have no bearing upon the question here at issue because it is expressly provided in the constitution of that State that officers such as the respondent may be impeached and removed for mal-administration in office. They are not restricted to crimes and misdemeanors, and that, Mr. President and Senators, is the explanation of the decisions which have heen rendered in that State, and it is the explanation of the proposition which is laid down by Curtis on the constitution. He, by living in that State, had got into his head the idea that a man could be impeached for anything because under their constitution he could be impeached for maladministration in office, and he lays it down in his comments upon the constitution in about those words.

At page 343, 1 Kent's commentaries I find laid down in a note, the proposition which we here maintain. The learned commentator, refer ring to the doctrine which is maintained by Story, says:

The learned commentator in the volume last cited, ably, and in my opinion, satisfactorily contends that the common law, in the absence of positive statute law, regulates, interprets, and controls the powers and duties of the court of impeachments under the constitution of the United States; and though the common law cannot be the foundation of a jurisdiction not given by the constitution and laws,

that jurisdiction, when given, attaches, and is to be exercised according to the rules of the common law. Were it otherwise, there would be nothing to exempt us from an absolute despotism of opinion and practice.

The proposition which we here maintain was never before 1866 presented, the learned managers say. I find in the note to Judge Lawence's article, this proposition,—Prescott's trial, page 114.

Mr. Blake quoted 4 Blackstone, 259, that impeachment "is a prosecution of the already known and established law;" and 2 Wooddeson, 611; and part 1 of Dolby's Report of the Trial of the Queen, page 841, on a bill of pains and penalties for adultery, where it was said by the Earl of Liverpool, he knew not how they could make that a subject of impeachment which, by the law of England, was not a crime.

Judge Prescott was convicted but he was convicted under constitution of the State of Massachusetts, which provides for a conviction upon impeachment for maladministration in office. And he was guilty of maladministration in office, for as probate judge of one of the counties of that State, he had approved a guardian's account in which a five dollar fee was inserted for his own benefit, and upon that charge he was convicted of maladministration in office as he ought to have been.

But neither the constitution of this State or the constitution of the United States authorizes the conviction of any man for anything except treason, a crime or a misdemeanor according to the known and established rules of the common law. It is said by one of the learned managers that in 1777, Mr. Wooddeson delivered some lectures upon this question of impeachment, and that in those lectures, he used some words which I do not now remember, but which the learned managers would have you believe, expressed an opinion upon his part that an impeachment could be maintained for a political offense, although it were not known to the common law.

In vol. 2 of Wooddeson, page 611, he uses these words, speaking of impeachment:

The trial differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments prevail. For impeachments are not framed to alter the law, but to carry it into more effectual execution where it might be obstructed by the influence of too powerful delinquents or not easily discerned in the courts of ordinary jurisdiction by reason of the peculiar quality of the alleged crimes. The judgment thereof is to be such as is warranted by legal principles and precedents.

In the memorable trial of Judge Barnard the same proposition was presented, the same decision was rendered.

Specification 7 is one of the charges they presented against him, it was as follows:

That said George G Barnard, on or about the twenty-second day of February, 1872, while sitting on the bench of said court, and holding a special term at chambers of said court at place aforesaid, on proceeding to scratch himself, which was in itself perfectly proper and innocent, said: "I suppose they will put that in; I am going to scratch, and suppose that will make the hundred and first article of impeachment," or the "thousand and first article," thereby referring to the notorious fact that grave charges of mal conduct in office had been or were to be brought against him, the said George G. Barnard, and meaning and giving it to be understood that the fact that grave charges of mal and corrupt conduct were laid against a justice of the supreme court was a matter fit for jest.

Why, the charges which have been made against men in office are some of them most absurd and ridiculous and this is one as you will quickly see. But to get rid of that charge required the able argument of the attorney for the defense, Mr. Beach. The citation of the authorities from American and English jurisprudence, going back to the time of Charles the First,—the review of all the impeachments in the Senate of the United States. The same principles were maintained by the managers in that case in undertaking to sustain this article, that are now maintained before this body, that the Senate was simply sitting to inquire as to whether or not a man was fit for office, and that they could take cognizance of and determine anything to be an offense and sufficient to remove a man from office and disgrace him forever. In the argument of that case Mr. Beach refers to the case in Pennsylvania, the impeachment of Judge Addison; and I want to read to you what he says about that, because my knowledge of the state of political parties at the time judge Addison was impeached, is somewhat limited. But Mr. Beach seems to have known why he was impeached. Judge Addison was impeached you will remember, because, being the presiding judge of the court of common pleas of one of the counties of the State, he refused to permit his associate judge (who in those days in that State, I believe, was a layman and not a lawyer, they having a law of that character, if I remember correctly,to charge the grand jury. In regard to that matter Mr. Beach says: "Was that not at a time when, there is too much reason to believe, that the warmth and vehemence of party had more influence than justice and that the Senate of Pennsylvania overleaped their constitutional limits?"

He says further: "If we are to go to Pennsylvania for a precedent, why should we not be guided by that which the same side has so earnestly given us in the trial in which that gentleman bore so conspicuous a part, a precedent of acquittal."

Mr. Beach had made upon specification 7 the same points which are made here with reference to the articles of impeachment. He reviews the trial of Andrew Johnson and says that he has considered all the opinions which were written upon the matter of that impeachment by the senators, and that the numerical majority of those opinions which were written and filed was in favor of the proposition that no crime was impeachable unless it was indictable at the common law. He says:

> There was (among others) the opinion of Mr. Reverdy Johnson, to which I never omit an occasion to render, at least, my tribute of acknowledgment of his great character as a jurist. He says: "For what can the President be impeached? If the power was given without assigning the causes, it is obvious that he would be almost wholly dependent upon congress, and that was clearly not designed. The constitution consequently provides, that impeachment can only be for treason, bribery or other high crimes or misdemeanors; for no act which does not fall within the legal meaning of these terms can impeachment be maintained. Political opinions, whatever they may be, when not made crimes or misdemeanors, are not the subjects of the power."

After laying down these propositions and elaborating them, Mr. Johnson says:

> If these views be sound, the articles which charge the President with having committed a high misdemeanor by the speeches made in Washington, St. Louis and Cleveland, in 1862, are not supported. First. Because there is no law which

makes them misdemeanors; and second, because if there was any such law it would be absolutely void.

1. That the crimes and misdemeanors in the quoted clause mean legal crimes and misdemeanors, (if there could be any doubt upon the point) is further obvious from the provision in the third section of the first article of the constitution, that, notwithstanding the judgment in impeachment, the party is liable to "indictment, trial, judgment and punishment, according to law." This proves that an officer can only be impeached for acts for which he is liable to a criminal prosecution. Whatever acts, therefore, could not be criminally prosecuted under the general laws cannot be grounds of an impeachment; nor is this doctrine peculiar to the United States. It was held in the case of impeachment of Lord Melville, as far back as 1806, and has never since been judicially controverted in England.

Mr. Beach in his argument, says further, upon this proposition, that there is filed in the Andrew Johnson case, "the opinion of Senator Fowler, in effect the opinion of Senator Frelinghuysen, the opinions of Senators Buckalew, Doolittle and Henderson, and Trumbull and Grimes sustaining these views;" and these, Mr. President and Senators, are the propositions which we here maintain. He adds that these views are sustained by "a majority of the Senators, who gave any expression of opinion upon this subject, and this is the last trial of impeachment," that is, this trial of Andrew Johnson was the last trial of impeachment before the Senate.

We have an authority for this proposition in our own State. Senator Waite, in his opinion in the impeachment case of Sherman Page, laid down the proposition that this court sat not to inquire whether or not a man was suitable for his office or fit to remain in office, but that it sat as a court, and was governed by the rules of court. He says:

It seems to be the settled law of this country, that criminal and penal statutes should be strictly construed. Therefore we should give a plain meaning to the language of our constitution. I have been moved to write out this opinion, mainly to do what little I could to put down what I deem to be a latitudinarian and dangerous doctrine. I think the members of this court should be bound by the rules of law.

Judge Waite also says in this opinion:

Our constitution provides that certain officers may be impeached for corrupt conduct in office, and for crimes and misdemeanors. It is claimed by the prosecution that the words "crimes and misdemeanors" do not mean what we would understand at first blush, to-wit: legal crimes, but extend to all acts of mal-administration, misbehavior or misconduct in or out of office, whether criminal or not, thereby leaving the question to the "arbitrary discretion of the Senate," so that "it could make that a crime at one time or in one person, which would be deemed innocent at another time or in another person;" which in a word would invest this court with powers undefined by law. Such authority is the essence of despotism, and is not entrusted to any other court or department in this country. It is to regulate the powers of the courts, the departments and public officers that we frame constitutions, enact statutes and adopt the common law, which latter contains the accumulated experience of centuries, is so well adapted to circumstances, and is so multifarious in its provisions, that it is impossible to codify it. It is to be found in legal elementary works; the arguments of counsel and chiefly in the decisions of the courts. It is against the policy of this law, and of all enlightened, modern government, to endow courts with undefined powers.

He was not in favor of making precedents. It is sufficient to say, before I leave this case of Barnard's, that the Senate of the State of New York voted upon the question of whether or not that charge there made was sufficient, upon the objections made by the counsel for the respond-

ent, and the specification was quashed or stricken out, and no evidence was introduced under it.

To show you that the proposition which I maintain, that this brief of Judge Lawrance (upon which the counsel so much rely for the purpose of maintaining the present trial), was prepared for, and used by Mr. Butler, in the Johnson impeachment trial. I cite from the argument made in the trial of Charles A. Edmonds, vol. 2, page 1756.

In the argument of these charges of drunkenness and adultery, and he maintained the propositions which we maintain here, The counsel said:

The brief of Mr. Lawrence, that has been read from, and which is found also in the American Law Register, was prepared for the use of Benjamin F. Butler upon the impeachment trial of Andrew Johnson, and it is the brief upon which his argument is based; and if you will look at the first volume of the proceedings there, at Mr. Butler's speech, you will find that brief just as it is here, only, perhaps, a little more elaborate, Mr. Lawrence being somewhat biased upon that side of the question, but against Mr. Lawrence I will read a very little from another manager in that case, Mr. Wilcox, of Iowa, and no one certainly can charge him with bias on the other side of the case. I will read from the reports of committees of the first session of the 40th congress, page 62. It is as follows:

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. When the Senate is organized under this section of the constitution as a High Court of Impeachment, it is simply a court of special criminal jurisdiction,—nothing more, nothing less. It is bound by the rules which bind other courts. It is as much restrained by law as any other criminal court. It is not a tribunal above the law and without rule to guide it. If it were, it might well be addressed in the language of Burke in one of his speeches in the Hastings case when he said "this high court * * * This highest court of criminal jurisdiction, exercised on the requisition of the House of Commons, if left without a rule, would be as lawless as the wild savage and as unprincipled as the prisoner who stands at your bar." No man would be safe before such a court,—a court that could make the crime, determine its mode of proof, pronounce and execute judgment, without restraint from the constitution or laws of the land. No such irresponsible engine of wrong and oppression has been created by the constitution. The British constitution allows no such unrestricted power to the House of Lords.

An impeachment before the Lords by the Commons in Great Britain, in parliament, is a prosecution of the already known and established law, and has been frequently put in practice, being a presentment to the most high and supreme court of criminal jurisdiction, by the most solemn, grand inquest of the whole kingdom; and when this most high and supreme court of criminal jurisdiction is assembled, for the trial of a person impeached for a violation of the 'already known and established law,' it must proceed according to the known and established law, for although 'the trial must vary in external ceremony, it differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments prevail.' A doctrine which would assert for the Senate of the United States greater and more despotic power in cases of impeachment, than is possessed by the House of Lords, will never be accepted by the American people.

I will read one section upon page 15, which is as follows:

It is claimed by those who oppose the doctrine herein advanced, that it is contrary to the curent of English and American authorities. This is an error which a careful examination of the cases will not fail to expose. Comparatively little attention has been devoted to the power of impeachment, and to the laws and principles that govern it, in this country. Popular opinion is more at fault with respect to this subject than perhaps any other within the entire range of the constitution. It is generally considered a kind of nnlimited, undefined, and undefinable power, whose proper office is to supply all defects of law, and to provide all desired remedies respecting civil officers and their official conduct,—a patent medicine for the speedy cure of all cases which baffle the skill of the regular practice. It seems strange

that this idea should have become so prevalent, for it has not a fair, impartial well considered case, in either the United States or Great Britain, to support it.

There is the opinion of one of the managers in the Andrew Johnson case. It cannot be said that he was prejudiced.

Now, Mr. President, and gentlemen of the Senate, I have reviewed these cases of impeachment because I am aware that there is abroad in the land and perhaps in the minds of some of us;—a general notion that a court of impeachment is above law and not governed by the law. And the counsel upon the opposite side has cited from the opinions of men who were arguing cases and from the latest works of text book writers in different sections to maintain if possible the position they have taken in this case; the learned managers have also cited from that section in Story where he reviews the ancient impeachments had from 1377 to 1640, —the days when no law prevailed in England,—when passion and prejudice reigned supreme throughout the land. They have cited that section and have claimed that Mr. Story believed that for any political offense or maladministration or misconduct in office whether indictable or not, impeachment would lie. He says he does *not* so believe. They have cited Curtis on the constitution and Pomeroy on the constitution.

Now gentlemen of the Senate, there is as the learned manager in the Andy Johnson case said, no well considered case where this objection was made and these authorities cited, from the year 1640 in English jurisprudence down through the entire history of England and from the beginning of this government down to the present time where the propositions we now maintain have not been sustained by the courts, not one. They cite you the Judge Pickering case,—there were three charges there which were sufficient to maintain that impeachment, and the fourth resulted as it naturally would in any court where judgment goes by default, because Judge Pickering did not appear and make his defense.

I have cited you the history of impeachment in England and shown you that from 1640 down to the present time these propositions which we here maintain have been urged in every case of impeachment. In the case of the Earl of Strafford, the Earl of Orrey and the Earl of Clarendon this position was sustained, and the House of Commons had to pass bills of attainder to destroy the victims. They could not succeed in their purposes before the House of Lords. And when they came down to the case of the Earl of Macclesfield this proposition was maintained for he was convicted for a violation of the statute. In 1806 Lord Melville was acquitted because he was able to say "there is no common or statute law under which this offense is indictable or subject to information." When the counsel of Judge Chase presented his able defense to the Senate of the United States he made and urged the position which we here maintain, and the Senate of the United States sustained the defense. When Judge Peck was impeached because he had fined and imprisoned an attorney for contempt of court his counsel made the defense which we here make, and it was sustained by the Senate. When Andy Johnson was brought to that great trial where passion and prejudice might well be expected to sweep away the judgment and reason of men, there were still found in the Senate of the United States some great lawyers so clear headed and eminent in learning and ability that, although in political opinion they were opposed to him and were desirous that he might be removed, neither the unscrupulous prosecution of the honorable Benjamin Butler with Judge Lawrence's brief in his hand, nor the able opinion of Senator Sumner who was so interested in having Secre-

tary Stanton "stick," were able to remove the sometime tipsy president from the high position which he lawfully and rightfully held, upon the charges that in a drunken mood he "swung around the circle" and made speeches to the poeple. I say therefore that no case can be found in the history of English or American jurisprudence where this defense has been made and the authorities cited,—no well considered case can be found where the defense has not been maintained. And in the last and most authoritative decision of the question which is here presented, in the case of Edmonds of Michigan,—under a constitution like that under which you are trying this case,—by the decisive vote of 27 to none and 26 to one, the charges of drunkenness and debauchery which were injected into those articles of impeachment by the managers were overthrown.

Now against the opinion of Judge Lawrence and the authorities which he cited,—against the ipse dixit of careless text-book writers whom they have cited,—we cite you to the well considered cases which we have reviewed,—to the opinion of Judge Story and the law as laid down by Blackstone,—to the lectures of Mr. Wooddeson; and we ask, when to the decision of this case you come, that you will bear in mind the high standing of these authorities backed up by the well considered and judicial determination of this question which was given by Prof. Dwight without partisanship or reason for prejudice or bias and we ask you to overthrow the propositions of the managers in this case that you are here to *make* a precedent and that you sit here to try and convict for all offenses whether indictable or known to the law or not.

Will the President inform me how much time I have used?

THE PRESIDENT. About an hour and forty minutes.

Mr. SANBORN—(resuming his argument.) There is another ground upon which this proposition may be maintained—from the evident reading of the statute.

The constitution of our State says: "The governor, secretary of state, treasurer, auditor, attorney general, and the judges of the supreme and district courts, may be impeached for corrupt conduct in office, or for crimes and misdemeanors, but judgment in such cases shall not extend further than a removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, in this State. The party convicted thereof shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law."

Now if you can impeach men who are not indictable, how can they be subject to indictment after their impeachment? That is a pertinent question. The very reading of the constitution shows that if a man is impeached for an offense he is subject to indictment; and the converse of the proposition follows,—that unless he is subject to indictment he cannot be impeached. Who can you impeach for maladministration in office? The next section tells you:

"The Legislature of this State may provide for the removal of inferior officers from office, for malfeasance or nonfeasance in the performance or their duties."

The *inferior* officers may be removed for malfeasance in the performance of their duties, but *superior* officers can only be removed for "crimes and misdemeanors," or "for corrupt conduct in office." Those three provisions of the constitution plainly show the effect, intent and limitations of the statute cited by the managers which provides that habitual drunkenness should be cause for removal from office; the statute relates only to *inferior* officers—it has no relevancy to the matter in issue

herein, and if it *did* refer to *superior* officers it would be unconstitutional and void. The legislature has no authority to say under this constitution and never intended to or could declare that any judicial officer, the governor, secretary of state, auditor, treasurer or attorney general could be removed for any offense not mentioned in the constitution. The power of the legislature is limited by the constitution, and while it is expressly given the power to enact when *inferior* officers may be removed for malfeasance or nonfeasance in office, the very granting of this power expressly negatives its right to remove *superior* officers for maladministration or any offense not enumerated in the constitution.

My second proposition is that this offense of drunkenness is not indictable at common law. I do not propose to discuss extensively what the decisions of any of our States may be as to whether or not this offense is indictable. The supreme court of this State has laid down over and over again this proposition, and upon this proposition we stand: that they will be bound by the decision of the supreme court of no one of the States determining what the common law is, but that the common law in force in this State is the law as it existed in England when this country was settled, or at sometime thereafter and prior to the adoption of the United States constitution. Now Mr. President and Senators, I pretend to say that from the beginning of English jurisprudence down to the time of the adoption of the constitution of this State, no case or authority can be found which will show that the offense of drunkenness as charged in these articles of impeachment was ever indictable in England. It never was, it never has been, and it was not punishable by the temporal courts until sometime in James the First's times when a statute was passed which enabled justices of the peace to impose a forfeiture, upon the issuing of a summons, of some few shillings.

I cite Bishop's criminal law, volume 1, section 399. "Mere private intoxication, with no act beyond, is not indictable at the common law." citing the State against Deberry, 5 Ire. 371; the State against Waller, 3 Murphy 229; and other cases.

"The common law has always regarded drunkenness as being in a certain sense criminal. Since therefore, a man who intends one wrong and does another of the indictable sort is punishable even where the wrong intended would not be so if actually done, voluntary drunkenness supplies in ordinary cases the criminal intent, thus, when a man voluntarily becomes drunk, there is the wrongful intent; and if while too far gone to have any further intent, he does a wrongful act, the intent to drink coalesces with the act done while drunk, and for this combination of acts and intent he is liable criminally."

I next cite from the 6 American Law Register, page 669 as to the condition of the law in England, in referring to the Pickering case Mr. Nicholson says:

> He was impeached for drunkenness and profane swearing on the bench, although there is no law in the United States forbidding them. Indeed I do not know that there is any law punishing either in Newhampshire where the offense was committed. It was said by one of the counsel that these were indictable offenses. I however, do not know where; certainly not in England. Drunkenness is punishable there by the ecclesiastical authority, but the temporal magistrate never had any power over it until it was given by a statute of James I., and even then the power was not to be exercised by the courts but only by a justice of the peace, as is now the case in Maryland, where a small fine may be imposed.

I read from Burn's justice of the peace, page 1430, to show what this statute of James was:

By 21 Jac. 1, C. 7, S. 3. It is enacted that any justice of the peace in any county, and any justice of the peace or other head officer in any city or town corporate within their limits, respectively, shall from henceforth have power and authority upon his own view, confession of the party, or proof of one witness upon oath before him, which he by virtue of this act shall have power to administer, to convict any person of the offense of drunkenness, whereby such person so convicted, shall incur the forfeiture of five shillings for every such offense and the same shall be levied, or the offender otherwise punished as in said statute is appointed; and for the second offense he shall become bound to the good behavior, as if he had been convicted in open sessions, anything in the said former statute made in the fourth year of his majesty's reign to the contrary notwithstanding.

By 4 Jac. 1. C. 5, S. 2, it is enacted. That all and every person or persons which shall be drunk, and of the same offense of drunkenness shall be lawfully convicted, shall for every such offense forfeit and lose five shillings of lawful money of England, to be paid within one week after his or their conviction thereof to the hands of the church warden of that parish, where the offense shall be committed, who shall be accountable therefor to the use of the poor of the same parish; and if the said person or persons so convicted shall refuse or neglect to pay the said forfeitture as aforesaid, then the same shall be from time to time levied of the goods of every such person or persons so refusing or neglecting to pay the same by warrant or precept of the same court, judge or justices, before whom the same conviction be; and if the offender or offenders be not able to pay the said sum of five shillings, then the offender or offenders shall be committed to the stocks for every offense, there to remain by the space of six hours.

By Sec. 6. If any person or persons, being lawfully convicted of the said offense of drunkenness, shall after that be again lawfully convicted of the like offence of drunkenness, that then every person and persons so secondly convicted of the said offense of drunkenness, shall be bounden with two sureties to our sovereigh lord the king's majesty, his heirs and successors, in one recognizance or obligation of ten pounds, with condition to be from thenceforth of good behavior.

Up to the time that the common law became dominant in this country or up to the time of the adoption of our constitution, no man has ever been indicted in England for drunkenness, no man had ever been indicted for intoxication, and no law had been enacted by which the temporal courts could inflict punishment except the statutes which I have cited here.

Bishop upon criminal law lays down the proposition, that mere drunkenness, with no act beyond is not indictable at the common law. There are various old English statutes early enough in date to be common law with us, making drunkenness punishable or finable, yet they seem not to have been in force as common law in this country. The trouble with them was that they never made that offense indictabl.

Senator D. BUCK. Does not Bishop in his work just cited refer to private drunkenness and not to public drunkennesse?

Mr. Manager COLLINS. The learned counsel for the respondent did not read it all.

Senator D. BUCK. The 3rd of Murphy, you will find, by examination, does not sustain that doctrine. The decision in that case is to the effect that drunkenness in a public place is indictable. I want to know now whether you are speaking in regard to private or public drunkenness?

Mr. SANBORN. I understand these authorities to go to the extent that both private and public drunkenness are not indictable.

Senator D. BUCK. Well, have you the 3rd of Murphy?

Mr. SANBORN. No sir.

Senator D. BUCK. Please examine it and see if that is not in point. I now cite from 5 Humphrey's Tennessee reports, page 142.

The grand jury at the August term of the circuit court, held for the county of Hickman, in 1844, presented Hutchinson for drunkenness. The indictment charges that Hutchinson, on the 12th day of August, 1844, and on divers other days and times before and since that day, in the county of Hickman, was unlawfully, openly, notoriously, and publicly drunk, to the common nuisance of all the good citizens of the State, then and there residing, being passing, and repassing, to the great corruption of public morals, to the evil example, etc

The case was tried by Judge Dillahunty and a jury of Hickman county, in December, 1844,

The State proved that the defendant was drunk in the streets of Centerville, in the county of Hickman, on the day mentioned in the indictment. There was a large crowd present witnessing his drunkenness. It also appeared that the defendant had often and before that time been drunk in public; that defendant was noisy whilst getting drunk, and, after becoming fully intoxicated, he fell down in the street and went to sleep.

The Judge charged the jury that, however much the acts of the general assembly legalizing drunkenness, in any shape, may be regretted by those who have witnessed the happy effects on the public morals, resulting from the enforcement of the common law, yet, as the law now stands, no man can be indicted or presented for a single act of drunkenness, however gross it may be, if no other offense of an indictable grade be committed at the same time. But, as to habitual drunkenness, the law is the same now that it was before the passage of the late statutes on the subject of drunkenness.

Mr. Manager HICKS. The statute was passed in 1841 and I call the attention of the counsel for the respondent to the fact that that statute was afterwards repealed.

Mr. SANBORN. Now it appears, Mr. President and Senators, that after the supreme court in the State of Tennessee had laid down the principle that for a single act of drunkenness a man could be indicted, the legislature of that state considering it such a departure from the common law enacted a statute to the effect that a person who should be guilty of that offenae should not be indictable.

Mr. Manager HICKS. May I ask the counsel if the legislature did not also repeal that?

Mr. SANBORN. At a later date a code was passed which repealed all prior acts and among other acts that was repealed, and in a subsequent case in Tennessee it was held that at common law a single act of drunkness was indictable provided various acts were charged prior to that time. But under the decisions in the State of Tennessee themselves the charges in the articles of impeachment here presented are insufficient as charges in an indictment, whether they are sufficient as articles of impeachment or not, is for this court to determine, should it come to the conclusion that the decisions of these various courts cited by the managers and which were rendered subsequent to the coming into force of the common law can determine what the common law is for this state.

The supreme court of this State have held that these decisions of other States do not determine this question, but that it is determined by the English precedents. The managers in this case, although they have industriously searched, and although in the opening of this case, we announced that we defied them to produce any case, or any form of an indictment for drunkenness at common law, which was ever used in England, or found in any English books, or any Euglish authority

which gives any precedent for an indictment for drunkenness, have bee unable to produce any such precedent, form or authority.

We now plant ourselves on this proposition; that there never was decision in England, prior to the adoption of the common law, in thi country, to the effect that drunkenness was indictable. Chitty give forms for indictments for keeping a baudy house and for various othe offenses, something like twenty in number, and in that book of forms there can be found no indictment for drunkenness. The fact is ther never was such an indictment known to the common law. It is tru that two or three of our southern states have undertaken to establish precedent and make a law. Here they may make a law for their states but, Mr. President and Senators, the law which prevails in Minnesot is that which was the law when this country was settled, and by tha law, drunkenness was not indictable.

Now let me say one word further with reference to these authorities which have been cited. The case from Addison is a decision by a *nisi prius* court, in some county in the State of Pennsylvania,—a decision which ought not to have and would not have weight in any justice court in this country.

I ask the Senate to consider the facts that the authority which they cite from Addison, and upon which they lay so much stress, was the decision of one of the judges of the county court of one of the counties of Pennsylvania, before A. D. 1800, and that all the research of counsel has not been able to find a decision following that, since that early date, that this proposition maintained by the Tennessee court, and cited by counsel, was repudiated by the legislature of that State when they next met, and the common law rule re-adopted by statute, and that the decision which they cited from the State of Virginia, is like that in Addison, of a *nisi prius* court, not equal in standing or authority, to one of our probate courts.

I find in the authority which they cite from Texas, there is no indictment whatever, and no proceeding for the punishment of a crime. I find upon examination of that authority, that there was a statute in that State providing that a petition might be presented to the court alleging that a justice of the peace or state officer had been guilty of drunkenness; that a jury of twelve men should determine *the fact* as to whether or not the was guilty of habituai drunkenness, and that if he was found guilty he might be removed by the court. A petition was filed by three or four men to the effect that a county attorney had been guilty of habitual drunkenness from the time he was elected.

The court says: "This is not a criminal proceeding: it is the determination of the fact of whether or not, this man was habitually drunk under the statute of the State;" and they hold that in this proceeding it is sufficient, in the petition, to say that the man was guilty of habitual drunkennesss, and the fact is to be determined by a jury.

Mr. Manager HICKS. Will the counsel allow me call his atttention to the fact that this was cited not as a cause for indictment but simply as giving the form of the indictment to be followed, and which was similar to the form of indictment in the year 1818. That was cited by the managers upon the point of certainty and not upon the point of sufficiecy.

Mr. SANBORN. Well another thing; the authority which the learned manager cited from Wharton's criminal law which is negatived by the authorities in Bishop and by the earlier authorties of the old common

law text books, is found only in the last edition of Wharton and is based on this new doctrine which has been interpolated into the decisions by the *nisi prius* courts to which I have referred. You cannot find the proposition which Wharton there lays down in any of his older editions, you only find it in the later editions. Now, if, subsequent to the adoption of the common law in this country, the county courts of certain states have seen fit to declare that the common law should be that which it was not and was never intended to be, does that change the provision of the constitution of this state (which under the rules I have attempted to show you should goven this high court) provides that only crimes and misdemeanors which are indictable at common law are impeachable offenses? If the *nisi prius* courts of these other states do not govern, and if the common law of England is to stand here as it stood when this country was settled, then the charges which are made in these articles of drunkenness, do not charge an indictable offense and the charges ought not to be maintained.

Another proposition I maintain is this: Under the decision, (the second that the learned managers cited from Humphrey,) the court held an indictment bad which was drawn in the words of these articles because it did not state that the defendant had been repeatedly intoxicated before the commission of the offense charged.

Mr. Manager HICKS. (Interrupting.) Will the counsel allow me to state that the counsel who opened the case upon behalf of the respondent admitted that in strictness it was not necessary and therefore we could not avert to it? That the same method of strictness was not necessary in articles of impeachment as in indictments.

Mr. SANBORN. (Continuing.) And if you follow the authorities in that state, even giving all the latitude which the learned manager claims in a proceeding for impeachment, these articles are not sufficient. They are insufficient because in the first place they do not charge specifically that on a certain day and at divers other dates prior to that day the respondent committed the acts alleged against him, which is the position noted in those numerous authorities; secondly, because they do not charge Judge Cox was ever publicly or notoriously drunk or intoxicated. There is no statement in any of these articles that he was ever known by any individual person to be intoxicated. A man may be intoxicated and still be able to perform his duties. The Judge *was* able in this instance, if the charges be true, to perform his duties and perform them properly. If a man gets intoxicated and goes on with the discharge of his duties and it is unknown to any one it is not an offense. He is not openly and notoriously intoxicated. And it is nowhere charged in any of these articles that the respondent ever *was* openly or notoriously intoxicated. It is nowhere charged that any person in his court ev er *knew* that he was discharging his duties while under the influence of intoxicating liquors as they say he was, or that any one in his court ever *knew* that he had been or was indulging in the use of intoxicating liquors at all.

Now as to section 8 of chapter 91: The constitution of the State gives no authority to the legislature to make habitual drunkenness or anything except crimes and misdemeanors an offense. If the theory of the honorable manager, Mr. Hicks, is correct and the words "crimes and misdemeanors" as used in the constitution mean all offenses, from the slightest peccadilloes to murder, this case was before specifically provided for by the constitution, and this statute cannot apply to it.

Again the learned manager says, and truly says, this statute is a reiteration of the common law. Now it was the settled doctrine of the common law that the law embodied in this statute should have no reference or application to the judges of the courts of record. Because no judge of a court of record could be indicted at the common law. So is 1st Bishop's Criminal Law, section 399; so is the 6th American Law Register, 669; so is Wharton's Criminal Law; and it has been held, by by the supreme court of the United States, not only that a judicial officer is not liable to indictment or criminal procedure for any act which he does in the performance of his duty, but that no civil suit can be maintained against him, although he performs an act corruptly and fraudulently in the discharge of his duty.

When this statute was adopted the common law was reiterated and adopted with it, and as it was limited in its operation in England and judges were excepted from its operations there—so when the statute was adopted here its limitations and exceptions at common law were adopted with it, and as in England it had no reference to and could not be applied to the offenses of judges of courts of record, so it cannot refer or be applied to those here.

Again, look at the absurdity which would result from supposing for a moment that that statute had reference to a judge. If misbehavior in office and willful neglect of duty is subject to fine and imprisonment and that statute refers to a judge of a district court we should have the anomaly of a judge of the district court being indicted before a grand jury of his own county, arraigned and brought to answer before himself! Do you suppose that is the intention of that statute? Yet there is no escape from that conclusion, if this statute refers to the offenses of a judge of the district court, for, if he commits the offense in the county where he lives, and he lives in his own district, then he must be indicted where he commits the offense and he must be tried in his own district and before himself.

That statute has no more reference to judicial officers than it has to any other subject foreign to its consideration.

Again, these articles are insufficient because they fail to charge this man with any act in the discharge of official duty in violation of law, maliciously or wrongfully done. They say, that being intoxicated he was disqualified for the discharge of the duties of his office. They do not allege that he performed them improperly or failed to perform them properly. It is laid down as a fundamental proposition in all the works of jurisprudence, that a judicial officer is always presumed to do every act which he officially performs, justly and correctly. I cite 3 Page's trial page 164, to show that wherever a judge in the discharge of his official duties does an act, it is conclusively presumed, unless it be otherwise shown, that he does it correctly, impartially, and in the proper discharge of his duty.

Now we have the anomalous charge here that this respondent, having voluntarily partaken of intoxicating liquors, went upon the bench and discharged his duty faithfully and impartially,—and it is proposed that he shall be impeached for that.

Again, the charges in articles 17 and 20 are so general and indefinite that they ought not to be answered. Mr. President and Senators, upon those articles you have limited us to five witnesses. You say that we shall produce here only five witnesses, and that we shall meet charges which extend over three years time,—that we shall meet the charge that

from 1878 until 1881 this man, at divers other times than the 16 times theretofore named, was guilty of taking voluntarily, intoxicating liquors, and the managers undertake to say that we shall come forward and meet all these charges with five witnesses and review the action and conduct of this man from 1878 to 1881. Is that reasonable or right? Is that the reasonable certainty with which a man is entitled to be charged in a criminal proceeding? Shall we not have the right to know, Mr. President and Senators, when and where and in what particulars we are charged with these flagrant acts of misbehavior in the discharge of our duties, that we may prepare ourselves with our witnesses to meet the trying ordeal? Shall it be said that we shall go into a trial here and prepare ourselves to review the action of this man for three years upon two separate charges, one of drunkenness and the other of lewdness, and to investigate his private demeanor and behavior during that entire time without specifications of time, place or manner and with a limitation of five witnesses to each article upon us?

But there is a still more serious objection to those charges. I now ask your attentive consideration to three articles,—the 18th, 19th and 20th. We will take the 20th article for example.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota for the ninth judicial district, unmindful of his duties as such judge, and of the dignity and proprieties of his said office, and in violation of the laws of the State of Minnesota, did at divers times, since the 4th day of January, A. D. 1878, at sundry places in the said State, demean himself in a lewd and disgraceful manner, in this, that he, the said E. St. Julien Cox, did then and there frequent houses of ill fame, and consort with harlots, whereby he, the said E. St. Julien Cox, has brought himself and his high office into disrepute, to the manifest injury of the morals of the youth, and good citizens of the State of Minnesota, and disgrace of the administration of justice, &c.

Now it is not charged, Mr. President and Senators, in either of the three last articles, that he committed any acts therein charged in the performance or discharge of the duties of his office; and I undertake to say, no judge or officer can be convicted or tried by this court of impeachment except for offenses committed in the discharge of his duty as such officer. Neither of the three last charges claim that he was in the discharge of the duties of his office when any of the offenses charged were committed. The proposition I have just announced is I think founded on reason and supported by an unvarying line of authorities.

In Story on the constitution, the learned author says:

Another inquiry growing out of this subject is, whether, under the constitution, any acts are impeachable except such as are committed under color of office, and whether the party can be impeached therefor after he has ceased to hold office. A learned commentator seems to have taken it for granted that the liability to impeachment extends to all who have been as well as to all who are, in public office. Upon the other point his language is as follows: 'The legitimate causes of impeachment have been already briefly noticed. They can have reference only to *public character* and *official duty*. The words of the text are, "treason, bribery, and other high crimes and misdemeanors."'

Now I call the attention, Mr. President, of yourself and the honorable senators to this point: That the words of the constitution of the United States do not declare that a man can be impeached for reason, bribery and other high crimes and misdemenaors in *office*; the constitution of the United States provides that certain officials can be impeached for

treason, bribery, and other high crimes and misdemeanors, and stops there.

Our constitution declares that certain officers can be impeached for corrupt conduct in office, crimes and misdemeanors. Now, the position I maintain is that under neither of these constitutions can any judicial officer be impeached for any offense which he may have committed which was not done in the discharge of his official duty. "Treason" "the treason contemplated," says the learned Judg Story, "must be against the United States. In general, those offenses which may be committed equally by a private person as by a public officer are not the subjects of impeachment. Murder, burglary, robbery, and indeed all offenses not immediately connected with office, except the two expressly mentioned, are left to the ordinary course of judicial proceeding, and neither house can regularly inquire into them, except for the purpose of expelling a member."

In the sixth American Law Register, page 657, I find this statement: "In general, those offenses which may be committed equally by a private person as by a public officer are not the subject of impeachment."

I cite also 14th Minnesota, page 456, a case arising under the statute, too, about which there has been so much controversy. This was the case of the State of Minnesota against Coon, which arose upon an indictment against a defendant for willfully neglecting his duty as a justice of the peace and for misbehavior in office.

The specific acts charged are, in substance, that the defendant having in his possession as justice of the peace, sixty dollars and twenty cents, received by him in satisfaction of a judgment recovered before him by one Martin Klein, he did "willfully, corruptly and fraudulently withhold it" from said Klein; that Klein having called on him and made enquiry of him about the said judgment, he 'willfully and corruptly, and with intent to injure and defraud the said Martin Klien" advised him to sell such judgment, and withheld from him the knowledge that the judgment had been satisfied, and neglected to pay over to him the amount received in satisfaction of the judgment, and "then and there willfully and corruptly advised the said Martin Klein to sell the said judgment," and that afterwards he paid of the money so received, to one J. A. Kennedy, fifty-one dollars, and did then and there willfully and corruptly reserve to himself the remainder of said judgment money, amounting to nine dollars and twenty cents." with intent to injure and defraud the said Martin Klein."

The court say:

The defendant could not, in his official character, advise Klein to sell the judgment. It is not his official duty to give any advice on such matters. A party has no right to ask nor rely upon it, except as he would ask the advice of a private person. As to the payment to Kennedy, and the retaining, by defendant, of nine dollars any twenty cents of the money received on the judgment, it is not shown that the payment to Kennedy was wrongful, nor that the retaining of that amount was wrongful. How much of the sixty dollars and twenty cents was for damages, and how much for costs, is not stated, nor is it stated that at that time any demand was made for the amount which Klein or Kennedy had the right to receive. *The incident shows conduct on the part of defendant, which might, under some circumstances, be improper, but shows no facts to make his conduct a criminal offense.*

I next cite 24th Minnesota reports, page 154. I think I said, Mr, President and Senators, that the indictment in tho case last read from was based on section 8, chapter 91, the statute about whtch there has been so much controversy here, relating to misbehavior in office; and the supreme court held that the advising of a party by a justice of the

peace to sell his judgment was not an act done in the discharge of his official duty, and was not an act for which he could be indicted under that statute. Now the court say in the 24th Mindesota, page 154 :

> The case of the *State vs. Coon*, 14th Minn. 459, is very different from this one. The question in that case was, whether the defendant, who was a justice of the peace, was guilty of misbehavior in office, by corruptly advising a plaintiff, who had recovered a judgment before him, to sell such judgment. The giving advice in such matters was clearly beyond the scope of his official duty, and it did not appear that he had assumed to give the advice as a justice of the peace, nor was it evident how he could give such advice the appearance of an official act, and the court said : "the defendant could not in his official character, advise Klein to sell the judgment. It is not his official duty to give advice on such matters."

One of my associates upon this question of the omnibus nature of these two charges, desires me to cite impeachment trial of Dorn, pages 9 and 101. The charge on page 9 is of the same character as these omnibus charges to which we object, and it was stricken out on account of its omnibus character ; and if you will look at the names of the men who voted, (on page 101,) you will find that they were judges of the courts who voted in favor of striking out this charge.

Now, Mr. President, it is established by the authorities from Minnesota, and other authorities which I have cited here as to these last three charges, that no offense, even by a justice of the peace, which is not committed in the discharge of his official duty, even so small an offense as that of advising a man to sell a little judgment obtained before a justice of the peace, is subject to indictment or criminal procedure, unless it is committed in the discharge of his official duty. The proposition which I maintain as to these articles, is laid down by Story as already cited; it is laid down by Wharton; it is laid down by Rawle upon the Constitution; it is fundamental; and there never has been any charge maintained against a man in the history of impeachment for any acts which he committed as a private citizen, while not in the actual discharge of his official duties.

It is not charged in these articles that Judge Cox was guilty of lewdness upon the bench: that he took any lewd women upon the bench that he discharged any of his duties in the presence of lewd women, or in a house of ill fame, or that in the discharge of his duty he frequented houses of ill fame, but these are all charges against him as a private citizen. I ask you, Mr. President and Senators, if, under the provisions of the law of Minnesota as laid down by the supreme court, a justice of the peace cannot be indicted for the crime of advising the sale of a judgment which has been rendered before him under that statute as official misbehavior in office, is it proper that this respondent should be tried for these offenses so much more henious and so much more important, which, if committed, were the acts, not of the officer, but of the citizen?

Mr. President and Senators, I have hurried through the argument of this case with all the zeal of which I was capable, because I was aware that the matters here to be discussed were so weighty, the authorities to be cited so numerous, that it would be with the greatest difficulty that I should be able to accomplish what I desired. I have not done it; it has been impossible for me to present to you, gentlemen, as fully as I would like, the authorities on our behalf, and the review of the authorities cited by the honorable managers. But, gentlemen, all our actions in all our lives are limited by our time and ability, and around

me as around us all circles the impassable barrier upon every side b yond which I can not reach, and over which I can not soar.

Finally then, Senators, if in the review of these articles you find tha from the time the doctrine of impeachment became established in Englan from the time passion and prejudice passed away and judicial principl prevailed,—from 1640 to the present time,—the positions which w maintain as to the character of a court of impeachment and th indictable character of the offenses for which impeachment would lie, hav been universally maintained by the courts,—if you find that the bette text-writers upon the subject, Story, Prof. Dwight, Wharton in his earlie editions and Blackstone, sustain our position, — that no well consid ered case can be found in which the propositions which we here maintai have been presented and urged by the defense where they have not suc ceeded,—if in this array of authority and the decisions of these court are found that of the Michigan Senate in the Edmonds impeachmen trial, (which is upon the precise point in issue, and the only similar con tested case which has been produced here) together with the opinions o the most learned and unprejudiced of the later writers upon impeach ment—we ask you to hold with us that this is a *court* governed by th wholesome rules of the common law and the decisions of the court which have preceded it.

If you find no authority has been produced or can be produced her which establishes that the offense of drunkenness was ever indictable a the common law,—if from the earliest history of English jurisprudenc to the time of the adoption of our constitution no case can be found i the decisions of the English courts or the English text-books upon tha subject, laying down the proposition that drunkennes is indictable,—tha books of precedents at common law present no precedent for an indictmen for drunkenness, and that this common law as it existed when the con stitution was adopted, (and not as it has been added to and changed by petty county courts of other States by decisions rendered for their own pri vate and personal purposes) that *this* law as it so existed and as found in the decisions of the English courts is the law which prevails in this State as our supreme court has held, unchanged by the decisions of the petty or supreme courts of other states, — then we ask you to maintain ou second proposition, that this offense which is charged here neither in dictable nor impeachable.

If the charges to which we object, specifically,—the 17th and 20th,—o drunkenness and lewdness,—are so vague and indefinite that we ought not to be called upon to meet them, so vague and indefinite that if we should be convicted upon them to-day, to-morrow, or as soon as this court adjourns, another court may come and present articles against us charging the same offenses within the same time and success fully claim that they were not the same offenses alleged against us here because they were at divers other times within the same period, we ask you confidently to strike out these artices.

If it be true, as a proposition of law, that no judicial officer or other high officer under the constitution of this State or of any State can be impeached except for high crimes and misdemeanors committed in the disgrace of his official duty, that he cannot be impeached for offenses committed as a private citizen, as a man and not as an officer,—if that proposition be sound and the three last articles have no reference to the discharge of his official duties, we ask you to follow this law and the

uniform dicisions of the courts upon this proposition and strike out these articles.

Mr. President and Senators, I thank you for the long and patient hearing which you have given me upon this case.

Mr. Manager COLLINS. With the consent of the counsel I would like to ask him one or two questions. Mr. Sanborn, this Edmonds' case which you have cited here, is about the only case you find, I believe, where drunkenness is charged as an offense. Now is not the constitution of Michigan like ours upon the subject of impeachment?

Mr. SANBORN. Yes.

Mr. Manager COLLINS. Now, was there not a statute in Michigan at that time almost precisely like ours concerning officers being removed from office for drunkenness?

Mr. SANBORN. I have not examined that.

Mr. Manager COLLINS. Was not Edmonds charged with drunkenness by article X. and with adultery in article XI?

Mr. SANBORN. Yes.

Mr. Manager COLLINS. Now in that case was the question of law raised, from the beginning to the end, as to the sufficiency of either of those articles?

Mr. SANBORN. I did not look that matter up personally.

Mr. Manager COLLINS. As a matter of fact, did not the managers admit, when they got through with their case, that they had made out no case against the respondent under article X?

Mr. SANBORN. I am not aware of it. I will state here, that Mr. Arctender has looked up that case.

Mr. Manager COLLINS. Well, that is the fact,—the managers abandoned article X and said that there was no testimony upon it, and virtually abandoned article XI. I have the authorities to show this, right here.

Mr. Manager HICKS. I desire to correct one misstatement which I made last evening, to which the learned counsel for the respondent has devoted a lengthy argument,—a misstatement which I really corrected last night by an authority which I read. In my statement I said this proposition had never been maintained, forgetting to limit the time, and immediately after read you the authority which limited it to three-quarters of a century or nearly that time. The statement which I read afterwards was that, by the opinions of the framers of the constitution by contemporaneous construction, uncontradicted by any authority for more than three-quarters of a century after the adoption of the constitution. That was the time to which I intended to limit it and I desire to limit it to that.

I call attention also to a statement which I made which counsel undoubtedly failed to properly understand,—that I maintained thss was not a court. I think I made no such statement or argument.

The PRESIDENT. What rule will be adopted by the Senate at this time? The arguments are now closed as the chair understands, although the time allotted to the managers has not been wholly exhausted?

Senator CAMPBELL. If the argument is closed I move that the Senate go into secret session.

Which motion was adopted, and all persons not members or officers of the Senate were requested to withdraw.

The Senate then went into secret session for the consideration of respondent's demurrer.

Senator Adams offered the following resolutions:

Resolved, That the demurrer of the rospondent be sustained as to 17th, 18th and 20th articles.

Resolved, That the demurrer of the respondent to the remaining a cles be overruled *pro forma*, without prejudice to his right of renew the objections on the trial of the issues of fact.

A division of the question being asked the President stated that question was first upon the adoption of the first resolution as to the 1 article,

Senator A. M. Johnson offered the following amendment which ruled out of order, as not pertaining to the same subject as the resolut then under consideration.

Resolved, That the honorable managers shall be allowed to so am articles 17, 18 and 20, that they shall be definite as to time and place places, so the respondent can safely put himself on trial under a articles.

Senator Macdonald offered the following as a substitute for both th of Senators Adams and Johnson:

Ordered, That the demurrer of respondent to the articles of impea ment be overruled, but that the board of managers on the part of House be and are hereby required to furnish the respondent on or be January 6th 1882, with specifications as to the 17th and 2 articles. Should no such specifications be furnished, tden and in t case no testimony will be received in support of said articles 17 and

Senator Castle demanded a separate vote upon the adoption of the der as to articles 18 and 19.

Which being directed the order was unanimously adopted as to other articles.

Senator Campbell moved that the demurrer be overruled as to arti 18.

And the roll being called, there were yeas 23, and nays 6, as follo

Those who voted in the affirmative were—

Messrs. Aaker, Buck C F., Buck D., Campbell, Case, Hinds, How Johnson A. M., Johnson F. I., Johnson R. B., Macdonald, McCorm McLaughlin, Miller, Morrison, Officer, Powers, Rice, Shalleen, Tiffa Wheat, White and Wilson.

Those who voted in the negative were—

Messrs. Adams, Bonniwell, Castle, Crooks, Gilfillan C. D., and Meal

So the demurrer was overruled as to the seventeenth article of i peachment.

Senator Campbell moved that the demurrer be overruled as to the 1 article of impeachment.

And the roll being called, there were yeas 27, and nays 2, as follo

Those who voted in the affirmative were—

Messrs. Aaker, Adams, Bonniwell, Buck C. F., Buck D., Campb Case, Crooks, Hinds, Howard, Johnson A. M., Johnson F. I., John R. B., Macdonald, McCormick, McLaughlin, Mealey, Miller, Morris Officer, Powers, Rice, Shalleen. Tiffany, Wheat, White and Wilson.

Those who voted in the negative were—

Messrs. Castle and Gilfillan C. D.

So the demurrer was overruled as to the 19th article of impeachme

And the order offered by Senator Macdonald was adopted as a whe

On motion the session was declared to be open and the honora managers and respondents counsel were notified of the fact.

On resuming business in open session, the respondent having appeared attended by his counsel.

On motion of Senator Macdonald, the clerk was directed to read for the information of the counsel for the State and the respondent the order adopted by the Senate in secret session.

The clerk then read the following order:

Ordered, that the demurrer of respondent to the articles of impeachment be overruled, but that the board of managers on the part of the House, be and are hereby required to furnish the respondent on or before January 6th, 1882, with specifications as to the 17th and 20th articles. Should no such specifications be furnished, then and in that case, no testimony will be received in support of said articles 17 and 20.

The PRESIDENT. I will further inform the counsel that articles 18 and 19 were afterwards acted upon, and that the motion for demurrer was also overruled.

Senator RICE. I would like to ascertain from the respondent how much further time will be necessary to transact what business they may have at this time.

The PRESIDENT. The chair would state that it having been announced to the Senate that the counsel had given notice of further motions. It was desired on the part of the Senate, to know whether much time would probably be taken in the discussion of those motions.

Mr. ARCTANDER. Mr. President, I suppose upon the preliminary motion concerning which I spoke to the President, it would probably take an hour or two; but we apprehend that that motion can just as well be raised when the Senate meets again for the consideration of this case. We make this suggestion in order not to occupy further time of the Senate at this time.

Mr. Manager COLLINS. Does that motion go to the question of jurisdiction in any way?

Mr. ARCTANDER. It does not. I would state that I apprehend the Senate will not require us to answer before. We shall, of course, ask leave of the Senate to answer to these articles of impeachment, the demurrer having been overruled, as I understand, except as to two articles.

The PRESIDENT. The demurrer is overruled as to all.

Mr. ARCTANDER. With the reservation, as I understand, that no evidence will be allowed under articles 17 and 20, unless further specifications are presented by the managers. I suppose there can be no question about our being required to file any answer before this blil of particulars is furnished by the managers, and that we shall have a reasonable time, after the service of the bill of particulars in which to file our answer.

Mr. ALLIS. Mr. President, I would suggest that some time be limited by the Senate in which the bill of particulars shall be served, and that we may have a certain time afterwards in which to file our answer.

Senator RICE. Cannot counsel arrange that matter between themselves, so that when we meet here on January 10th, the trial can proceed, and that counsel for the respondent may have such time as may be agreed between them and the managers, to file their answer, and we take up the matter of these specification, say at the last end of the trial?

Mr. ARCTANDER. Well, I apprehend, Mr. President, that our answer should not come in by piece-meal, but that we should file an answer to

all of the charges at once. It would hardly be proceeding in the way in which courts generally do to file an answer now and then afterwards to file an answer to some other articles. Of course we cannot answer the specifications of which we know nothing at this time.

The PRESIDENT. That is a matter to be determined by the Senate, or by the counsel with the consent of the Senate. Senator Rice suggests that those specifications be filed at an early day during the progress of the trial, or even prior thereto, and that then the consideration of those articles, or the examination of witnesses under them, be postponed until the last of the trial, thus giving time for counsel to respond.

Mr. ARCTANDER. May I ask, Mr: President, Whether it was not the order that these specifications should be served upon us before the 6th of January.

The PRESIDENT. That is the recollection of the chair.

Mr. ARCTANDER. 1 would suggest, then, that the Senate give us leave to file our answer on the 10th of January at the re-convening of the Senate.

The PRESIDENT. A motion to that effect will be in ordor.

Mr. Manager COLLINS. There will not be any objection to that, Mr. President, and gentlemen, providing their answer is to be as we anticipate it,—an answer of not guilty. The object of this session was to settle the issues in order that the State might be saved expense in the way of subpœnaeing witnesses ; if the issues are now substantially settled although there is no formal answer filed, apprehend that that course would be perfectly satisfactory. We, in that case, should assume that the plea of not guilty would be entered to all of these charges and would prepare for trial accordingly. Perhaps the counsel might indicate what their plea would be, or, that it would be that, and it would be perfectly satisfactory to us.

Mr. Arctander can state this, that so far as we know now, except as to these two special articles, our plea would be a general denial, and I suppose this will be taken with the understanding that any agreement in regard to the answer at this time upon our part, will not waive any objections that we may desire to take to the filing of any other or further articles or to any of the specifications or bill of particulars which the learned managers may see fit to file under this order; that we may be allowed to enter our objections to their filing any specifications or bill of particulars at that time.

Mr. Manager COLLINS. We will not claim that we could file any additional articles; we apprehend that we have no right to do that. Our bill of particulars, howevrr, might perhaps be defective, in the minds of the Senate, and that would be a matter for further discussion. I apprehend that on that we substantially agree,—that we may file our specifications when we see fit, but before the 6th of January, and if their answer is filed upon the 10th, we shall then be ready to go on with the trial.

The PRESIDENT. I think we can assure both parties that they will be allowed a reasonable length of time for the performance of any duty in the matter of pleadings.

It was then agreed by and between the managers and the counsel for the respondent, that the bill of particulars might be served personally or by mail upon Mr. Allis, of counsel for the respondent.

It was also understood and agreed that counsel for the respondent should file their answer on or before the 10th day of January, 1882.

On motion, the High Court of Impeachment then adjourned to Tuesday, the 10th day of January, A. D. 1882, at 10 o'clock, A. M.

EIGHTH DAY.

ST. PAUL, MINN., January 10, 1882.

The Senate, sitting for the trial of E. St. Julien Cox, judge of the ninth judicial district, upon articles of impeachment, exhibited against him by the House of Representatives, met at 12 o,clock M., pursuant to adjournment.

The Sergeant-at-Arms having made proclamation,

The Managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. James Smith, Jr., Hon. O. B. Gould, Hon. A. C. Dunn, Hon. G. W. Putnam, Hon. W. J. Ives and Hon. L. W. Collins, entered the Senate chamber and took the seats assigned them.

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

The PRESIDENT. The Senate will please come to order. The chair will state that the Sergeant-at-Arms and the Assistant Sergeant-at-Arms, both appear to be absent; it is to be presumed, upon duties connected with the impeachment trial. It is important that the Senate should have a Sergeant-at-Arms. What is the pleasure of the Senate?

Senator CROOKS. I move that the President be requested to appoint a Sergeant-at-Arms *pro tempore*.

The PRESIDENT. It is moved and seconded that the President be authorized to appoint a Sergeant-at-Arms temporarily. Is the Senate ready for the question? As many as are of the opinion that the motion should prevail will say aye; those of the contrary opinion, no. The ayes have it.

The chair will appoint Mr. A. H. Bertram, who is now serving in the capacity of Postmaster to this Senate, sitting as a court of impeachment, as Sergeant-at-Arms until the regular appointee returns. The Senate sitting as a court of impeachment is now ready to proceed to the business before it.

Senator ADAMS. Mr. President, I would suggest that the Sergeant-at-Arms just appointed be sworn as an officer of this court.

The PRESIDENT. The suggestion is a proper one. Mr. Bertram will be sworn.

The oath was then adnfinistered by the President to Mr. A. H. Bertram as Sergeant-at-Arms, as follows:

You do solemnly swear that you will support the constitution of the United States, and of the State of Minnesota, and faithfully perform the duties of your office to the best of your judgment and ability. So help you God!

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

Messrs. Aaker, Adams, Bonniwell, Buck C. F., Buck D., Campbell, Case, Crooks, Howard, Johnson A. M., Johnson R. B., Langdon, McCor-

mick, McCrea, McLaughlin, Morrison, Peterson, Powers, Rice, Shaller, Shalleen, Tiffany, Wheat, White, Wilkins and Wilson.

The PRESIDENT. There is a quorum present.

There has been filed with the Clerk of the Court of Impeachment specifications under articles seventeen and twenty, which will be read by him for the imformation of the court.

The Clerk read as follows :

EXHIBIT B.

State of Minnesota.—ss.: In the Senate, sitting as a Court of Impeachment.

In the matter of the impeachment of E. St. Julien Cox as a judge of the district court of the State of Minnesota.

Specifications under articles seventeen (17) and twenty (20), made pursuant to the order of the Senate, showing the times when, and the places where the offenses charged were committed, viz.: under,

ARTICLE XVII—SPECIFICATIONS :

I. At Marshall, in the county of Lyon, in said State, on the seventh (7th) day of November, A. D. 1878.

II. At New Ulm, in the county of Brown, in said State, on the second (2d) day of August, A. D. 1879.

III. At Redwood Falls, in the county of Redwood, in said State, on the fifteenth (15th) day of June, A. D. 1880.

IV. At New Ulm, in the county of Brown, on the first (1st) day of July, A. D. 1880.

V. At Marshall, in the county of Lyon, in said State, on the thirtieth (30th) day of September, 1880.

VI. At New Ulm, in the county of Brown, in said State, on the twenty-first day of January, A. D. 1881.

VII. At New Ulm, in the county of Brown, in said State, on the seventeenth (17th) day of May, A. D. 1881.

VIII. At New Ulm, in the county of Brown, in said State, on the second (2d) day of August, A. D. 1881.

Under

ARTICLE XX—SPECIFICATIONS :

I. At St. Peter, in the county of Nicollett, in said State, on the thirtieth (30th) day of August, A. D. 1879.

II. At New Ulm, in the county of Brown, in said State, on the twenty-first (21st) day of January, A. D. 1881.

III. At Minneapolis, in the county of Hennepin, in said State, on the fourteenth (14th) day of October, A. D. 1881.

January 6th, 1882.

HENRY G. HICKS,
JAS. SMITH, JR.
O. B. GOULD,
L. W. COLLINS,
ANDREW C. DUNN,
G. W. PUTNAM,
W. J. IVES,
Managers on the part of the House of Representatives.

Personal service of the foregoing specifications upon the undersigned on the 6th day of January, A. D. 1882, is hereby acknowledged.

JNO. W. ARCTANDER,
Of Counsel for the Respondent, E. St. Julien Cox.

The PRESIDENT. At the last session of the Senate, during the consideration of the demurrer filed by the counsel for the respondent, it was intimated that in case that demurrer should be overruled by the court, counsel for the respondent would desire to make further motion before proceeding to the trial, on the merits. It will be proper now before proceeding to trial for counsel to present motions.

MR. ARCTANDER. I suppose, Mr. President, it is now a proper time to file the respondent's answer, and I hereby do so.

The PRESIDENT. The counsel for the respondent file the following answer, which will be read by the clerk :—

ANSWER.

STATE OF MINNESOTA, }
HIGH COURT OF IMPEACHMENT. } ss.

In the matter of the impeachment of E. St. Julien Cox, judge of the district court in and for the 9th district :

And now comes the above named respondent, E. St. Julien Cox, and protesting against the manifest defects, errors, informalities and insufficiencies contained in the alleged articles of impeachment, alleged to have been exhibited against him by the House of Representatives of the State of Minnesota and against the want of jurisdiction of court, and reserving to himself all right and benefit of exception thereto and to the insufficiencies and defects of said articles on their face appearing, respectfully submits the following answer to said articles :

I.

1. For answer to the matters alleged and set forth in the first article, respondent protests, that the said article is insufficient in law in this, that the facts therein stated do not constitute either corrupt conduct in office, a crime, a misdemeanor, or a public offense.

2. For a second and further answer to said article respondent alleges, that no testimony whatever was ever adduced either before the House of Representatives or before any committee of said house, on the charge in said article contained, substantiating said charge, or upon which to base said charge, but that the same was voted by said House of Representatives without being supported by any evidence whatsoever.

3. For a third and further defense and answer to said article, and the pretended charge or charges therein contained, respondent denies each and every allegation, matter, statement or thing, in said article contained, and each and every part, portion and parcel of each and every such allegation, either in the manner and form as therein alleged, or otherwise, save and except that respondnnt admits, that at the time in said article specified he was a judge of the district court of the state of Minnesota, in and for the ninth judicial district.

4. For a fourth and further answer and defense to said article, respondent says, that he is not guilty of the pretended charge in said article contained, and that he is not guilty of any corrupt conduct in office, or of any misbehavior in office, or of any crime or misdemeanor in office or of any crime or misdemeanor at all, either as in said article alleged or otherwise.

5. For a fifth and further answer and defense to said article, respondent alleges, that the said pretended charge, in the said first article contained, was in the month of February, A. D. 1878, duly, fully and thoroughly investigated by the House of Representatives, of the State of Minnesota and by and through a select committee of said House, and that after having summoned and fully examined under oath a number of witnesses, present at said court, during all of said term, as to said charge the said committee on the 4th day of March, A. D. 1878, unanimously reported to said House of Representatives, that after a full and thorough investigation of said charge, the said committee found the said charge unfounded, false and malicious, which said report was by said House of Representatives then and there duly adopted; wherefore respondent alleges, that by said investigation, report and adoption of the same, respondent was and has been duly acquitted of the said charge in said first article contained, and insists, that he should, therefore, not be required to further defend against the same.

II.

1. For answer to the matters alleged and set forth in the second article, respondent protests, that the said article is insufficient in law, in this, that the facts therein stated do not constitute either corrupt conduct in office, a crime, a misdemeanor, or a public offense.

2. For a second and further defense and answer to said article, and the pretended charge or charges therein contained, respondent denies each and every allegation, matter, statement or thing, in said article contained, and each and every part, portion and parcel of each and every such allegation, either in the manner and form as therein alleged, or otherwise save and except that respondent admits, that at the time in said article mentioned, he was a judge of the district court of the State of Minnesota in and for the ninth judicial district.

3. For a third and further defense and answer to said article respondent says, that he is not guilty of the pretended charge in said article contained, and that he is not guilty of any corrupt conduct in office, or of any crime or misdemeanor in office, or of any crime or misdemeanor at all, either as in said article alleged or otherwise.

III.

1. For answer to the matters alleged and set forth in the third article, respondent protests, that the said article is insufficient in law in this, that the facts therein stated do not constitute either corrupt conduct in office, a crime, a misdemeanor or a public offense.

2. For a second and further answer and defense to said article, and the pretended charge, or charges, therein contained, respondent denies each and every allegation, matter, statement or thing, in said article contained and each and every part, portion and parcel of each and every such allegation, either in the manner and form as therein alleged, or otherwise,

save and except, that respondent admits, that at the time in said article mentioned, he was a judge of the district court of the State of Minnesota in and for the 9th judicial district.

3. For a third and further answer and defense to said article, respondent says, that he is not guilty of the pretended charge in said article contained, and that he is not guilty of any corrupt conduct in office, or of any misbehavior in office, or of any crime or misdemeanor at all, either as in said article alleged or otherwise.

IV.

1. For answer to the matters alleged and set forth in the fourth in the fourth article, respondent protests that the said article is insufficient in law in this: That the facts therein stated do not constitute either corrupt conduct in office, a crime, a misdemeanor, or a public offense.

2. For a second and further answer and defense to said article and the pretended charge or charges therein contained, respondent denies each and every allegation, matter, statement or thing in said article contained and each and every part, portion and parcel of each and every such allegation, either in the manner, or form as therein alleged, or otherwise, save and except that the respondent admits that at the time in said article mentioned, he was a judge of the district court, of the Stafe of Minnesota, in and for the ninth judicial district.

3. For a third and further answer and defense to said article, Respondent says: That he is not guilty of the pretended charge in said article contained, and that he is not guilty of any corrupt conduct in office, or of any misbehavior in office, or of any crime, or misdemeanor in office, or of any crime or misdemeanor at all, either as in said article alleged or otherwise.

V.

1. For answer to the matter alleged and set forth in the fifth article respondent protests, that the said article is insufficient in law in this: That the facts therein stated do not constitute either corrupt conduct in office, a crime, a misdemeanor or a public offense.

2. For a second and further answer and defense to said article and the pretended charge, or charges therein contained respondent denies each and every allegation, matter statement or thing in said article contained, and each and every part portion and parcel of each and every such allegation, either in the manner or form as therein alleged, or otherwise, save and except, that respondent admits, that at the time in said article mentioned he was a judge of the district court of the State of Minnesota in and for the ninth judicial district.

3. For a third and further answer and defense to said article respondent avers, that he is not guilty of the pretended charge in said article contained, and that he is not guilty of any corrupt conduct in office, or of any misbehavior in office or of any crime or misdemeanor in office, or of any crime or misdemeanor at all, either as in said article alleged, or otherwise.

VI.

1. Respondent for answer to the matters alleged in the sixth article

protests, that the said article is insufficient in law in this: That th facts therein stated do not constitute either corrupt conduct in office, crime, a misdemeanor or a public offense.

2. For a second and further answer and defense to said article an the pretended charge therein contained, respondent denies each an every allegation, matter, statement, or thing in said article contained and each and every part, portion and parcel of each and every such alle gation, either in manner or form as therein alleged, or otherwise, sav and except that the respondent admits that he was a judge of the distric court at the time therein mentioned.

3. For a third and further answer and defense to said article, respon dent says: That he is not guilty of the pretended charge in said articl contained, and that he is not guilty of any corrupt conduct in office, o of any misbehavior in office, or of any crime or misdemeanor in office or of any crime or misdemeanor at all, either as in said article alleged o otherwise.

VII.

1. For answer to the matters alleged and set forth in the seventh ar ticle, respondent protests, that the said article is insufficient in law, in this: That the facts therein stated do not constitute either corrupt conduct, a crime, a misdemeanor, or a public offense.

2. For a second and further answer and defense to said article and the pretended charge therein contained, respondent denies each and every allegation, matter, statement or thing in said article contained, and each and every part, portion and parcel of each and every such allegation, either in manner or form as therein alleged, or otherwise, save and except that respondent admits, that at the time in said article mentioned, he was a judge of the district court of the State of Minnesota in and for the ninth judicial district.

3. For a third and further answer and defense to said article, the respondent says: That he is not guilty of the pretended charge in said article contained, and that he is not guilty of any corrupt conduct in office, or of any misbehavior in office, or of any crime or misdemeanor in office, or of any crime or misdemeanor at all, either as in said article alleged or otherwise.

VIII.

1. For answer to the matters alleged in the eight article, respondent protests that the said article is insufficient in law in this: That the facts therein stated do not constitute either corrupt conduct in office, a crime, a misdemeanor, or a public offense.

2. For a second and further answer and defense to said article and the pretended charge or charges therein contained, respondent denies each and every allegation, matter, statement, or thing in said article contained, and each and every part, portion and parcel of each and every such allegation, either in manner or form as therein alleged or otherwise, save and except that respondent admits, that at the time in said article mentioned, he was a judge of the district court of the State of Minnesota in and for the 9th judicial district.

3. For a third and further answer and defense to said article, and the pretended charges therein, respondent says that he is not guilty of the

pretended charge in said article contained, and that he is not guilty of any corrupt conduct in office. or of any misbehavior in office, or of any crime or misdemeanor in office, or of any crime or misdemeanor at all, either as in said article alleged or otherwise.

IX.

1. For answer to the matters alleged in the ninth article, respondent protests, that the said article is insufficient in law in this: That the facts therein stated do not constitute either corrupt conduct in office, a crime, a misdemeanor, or a public offense.

2. For a second and further answer and defense to said article, and the pretended charge therein contained, respondent denies each and every allegation, matter, statement, or thing, in said article contained, and each and every part, portion, or parcel, of each and every such allegation, either in manner or form as therein alleged, or otherwise, save and except, that respondent admits, that at the time in said article mentioned, he was a judge of the district court of the State of Minnesota, in and for the 9th judicial district.

3. For a third and further answer and defense to said article, respondent says, that he is not guilty of the pretended charge in said article contained, and that he is not guilty of any corrupt conduct in office, or of any misbehavior in office, or of any crime or misdemeanor in office, either as in said article alleged or otherwise.

X.

1. For answer to the matters alleged and set forth in the tenth article, respondent protests, that said article is insufficient in law in this: That the facts therein stated do not constitute either corrupt conduct in office, a crime, a misdemeanor, or a public offense.

2. For a second and further answer and defense to said article and the pretended charge therein contained, respondent denies each and every allegation, matter, statement, or thing, in said article contained, and each and every part, portion or parcel of each and every such allegation, either in manner or form, as therein alleged or otherwise, save and except that respondent admits, that he was on the day in said article mentioned a judge of the district court of the State of Minnesota, in and for the 9th judicial district.

3. For the third and further answer and defense to said article, respondent says, that he is not guilty of the pretended charge in said article contained, and that he is not guilty of any corrupt conduct in office, or of any misbehavior in office, or of any crime or misdemeanor in office, or of any crime or misdemeanor at all, either as in said article alleged or otherwise.

XI.

1. For answer to the matter alleged and set forth in the eleventh article, respondent protests, that said article is insufficient in law in this: That the facts therein stated do not constitute either corrupt conduct in office, a crime, a misdemeanor or a public offense.

2. For a second and further answer and defense to said article, and the pretended charge therein contained, respondent denies each and

every allegation, matter, statement, or thing, in said article contained, and each and every part, portion and parcel of each and every such allegation, either in the manner and form as therein alleged, or otherwise, save and except that respondent admits that at the time in said article mentioned, he was a judge of the district court, of the State of Minnesota, in and for the ninth judicial district.

3. For a third and further answer and defense to said article, respondent says: That he is not guilty of the pretended charge in said article contained, and that he is not guilty of any corrupt conduct in office, or of any misbehavior in office, or of any crime or misdemeanor in office or of any crime or misdemeanor at all, either as in said article alleged or otherwise.

XII.

1. For answer to the matter set forth in the twelfth article respondent protests: That the said article is insufficient in law in this: That the facts therein stated do not constitute either corrupt conduct in office, a crime, a misdemeanor, or a public offense.

2. For a second and further answer and defense to said article, and the pretended charge or charges therein contained, the respondent denies each and every allegation, matter, statement or thing, in said article contained and each and every part, portion or parcel of each and every such allegation, either in the manner or form as therein alleged, or otherwise, save and except, that the respondent admits, that at the time in said article mentioned he was a judge of the district court of the State of Minnesota, in and for the ninth judicial district.

3. For a third and further answer and defense to said article, respondent says: That he is not guilty of the pretended charge in said article contained, and that he is not guilty of any corrupt conduct in office, or of any misbehavior in office, or of any crime or misdemeanor in office, or of any crime or misdemeanor at all, either as in said article alleged or otherwise.

XIII.

1. For answer to the matters set forth in the thirteenth article, respondent protests that the said article is insufficient in law in this: That the facts therein stated do not constitute either corrupt conduct in office, a crime, a misdemeanor or a public offense.

2. For a second and further answer and defense to said article, and the pretended charge therein contained, the respondent denies each and every allegation, matter, statement or thing in said article contained, and each and every part, portion or parcel of each and every such allegation, either in manner and form as therein alleged, or otherwise, save and except that he admits that he was at such time, a judge of the district court of the State of Minnesota, in and for the ninth judicial district.

3. For a third and further answer and defense to said article, respondent says: that he is not guilty of the pretended charge in said article contained, and that he is not guilty of any corrupt conduct in office, or of any misbehavior in office, or of any crime or misdemeanor in office, or of any crime or misdemeanor at all, either as in said article alleged or otherwise.

XIV.

1. For answer to the matters set forth in the fourteenth article, respondent protests that said article is insufficient in law in this: that the facts in said article stated, do not constitute either corrupt conduct in office, a crime, a misdemeanor or a public offense.

2. For a second and further answer and defense to said article, and the pretended charge or charges therein contained, respondent denies each and every allegation, matter, statement or thing in said article contained, and each and every part, portion and parcel of each and every such allegation, either in manner or form, as therein alleged, or otherwise; save and except that he admits that he was at the time, in said article mentioned, a judge of the district court of the State of Minnesota, in and for the ninth judicial district.

3. For a third and further answer and defence to said article respondent says, that he is not guilty of the pretended charge in said article contained, and that he is not guilty of any corrupt conduct in office, or of any misbehavior in office, or of any crime or misdemeanor in office, or of any crime or misdemeanor at all, either as in said article alleged or otherwise.

XV.

1. For answer to the matters set forth in the fifteenth article respondent protests, that the said article is insuficient in law, in this: "That the facts therein stated, do not constitute either corrupt conduct in office, a crime, a misdemeanor or a public offense."

2. For a second and further answer and defense to the said article and the pretended charges therein contained, respondent denies each and every allegation, matter, statement or thing, therein contained, and each and every part, portion, and parcel of each and every such allegation, either in manner and form as therein alleged, or otherwise, save and except that the respondent admits, that at the time in said article mentioned he was a judge of the district court of the State of Minnesota, in and for the ninth judicial district.

3. For a third and further answer and defense to said article, respondent says: that he is not guilty of the pretended charge in said article contained, and that he is not guilty of any corrupt conduct in office, or of any misbehavior in office, or of any crime or misdemeanor in office, or of any crime or misdemeanor at all, either as in said article alleged or otherwise.

XVI.

1. For answers to the matters set forth in the sixteenth article respondent protests that the said article is insufficient in law in this: That the facts therein stated do not constitute either corrupt conduct in office, a crime, a misdemeanor or a public offense.

2. For a second and further answer and defense to said article and the pretended charge therein contained, respondent denies each and every allegation, matter, statement, or thing in said article contained, and each and every part, portion and parcel of each, and every such allegation, either in manner or form as therein alleged or otherwise, save and except, that respondent admits, that he was at the time in said article

mentioned, a judge of the district court of the State of Minnesota in an for the ninth judicial district.

3. For a third and further answer and defense to said article, r spondent says, that he is not guilty of the pretended charges in sai article contained, and that he is not guilty of any corrupt conduct i office, or of any misbehavior in office, or of any crime, or misdemeanc in office, or of any crime or misdemeanor at all, either as in said artic alleged or otherwise.

XVII.

1. For answer to the seventeenth article, respondent protests that th same is indefinite and uncertain and does not inform him of the natur and cause of any accusation against him.

2. For a second and further answer to the pretended specifications t said article, served upon respondent on the 6th day of January, A. D 1882, respondent objects and protests against the same and any consid eration of the same, or any of the same for the following reasons:

1st. Because the same are no specifications whatsoever, and are in complete and indefinite, and do not inform the respondent of any accu sations against him with sufficient definiteness to enable him to prepar his defense to the same.

2d. Because the allowance and consideration of the same are in vio lation of the constitutional rights of the respondent, in this:

That the same contains articles of impeachment which the House o Representatives have never considered or adopted.

That the constitution confers upon the House the sole power of im peachment and requires that power to be exercised by a vote of the ma jority of the members elected to that body.

That the power of impeachment cannot be delegated to a Board o Managers.

That this respondent cannot be tried on any articles unless they hav been served upon him twenty days previously to the trial, and that th said pretended specifications were only served on respondent four day before said trial.

That the pretended specifications numbered 1, 2, 3, 4, 5, 6 and 8, wer never presented to the House of Representatives or considered by it, and that the same are based on no evidence whatsoever, adduced either before the said House or before the Board of Managers, and that no evidence whatever has ever been adduced on any of said pretended specifications.

3. For a third and further answer to said article and the pretended specifications thereto, respondent protests, that the said article and said pretended specifications are insufficient in law in this: That the facts therein stated do not constitute either corrupt conduct in office, a crime, a misdemeanor, or a public offense.

4. For a fourth and further answer and defense to said article and the pretended specifications thereto, and the pretended charge or charges therein contained, respondent denies each and every allegation, matter, statement and thing in said article and pretended specifications contained, and each and every part, portion or parcel of each and every such allegation, either in manner or form as therein alleged, or otherwise, save and except that respondent admits that during the years in said article mentioned, respondent was a judge of the district court of the State of Minnesota in and for the ninth judicial district.

5. For a fifth and further answer and defense to said article and the further specifications thereto, respondent says: That he is not guilty of the pretended charges in said article, or in said pretended specifications contained, that he is not guilty of any corrupt conduct in office, or of any misbehavior in office, or of any crime or misdemeanor in office, or of any crime or misdemeanor at all, either as in said article and in said pretended specifications alleged, or otherwise.

XVIII.

1. For answer to the matters set forth in the eighteenth article respondent protests that the same is insufficient in law, that it is indefinite and uncertain, and does not inform him of the nature or cause of any accusation against him, and that the facts therein stated do not constitute either corrupt conduct in office, a crime, a misdemeanor or a public offense.

2. For a second and further answer and defense to said article and the pretended charges therein contained, respondent denies each and every allegation, matter, statement and thing, therein contained, and each and every part, portion and parcel of each and every such allegation, either in manner and form as therein alleged or otherwise, save and except that respondent admits that respondent has, ever since the 11th day of January, A. D. 1878, been and still is a judge of the district court of the State of Minnesota, in and for the ninth judicial district.

3. For a third and further answer and defense to said article, respondent says that he is not guilty of the pretended charge in said article contained, or of any corrupt conduct in office, or of any misbehavior in office, or of any crime or misdemeanor in office, or of any crime or misdemeanor at all, either as in said article alleged or otherwise.

XIX.

1. For answer to the matters set forth in the nineteenth article, respondent protests that the said article is insufficient in law in this: That the facts therein stated do not constitute either corrupt conduct in office, a crime, a misdemeanor or a public offense.

2. For a second and further answer to said article and the pretended charge therein contained, respondent denies each and every allegation, matter, statement or thing in said article contained, and each and every part, portion and parcel of each and every such allegation, either in manner and form as therein alleged or otherwise.

3. For a third and further answer and defense to said article respondent says, that he is not guilty of the pretended charge in said article contained; that he is not guilty of any corrupt conduct in office, or of any misbehavior in office, or of any crimes or misdemeanors in office, or of any crimes and misdemeanors at all, either as in said article alleged or otherwise.

XX.

1. For answer to the twentieth article respondent protests that the same is indefinite and uncertain, and does not inform him of the nature or cause of any accusation against him.

2. For a further answer to the pretended specifications to said article served upon the respondent on the 6th day of January, A. D. 1882, re-

spondent objects and protests against the same and any consideration of the same or any of the same for the following reasons:

First. Because the same are no specifications whatsoever, and are incomplete and indefinite, and do not inform the respondent of the nature of any accusations against him with sufficient definiteness to enable him to prepare his defense to the same.

Second, Because the allowance and consideration of the same are in violation of the constitutional rights of respondent in this.

That the same contains articles of impeachment, which the House of Representatives have never considered or adopted.

That the constitution confers upon the House the sole power of impeachment, and requires that power to be exercised by a majority of the members elected to that body.

That the power of impeachment can not be delegated to a board of managers.

That this respondent can not be tried on any articles unless they have been served upon him twenty days previous to his trial, and that the said pretended specifications were only served on respondent four days before said trial.

That the said pretended specifications were never presented to the House of Representatives, or considered by it, and that the same is based on no evidence whatever, adduced either before said House, or before the Board of Managers, and that no evidence whatever has ever been adduced on any of said pretended specifications.

3. For a third and further answer to said article and the preteednd specifications thereto, respondent protests that the said article and said pretended specifications are insucffiient in law in this: That the facts therein stated do not constitute either corrupt conduct in office, a crime, a misdemeanor or a public offense.

4. For a fourth and further answer and defense to said article and pretended specifications thereto and the pretended charge or charges therein contained, respondent denies each and every allegation, matter, statement, and thing therein contained, and each and every part, portion and parcel of each and every such allegation, either in manner or form as therein alleged, or otherwise.

5. For a fifth and further answer and defense to said article and the and the pretended specifications thereto, respondent says that he is not guilty of the pretended charges in said article, or in said pretended specifications contained. That he is not guilty of any corrupt conduct in office, or of any misbehavior in office, of any crimes, or misdemeanors in office, or of any crimes or misdemeanors at all, either as in said article or in said pretended specifications alleged or otherwise.

Respondent respectfully objects to the jurisdiction of this court either of respondent's person, or of the subject matter of this proceeding, and protests that this court has no jurisdiction, authority, or right whatsoever, to proceed with the trial of this respondent or to make, announce or enter any order or judgment in this proceeding; for the reason that the Senate of the State of Minnesota, pursuant to a joint resolution by the Senate and House of Representatives therefore duly adopted, did on the 19th day of November, A. D. 1881, adjourn *sine die*, and that the same has never since said time been lawfully or otherwise convened, and that by said adjournment, the Senate of the State of Minnesota and this court became and ever since has been *functus officio*, and has no legal existence whatsoever.

The respondent prays judgment that he be acquitted of all corrupt conduct in office, or crimes and misdemeanors, charged against him in and by said articles of impeachment.

E. ST. JULIEN COX,
Respondent.

J. B. BRISBIN,
LORENZO ALLIS,
WALTER H. SANBORN,
C. K. DAVIS,
JNO. W. ARCTANDER,
Counsel for Respondent.

The PRESIDENT. Are there any motions to be made at this time upon the part of the respondent?

Mr. ARCTANDER. Mr. President, I ask that an application by counsel for respondent be read by the clerk.

The PRESIDENT. The following application made by the counsel for the respondent will be read by the clerk:

The CLERK. And now comes the respondent, and most respectfully makes application to the court, that the court take some action by which it recede from rule 16, so far as limiting the number of witnesses for the defense is concerned, either by amending said rule, or by making an order allowing the respondent to summon and examine before the court such number of witnesses as he shall be advised.

Mr. ARCTANDER. Mr. President, the respondent desires to be heard on that application.

Is it the pleasure of the Senate that we now proceed.

Senator CAMPBELL. I move that the resolution be referred to the committee on rules.

The PRESIDENT. Senator Campbell moves that the resolution just offered be referred to the committee on rules by the counsel for the respondent. What is the pleasure of the Senate?

Senator C. F. BUCK. Mr. President, it seems to me that this is a matter which should be settled at once, and I do not know that the committee on rules can do anything which the Senate cannot as well do. The resolution is an important one, and if any change is to be made in the present rule it should be made at once in order to give the respondent an apportunity to summon whom he may desire. It seems to me that the question ought to be settled by the Senate, and settled very soon.

Senator CROOKS. I would ask that the resolution of respondent be read again for the information of Senators who were not able to hear it.

The PRESIDENT. Senator Crooks moves that the request of counsel for the respondent be read again.

The Clerk again read the resolution.

Senator CAMPBELL. Mr. President, my idea was that by referring this application to the committee on rules the committee might hear from respondent's counsel and suggest such modification of the rule, if a modification is necessary, as would be agreeable to them. That simply, was my idea. I have no personal wishes in the matter, but believe that the committee can more readily arrive at what may be necessary and proper than can the entire Senate.

Mr. ARCTANDER. I do not know that the President understood me. The counsel for the respondent desired to be heard before the Senate upon this application, and I inquired whether the Senate desired to hear us now or after the adjournment.

The PRESIDENT. The chair did not understand the request of coun sel. The Senate will doubtless be willing to hear counsel at any time upon that question. It will be so considered, at least if there is no ob jection.

Senator C. F. BUCK. Mr. President, I would suggest that the cour take a recess until two or half past two o'clock, and then listen to wha the counsel for the respondent has to say on the subject.

The PRESIDENT. Does the Senator make a motion to that effect?

Senator C. F. BUCK. Yes, sir. I move that we take a recess till hal past two o'clock.

The motion of Senator Buck that the Senate take a recess until hal past two, was carried.

AFTERNOON SDSSION.

The Senate convened at 2:30 P. M.

The PRESIDENT:—The Senate will please come to order.

The court is now ready to proceed with the business before them.

Mr. ARCTANDER. Mr President: I beg leave to state that the argu ment on this application had by counsel been assigned to my learned associate, Mr. Brisbin, but on Saturday he was suddenly called away to Milwaukee, and does not expect to return before to-morrow morning and I certainly regret that he cannot be here, as I have no doubt that he would be able in a great deal better manner than I can do it, to lay these important matters, as it seems to us and the respondent, before the court.

I need not state that it is with a great deal of diffidence I approach this subject, because it is a somewhat delicate matter. This rule that we now attempt to attack is the handiwork of the Senate and the court itself, and we all know that there is a great temptation in man to con sider that he can do no wrong, and whenever his handiwork is attacked, his feelings and his mind rebel against the attack. When even the Ruler of the universe could not abstain after He had created the heavens and the earth from exclaiming that "it was very well done indeed," it is probably not improper to suppose that Senators, who are no more than mortals, entertain the same feelings, and that you will consider us rather as usurpers when we come before you and ask you to take back anything you have done yourselves.

Another reason why we come to the argument of this application with a great deal of diffidence is, that we know that the motives of the Senate, or this court, in adopting that rule are motives that ought to be honor ed, that we do honor, and that we ought all to cherish, for they were motives of public economy. We see the danger that a possible expense may be brought upon the State by this our application—we see that Senators only with great hesitancy will admit the proposition and the stand we take upon this application, and we think it is reasonable that it should be so; but we also consider—and I think that the court will also consider—that a matter of expense, although it is an item—and a great item probably—must disappear when we consider the importance of this subject and of these proceedings. The importance to the State and the importance to this respondent—the importance that this respon dent shall not be judged unheard or cramped in his defense. But we have such confidence in the integrity and impartiality of the Senators, that, if we can show to them that this rule works an injustice towards this respondent—that it is against all known precedents, that it

is contrary to our constitutional rights, that the Senate and this court will not for one moment hesitate, but will say, "we will give you a full and a fair hearing."

We claim, in the first instance, that the rule is prejudicial to our rights, because we have not, heretofore, been put upon an equal footing with the state. The State has had its sifting process under oath; it has examined the witnesses; it is well versed with the facts, with the charges, with the testimony, by which they can establish these charges, while we have been excluded from that hearing—while we have been denied the privilege of hearing and cross-examining the witnesses adduced before the House of Representatives, or of producing witnesses, that might entirely dispel and disprove any charge against us. In that respect the State has had a great advantage over the respondent.

It has, further, as appears from the testimony, already taken before the House of Representatives, another advantage.

It appears that the State has been able to secure the services of circuit riders, as witnesses, men who have traveled from court to court, and have attended the terms constantly, you might say, so they need only to call, in most of the charges, but these five men, who can all swear to the state of affairs in that court according to the view they take of it from the beginning to the end of the term of the court, while we are necessarily compelled to bring before you, to disprove anything that may be brought before this court,—necessarily compelled to bring in men who have attended only part of a term or a day, one set of men one day, another set of men another day and so on through the term; we are compelled to bring before you grand jurors, who at certain times have been in their grand jury room and cannot testify to the state of affairs in court at that particular time; we are obliged at that particular time to bring in before you petit jurors who were at that time in court, and *vice versa*. You can therefore see at a moment's thought what injustice it would be to limit us as to the number of witnesses when we have not had our choice and pick, as the State has of bringing men here who have attended steadily extending through whole terms.

I say without fear of contradiction, that the testimony adduced before the House of Representatives shows that this is the character of their evidence, and you can therefore see that as we are charged with intemperance,—with intoxication during whole terms of court—extending for a period of from eight days to twenty days, that the State may come in here and swamp us with witnesses under that rule. We are only left the privilege of calling men, (honest men it is true) who were present only at times, and who were not attending upon the court constantly.

We have to meet the different dates and the different occasions at which they claim the respondent was in an intoxicated condition during each term, and have to show by different witnesses, his condition on the different occasions and different dates at every term of court.

Another point is this: that while we are charged here with being in a state of intoxication, during whole terms of court, as stated before, yet I apprehend that it will not be claimed, nor will the State attempt to show anything but isolated instances during those terms of court. The State has its witnesses selected. They know what their testimony will be; they have had their witnesses before them, and they know with what witnesses to prove each of these isolated instances during every term of court. While we have no knowledge, except that which is conferred upon us by the articles of impeachment, namely; that between such and

such dates, we were in a state of intoxication while in the discharge of our official duties. Now then, we are tied up at this table, from this day and until the close of this trial. We cannot after this trial has commenced, the respondent certainly cannot, his counsel cannot, in justice to their client go around to the counties at which these different terms were held, to find witnesses for the dates or for the isolated occasions the State shall rely upon and prove before you. We cannot, then go and hunt up the testimony. You will not give us the time, and most certainy you will not wait here for us to go away and do it.

Another consideration is this:—The subject matter of this investigation must necessarily be limited, so far as evidence is concerned, to opinion. Whether a man is intoxicated or not is a matter of opinion, and opinions upon that subject, as you, senators, know, certainly differ to great extent. Some men will be of opinion that a man is drunk when they can smell liquor from his breath. Other men will believe that a man is not drunk as long as he can walk, and all there is to it, is that these men can come before you and say that they believe, that in their *opinion*, the respondent on a certain given occasion was drunk, or was sober. But I say that it is unfair, under such circumstances, when the subject matter rests entirely, as you may say, on the opinion of witnesses it is unfair for you to say that the State may prove by five experts, or by five men, their opinion as to the condition of the respondent at a given time and that he can only disprove it by the opinion of five other witnesses and no more. You will have five opinions against five opinions, and then you will decide. It is not fair, it is not doing justice to this respondent, I claim under the peculiar circumstances of this case to limit him to five witnesses.

Another thing is that our witnesses, as I have said before, have not been subjected to a sifting process under oath; we know not what they will swear to, at least not with certainty. They may "go back" upon us. One or more of the witnesses we shall call may do so. Now you limit us to five witnesses; two of the witnesses may go back on us. The State knows what their witnesses will swear to; they have already had them under oath and they know what their testimony will be. They cannot be deceived by them. There is no danger as to their witnesses. The State stands there with their five witnesses; two of our witnesses go back upon us and swear not to what we expected to prove by them, and we are hundreds and hundreds of miles away from the place where we can get others. Are you going to wait for us to send for such other witnesses, perchance towards the close of this trial? Are you going to adjourn this court and let us send for others in their place? You would say: It is too late now to apply for other witnesses. The fact is, gentlemen, we can not expect such a leniency. We must be assured now that we stand on solid ground.

Another thing is this: it is proper for the prosecution to show the simple fact—if they can do it—that the respondent at a certain time was intoxicated. That is a positive fact. We on the other hand have thrown upon us the burden of showing a negative; that he was not intoxicated. It has always been held in law, if not impossible to prove a negative fact at least very difficult,—a feat surrounded by great difficulties. When we are in that position, a position in which we are called upon to prove a negative fact, a great deal more difficult position than the one prosecution hold, will you say that we under these circumstances shall stand on the same and on equal footing with the prosecu-

tion. I believe not. To make out this negative fact of the respondent not being intoxicated, as he is charged to have been, it becomes necessary, among other things, to show by links and circumstances that it was impossible that such a state of affairs could exist; that it was impossible that he could be drunk, and that fact we must show of course by other witnesses—in many instances—than those by which we can prove that he was in a perfectly sober condition when on the bench. We intend in one or two instances, at least, to follow up the respondent and show you that when he left a certain place he was perfectly sober; that when on his travels to the term of court he stopped at a certain place and we will show what he did; if he drank anything, who his companions were and that he was perfectly sober when he left the place. We intend to follow it up by showing that when he arrived where he was to hold court perfectly sober and before he went into court. All of those circumstances we are entitled to show to you if they are true and they are entitled to weight, and more weight than simple opinions as to whether he was drunk or sober when upon the bench; they tend to establish the impossibility of the theory of the prosecution, and we are entitled to show it, if you limit us to five witnesses, the same number as the prosecution in what position are we? They prove by five men absolutely, probably, proved that the respondent was intoxicated at a certain time. We consider it necessary and better evidence to bring in before you the circumstantial evidence, the circumstances and links, which establish the impossibility of that fact and we may need five or six witnesses to that fact; then we shall be excluded from proving his condition upon the bench at the particular time because we had exhausted our number in proving the surrounding circumstances. It would not be fair, it would not be just and I do not believe that this Senate will be a party to such an injustice.

Another privilege which always is granted to a defendant in a criminal case, is that of impeaching the witnesses adduced by the prosecution. We shall claim that right in this case. We shall claim that we are entitled to it as part of our defense. There are different ways in which you can impeach a witness, and we shall probably resort to one or more of them. You may show that a witness at other times and under other circumstances has made different statements than those he makes upon the stand; it is absolutely necessary for us, for you, to test the sincerity and honesty of the witnesses, that we should be allowed to show the fact if they have made other different and inconsistent statements at other times, out of court. It will be proper for us to show that any of the witnesses who testify against this respondent are actuated by malice and ill will, and if that question is asked them on the stand, my experience as an attorney teaches me, and I think the experience of every attorney in this Senate is, that as a general rule, they will deny it. Then the burden is upon the defendant to show that there really is a state of ill-feeling or malice towards the defendant existing, and you may show this in numerous ways, among others, by showing threats made against the defendant, and that is what we intend to do in one or two instances in this case. But your rule limiting us to five witnesses excludes that kind of testimony, for it is not probable that the men who were present in court and who will come in on our side and when they are sworn testify that the respondent was not intoxicated in court; it is not probable, say that they should be the same, men who had heard the threats made at other times and occasions, or that they should happen to be the same men who had heard other state-

ments made by witnesses for the State. Your rule as it stands, virtuall entirely excludes us from this class of evidence, from a privilege th we are entitled to, and which we claim.

If we are bound by that rule, we must meet the prosecution upo their own battle ground with our five witnesses against their five prove the fact or non fact of intoxication upon the bench, and we a excluded, because you will allow us no more witnesses, from impeac ing in any form, shape or manner, the witnesses for the prosecution, c any of them. That is a privilege that you have no right, I claim, to d prive us of; it is a privilege that any defendant has, and he should ha it to the fullest extent.

I now desire to call your attention to one particular article, viz: Th 18th, the one that charges habitual drunkenness, and on that partic larly show you the injustice there is in this rule. Now I take it f granted that the law is well established on this point, that the questio of habitual drunkenness is a question of law for the court and not question of fact to be testified to, and that you can only show the fac that go to show the legal conclusion that a man is an habitual drunkar

Now it would be proper, I take it, in such a case, for the prosecutio to show that the respondent has at several and sundry times, or all th time if they can do it, been drunk and under the influence of liquo You see the privilege that the prosecution will have under this rule law. They have their pick and choice of witnesses and they are the a tacking party. They may choose five men, who will come before yo and swear that they have seen defendant drunk twenty, thirty, fifty, one hundred times in the year; parties who may have been right wit him or claim that they have. They come in here and may swear to th truth and they may also swear to a falsehood. What they say may b false altogether although true as to the terms. If it is not it woul be our desire to show that the defendant was not drunk at thes particular times, that this one witness has sworn to those forty, fifty, or on hundred times. Now, in what position are we? Are we liable to find fiv men who have all or any of them been at all of these places all these times with the respondent. We must go around and find som witnesses for one occasion, other witnesses for another occasion, and s forth for a third, a fourth, a fifth, a tenth a fiftieth occasion.

Again, the prosecution has the power of attacking, they have th power of leading the battle in whatever direction they see fit; the choose their own battle ground; we must follow where they lead. The can find men that under the circumstances can perjuriously corner u in such a way under this rule as it now stands that there is no avenue escape for us and certainly this senate cannot intend that it should b so done.

I think I have succeeded in showing the Senate that our rights woul be seriously prejudiced by maintaining this rule as it stands now. dare say that if it is left to our discretion to say how many witnesses w shall bring, I dare say, that no witness will be called here by us unles we consider him essentially material and important to our defense. An I think I can pledge our honors as counsel, that no witness shall, unne cessarily be dragged down here, and that we shall use our judgment t the best of our ability as to the necessity. And I desire to say that o some of these articles it is probable that only two, three, or four witnes es may be introduced for the defense—where there are no more needed or where we have been cornered by our enemies when no one else wa

present. But we claim the privilege on other articles to introduce an array of proof which will so conclusively establish the falsehood of the latter charges and the falsehood of those men who have testified to them that it will react upon those instances where our enemies think they have cornered us and have us where we have no witnesses to bring in, because there was nobody there, except our traducers who have sought long our death and destruction. We ask the privilege, I say, on occasions where we can prove by a number of witnesses the falsehood of these charges, and of these very men,—we ask the privilege, I say, of introducing witnesses to such an extent that it may re-act in these instances where we are left at the mercy of our traducers, and I think that we have a right to ask that much from this Senate.

Now, so far as precedents are concerned I say this, Senators, without fear of contradiction, that you may investigate from the bloodstained times of Lancaster and York down to the present time, and you will not find an impeachment trial in England or America where the number of witnesses allowed to the respondent has been limited by any number whatsoever.

I will call your attention to the first case of impeachment that was tried in the United States, the one of Judge Pickering. That was a case in which the defendant did not come to trial, but before the summons was served upon him the following resolution was passed by the Senate. I refer to the record of his trial in the annals of congress of the years 1803–4, page 326 :

> Resolved, That the Secretary of tho Senate do issue twelve subpoenas for witnesses in the above form for the issue of the said Pickering, with blanks therein for such witnesses as he, the said Pickering, may think proper to summon; which subpoenas shall be delivered by the Sergeant-at-Arms to him, at the time he shall serve the summons aforesaid upon the said Pickering.

Mark the words !

> "With blanks therein for such witnesses as he, the said Pickering, *may think proper* to summon."

Leaving it entirely to his discretion how many to call.

The next case that came up was the case of Judge Chase, and I read the rule adopted by the United States Senate from Benton's abridgement of Debates of Congress, 3. volume, page 176.

> Rule 5. Subpoenas shall be issued by the Secretary of the Senate upon the application of the managers of the impeachment, or of the party impeached or his counsel, in the following form: And there is no limitation whatsoever as to number.

I have studied up this subject. I have examined every case and find that there is no rule of limitation anywhere. This rule 5, here, goes through every impeachment trial, and no limitation whatsoever is made as to the number of witnesses in any of them. The same was the rule in the trial of Judge Tech, page 57. I will not take up the time of the Senate by reading it, but I leave it here so that the managers can examine it. The same rule is to be found in the 1st volume of Edmond's trial, Michigan, page 23, and also in Dorn's impeachment trial, New York; page 15 ; also in Smith's impeachment trial, New York, page 5 ; in McCami's trial, New York, page 11 ; in Curtiss' trial, New York, page 4 ; in Trindle's trial,

New York, 1st volume, page 58; in Barnard's trial, New York, 1st volume, page 70; in Andrew Johnson's trial, 1st volume, page 15; in Hubbell's trial, in Wisconsin, page 5.

And the same rule we find in Judge Page's case in this State. I will not take up the time of the Senate in reading these different authorities, because it is, beyond peradventure, a well settled rule of proceedure, not only in the United States, but in England, that the defendant can never be trammeled in his defense,—can never be cramped,—and in the number of witnesses he sees fit to introduce, can never be limited.

I will call the attention of the Senate to the fact that in Judge Chase's case for instance, as appears from the report of the trial, there was sworn for the prosecution, twenty-four witnesses; and for the defendant, forty witnesses, about a double number.

I last come to the point that I consider of the greatest importance that this rule, so far as it limits the number of witnesses for the defense is an infringement on the constitutional rights of this respondent.

Before I go into that, I desire to call the attention of the Senate, (I do not know whether it is necessary or not), to the danger in cases of this kind to depart from the rule laid down by the precedents. A departure from precedents I apprehend has been healthy and good when it goes in a proper direction.

A limitation of the number of witnesses on the part of the State, I do consider an improvement upon the old rule—it is a departure from the precedent which is in the right direction, because limiting the number of witnesses, on the part of the prosecution necessarily, of itself, limits the number of witnesses upon the part of the defense, without tresspassing on the defendant's rights. If the prosecution has leave to introduce ten or fifteen witnesses it would be our desire, of course, to introduce thirty if we could. If they are limited to only five there is only that number to controvert and it is not probable or reasonable to suppose that we will take up the time of this Senate with what we deem simply cumulative evidence. For I can assure the Senate that none here are so anxious to go home, and get away from this trial as the counsel for this respondent are, at least I can speak for myself, leaving at home as I do, an extensive law practice, requiring constant attention, to attend for days and weeks on this court—but a departure in the direction that this rule goes, a departure from the precedents, limiting the number of witnesses for defendant is a departure in a dangerous direction and one which is going to prove pernicious and dangerous, sometime, in this State, if it is insisted upon.

I say that not only is this rule against precedent, "Senators, but it is also against the rights guaranteed the defendant and every citizen, be he ever so humble or ever so high by the constitution of our State—guaranteed him whenever he is accused of crime. And it has been settled, I suppose, beyond peradventure by this Senate, that respondent has been accused of crime. The decision on our demurrer settled that matter,

I read from the constitution of this State, from the bill of rights, section 6:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county or district wherein the crime shall have been committed. Which county or district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, 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 in his defense.

"To have compulsory process to obtain witnesses in his favor," not five witnesses, gentlemen, not ten, not the necessary witnesses, but "his witnesses"—witnesses in his favor." If you have a right to limit the number of witnesses as far as defendant is concerned, at all, you have the right to it to any extent whatsoever. I admit that you have the right to do so, so far as the State is concerned, but when you come to limit them upon the part of the defendant, you tread upon holy ground, ground that has been hedged around by the framers of our constitution. If you can limit them to five, to four, you can limit them to one, you can deny the right altogether. The only correct position is, that you have not the right to limit the witnesses upon the part of the defense at all. Where there are the constitutional guarantees. You may say that this applies only to trials in courts in criminal prosecutions there. I say no, gentlemen. If you read the next section of the same bill of rights, you will find that impeachment has been considered part of the criminal prosecution of this State.

SECTION 7. No person shall be held to answer for a criminal offense unless on the presentment or indictment of a grand jury, *except in cases of impeachment.*

I repeat it again: No person shall be held to answer for a criminal offense *unless on the presentment or indictment* of a grand juror, *except in cases of impeachment.*

Does not that clearly show that the answering in the case of an impeachment is an answering for a criminal offense, and that impeachment is a criminal prosecution.

We are within the language, as well as within the spirit of section six of the constitution, which guarantees to us the right of compulsory process for our witnesses and *all* of them, — all that we consider, in fairness and honor, to be necessary.

When we claim, that it is not for the state to say, not for this court to say, but for us alone to determine what witnesses are necessary and who are not.

Why, deserting the ground that the constitution has taken would get us back to the dark ages when the right was refused to a criminal even to introduce witnesses against his accusers. It was a principle of law in England, in the olden times, many years ago, that whatever witnesses the Crown brought forward they could not be opposed by other witnesses upon the part of the defense. The prisoner could not open his mouth, nor introduce witnesses, nor get subpoenas issued for them; nor, if they appeared voluntarily, could they be sworn in his behalf. It was not allowed him to show that he was innocent. Are we drifting back again to the time of the old dark ages? Are we going back of the time of the trial of Warren Hastings, for even at that time, senators, without any constitutional provision, without any thing to defend or protect the rights of a defendant, we find that the Lord Chancellor Thurlow, in address ing Warren Hastings, on his impeachment trial, tells him that he has the right not of mercy, but *the right* to have all the witnesses he desired. I will read you from the address of Lord Chancellor Thurlow as it is quoted in the seventh (7th) volume of the lives of the Lord Chancellors, on page 100. The Lord Chancellor in addressing Warren Hastings says:

Time has been allowed you for preparation proportioned to the intricacies in in which the transactions are involved, and to the remote distances whence your documents may have been searched and required. You will still be allowed bail for the better forwarding of your defense, and whatever you can require will still be yours, witnesses and all things else you may hold necessary. This is not granted you as any indulgence, it is entirely your due: it is the privilege which every British subject has a right to claim, and which may be claimed by every one who is brought before this tribunal.

This is not in consonance, gentlemen, with rule laid down for the proper conduct of this trial. You are going back not only of the constitution, but you are going back of the trial of Warren Hastings, toward the dark ages when it was considered that a defendant had no right that the prosecution was bound to respect; nor had any right to be heard in his defense, by counsel or by witnesses.

I have no doubt that this was done unwittingly. I have no doubt that if this matter had been brought before the Senate at the proper time, this rule would never have been adopted. I have no doubt that you, senators, if your attention had been called to it, would have revolted, mind and soul, at a proposition calculated to so cramp the respondent in his defense.

I intended to read a citation in regard to the danger of excluding testimony which was cited in the Sherman Page case, by the learned manager, Mr. Gilman, from Appleton, on evidence, stating, almost, that it is a crime in any judicial investigation to crowd out any evidence that can tend to shed light on the subject matter; but I do not think it is necessary to take up the time of the Senate.

The same learned manager in that case, in his closing argument, made the remark that impeachment trials were like angels visits, they were few and far between; and I say, Senators, if that be so, for heaven's sake let us treat them like angels, treat them decently. It may be said and argued that this rule only applies to the pay of witnesses and that no more can get paid. I take it, if you read the language of the rule you will see that that is not the import of it, but the question in and by that rule decided, is that no more than five (5) witnesses will be heard on either side. I read the rule: "The number of witnesses permitted by the court shall be five upon the part of the prosecution, and a like number upon the part of the defense to each article of impeachment, unless otherwise ordered by the court," there is no question about the fact. The court will permit no more than that number to come, unless this rule is modified; but even if it were only a matter of pay, I take it for granted that it would be too small a matter for the State of Minnesota—it would be too narrow a garb for it to clothe itself in,—if it should stand upon its dignity and allow these poor grasshopper farmers up in that district to be called down here as witnesses and not to pay them for their time and attendance, and for traveling and other expenses, but that they should have to pay them themselves. And pay their own expenses down here while in attendance to throw light upon this subject, thus benefiting the respondent and benefiting the State.

I think there is an additional reason, and it is that this rule is establishing a precedent which will have to be followed, for it is one which, if established in this trial, will appear as a spectre in every impeachment trial we shall hereafter have, (and it seems that they are not like "angel's visits" any more, but that they come quite frequently,—more frequently than we could wish.) Remember gentlemen, that in every

one of these trials coming hereafter, this rule will stand as a precedent, that the Senate has a right to limit the number of witnesses; if you do not by your action to-day, go back upon it as far as the right of the respondent is concerned. And I simply place before you the danger of such a precedent in politically perturbed times hereafter, when political feelings run high, when a political opponent is to be crushed; how such a precedent may be made use of! How on strength of this rule a defendant may be refused more than one witness, or even refused to be heard by any other witness than himself; and I say, that there is danger ahead. It is not only then to this respondent that there is danger, but to those that come afterwards, and I take it that in this case there are particular circumstances why the Senate should not be over anxious to make any precedents of this kind. I refer to the fact that the respondent in this case has a different political faith, and is well known to have a different political faith from the majority of the Senate, and I say that for that reason, if for no other, the Senate should be over careful in all its acts in this trial, that it shall not be said hereafter, that rights were refused this respondent on account of his politics, that no reproaches shall ever be cast on our party, for its actions herein, and that no shadow of reason for such reproach shall be afforded our political opponents; that it shall not be said hereafter that respondent was convicted because he was not allowed to prove himself innocent for I know he can do it. I know he can crush the prosecution if he is allowed to produce his proof. The prosecution has tried its case in the newspapers thus far. We come now before you, where *they* have to try this case on equal terms with us, and where we promise to crush them, if we are allowed so to do—if we are not to be cramped in our defense, But if we should be cramped, if we should not be allowed to bring the proof before you that is at our disposal and within our reach, posterity will say, (and will have some ground to say) " This man was unjustly convicted." And aspersions may be cast upon our party, upon the men who compose it, upon the republicans who compose the majority of this Senate which are never desirable, aud certainly be avoided.

Gentlemen of the Senate, we beg you that in this matter you will let all veils of partizan and other prejudices which may cloud your vision of justice fall.

We beseech of you that you let no scruples fostered by a praiseworthy but in this matter certainly pernicious anxiety for public economy narrow the horizn of your judicial vision, lest you might unwittingly commit a great act of injustice toward this respondent.

We implore of you that you let the toga of the legislator and the politician fall and that you rise to your duty in that pure and unsullied ermine of the judiciary, that as fair and unbiased judges you grant us a full, a fair, and an untrammelled hearing before the bar of this Senate; that you mete out to us justice, in the words of the constitution "freely, and without purchase."

Nay, we *demand* at your hands, we demand from your consciences, and from your high sense of justice, our constitutional rights. We demand a full and untrammeled hearing in our defense before you; we demand that you deny us not the rights which you, as legislators, with unstained hands have always granted to the lowliest and the meanest felon in the land, to the pariahs and ghouls of society, the rights which your courts every day in the year,—*with your sanction*, mind you—grant and extend to the murderer who comes into the temple of justice his hands reeking

with the blood of his slain victim,—to the cowardly burglar who, under cover of darkness and night, breaks into your dwelling and absconds with your earnings,—to the abominable and dastardly wrecker of female chastity and virtue,—to the sneak thief who steals your pocket book—nay to every petty offender liable to a five dollar fine, the right of being heard fully and fairly in one's defense. We demand, that this sacred right shall not be withheld from this respondent who, raised by the confidence of his fellow citizens to the very pinnacle of every true lawyer's ambition stands before you to-day, on trial, not it is true for his life, nor for his liberty, but for that which to every true man is dearer than life, for his honor and for that without which liberty is not worth having—for his civic existence.

Senators, if this respondent must be crushed, if it is written in the indomitable books of fate, in your hearts, and in your minds, that his future as a citizen of this grand commonwealth shall forever and ever more be blasted if the blood of his progeny shall for ages and ages be corrupted and attainted, let it at least be done in a decent manner, — let it at least be done, with the semblance of fairness, and justice. If not for his sake, at least for your own, for the sake of the honor and dignity of this Senate, — for the sake of the fair name of the State and of a free government, for the sake of the generations to come hereafter, that they may not need to turn with a blushing cheek from the leaf in the history of Minnesota which has written upon it such a cruel act of injustice committed by their ancestors.

If I have allowed myself to be drawn away in this matter, if I have exceeded the bounds of propriety, — if I have said things I ought not to have said that might wound any one's feelings, I ask your pardon; I certainly meant no disrespect to this Senate. I have full confidence in the fairness and the integrity and the sound judgment of the Senate on the matter, — that Senators will see that they have done us injustice. My excuse, if I have unwillingly traveled over the line, must be the zeal not only of the advocate but also of the warm personal friend. My warm friendship for the respondent must speak for me, and wring from you your pardon for aught I may have said offensive to this Senate.

I feel in my heart that this point is the turning point in this case; that here is the point upon which this case hinges. If you shut us out here if you deprive us of our constitutional right, if you say to us: "You shall not prove yourself innocent except by a limited number of witnesses," then I say, gentlemen, we might just as well submit to judgment to-day, without any further hearing. If upon the other hand, from the fullness of your hearts, from your sense of justice, you are willing to say that this rule shall not stand, and that the defense shall not be hampered in its course of defense, then I feel that the day will come when this respondent will walk out of this court room a vindicated man, when the slanders that have been heaped upon him, and the malicious charges which have been broad-cast over this State by newspapers and private enemies will hover no more around him, when the tongue of the slanderer and traducer will be silenced and hushed for ever and ever.

Mr. Manager COLLINS. Mr. President and Senators, the Senate will bear in mind that at the time of the adoption of this rule there was nothing said. I think, I will say nothing, at least very little, by the managers, concerning it. It is a matter that we felt and now feel particularly within the discretion of the court,—a matter that should be settled and I differ somewhat with the learned counsel for the respondent her

when he says that this rule has been adopted without any thought, it is a rule, as I understand, that was adopted upon the suggestion of the committee, and it was certainly adopted and modified after quite an argument here in the Senate, an argument, that as I said, the managers took no part in, because they did regard it as a matter that should particularly interest them. They desire that this respondent shall have a fair trial. It is the very earnest wish,—the earnest wich of every one of the managers, and I presume their wish upon the matter is just as earnest as any of the Senators here,—that this respondent should have a fair and impartial trial, and if he can prove himself innocent of these charges he shall be vindicated by this court. It certainly is my desire, and I have no doubt the desire of every one of the board of managers, that such should be the result,—that whatever may transpire here and that whatever may be the ultimate result that it can certainly can be said he has had a fair and impartial trial, and I think that the learned counsel has wasted a great deal of unnecessary time and eloquence, because, as I construe this rule, it is a matter that, in whatever way it may be treated, never can result in any way but in fair play to the respondent. Let us look at it for a moment:

"The number of witnesses permitted by the court shall be five on the part of the prosecution and a like number on the part of the defense, *unless otherwise ordered* by the court."

I apprehend that if at any time during the trial, it should seem that this rule is unfair in any particular, that it will be modified by the court for the benefit of this respondent as well as for the benefit of the people of the State, should it become necessary, and that is a matter that will be wholly within your discretion. This is a matter wholly within your discretion, and it is that every member of this court will treat fairly and do it exact justice. And if at any time during the progress of this trial a dozen witnesses or even fifty may be necessary upon any particu- point, that this court will freely and fully grant that permission to the respondent or to the State as I have said for that purpose.

Senator CROOKS. I would ask the counsel for the state a question: Would it not amount to about this: that if at any particular time during the examination upon any one of the articles of impeachment, the respondent needed certain witnesses, it would not be necessary to delay a sufficient length of time to procure their attendance? Now having been served (as they have been) with these articles of impeachment, and with the specifications under the general charges—their answer to-day having been filed—do you not think it would lead to a saving of time and to what we are to arrive at,—the ends of justice—to let that rule be rescinded? If they stand by this rule up to the very moment they want their witnesses, they cannot get them without great delay to the Senate.

Mr Manager COLLINS. If I am called upon for an opinion in reference to the matter, I am very free to say that I am decidedly of the opinion that there would be no difficulty whatever; I am decidedly of the opinion that if at any time it should be necessary to increase the number of witnesses, or to change this rule, that they could be very easily brought here. And I can illustrate it in this way: the counsel has suggested that possibly the respondent may desire to impeach some of the witnesses upon the part of the prosecution. Now I can say in return that it is very possible that the state will desire to impeach some of the witnesses upon the part of the respondent. And I cannot see any difference,—if we do so desire, we shall have plenty of time to bring them

here—this rule works both ways. I mean it is just as hard on the state as it is upon the respondent. I say that if at any time during the progress of this trial, the state or the managers desire more witnesses, that we shall not hesitate to ask for them, and we are abundantly satisfied that there will be plenty of time to get them here. I am very decidedly of that opinion. Suppose, for instance, in the opening of this case, upon the part of the prosecution, in the examination of witnesses there is one whom they desire to impeach; now, this rule as to the impeachment of a witness has been stated by the counsel for the respondent and it has been stated correctly. A witness may be impeached in several different ways. The two principal ways in which he may be impeached is, first, by showing that he has made other and different statements than those he has made in court. Now, of course if a witness should be placed in that position it would be very easy, the moment the witness leaves the stand or during the progress of the case, to bring the witnesses with whom you desire to impeach him. Again, a witness may be impeached by showing he is untruthful.

Now there is nothing to prevent (and I apprehend this case will last long enough) in case a witness is put upon the stand by either party, the other party will have plenty of time to get witnesses here to impeach him. It seems to me that there could be no delay that could cut any figure in this matter. Now, so far as this rule is concerned, I desire to say here that we are not at all particular what the rule is. As we stated when consulted at the time of the adoption of this rule we are not at all particular so long as it is an equal and fair rule: but we are not prepared to agree with the counsel who contends that we, upon the part of the State, should be confined to five witnesses, while they may be allowed for certain reasons which he gives,—reasons which I think are of very little importance and consequence,—to have more. Now the constitutional provision the gentleman speaks of,—and he has made several eloquent allusions here,—the constitutional provision he speaks of here is this, and it applies to all criminals: He shall be "confronted with the witnesses against him," he shall be "entitled to have compulsory process for obtaining witnesses in his favor." Now that means simply this that the process of the court is put in his hands; he may subpoena just as many witnesses as he pleases, just as they can in this case, but there is no constitutional provision that requires the defendants witnesses to be paid. It is always a matter to be decided by a court, in the discretion of the court, and I apprehend that in all cases where the defense is concerned and the State imposed upon by an immense crowd of witnesses, that the court exercises its discretion and says who shall and who shall not be paid. And, gentlemen, I might as well state as a matter of fact that in very few criminal cases are the defendant's witnesses paid.

Now I desire to call the attention of this body to one or two points which have been made by the counsel. I call the attention of the Senate to the fact that before these articles of impeachment, or soon after these articles of impeachment where presented to the Senate, a copy of this testimony was furnished to the respondent at the expense of the State. the house of Representatives voting unanimously to do so. Now they have had their testimony before them. They are certainly prepared to tell what wittnesses they would need here and I can say gentlemen I believe that at the end of this trial it will be seen that not one of these witnesses examined before that committee will have been impeached or will be attempted to be impeached; and, so far as that

is concerned, they have been fully advised of the matter and know precisely what these witnesses will testify to. And so far as these witnesses are concerned the argument of counsel that they were at sea while we were fully prepared as any member of the Board of Managers, they are prepared as fully as we are, they have had the same opportunities, they have read the testimony and know as much about it. I apprehend that it is hardly to be expected if they have inquired into the matter and examined it as I presume they have.

Now so far as this charge of habitual drunkenness is concerned, unless there be a great deal of truth about it that twenty or thirty witnesses, as suggested by the counsel for the respondent will come in here and testify to acts of drunkenness on the part of this respondent I apprehend that they will need more. And I apprehend that if twenty or thirty witnesses do come in here and testify to that state of facts, it will require quite as many negative witnesses to convince this court that it is not true; amounting in the aggregate to over two hundred witnesses. But the court will remember that we have here something over twenty (20) charges, that there are five witnesses subpoenaed upon each side upon the general charge to over two hundred witnesses, five witnesses you may say upon each one of these specifications. Now these witnesses will all be witnesses undoubtedly upon this general charge of habitual drunkenness. If they are not then it is useless for us to attempt to introduce any more, and this will be equally true with the witnesses for the respondent. They will be witnesses of precisely the same nature, and their testimony, so far as it goes, will contradict the testimony upon the part of the prosecution.

Now, there is no disposition on the part of the managers and we want it distinctly understood, to in any way confine them so far as the number of witnesses is concerned, if we are allowed the privilege of producing the same number or witnesses. That is all we desire; and the motion that was made by Senator Campbell was one that occurred to the managers as being precisely what they desire,—a motion to refer this to the Committee on Rules, who might examine the matter and see as to the necessity for a change, but I am inclined to the opinion that there is no necessity of anything of this sort, and that by the time we get through with this testimony, and by the time we examine one hundred witnesses upon each side, that we shall have arrived at the truth in this case. And if the managers have no case here that they will *feel inclined to drop* the matter there. I apprehend that by the time the Senate has got through with two hundred witnesses they will know as much as if we had examined four hundred, as to the real merits of this case.

I do not know that I have anything to say in regard to the political matter that has been mentioned here. I apprehend that there is no danger, and that it is not necessary to caution the Senate upon its behavior, so far as its political standing is concerned. I apprehend that politics have nothing to do with this case. I know they have not, as far as the Board of Managers is concerned, and I do not believe there is a Senator upon this floor who will let his feelings be influenced a particle by any political matter. And I do not therefore think it necessary for me to reply to that suggestion of the counsel. I think counsel will feel upon reflection, that it was unworthy of him to make such a suggestion.

I will leave the entire matter with the Senate by simply saying that we desire a full and impartial trial, and if it is necessary to give the re-

spondent upon this trial, a hundred witnesses upon each article, giv it to him ; but do not give him that number, and only allow us five.

Mr. ARCTANDER. Mr. President, I desire to make a few remarks in re ply to the honorable manager. I think I need not refer to the argu ment made by the honorable manager that we could apply for thi order at any subsequent time, when it might appear necessary, becaus Senator Crooks, in my opinion, has so conclusively answered that pro position by the question he put to the learned manager, Mr. Collins. Le me remark, right here, that the Senate can readily see that that woul be rather late in the day to ask for such in indulgence. The learne manager says that we could get additional witnesses here, and that i would be very easy for us to get them here without any delay, when ever we could show that they were needed. I now call the attention o the Senate to the fact that most of these charges and specifications ar laid in out of the way places, that cannot be reached by railroad even in less than two days, as for instance, at Marshall, in Lyon county, a Tyler, in Lincoln county, and Redwood Falls, in Redwood county Some of the places cannot be reached by rail, at all; for instance, Beave Falls, in Renville county; others can be reached only in the course o several days. Now how would we get those witnesses here in time?

Would it not be a great deal more expensive for the Senate to sit and wait here for those witnesses to be sent for, and would it not cost th Senate a great deal more to keep this court waiting for a week with forty-one Senators, and seven managers, and other officers to be paid high salaries than the few paltry dollars it would cost to have those additional witnesses here from the start! thus saving the necessity o waiting for their appearance. I say, without fear of contradiction, that in some instances it would be absolutely impossible to get them here after we had started in on our defense.

As to the point which the learned manager made, that there was nothing in the constitution about the pay of witnesses, I did not make any such claim. I do not claim that these witnesses have any constitutional right to be paid by the Senate, and it was not upon the pay question that I addressed the Senate. It was upon our constituional right to have our witnesses here, for that rule is not in regard to the pay, it is limiting us as to the number of witnesses we can introduce at the bar of the Senate. The counsel says that we are on an equal footing with the State, becausewe know what the testimony as taken before the committee is, and what it will be here because it will be mainly that, and that we have the same way of finding out that they have. Now I say, if we are going to rely upon that testimony which was taken before the committee, we would be groping in the dark, and I desire to call the attention of the Senate to the nature of some of the evidence that has been furnished us by the House. Let us take the first article. That article charges us with being intoxicated in the county of Martin, at a term of court there. What is the evidence with which the prosecution has furnished us upon that matter? I ask leave to read it. It is only half a page. I desire to read it to show that we are entirely groping in the dark, when we rely upon that evidence as a key to the situation. Have we been along with this board of managers who constituted themselves into a smelling committee going around through every county in the ninth judicial district to find out something. Did we hear what those witnesses told them? Do we know anything of what they have brought out from the witnesses they examined then and will bring out when these wit-

nesses come down here? Have they furnished us with a copy of the record of their smelling expedition? Not at all. All we have is the record of the testimony given before the House committee, that record shows that there is not a scintilla of testimony that Judge Cox the respondent in this case was on the occasion to which have referred, (the 1st article) drunk or intoxicated while in the discharge of his official duties. The witness sworn before the committee upon which this charge is based, and the only witness, was the clerk of the court of that county. Here is his testimony:

Q. Where do you reside?

A. I answer, Fairmount, Martin county, Minn. Have resided there six or seven years, have seen Judge Cox, have known him for three years last January, don't know of his committing any crime or misdemeanor. I have been present when he was holding a term of court, and discharging his official duties as judge. I couldn't say he was intoxicated, I have seen him while he was holding a term of court at Fairmount, I couldn't say he was intoxicated at that time, toward the last of the term I thought he acted strangely, one or two days and one or two evenings; I couldn't say I saw him drunk; he was either very weary or something was the matter with him; I don't think he was right exactly. After the term, I heard a good deal of talk to the effect that he had been drinking too much, but I was very busy at the time and didn't hear a great deal.

That was every scintilla of testimony upon which this first article of impeachment was based. It was upon the testimony of a man who swears positively three times that he could not say that Judge Cox was drunk. And upon that testimony they tell us we are prepared to come before this Senate that we know what we have to meet and that we know what evidence will be brought against us. If the others are of the same character we are certainly well prepared upon the evidence. Now the very argument of the counsel before you is one in favor of our position in this matter; he says it will take more witnesses upon our side to convince you that Judge Cox was not drunk than it will take for them to establish that he was drunk, that is the very strongest argument that can possibly be made in favor of the respondent's claim now before you and in favor of your relaxing the rule in favor of the respondent, because there is no question about the fact that the respondent has been first charged in the newspapers, then in taverns, tippling houses and on the streets. Then, after all you have heard, and all the prejudice that has been created against him you are asked to say to him that if he cannot disprove the charges by an equal number of witnesses he shall not disprove them at all, that he shall have no more witnesses than the State shall have and this in the fact of the admission upon the part of the learned manager that it will be necessary for him to call more witnesses than they produce to show that he was not drunk at the particular time charged.

As far as the allusion of the learned manager to politics is concerned, I certainly beg to be pardoned if anybody has understood me to say that the political learning of any Senator upon this floor, would influence him in the decision of this question. I do not think I so expressed myself. I think I simply cautioned the Senate to be over careful in all its actions, on account of the effect it might produce afterwards, for what might be said about it, for what people might lay at your door. I did not say, nor did I for a moment, expect that any Senator upon this floor, would let party prejudice or anything else sway him away from the path of his duty, and from the oath he had solemnly taken!

but said it as a mere matter of caution, said it as being necessary and the peculiar circumstances, that it was necessary for the Senate to act such a way as to give no occasion for remark.

I will state, gentlemen, that the defendant in this case, although some of the articles he may have more than double the amount whi the State may have, we shall be perfectly satisfied if you will grant the privilege, simply to so relax the rule so that we may be allowed a do ble number of witnesses to the number produced upon the part of t State. That is all we ask of you, and if you will give us that, we sha ask no more. And I will state at this point that upon some of the ar cles we shall probably not produce as many as they do, but on othe we desire to overwhelm them if we can. I assert that in my opinio by extending the rule in the way I now ask it to be extended, you wi have no more witnesses here than under the rule; because there will articles on which we shall not have the number now allowed, and if yo allow us the privilege whenever we desire to avail ourselves of it, that all we will ask from you. We will stand no more upon our constitu tional rights in that case, we will say no more about that, but we con sidered that there was a danger in a precedent being laid down of limi ing the defendant at all. We considered that there was a danger tha should be avoided for the generations that shall come after us, for thos that may have to do with impeachment trials hereafter. And that i the reason why we asked you to give us a fair opportunity on the par of the defense. But I say that we shall be personally satisfied if yo grant us double the number of witnesses that is allowed upon the par of the State.

The PRESIDENT. The discussion so far upon this matter has been up on the request of the counsel for the respondent that the rule in ques tion be changed. Senator Powers now makes the following motion which will be read by the Clerk.

The Clerk then read the following resolution:

Moved that the rule limiting the number of witnesses to five on each side, on each article of impeachment be rescinded.

The PRESIDENT. The question is upon the motion of Senator Pow ers.

Senator CAMPBELL. I would like to inquire what became of the mo tion to commit, made before dinner, that was pending, I believe, whe we took a recess?

Senator POWERS. Mr. Presicent, it seems to me that that motion wa not seconded.

Senator CAMPBELL. I think it was.

Senator POWERS. I had an impression at the time that that would simply be referring it to a class of middle men, and that they would have to report, after hearing the arguments of the counsel for the respondent, and then it will be brought before the Senate, and that it would take up just as much time again. Now inasmuch as the arguments have been made before the Senate, I think this would be specially unnecessary now. So far as this question of limiting the number of witnesses on the part of the respondent, or on the part of the prosecution is concerned. I was not satisfied with it at the time it was passed, although I said but little. I think that the position that was then taken by the Senator from Washington, (Mr. Castle,) was a correct one. I have never read a case where a man was entitled to all the justice he could get with five witnesses or ten witnesses or twenty witnesses, or any other given number, and I be-

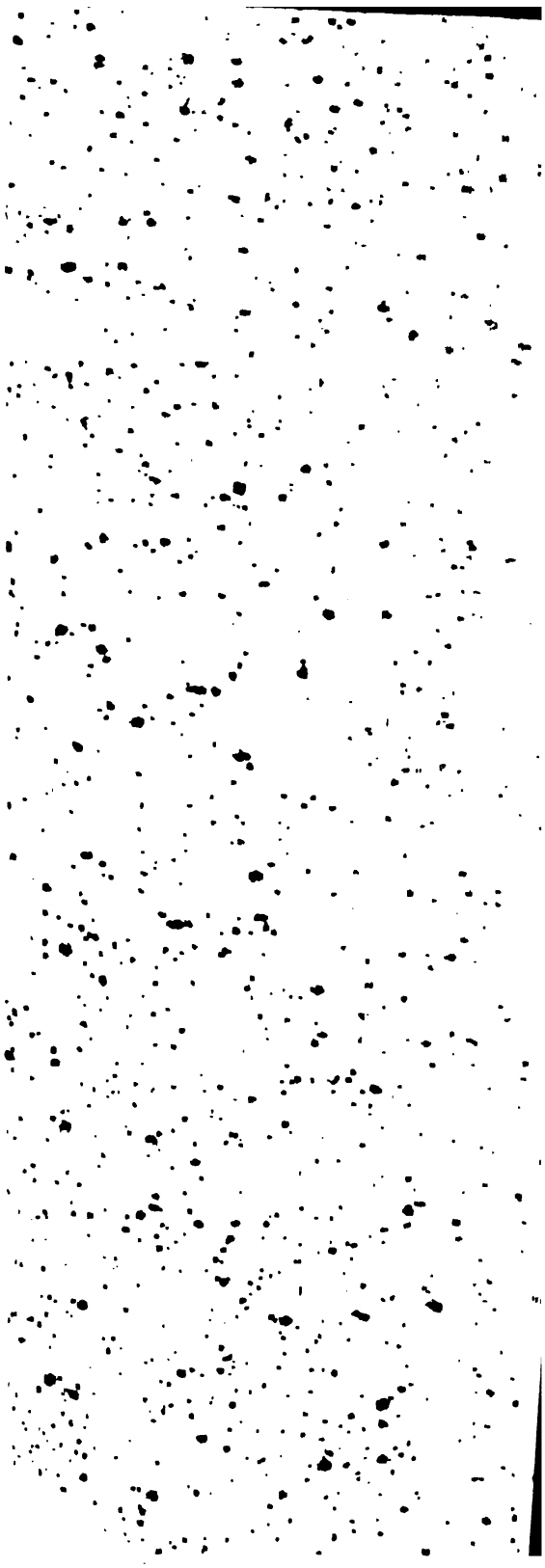
ave it would be an act of economy in us to throw the defense in this se upon their judgment and honor, to summon only such persons as they em necessary, essential and important in the case. I would vote against ubling the number, and allowing them to feel that they almost were un- r necessity in duty to the respondent, to summon double the number of itnesses that are examined on the part of the managers. I believe that e resolution I have offered, should be adopted, and that we should give ch side an opportunity to bring all the witnesses that may be necessa- y in handling this case. It is an important case. It is one involving t only property interests,—if it were even that I should say that both ere in justice entitled to all the testimony they might require—but re is a case where the sacred honor, integrity, sobriety and chastity,— d everything else that is sacred, on the part of one of our citizens who s been occupying a very important and responsible position has been pugned, and where his reputation, and that of his family, are at stake. ow I want to give him the most abundant opportunity to prove his in- ocence if he can, and it seems to me it is somewhat harder to ove a negative, as has been said, than to prove an affirmative. I be- ve I can make a charge here, in five minutes, against a man which will ke him perhaps twenty minutes or half an hour to explain away. I ve always advocated economy in all the expenditures of the State, and rhaps have been called picayunish because I have done so, but when comes to a matter of the honor, fidelity and integrity, and when every- ing that is sacred to a citizen of the State is attacked, I want to give e State a chance to *prove* that those charges are true, that is if they can do it, and I want to give the respondent an opportunity to clear himself oroughly,—not as he can do it with five witnesses, or two, or three, or ur, or fifty, but until his counsel shall say, "We have done our best, at is all we can do. Now, gentlemen, decide."

The idea that the witnesses may be examined here but that we will only pay a limited number, I think is not well taken. If the State or the respondent have authority to examine witnesses here bring them here at a heavy expense and keep them here. I shall vote to pay them their fees whether they are sworn or not, and whether they are sworn in or not. I believe this sovereign State is able to pay a man, or woman, as the case may be, who are examined here and held to give testimony, whether they give testimony or not, than those witnesses are to go home without their pay because they are not sworn in.

Senator C. F. BUCK. I desire to say in addition to what has already been said that I approve of everything that the Senator who has last addressed the Senate has said, I only wish to say in addition to what he has said that this subject will be under the control of the Senate and if we see that we are being imposed upon by either of the managers or the counsel fot the respondent we can bring them to a sense of their duty. I heartily second the motion of Senator Powers.

The PRESIDENT. In order that the Senators may direct their remarks to the question before the Senate properly, the chair would state that prior to recess the motion was made by Senator Campbell that the application of the counsel for the respondent be referred to the committee on rules, that motion having been first read and being a motion to commit a motion to rescind would not be properly under consideration at the present time.

Senator CAMPBELL. Mr. President, one word in support of my motion. I am a good deal like the Senator from Fillmore, [Mr. Powers,] I do not



very often preach a homily but I am opposed to the useless expenditu of the public money, I may not be as good a judge of the constitution members of the Senate who are lawyers, but in nearly every law suit have witnessed I have usually found the defense after the testimony f the prosecution was in, have wanted witnesses that they did not kno they wanted before. I apprehend that if we remove this limitation an fix it as the counsel ask and they should examine ten witnesses on eac article that after the testimony for the prosecution would be in the would find those ten would probably not meet their wants and th they would perhaps want some others to rebut what would be brough out in the prosecution.

Now I shall never cast a vote in this Senate in favor of limiting th number of witnesses to the injury of the respondent or any other man I would rather, if it became apparent that he could prove his innocenc by the obtaining of one hundred witnesses to go home for two week and give him that time for the purpose of obtaining those witnesses than to compel him to go on without them. But I apprehend that i may be possible that the prosecution may fail on some of those article altogether, it may be that no witnesses may be required,—that they would fail to make out some of those articles so clearly that little or n testimony would be desired.

I opposed this rule, it is true, when it was first offered by the com mittee. It struck me then that it was not just the proper thing to limit the number of witnesses, and I think the rule was modified so as to read "unless otherwise ordered by the Senate." I think that makes the rul sufficiently flexible for all purposes; and I apprehend that this Senate is not going to sit here and see the respondent jeopardised on account o a limitation of the number of witnesses. I apprehend that the respon- dent will be allowed all the witnesses that he can find will be of any benefit to him.

I move to refer the application of the counsel to the committee on rules, and that they may recommend any modification that in their judgment may be necessary. They are lawyers, they are competent, I apprehend, to suggest the necessary modifications, and the application of the respondent for an increase of the number of witnesses on this, that, or the other article, I apprehend, would receive consideration from them, the same as it would from the Senate, and I apprehend that, at this early day, and before we have heard any testimony, we had not better open up the door here. We have fixed a very liberal compensa- tion for the witnesses—double what it was in the Page case, I believe— and I do not think it is best to unlock the doors to bring all of the Min- nesota valley down here to testify just at present. I say I shall always be ready at the proper time to grant any indulgence necessary.

Senator RICE. I hope the motion of the Senator from Meeker will be adopted. I think if we referred this application to the committee on rules they, on consultation with the managers and the counsel for the respondent, would come to some satisfactory conclusion. I move the adoption of the resolution.

Senator POWERS. I would like to ask, Mr. President, which is the motion now before the Senate.

The PRESIDENT. The motion to refer to the committee on rules.

Senator POWERS. Would not my resolution be one to amend?

The PRESIDENT. No, it would not.

Senator POWERS. To amend the resolution of the Senator from Meeker?

The PRESIDENT. It would hardly be germane as an amendment.

Senator POWERS. It strikes me that we are laying out work to go all over this same thing again. Now so far as I am concerned, the more I have thought, from the time we were here nearly a month ago, to the present time, the idea of limiting the number of witnesses the more dissatisfied I am with the whole principle. Whether a committee report on that, whether the managers agree to it, whether the respondent's attorneys agree to it I think the principle is wrong. We are here establishing precedents that will be referred to in other impeachment cases that take place in this state, perhaps, or in other states, or it may be in other countries, and I think the principle is a new one and that it ought to be eliminated from our proceedings altogether. I would not vote for it if both parties were in favor of it because I think the principle is wrong, I think as I said before it is establishing a precedent that will not rebound to our credit.

Senator WILSON. Mr. President, I wish to say a single word with reference to the discussion that was had upon this rule at the time it was established. My recollection is that those rules were reported by the gentleman from Hennepin and the objections to them by the gentleman from Washington, resulted in a clause being attached "unless otherwise ordered." My recollection is that the attorney, Mr. Allis, who was standing at the desk at the time, said that would be satisfactory to the counsel for the defense. I was opposed to the order at the time. I thought that it was limiting a man in his rights under the constitution to confine him to any given number of witnesses for his defense. That is my recollection of the action of the Senate at the time this rule was adopted.

Mr. ALLIS. Mr. President, I have no recollection of ever assenting. I took no part in that discussion, but I think Senator Gilfillan turned around and asked me, in regard to the number of witnesses, and that I told him that I thought it would be sufficient, or something of that sort. But I have never expressed the opinion that it was a proper view, because I have been from the beginning of the opinion that it was a precedent that should never be adopted by any body. I agree entirely with the views that were expressd by Senator Castle in regard to the principle involved. I might have been asked the question from my seat, at that time, if the number of witnesses would be satisfactory.

Senator CROOKS. At the time the rules were adopted by the Senate, it occurred to me, that it would be a great impropriety under the constitution to adopt any such rule; and I say now, that when a man is brought here on trial for *more* than his life it is pretty hard to state at what point we shall stop him in the production of evidence to assert his innocence before this tribunal. I am strongly in favor of the abrogation of the entire rule, and I am in favor of giving to the honorable board of managers, as well as to the respondent, the privilege, at their own option to produce just as many witnesses as they may require. I believe that is the shorter and the better course. If we are to stop at every single article of impeachment and discuss this question, we shall get into a very heavy business. I believe the safe course for the Senate to adopt is simply to abrogate the entire rule and leave it open and allow these men to bring up every man, woman and child in this State, if

necessary, to vindicate what is more to the respondent than his life this impeachment trial.

Senator ADAMS. Mr. President, I move to amend the motion of th honorable Senator from Meeker county. The motion now pending is, believe, to commit this resolution to the committee on rules. I mo to amend the original motion by moving the adoption of this resoluti by this State. This matter has been fully discussed this afternoon.

The committee on rules is composed of lawyers, and are no bett qualified to judge of what my obligations and duties are than I am my own conscience, and I have learned in the fifty years of my li and its experience, that it is not always best to have the most implic confidence in the lawyers, doctors or anybody else. (Laughter.)

Now, gentlemen, under the solemnity of your oaths, you are called act upon this question. Your action here will pass into a precedent the management of courts of impeachment in the State of Minnesot It is scarcely to be presumed, gentlemen, for a moment, that the trial Judge Cox will be the last impeachment trials in the history of the Stat And as long as our State constitution guarantees to its humblest as we as to its highest citizen, the broadest liberty under that constitutio why attempt to curtail it now? As I remarked I have not the broade confidence in the world, in the lawyers, because their profession is som times to make the wrong right and the right wrong. But I belie there is not a lawyer but will tell you that is a dangerous precedent be set in the State of Minnesota, and that we had better take the co mon law practice if we have no statutory law in relation to these que tions. I have confidence in both managers and the attorneys for Judg Cox, to balieve they will incur no needless expense in summoning wi nesses to testify before this court. They have their own honor and r putation at stake. It would hardly look well to have it go out throug the State of Minnesota, that the honorable managers and the counsel f the respondent had summoned Tom, Dick and Harry from all over th various parts of the State, who having been presented at the bar of th Senate, knew nothing at all about this matter. It is presuming to much to believe that they would be guilty of anything of the kin Then let us rescind that objectionable feature in our rules, and let the com mon law apply, as it does in the case of all criminals,—give the partie not only for the State, but for the respondent, an opportunity of pro ing the question, pro or con, in any manner they may see fit. Thi will facilitate the trial and permit us to get home to our other duti much sooner than it will if this matter is to be brought up upon eac article,—as it will most assuredly come up, if it stands in the prese form, as an invariable rule in this court. I hope therefore, that m amendment will prevail.

The PRESIDENT. The chair will state that the remarks of Senato Adams do not apply to the resolution before the Senate. The couns for the respondent comes before the Senate with a request that some a tion be taken by the Senate as an amendment to rule sixteen. Senato Campbell moves that the request or the question pending be referred t the committe on rules. It is substantially a motion to commit. It i not amendable in the manner indicated by the Senator. The amend ment proposed by the Senator would not be germane to the motion the Senator from Meeker.

Senator ADAMS. I was referring more particularly to the motio made by the Senator from Fillmore. [Mr. Powers.]

Senator HINDS. Mr. President. It seems to be conceded upon the part of the prosecution also upon the part of the defense, that the power of issuing subpœnas for the witnesses rests in the court. And certainly all the precedents that have been cited show that to be the fact. The motion is in effect that the application for the abrogation of the order in regard to the number of witnesses be committed. It seems to me that that would be a very safe and proper course for the Senate now to adopt, for this reason: This order that has been adopted can hardly be characterized as restricting the number of witnesses for it allows a hundred witnesses on each side. There certainly is not much restriction in an order that permits that number of witnesses to be examined.

Senator POWERS. It restricts to a hundred, doesn't it?

Senator HINDS. A hundred on each side.

Senator POWERS. That is a limitation then.

Senator HINDS. If a hundred is a limitation then it is a limitation; but the privilege of examining a hundred witnesses is not much of a restriction. If, however, when the prosecution have examined the number of witnesses that the rule permits them to call and authorizes the Secretary to issue subpœnas for and they find that there is a necessity upon their part to have more they can make application for leave to issue further subpœnas. The order itself provides that as a remedy for such a condition, if they should find themselves in such a condition.

Now, it would seem to me that it would be proper to go on with the examination of these witnesses. It may be, when the State have got through their examination, the court will be met by a motion on the part of the respondent to be discharged from one or more or a dozen of these articles, for the want of sufficient proof to sustain them. If so it will be a subject for the Senate, as a court, to consider. If the respondent should be thus discharged from one or more of these articles, he certainly will have no occasion for subpœnaing more than five witnesses upon those, and he has the power to call for subpœnas to the extent of five upon those. If, however, when the prosecution have rested their case, and these matters have been considered and determined by the court, the respondent finds it desirable to call for further witnesses,—the subpœnas for which he cannot now receive under the rule—*then* will be an ample opportunity afforded him to make the application. He can then state the articles as to which they are desired to be called. He can state their names and their residences. All the information, or at least sufficient information for the court to consider the propriety of his application can then be presented.

Now the right and the power of issuing subpœnas rests with the court alone; the court has a right, and under certain circumstances it would be very proper for the court to exercise the right of requiring the names of the witnesses and the articles to which their testimony is supposed to relate. Ordinarily, when subpœnas in a criminal case are issued at the expense of the State upon the application of a defendant, the court requires the names of the witnesses and the facts expected to be proved by them; and the court then determines whether or not the subpœnas shall be issued. This is also shown to be the practice in impeachment trials, by the fact that in all of these trials which have been cited, the court has ordered subpœnas to be issued upon such a showing; as much as to say that without the order there is no right to their issuance. In the very first authority cited, I understand there was a limitation not to one hundred witnesses but a limitation to twelve witnesses. That is

the construction I put upon the language of the order, "that twelv subpœnas shall be issued" and only twelve,—calling for a subpœna fo each witness, is the idea of the order. Now, in this case, if there ha been a necessity for a greater number of subpœnas, or a greater numbe of witnesses, a greater number would have been granted by the cou upon a proper showing.

If this application goes to the committee, the committee will have am ple time before either the prosecution or defense will have any use fo these additional witnesses, to consider and report what will be advisabl in that regard. At the same time I would desire to see the order presen ted by the Senator from Fillmore (Mr. Powers), also go to that commit tee ; and I think I shall offer as an amendment that it also go in th same connection, and let the committee take sufficient time to conside them. There is no hurry about considering the matter. If we are t examine a hundred witnesses on the part of the prosecution, it is goin to take us weeks and it may be prolonged into months before any wit nesses will be called upon the part of the defense. There will then b no necessity for the defense of even the expense of a hundred witnesses at the most not of any additional witnesses. So I say that while I am in favor of giving a full, complete and ample opportunity to the respon dent to present his case in his own behalf and with his own witnesses t almost any number that they may deem desirable, and probably shal make no objection to any number that they might name as being desir able upon their part upon any article, I think we had better as a cour still hold that matter in abeyance for future consideration, because w have not yet reached that stage of the proceedings at which any addi tional number of witnesses are necessary. When we do reach that stat of the proceedings, we can take the matter up and consider it more in telligently, on our part, and more certainly to the satisfaction of the de fense itself. They will then be better prepared to inform the court how many more subpoenas they need.

The prosecution, at the close of their case, may also desire further wit nesses. They will also then be able to inform the court how many more witnesses they desire to subpoena on their part. I think the committal would be a proper disposition of the entire matter.

Senator POWERS. Mr. President, I would like to ask the Senator from Scott [Mr. Hinds] whether he does not regard it as desirable in the be ginning, before the managers (feeling that they are limited now under the rule to five witnesses) commence the case, to decide whether they are to be limited or not,—whether it will not be a cause of complaint on their part afterwards if they feel that they are limited to five witnesses and then that limitation being removed, on the part of the managers, in winding up the case, they will not have cause for complaint and say, "we were limited to five witnesses and we ask you also to limit the respondent to five." Is it not desirable that we should establish some kind of a rule in the beginning, if the one already established is to be disturbed at all.

Senator HINDS. In answer I would say that the rule already estab lished seems to be to limit to five witnesses to each article unless other wise ordered. That is a rule that is still in operation, and would re main in operation, guiding both sides until it were changed. Now I do not understand that the Managers claim at this time any desire upon their part, to change or modify that rule. Certainly the manager that

spoke a short time ago, [Mr. Collins] did not suggest any change as desirable on their part.

Senator POWERS. Provided it is not changed for the benefit of the respondent, but suppose that it should be changed in their interest, then would they be satisfied?

Senator HINDS. It would be inexpedient for the court to make any general change whatever, but to make all the change that the circumstances, when they arise show desirable. I think that the order that has been adopted had better stand just as it is, until necessity arises for its application or the application for a change. Now, if the managers find upon their part that it is desirable to make a change in that, they know that it is open to them to make the application. They do not know that there is any desire on their part or any necessity; they may find when they get through with the number of witnesses that they are now authorized to produce that they do not wish upon their part any change, even though the defense does desire additional witnesses, and we may grant the application to the defense and deny it to the State, according to what our judgment would be when the application is made. There certainly is ample time for that because these one hundred witnesses cannot be disposed of in a few days. It is going to take *weeks*, according to all past experience, in the examination of witnesses, to get through on the part of the prosecution.

Senator POWERS. But we shall dispose of one article sometimes perhaps in half a day.

Senator HINDS. We might dispose in some instances of half a dozen witnesses in a day. We might dispose of a whole article or of several articles in a day. But take the whole as a whole, it is going to take weeks to make an examination of a hundred witnesses on any subject, I don't care what it is; because there is not only the examination in chief but there is also the cross-examination.

Mr. Manager DUNN. Mr. President, the discussion in reference to the desire of the managers leads me to say this: That when this rule was adopted as I read it, "The number of witnesses permitted by the court shall be five upon the part of the prosecution and a like number on the part of the defense to each article of impeachment," it will be remembered that two articles of impeachment were directed by the order of the Senate to be made more specific, by filing specifications under those articles. That has been done, and I think some seven or eight specifications under those two articles have been filed, and served upon the respondent. The rule as it now stands under a strict interpretation of it, would limit the prosecution and the defense to but five witnesses to substantiate seven distinct and separate offenses, or charges. Now the managers would ask that this rule,—and will ask at sometime during the investigation of this matter, that the word "specifications" be added after the word article, so that the rule would read "and a like number upon the part of the defense, to each article or specification of impeachment," which would increase the number of witnesses by five to each of those specifications; and my recollection is that there are seven, making thirty-five more than the hundred. We have no objection to the rule as it stands, as to the limit of the witnesses, but for my part as one of the managers I should like that rule to be a little more flexible in that the whole number of witnesses that are allowed here might be used both for the prosecution or the defense, whether they apply to any particular article or not.

Senator CAMPBELL. I would like, Mr. Manager Dunn, if it is not sufficiently flexible, when the court reserves the right to change the rule at any time, as will be inferred from the words "unless otherwise ordered," if you will read the rule a little farther you will see.

Mr. Manager DUNN. I was not making any argument in favor of that proposition at all, but simply throwing out the suggestion. The managers have so construed that rule as to apply to the specifications as well as to the articles, and have subpoenaed upon the part of the State five witnesses for the number we have deemed necessary to substantiate each one of those specifications which were served upon the respondent upon the 6th day of January, and which were read in the hearing of the Senate this morning. Whether our construction is right or not, we shall ask the Senate that that construction be allowed, and that those witnesses be sworn here to substantiate those specifications. Therefore if this matter is going to be determined at this time, I would suggest to some Senator, that he offer a resolution that the matter might go to the committee on rules with this application of the respondent.

Senator CROOKS. I would suggest to the honorable manager (Mr. Dunn), that it would be better to get about the question before us. If this committee takes it for consideration, it will then make its report. If the application of the respondent should be denied, then the question would arise upon a motion similar to that of the Senator from Fillmore.

Mr. Manager DUNN. My remarks were simply made in answer to the inquiry of the Senator from Scott as to whether we desired to make any change in the rule.

Senator HINDS. Certainly, if one article is cut into seven, each specification under that article, would be in fact, and the Senate would necessarily consider it as a separate article requiring separate proof. It could not well be otherwise than that, I think. It has been asserted here also that it might be desirable upon the part of the prosecution, and certainly it has been expressed upon the part of the respondent to call impeaching witnesses. Now I do not understand that the order that the court has adopted, limits any witnesses (?) whatever, upon that subject; that the limitation of the witnesses is as to the articles themselves, and not in regard to collateral matters. Not only the impeachment of a witness may be a collateral matter in which there is no limitation of the number of witnesses, but there may be other collateral matters arising, in which there will be no limitation of witnesses, under the order as it now stands, and very properly so, because those collateral matters upon which either party may offer evidence, will depend upon circumstances that arise during the progress of the trial, and could be regulated by the circumstances that may arise.

The PRESIDENT. The question is upon the motion of Senator Campbell.

Senator CASTLE. I would inquire if it is not the fact that there is only one member of that committee present.

The PRESIDENT. The chair has been so informed.

Senator CASTLE. It seems to me, Mr. President, that we might as well dispose of this matter now as to refer it to the committee on rules and then have another discussion of the same general character as is this. Members of the senate would be no better satisfied after the members of the committee on rules had reported than they are now. And it seems to me we might as well settle this question right here before we proceed to the trial and the merits of this case.

The PRESIDENT. Is the Senate ready for the question? The question is upon the motion of Senator Campbell to refer to the Committee on rules.

The ayes and nays were then called and the President said: The nays appear to have it. The nays have it; the motion is lost. The question now recurs upon the motion of Senator Powers which is that the rule limiting the number of witnesses to five on each article of impeachment be rescinded.

Senator CAMPBELL. I call for the yeas and nays.

Senator POWERS. Mr. President, I do not desire to take up the time of the Senate more than a minute more, for I have already talked more perhaps than I ought to have done. But when I feel upon any subject, I feel strongly sometimes. It does seem to me that this is a matter in which not only the managers and the respondent, but all of us are individually and eqnally interested. For we are all managers on the floor of this Senate; and there is a sense in which we are all respondents. I can very easily conceive of a case where the dearest and most sacred rights of the people at large, throughout the state, may be menaced through an impeachment of this kind, and hence a case where it would not be simply a personal matter with the judge or any officer who might be impeached but where the whole State as a State might be affected, and hence as I said before we are all respondents as far as endeavoring to obtain justice is concerned to the fullest extent in this case.

Senator D. BUCK. It seems to me that we are trenching upon dangerous ground to open the flood-gates and let in all the witnesses that the respondent sees fit to have brought here. It seems to me that there ought to be some restriction, and I think the rule adopted was a wise one. There was a provision in the rule adopted that if upon a proper showing other witnesses are by necessity required, we can order and direct them to be brought in. We can allow subpœnas to be issued, and the parties upon a proper showing can bring them in here and have them testify. I think we had a perfect right to adopt the rule which we did. This idea about this being a criminal prosecution we want to get rid of that nonsense as soon as possible. This is not a criminal prosecution; it has none of the elements of a criminal prosecution from beginning to end: and I say, that the sooner we get rid of such nonsense as that the better we will understand our position here. Thec onstitution has nothing to do with the number of witnesses in this case. It is amatter which is entirely within our discretion. We can limit or confine to any certain number, or, we may, as the Senator from Scott says, allow two or three hundred to come in. That is the restriction we have placed upon this matter. Now, by the amended articles and under the specifications, there will be seventy more witnesses required according to the present rule; and yet this is called a restriction! I am as strongly in favor of meteing out justice to this respondent as any man that treads the soil of Minnesota. There is no man more anxious that he shall have justice done him: no Senator or member of this court more anxious that both sides should have a fair investigation than myself. I have been friendly to the respondent for nearly a quarter of a century,—and as the subject of politics has been brought up here,—I will say that we belong to the same political party. I have been his personal friend and am now anxious that justice should be meted out to him, but I am not willing that the flood-gates shall be opened, and that all the witnesses may be brought in here that either side may see fit to bring. Why

the twenty-five thousand dollars appropriated for this impeachmer trial will be exhausted and the vouchers for our pay will have to be r pudiated, or we shall have to be compelled to take only twenty-fiv cents on the dollar, or else we shall have to call an extra session of th legislature in order to be able to go on.

Senator POWERS. It might be taken out of the school fund. (Laughter.

Senator D. BUCK. It could come out of the school fund, yes, an shipped out of the State in an extra car. (Laughter.)

My own feelings at the present are to let the rule stand as it does. I during the trial it shall appear necessary it will be modified for the in terests of the respondent or the State. If the respondent shows her that he needs more witnesses, that other witnesses are material and neces sary to come in here and testify in his behalf, in order that he may re ceive justice and in order that this case shall be tried equitably an properly I shall vote for it and shall vote to modify the rule if necessary But I say at the present time I do not deem it necessary to change thi rule. Let us go on as we are and upon a proper showing if necessary for either side, I am willing to vote to change it.

The PRESIDENT. Senator Hinds moves the following as an amend ment to the motion: That when the number of witnesses allowed t the prosecution have been examined either party desiring subpœnas fo other witnesses not now allowed may apply to the court for subpœnas for the same, showing to which article their evidence will relate and the name and residence of the witnesses.

The PRESIDENT. The question will be upon the amendment of the gentleman from Scott.

Senator POWERS. How is that amendment worded? Will you please read it again.

The Clerk then re-read the proposed amendment.

Senator POWERS. Well, they have the right to apply now, whether their request is granted or not, is another question.

The CLERK. This indicates the time when they may regularly apply.

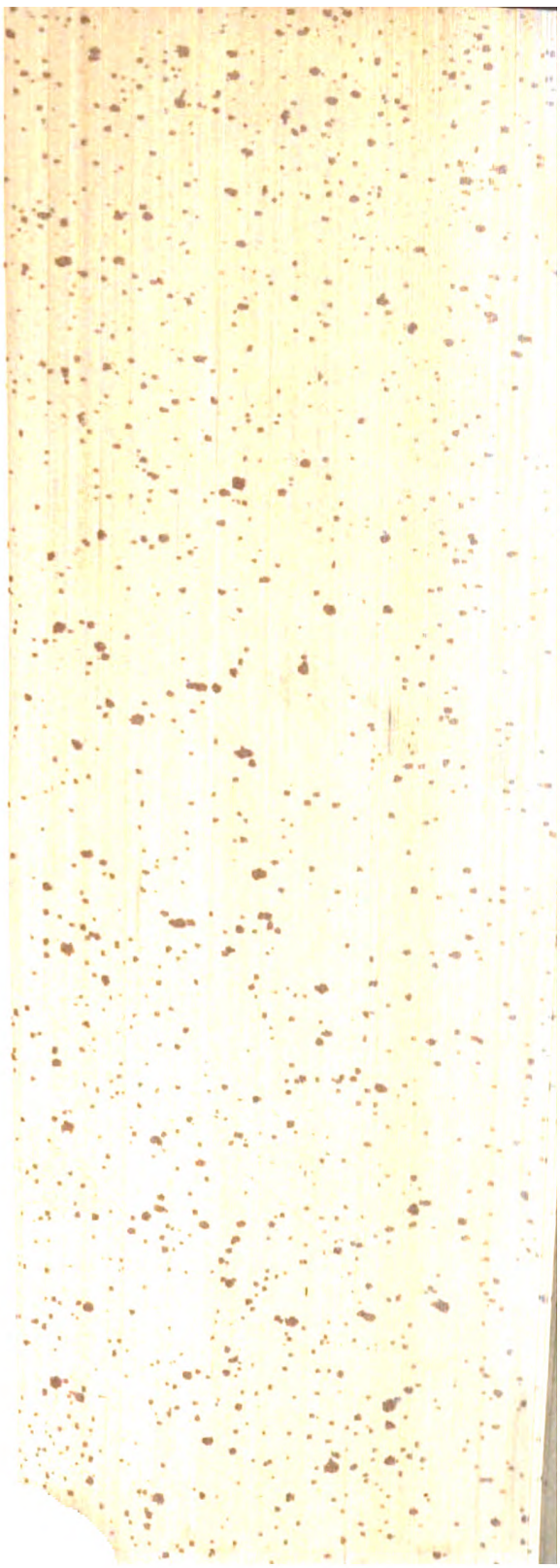
Senator HINDS. This amendment was suggested when the counsel for the respondent read certain testimony that he asserted was all that was introduced before the House committee, upon which a certain article of impeachment was founded. Now supposing the same contingency should arise upon this trial: that when the prosecution have rested finally and have introduced no further evidence upon that, or a dozen, or all of the articles of impeachment, then what was there stated, will there be any necessity for subpoenaing any additional witnesses upon the part of the defense.

It occurred to me that it would be expedient for this court, having in mind the interests of the State at large, as well as of the respondent, to postpone any final action upon this application until we have heard the prosecution, and then, if it shall turn out that one or more of those articles were supported by no other evidence than what was there stated, or by any evidence that was clearly insufficient to maintain the charge upon the part of the State, why should we put even the respondent to the necessity of preparing any further proof as to those articles, or impose upon the State the burden or necessity of paying for any further or additional witnesses in regard to them? While that may be true as to such articles as should be left in that situation—if any of them should be so left—the same thing might arise generally. Why take up the matter now, and finally dispose of it, when it may be weeks and months

fore the occasion will arise—if it ever does arise—when the respondent sires any further witnesses than those that he is now authorized to ue subpœnas for; and that is all; it answers the present application r postponing a further consideration of it until we hear what the prosution have to present before us. It seems to me that it is all the respondt can ask for, and preserves, also, the rights of the prosecution as ll. I am very strong in my conviction that it is acting the part of sdom to postpone this matter until we have heard from the prosecun. If the prosecutors do not desire, on their part, any further latide in regard to witnesses than they already have. Certainly the reondent knows what he has to meet and if he has to meet matters that undred witnesses on the basis of five witnesses to each article, or, as will be now multiplied, with the construction that the Senate will voltarily give to these specifications, to one hundred and thirty witnesses; one hundred and thirty witnesses are not sufficient they certainly will in a situation to point out clearly to the court their necessity, and, st certainly, when that occasion arises. I think there will not be a ssenting voice in this court to oppose it.

Senator D. Buck. Mr. President, I would like to add a word to what have already said. Posssibly there may be some of the articles upon ich there will be no proof offered upon the part of the State, or if oof is offered it may not be sufficient to maintain the allegation on em, and, therefore, the respondent here may have to subpœna fifteen twenty witnesses, or more witnesses to meet the charges contained in icles that may never be moved or be withdrawn and abandoned. w, understand that the method of procedure will be for the State—rhaps I am not correctly informed on that point, but my belief was at the State would introduce its evidence, under each article, in supt of the allegations contained in them; and that which it had fined its whole case. Embracing the evidence from the beginning to e end, the respondent would then come in and meet each charge as he s fit. Now, if they take up charge or article, number one on the rt of the State, and there is no proof—or proof that, in its effects, approximate to nothing—there will be no need for the respondent to have pt here for two, three or four weeks, fifteen, twenty or forty witnesses meet that article. So that you see that if you repeal the resolution order we shall be getting into deep water, where we shall not know r exact position, and it seems to me with due deference to other genmen, that if the Senate allows the matter to remain as it now is, and ermines the question when it arises in the ordinary course of our oceeding, that we shall be in much better shape to do substantial tice.

Senator Adams. I wish to reply to some points in the argument of learned friend, the Senator from Le Sueur, and also to the remarks he Senator from Scott county. My opposition to this rule grows out considerations entirely outside of this particular case. As I before arked, I do not wish, as a Senator, to become a party to the estabment of a precedent that may be cited and used in the future to the ious injury of some innocent person, and, if injury results from the ablishment of a wrong precedent, I do not desire that any portion of blame which we necessarily invoke upon this Senate, should be laid my door. The point, as I understand it, of the Senator from LeSueur hat this is not a criminal trial; that it bears no relation to a crimitrial. The charges, I believe, however, differ very materially from



the gentleman's conclusion. The charges say, "for high crimes and mi demeanors." Now, what is a crime? The statute enumerates a gre many offenses which are denominated crimes, and I think the procedu had in all courts of justice involving a crime, are identical and precisel the same. If the gentleman desires to assume that this is not a cour and hence should not be controlled or governed by any of the fund mental principles of law which control courts for the trial of crimes, the he is right, and I am wrong. I start out, however, upon the basis tha this is a court *de facto*, clothed with all the rights, powers and privileg of a court of law and a court of justice. That being the case, this is criminal action, and all the principles of law applicable to cases tried i criminal courts should be applicable in this court. In answer to th argument of the gentleman from Scott county, the mover of this amend ment, in which he says, that it would be well to let this rule limiting th number of witnesses to five on each article, stand, for the reason that it should appear, after the evidence on behalf of the State is all in, tha any of the articles have not been sustained, that it will not then be nece sary for the respondent to examine any witnesses. I have only to say that the proposition is self-evident, but has nothing at all to do with th dangerous character of this rule. The latter handicaps both the pros cution and the defense. If the prosecution, by way of illustration, ex amine five men, which is the limit under this rule, and it should appea that neither of those five men have been personally cognizant of the fact charged on the particular occasion. and are unable, consequently, unde the solemnity of their oaths, to testify as to the facts alleged, and tha after these witnesses have been introduced and examined, it should com to the attention of the managers that there are parties who can testify t these facts, they must then appeal to the Senate, and we shall have t modify this rule so as to permit them, in that particular case, to sum mon additional witnesses. The same argument would apply if, after th limited number of witnesses under the rule have been exhausted, i should appear to the attorneys for the respondent, that William Jones o Peter Smith, or whosoever it might be, could and would swear probably to facts which would exculpate him from all these charges. His atto neys would then have to apply again to the Senate for a modification o the order. I do not believe that the honorable managers have summon ed here one more witness than is absolutely necessary, in their opinion to establish the truth of these charges. Neither do I believe that th attorneys for the respondent will summon here a single witness mor than is absolutely required to clear him, if possible, from the allegation contained in the charges.

But I am, gentlemen of the Senate, opposed to the amendment of fered by Senator Hinds because it leaves a dangerous precedent standin as though the last objection had not been touched on at all. It is tru that this is a trial of a crime by a court of impeachment; but does thi differ, gentlemen of the Senate, from a trial for crime by a court organ ized under your state law? All that can be said is that we are not gov erned by any recognized rules. It was first said, when the court of im peachment was first organized, that this court was a law unto itself That gentlemen, would make it an inquisition and not a court. Be cause a court necessarily implies the idea of law and of justice. A court is convened to do what? To execute the law and to punish it violation. If you have no law in the State to violate you can have n court; and certainly, you cannot sit here as a court of impeachment

and deny the obligatory mandates, either of the common law or of your statutory law. This is a court for the trial, of a crime, by impeachment, on presentment, the same as is done in your district court. There the criminal is presented by the grand jury and held to trial before the district judge. Here the great State of Minnesota, through its House of Representatives, sitting as a grand jury in the case has presented articles of impeachment against the respondent, and you, gentlemen, in your collective capacity as a Senate, represent, to-day, precisely the character and position of a judge of the district court on the bench when called upon to try a criminal for crimes of the same character contained in bills of indictment.

Senator CROOKS. Question.

The PRESIDENT. The question is upon the adoption of the amendment offered by Senator Hinds.

Senator HINDS. Mr. President, in answer to the argument of the senator from Dakota in his illustration of the nature and power of this court, I would say this, that the proposition which is contained in this proposed amendment places or attempts to place this court in as near the same position that a criminal court occupies as it is possible to place it, with the rule or order that has already been adopted. The practice of criminal courts in regard to the production of evidence is this: The State issues its own subpœnas, upon its own motion, to any extent that the State deems necessary. Her original order that this court has adopted has restricted the prosecution in that regard. That certainly, is no detriment to the respondent. Criminal courts in the production of witnesses under subpœnas, at the expense of the State, in behalf of the defendant, determines upon his application what witnesses shall be subpœnaed, and none are subpœnaed except upon the special order of the court, because the court does not issue general subpœnas in criminal cases, for the defendant to fill out and bring in at the expense of the State any witnesses that he sees fit to; but application must first be made to the court and the court directs subpœnas to issue for this, that and other witnesses.

We have perhaps, the strongest illustration of this rule in the trial that is now in progress in Washington. The assassin of President Garfield has no witnesses subpœnaed for him at the expense of the government except on his application to the court giving the name and residence of each witness. This court, however, has adopted a rule that goes far beyond the practice in criminal cases in that regard, because it puts into the hands of the respondent here a blank subpœna in which to fill out the names of 130 witnesses. That certainly is giving into the hands of the respondent far greater privilege than a defendant upon a criminal trial has. His proposed amendment to the order does not modify that in any degree; but still holds out to the respondent, and, at the same time, to the State, the right upon application to the Senate, after the State has rested its case upon the evidence of the witnesses that they now propose to introduce.

Senator CASTLE. I think I must have misunderstood the Senator from Scott county. I would enquire of him whethar he lays it down as a legal proposition, that a defendant in a criminal case can only issue a subpœna by consent of the court. I would ask whether he desires this Senate to understand that he makes that as a statement of law.

Senator HINDS. No, sir, I did not lay it down either with that idea or in that language.

Senator CASTLE. Or, that a criminal in a criminal case, can get a subpœna for witnesses in his favor only upon application to the court? Does the honorable Senator desire to be understood as advocating either one of those propositions?

Senator HINDS. I do, with this modification: In cases where the State is to pay the fees of the witnesses subpœned in behalf of the defendant. That, as I understand it, is the proposition that we are here defending.

Senator CASTLE. I was about to say, Mr. President, that either the Senator or myself was exceedingly misinformed, if his proposition, as I understood, was true. I have practiced in criminal courts for a great many years, and have assisted in the trial of a great many criminal cases, and never before known or heard of a lawyer or any other man, advancing the proposition that a defendant on trial before a district court was not entitled to subpœnas to any extent whatever,—not as a matter of *grace*, but as a matter of *right;* not as a matter of favor from the court, but as one of those solemn rights that are guaranteed to us under the constitution of our State, and under the common law of England; the right of every defendant to have the compulsory process of the court for all the witnesses that he may desire to demonstrate his innocence. I believe, Mr. President, that no lawyer will question that proposition. So far as the modified proposition as to paying the witnesses upon the part of the State is concerned, that is entirely outside of this case

Mr. President, I did not intend to say anything further than what I said when this rule was adopted. I then asked any member of that committee on rules to show me a precedent in any land where constitutional liberty obtains, in any court of competent jurisdiction, at common law, or growing out of the common law, or at civil law, where, upon general questions, a party, plaintiff or defendant, was ever limited as to the number of his witnesses. None was produced then; none is produced now, and, for the very best possible reasons, none can be produced. And hence we art met, face to face, with the startling proposition that we, the Senate of the State of Minnesota, propose to adopt a rule without a precedent and contrary alike to precedent, to correct principles of law, to common justice and common right.

I, for one, Mr. President, did not vote for the adoption of those rules. I shall most assuredly vote in favor of abrogating them. Our oaths, our consciences, our interest bind us to decide this matter according to law and evidence. It is said, almost flippantly, that we are a law unto ourselves, so far as a power exists, under a constitution such as ours, of remedying decisions that is wrong, I admit that it is true. There is no appeal from this tribunal. It is a court of last resort, armed with extraordinary powers. From the very fact that we possess a power so extraordinary, and so great that it will reach the highest in the land, we ought carefully to weigh every act of ours that shall tread upon the old landmarks and the old principles of constitutional law. I say, Mr. President, it will be an evil day to the escutchen of Minnesota, it will be an evil day to the Senate of Minnesota, if it shall be proclaimed by us abroad in the land, that we are a law unto ourselves, that we ignore law, ignore precedent, ignore everything, but our own will.

Now, sir, what is the excuse that is offered for a rule of this character. Why, the excuse is, if I understand it aright, that there will not be money enough to pay all these witnesses. That the State of Minnesota, after its representatives have preferred charges against one of its officers,

after they have brought him before the Senate to answer to grave crimes and misdemeanors, shall say to the Senate of Minnesota, the trial court, we will hamper you; we will not permit you to try the case; we will not permit you to do justice on the one hand, to the State of Minnesota, which has preferred these solemn charges, nor permit you upon the other hand to do justice to the respondent who is arraigned to answer to them. Why, Mr. President, such an argument should never be considered by a sensible man, sitting as a Senator, a chancellor, a judge of law and equity.

Again, in the very interests of economy, and I almost feel like insulting the Senate by adverting to the question, would it not be better to say to-day, to the managers upon the one hand, and to the the respondent and his counsel upon the other, "Gentlemen, try this case to-day as all the cases of a like nature that have gone before, have been tried, try it as we have sworn it shall be tried, according to law and the evidence. Produce your witnesses: sustain, if you can, your charges. To the respondent, on the other hand, produce yours, rebut the presumption raised upon the part of the State if you can. In the trial before us, where we sit simply as judges, we will pass upon such facts as you shall introduce before us; we will pass upon all facts that, in your judgment, it is desirable to introduce. Can a man have a fair trial, Mr. President, under any other circumstances, I submit? I submit, Mr. President, can a man have a fair trial under any other circumstances? Can the State do justice to itself under any other?

We are launched upon the sea of his enquiry; we are forced to his inquiry, and the consideration of the questions involved in these articles of impeachment. We are bound by our obligations as Senators; we are bound by our honor as men to faithfully, fairly and honestly discharge that duty without fear, favor or affection. Now, I submit, Mr. President and Senators, in the very nature of things, can a fair trial be had, can the interests of the State be fully represented if the hands of the managers be tied? Can the interest of the respondent be guarded and be defended if the hands of the counsel are tied in the premises? Why, Mr. President, it is perfectly astonishing that we propose to lay down a rule here to-day, without a precedent; that we propose to lay down such a rule to-day, as never existed before, since the good, old Saxon race, by its Charter of Rights, has obtained justice and liberty and fairness for its citizens. I admit, Mr President, that such a thing has been known; but it was known, Mr. President, only in that dark day of judicial proceedings and judicial history when a fair trial was never guaranteed to the citizen; and as was remarked by one of the counsel in this case, it is a step backwards, away backwards—generations and ages—in jurisprudence. Mr. President, I should feel ashamed, to-day, if the State of Minnesota, if the Senate of the State of Minnesota should take that backward step.

One word more, in regard to this being a criminal procedure. I differ from my able friend from Blue Earth, with great regret, but I submit as against him, articles of impeachment exhibited by the House of Representatives in the name of themselves and of the State of Minnesota, against E. St Julien Cox, judge of the district court for the ninth judicial district, in maintenance and support of their impeachment against him "crimes and misdemeanors in office;" and, as if that were not strong enough, at the close of each charge, "whereas he, the said E.

St Julien Cox was then and there guilty of crimes and misbehaviour in office, and of crimes and misdemeanors in office."

Mr. President and Senators, what is the graveness of this charge? If the defendant is not guilty of a crime, he is not guilty at all. If the respondent here is not charged with a crime he is not charged with anything that a court of impeachment could, under these articles of impeachment, recognize. How do you arrive at the fact whether or not a party has committed a particular crime, if you do not arrive at it in the usual course of ascertaining and determining criminal conduct? Why, Mr. President and Senators, every element that constitutes crime, every element that goes to make up a criminal tribunal is here before us in this examination, and nothing else is before us, and upon the final determination, when we shall arise in our places respectively, and pass upon the questions that have been brought here and tried before us, the question will be guilty, or not guilty—of what? Guilty or not guilty of "crimes and misdemeanors in office." If that be true, Mr. President and Senators, I appeal to you here, to-day, whether it is desirable for us to go back, whether it is desirable for us to depart from the clear and undoubted requirements of the oath we have taken to decide this case according to the law and the evidence. The law is recognized and none dare deny it. Let it not be said that we havedeparted from establisheld landmarks, that we have made a new departure; that instead of deciding this question upon the evidence and upon the law—the law as it has existed from time immemorial,—that we propose to be a law unto ourselves.

Senator D. BUCK. I did not intend, Mr. President, to speak upon this question at all; but so much has been said upon the question as to whether this is a criminal proceeding that I feel like saying a few more words in regard to it. I wish to say that this proceeding has none of the elements of a criminal proceeding. In the first place, under the constitution and laws of this State a man must be prosecuted criminally by indictment or by a warrant and arrest that is one thing which constitutes a criminal proceeding. He has a right to come into court and challenge the jury for bias or because they are influenced against him through interest, prejudice or relationship. It is the common law, the world over, and it is the common law of this State that no man shall be twice put in jeopardy on a criminal charge. The criminal law says that no man shall be put in jeopardy twice for the same offense. But the constitution of the State says that notwithstanding the impeachment of an officer he may nevertheless, for the same offense he may be criminally indicted, tried and convicted. Now, I want to know from the Senator from Washington whether if, after having gone through this process of impeachment and being found guilty the defendant can still be indicted, tried, convicted and punished for the same offense under the criminal law, we are not violating one of the "dearest principles" that he so eloquently talked about; you have placed the respondent in jeopardy twice—

Senator CROOKS. Can I interrupt the argument of the Senator from Blue Earth for a moment?

Senator D. BUCK. Certainly, sir.

Senator CROOKS. Allow me to read three lines of the seventh section of the Bill of Rights.

Senator D. BUCK. Please read it.

Senator CROOKS. "No person shall be held to answer for a criminal

offense unless on the indictment or presentment of a grand jury, except in *cases* of *impeachment.*"

Senator D. BUCK. "Except in cases of impeachment." Now what does that mean? It means simply that he may be tried on an impeachment because he has committed "crimes and misdemeanors in office." This is not a criminal trial, not a criminal procedure. Tell me, if you can, what element enters into this case that has any analogy to a trial in a criminal proceeding? You cannot arrest the defendant, you cannot take his property, you cannot take his life, even if he were guilty of murder, you cannot imprison him within the walls of a jail. Tell me where it has the first element of a criminal proceeding? I will tell you where the analogy comes in. If a man has assaulted another, if he has robbed another, if he has committed burglarly, his victim can bring a civil action and can recover damages—for what? Because a crime has been committed, and the man has been injured. This is no more a crimnal proceeding, I say, than a civil action for damages for assault and battery is. You prove a crime has been committed, but you maintain your action civilly—I want to know if this court places itself in the position, that when the evidence is all in, and this question has been argued by counsel pro and con, and we come to render our judgment that the rule in criminal proceedings is to obtain. I want to know whether the Senator from Washington is going to say here to his brother members of this court that we cannot punish this respondent unless the evidence shows that he is guilty beyond all reasonable doubt? Are you going to apply thal rule here?

Senator CASTLE. I certainly shall, Senator.

Senator D. BUCK. There is one who certainly will not; and when the Senator from Washington talks here so eloquently about the many things he has enunciated,—that we are sworn to do justice and administer the law according to the evidence, I want to say to the honorable Senator that I render my judgment according to my own conscience, and according to the oath which I have taken myself, and not according to the oath which was taken by the Senator from Washington. I do not take an oath to administer justice according to the law and evidence, and as the constitution of the State, prescribes according to the views which the learned counsel from Washington, may have of them, but according to my views of the case, as I have been able to determine them from the study and examination which I have been able to make of the matter, as God has given me power to see and determine for myself, according to my views and not according to his, and for such views, and for my action in the case, I am not responsible to the Senator from Washington.

This case has not the first element of a criminal proceeding. It is true that the charges are that he has committed certain crimes, but the *trial* is not a criminal proceeding. It is instituted only for the purpose of ousting the respondent from his office; not for the purpose of punishing him. You can inflict no punishment according to the rules of criminal law. You cannot take his property; you cannot take his life; you cannot take his liberty. Why is it that this is called a criminal prosecution, when the prosecution cannot follow up conviction, except simply by ousting the respondent from his office, a result which, in almost all other instances (except in the case of a very few officers), can be achieved under the old proceeding that we used to call "a motion." Why do you remove these inferior officers without impeachment? It is

a civil proceeding. Who ever before heard of a criminal proceeding remove a man from office. It is an unheard of thing, it seems to me, call this a criminal proceeding. I protest against it, and therfore if r position is good, and this is not a criminal proceeding, then the arg ment of counsel, and the principle upon which he has based his arg ment here, viz.: That no criminal court ever restricted its witness does not apply. His argument is based upon the idea or theory th his being a criminal case, in no criminal tribunal has the number witnesses that were to be introduced, ever been restricted. I do n think that is correct. Suppose a man is on trial upon a criminal char and there have been fifty witnesses called to impeach a man who h sworn that he saw another commit the crime of murder, cannot t court say, after that number of witnesses have been examined, that fif witnesses upon that point are enough? If you have a hundred wi nesses upon one point of impeacnment, cannot the court stop the tri and say to the party introducing them, you have had enough, and w will not allow any more of these witnesses to testify upon that one point

I say, it is a rule of law, that when it appears that a large number witnesses have been introduced and have testified upon one subject, th the court has discretion, whether the case is a civil or criminal one, interfere. We have the right to limit the number of witnesses, and do not wish any of my brother Senators of this court to be at all afrai of this question. We have a right to meet it, because it is a legal righ a legal power that we possess. Not that I would exercise an unconst tutional power here. I do not know who has said that we are a la unto ourselves; that we are supreme, that we can act in this matter a we please. I have heard no such speech here from any member of thi court; and I do not believe that it has been uttered here. If it has bee spoken, it was said without my knowledge, and not within my hearin and I, for one, desire to say that I repudiate entirely any such doctrin I say here, that we are not a law unto ourselves: that is, outside of th law itself. I say we have no right to impeach a man except for an im peachable offense. In my opinion, if we were to attempt to do so, th person charged would not be ousted from his office. I say now that i we go on here, and the record shall show that Judge Cox was impeache and tried for an offense not impeachable that he will still, in spite of our power, be judge of the ninth judicial district. I believe that is t law. I do not think we can take up, for instance, any political indisc tion, charge a man with it and hold him to trial for it.

Impeachment can only be for a true crime, and acting here under obligations which I have assumed, and not upon those which any ot Senator may have undertaken. I propose to vote here in this mat as my oath, and my sense of justice determines, and so believing I sh vote to the original order stand,

Senator CROOKS. Question.

The PRESIDENT. The question is upon the amendment offered Senator Hinds. Is the Senate ready for the question?

Senator CAMPBELL called for the ayes and noes.

The PRESIDENT. The ayes and noes are called for. The Clerk w call the roll upon the adoption of the amendment of Senator Hinds.

The roll being called, there yeas 14, and nays 9, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Buck D., Campbell, Case, Hinds, Howard, McLau lin, Morrison, Shalleen, Wheat, White, Wilkins and Wilson.

Those who voted in the negative were—

Messrs. Adams, Bonniwell, Buck C. F., Castle, Crooks, Johnson A. M., Johnson R. B., Peterson and Powers.

And so the amendment was adopted.

Senator CAMPBELL. I move Mr. President, that the Senate do now adjourn until ten o'clock to-morrow morning, if another hour has not already been fixed by the rules. I have forgotten as to that.

The PRESIDENT. The chair is of the opinion that 10 o'clock is the regular hour.

The motion of Senator Campbell to adjourn until to-morrow at 10 o'clock was then put by the chair and carried.

NINTH DAY.

ST. PAUL, MINN., January 11th, 1882.

The Senate, sitting for the trial of E. St. Julien Cox, judge of the ninth judicial district, upon articles of impeachment, exhibited against him by the House of Representatives, met at 10 o'clock A. M., pursuant to adjournment.

The Sergeant-at-Arms having made proclamation,

The Managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. James Smith, Jr., Hon. O. B. Gould, Hon. A. C. Dunn, Hon. G. W. Putnam, Hon. W. J. Ives and Hon. L. W. Collins, entered the Senate chamber and took the seats assigned them.

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

The PRESIDENT. The Sergeant-at-Arms will make the usual proclamation.

The Sergeant-at-Arms made the usual proclamation.

The PRESIDENT. The Clerk will call the roll.

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

Messrs. Aaker, Bonniwell, Buck C. F., Buck D., Campbell, Clement, Gilfillan C. D., Hinds, Howard, Johnson A. M., Johnson F. I., Johnson R. B., Langdon, Macdonald, McCormick, McLaughlin, Morrison, Officer, Peterson, Pillsbury, Powers, Rice, Shaller, Shalleen, Simmons, Tiffany, Wheat, White, Wilkins and Wilson.

The PRESIDENT. There is a quorum present.

Do counsel for the respondent desire to make any motions prior to the presentation of the case on the part of the prosecution.

Senator C. F. BUCK. Mr. President, I rise to a question of privilege. I notice in the journal that was furnished to the Senate yesterday morning that I am made to take a very active part in the proceedings of this body on the afternoon and evening of the 15th of December. It was the afternoon on which the very able Manager Mr. Hicks, addressed the Senate; and as I could not be here and as a matter of fact was not here on that day, I think there must be some mistake in the record, as it now stands, and that where my name appears—

The PRESIDENT. On what page does the error occur?

Senator C. F. BUCK. On pages 42, 43, 44, 60 and 61, and others. desire to say that wherever my name appears in the record of the pr ceedings that day, that there should appear instead, the name of n able namesake from Blue Earth. [Mr. D. Buck.] I do not know ho this matter can be corrected, but the truth of history requires that should be amended or corrected in some way. I simply make this e planation in justice to the Senator from Blue Earth.

The PRESIDENT. The clerk will see that the record is corrected in t particular mentioned by Senator C. F. Buck.

The CLERK. The entry of the remarks of Senator C. F. Buck in t journal of to-day, will be the only correction that will be possible.

The PRESIDENT. Senator Wilson presents the following order whic will be read by the clerk. The Clerk read the following resolution:

Ordered, That hereafter the daily sessions of the Senate while sittin as a court of impeachment be from 9 o'clock a. m. to 12:30 p. m.; an from 2:30 p. m. till 6 o'clock p. m., unless otherwise ordered.

The PRESIDENT. The question is upon the adoption of the order. the Senate ready for the question?

Senator RICE. Mr. President, I ask that the resolution be again rea

The PRESIDENT. The order will be again read for the information the Senate.

The Clerk read again the resolution offered by Senator Wilson.

Senator RICE. Mr. President, I am as anxious to get through wit this case as any man in this Senate; but it seems to me that the resolu tion offered goes a little too far. I am afraid that the managers an especially the attorneys for the respondent will be overtasked, working as many hours as that resolution would require. It seems to me that this Senate will meet at ten instead of nine o'clock, that the difficult would be remedied, or, if it would take an adjournment at five instea of six o'clock in the evening.

Senator WILSON. Mr. President, I had written that order in the firs place making the hour at which we were to meet each morning, 1 o'clock; but after consulting with some of the managers, and after hea ing the expressions of the reporters, it was thought best to fix the hour a 9. I had written it, in the beginning, so as to commence at 10 o'clock with an evening session; but the reporters preferred to have a longe session in the day time, without an evening session. So far as I an concerned, I am anxious to get through with this business as speedily a possible, and to get away from here; and as it is going to be a long tria anyway, as it now looks to me, and as the days are getting longer, no every day, at both ends, it appears to me that the Senate might just a well meet at 9 o'clock as at 10. I am decidedly in favor of this Senat meaning business, and attending to business constantly until we ge through. I hope the resolution or order will be carried.

Senator RICE. I move to amend the resolution, Mr. President, by in serting the figure 10 in lieu of 9. It seems to me, Mr. President, tha after the attorneys and managers finish their work here for the day go home and read up authorities and prepare their case for the nex day, that to come in here at nine o'clock, the next morning will be hardship to them, and for that reason, I move to strike out 9 and in sert 10 in lieu thereof.

Senator WILSON. I would like to hear an expression of opinion from the attorneys. I am disposed to accommodate them as far as possible.

The PRESIDENT. The question is upon the amendment of Senator Rice, to strike out the word nine and insert in lieu thereof the word ten. Is the Senate ready for the question? If the managers desire to be heard on that point the Senate will now hear them.

Mr. Manager DUNN. On that subject, Mr. President, I think I can voice the opinion of the managers that ten o'clock is as early as we think we ought to be asked to come here in the morning after the investigation that will necessarily occur on our part every evening during the trial of this case. We think, if it be consistent with the views of the Senate, that ten o'clock will suit our convenience much better than nine.

Mr. Manager HICKS. Mr. President, in justice to Senator Wilson I desire to say that I suggested nine o'clock for the morning hour instead of ten, and that we have no evening session. The Senator showed me a resolution which he proposed to introduce which provided for an evening session. I told him we preferred to come here in the morning, at nine o'clock, I thought, rather than to come in again in the evening but if the Senate does not desire to sit in the evening and would give us the time until ten o'clock in the morning, it would certainly be preferable to come in here at that hour rather than at nine o'clock.

The PRESIDENT. The question is upon the amendment of Senator Rice fixing the hour at ten o'clock instead of nine. Is the Senate ready for the question? As many as are of the opinion that the motion should prevail will please say "aye." The contrary minded "no."

The ayes appear to have it.

Senator CAMPBELL. Division.

The PRESIDENT. The yeas and nayes are called for. The Secretary will call the roll.

The roll being called, there were yeas 17, and nays 13, as follows:

Those who voted in the affirmative were:—

Messrs. Bonniwell, Buck C. F., Clement, Howard, Johnson F. I., Johnson R. D., Langdon, McLaughlin, Officer, Peterson, Pillsbury, Powers, Rice, Shaller, Shalleen, Simmons and Wheat.

Those who voted in the negative were:—

Messrs Aaker, Buck D., Campbell, Gilfillan C. D., Hinds, Johnson A. M., Macdonald, McCormick, Morrison, Tiffany, White, Wilkins and Wilson.

And so the amendmeut was adopted.

The question will now be upon the adoption of the resolution as amended.

As many as are of the opinion that the motion should prevail will say aye, those of a contrary opinion, no.

The ayes have it, and the resolution fixing the time for meeting in the morning at 10 o'clock, is adopted.

If the counsel for the respondent have any further motions to make prior to the opening of the case by the Manager on the part of the State, the Senate is now ready to hear them.

Senator AAKER. Mr. President, there was a resolution pending last night before the adjournment. It was amended but not acted upon as amended. It was not disposed of.

The PRESIDENT. The chair was not aware that a resolution was pending.

Senator AAKER. The resolution of Senator Hinds was adopted.

The PRESIDENT. A request was made by the counsel for the respond-

ent that some action be taken by the Senate relative to rule 16. Whil the matter was under consideration there being no resolution or eve motion pending, Senator Hinds moved to amend. The proposition wa carried and substantially amended rule sixteen by the addition o certain language and, in the opinion of the chair, that practically ended the matter unless it was desired to re-open the matter an amend further. There was no resolution pending that the chair kne of.

Senator CAMPBELL. If that ends the matter, Mr. President, I mov that the managers proceed to open their case.

The PRESIDENT. It will be taken as being the sense of the Senate tha the managers proceed to open the case if the counsel for the respond ent have no further motions to make.

Senator CAMPBELL. Certainly ; my motion was intended to be mad with that qualification.

Mr. ARCTANDER. Counsel for the respondent have no further motion to make at this time.

The PRESIDENT. It will be in order then for the honorable manager to open the case and the Senate is ready to hear them.

Mr. Manager HICKS. The respondent in this case having, by hi answer yesterday, put at issue the facts alleged in the several articles o impeachment it becomes the duty of the managers to present to yo the facts, as they have come to our knowledge, upon which those ar ticles are founded, and which we expect to prove.

Some of the issues presented by the answer of the respondent hav already been decided by this court. I still use the term "court," be cause we have here a party accused and an accuser. We have her judges who are to decide first, whether the party accused is guilty of th acts alleged against him ; and who have already decided that the fact charged constitute an impeachable offense. We have here also a bod of men, duly constituted by the constitution of this State, to pass judg ment. It is true that your jurisdiction is limited. You can try only certain number of officers ; you can try them only for the offenses name in the constitution ; and you can only declare two certain punishment —removal from office, and a disqualification to hold office in the future This then, though a court, is a court of extremely limited jurisdiction the practical result being, that you have only to inquire, whether th respondent is guilty of the acts charged, and, if so, to remove him fro office, as you have already decided, that they constitute an impeachable o fense. As was rightly said by the Senator from Blue Earth yesterday you can neither touch the respondent's person, his property nor his liber ty. You can only inquire into his fitness to hold office.

The first issue which the respondent seeks to bring you is th question, which has already been decided by this court, and that i whether the facts stated in the several articles constitute an impeachabl offense. This having been decided, I will not insult the dignity o the Senate as a court by again referring to it. The second and thir answers which are given to each of the several articles, are practically the plea of "not guilty." To the first article there is the additional ple that the respondent has been acquitted of the charge therein alleged.

A further issue is made as to your jurisdiction because the House o Representatives had no evidence before it upon which that article i based ; and, finally, as one grand plea to the jurisdiction the respondent has come in and said "you are not a court ; you are not a Senate ; you

as an official body, are dead; you died last November, when the Legislature adjourned," and he dares to do this in the face of a precedent which has thoroughly established the fact, that the Senate may sit as a court of impeachment, after the legislature has adjourned. I refer to the Page impeachment trial.

It seems proper that in the presentation of this case, the Board of Managers should drop each and every other issue here made, and speak only to the one, the question of guilty or not guilty, and the facts which we propose to prove upon that issue.

The defendant is here charged with the crime of drunkenness. What is drunkenness? Why, it is an abnormal state of mind or body, produced by the use of alcoholic stimulants. I do not pretend or propose, gentlemen, to read you a dissertation upon the subject of intemperance in all its wide range, but to call your attention to a few simple facts as to the effect of alcohol upon the human system. It produces a great many different results. As the sun, shining upon the thousand varied objects in nature, reflects back from each a different color; so alcohol, introduced into the human system, produces a variety of effects, and a variety of conduct. This is true of the experience of every individual present.

I say it is true of the experience of every individual present—I saw a smile—I do not say that each individual present has experienced this; but I say that as each individual sees the colors reflected back upon the thousand different objects upon which the sun shines, so it has been the experience of every individual here to see men in a drunken condition in different moods. It is that which has been the experience of every man present. I say that this alcoholic poison which is taken into the system produces a different effect upon different systems.

It is necessary that I should premise this, for this reason. We shall not pretend to prove to you, Mr. President and gentlemen of the Senate, that the respondent here had taken the same amount of alcohol into his system in each and every of the instances in which we allege that he was intoxicated.

We do not expect to prove to you that in every case he was maudlin drunk, or that he was totally incapacitated by reason of the use of intoxicating liquors to perform his duties. Totally,—mark you, I say. But we expect to prove to you various stages of drunkenness in these various instances, and you will observe as the evidence is produced before you, that this alcoholic poison acts in a peculiar manner upon the respondent—differently perhaps from the manner in which it acts upon other people. For instance, many individuals when they take this poison into their system are affected only bodily, and are in the condition of which we speak when we say, a man becomes "drunk in his heels" before he does in his head. This touches upon extreme drunkenness. In other individuals the reason fails, almost entirely so, some time before the body seems to be affected visibly. There may be indications of it upon the body, but they will be comparatively slight. It will appear in evidence that the effect of alcohol upon the respondent is principally upon the mind.

Now these various stages that we find to result from the use of alcoholic poison are first—and I will define them as given by one of the best authorities in the country—confusion of thought, delirious excitement, sometimes nausea and vomiting, ultimately inducing a state of narcotism—sleep, and in fatal cases, producing a kind of apoplexy and paralysis

of the heart. We do not claim here, Mr. President, that the respondent has taken intoxicating liquors to such an extent as to prove fatal, for it has not produced that effect; nor do we propose to show to you that other certain conditions which sometimes follow upon the use of alcohol have taken place in his case. I do not remember any place in the evidence where it was shown to produce upon the respondent nausea or vomiting. But we do pretend to be able to show some instances in which the first effects of alcohol are shown upon the respondent, viz.: confusion of thought and a delirious excitement; and then some of the other offenses that are charged against him will appear to be the secondary stages or the other effects of drunkenness when he comes fully under the narcotic effect of drink, or in other words, sleepy.

All these different charges will be somewhat various in the degree of intoxication charged upon the respondent, even to the extent, as the honorable counsel for the respondent said yesterday, to "cornering" the respondent; because, Mr. President, we have no reason to doubt from the evidence before us, and which we will produce to you, that we shall prove to you in some of these charges, what we believe, we are not required to do, viz.: that beyond a reasonable doubt the respondent, as a judge of the district court has, within the last four years, in many instances attempted to perform and pretended to perform the duties of the office of a judge of the district court of the State of Minnesota while in a state of the most extreme and disgusting intoxication.

I would gladly forbear to recite the history of the wrongs against the people of this State, but it becomes my duty to do so. It is a record disgraceful alike to the State of Minnesota and to the respondent. I owe the respondent no personal ill feeling. I believe that ill feeling actuates no member of the Board of Managers. But it becomes my duty, Mr. President and gentlemen of the Senate, to state to you here to-day, as I will endeavor to do briefly, facts which shall cause the cheek of every Senator to blush for very shame.

The first article alleged, charges the respondent with exercising the powers and duties of a district judge, of the State of Minnesota, upon the 22nd day of January, 1878, in the county of Martin in this state, while in a state of intoxication. The facts briefly in this charge will be that Judge Dickinson, who was judge of the sixth judicial district of this State, called the respondent to hold the term of court in Martin county in 1878, something less than thirty days after the respondent had taken the oath of office as judge. We shall show you in this case, Mr. President, and Senators, not that the respondent was maudlin drunk at that time, but simply, as we believe, beyond any reasonable doubt, that he exercised the duties of his office, that he sat there upon the bench as judge in a state of intoxication. And we believe that being proved, it is not necessary that he should lie there at the foot of his table like a brute. We believe that any delirium, any intoxication, however slight, upon the bench, which affected his mind, which produced a visible and marked effect upon his mind, is sufficient to disqualify him and deprive him from further holding the office of judge of the district court of this State.

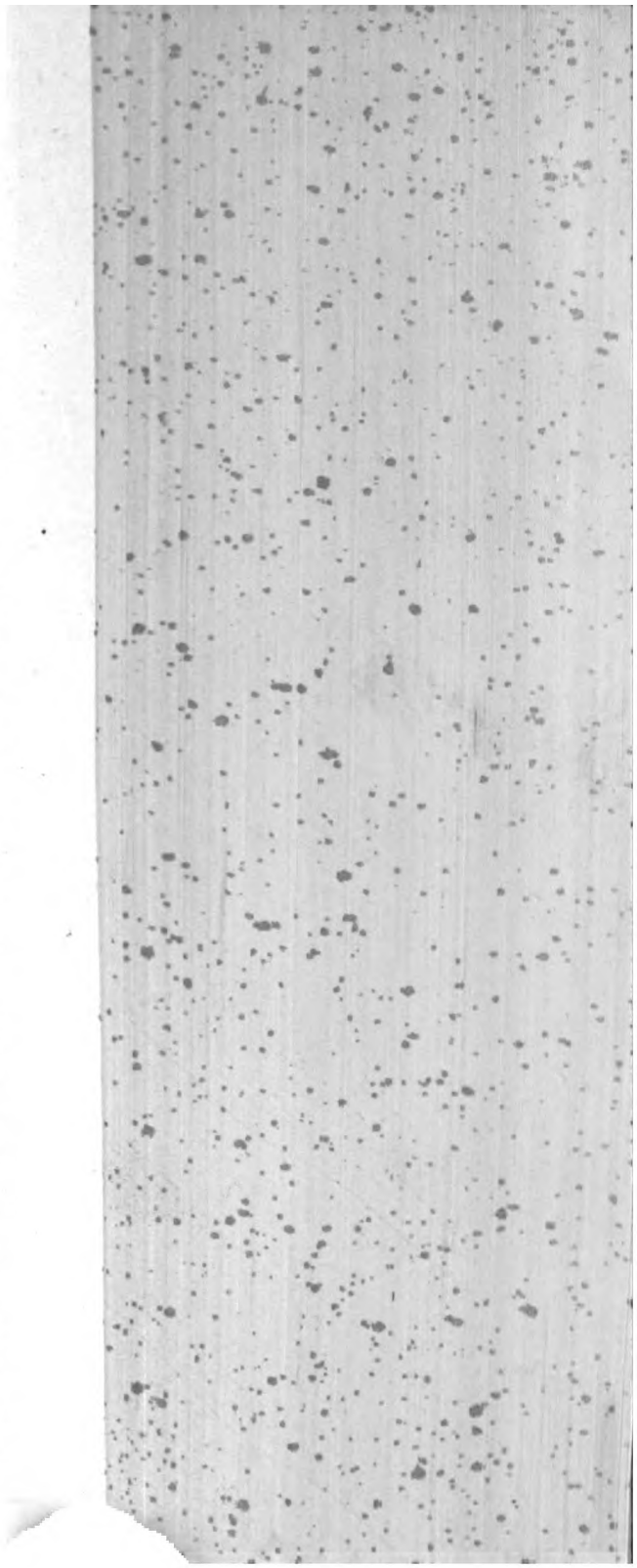
I cannot forbear, Mr. President and Senators, in this connection to notice the fourth issue which is here made by the respondent. He comes, gentlemen, and pleads that of this offense he has once been acquitted. The acquittal was this, as will appear from the record, that after holding his term in Martin county—they have made it neces-

sary for me to explain what may, perhaps, be proved in this connection, —after the holding of the term in Martin county, the people of that county feeling outraged by the conduct of respondent, took measures— as the gentleman said here yesterday, first the people, and then the press—and the matter was thought of such a serious nature that the legislature of the State, then in session, deemed it necessary to inquire into the facts, and I call your particular attention to a fact, which I well knew when it occurred but had forgotten, that the record showed so plainly that at that session which many Senators will remember, when there were matters of the very highest importance pressing upon the legislature, at the very last hour of a long, busy session, (one of those annual sessions) on a Monday morning, when it was not shown by the record that there was a quorum present—although there was undoubtedly at the time a bare quorum present—the report of this committee was presented to the House, and adopted without division.

You heard a portion of it read yesterday.

The sheriff, the foreman of the grand jury, an attorney at law from Fairmount, Martin county, all of whom were present during the entire term of the district court, that at Fairmount in said county, commencing on the 22d day of January, A. D. 1878, and continuing nine days thereafter, and that from a full and fair investigation of the subject matter and all the testimony offered on it we find that Hon. E. St. Julien Cox judge of the 9th judicial district was not intoxicated while presiding on the bench during said term of court, and that his conduct as a judge while so presiding was not, in any manner, censurable, and that the charges made in the Lanesboro Journal, which your committee were directed to investigate are wholly false, slanderous and untrue." Simply the charges presented in the Lanesboro Journal. Now, then, we have had the evidence of one witness before the House, and I desire to call attention to his evidence, as you may have other witnesses of the same kind before we finish. That man said he was not prepared to say that Judge Cox was drunk upon the trial. Aye, but when we turn and ask the other question,—are you prepared to say that Judge Cox was *not* drunk upon the trial,—was not in any manner affected by the use of intoxicating liquors,—I think you will find in every instance the answer to be that he is not prepared to state that. And on the very next page of the journal, at the bottom of the page, a vote was taken in the House of Representatives, upon which there were only yeas thirty and nays twenty-two, showing that a quorum was not present immediately after his report was made. To my distinct recollection as a member of that body there was no vote upon the report except the statement of the Speaker, "the report of the committee will be adopted unless objection is made." Moreover this was no trial; "The House of Representatives have the right to impeach but the Senate have the sole right to try impeachments." There was then no trial.

This plea of having been heretofore acquitted drops upon the first weight of investigation. However, I am free to confess, Mr. President and Senators, that I do not consider this by any means one of the strongest charges against the respondent here. One further incident I would like to note right here. Here was a warning to the respondent. Not only this but the chairman of the judiciary committee sat down, and as I am informed, in the presence of the respondent penned the very act upon our statute book, which makes habitual drunkenness cause for removal from office. That act immediately passed both houses and very many of the



gentlemen present know the reason why the act was passed then and there.

We next come to the case at Waseca. At a term of court held in Waseca county, commencing on the 20th of March, 1879, and lasting until the 7th day of April following. It is the unanimous opinion of every gentleman who sat in that court during the first week, that the respondent was, during that week, entirely sober. Now then it may be urged and will be urged that the respondent is a peculiar man when sober; in fact it has already been urged that, when sober, he appears very much like a drunken man; but mark you, gentlemen, in these several instances, we shall not ask you to guage the respondent by other men, but we shall simply ask you in your judgment, to guage the respondent drunk, by the respondent sober. Most unquestionably witnesses will come in here and declare that for the first week he was entirely sober at this term of court held in Waseca county. But what followed? First these witnesses will tell you that he came into court in a rather peculiar condition which indicated intoxication. For a day or two, it kept growing worse until, on the night of the second of April, he indulged in one of those bachanalian revels, lasting all night long, and then the respondent, as a judge of the district court of the State of Minnesota, on the morning of the third of April, in the trial of the case of Patrick Powers against Joseph R. Herman, comes into the district court of Waseca county, in a case involving the sum of fifteen hundred dollars,—his hair dishevelled, his eyes bloodshot,—all the indications of drunkenness upon him,—goes upon the bench and commences the trial of that cause. And these same men who aver that for a week, he was sober and acted proper in every particular, will tell you that there he was unmistakably drunk, and so drunk that he was absolutely unfit to perform the duties of his office, in the trial of this case.

We shall show you that a gentleman by the name of Lewis was attorney for the defendant, Herman; that an attorney by the name of Collester, was attorney for the plaintiff, Powers; that Mr. Powers was a witness upon the case; that Mr. Lewis, the attorney for the defendant was cross-examining Mr. Powers and that he commenced, as attorneys sometimes do, to ask very urgent, rapid questions, and as the opposing counsel insisted "was endeavoring to bulldose his witness," whereupon Mr. Collester, the attorney for the plaintiff, got up and addressed himself to the court protesting against the defense. To his utter amazement,—and he is as honest a friend of the respondent as I have found in all southern Minnesota,—he says the man was so stupid he did not hear! He sat there with his face over on his breast and entirely oblivious to the surrounding proceedings. What did he do? He immediately stepped around to Mr. Lewis, as soon as he could without interrupting the progress of the case and says, "Mr. Lewis, you see the condition of the Judge. I am going to make a sham motion to get a witness here from Waseca just as soon as you get through with your examination, and for God's sake don't oppose me." Here was a man who had a client with the sum of fifteen hundred dollars involved in his suit, a small amount to some of you, gentlemen, but to him it may have been large, and obliged to go around and say to the opposite counsel, in order to get rid of this drunken judge, "I am obliged to make a sham motion to get a witness from Waseca." "Well," Mr. Lewis says, as we shall show you, "I shall not object." He asked one or two questions more after which the counsel for Mr. Powers at once got up, aroused the

judge, and made a motion to have the court take a recess for a couple of hours until he could get a witneess from Waseca. Well, the judge brightened up for a moment and then said it was an unheard of proceeding; that it could not be entertained for a moment.

The opposite counsel finding that the judge was very stubborn upon the matter finally consented. The court finally adjourned to 2 o'clock in the afternoon. And the clerk of the court will come in here and tell you that he immediately felt it his duty to do what he could for the honor of the respondent and for that of the district court of this State and said to the judge, "I want to see you down stairs," and the judge replied "No I have got enough in me already." "Never mind that," said the clerk, "I want to see you down stairs," and the judge follows him down stairs, and that honest and honorable clerk took him over to the hotel and put him to bed and told him to stay there until he called for him. At the beginning of the court in the afternoon, he goes over to the hotel, gets Judge Cox and escorts him back to the court-house and acts as a convoy to keep him from getting into those hell holes surrounding him upon every side; and when he gets him to the court-room, the respondent upon his own motion was obliged to adjourn the court until 7 o'clock in the evening and was driven out by his friends, away from town in order to be kept sober. And at 7 o'clock in the evening, as we shall show you, he was barely able to conduct the business of the district court. Why, gentlemen, I grieve that such conduct and such an exhibition of intemperance, should ever have taken place in the State of Minnesota.

Now then they will say "He was not drunk, Oh no, he was only sleepy." But mark you, gentlemen, that this sleep was induced by the use of intoxicating liquors as I shall show you, because we will show you by the men who drank with him that it was liquor; and that if it is the secondary stage of this disease it does not make any odds what stage of the disease it is,—whether it is from the first exhilerating effects of the fluid or whether it is from the last stupefying effects of the fluid it results from the use of intoxicating liquor and results to the disgrace of the State and to the detriment of business and your line of duty is plain.

The next case is another instance of the terrible effects that alcoholic poisons will produce in man. An adjourned term of the district court of Brown county was held at New Ulm, commencing sometime about the 10th or 11th of June, 1879. There was a case that had been agreed upon by the several counsel for the respective parties and by the court which was to have been tried at this adjourned term. In fact there were two cases in which there were similar issues of fact and law, and which in fact were to be tried at one and the same time. The cases were the cases of Wells vs. Gezike and of Evans, Peake & Co. vs. Gezike. Hon. Gordon E. Cole, of Faribault, was counsel upon one side, and Hon. M. J. Severance, now one of the judges of the district court of this state, was counsel upon the other side. There were other counsel in the case. Mr. Cole and Mr. Severance had been, for a few days prior to this, engaged in the trial of a case at Owatonna. On the 12th day of June they telegraphed to Hon. E. St. Julien Cox, at New Ulm, that they could be there that night but the respondent adjourned the court, of this adjourned term, that afternoon; so that this case was really a case tried at chambers. But mark you, one thing to which your attention has already been called in the preliminary remarks of this case, the

judge of a district court, by the statutes of this State his court is open for business at all times and it does not make any odds whether the judge tries the case with a jury at a general term, whether he tries it at a special term or whether he tries it at chambers. He is likely to exercise large discretionary powers and in no instance has he any right to be under the influence of liquor to any extent.

Mr. Severance will come in and testify to you that he came to New Ulm that night; that he hunted around and found Judge Cox in an old barn, back of some old building in New Ulm, drunk; the only words that will express it, and the only words that could express it were "totally drunk:" that they finally found the judge and agreed with him that he should try the case the next day, which the judge consented to do, provided they would get an amanuensis to take testimony in the case. The next morning they went up to the court house, and be it said to the credit to the respondent that he objected somewhat to going into the trial of the cause in the condition in which he then was. But it was finally agreed that he should go on and try the case in this way; he was to make no rulings upon any question which should be submitted to him. Why? Because he knew and the counsel knew, that he was too drunk to do it; but he merely sat there as a matter of form,—as a thing before whom the law required this case should be tried,—and a clerk,— a clear headed man from the land office, was to take the evidence and all the objections and exceptions, and when the case was finished and when the respondent had sobered up, then the matter was to be tried. We will show you gentlemen, that this respondent, in the language of one of the witnesses, "had not fully recovered from the debauch of the night before;" yet he was there sitting for the trial of a case involving a large sum of money in which some of the ablest counsel in the State of Minnesota were engaged, sitting there, in a condition of extreme stupor, the second, or last stage of drunkenness. We shall produce to you the two counsel on each side and the clerk of the land office who took the testimony. They are the five witnesses, and we thought them the most important that would be called.

The next case occurs at a special term of the district court held in Nicollet county, at St. Peter, on the 5th day of August, A. D. 1875. It was a case entitled Brown *vs* the Winona & St. Peter Railway Company. It was upon a motion for a new trial. The amount involved in the suit was the sum of six thousand dollars, and the counsel upon both sides of that case will come in and tell you that the respondent in that instance was so intoxicated that they were obliged to adjourn the matter; they were unable to proceed, and this was not a secondary stage; this was one of those hilarious or first stages of drunkenness.

The next case under article five occurred at St. Peter, on the 18th day of October, 1879. A case wherein one Albrecht was plaintiff, and Long, the sheriff of Waseca county, was defendant. It seems that there had been a motion for a new trial. A case had been made, the judge of that district,—the respondent,—refused to certify the case; an alternative writ of mandamus was issued from the supreme court of the State of Minnesota, compelling him to show cause why he should not certify the case to the supreme court. That was argued (all prior to the time we have mentioned); the supreme court made that alternative writ peremptory. It was sent to the sheriff of Waseca county, and he went to St. Peter to serve it upon the respondent. We shall show you by the sheriff who served that paper upon the respondent, that at the time he

made that service; and at the time the respondent wrote his name there he was in a maudlin state of intoxication. He found him at the bar of a whisky shop in St. Peter, and the respondent said "He would be damned if he would sign the paper." He used expressions of contempt against the supreme court of the State of Minnesota, who had made the order, and finally Sheriff Long was obliged to leave a judge of a district court of the State of Minnesota, and go and get a citizen of Saint Peter who had some influence over him, in order to get him to do his duty. And he went and got the friend who has stood by the respondent all these long years,—the man whose purse and friendship have ever been at his command,—he went and got "Jack" Lamberton, as they call him, to see if he could not get the judge to sign this order; and this same drunken judge reiterated there in the face of that friend, who had done him service for years, that he "would be damned if he would do it." And Jack Lamberton says that he finally looked over the papers and saw that it was necessary for him to sign them, and thereupon told the respondent, "you must sign them," and compelled him to sign them; and we shall produce to you the original paper. There is a little evidence right here that seems stronger than any human evidence,—records are terrible things. The only writing on that paper is the signature of E. St. Julien Cox, and you will see it a thousand times, when it is graceful and beautiful, as is the respondent when he is sober, but the signature there is *drunk!* It is unmistakable. And is it to be wondered at, when men see the judges of the district court in such a condition, that they feel an honest contempt for them, or that such a judge is obliged to enforce his authority by excessive and unusual fines?

The next case is article six. A case which occurred at a special term, or at chambers, on the 10th day of November, 1879. I say to you frankly, Mr. President and gentlemen, that after examining the evidence upon that case, I see only indications of very slight intoxication. The witnesses will be produced before you, however, that you may know all the various stages of intoxication in which this man has been seen. It is not one of those graver cases which I have just named, but a slighter and milder form of intoxication.

The seventh article alleges acts which ocurred on the 10th day of December, 1879, at a general term of the district court, in Nicollet county, in a road appeal case. The title of the case was Dingley against the County Commissioners. The case was being tried at an evening session, and we shall show to you, gentlemen, most unmistakably, by the witnesses there present,—men who have know Judge Cox for years, who have lived with him in the same town, who know him drunk and know him sober,—that he was unmistakably under the influence of liquor, upon that occasion.

Another occasion of similar import is, at the May term, 1880, under article eight, at Brown county, at the general term of the district court, in the trial of the case of McCormick vs. Kelly, on the 10th and 11th days of May, 1880. The evidence of the witnesses will be that be was intoxicated, not to the extent to which he was in some cases named, but more than in the slighter cases, and less than in the more aggravated cases.

In the June general term of the district court for the sixth judicial district, held in Blue Earth county in 1880, Judge Cox was requested to go to the city of Mankato, to hold court there for Judge Dickinson. There will be evidence before you, gentlemen, to show that Judge Cox,

the respondent, while in the trial of causes there, was somewhat under the influence of liquor. I have not conversed personally with some of the witnesses in this case, and shall therefore, only speak or as I have received it from other members of the Board of Managers.

I next come to one of those disgraceful scenes which is certainly painful to recite. At a special term of court, held in Lyon county on the 12th day of May 1881, there were several persons to be admitted to citizenship there; among others, there were two men named Marks. The judge had arrived in town, to hold a special term, and not coming to the office of the clerk of the court, where he usually held court, at the appointed time the clerk sent one of the parties who were to be naturalized out to find him. They found him in a saloon; they were unable to get him to go to the court house. They came back and so reported to the clerk; the clerk then finally went down and saw the judge himself in the saloon. The judge insisted that he should come down there and have his men naturalized. The clerk very naturally protested that it was not the proper place to hold the court in a bar-room, and finally induced him to go back to the office to commence to hold the term of his court there. The evidence upon all hands will show you that he was greatly intoxicated. Nay, his own conduct, if these facts which we allege and which we have the most implicit confidence, we can prove to you beyond any reasonable doubt are true, you will know that the man who so acts must have been drunk, or insane, to have committed them. While Mr. Marks was being interrogated as to his citizenship or at the same stage of the proceedings there were some hard words between the respondent, the judge, and this man Marks or some words of some kind the nature of which will be shown you, that the judge struck this man in the face; whereupon this man, a German, says, "if you are Judge Cox, you can't strike me in the face," and immediately takes the respondent by the collar and puts him back in the corner and holds him there; and the deputy sheriff will tell you that he buried his face in his hands because he did not want to see a breach of the peace, and because he thought Judge Cox deserved what he got. We will show you these facts by the deputy sheriff, and by the very man he struck in the face, can you doubt that he was drunk?

"Oh judgment! Thou art fled to brutish beast and men have lost their reason;"

if this be true.

Article 11,—and here we find some little conflict of testimony. Some very prominent and truthful men,—men in whom we have the most implicit reliance,— insist that the respondent was intoxicated on the trial in the case of John Peter Young against Charles B. Davis; other truthful men say they don't know, but that they are not certain that he was *not* intoxicated. It was not one of those gross cases however, to which I have just referred.

Article twelve is a case in Renville county at the general May Term, 1881. It is unquestioned on all sides that, for the first two or three days the respondent was sober, but afterwards he was considerably intoxicated, especially at the latter part of the term.

The next case is article thirteen, and is another one of those outrageous cases; not because he was outrageous upon the bench, but, taking all the circumstances into consideration, it outrages every principle of decency, of honor, of manliness and duty. The respondent had appointed

a special term of court to be held on the 12th day of June 1880,—and I want to call your attention now, if you have your copy of the articles of impeachment, to the fact that there is a mistake in the date. It is alleged to have been committed in 1881, but it is, in fact, in 1880. However, if it were a criminal indictment, we could prove that fact. As it is now alleged at the time it occurred, we do not make any claim that the fact occurred in 1881, but allege that it occurred in 1880. On that day the respondent had appointed a special term of court to be holden at New Ulm. An alternative writ of mandamus had issued on certain parties in the district and a motion was to be heard at that time. The attorney for the plaintiff will come before you and testify that the respondent had been intoxicated for several days ; that he was somewhat in doubt as to whether the judge would be able to attend that term at New Ulm. They lived at St. Peter where the judge resided and the attorney took particular occasion to inform himself as to whether the respondent had gone to New Ulm to attend the term of court and watched every train for that purpose. He found the respondent had been to the train and, when he should have gone to New Ulm to attend this special term of court, had taken the train the other way and had gone East instead of West. He finally went to the last train upon which the respondent could have gone to New Ulm and discovered that he had not taken the train and then came back to the city of St. Peter and there he discovered the reason why the respondent had not gone there to attend this special term. He found him upon a bench, outside of a whisky-shop in the utmost state of intoxication,—so drunk that he got his arms around the neck of the attorney and says "I will give you any order you want." Think of a judge of the district court who is to decide upon your rights and your privileges in his drunken, maudlin state, knowing that he has neglected to attend to his duty, hugging the attorney and telling him in a public street : "I will give you any order you want."

Drunkenness has a very peculiar effect on some persons. All through the ninth judicial district, in looking up this testimony I found the warmest friends towards this respondent, I found men whom I really believe would elect him to any other office within their gift except the judicial office ; but I found men who feel outraged by the manner in which he has conducted the office of the district court of that district. I say whisky works wondrous changes. Why, it is said that an old lady in England was incarcerated in a jail within the period of eight years, some one hundred and forty-seven times, and that she smashed windows every time she got drunk. Drunkenness, I say, shows peculiarities ; but I certainly never could believe what we have the utmost confidence we can prove, unless I could believe that the man was drunk or insane.

At a general term of the district court in Lincoln county, in June, 1881, the term was first commenced at Marshfield and afterwards adjourned to Tyler. I found up in that county when I got there, that the Tyler people were rather friendly to the respondent, and the Marshfield people were not, perhaps, so friendly. I did not see them all and ought to say nothing about them. However I went to Tyler and found them very friendly. But I found men, undoubtedly truthful, who stated that there was no doubt that Judge Cox was under the influence of liquor very largely during the term of the district court held at that time. And here is one act which we expect to prove to you, gentlemen ; to show that he must have been drunk or he never would have committed it. It was testified to before a committee of the House of Representa-

tives, and we shall prove to you also, that upon a trial of a crimin
cause at that term of the court, the defendant was not arraigne
He was however tried, found guilty by a jury, by the way, allow m
to say, upon the charge of an assault with an attempt to commit a rap
He was convicted by the jury of a simple assault,—the jury in its mer
or leniency, whatever it may have been, recommended him to the mer
of the court and was fined the sum of ten dollars, to which we take
exceptions because it was probably as much of a fine as should ha
been imposed, judging from the facts as we learn them, but *after all th
had been done* the attention of the court and county attorney was call
to the fact that the man had not been arraigned. The jury were, in th
presence of the defendant excused until after dinner, but were informe
that they would be required to sit in that case. During the recess,
we are informed, and I shall only state it as we expect to prove by th
party himself and by his attorney, the respondent took this defenda
out behind the court house and said to him, "Now look here, you
man, you have been tried on this charge once, you have been foun
guilty, we do not want any more bother with you; you come in th
afternoon and plead guilty and I will fine you ten dollars, again; but
you put us to the trouble of a trial "I will fine you fifty dollars." Cou
a judge of the district court have been otherwise than drunk and ha
made that statement to the man? And it is true that the man did com
in, and did plead guilty *and was fined ten dollars in accordance with the co
tract!*

At Lyon county at the general term, 1881, we shall produce to yo
undoubted evidence to show to you that during the first three days of th
term, the respondent was unmistakably intoxicated. He sobered up
every one will admit, after that and the reason why he became sobere
Mr. President and gentleman of the Senate, was that the outraged pe
ple of the 9th judicial district refused longer to forbear this man
drunkenness upon the bench. A grand jury of that county brought i
resolutions censuring him for his drunkenness, and those resolutions i
stead of being spread upon the records as we expected to find them,
we shall prove to you, were taken by the respondent himself. Cou
was immediately adjourned when they came in, and the bar was invite
down to the respondent's hotel to consider the resolutions. Why, ge
tlemen, do you know that the lawyer is always anxious to be friendl
with the court. He does not want the court to feel that he is not
friend. Mark you, this man has almost unlimited power and i
fluence over the members of the bar. Any man who may oppose hi
is liable to be fined as was the county attorney in one of the counties
his district. These men, as I say, over whom he has almost unlimite
power are called down to his room at the hotel and asked, not in
many words, but asked to give him a whitewashing; and, gentlemen
the Senate we shall present the evidence before you and you can mak
up your minds as to the reason yourselves. We do not clai
that at that time he was intoxicated, we claim that those resolution
sobered him; in other words intimation had been given him in th
morning before they came in, that those resolutions would be produce
and he checked his course and as one of the witnesses will testify to yo
he became a sober man sooner than he ever saw a man sobered before i
his life, and unmistakable evidence will be given you that that gran
jury had good reason for their censure and that he was unmistakabl
drunk on the second day previous. I am frank to say to this Sena

er carefully examining the charges in the Sixteenth Article as to acts
ged to have occurred at a special term held in August, 1881, that I
d only one man willing to swear that during that time the respondent
s under the influence of liquor. And yet that man is a man of un-
ibted truth, but as we have as yet no corroborating testimony the
nesses whom we expected to find not being within the State, we may
present any evidence on that point.

Under artiele seventeen we found one or two very disgraceful affairs
nected with the administration of justice in the ninth judicial dis-
t, and the first was away back on the 7th day of November, 1878.
t was only about eight or nine months after the respondent had been
en a warning, which ought to have checked him in his career of intoxi-
ion, but, on the 7th day of November, 1878, he was called to the vil-
e of Marshall to hear a case in proceedings supplementary to execu-
n, in the matter of the Cleveland Co-operative Stove Association
inst Robinson and others. He came there for the purpose of hearing
se supplementary proceedings, in a condition rendering him almost un-
e to get into the building, from druukenness. He went on the bench
l he attempted to continue their proceedings. They were obliged to
urn until the next day. And one of the warmest friends of the re-
ndent who said that in all the four years of his acquaintance with
respondent, he had never seen him drunk upon the bench but once,
l that at this time the respondent was royally and gloriously drunk;
l that is the testimony of his friends, he hasn't any enemies out there.
have not found a man in all the ninth judicial district, who is un-
ndly with this respondent; they are unfriendly only to his vices.
y, the man could be a tower of strength but for this, not only there,
in the whole State.

The next case was another one of those disgraceful scenes, and it oc-
red at Brown county, in July or August, 1879, and that is charged in
month, but probably the proof will be in another. The clerk of
court has not been seen since we obtained the facts.

a a divorce case of Coster vs. Coster. The case was to be heard at
ecial term; the attorneys waited at the court-house, at New Ulm,
ted up on the hill at New Ulm, for a long time, and the judge not
ing his appearance they sent the deputy sheriff down to find the
e It seems that they found him either in bed or upon a chair, they
ld not remember which, at a hotel; the party did not remember ex-
y where he found him, but he told the respondent he was wanted at the
rt-house, and finally induced him to go. The witness says that he is
deputy sheriff, and he is apparently a very truthful man. He will
you that the respondent, was in a state of intoxication at that time
that the respondent told him he could not walk. That a butcher
came along the streets of New Ulm—not one in which they haul the
, but one in which they haul the offal and, that the respondent
nted the cart and swinging his hands went up through the streets of
r Ulm howling like a madman; that when he got to the court house
found it so warm that it was decided to hold court on the steps.
t was all perfectly proper, it does not make any difference where you
l court, if you have a judge that you have respect for there will be
t and order and decent proceedings, they held the court on the steps,
h as I say was perfectly proper. It seems that this was a divorce
in which the defendant had been ordered to pay over a certain
unt of alimony, he did not pay it. An order to show cause why he

should not be punished for contempt had been issued and the jud said to the defendant "we will send you to jail," and I believe order him to be committed to the jail but the sheriff would not obey the ord and he finally ordered the sheriff and the defendant both to be comm ted, and, as there was no one to commit them, that order was not obey he finally compromised however by telling the defendant that he mig go down town and bring up some beer. The defendant told him would do so if he, the respondent would furnish him some money, whe upon the judge of the district court of the ninth judicial district took half a dollar out of his own pocket and gave it to the defendant, and t defendant went for the beer, brought the beer back, and there on t steps of the court house, they sat and drank it. (Laughter.) It caus a smile, it should cause a blush of shame upon the face of every man.

Under specification three of article seventeen, I have not personally e amined the witnesses who will testify before you, and I will therefore s nothing about the charge. I have not had an opportunity even to co sult with the manager who examined the witnesses.

The next case is specification four under article 17, and is one whi occurred in 1880 at a special term of court held at New Ulm,—the ca of the board of county commissioners against Amasa Tower. There h been a trial of this cause; and there was a motion for a new trial to heard at this term. The respondent not reaching the court house as w expected, the parties went down to look for him. They found him, a they will both testify that they found him in a state of intoxication, a you may well infer that because, as they will tell you, the responde commenced to decide their case while going up to the court-house their company and when one of the counsel protested and wanted to heard upon the matter, the respondent says, "it's no use; Wallin has g you !"

Now that may do in non-judicial proceedings, but it will not do matters where the rights of parties are at stake in our courts. He w unmistakably under the influence of liquor, as both parties will testif As we are informed and expect to show you, he finally directed the cle to enter an order denying the motion for a new trial, but the clerk reco nizing the fact that the judge was intoxicated, refused to enter it a entered an order of continuance instead !

Gentlemen, when a judge of the district court becomes so drunk that the officers of his court refuse to obey him, it is time to call a ha

Specification 6 under article 17, includes the same facts, and will be t same in the character of its proof as specification 2 of article 20; but was thought that the facts constituted two offenses and it was therefo deemed best to charge them in two articles. The facts are these: som time in the month of January 1881, shortly after Edward Casey had be elected sheriff of Brown county, the respondent was at New Ulm on sou business, and one night sent for the sheriff; and when the sheriff arriv and asked the respondent what he wanted, he replied, "well, I want y to go up there and arrest Mrs. Shields,—those women up there."—intim ating that they were keepers of a house of prostitution; and when ask if he had been up there, he said yes, he had, but they would'nt let hi in. It was after this that he came down and instructed the sheriff to there and arrest them. The sheriff was somewhat new in his busine and he did not understand whether it was proper and right to obey order of the judge so given,—and if any of you have ever exercised t duties of that office, you well know that a great many of the duties

that office require a considerable knowledge of law to perform them properly. And he went to the county attorney and inquired concerning the matter. The county attorney very wisely told him not to arrest any of the parties until he had a warrant, and the sheriff went back to the respondent, and the respondent, as the sheriff will testify, while under the influence of intoxicattng liquors, insisted upon his going to said house and arresting the inmates thereof.

Now, whether this was frequenting houses of prostitution under article twenty, or whether it is an attempt to exercise the duties of a district judge, in either event, gentlemen, I apprehend that with the other facts in the case it will be enough for you to say that, if true, as we expect to prove it, the respondent should no longer sit as a judge of the district court of the ninth judicial district.

Article 17, specification 7, occurs at the Brown county general term of 1881, last May. The evidence will be produced, if necessary; I intimate this to the Senate, we have evidence—a party who is very busy and who dislikes to come but who can be produced at twelve hour's notice—to show that within twelve hours of the time when the respondent should have opened the court at New Ulm, on the morning of the 17th of May, 1881, twelve hours previous to that he was drunk and in the gutter at Sleepy Eye; was taken out of that by the man who was carrying mail on the road and lead to his hotel, and he said to Judge Cox, "It is only twelve hours until it is time for you to open the court in New Ulm, and you have no business to be here in this condition."

This evidence will be further followed by showing that he drove down to New Ulm the next morning, which was the first day of the term; that he was drunk when he got out of the buggy at the court house in New Ulm, drunk when he went up the steps, drunk when he opened court, and drunk for the next two or three days; not maudlin drunk, but so that he was evidently under the influence of liquor. This will be the evidence.

Why, if there were no further evidence of his drunkenness it would be the excessive and unusual fine which he imposed at this term.

There was a divorce case, Wilde against Wilde, which was tried at this term. The question involved in the trial of this case, however, was the application for alimony, or for attorney's fees. Mr. Webber, the counsel for the plaintiff had obtained and served upon defendant an order to show cause issued upon the defendant, why he should not be punished for contempt for not paying over the $50 counsel fee. The defendant was brought up; he was a poor German; he did not understand English. He was brought there into one of the civilized courts of this civilized country, and there,—almost unable to make himself heard,—without counsel, in the first instance, was fined two hundred and fifty dollars for contempt, then five hundred dollars, then one thousand dollars. And by the time the respondent had reached this point Mr. Webber, from the generosity of his heart had changed sides, and he went over to the poor man's side and said, "Hold on, Judge Cox, I don't want this man fined this way." "Ah, it don't make any difference whether counsel wants it or not, he must be fined to preserve the dignity of this court;" and thereupon he was fined twelve hundred and fifty dollars, and the records show it! It is not the hearsay of anybody; the records are there, we have them and shall produce them.

The respondent says you must go down and get John Lind to help you out of this scrape. Finally the fine, at the solicitation of Mr. Web-

ber was remitted, and the order was entered that defendant should pay this $50 within a certain number of days, or stand committed to the county jail; and the records are there to show it. Would anybody but a drunken judge ever enter that order in the district court of Brown county?

All these facts and many others that we can bring, show unmistakably Mr. President and Senators, that this man, from the very day when he assumed the judicial office up to the present time, has been an habitual drunkard. He has been, in the language of one of the witnesses, "as near an habitual drunkard as it is possible for a man to be and not be continually drunk."

And for this, under article 18, we shall also ask that he be prohibited from further exercising the duties of that office.

I could not help but think when I come to look over article 19, charging him here with an offense on the 14th day of August, of those lines which so many of us have read, in Cicero's first oration against Cataline

To what lengths will thy unbridled audacity fling itself

In October last, four days after the meeting of the legislature, at which the respondent must have felt unmistakably sure, that charges would be made against him, we find this respondent at the city of Minneapolis in a partial state of intoxication, asking a hackman; first he went down and pawned his watch for twenty dollars, then asking a hackman—to go and "find him a woman;" that is the language,—you can draw your own inference. And the hackman did go and find him a woman of the town, and brought her back to him. He got into the carriage and then was told to drive them out, "where they could be alone by themselves." At 2 o'clock in the afternoon of that day he was driven out to Diamond's, a bawdy house, just on the border of the county and there remained with the prostitute which the hackman had found him until 9 o'clock that evening. Notwithstanding he borrowed $20, just before he started on this trip, on his watch, he went to that hackman that night before ten o'clock, without a dollar. And it was this misfortune of borrowing from the hackman and of giving in payment a check upon a bank in which he had no money to pay that hackman, for the money the hackman had loaned him, that developed this state of facts.

There is also another state of facts concerning his being in the court house at St. Peter with a woman. All the facts I have not had from the witnesses themselves, and yet we expect to produce them before you and show you that the little boys on the streets, and the officers of the town watching, because, forsooth, a woman of improper character was taken into the court house, in the night time, with the respondent.

Mr. President and Senators, I have already spoken longer than I intended. I have briefly alluded to those facts which we expect to prove. In nearly every instance I have conversed with the witnesses. They are the best citizens of Minnesota. They will come before you, they will tell their story, and as you understand, it may be difficult sometimes to tell when a man is intoxicated, so may some of them sometimes find it difficult to testify positively; at other times there will be no question. Although we believe, under the rule of evidence that ought to be established in this case, all we have to do is to prove our case by a preponderance of evidence, yet we do not think, Mr. President and Senators, that we shall be obliged to object even to the other rule, i

you so order, to prove the offenses beyond a reasonable doubt. Yes, sir, Mr. President, we expect to establish beyond the possibility of a doubt that this respondent has been grossly intoxicated upon the bench of the district court of the State of Minnesota *many* times in the last four years.

Mr. Manager DUNN. The managers are ready to proceed with the examination of the witnesses.

Senator D. BUCK. I move that we take a recess until 2:30 o'clock, this afternoon.

Senator HINDS. I move to amend that we take a recess for five minutes.

The PRESIDENT. As many as are of the opinion that the motion of Senator Hinds should prevail will say "aye." The ayes appear to have it; the ayes have it.

AFTER RECESS.

The PRESIDENT. The Senate will please come to order.

Are the counsel for the prosecution ready to proceed?

Mr. Manager DUNN. We are are ready. We call S. W. Graham.

The PRESIDENT. The Sergeant-at-Arms will call S. W. Graham.

The SERGEANT-AT-ARMS. He has just stepped out.

The PRESIDENT. Will the Seargent-at-Arms please notify Mr. Graham that his presence is needed.

Mr. ARCTANDER. While we are waiting for this witness the counsel for the respondent desire to submit a motion for the consideration of this Senate, viz: That all the witnesses upon each article (except the witness upon the stand) be excluded from the court room during the examination of the other witnesses upon that article.

The PRESIDENT. Will the counsel please put that motion in writing.

Mr. ARCTANDER. I will, sir.

The PRESIDENT. Counsel for the respondent makes the following request:

The respondent requests that all witnesses to be called for the prosecution, on every article, be excluded from the court room during the examination of other witnesses on the same articles.

The PRESIDENT. That is a resolution that will be submitted by the Chair to the consideration of the Senate.

Mr. ARCTANDER. Mr. President, I would like to say a few words on the motion.

The PRESIDENT. Counselor Arctander will be heard on the request made by him.

Mr. ARCTANDER. I apprehend, Mr. President that most of the Senators are well aware of the fact that in all cases it is in the sound discretion of the court, to exclude witnesses from the court room if it is considered that such course will serve the furtherance of justice. It is a motion that is always addressed to the sound discretion of the court. It is not a right that we can demand; it is not a right that either the prosecution, or any defendant in any case can demand; but it is an indulgence of the court that we can ask, and one on which the court will use its sound discretion and judgment. And it seems to me that this is a proper case in which for the exercise of that discretion for the reason that here are witnesses called to prove the state or condition of the res-

pondent in court on special occasions. Now sir, an opinion is easil given as to whether the respondent was drunk or sober, at a particula time, but the *truth* of the matter, and even the truth of the opinion o the witness will only appear upon a proper cross-examination. Yo can only ascertain whether the witness bases his opinion upon prope facts, by subjecting him to proper cross-examination, as to what wa done, what happened, how the respondent acted, what he said, and wha he did, etc.; and if it should perchance happen that there are witnesse from the same county, witnesses who attended at the same term of cour who have a spite or a malice against this respondent who desire to d him a wrong, who have no regard for their conscience,—them, I say that it would be an easy matter for them, if they are allowed to sit her and listen to the testimony given by the other witnesses to conform thei statements to those made by the witnesses before them, and to refres their recollections by, and testify from the statement of the other wi nesses, rather than from their own independent recollections. I say tha no injustice can be done to the State, and we are perfectly willing t have our witnesses excluded, too. We are perfectly willing that this in vestigation should proceed on both sides with fairness and that ever opportunity shall be given to us, and to the State, and to this Senate, t to find out the true facts, and the true inwardness of this matter, and think it can be done to the much better satisfaction of the Senate, an of the respondent, if it can be done in the manner here proposed, viz:— that the witnesses be excluded and that they only be called in whe they are wanted, to remain meantime in the anteroom or any where else where they will be accessible, and that none of them sha hear the testimony of the other witnesses, or base his testimony on ev dence given by any other witness.

I desire, upon this motion of the Senate, to refer to the manner i which the testimony was given before the committee of the House i this matter. After one witness was allowed to testify, another one wa called, such testimony as this was received:—"I heard the statement of Mr. Thompson; I corroborate his statements as to the May term 1880; they are correct." Such evidence, of course, would not be allowe in this court, but you may get the same class of evidence involuntarily and without desiring it. You may get it by allowing the witnesses t be present and to listen, one after the other, as they come upon th stand.

The PRESIDENT. Upon requests of this character, or requests of an kind being made by counsel in the case, the chair will not consider suc request as a motion, but leave the matter to the discretion of the Senat as to what shall be done, and leave it for the Senators to make motion in the case, should they deem motions desirable.

Senator D. BUCK. I would inquire of the Managers how that arrang ment will satisfy them, whether they are willing that the witnesses o behalf of the State should be excluded and the witnesses on the part o the respondent also, whether that is agreeable to them. If so, I suppos that would meet the wishes of the court.

Mr. Manager DUNN. Mr. President, I am aware that a rule similar t that which is sought to be invoked here is frequently put in force in th courts of our land in criminal trials, and I am also aware that that rul is usually invoked where there are grounds for believing that parties a so deeply interested in the outcome and the result of a criminal prosecu tion that the evidence of one witness might be colored by having hea

the evidence of another witness. To my mind, Mr. President, this is simply another attack upon the integrity of the management that have at heart and have in charge the issues involved here upon the part of the state as well as upon the integrity of gentlemen of high character who have been subpœnaed here as witnesses in this prosecution. We have no fear as far as our case is concerned, but that the result will be just the same whether the rule is or is not enforced in this matter; but I submit there should not be a resolution or an order of this kind adopted here for this reason, that it is a direct impugning of the motives of the managers in this case and also of the integrity and honesty of the witnesses that have been subpœned here. There is no witness subpœned that has one particle of interest directly or indirectly, not in common with every citizen of the ninth judicial district, or of the State of Minnesota, as to the outcome of this case. They have no feeling in the matter. They have been dragged here by the power of the State. There is not a volunteer in the whole array that has been subpœned here. They have been subpœned here, compelled against their wishes, against their inclinations, contrary to their desires to come here as witnesses in this matter and I, for one, trust, that gentlemen who have been subpœned here will not be excluded because of the rigorous rule that has been invoked in some instances, in the district court, only when there is well grounded fear to believe that some collusion may have been entered into, or that the interest of the witnesses is so great that their evidence will be colored. I trust that this resolution will not be allowed and that the witnesses will not be excluded on this pretence.

Mr. SANBORN. Mr. President and Senators, I had not intended to be heard on this motion; but I desire to say on behalf of the respondent, and the counsel who represent them, that there is no attempt on our part to impugn the integrity either of the management of this case, or the witnesses; and that the fact that we make this motion, negatives conclusively the proposition that there is or has been any attempt here to impugn the integrity of the management. For, gentlemen, if we intended to impugn their integrity or their management of this case, or to insinuate that in preparing their testimony or talking with their witnesses, they had done any improper act, we should not ask that these witnesses be excluded from hearing the testimony of those who are first to testify, because if we believed that the managers here would instruct them what the witnesses who have first testified, did testify to, it would be useless to exclude the others. The very fact that we have confidence in the managers, and that we believe that they propose to introduce here the evidence of just such witness they have subpœnaed, testifying, as they naturally would in a case of this importance, is made evident by the fact that we ask that those shall be excluded who have not testified until their turn comes to testify. Nor is it because we believe that the witnesses who are coming here, are necessarily inclined to say ought but the truth, that we ask that this course be adopted. But men are much alike; we all know how natural it is for each one of us to follow in the track of some illustrious predecessor in our particular line of business, or walk of life, and when a witness is called to the stand to testify, after another one has gone before and told his story regarding the same state of facts and circumstances, we all know how natural it is for him to follow behind and say "yes, yes," to everything that has been testified to by his predecessor. Nor do I think the rule which is here invoked a rigorous rule, or an extraordinary rule.

Many times in the practice of the district court of this county have I heard this motion made; many times have I seen the judges of the district court of this county exclude all witnesses except those who were called upon to testify at the immediate time, and I do not call to mind, gentlemen, a single instance where that motion was made by any counsel, when the rule was not adopted by the court. It can do no harm; it is a rule which necessarily tends to the elicitation of that which is true, and of naught which is untrue. It brings each witness to state the facts which he himself knows, without having them colored by the testimony of any witness who may have preceded him. It impugns nobody's motive. It secures the administration of justice and it certainly can do no one injury. It seems to me it is a proper rule to be adopted in this case, if it is a proper rule to be adopted in the trial of ordinary cases in the district court; for this case is not one of any less importance than those tried in the ordinary administration of justice in our district courts.

Mr. Manager DUNN. Mr. President, just one word now. We were told yesterday by one of the counsel for the respondent that this management had organized itself into a smelling committee and had visited the bar-rooms and the slums in the whole upper country in the investigation of these matters in order to procure witnesses to come down here and testify. It was insinuated that we had gone very far out of our line of duty as managers and that is the reason, that I hope this Senate will rebuke, on the part of the defense, by refusing to grant this order, the insinuation that was cast upon the managers upon the part of the State. We have simply endeavored to fulfill here a duty which was imposed upon us by the House of Representatives in preparing our case. We have necessarily been compelled to visit the various sections of the country in which the respondent has held his court, in order to select and be able to produce the best possible witnesses. We have had to sift out and cull as it were from the vast number of witnesses who might have been produced here those particular persons whom we deemed to be the best witnesses to introduce under the rule limiting us to five witnesses. That is the reason I said what I did.

Senator C. D. GILFILLAN. Mr. President, I send forward a resolution which I desire to offer.

Mr. PRESIDENT. Senator Gilfillan presents this resolution which will be read by the clerk.

The clerk read the following resolution:

Ordered, that the witnesses on the part of the prosecution during the giving of the testimony, shall be excluded from the court room, except the witness placed upon the stand, and that a like mode of proceeding be had in the receiving of testimony on the part of the respondent.

Senator C. D. GILFILLAN:—I offer that for the purpose of testing the sense of the Senate on this question. I do not see that the adoption of this rule that it can do any harm, either to the State or to the respondent. It may perhaps serve the cause of justice. It may, or may not. It can certainly do no harm to the prosecution.

Senator CAMPBELL. I would like to have the request of Counselor Arctander read again, I think that goes farther.

Mr. Manager COLLINS. It goes a great deal farther.

Senator CAMPBELL. I think he only requested that all the witnesses that were to be examined upon the same article be excluded, except

the witness upon the stand. I would like to have the request read again.

The PRESIDENT. The request made by Counselor Arctander will be read again for the information of the Senate.

The clerk read as follows:

"Ordered that all the witnesses called for the prosecution, on every article be excluded from the court room during the examination of other witnesses on the same article."

Senator CAMPBELL. I like that language much better, and if it would be agreeable to the Senator, I move its substitution in place of the resolution offered by Senator Gilfillan.

Senator C. D. GILFILLAN. I would like to have it include the witnesses on the part of the respondent.

Senator CAMPBELL. Certainly, sir.

Mr. ARCTANDER. The latter was inadvertently omitted from our request, which was drawn up in a hurry. We did not expect that the witnesses upon more than one article would be present at the same time; but I understand there are several who are to testify upon several different articles, so that it would not make any difference.

Senator C. D. CILFILLAN. That would so mix matters that, perhaps, mine would be the better resolution.

Senator CAMPBELL. Perhaps so.

The PRESIDENT. The question is upon the adoption of the order presented by Senator Gilfillan.

Senator CASE. I would like, for my own information and for the information of Senators about me, to have the resolution offered by Senator Gilfillan again read.

The PRESIDENT. The resolution of Senator Gilfillan will be again read by the Clerk.

The Clerk read the resolution again.

Senator D. BUCK. Mr. President, that is broader than we intended. Now here are five witnesses, we will say on the first article, is there any reason why the witnesses on the other articles, if any be brought here to testify on those articles, should be excluded from the court room while they are waiting to be called upon. Many of them come here from a long distance, and are somewhat interested in this question. Many of them are known to us to be the first citizens in the State. Are they to be excluded from this chamber because they are not to testify on the first article? It seems to me the proposition is absurd. It is wrong for a witness, called here to testify upon any one of these articles, to be excluded from the court room when articles other than those upon which he is to testify are being examined. It seems to me, I say, all wrong.

Senator C. D. GILFILLAN. The difficulty, it seems to me, to which that order would lead us, would be this: I presume that it is likely that some witnesses will be called to testify upon different articles, and we cannot very well separate them from those who are called to testify only to one. That will be the trouble. If the order will exclude a man from the court room during the examination on a certain article or specification, because he is expected to testify upon more than one article, we shall then have to exclude almost all the witnesses. On the other hand if we allow a witness who is summoned to testify on the eleventh article, present, when they take testimony on the third article, and it should

appear that he knows as much about the third article as the eleventh, we shall have to exclude him. If we shall allow only the witnesses upon each specific article and no more, to be present during the examination under that particular article, and each one is to be confined to a specific article named, then you can enforce the rule. But it will be difficult to allow them to come in and hear everything that was said excepting what was said on the article upon which they were called. It will involve us in a great many difficulties. We will get so mixed up that we cannot separate them.

Senator HINDS. Mr President, if the order is adopted it is applying to the proceedings in this court, a rule almost obsolete in the trial of civil and criminal cases. It is a rule that in ancient times was resorted to. It never was, however, a permanent rule of practice in courts; it was a rule that the court, upon special application, would apply whenever the side that made the application could show some special reason why the ordinary course of proceedings should be departed from. It does not seem to me that there has been in this application any sufficient reasons shown why any one of the numerous witnesses—two or three hundred of them—should be excluded while any other witness is giving his testimony. In the district that I reside in I do not think that there has been an application for the enforcement of this rule, which has been granted, in five years time. I have, in my recollection, no instance of it within that time, and I do not know that I have a single instance of it in my recollection, even in ten years time. It is, however, occasionally adopted, but, in modern times, only upon a special showing; when it is made to appear that there is some particular reason for it. I can see in the order as it is presented here, either as proposed to be amended, or as originally introduced, an unfairness. The order merely applies to the witnesses upon the part of the prosecution. They shall be excluded while the witnesses on the part of the defense may all remain present in court, and hear all of the numerous witnesses on the part of the prosecution. These same witnesses on the part of the defense were present witnessing the same transactions to which the witnesses upon the part of the prosecution testify. Is there any reason why the witnesses on the part of the prosecution should be excluded while either one of their witnesses are being examined, the same reason applies to, and should exclude, all the witnesses on the part of the defense at the same time. Otherwise if there is any advantage or disadvantage, to one side by reason of excluding a part of the witnesses, the other side has that advantage or disadvantage. It seems to me that it would be better to proceed in the ordinary way of modern trials, of western trials particularly, until there can be some special reason shown why the usual practice in civil and criminal trials should be departed from.

Senator D. BUCK. There is one other question, Mr. President. Where are all these witnesses going to be kept all this time? There are, to be sure, hotels and other places where they can remain, but it will take a great deal of time to send after each one of these witnesses, and with two hundred and fifty witnesses to be examined, we will see the dog days before we get through.

Senator C. D. GILFILLAN. There will be no trouble about that, sir. There are a number of rooms to be had, among others the municipal court room in this building. It is generally vacant after eleven o'clock in the

morning. We can get the clerks' room also. We can have that at any time, night or day.

Senator D. BUCK. Well, that will only hold a limited number, not more than nineteen or twenty.

Senator C. D. GILFILLAN. Well, we shall not want all of them hanging around here.

The PRESIDENT. The question is upon the adoption of the order presented by Senator Gilfillan.

Senator D. BUCK. I call for the ayes and nays.

The PRESIDENT. The clerk will call the roll.

The roll being called, there were yeas 14, and nays 18, as follows:

Those who voted in the affirmative were—

Messrs. Adams, Bonniwell, Buck C. F., Campbell, Clement, Crooks, Gilfillan C. D., Johnson A. M., Langdon, Miller, Officer, Shalleen, Simmons and White.

Those who voted in the negative were—

Messrs. Aaker, Buck D., Case, Hinds, Howard. Johnson F. I., Johnson R. B., Macdonald, McLaughlin, Morrison, Pillsbury, Powers, Rice, Shaller, Tiffany, Wheat, Wilkins and Wilson.

Senator RICE. I wish to explain my vote, Mr. President. I vote no, on this motion. I should have no objection to voting for a resolution such as was presented by the counsel for the respondent.

The PRESIDENT. The motion being upon the adoption of the resolution of Senator Gilfillan, upon a call of the roll the motion is lost.

Senator CAMPBELL. I now move the adoption of the request of the counsel for the respondent.

Mr. ARCTANDER. Will the senator permit me to withdraw the words "for the prosecution." I so drew it originally, but I desire to draft it so as to make it apply both to the prosecution and to the defense.

Senator CAMPBELL. Yes, amend it in that particular and it will be satisfactory to me.

The PRESIDENT. The clerk will read the request made by counsellor Arctander.

The clerk read as follows:

The respondent's request that the court order that all witnesses to be called for the prosecution on every article be excluded from the court room during the examination of other witnesses on the same article.

The PRESIDENT. Mr. Campbell moves that the request of counsellor Arctander be adopted. Is the senate ready for the question.

The motion was put by the President, and carried.

Senator WILSON. Mr. President, the ayes and nays were called for before the question was put.

The PRESIDENT. The chair did not hear. The clerk will call the roll.

Senator POWERS.. I do not wish to take up the time of the Senate with any remarks upon this question, but it does seem to me that excluding witnesses upon either side in a case of this kind is something like the custom of challenging jurors and objecting to their sitting on a case until they first prove that they are fools or ignoramuses. Certainly I, for one, do not believe that we have a right to assume that the men that have been subpœnaed here for the State, or, for that matter, by the defense, are men who, either consciously or unconsciously, will,

or can be, influenced by the testimony of any person who has given evidence before us. If we are going to exclude any person, I do not believe that the idea of excluding a man called to testify only on a particular article will be practicable because, as has been said before a man in giving testimony may testify upon one, two, three, or a dozen articles. It may be drawn out, and you can scarcely separate the articles in that way. Now, when the question of expense was up before the Senate, I assumed, and I believe that I was right, that the attorneys for the respondent in this case were not only gentlemen but men of responsibility and judgment and integrity, who knew whom they wanted to summon here, and who had not come here to summon persons that were not needed, or to make any unnecessary expense to the State; and just so I believe that when persons are summoned here as witnesses we have a right to assume, until it has been shown otherwise, that they are men of intelligene and that they will not either consciously or unconsciously allow their judgment to be warped or influenced by the opinions or statements of men who have preceded them; and it seems to me that it is going away back to the dark ages to assume in advance that a man cannot give an opinion intelligently or honestly unless he has been shut out from hearing the evidence of another man on the same question. I do not believe Mr. President, in excluding any person that is summoned here as a witness and shall vote against it.

The PRESIDENT. Is the Senate ready for the question?

Senator CAMPBELL. If the court will indulge me a moment I will draw a substitute and submit it in writing.

Senator WILSON. I believe, Mr. President, I might as well explain my vote now, for I do not believe in this way of doing things at all. I do not believe that I have any right to say by my vote that I believe that any gentleman who has been brought here against his will is going to perjure himself because somebody else has. And aside from that, is the matter of inconvenience, for, if we are to have three or four hundred witnesses here, we shall have to rent the Opera House or some other place to cage them in. And in the absence of witnesses, who have been summoned here, but who may be temporarily absent when their names are called, it will be inconvenient to send out a committee to chase them down around the town somewhere. The first witness that was called here awhile ago, had been here only a minute before, but had left the house and when wanted could not be found. I believe it is unnecessary and uncalled for, in the nineteenth century of civilization that this thing should be done, and I am opposed to it.

Mr. Manager COLLINS. Mr. President and Gentlemen. I had not intended to say a word in regard to this matter because I do not regard it of great consequence, provided the rule, as adopted, is an equal one and applies alike to both parties. I might say, however, that in a practice of nearly sixteen years, I have never known that rule to be enforced in the district court. I have, on one or two occasions, known it to be asked for and invariably withdrawn, the counsel having considered it unworthy of them, as has been stated by Senator Hinds, it was formerly the rule and was applied with great severity; but of late years it has not been the practice. If it is adopted by this Senate it will reflect upon the witnesses for the respondent quite as much as upon the witnesses for the State, and it will reflect upon us all unjustly. I have no reason to believe that there is any man, who is coming here—I hope the counsel has no reason to believe otherwise; I see him smile at my remark—

but I have no reason to believe, and do not believe, that a single witness is coming here on either side who will perjure himself in the slightest degree. I do not believe now that there has been any effort on the part of either side to influence or bias witnesses in any way; and I believe that the witnesses, as far as both sides are concerned, will come here and state truthfully what they know; and that the application of this rule would be a reflection on them that would be very unjust and unfair.

Mr. ARCTANDER. I beg leave of the court, if it is in order, to correct a remark made unwittingly by the Senator from Goodhue, in regard to the inconvenience of getting a room that would hold all of the witnesses that will be here. I call the attention of the Senate to the fact that under the rule already adopted, in regard to the payment of witnesses, neither the prosecution or the defense will subpoena witnesses, except about the time they expect to need them, and when they get through with the witness the latter will be discharge so that there is no probability that at any one time more than fifteen witnesses will be in St. Paul. There would be no difficulty in providing places for them. The respondent's witnesses, of course, will not be subpœnaed until such time as we have some idea as to when we shall need them. We have not yet taken out a subpœna from the clerk for any of our witnesses, much less to subpœna them, and we do dot intend to do so until we can calculate, with comparative certainity, about the time we shall want them, so as to create no unnecessary expense for the state to bear. I apprehend that the managers have acted in the same way. At least, I understood from the paper, that they had subpoenaed a certain set of witnesses for one day, and another set for another day, and that as soon as a witness has been disposed of he will be sent home. So that the question of expense will not need much consideration.

The PRESIDENT. Senator Campbell withdraws his motion to adopt the resolution offered by Counsellor Arctander, and presents the following order: It will be read by the clerk.

The clerk read the following:

Ordered, that all the witnesses, except the witness on the stand, to be called upon any particular article by either the prosecution or defense, be excluded from the court room during the examination of the other witnesses on the same article.

The PRESIDENT. This order takes the place of the request which has been argued, and the question before the Senate is on its adoption. Is the Senate ready for the question?

The ayes and nays having been called for, the clerk called the roll upon the adoption of the order.

Senator LANGDON. I would like to hear that order now again.

The PRESIDENT. The order will be again read for the information of the Senate.

The clerk again read the order.

The clerk will call the roll.

The roll being called, there were yeas 12, and nays 20, as follows:

Those who voted in the affirmative were—

Messrs. Adams, Bonniwell, Buck C. F., Campbell, Crooks, Gilfillan C. D., Johnson A. M., Langdon, Miller, Rice, Shalleen and White.

Those who voted in the negative were—

Messrs. Aaker, Buck D., Case, Clement, Hinds, Howard, Johnson F.

I., Johnson R. B., Macdonald, McLaughlin, Morrison, Officer, Pillsbury, Powers, Shaller, Simmons, Tiffany, Wheat, Wilkins and Wilson.

And so the motion was lost.

The PRESIDENT. The hour has now arrived which has been determined upon for recess.

Senator CROOKS. I would ask, to save time, with the permission of the Senate, whether the counsel for the respondent, and the honorable Board of Managers, have agreed as to the order in which these articles of impeachment are to be tried?

Mr. Manager HICKS. Mr. President, I would state that there has been no agreement for the reason that the Board of Managers felt that the Senate would allow them the full latitude in this matter, provided that it was done with a due regard to the consumption of time, and we therefore propose to take up the articles *seriatim*. We have subpœned our witnesses with that end in view.

Senator CROOKS. I am asking merely for information.

Senator WILSON. I move, Mr. President, that the Senate take a recess until half past two.

The motion of Senator Wilson was carried, and the court here took a recess.

AFTERNOON SESSION.

The PRESIDENT. The Senate will please come to order.

Before proceeding to the order of business the Chair would state that the Sergeant-at-Arms and his assistant, and the Sergeant-at-Arms *pro tem.*, are absent on duty, in the matter of summoning witnesses, leaving the court without any Sergeant-at-Arms.

Senator C. D. GILFILLAN. Mr. President, I introduced a resolution here some time ago, for the appointment of C. A. Anderson to take charge of this room so far as keeping it in order was concerned. It was laid upon the table, upon the theory that in its wording it included work for which somebody else was already receiving compensation. It is clear now from the inspection of the journal, that that was not the wording of it and I now move its adoption. I think he can take charge of the room itself so far as the door is concerned, and probably the Sergeant-at-Arms will be here to-morrow, and if after that, we should need anybody to serve papers, we can appoint a man specially for that purpose. We ought to have one of the regular officials here all the time.

The PRESIDENT. Senator C. D. Gilfillan presents the following resolution, which will be read by the Clerk.

The Clerk read the following resolution:

Ordered that C. A. Anderson be appointed to take charge of the court room so far as to keep the room cleanly.

The PRESIDENT. The question is upon the adoption of the order. Is the senate ready for the question?

The Clerk will call the roll upon the adoption of the order as it involves an expenditure.

Senator C. BUCK. I would like to inquire if there is anything there which specifies what his pay shall be?

Senator GILFILLAN. That is fixed by a former resolution at two dollars a day.

The roll being called, there were yeas 25, and nays 0, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Adams, Bonniwell, Buck C. F., Buck D., Clement, Gilfillan C. D., Howard, Johnson A. M., Johnson F. I., Johnson R. B., Langdon, Macdonald, McLaughlin, Mealey, Morrison, Officer, Rice, Shaller, Shalleen, Simmons, Tiffany, Wheat, White and Wilson.

So the order was adopted.

C. A. Anderson came forward and was duly sworn by the President.

The PRESIDENT. Are the counsel for the prosecution now ready to introduce their witnesses?

Mr. Manager DUNN. Mr. S. W. Graham, the gentleman called this morning, is now present.

S. W GRAHAM

Called and sworn on behalf of the State, testified:

By Mr Manager DUNN.

Q. What is your name? A. S. W. Graham.

Q. What is your residence?

A. Blue Earth city, Faribault county, Minnesota.

Q. What is your occupation? A. Lawyer.

Q. Are you practicing your profession? A. I am.

Q. How long have you been practicing? A. About fourteen years.

Q. Do you know the respondent in this action? A. I do.

Q. How long have you known him?

A. Well, since 1878; January, 1878, personally.

The PRESIDENT. The chair would suggest, in order that all the Senators may hear the proceedings, that it would be well that all the questions and answers should be asked and answered in a louder tone.

Q. Where did you first meet Judge Cox?

A; At Fairmount, Martin county.

Q. What was your business there?

A. I was there professionally, as a lawyer.

Q. What was Judge Cox's business there?

A. He presided over the court in the absence of Judge Dickinson.

Q. Was it a general term of the district Court?

A. Yes, sir; a general term of the district court.

Q. Upon what day did the court commence, if you know, or about what day?

A. The fourth Tuesday of January is the term day of the court.

Q. About how long did the court last?

A. I think it lasted some four weeks, in all; I wasn't there all the time.

Q. How much of the time were you there? A. About two weeks.

Q. On the opening day of the court and for two weeks following?

A. Yes, sir.

Q. Were you engaged in the trial of causes before the court?

A. I was, sir.

Q. Did you associate at all personally with the judge, out of court?

A. Somewhat.

Q. Were you in his company part of the time? A. Yes, sir.

Q. Did you observe the habits of the judge during that term of court as to the use of intoxicating liquors? A. I did, sir.

Q. What were his habits?

Mr. ARCTANDER. That is objected to.

The PRESIDENT. What is the objection?

Mr. ARCTANDER. Respondent objects to it as immaterial, irrelevant, and incompetent.

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

Mr. SANBORN. Will the president allow me a moment?

The PRESIDENT. Certainly.

Mr. SANBORN. The charge, Mr. President, which the managers propose to substantiate this afternoon, as I understand it, is the first charge.

Mr. Manager DUNN. Yes, sir, the evidence is directed to that charge.

Mr. SANBORN. The evidence now being produced is directed to that charge. That charge is that:

"On the 22 day of January, A. D. 1878, and on divers days between that day and the 5th day of February, A. D. 1878, acting as and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and there pending in the district court of Martin county, and did then and there preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding in matters and things then and there before him as such judge, and which then and there rendered him incompetent and unable to discharge of his said office with decency and decorum, faithfully and impartially, and according to his best judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox was then and there quilty of misbehavior in office and of crimes and misdemeanors in office

There is a charge, Mr. President, under which this evidence would be material—article eighteen.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of Minnesota, has been * * * and now is guilty of the offense of habitual drunkenness, whereby he * * * was * * * guilty of misbehavior in office.

Now, Mr. President, if this evidence is directed to article eighteen, it is competent. If it is directed to article 1, it seems to me that it is incompetent, because it does not tend to show that while he was in the discharge of his duty, while he was acting as judge, he was in the state of intoxication, which article one charges; and if the testimony is to be introduced at this time, we desire this witness to be counted as one of the five witnesses who, under the rule, will testify to the charges under article eighteen.

Mr. Manager DUNN. Does the President and the court desire to hear argument upon that question, having decided it?

The PRESIDENT. The court is willing to hear the argument of the managers if the counsel for the respondent is through.

Mr. Manager DUNN. I supposed he was through. I beg his pardon

Mr. SANBORN. My associate suggests that there is another reason why this evidence is incompetent—that it is generally incompetent, because it is not competent to show his habit by the opinion or statement of the witness: but the facts must be shown from which that deduction may be drawn, as well as other evidence on the general question of what his habit was.

Further the question is not confined to his habit while upon the bench, or in the discharge of his official duty, but, presumably, what was his

habit when he was associating with the witness off the bench and outside of his official duty.

Mr. Manager DUNN. May it please the court, it strikes methat this evidence is competent, upon more than one ground and upon more than one of the charges. I stated, and I state now, that the evidence of this witness is mainly directed to the first article of impeachment: and it was stated in the hearing of the Senate this morning by the gentlemen of the management who opened this case, that perhaps evidence that had a direct bearing upon each separate one of these articles of impeachment would also be competent and have a bearing upon the eighteenth article, which is the charge of habitual drunkenness. If that is the case I cannot see how the management could be restricted to five witnesses upon that charge, or how any line should be drawn which would require that we should count every one of these witnesses exceeding five in number, that should happen to give evidence of intoxication of the judge of the ninth judicial district, as evidence in the aggregate, going to prove article 18, which charges habitual drunkenness. It would be an impossibility to my mind to draw any such line between the evidence. The question directly involved here is this: the witness has testified that he was associating personally with the judge during that term of court. The question is asked him, what were his habits at that time, (referring, of course, to a time when he was personally associating with him, and calling for his individual, personal knowledge, at a specific time designated in this first article of impeachment) as to the use of intoxicating liquors? Now the witness has certainly given evidence of being a competent witness on that point. The proper foundation is laid: and it is not a general question, because it is simply confined to the time when this witness was in the personal compay of the respondent in this action. He is charged in this article with being intoxicated by the voluntary and immoderate use of certain intoxicants, to-wit, alchoholic liquors. It may be necessary for the management to prove here that that was the cause of the intoxication; that it was not by reason of the voluntary and immoderate use of some other intoxicant drug or some other agent which caused this intoxication. In that view of the case the evidence is relevant to this issue, and is material. I submit to the President of the court that this evidence is certainly material and competent at this time.

Mr. ARCTANDER. If the court will bear with us we have sent for an authority.

The PRESIDENT. Have the counsel any further desire to be heard upon the question?

Mr. ARCTANDER. We have sent for an authority which will be here in a moment, if the conrt will bear with us.

Mr. Manager DUNN. We waive that question for the present in order to save time, while they are waiting for their authorities and will go on to another branch of the evidence.

Q. You may state, Mr. Graham, whether during any of the time—it will, probably, be about the same question but in another form—state whether, during any of the time that you were present in the company of Judge Cox at that term of court, to your knowledge, he used intoxicating liquors?

Mr. SANBORN That is objected to as incompetent and immaterial. It is the same question.

Mr. Manager DUNN. Then we will wait for your authority, unless the court sees fit to decide the question without waiting.

The PRESIDENT. The chair will first hear the authorities.

Mr. SANBORN. We withdraw the objection to the last question.

Mr. Manager DUNN. Will you read the last question, Mr. Reporter.

The reporter read the question, as follows:

Q. You may state, Mr. Graham, whether during any of the time that you were present in the company of Judge Cox at that term of court, to your knowledge he used intoxicating liquors?

Q. Please answer, Mr Graham. A. He did.

Q. Upon how many occasions?

A. Do you mean how many days?

Q. Yes, sir.

A. Well, I should say, within my knowledge, nearly as many days as I was there; that would be perhaps about eight or ten days.

Q. Where did he indulge in drinking; at what places in the village of Fairmount? I mean by that, private or public houses, or both?

A. At the residence of Captain Jones; in his room at the hotel, and in one saloon there. These are the only three places I can call to mind.

Q. With whom did he drink; that is, in what company?

A. Do you mean the names of the persons?

Q. No, sir; I don't ask you to give the names, but whether in a promiscuous company or with single individuals?

A. I think with single individuals, excepting at Captain Jones' residence. It the saloon, others were in there at the time, but I do not think that any one drank with him but myself. We had a glass of beer in there on one occasion; that is the only occasion that I remember of.

Q. In the saloon? A. In the saloon.

Q. Do you know whether, at any of these times, he became intoxicated?

A. May I say that I have heard it said that the least amount—

Mr. SANBORN. Wait a moment; we object to what you were told.

The WITNESS. Then I shall have to ask for an explanation of what you mean by "intoxicated."

Mr. ARCTANDER. We object to the question unless it is limited to some time immediately preceding the sitting of the court. That is the ground of our objection, that it is not properly limited; that to make the question proper it must be limited to times and locations immediately preceding the sitting of the court. For instance, in the morning or at the noon recess. If Judge Cox at that time went to the house of Captain Jones or anybody else, ate dinner there, and took wine, more wine, perhaps than some other man would have taken, I do not understand that that can be inquired into by this Senate under this charge. This charge is drunkenness while upon the bench, drunkenness while in the discharge of his official duty, and I maintain that nothing else can be shown under this charge.

Mr. Manager DUNN. I am a little surprised at the technicalities of the other side. I supposed we would go along swimmingly with this case when we got to the evidence; that there would be no technical objections to the putting in of evidence which must, upon its face, seem to be perfectly proper and necessary to the proper proving of this case, if it can

proved. We claim here, Mr. President and Senators, under this arge, that the district court is always open; that there is no time when district judge can become intoxicated and shield himself behind the re statement that he was not at that time actually engaged in passing tence upon somebody, or deciding upon the rights of somebody, and is evidence goes to that extent. It is intended to be followed up as a tter of course, by showing that this intoxication prevailed not only ile he was off the bench, but while he was on the bench, during that m of court. I cannot, for the life of me, as a lawyer, see why the idence is not admissible.

Mr. ARCTANDER. I apprehend, Mr. President, that even if that statent be true, that a judge of the district court is a personage who always ries his office with him, in his pocket, wherever he goes; who cannot as a private citizen under any circumstances; that when he retires the evening the district court is still open and he is still judge; that ring his sleep he is a judge of the district court in the way that con- or the learned managers understand it. It is true that he is a judge the same time: but we must distinguish between the private citizen l the officer. It is uncongenial, to say the least, to the idea of a free ntry that a man who holds an office is a man different from anybody e.

Mr. Manager DUNN. He is and ought to be.

Mr. ARCTANDER. That his office follows him outside of the discharge his official duties, that when he is called upon as an officer that the man lestroyed and in his place the officer. And the statement which he made in regard to the court being always open, does not make this maial or relevant, because we are not charged in this article with private nkenness. We are charged with drunkenness in the discharge of cial duty, and whether or not we are always subject to be called on to discharge official duties is unimportant if as a matter of fact, were not actually engaged in them, at the time this offense is ged to have occurred. Because the question is, did we, while we e in the discharge of official duties become intoxicated. If this ate is going to sit here and receive that kind of testimony as to every asion during his term of office where Judge Cox has taken a glass of r or whisky, we shall certainly sit here until midsummer, or, posly longer. This will certainly be so, if we are going through the hisy of his life, to examine his conduct on every possible occasion. thought the evidence to be limited to the charges against him; but he prosecution is going to bring that kind of evidence, we shall cerly have to bring similar evidence to controvert it; but how many rges shall we then have to meet under one charge against us as shown the articles presented. It seems to me that the Senate to protect it- must hold that this is immaterial and irrelevent, and not permit it ome in. We may spend some time in sparring in starting, but when question is established and the Senate has disapproved of that kind estimony, we shall lose no more time about it, and in the end will e time, perhaps weeks.

Mr. Manager HICKS. I would say, Mr. President, that carrying the ic of the gentleman to its legitimate conclusion, you can end the case lay by shutting down on all testimony; for the gentleman knows as l as any other lawyer in the State, that a judge of the district court is le to be applied to at any moment to discharge the duties of his of- ; that it is his duty, his sworn duty, to be in condition to discharge

those duties to the best of his learning, judgment and discretion. I the point here is, I take it, that it is eminently proper to show tl this party was drunk at these various places, during the same time tl he was holding a term of the district court. These facts will account the peculiar conduct of the judge following the drinking, which we cla was intoxication, and which fact we will leave to the judgment of t Senate for it to pass upon.

Mr. SANBORN. I dislike to occupy time here, Mr. President, and we must determine what we are here to try. The charge made agai us, which this evidence is introduced to sustain, is, that on the 22 day of Januarv, "while acting as and exercising the powers of Jud * * * he did enter upon the trial of certain causes, and the examir tion and disposition of other matters, then and there pending in t district court of Martin county, and then and there did preside while was in a state of intoxication."

Now, Mr. President, if it was proposed to prove, in the trial of th case, that this man was intoxicated at a time when he was liable to called upon to exercise the powers of a district judge; and if the e dence which it was proposed to be introduced to sustain this charge w that on a certain evening, just as the judge was retiring to sleep, b when he was liable to be called upon to issue a writ of habeas corpu he drank a glass of beer, and by drinking of that glass of beer, becan so intoxicated that he went to sleep, then in all fairness, Mr. Presider that charge ought to have been presented to this Senate instead of th charge that while this man was upon the bench of the district court, e: ercising and discharging the duties of his office, and presiding in cou he was guilty of intoxication. It ought to have charged that on th day, as he was about retiring to sleep, when he was liable to be calle upon to exercise the duties of a judge of the district court; when h might have been called upon to issue a writ of habeas corpus, which h was *not* called upon to issue, that he drank a glass of beer, and there an then became drunk and went to sleep, and, therefore, was guilty crimes and misdemeanors in office.

Now, the position which the counsel take here is evidently one whic they did not think of in the House of Representatives, and when th article was drawn, they did not at that time charge, and did not prop to charge, gentlemen of the Senate. that this man was guilty of crin and misdemeanors in that he became intoxicated when he was not c charging and exercising the duties of his office, and therefore should impeached and removed from office, otherwise, they would not h been so careful to declare that at the time when he became thus into cated he was performing the duties and exercising the powers of a juc of the district court.

Mr. HICKS. Allow me to call the attention of the counsel to the that the charge of presiding on the bench occurs only in this article a perhaps, in one other, in all the twenty.

Mr. SANBORN. Now, whether it occurs in any other article or not not material in the discussion of this question and that subject I h not particularly examined this afternoon. If it is not proposed, by introduction of this testimony, to show that at any of the times specif in other articles which are presented for the hearing of this Senate the spondent was intoxicated, but that under and in support of this art which charges him with being intoxicated while certain cases were pe ing before him, and he was presiding as a judge of the district court, i

proposed to offer evidence that in a certain saloon when not discharging the duties of his office, and when he certainly was not presiding over the district court or determining any cases then and there pending before him as this article charges, he drank a glass of beer. Perhaps it is proposed to show that the glass of beer which he drank made him intoxicated, that was not the article presented to the Senate. It is not the question which we have come here prepared to try. We came here prepared to try questions which they have presented, and this article charges intoxication when he, respondent, was discharging the duties of his office and not when he was liable to discharge them. The objection, it seems to me, should certainly be sustained. The testimony has gone far enough to show to what it tends. This witness says that at Mr. Jones' house, in a saloon, and in his room in the hotel, Judge Cox took a glass of wine, or beer, or some other kind of liquor. Is it expected that in the trial of these five articles we shall follow Judge Cox into every hall, saloon, private house, or dinner party which he has attended, and determine whether he took a glass of beer on each or all of those occasions; or, is it only expected of us, that we shall be prepared with our testimony to meet the charge which is presented,—that in open court, while in discharge of the duties of his office, "while acting as and exercising the duties of" his office, as the charge is, he was intoxicated. Which of those, Mr. President and gentlemen, is it that we are here to try?

Mr. Manager HICKS. Just one word, Mr. President. We charge simply the drinking. We propose to show that from the effect of this drinking he became intoxicated, and, while in that state of intoxication, presided upon the bench. That is the state of facts that we propose to show.

Mr. SANBORN. If that be true, the answer to it is simply this: There is a certain order in which that testimony should be introduced. It should not be permitted here that testimony should be introduced showing that at a certain time he drank a glass of beer or anything else, unless it is first shown that he was intoxicated on the bench. That is the foundation of this charge. When it is shown that he acted as though he was intoxicated, or that he was intoxicated on the bench, it will be proper to show that he had been drinking liquors, which induced the intoxication. But if the counsel is permitted to proceed here and rake up the private history of this man from the time he was elected until the present time, and then he shall be unable to show that he *was* intoxicated on the bench on the 22nd day of January 1878, the charge all fails; we have spent our time and our labor, and taken all this testimony, for nothing, if the charge is that when he was exercising the duties of his office, he was intoxicated. Now, in the order of evidence this testimony should be excluded until the foundation is first laid and it is shown that he was intoxicated on the bench on that day. When that is shown, they must show from what the intoxication came, by showing that he drank a glass of beer in the saloon. This does not tend to show that he was intoxicated on the bench.

Mr. Manager DUNN. Mr. President, I beg the pardon of the Senate for taking up any more time, but it seems to me that this matter can be disposed of very readily. We charge this defendant with having upon the 22nd day of January, and at divers days and times thereafter, up to the 5th day of February, while in the discharge of his duties as a judge of the district court, with being intoxicated upon the bench, at Fair-

mount, in Martin county. Stripped of all its verbiage, that is th charge, we propose to maintain that charge by showing first that h drank something which made him intoxicated. That is objected to b the counsel, who say, "you cannot show that he drank anything t make him intoxicated." That will not do. You must show first, tha he *was* intoxicated. That is the logic of the counsel. In other words it is as though a man came into court and pleaded in extenuation of crime that he was intoxicated when he committed it, and was told tha he would not be permitted to show that he had drank something whic made him intoxicated. We propose first, to show that this man drank something which would naturally make him intoxicated, during th time when we allege that he was intoxicated. Then we supplemen that further by showing that he drank it in the presence of this witness and that the witness knew of the fact; and then the following questio is: Did he, during any of those times, drink liquor to such an exten that he became intoxicated?

Mr. ARCTANDER. That is the question now.

Mr. Manager DUNN. Yes, sir; that is the question now. If we show by this witness that he did drink liquor during those times, and be be came thereby intoxicated, and that was during the term of the district court, in the county of Marshall, when he was there acting as judge of that court, having no other business at all there except to preside and to preserve the decorum of that court, and to use his best learning and judgment in the discharge of his duties,—I say if it stopped right there, he has presided there over that court when he was intoxicated. I say if we went no further; but we propose to go further than that. This is but one step in the programme. We propose to go further and show that not only was he intoxicated by means of these intoxicating liquors, but that he was intoxicated on the bench, the result, perhaps, of the use of this same intoxicant. I do not know what the fact is, and it may be that a man can be drunk this minute, and sober the next minute. Perhaps some of the counsel on the other side have more information on that point than I have. I do not know; I have not had much experience upon that point. It may possibly be the case; but from what little I have observed in the world, a man who is drunk this minute, is not exactly sober the next. It may be possible that we shall be able to show in this case a sort of continuing drunkenness, drunkenness to-day and an increase of it to-morrow, or, perhaps, not an entire cessation of it; and that may be carried onto the bench. Now, if we show this state of facts, that the respondent was drinking liquor and was intoxicated, in the town of Fairmount, by this and other witnesses, and that going upon the bench he acted in a manner which was strange to the beholder, or which did not comport with the dignity of a judge, we shall then ask this Senate to infer from that fact that he was intoxicated.

If we were to ask this witness the direct question whether Judge Cox was intoxicated on that day counsel would stop us in a minute. They would say, you were calling for the *opinion* of the witness upon the case, and you cannot do it. You have not shown that he drank any liquor, or that he had been where liquor was to be had. You have not shown that he has been exposed to temptation in the form of liquor or that he has been liable to contract this sickness, or disease. But we propose to follow up this question in a proper and legal way, first by showing that he drank liquor; second, that he drank it at the time and place charged; third, that he drank it in excess so that he became intoxicated; and follow it

by showing his conduct upon the bench, and then ask this Senate say, upon that state of facts whether he was guilty of intoxication up- the bench or not. And if this is not a legitimate and lawyer-like way determining the question, I do not know how to try a law-suit, and haps I do not.

The PRESIDENT. Do the respondents wish the close of the argu- nt?

Mr. SANBORN. I suppose we are entitled to close the argument.

Mr. PRESIDENT. Yes, sir.

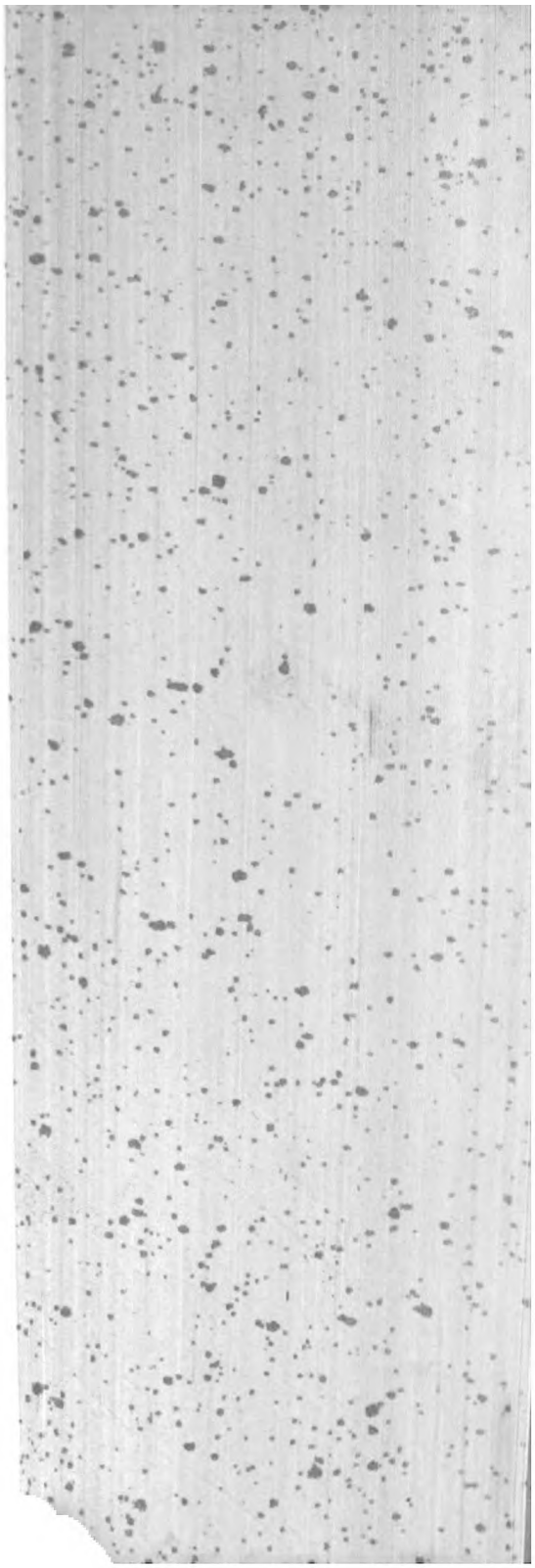
Mr. SANBORN. The answer to all that has been said by the counsel has just sat down is this; "That all the testimony which he pro- es to introduce in this case is immaterial and has naught to do with charge unless it be established that—while Judge Cox was presiding, the 22nd day of January, 1878, in a district court of Martin county, was intoxicated in the exercise of the duties of his office, in the trial he cases that then came before him. I care not, in the trial of this rge, how many glasses of beer Judge Cox may have drank, or how ch wine he may have taken at a dinner party, at some Mr. Jones' se, provided that he was not, at the time charged in this article, in the rcise of the duties of his office, while presiding upon the bench, guil- f being so intoxicated that he could not intelligently discharge his es. Nor are any of the other questions or issues to which they pro- to direct their testimony in any way charged in the articles which presented against us. The charge is at this time "while he presided dge." What difference does it make outside of the discharge of his while he did preside as judge at the time charged; and how can it material under the charge here presented for the prosecution to go on this evidence of intoxication outside of court which they say they ose to introduce.

he question here is, was he intoxicated at the times, and in the pla- and in the discharge of the duties as charged. Not was he intoxica- when he was liable to be called upon to do something else, and in e other place. That is not the question which we are here trying, the first thing for the managers to do in the introduction of evidence show what the action of Judge Cox was on the 22nd day of January, , when he was presiding in court, and discharging the duties of his e, as they have charged. If he acted queerly, if he acted strangely, acted as a drunken man, if he did not decide the cases properly,— they have shown that, and have shown that he acted improperly, t as a sane or sober man would have acted, then they can show, if can, what caused his action. But until they have shown the acts hich he was guilty on the 22nd day of January or at the dates ged, while he was presiding, as judge of the court, the evidence of else he did, is certainly incompetent and immaterial in the deter- tion of these issues.

e PRESIDENT. The decision upon the objection raised by the coun- will leave an important bearing upon most of the articles of im- hment, and the Chair prefers to submit the question to the Senate.

. ARCTANDER. I would ask, Mr. President, before submitting the er whether we can have the question, and the particular objection to it read by the reporter. The ground of the objection was that uestion was not proper limited.

e PRESIDENT. The question will be read by the reporter, as well as round of the objection.



[The question and the objection to it made by counsel for respondc was read by the reporter.]

Senator MEALEY. For some reason, Mr. President, I hear very poo to-day, and I was not able to hear the proposition, and as it is a vi important one, I would like to hear it read again.

The PRESIDENT. The reporter will again read the question and t objection to it. * * And the spectators will endeavor to p serve order so that the reporter may be heard.

[The reporter again read the question and objection.]

The PRESIDENT. The question for the Senate to decide is whether t objection shall be sustained.

Senator D. BUCK. What is the question, Mr. President? We do n hear that over here.

Mr. Manager DUNN. The question that I asked the witness, if I m be allowed to state it, was, whether, at any of these times when he n ticed Judge Cox drinking, or when he was drinking with him, the r spondent became intoxicated.

Senator D. BUCK. Was that during the term of court?

Mr. Manager DUNN. Yes, sir, during the term of court, between tl 22nd of January and 5th of February. The objection is that it is n sufficiently limited to the precise time of the sitting of the court. I b lieve I have stated it fairly, Mr. Arctander.

Mr. ARCTANDER. Yes, sir.

Senator CROOKS. How many days does that cover?

Mr. SANBORN. Three days and three occasions; one in his room, a his hotel; another occasion was at Mr. Jones' house, at a dinner pa ty, and another occasion was when he took a glass of beer in a saloo with the witness, and the question is whether he become intoxicated a that time.

Mr. Manager HICKS. May I correct the counsel? Either he mis understands or I do.

I understood the witness to say that they drank on every day for 8 10 days. I think the counsel has misstated the proposition. The w ness stated that he drank, at three different places, but did not limit to three different times.

Senetor CROOKS. With the permission of my colleague, simply f the purpose of expediting busines, I want to know whether the obj tion on the part of the respondent here was as to the time? Now, th if this covered three days what part of those three days does it cov

Mr. Manager HICKS. The witness has not stated that fact as yet.

Senator C. D. GILFILLAN. As near as we can get at the status this question, it seems to me to be a confused jumble. I sugg that we get at this matter by requesting the counsel on the part of t prosecution to reduce his questions to writing, and then have the cou sel on the part of the respondent reduce their objection to writing, Senate can then act intelligently, I do not see that they can do it in a other way upon the record as made up. I think it will be proper the prosecution to reduce their questions to writing.

Mr. Manager DUNN. The question has been taken down by the porter and has been taken out to be transcribed.

Senator C. D. GILFILLAN. There seems to be a misunderstanding to what the question was. The question and the objection should put in writing. If the Senate desires it, the minutes which have b sent out will be recalled, so that the exact question can be ascertain

The PRESIDENT. Under the rules it is necessary to reduce any question to writing, when any Senator or the President desires it. The counsel will please state his question in writing, as near as may be, and the counsel for the respondent will commit to writing the objection they desire to make.

Senator POWERS. Mr. President, I was going to say that if the counsel for the prosecution are required to reduce every question to writing that we shall not get through here in ten years. It seems to me that as far as the witness was allowed to go that his evidence was that the respondent used intoxicating liquors "nearly as many days as I was there; perhaps eight or ten a days." Those are the very words the witness used. The question raised was whether the counsel for the prosecution has a right to inquire whether the respondent used intoxicating liquors at any other time than when he was upon the bench, or in the official discharge of his duties. The witness has already testified that he used intoxicating liquors, "nearly as many days as I was there; perhaps eight or ten days."

Senator HINDS. It strikes me that the testimony that has been recited by the Senator from Fillmore, was introduced without objection.

Mr. ARCTANDER. It was

Senator HINDS. Objection having been first made and then waived, the question that is now pending is what was the effect of these several drinkings upon the respondent.

Senator POWERS. If you will allow me a moment, before this testimony was given the question was asked, "what were his habits?" and that was objected to, and subsequent to that came the question I referred to.

Senator HINDS. The final question calls for the statement of the witness as to the effect of these several drinkings upon the respondent.

Mr. Manager DUNN. That is correct.

The PRESIDENT The question and the objection having been written by the counsel, with the permission of Senator Hinds will be read by the Clerk.

The Clerk when read the question, as follows:

Q. During any of the times that you saw Judge Cox drinking did he become intoxicated?

Objected to as incompetent, immaterial and not properly limited, not limited to times immediately preceding the sitting of the court.

The PRESIDENT. The question for the Senate to decide is whether the objection is well taken. Shall the objection be sustained?

The vote of the Senate being taken the objection was overruled.

The WITNESS. Yes, I should say he did.

Q. You say he did, in your judgment? A. Yes.

Q. During any of the time while he was actually engaged in holding court,—during any of the recesses of the court;—do you know whether Judge Cox drank any intoxicants? A. I do.

Q. How many times, if you can remember during any of these recesses?

A. I won't pretend to say the exact number of times.

Q. Were the recesses of the court frequent or infrequent?

A. Quite frequent; perhaps no more so than they are usually. It occurred sometimes before noon, and afterwards; perhaps two or three times, perhaps four times during the day, on an average.

Q. During any of those recesses, do you know whether Judge Co drank intoxicants?

A. I recollect now only one time. I would state now that it is m best recollection that during one of the recesses there in the forenoon afternoon, Judge Cox and myself stepped into a saloon and took a gla of beer each. I remember no other time during a recess of the cou that I saw him drink.

Q. What was the condition of Judge Cox as to sobriety while h was upon the bench actually engaged in the discharge of his duty.

A. I do not think that Judge Cox during the time that I was ther was under the influence of liquor, while upon the bench with one ex ception. I do not wish you to understand that he was *somewhat* unde its influence. Now, I don't know what intoxication is; if you mean b that drunk, he was not drunk, at any time on the bench so far as know.

Q. Well, was he during any of that time, while he was on the benc under the influence *manifestly* of intoxicating liquor.

A. I thought he was, particularly on one occasion.

Q. Well, you may describe that occasion. When was it?

A. It was probably the 4th day of the term. The case in which was engaged was the first case taken up. The case was that of the Stat of Minnesota against Archie McDonald. The case had been tried, th jury were out, and we were waiting for the return of the jury. It was a evening session—the occasion to which I refer. Judge Cox sat in th chair. I *thought* that he was considerably under the influence of liquo from his manner and what he said,—which was but very little; I can not remember the expression. I know the impression made upon my ception. I do not wish you to understand that he was not somewhat unde influence of liquor at that time,—more so than at any other time that saw him during that term.

Q. I don't know whether you have stated the year in which thi was? A. 1878, I believe.

Cross-examination by Mr. SANBORN. Q. Court sat on the fourth Tuesday of January? A. I believe so.

Q. Did you go there the first day? A. I did.

Q. And remained in attendance?

A. Remained in attendance till Saturday I believe, when I returned home. Returned again upon Monday, and staid the most of that week and returned home the last part of the week.

Q. Was the grand jury there? A. Yes, sir.

Q. Did Judge Cox charge the grand jury? A. He did.

Q. Charge them well? A. I thought he did.

Q. Proceed to the trial of causes? A. Yes, sir.

Q. Continue the trial of causes during that week. A. Yes, sir.

Q. How many sessions of the court were there? A. The first week

Q. Yes, sir, I mean how many a day.

A. Why, there was one session a day, or if you call the noon recess the end of a session, there were two, one in the forenoon and afternoon and one in the evening perhaps.

Q. Did not the court sit from 8 to 9 o'clock in the morning, until 12 or 1; then adjourn to half past 1 or 2, then hold until 5 or 6, and then adjourn an hour and a half, and hold two or three hours in the evening?

A. I think you have stated it correctly, excepting as to the evening

I cannot recall now that there was any session of the court during the evening, excepting in one case where we were waiting for the jury. I may be mistaken, however.

Q. Court met pretty early up there? A. Yes.

Q. Continued in session all day, except the noon recess?

A. Yes, sir.

Q. Did that every day? A. Every day, I believe; yes, every day.

Q. Judge Cox continued in the discharge of his duties, trying cases right along? A. Yes, sir.

Q. He seemed to be competent and able to discharge his duties, didn't he, during those days? A. Yes.

Q. Didn't he dispatch business rapidly and properly?

A. I found no fault.

Q. Well, didn't you think he did? A. As well as judges usually?

Q. Yes, that is what I mean. A. As well as judges usually.

Q. I suppose, if you practice law, you sometimes get beat, like all of us lawyers, and think you would like to have a change in the decision once in a while?

A. I do not quarrel with the court for its opinion.

Q. Now, had you ever met Judge Cox before this term of court?

A. I believe I never had.

Q. Didn't know anything about his characteristics?

A. Not personally.

Q. The characteristics of his mind? A. No, sir.

Q. You don't know how the man acted,—whether he was a very austere man or a jovial man? A. I did not.

Q. Well, now, on the first day that you were up there, were you associated with him very much outside of court? A. No, sir.

Q. How many hours were you with him, or how many minutes, socially, talking and exchanging the compliments of the day?

A. The first day not at all.

Q. On the second day did you talk with him?

A. I believe I did.

Q. How many hours or minutes do you suppose you were engaged in conversation or associating personally with him, during that day, outside the session of the court,—I mean outside of actual proceedings of the judge on the bench; I suppose you were in court during that time?

A. Yes, sir; but a few minutes.

Q. Not probably more than five minutes?

A. Yes, perhaps a little more than that: perhaps ten.

Q. Where was that? A. I think at his room.

Q. At his room in the hotel? A. I think so.

Q. What time?

A. After dinner, and before the opening of the court in the afternoon.

Q. Were you on that day,—the second day of the term—in his room twice? A. I believe not.

Q. Well, then, you were not there after dinner, at the recess and in the evening,—which was it? A. Your question once more.

Q. If you were in his room but once that day you were not there at noon recess and in the evening at all. Which was it?

A. I was not at his room, to the best of my recollection, in the evening at all.

Q. Were you at noon? A. Yes, sir.

Q. At the noon recess? A. Yes, sir.
Q. Who was in the room? Anybody besides the judge?
A. No one besides the judge and myself I believe.
Q. Wasn't there another gentleman occupying the room with the judge during all that term; and wasn't he present there at noon of the second day of the term when you came in?
A. Perhaps there was.
Q. Wasn't Mr. Wilkinson there,—M. S. Wilkinson?
A. He was there in attendance on the court.
Q. Well, wasn't he in the room at noon on that day when you came in? A. Upon reflection I think he was.
Q. Now, that was the occasion to which you referred about the judge drinking in his room, wasn't it?
A. One, yes sir.
Q. Who asked you to drink? Or, did you ask them to drink?
A. I did not ask them to drink. I believe the judge very politely asked me "if I would take something." (Laughter).
Q. And you very politely acceded?
A. Well, I acceded. (Laughter).
Q. And very politely "took something"?
A. I did take "something," yes, sir. (Laughter.)
Q. How many drinks did you take?
A. One I believe.
Q. It did not intoxicate you. A. It did not.
Q. Did the judge take any at that time? A. He did.
Q. More than one?
A. My best recollection is that he did take more than one. (Laughter.)
Q. How many? A. Well, I would say two.
Q. Will you swear to that,—are you willing to put youself on oath that Judge Cox at that time took two drinks?
A. Well, I will not swear that he did.
Q. You won't swear that he took more than one?
A. I would only say that it was my best recollection that he did; you call my attention to the fact that Senator Wilkinson was there,—and I think he took a drink with him and one with me. I think they were drinking when I went in; I think they were just having a little. (Laughter:)
Q. Now, let me see if I cannot refresh your mind; didn't Senator Wilkinson invite you to drink instead of Judge Cox?
A. I believe not.
Q. I want to call you attention to that particularly; isn't it the fact that Senator Wilkinson invited you to drink with him and not Judge Cox?
A. No, sir; Judge Cox produced the bottle himself and invited me to take some of it. That is my recollection.
Q. What was the liquor?
A. I thought it was a rather poor article of whisky. (Great laughter.)
Q. Was it gin? A. I believe not.
Q. You think it was whisky? A. I think it was whisky.
Senator C. F. Buck. Mr. President, I didn't hear that last answer. (Great laughter.)

The stenographer was then directed by the President, to repeat the answer of the witness.

Q. Will you swear as a fact that you were not invited to drink at that time, by Senator Wilkinson, and that Judge Cox did drink?

A. I will swear that it is my best recollection, as I recall it now, that Judge Cox invited me to drink and produced the liquor that we drank. That is my best recollection.

Q. How long after that did court meet that evening?

A. I think within half an hour.

Q. The judge didn't seem to be very much intoxicated that day, you said? A. No, sir.

Q. He performed his duties as judge just as well as judges usually do, did he not?

A. I do not think he was very much intoxicated, I do not think so.

Q. Now we come to the third day. How many times did you meet him socially on the third day?

A. I do not think I met him socially on the third day, during the day time.

Q. Didn't talk with him? A. I think not.

Q. Did you during the evening?

A. I believe I did during the evening.

Q. After court adjourned? A. After court adjourned.

Q. How long a time did you spend in his company?

A. During the evening?

Q. Yes, sir.

A. From about 8 o'clock till 2 the next morning. (Laughter.)

By Mr. Manager DUNN. Was that the third or fourth day?

A. Well, I dont say whether it was the third or fourth day. I will not be certain as to that. There was only one meeting of that kind, and that was the third or fourth day.

By Mr. SANBORN. Where was that?

A. That was at Captain Jones' private residence.

Q. Well, then the next day was the fourth?

A. If that was the third.

Q. On the fourth day did you meet the judge?

A. In the court room; I don't think I met him otherwise than in the court room.

Q. Court opened the next morning as usual? A. Yes, sir.

Q. The judge discharged his duties as usual? A. Yes, sir.

Q. And was this the day on which there was an evening session?

A. I believe it was.

Q. You had been trying the case of the State against McDonald; what time did you commence the trial of that cause?

A. My recollection is that it was on the morning of the second day of the term.

Q. On the morning of the second day of the term? A. Yes.

Q. Then you had been trying it two days before this date? A. Yes.

Q. What time did you conclude the trial of the cause?

A. The State closed about the middle of the afternoon, not on the second day I think.

Q. Of what day?

A. Of the third day it must have been; and the defence closed sometime the next day I believe towards night. Now I will not try to say when it was that the case was closed.

Q. You think it was in the afternoon sometime?
A. I think so; that would be my recollection.
Q. The case closed in the afternoon, and no other case was taken up on that day was there? A. I believe not.
Q. That was the last case on trial that day; no other business was transacted that day was there?
A. Some motions,—some court business. I believe Senator Wilkinson had some motions to make in the evening during the evening session I have forgotten their nature. They did not make a very lasting impression upon my mind.
Q. There was no jury present?
A. No jury in the panel; the jurors were present I presume.
Q. The judge sat upon the bench in the evening? A. Yes, sir.
Q. What time did the court meet in the evening?
A. Well, early lamp-light; I don't remember when.
Q. That would be about 4 o'clock, I suppose,—in January?
A. No.
Q. Five? A. Oh, between 7 and 8.
Q. It would be 7 or 8 o'clock? A. Yes, somewhere along there.
Q. In the winter time lamp-light is pretty early in this country, you know.
A. Well, I do not mean in the day time; I mean in the evening.
Q. Now how long did that session of court continue in the evening?
A. Oh, from one to two hours.
Q. Senator Wilkinson was present and made a motion.
A. Yes, sir.
Q. Who else was present? A. Well, the Martin county bar.
Q. Well, who are they? A. Mr. Higgins.
Q. What is his first name? A. I don't remember.
Q. Go on.
A. And Mr. Blaisdale, Mr. Shanks and myself, Mr. Dunn, Senator Wilkinson, Mr. Wolleston, and a great many others whose names I perhaps could call if you wish farther.
Q. Who was the clerk of the court there?
A. Mr. Fancher. He was present.
Q. Who was the sheriff? A. Mr. Berg.
Q. Was he there? A. I am not certain. I think he was.
Q. In the afternoon the business of the court had been transacted as well as ever hadn't it? A. Yes.
Q. He charged the jury did he not? A. He did.
Q. They retired to consult, then it was that the court adjourned until the evening session I suppose?
A. That is my recollection.
Q. Now, what did the judge do at this evening session that led you to think that he was under the influence of liquor.
No audible answer.
Q. Well, let us take up this matter seriatim and see what was done. What was the first thing that was done at the evening session after the judge came in and took his seat?
A. There was no court business done during that evening. Judge Cox occupied the chair, the attorneys were sitting by the table. Judge Cox was silent that evening mostly, as I remember it. He said but very little if anything. I think he did make some remarks. I think no other member of the bar made any motion or had any talk to the court

excepting Senator Wilkinson who addressed him somewhat laughably perhaps, not on a business point. The scene, I thought at that was a little comical, to put it in those words,—I thought it was a little comical. I don't know that there was anything bad about it. I remember we all had our laugh from what was said by the Senator and the surroundings, the environments of the court-room, and the *occasion*. We were having a little frivolity, a little jollity.

Q. Now, perhaps I get an understanding of this: The court then, had adjourned from the afternoon session simply to await the verdict of this jury so that they would not have to stay out over night?

A. That is my recollection.

Q. And it was not the intention to do any business that evening?

A. I think not.

Q. And the bar, the jury and everybody understood that this evening's session was merely a session to await the coming in of that verdict so that the jury would not have to stay out all night?

A. That is my understanding of it.

Q. And that nobody attempted to do any business or make any motions?

A. No, sir, none excepting this business that Senator Wilkinson,—*if* that *was* business.

Q. The judge sat in his chair, as we all know the judge frequently does of an evening when he has nothing to do in the court, waiting for the jury and quietly waiting for the result? A. Yes, sir.

Mr. Manager DUNN. (to Mr. Sanborn). Who is testifying, you or the witness?

Mr. SANBORN. Well, the witness seems to be.

Q. The attorneys were enjoying themselves as well as they could under the circumstances? A. Yes.

Q. Senator Wilkinson made some laughable remarks in the presence of the attorneys and the judge to the end that the jollity might be increased, didn't he? A. What is the question?

Q. Senator Wilkinson, while you were waiting there for the jury, made some jocose remarks to the end that the attorneys might enjoy themselves better, didn't he, and his conversation was addressed to the court?

A. I do not know that Senator Wilkinson meant or designed to create a laugh by what he said,—I don't know that that is true. There were some words between the judge and Senator Wilkinson, and the result of it was, under the circumstances, that we enjoyed ourselves by the laugh that followed. That is about the amount of it.

Q. No cause was being tried? A. No, sir.

Q. No motion in court was being heard?

A. No, sir,—excepting it might have been a motion in court as I have before stated.

Q. During the time that the judge sat there in this condition of quietude or silence, no effort was made to do any court business by any attorney, was there?

A. It is my recollection that there was no effort made to do any business,—excepting the motion before referred to.

Q. And it was the understanding, when the court adjourned to the evening session, that there was to be no business done at that evening session? A. I will not say as to that.

Mr. Manager DUNN. I shall object to the question. I have no (jection to proper questions, but I object to that kind of a question.

Mr. ALLIS. He is just cross-examining the witness.

Q. That was the evening session you thought the judge was into cated on the bench, to which you referred in your direct testimony?

A. Yes, that is the evening.

Q. No other time? A. No.

Q. You said, in answer to the general question,—as to whether y saw him intoxicated after drinking at the times you have stated,—t you thought you did see him intoxicated once. Was this the time t you referred to in answer to that question? A. It is.

Q. Is that the only time that you did?

A. In the court room, it is.

Q. Did the jury come in that evening? A. They did not.

Q. You stayed there how long?

A. We stayed probably till 10 o'clock in the evening.

Q. The jury did not come in? A. No, sir.

Q. Then the court adjourned until the next court day? A. Yes

Q. Now, let me ask you this by way of refreshing your recollectio —I want to ask you if, when the court adjourned in the afternoon, adjourned over to the next day, and the judge came back th without any adjournment of the court, to the evening, and sat down his chair without calling the court at all? A. I could not say.

Q. Won't the records of the court probably show, when you come look at them, that the adjournment of the court was made in the af noon until the next day, and that the judge came back there to see the jury were agreed, so that they would not have to stay out all nigh

Mr. Manager HICKS. Would not the record be the best evidence that?

Mr. SANBORN. Yes, sir.

Mr. Manager HICKS. I object to that as incompetent.

Q. Won't the record probably show that?

A. I do not know what the record shows. I have never read it.

The PRESIDENT. The chair would hold the question is improper.

Q. I will ask you this question, (if the court holds it proper.) Is it your best recollection that this was not a session of court at all, t that the court adjourned over till the next day in the afternoon, and t the judge and attorneys came back there simply to see if the jury h come in?

A. Well that would be my recollection of it.

Q. Now, then, the next question: How long after that did you tend the court?

A. I think that brings us down to the close of Friday evening.

Q. Saturday evening?

A. No, sir, I think the grand jury were called upon Tuesday, a then there was the preliminary call of the calendar upon that day, a then the McDonald case was taken up the next day, which las Wednesday, Thursday and Friday,—the jury coming in on Saturd morning. That would be my recollection; that during Saturday I turned home; returned on Monday morning and stayed there the m of the following week,—probably till Friday; I would not say.

Q. During the remainder of the term the judge presided upon t bench, tried causes and discharged his duties as well as judges usua do, did he not?

. I cannot speak so distinctly of the following week, because I had ther case that was tried. If I were engaged in other cases, which ubt now, they were not tried, they were continued. I was there on e other business as well as court business and I did not attend court very much during the next week,—being in and out at differ- times.

Well, as far as you know.

As far as I know, while I was there.

The judge was not intoxicated when you went into court as you in and out, and was discharging his duties, as far as you know, as as judges usually do?

Yes, sir, I think he did.

Now, let me ask you about the adjournment of that court. Did hat court adjourn on Thursday, or Friday of the second week,—I adjourn finally for the term, and did not Judge Cox leave on the day that you did?

That may be true; I will not say; I cannot remember now. I not looked at the record since that time.

Did not Senator Wilkinson and Judge Cox leave for Winnebago in fternoon of the same day that you did, and did not you know that were going on that afternoon?

That may be true. I don't know whether it is true or not.

What makes you think that the court continued in session four s? That was your recollection at first. Arn't you in error, pro- y?

My recollection then was that Judge Dickinson came to Fair- t a few days after Judge Cox went away, and that I heard (I was sitting) that the court continued for a couple of weeks longer. Now that not have been that term. I do not remember whether it was or That was the reason that I said it continued four weeks. If I am ror about that, then I am in error about the other.

Judge Cox was not there after the two weeks then, anyway, he? A. No.

If the term continued, it was continued under the presidency of ge Dickinson? A. Yes.

aper book handed witness.)

Look at that, and see if that is not the court calendar for that —the printed calendar that was used by attorneys for that term?

Well, I could only speak from the date, this appears to be dated, eneral term, January 22, 1877. I know nothing about it other than

The two cases I have spoken of,—I have mentioned only one of ,—appear upon this calendar. My recollection is they had been nued over one term before they were tried. They had but one a year then. That may be the calendar for that year; I don't

r. Manager HICKS. It purports to be for 1877.

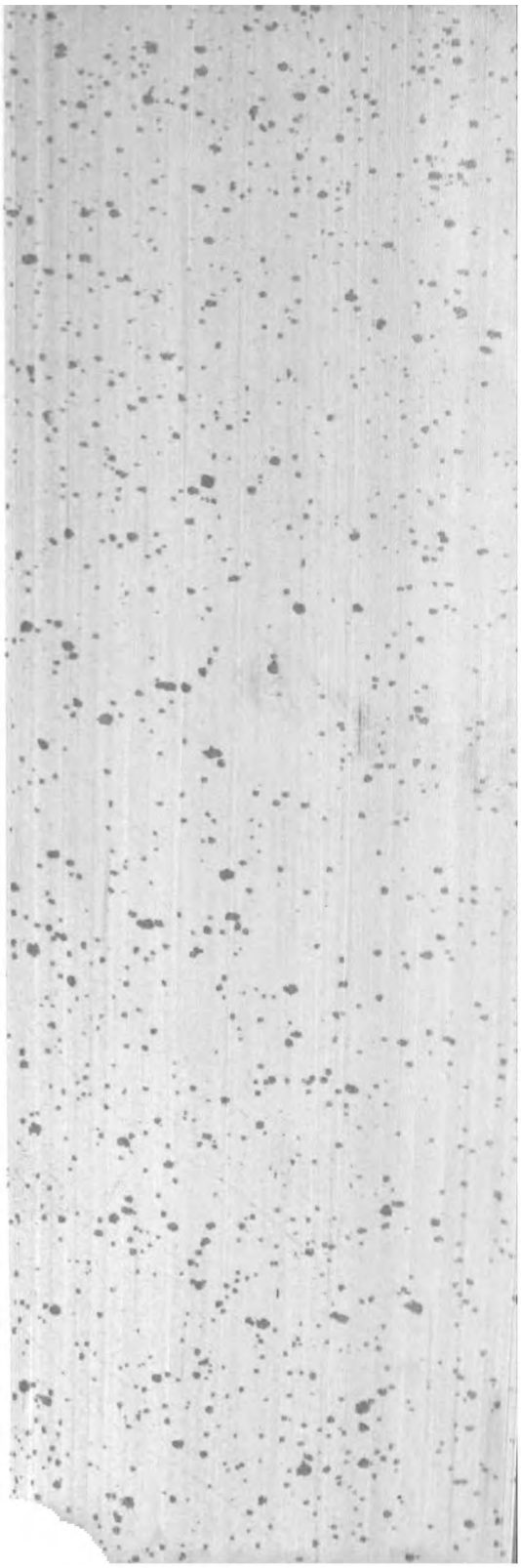
he WITNESS. It purports to be for 1877.

r. Manager HICKS. And this occurrence took place in 1878?

he WITNESS. It did. Mr. McDonald was bound over in 1876, was ted in 1877, the case was continued to the next year, and the next it was tried, which would be in 1878.

r. SANBORN. I think that is all.

he PRESIDENT. Have the managers any further inquiries to make of witness?



Mr. Manager DUNN. Yes.

RE-DIRECT EXAMINATION

By Mr. Manager DUNN.

Q. Mr. Graham, you said that Judge Cox was under the influenc of liquor while he was on the bench, do you wish to be understood tha this evening you speak of, was the only time during the term of cour that Judge Cox was manifestly under the influence of liquor, and tha you saw it?

A. I will have to answer that in my own way if permitted to do so I was entirely unacquainted with Judge Cox personally until I met him on that first day of the term; whether he was under the influence o liquor I will not say, excepting at that time, his actions were somewha peculiar; they may have belonged to the man.

Q. You saw him on the first day when he charged the grand jury?

A. I recollect that I did.

Q. Well, was he under the influence of liquor then?

A. I think not.

Q. Well, were not his actions different after the second day of the term.

A. I thought they were.

Q. And did they not grow more different, and did not he have peculiarities?

A. Well, I thought so; I thought that he acted a little different; the peculiarities were rather more prominent.

Q. And you knew that he had been drinking, did you not?

A. I knew that he had drank to the extent I have spoken of.

Q. Let me call your attention to one time: do you recollect taking a dinner at Mrs. Older's at the hotel, what they call a New England dinner?

Mr. ARCTANDER. That is objected to as not proper re-direct examination. There is nothing in the cross-examination to call for this.

Mr. Manager DUNN. I do not apprehend we are confined in the re-direct examination to anything they brought out in the cross-examination.

Mr. ARCTANDER. If we try this case as ordinary cases are tried that is all we ask.

The PRESIDENT. The chair will not overrule this question. It is generally expected the main question can be put in the direct examination and that upon re-direct examination such questions only as bear upon the cross-examination will be allowed.

Mr. Manager DUNN. I think that is different from any rule of evidence I ever read on cases of this kind. I call your attention to that Mr. Graham? A. I boarded at the Older House.

The PRESIDENT. The chair does not overrule the objection.

Q. Do you recollect the time when Mrs. Older invited the judge, and the senators, and the bar generally over there to dinner one day?

A. I believe I do recollect.

Q. Do you recollect whether there was anything to drink there on the table that day contained in a large pitcher. A. I believe there was.

Q. Well what was that? A. Lager beer.

Q. Was it lager beer or that English beer they make up there?

A. Well, it was beer; I do not know whether it was lager beer or not.

Q. It was beer. That after the dinner the party adjourned up stairs to a room? A. Yes.

Q. Do you recollect that there was another large pitcher of beer brought up there? A. I believe there was,—yes.

Q. Do you recollect whether there was any of it left after the party left? A. I do not know.

Q. Do you recollect whether it was drank or not?

A. There was beer drank upstairs in that room.

Q. Do you recollect whether the judge drank or not?

A. I do not recollect distinctly; I think he did.

Q. It is your impression that he did, is it not?

A. It is my impression that he did.

Q. Well now that was just before the court opened in the afternoon?

A. It was at noon.

Q. Well the judge went immediately from that room over to the court room, did he not? A. I believe so.

Q. You went with him? [No audible answer].

Q. Well were there any marked peculiarities in the judge's conduct that afternoon, Mr. Graham?

A. Well, the peculiarities that I have spoken of before, were a little more marked that afternoon.

Senator CASTLE here took the chair to act as President pro tempore.

Q. They were a little more marked that afternoon? A. Yes.

Q. Do you remember that in that case of McDonald that there was a Sunday intervened during the trial of that case. Haven't you got the dates a little confused; don't you remember that we were five days trying that case, that we commenced it on Wednesday and summed it up on Monday.

Mr. ARCTANDER. We object, Mr. President, to the managers cross-examining their own witnesses in this way.

The PRESIDENT, *pro tem.* Oh, I think the question is proper. I presume the court has already been over it.

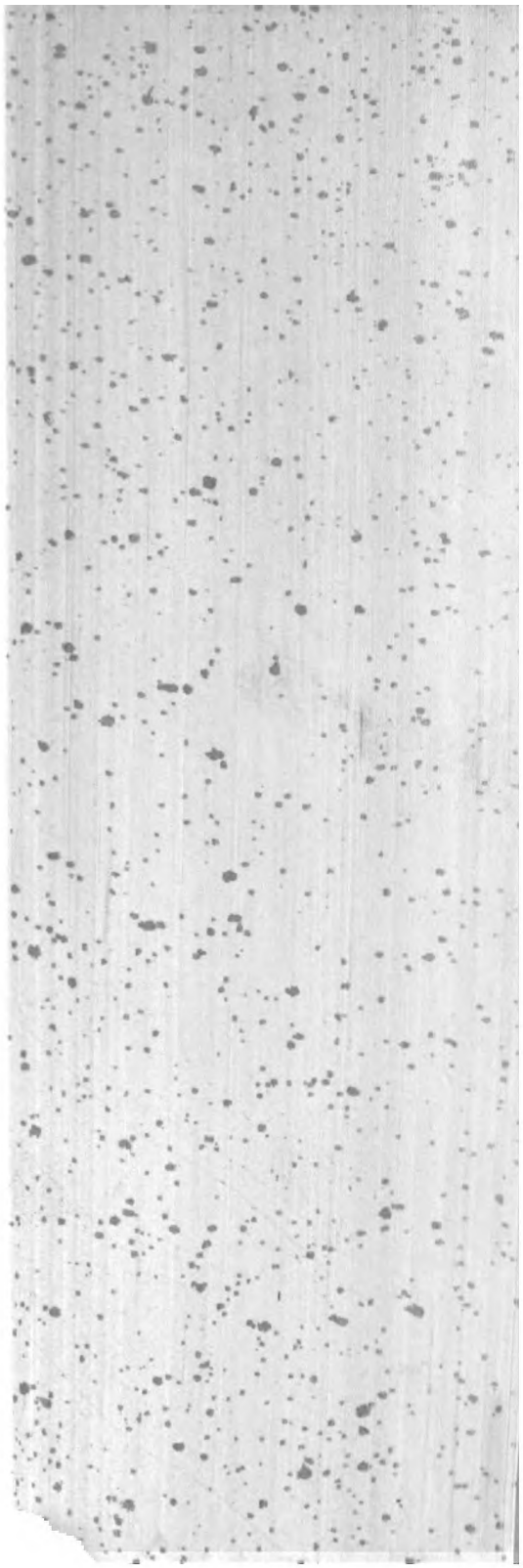
A. I have never looked at the date, I have no recollection. I stated it the best of my recollection but I might have been in error there. The cause may have lasted five days and a Sunday may have intervened; that may be true, but as you call it to my mind I think it is true that Sunday intervened; that we did not finish it the first week.

Senator POWERS. You have stated twice, I believe, in your testimony that the conduct of the judge on the evening of the fourth day, I think it was, while waiting for the jury, was rather comical, and once you stated that it was rather peculiar. And you made a statement on that matter somewhat in a significant or suggestive way; what is the meaning of that. In what did the comicalities, or peculiarities consist, that made it noticeable to you?

A. I do not think, Senator, that I can make that any plainer than I have; I simply remember the scene as a little peculiar in a court room; it struck me as rather peculiar. I cannot say that the judge said anything improper or out of place; his actions were a little peculiar.

Senator POWERS. If there was any meaning to it, any more than a little eccentricity, we desire to know it of course.

A. Well, I thought that the judge was a little intoxicated that evening. Now that is my idea of it; and the scene in the court room, and what was said by an attorney as a little ludicrous. And I know there was some merriment over it, and that is about all I remember about



that. There was nothing that the judge said that recalls it to my mind. He said nothing that I remember was improper.

Senator POWERS. A long chain of questions were put to you by the counsel for the respondent, to which you neither assented nor dissented, at the time that the counsel for the prosecution objected. Did you mean the Senate to understand that you assented to all that chain of questions?

A. Well, I couldn't be able to answer that unless the questions are repeated.

Senator POWERS. I wouldn't wish to ask that; there was quite a lengthy chain of questions.

A. My recollection is that I did assent to most of them, if not all. I do not recollect anything except what was objected to by Mr. Dunn; I neither assented nor denied that. If you desire the specific answer the reporter may read the questions, and I will then answer.

Senator POWERS. I did not understand you as either assenting or dissenting.

Mr. Manager DUNN. Did I understand you to say that your recollection of that evening was that there was not a session of court; the attorneys were all there, were they not?

A. Not only the attorneys in that case, but in other cases; I think they were all there.

Q. And the court was there, and the sheriff, and the baliffs and the clerk of the court? A. Yes, sir.

Q. Did you wish to be understood that according to your recollection that was a regular session of the court?

A. Well, I suppose it would be a session of the court if the judge were present, and the clerk were present and in his place, and the sheriff was there. I think the court was called, but I am not so sure as to that. I can not say as to that, whether it was regularly called by the sheriff. My recollection is indistinct upon that matter; I think it was, however. My recollection is that there was no business done upon that evening.

Q. What was Mr. Wilkinson's motion, you said he made a motion,—as you remember?

A. I do not remember what the motion was.

Q. It was a motion addressed to the court, was it not? A. It was.

Q. As a court?

A. Yes, sir, addressed to the court, as a court.

Q. The same as it would be at any session of the court pertaining to business in the court as you now understand it?

A. As I now recollect it, it was.

Q. Relative to a case that was on the calendar, was it not?

A. Well, I presume so I cannot recollect now.

Q. You thought at the time it was a case in court, did you not?

A. That was the understanding at the time, of course it is a long time that has elapsed since then. It would be my impression that it would be in reference to some business before the court—business in which I was not personally interested however. At least I should say so.

Q. Well you said it was a ludicous scene; did the frivolity of the scene come from the action of the judge, or from the party who made the motion or both?

A. My recollection is that the merriment mostly proceeded from the mover, from the man who made the motion and the circumstances.

Q. Did the judge rebuke the merriment, or did he join in with the laughter?

A. I don't think that he rebuked it, no, I think he did not.

Q. Well, it was not a boisterous scene?

A. I don't think it called for rebuke, probably at the time.

Q. Was the judge in a condition to transact business as judge of the district court?

A. I would not say he was not.

Q. Would you say that he was?

A. I simply say that is my recollection; the impression made upon me at that time that the judge was somewhat under the influence of liquor. Whether that disqualified him I could not say without further evidence, for I don't remember that he attempted to do anything and failed in it. He sat on the bench and was very quiet; that is my recollection. That he was very quiet until he went away out of the court room.

RE-CROSS-EXAMINATION.

By Mr. SANBORN.

Q. Have you ever seen Judge Cox when he was intoxicated beyond question; when you knew he was very much intoxicated?

A. No, sir, I never did.

Q. And don't know whether the characteristics of the man when he becomes intoxicated are quiet or boisterous, laughter or jollity?

A. I do not.

Q. You don't know what his habits are in that respect?

A. Oh, this evening he was very quiet and said nothing.

Q. Was not the motion which Senator Wilkinson made a sham motion for the purpose of sport, and not for the purpose of having any business transacted?

A. I have stated all I recollect about that. I could not state it differently from what I have stated it before.

Q. You have stated it in two ways; in answer to my question you have stated what your impression was; finally upon the cross-examination you stated what it was a regular session of the court, that the court adjourned in the afternoon to the next day, and that the court came back there simply to see that the jury did not have to stay out over night?

A. I think there was no business undertaken to be transacted. I think the motion of Mr. Wilkinson or remarks of Mr. Wilkinson, were addressed to creating a little merriment for the attorneys.

Q. Now, you have stated in the re-direct examination that your remembrance was that that was a motion in a case in court.

A. I have not stated so.

Q. Well, I understood you to say so.

Mr. DUNN. I stated so to you and you assented to it.

Mr. SANBORN. Now, which of those two things are true?

A. Now, if I recollect my testimony it is this, that it may have been; I say that the court was there, that the clerk was there, that the attorneys were there,—if that constitutes a session of the district court, then it was a session of the district court. I do not remember that any business was done upon that evening, whether there was or was not, the motion, or whatever it was, was addressed to the court, that is all I re-

member of. What it pertained to I don't recollect, and I believe I have so stated two or three times, it was my intention to so state.

Q. You don't think it related to any business in court, do you?

A. Now, you will not get me to say I do not think so.

Q. Well, shall I get you to say that you do think so?

A. I will say that my idea is that it related to some business, but if it did it related to business in which I was not connected, and it made but a slight impression on my mind, so far as the motion itself was concerned.

Q. Well, was the matter granted or refused?

A. I think neither.

Q. Who opposed it. A. I believe nobody.

Q. What was done then, nothing? A. Nothing, I believe.

P. WOLLESTON,

Sworn on behalf of the State, testified:

Mr. Manager DUNN. Where do you reside?

A. In Fairmount, in Martin county, in this State.

Q. How long have you resided there? A. Nearly six years.

Q. What is your business?

A. I am a land owner and a merchant.

Q. How long have you been in the mercantile business there?

A. Nearly four years.

Q. Do you know the respondent in this action, Judge Cox.

A. I do.

Q. At a term of the district court, in your county in January 1878 at which Judge Cox, the respondent, presided as judge?

A. I was present.

Q. In what room was that court held?

A. In a room over my store, called Albion Hall.

Q. A building that you own? A. That I own.

Q. A building that you rented to the county for court purposes for that session? A. Yes.

Q. Were you not in and out of the court room there? A. I was.

Q. Did you see Judge Cox upon the bench any time during that court?

A. I saw him several times, more or less; almost every day.

Q. State what was his condition during any of the times you saw him, while he was on the bench as to sobriety.

A. The first week my impression was that he was perfectly sober. Subsequently during the second week I had very grave doubts.

Q. What were the cause of those doubts?

A. His behavior, and knowledge of the fact that upon many occasions he went into saloons.

Senator CAMPBELL. I would like to say that it is a little difficult to hear.

The PRESIDENT *pro tem.* Please speak a little louder.

Mr. Manager DUNN. Please answer the question again. I do not think the Senate heard the answer to that question. What was the cause of those doubts you had as to his sobriety? What led you to doubt?

A. His behavior upon one or two occasions in the court room; that on several occasions I had seen him going into and coming out of a sa-

loon. Putting the two together I considered that it arose from too much to drink.

Q. Was the saloon close by the court-room?

A. Within five or six doors.

Q. At what time of day would you see him going in and coming out of the saloon? A. I have seen him during the recess time.

Q. The noon recess? A. The morning recess.

Q. The recess between the morning and the noon recess? A. Yes.

Q. Between the opening of the court and the noon recess?

A. Yes, that is my impression.

Q. During the noon recess? A. And at the noon recess.

Q. And then in the afternoon recess? A. No, I don't remember.

Q. The saloon was close to your store was it?

A. It is five or six doors below the store.

Q. Who did you see him in company with, going into the saloon?

A. I could not say particularly.

Q. You say you have grave doubts, how strong are those doubts?

A. Well, on one occasion, one evening in court, I felt morally certain that he was very much the worse for liquor.

Q. That was the second week?

A. My impression would be that it was on Tuesday or Wednesday evening of the second week.

Q. Was it generally talked about in Fairmount that the judge was drunk?

Mr. SANBORN. That is objected to as incompetent and immaterial.

The PRESIDENT *pro tem.* I do not think that is competent. It would be hearsay would it not?

Mr. Manager DUNN. I shall ask it under some other charge but not under this.

The PRESIDENT *pro tem.* Is this under article number one?

Mr. Manager DUNN. Yes, sir. I will not press the question under this article, (to witness.) Did you see him intoxicated at any time during that term of court other than on the bench?

Mr SANBORN. That is objected to.

The PRESIDENT *pro tem.* What is this directed to?

Mr. Manager DUNN. It is the same article. It will go also to the other article,—article eighteen—as to habitual drunkenness. The question was permitted to be answered, when you, Senator, were not present.

The PRESIDENT *pro tem.* If that is the case I will allow it.

A. I have no distinct recollection.

Q. By Senator D. BUCK. I understood you to say that you thought he was the worse for liquor, and that was your expression, was it not?

A. Yes, sir.

Q. Now I want to ask you in your opinion whether he was or was not drunk?

A. My opinion at the time was that he was drunk.

By Senator CROOKS. Where was that, sir?

A. In the court room.

Q. Sitting as judge?

A. Sitting as judge, sitting or standing, but he was acting as judge.

Q. Was the court intoxicated? A. The court was intoxicated.

Q. And he was there as judge? A. He was as far—

Q. Was drunk in your opinion—you say that don't you?

A. Yes, sir.

CROSS-EXAMINATION,

By Mr. SANBORN.

Q. When did you first meet Judge Cox?

A. At Fairmount, at the opening of court.

Q. Were you introduced to him or did you speak to him on the day?

A. I don't think I was introduced to him, but I make a practice of always introducing myself to the judge of the court, and inviting them to my house to spend the first evening—the court and some members of the bar.

Q. You did that at this time? A. I did.

Q. And you met Judge Cox in the evening then at your house?

A. Judge Cox and Senator Wilkinson.

Q. How late did they stay?

A. Well, not late, certainly not later than 10 o'clock.

Q. When did you next have any conversation with him?

A. Well, almost every day; I used to go into the court and speak with him.

Q. Either before the opening of court or during recess?

A. Almost every day during the first week.

Q. During that week he was very sober? A. I saw nothing wrong.

Q. And he was discharging the duties of his office as well as any judge you ever saw, was he not?

A. I have nothing to say wrong against him.

Q. Did you hear him charge the grand jury.

A. I think I did.

Q. Were you present at the trial of the case of the State vs. McDonald? A. I was a witness in that case.

Q. What day was that that you were witness?

A. It was either Wednesday or Thursday of the first week if I remember rightly.

Q. And subsequent to that time, were you in daily?

A. Until the last two days.

Q. Of the court? A. Of the court; yes, sir.

Q. When did the case of the State against McDonald end? When was the jury charged as you recollect?

A. As far as I can remember it was Friday.

Q. Was that on Friday of the first or second week?

A. Of the first week.

Q. Do you know whether there was any evening session on that night? A. Yes.

Q. Were you there? A. I was there a part of the time.

Q. Was that the time to which you refer? A. No sir.

Q. You don't think the judge was intoxicated that evening?

A. I didn't think so.

Q. What case was tried the day you think he was?

A. That I cannot remember.

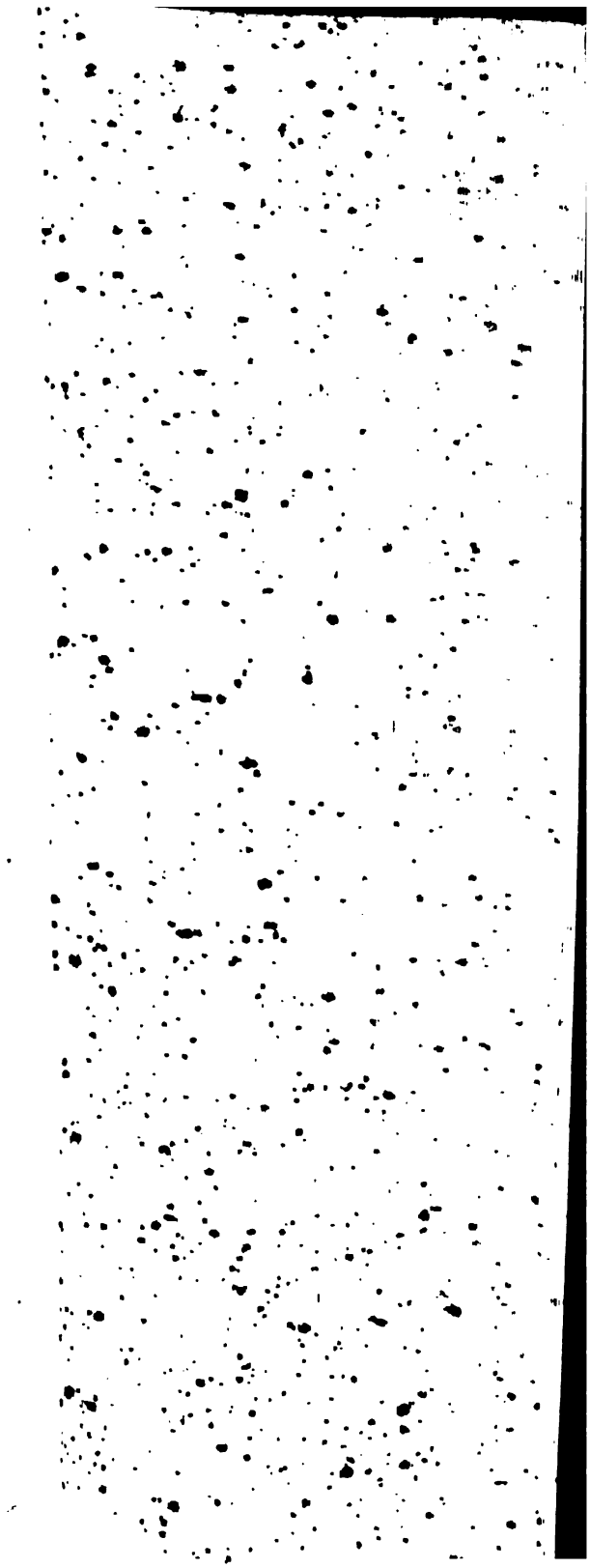
Q. Do you think it was Tuesday or Wednesday of the second week?

A. Yes, as far as I can remember that was the time.

Q. Did the court hold evening sessions during the second week every evening? A. Almost every evening.

Q. Commenced on Monday, at 8 o'clock in the morning, and ran during the day?

A. Yes, my reason for thinking so was that we spoke to Judge Cox
n the propriety of holding an evening session; and as he was anxious,
order to facilitate the business of the court, (it being his first term as
dge) he did not want any body to say that he threw any obstacle in the
ay of business and therefore consented to evening sessions.
Q. Do you mean that you consented or that he consented?
A. He consented.
Q. Was this Tuesday evening or Wednesday evening, according to
ur best recollection?
A. It was Tuesday or Wednesday evening.
Q. Well, which one, according to your best recollection?
A. Well, I cannot say.
Q. You can't fix that any further?
A. No, I cannot; it is only a general impression on my mind.
Q. Now, what was being done that evening in the court?
A. That I cannot tell you.
Q. Tuesday or Wednesday evening you say you cannot tell what
s being done? A. I cannot.
Q. Was there a jury trial progressing,—a jury present?
A. No, I don't think there was.
Q. Were there motions being made or arguments being heard?
A. There were some motions, I think, being made. The judge was
ing some instructions to the clerk of the court, or the sheriff, and it
med to me they were given in such an incongruous and unintelligible
y that nothing else but drunkenness could account for it.
Q. Which was it, the sheriff or the clerk?
A. The clerk, I think, but they were both present.
Q. That clerk's name is Mr. Fancher? A. Yes, sir.
Q. Where is he now? A. In Fairmount. I am speaking to the best
my recollection.
Q. And was Mr. Berg, the sheriff present?
A. I think he was.
Q. Who else was present? A. That I cannot remember.
Q. Who were the attorneys interested in this motion?
A. That I cannot remember. It was a case that did not affect me,
as not interested in that at all.
Q. Had you had any conversation with Judge Cox that day?
A. That I cannot remember.
Q. Had you seen him drunk that day?
A. No, I cannot remember that, particularly.
Q. Seen him going into saloons that day?
A. That I could not swear, either yes or no.
Q. Now, what was that direction that you thought was incongruous
unintelligible; what was it about?
A. Well, that I cannot remember. It was merely an impression
ned by me; it seemed to me to be given in such an unintelligible way
t they did not know how to regard it, and my conclusion in my own
nd (I didn't know anything about it) was that he must have been the
se for liquor.
Q. Have you ever practised law? A. No, sir.
Q. Don't know anything about the course of legal proceedings?
A. No, sir.
Q. Or the instructions that are usually given to clerks in cases?
A. No, sir.



Q. Was any other business transacted there besides the giving of t instructions to the clerk.
A. Oh, there had been different business.
Q. That evening? A. Yes, sir.
Q. Was there other business transacted?
A. I think there was.
Q. Other motions heard?
A. That I cannot be certain about, I cannot be certain that I w there the whole of the evening.
Q. How long do you think you were there?
A. I don't think that I was there much more than half an hour an hour.
Q. Was the court in session when you went in there?
A. I think so.
Q. Was it in session when you went out?
A. I stayed until it broke up.
Q. Was the court adjourned?
A. It was adjourned until the following morning.
Q. Then it did not break up—it was regularly adjourned?
A. It did not break up in that sense,—it adjourned to the next da
Q. The judge instructed the sheriff to adjourn until the next mor ing, did he? A. I cannot recollect.
Q. The judge did not give this instruction during the entire time y were in there—he did not occupy all the time? A. No, sir.
Q. How long a time did he occupy in giving the directions to t clerk? A. Oh, it was only a short time.
Q. Three minutes? A. Rather more than that.
Q. Five?
A. My impression and recollection is that it was so unintelligi that the clerk could not understand it; a good deal of talk as to how should be entered.
Q. Do you know whether it was finally entered? A. I do not.
Q. And you can not tell what it was about? A. No, sir.
Q. What any of the attorneys said about it? A. No.
Q. What the clerk said about it? A. No.
Q. Nor what Judge Cox said? A. No.
Q. Were the remarks of the clerk unintelligible also?
A. They were not.
Q. You couldn't understand what the clerk said? A. The clerk
Q. Yes? A. I understood what the clerk said.
Q. What did he say?
A. I cannot remember; I understood what the clerk said; but t what the judge said,—not the order he intended to give, because it w not a personal matter to me. I didn't pay particular attention to it.
Q. Do you know who either of the attorneys were that were disp ing over the question? A. No, I don't remember at all.
Q. Did they have a dispute over it as to what the order of ent should be? A. That I don't remember.
Q. You don't remember whether they took any part in the disc sion? A. No, I do not.
Q. Was this when you first went in there?
A. I think there had been other business going on, but I don't kn what it related to; it did not concern me.
Q. Was this about when the court adjourned?

A. It was about the time it adjourned.
Q. You had been in there half or three quarters of an hour?
A. I think so.
Q. During that half or three quarters of an hour, had there been other business transacted? A. I think so.
Q. Had the judge spoken or given orders or directions, or decisions during that day? A. Not that I had noticed particularly.
Q. Do you know whether he had or not? A. I do not.
Q. Had attorneys made motions during that time?
A. They had been talking, but really I forget whether there were motions made.
Q. You don't know whether they were making motions or arguing cases? A. No, I didn't pay much attention to it.
Q. You don't know whether they were trying cases or not?
A. No, they were not trying cases.
Q. They might have been trying a case before the judge without a jury, might they not? A. I think not.
Q. No witnesses, were there? A. No, I think not.
Q. How do you know that the Clerk didn't know what to enter?
A. Well, I gathered so from what he said.
Q. What did he say?
A. I can't tell you what he said, but that was the impression left on my mind.
Q. You don't know whether he entered the order or not?
A. I do not.
Q. You don't know what cause it was in? A. No.
Q. You don't know who was present? A. I don't know who.
Q. You don't know of anybody being present but Judge Cox and the Clerk?
A. I don't remember the names of anybody else; don't particularly remember others. I know there were others, but I don't remember exactly who they were, As I say, it was a matter I had nothing in the world to do with.
Q. Now, was there anything else besides the entry of the order that made you think the judge was intoxicated that eveniug; did he do anything else while he was on the bench there, that led you to believe so?
A. I don't know that I noticed him particularly until he came to that time.
Q. You didn't notice it before,—did you notice it after?
A. Well, that was the last thing; that was the winding up of the business.
Q. You noticed nothing out of the way before that?
A. I did not notice anything out of the way before that.
Q. And you noticed this, and then the court adjourned?
A. Yes, as far as I remember.
Q. You were in there at other times during the session of the court, every day; did you ever notice him at any other time during this session of the court when the performance of the duties of his office were impeded or affected by the use of intoxicating liquors?
A. I cannot say that I did,—very seriously impeded.
Q. Did you see him at any other time when he was under the influence of intoxicating liquors in court?
A. Well, I have a sort of idea that he was, but then I have nothing

to lead me to it. I thought he was excited, and under the influence of liquor.

Q. You saw nothing in the discharge of his duty that indicated it?

A. No, I can't say that I did.

Q. And he proceeded with the court day and evening until the close of the term, did he not?

A. After that evening I did not go into the court.

Q. Well, as far as you know? A. Yes.

Q. Was he very expeditious in the dispatch of business so far as you saw? A. Yes, I don't know anything to the contrary.

The PRESIDENT *pro tem.* Any further questions?

Mr. Manager DUNN. No further questions.

J. L. HIGGINS,

Sworn and examined as a witness on the part of the State, testified:

Direct examination by Mr. Manager DUNN.

Q. Where do you reside?

A. Fairmount, Martin county, Minnesota.

Q. How long have you resided there?

A. Four years and a little over.

Q. What is your business and occupation?

A. An attorney at law.

Q. The county attorney for Martin county? A. Yes, sir.

Q. Do you know the respondent in this action? A. Yes, sir.

Q. Were you present at the term of the district court held by him in Martin county, in January 1878? A. I was, yes, sir.

Q. Can you state what his condition was during any of the time that he was upon the bench as to sobriety?

A. Well, I think at one or two times when I saw him, he was under the influence of liquor; that was my opinion—intoxicated.

Q. Did you know of his drinking liquor during that term of court?

A. I never saw him drink any at all after court adjourned. That is I would not want to say positively that I saw him drinking; I saw him in a saloon with liquor in his hand, or in the act of drinking; I would not say. I saw him drink, though.

Q. Did you see him going into a saloon during the term of court?

A. I don't remember, sir, that I did.

Q. You never was at a saloon with him?

A. No, sir; unless at that time. I think I was in at that time, on business, after court adjourned.

Q. You state that upon one or two occasions he was intoxicated while upon the bench. A. That was my opinion, yes, sir.

CROSS-EXAMINATION

By Mr. SANBORN.

Q. How long have you been practicing law, Mr. Higgins?

A. Something over four years.

Q. When did you first become acquainted with Judge Cox?

A. On the first day of that January term of court.

Q. That is the first time you ever met him?

A. The first time I ever saw him; yes, sir.

Q. How long had you been practicing in Fairmount then?

A. I had come there the December previous,—immediately previous.
Q. Were you practicing law and had you a partner?
A. I had a partner at that time, Mr. H. M. Blaisdell.
Q. Where is he now? A. He is in Fairmount yet.
Q. Is he still a partner of yours? A. No, sir.
Q. You have dissolved? A. It would seem so, yes.
Q. Well, on the first day of the term did you meet Judge Cox, and talk with him? A. Yes, sir.
Q. How much time did you spend with him socially, out of court?
A. Well, I spent the evening of that first day at the house of Mr. Wolleston.
Q. How much of the evening did you spend with him, becoming personally acquainted with him and the action of his mind?
A. Oh, I could not say as to that. We met and talked to each other that evening.
Q. How much of a party was there there?
A. There was Judge Cox, Senator Wilkinson, Mr. Blaisdell and myself, invited by the clerk of course.
Q. The next day did you have any coversation with him?
A. Well, I presume I did. I could not say as to that. I presume I did as an attorney.
Q. The third day?
A. I don't remember that I did any more than in any way other than as I have said.
Q. When would be these one or two occasions when you think he was intoxicated upon the bench?
A. Well, one occasion was when the matter of having a new grand jury was under consideration; of having a venire issued for a grand jury. The indictments which the grand jury had found upon demurrer for some defect in the drawing of the jury or something of that kind, I forget just now—
Q. Who interposed that demurrer?
A. I am under the impression now that it was Senator Wilkinson; that is my impression.
Q. The demurrer was sustained and the grand jury was discharged?
A. The grand jury was discharged, the indictments failed at least; whether the grand jury was in session then I could not say. My impression is now that the grand jury had been discharged and that this demurrer was interposed to the indictments on account of some defect in the drawing of the jury.
Q. What day was that?
A. I would not say as to what day that was positively.
Q. Was it not the first or second day of the term.
A. It was not the first day of the term, because they had brought in another indictment. All the court did that day was to empanel the jury and charge them and call over the calender preliminarily.
Q. Was it the second? A. My impression is that it was not.
Q. Was it the third?
A. I would not say it was not; I think it was not though.
Q. Was it the fourth?
A. As to that I would not say. I can't remember distinctly the day.
Q. Well, what I want to get at is not just the day but as near the day

as you can give it; there were ten or twelve days to that term, and you cannot tell whether it was the first or last day.

A. Yes, sir, I should say it was not the first day nor the last. I don't think it was the second but it may have been the fourth or fifth day, I would not say as to that as I don't remember.

Q. You think it was about the fourth or fifth day?

A. No, I don't say that; I say it may have been, but I say in my opinion it was not the first, second or third; as to what day it was I would not say other than I have stated.

Q. Well there was an indictment pending and a demurrer to the indictment?

A. The demurrer to the indictment had been sustained; the question just arose as to whether or not the court should issue a new venire for the grand jury; that was the point.

Q. Now was the decision, sustaining the demurrer, or the argument that demurrer and the question as to whether a new venire should be issued all taken upon the same day; decided on the same day?

A. My opinion is that that immediately after the demurrer had been sustained there arose a question as to whether the court should issue a venire.

Q. Now immediately after the demurrer was sustained it was argued was it not?

A. It was argued before it was sustained, no doubt about that.

Q. The court decided that question as to the demurrer that it was good immediately upon the argument, did it not?

A. I think the court took it under consideration, but I would not say as to that; my impression is now that the decision sustaining the demurrer did not immediately follow the arguments upon that point. That is my opinion now, and that is the best of my recollection but I would not want to be understood as swearing positively to that.

Q. Now at what time of the day was the decision sustaining the demurrer rendered?

A. Well I think the venire for the grand jury was issued in the afternoon my impression is that the decision sustaining the demurrer was made about that time. I would not be positive as to that. Four years have elapsed since then and I don't remember.

Q. Now this was the occasion that you thought he was intoxicated?

A. This is one of the occasions that I thought he was under the influence of liquor; as to how much, why, I would not want to say. I thought it was apparent that he was under the influence of liquor.

Q. How was that rendered apparent?

A. By his rather confused manner, and by his style—general style.

Q. What did he say that was confused?

A. Well I would not pretend to use the exact language, or to give it to this court because I don't remember it. I know the impression I have now, is, from his general manner and style of speech and all, goes in that direction.

Q. Well describe what he did and said?

A. I say I would not pretend to do that because I can't. It is an impression that I have.

Q. Well, if you remember that an impression was made upon your mind by his actions and sayings at that time can't you remember the actions and sayings? A. No sir, I can't.

Q. Can't you describe any of them?

A. I would not want to because I don't think I could correctly as they occurred.

Q. Now the decision sustaining the demurrer was delivered by the judge from the bench, I suppose?

A. That is my impression.

Q. You could understand what that decision was I suppose. He delivered it intelligently?

A. I think so.

Q. You understood the demurrer was sustained?

A. Yes, sir.

Q. Everybody in the court room did, didn't they?

A. Well, I could not say as to that, I can only speak for myself.

Q. Then somebody made a motion to issue a special venire, I suppose?

A. I am under the impression that the judge did that of his own motion.

Q. Do you remember that a special venire was issued for a new grand jury?

A. That is my impression; he did it without the motion of the county attorney I believe.

Q. Who was the county attorney?

A. The county attorney was Mr. Shanks; he was not county attorney then,—at least he was not acting in that capacity.

Q. Who was? A. Mr. George Gale.

Q. Where is he? A. I could not tell you.

Q. Did he live there then? A. He did.

Q. Was Mr. Shanks there?

A. He was not in court. He was in town.

Q. Who was the attorney for the defense in that case?

A. I think Senator Wilkinson.

Q. Why was that grand jury dismissed, and why was the demurrer sustained, do you remember?

A. Well, I think our statute says that the grand jury shall be selected by the county commissioners, or they shall see to the drawing of the grand jury or something like that at its annual session in January, or the first term thereafter. I think they did not comply with the law in that respect.

Q. Do you remember that the county commissioners did not comply with the law in respect to drawing the grand jury. Was it not because they were not certified to be selected?

A. I say, something of that kind. That is a part of their duty, but as to what the particular point was, I would not say, but that is my opinion, as I have said.

Q. Were there not two names on the venire that were on the list, not notified at all?

A. I don't know; I did not examine the list; I am simply giving my impression and recollection.

Q. Do you recollect that the court rebuked the officers of the county for not having properly drawn that jury, or for being careless in the discharge of their duties?

A. I don't remember that the court did; he may have done so; I don't remember whether he did or not.

Q. Was there anything said about the issue of this special venire by the attorneys at that time or any argument of the objections?

A. I think that the county attorney had something to say about the matter; I don't know as any other attorney did.

Q. A special venire was ordered, was it?

A. I believe so.

Q. Issued. A. I think so.

Q. And a new jury summoned. A. That is my opinion.

Q. What happened after he had given that order,—what did the court do then?

A. I don't know, sir, I don't remember.

Q. Did not the court proceed with the trial of the causes and the hearing of what properly came before it?

A. It proceeded to business but as to what that business was I don't remember; I don't know as it did immediately, but then the court had not then concluded its term, and that is what I mean to say; it did business after that.

Q. Did it do business after that on that day, and all of the day, until night?

A. Why I think so, but I don't remember, you know, particularly.

Q. The court didn't adjourn on account of any inability to do business? A. I don't remember whether it did or not.

Q. The attorneys proceeded with their business?

A. I say I don't remember whether they did or not.

Q. You were there in court? A. I was during that day.

Q. Were you there in court after this special venire was issued?

A. During that same day?

Q. Well, during the remainder of the day?

A. Well, I could not say as to that, because I don't remember.

Q. And you don't remember whether any business was transacted after that, during that day?

A. I don't remember of any adjournment being had, and my impression is that the business was done, though I say I don't remember of any particular business being done, and am therefore unable to state.

Q. You don't remember then of anything improper being done by the judge during that day except that one act?

A. Well, I don't say that was improper.

Q. You don't say that was improper?

A. No, I don't know whether it was improper or not.

Q. Well there was nothing else done during that day, that led you to suppose that the judge's intellect or powers of reason, or ability, to discharge his duties were in any way impaired by the influence of liquor? There was nothing that called your attention to it except that one thing?

Mr. Manager DUNN. He don't say that; the witness has not stated that.

Mr. SNABORN. Was there?

A. Well, I wish to be understood correctly in regard to this; I don't wish to be understood that the fact of a new venire being issued leads me to think that Judge Cox was drunk, but it was his manner and general appearance at that particular time which led me to believe he was intoxicated at that time. I don't wish you to understand me that there was an error committed in any way by having that venire issued.

Q. Well, what was his manner?

A. Well, as I said before, I would not attempt to state, because I am not a good imitator and I might not do it properly.

Q. Now I come to my question again, was there anything in the

action or manner or appearance of the judge at any time during that day that led you to suppose that he was incapacitated for business on account of the use of liquor?

A. I don't remember of any thing; no, sir.

Q. You were present in court during that day?

A. Probably I was.

Q. This was in the afternoon, early?

A. I think it was about noon, yes, sir; either just before or just after dinner.

Q. If the testimony of the other witnesses was true the court was in session all that day, from eight, or nine o'clock in the morning until noon and from two or half or past two o'clock in the afternoon and perhaps in the evening?

A. Well, if they so testify, of course it must be so. I don't remember whether that is true or not.

Q. But you do remember this, that there was no day from the time Judge Cox came there, on the fourth Tuesday of January, until he adjourned that court finally, in which he did not hold court during the regular hours and all the hours for the holding of court and transact business; you know that, don't you?

A. No sir, I don't remember.

Q. There may have been an adjournment of the court at four or three o'clock?

A. I don't remember any such adjournment, but there may have been.

Q. So far as you know there was a continuous session at the proper hours for the transaction of business?

A. I don't remember anything to the contrary at present.

Q. Now you don't remember anything in this entire day, except the manner of Judge Cox, when he issued the special venire, that led you to suppose he was under the influence of liquor?

A. His manner and general appearance.

Q. You don't remember his manner and general appearance at any other time during the day, leading you to suppose so, in any of his acts?

A. No, I don't know that I do.

Q. Now what do you mean by "appearance?" You say his "manner and appearance;" how did he appear; you say it was not because the decision was wrong, but because of his manner and appearance; you cannot describe his manner; now can you describe his appearance.

A. Well, I mean to say this, that he acted as though he was under the influence of liquor, in the general expression of his eyes and in other ways.

Q. How did his eyes look, shut up or did they open wide—stare?

A. I don't think he was staring.

Q. What do you say? A. I don't remember that he was staring.

Q. Did they close?

A. I don't remember that they were closed, but they looked inflamed and red, as though he had been on a spree, not particularly inflamed but looked as though he had been drinking; that was my impression at the time.

Q. He could see pretty well?

A. I didn't ask him whether he could or not.

Q. You judged he could, didn't you?

A. I don't know as I passed any opinion upon it at the time.

Q. But you know whether he was blind, don't you?
A. I didn't ask him, and he didn't say he couldn't see.
Q. Was there anything else about his appearance that led you t suppose he was under the influence of liquor.
A. No, sir, I don't think of anything.
Q. You don't think there was anything else except his eyes?
A. I say his manner and appearance.
Q. Now was there any other time during the session of the cour that you have reason to believe that Judge Cox was intoxicated upo the bench? A. Yes, sir.
Q. When?
A. It was during an evening session, I think, of the term of court.
Q. What case was on trial?
A. I think, if I remember rightly, there was a motion being heard
Q. Who made the motion?
A. I think it was made by Senator Wilkinson on the part of some defendant.
Q. Did you hear Mr. Graham's testimony?
A. I heard his testimony.
Q. Is that the same occasion to which he referred?
A. I don't know whether it was or not.
Q. Was it just after the trial of the State against McDonald?
A. As to that I would not say.
Q. Can you tell what day of the term that was?
A. No, sir; I can't, I don't remember, Senator Wilkinson was making a motion.
Q. For what?
A. Well, it was in regard I think to some liquor case; some indictment or something of that kind, that is the best of my recollection.
Q. Who was opposing it?
A. Well, I think the county attorney was opposed to it, I guess he was not making—
Q. Didn't say anything did he?
A, I don't think he said much.
Q. He was quiet?
A. He was quiet, quite passive; now the case, as I said before, I think, was one of these liquor cases in my opinion.
Q. Could you tell by looking at the calendar what case it was in?
A. I could tell one of which I think it was, but I would not say what particular one. (Calendar handed witness.)
Q. See if you think it is on that calendar?
A. I think it was the first case on the calendar. I would not be positive.
Q. What is the title of it?
A. State of Minnesota against Hyde.
Q. What was the motion?
A. I think they made a motion to dismiss the case, but I say I would not be sure.
Q. Who was present? Mr. Dunn was present, Mr. Wilkinson, I think Mr. Blaisdell and myself.
Q. Was the sheriff there, Mr. Berg?
A. I don't remember of seeing him there.
Q. Was Mr. Gale or Mr. Shanks there?
A. I think Mr. Gale was there.

Q. Any other attorney?
A. As to that I don't remember.
Q. Any witnesses?
A. I don't remember that there was. I think not, that is, no witnesses in attendance upon the case.
Q. Were there any witnesses in court waiting around for any other case? A. I think not.
Q. Any of the jury?
A. There was no case being tried; there may have been some of the jurors.
Q. Were there any jurors there in court?
A. I would not say as to that.
Q. Do you remember of seeing any?
A. I don't remember who the jurors were at that term.
Q. Well, do you remember any body there but these attorneys you have mentioned?
A. Well, I don't remember of any particular individual.
Mr. Manager DUNN. There were persons but you don't remember who they were?
A. I think there were persons there.
Mr. SANBORN. Now what was done with the motion?
A. I don't remember. I don't remember what the result of it was.
Q. Was there a decision made?
A. I could not say as to that. I was under the impression at the time that the Senator was talking against time, just to hear himself talk.
Q. You heard Mr. Graham's testimony about a laughable speech that Senator Wilkinson made one evening?
A. I think I did.
Q. Was that the same speech do you think?
A. He made a very laughable speech; that is, his remarks were laughable; not because of any wit displayed, but the attorneys did laugh at what he said and did. They laughed at what he did, I guess, more than at what he said; his general manner.
Q. This was at the same time?
A. I don't say it was at this particular time.
Q. Was this the first or second week?
A. I think it was either the last of the first or the first of the second. I would not be positive as to that.
Q. Now, what did Judge Cox do or say that led you to think that he was under the influence of liquor?
A. Well he made one remark in my hearing; I do not know as it was directed personally to me; I do not suppose it was,—which led me to think he had been drinking.
Q. What was it?
A. He made this remark in regard to Senator Wilkinson. He either said "see that," I forget just what expression he used in describing him, but said he "when he came over here he tried to run his legs down his arm sleeves putting on his big coat," and I think he used several adjectives in describing the Senator, in sort of a pleasant manner.
Q. Was this while he was sitting on the bench?
A. I think it was just after the court had adjourned.
Q. This was after the court had adjourned and when he was going out of the court-room?

A. It was, I think right immediately after the court had adjourned

Q. Was there anything else in his appearance or actions that led you to think he was intoxicated?

A. Well I was under the impression then very forcibly that he was under the influence of liquor, or else he would not have made that remark.

Q. Was there anything else besides this remark which led you to think so? A. Well he acted as though he was rather drunk.

Q. Well, how did he act, what did he do?

A. Well sort of a demoralized don't-care-way.

Q. Did he decide the motion?

A. I don't know as to that my impression at the time was there wasn't much merit in the motion.

Q. Was not the motion made as a matter of sport when the judge was waiting for the jury there?

A. No, sir; I think the Senator made the motion; I don't know what his object was in making it of course, but it was not the understanding among the crowd that it was going to get up a laugh or anything of that sort. It did create some laughter, because there was a general understanding of the condition of the man who made it, and as to the other party.

Q. Now do you know that the court had been adjourned to this evening session, or had these attorneys just come in for the purpose of waiting for the jury to come in?

A. I think the habit of Judge Cox at that term was to hold evening sessions quite frequently, I think he held them for the purpose of doing some business. I don't think he adjourned unless there was something pending.

Q. Do you know whether this was a term thus held to do business or whether he had come over there to wait for the jury?

A. I am quite sure in my mind that it was a term for business.

Q. No other business was transacted or attempted to be—nobody made any other motion?

A. I don't know; that stands out in sort of striking relief from all the rest on account of the comical parts of it, and all that pertains to it

Q. Have you ever noticed a don't-care-way about Judge Cox, when he was perfectly sober?

A. Well, sir, the first two or three days of the term, I thought Judge Cox was most like other men, that is, straight and sober; I did not notice much jollity or a don't-care-way about him.

I have never seen him since he left there until I saw him on the streets, here in St. Paul. I don't know anything about his general characteristics or habits of mind, except what I have learned at that term and what I have heard other people say.

Q. Now was there any other time during that session of the court while the judge was on the bench intoxicated and endeavoring to transact business?

A. I don't remember, sir, of any particular time; I can say what I heard, but I don't suppose that would be evidence.

Q. Well you know what evidence is?

A. Yes; I won't state it, because I don't think it is evidence.

Q. Now are you willing to swear positively that he was intoxicated at either of those times or only that it was your impression that he was from his appearance and manner?

A. Well, I think that if ever I saw a man under the influence of liquor that was not positively drunk, and yet incapable, I think I saw Judge Cox in that condition. What I mean to say, is so drunk that he was incapable,—not deprived of the use of mind or body altogether.

Q. Now do you think the business of the court was impeded or affected on either of these two occasions by what you saw in his condition?

A. Well, I think—

Mr. Manager DUNN. We object to that question; we don't think that is a fair question, at least it is not germane to this examination. We haven't asked him that. I don't think we want to go into that.

Mr. SANBORN. Well we insist.

The PRESIDENT *pro. tem.* Well I suppose the facts, Mr. Sanborn, would be the things to draw out.

Mr. SANBORN. Well, was the business of the court impeded?

A. Well, I have only this to say, that during the session, which lasted from 12 to 15 days, there were but four cases tried, I think. There may have been some other business done. And I think there was a sense of demoralization existing among all present, for the first three or four days.

Senator GILFILLAN C. D. Speak a little louder. We did not catch that last sentence.

The WITNESS. I say the facts are these: I think that during a term lasting from 10 to 15 days, there were but this Archie McDonald case, that has been mentioned, and one civil case,—lasting but a short time—and two other cases which went rather by default; and I say I think there was a sense of general demoralization existing among all; that there was not much use to try to do business. Something of that kind. That was the impression I had, and it was talked and so generally understood.

Q. Wasn't that the way you got your impression from what you may have heard said?

A. No, sir. I was right there; I was able to form my own opinion.

Q. The McDonald case took how many days?

A. I think five, drawing a jury, and empanelling the jury.

Q. The decision of the case took two or three days?

A. No, sir the decision of the case did not take a day.

Q. And yet you say the judge held court right along every day?

A. There was something being done of some character or other.

Q. He was occupied all the time?

A. Well the court did not adjourn I don't think, over any particular day that it was in session. It was the longest term I think at that time that we ever had.

Q. Were there more than eight days' session.

A. My impression is—

Q. Well, well you swear that there were more than nine days without swearing to your impression?

A. I would not swear to it, that is my impression.

Q. Why do you speak of ten or fifteen days?

A. Because that is my impression.

Senator CAMPBELL. Mr. President, as to the hour fixed, by the court for adjournment. I desire to offer a resolution with the understanding that it lie over until morning.

The PRESIDENT *pro tem.* Unless objection is made the motion will be heard.

The CLERK, reading. *Resolved*, That a committee of five be appointed by the presiding officer to report such additional rules as may be necessary for the government of the Senate sitting as a court of impeachment.

Senator CAMPBELL. I desire to state my reasons for offering this. It is apparent at this time that our rules are to be limited for the government of this court of impeachment. The committee previously appointed which reported some rules, more particularly for the organization of the court, and for the government of it,—a majority of the committee has been absent, and I have no evidence that the Chairman of the committee intends to be present during the session.

The PRESIDENT *pro tem.* I would say to the Senator that a resolution was introduced by myself on the second or third day of the session, in substance the resolution already offered, requiring the judiciary committee to frame such other and further rules as might be necessary in the premises.

Senator CAMPBELL. Well I will let the resolution lie over, as I said I intended to do, until morning, and if the Judiciary Committee will report, it will not be necessary to call it up again. We have now proceeded two days with the trial, and I have seen none of them, and if they report rules I shall not urge the matter further. Otherwise ,I shall insist upon the resolution.

Senator ADAMS offered the following resolution :

Ordered, That the Secretary be and is hereby directed to have each days' proceedings of this court printed, so as to have copies of the same laid upon the tables of the members, by 10 o'clock, A. M., the following day.

Senator RICE. I believe in the Page Impeachment case, we had considerable trouble in regard to getting our journal printed, and I believe you will find it impossible to have the journal printed and laid on our desk at ten o'clock the day following, and I would ask the Senator from Dakota, to change his resolution so as to make it 10 o'clock of the second day.

Senator ADAMS. I will accept the amendment.

Senator D. BUCK offered the following amendment :

Resolved, That the Reporter be instructed and directed not to print or publish any remarks or discussions upon the questions in regard to rules or method of procedure unless it relates to the merits of the trial.

Notice of debate being given, the resolution and amendments went over.

Senator POWERS offered the following resolution :

Resolved, That no attorney or member be allowed to make any changes in the report of the phonographers, unless with the consent of the Senate.

Notice of debate being given the resolution went over under the rules.

Senator CROOKS offered the following resolution, which went over under the rules, notice of debate having been given :

Resolved, That the President of the Senate, be authorized and requested to appoint an additional page.

The Court then adjourned.

TENTH DAY.

ST. PAUL, MINN., January 12th, 1882.

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

The roll being called, the following Senators answered to their names: Messrs. Aaker, Adams, Bonniwell, Buck C. F., Buck D., Campbell, Castle, Clement, Gilfillan C. D., Hinds, Howard, Johnson A. M., Johnson F. I., Johnson R. B., Langdon, Macdonald, McLaughlin, Mealey, Miller, Morrison, Officer, Peterson, Powers, Rice, Shaller, Shalleen, Simmons, Tiffany, Wheat, White, Wilkins and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, judge of the ninth judicial district, upon articles of impeachment, exhibited against him by the House of Representatives.

The Sergeant-at-Arms having made proclamation,

The Managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. James Smith, Jr., Hon. O. B. Gould, Hon. A. C. Dunn, Hon. G. W. Putnam, Hon. W. J. Ives and Hon. L. W. Collins, entered the Senate chamber and took the seats assigned them.

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

Senator POWERS. The resolution introduced last night, upon which a Senator gave notice of debate, directed the reporters not to allow any Senator or any other person to tamper with their report after the record has been transcribed by them. It would seem almost unnecessary to pass a resolution of this kind, if it had not been for the statement that was made here yesterday. I supposed that the reporters, being sworn to give a fair and impartial report of the proceedings, would not permit any Senator, or any attorney on either side, to tamper with the record after it had been made out, and especially after it had been put into print. It would he a very easy matter for any member of this Senate or Court, after he had made a speech which had been replied to by some person, and, perhaps, shown to be absurd, to so change the original wording of his speech as to make another materiallydifferent to the one to which his opponent had replied. One of our witty American writers says, "that it is very wrenching to strike hard at nothing," and it would make a man who had made a speech appear very absurd if the original tenor and meaning of the speech to which he had replied was afterwards changed by revision. And this is so, not only as to the attorneys, but as to the witness. A witness might go to one of the reporters and have him change his whole evidence. The proposition is so self evident that I do not feel like taking up any time in discussing the question; but I wish to call up the resolution again and take a vote upon it, because it seems to me that there is no person here who, for a moment, would think of allowing any speeches, or evidence to be changed after delivery, unless it were some slight verbal alterations which might be necessary in the judgment of the reporter, to avoid repetitions, gra-

matical mistakes or tautological errors, a practice which has always existed.

The Clerk read the resolution, as follows :

"That no attorney or member be allowed to make any change in the report of the phonographer unless with the consent of the Senate."

The question being put by the chair upon the adoption of the resolution ;

The resolution was adopted.

Senator ADAMS. I wish to call up the resolution that I introduced yesterday in relation to the printing of the proceedings of this court, as it went over under notice of debate. I do not desire to discuss it this morning at all. I propose that the measure shall stand or fall fairly upon its merits without any discussion.

Upon motion the resolution was referred to the Committee on Accounts.

Senator CAMPBELL called up the resolution before offered by him providing for the appointment of a committee of five upon further and permanent rules for the government of the court.

Upon suggestion of the President *pro tem*, the resolution as originally drawn was amended by adding "and that the Judiciary Commtttee to whom the matter was hereto referred be excused from that duty."

Upon motion the resolution was adopted.

The PRESIDENT *pro tem*. The appointment of the members of that committee will be deferred until the President of the Senate is in his seat.

If there are no further preliminary questions the Senate will proceed to the regular business.

J. A. EVERETT,

Sworn on behalf of the State testified :

Examined by Mr. Manager DUNN.

Q. Where do you reside?

A. Fairmount, Martin county, Minnesota.

Q. How long have you lived there?

A. Six years, I believe.

Q. What is your occupation?

A. Post master and insurance agent.

Q. How long have you acted as postmaster?

A. Something over four yeafs.

Q. Do you know the respondent in this action? A. I do.

Q. How long have you known him?

A. Since January, 1878, I believe.

Q. Did you see him in Fairmount, in January, 1878? A. I did.

Q. What was his busimess there?

A. He was judge of the district court.

Q. Was he there holding court? A. Yes, sir.

Q. Were you in attendance upon that term of court?

A. Well, some little ; perhaps an hour a day, on the average.

Q. Do you know anything of the condition of the judge at any of the times that you were present, as to sobriety, and if so, what was his condition?

A. He was sober every time I saw him, with one exception, I think.

Q. What was that exception?

A. On one occasion I thought he was the worse for intoxicating liquors.

Q. Do you mean by that that he was intoxicated?

A. I mean that in my opinion he was so far intoxicated that his mind was confused.

Q. Was that at a time when the court was actually in session?

A. Yes, sir; it was at that time when the judge, undertook to issue a special venire for a petit jury.

Q. A petit jury or a grand jury.

A. A petit jury. After the petit jury had been discharged and some of the indictments had been brought in by the grand jury. I was foreman of that second grand jury.

Q. Do you know anything about his habits, as to whether he had been drinking intoxicating liquors at that term of court?

A. I don't know. I never saw him drink any.

Q. You never were in a saloon with him, and you don't know anything about it? A. No, sir.

Q. What time of day was this?

A. I think some time in the afternoon; that is my recollection of it now.

CROSS-EXAMINATION.

By Mr. SANBORN.

Q. When did you first meet Judge Cox, Mr. Everett.

A. Some of the first days of the term.

Q. You never knew him before?

A. No, I never saw him before.

Q. When were you first called as a grand juror; what day of the term?

A. I couldn't tell you the exact day, but I think one of the first days of the second week of the term; that is my recollection of it. I think we were in session some two or three days.

Q. How long did you serve as a grand juror?

A. I say I think some two or three days.

Q. Did you serve until the close of the term?

A. I think one of the last days of the term, either the last or the next to the last was the day that we were discharged. These dates I cannot give exactly, nor the time, because I have not thought of it from that day until this.

Q. During the sessions of the court which you attended, business was transacted by the judge in the usual course with this one exception? A. I think so.

Q. Transacted well? A. So far as I knew.

Q. He seemed to understand what he was doing, and facilitated business? A. Every other time.

Q. No demoralization or any indication of it?

A. I didn't see anything except on that one occasion.

Q. And you were there until the last day of the term?

A. I was in the town. I was not in the court perhaps over an hour a day, and perhaps not that. The longest time I was ever in court was when the grand jury were charged and when they were discharged. At those two times, I was there longer than at any other time.

Q. You came in and brought your indictments in the usual course,

and they were received by the judge in the usual manner, and you were asked if you had any further business to transact, and retired until you were discharged? A. Yes, sir.

Q. Now how came you to be in court when the special venire was issued?

A. I think it was just after the grand jury had been discharged, and they brought in a lot of indictments and the petit jury had been discharged and he undertook to issue a special venire for a new petit jury to try these cases; I think this was at the same time that we were discharged, that this occured. It could not have been—it my have been at some time later in the day, or even the next day.

Q. Do you remember any special act or word of Judge Cox at the time?

A. I could not repeat his words now.

Q. What made you think he was intoxicated?

A. I could not repeat his words any more than to give the general idea. I think he issued an order first, ordering a special venire made out without any discussion, and then all the attorneys were opposing in, and there was a good deal of discussion about it at the time.

Q. Considerable excitement there? A. Some.

Q. Several attorneys were talking at the same time?

A. I don't know that many of them were talking at a time, but they all took occasion to talk before they got through with it.

Q. Did you see anything in his actions unbecoming a judge?

A. Well, his actions were not what I thought becoming to a judge under the circumstances.

Q. Did not you testify before a committee of the House of Representatives a year or two ago, in 1878, in regard to this same occason?

A. I believe I did; yes, sir.

Q. Didn't you then testify that there was much excitement and you saw nothing in Judge Cox unbecoming a judge?

A. I don't think I did; I testified, undoubtedly, that there was considerable excitement.

Q. Didn't you testify that the wrangling was among the lawyers?

A. Certainly, the discussion was principally among the lawyers between the lawyers and the judge, in regard to the matter. They were arguing the matter to the judge.

Q. Didn't you testify that you kdew the lawyers and did not know Judge Cox, so that you weren't as well able to judge of the latter's condition.

A. I did not know Cox as well as the lawyers, I don't remember my testimony at that time, but that is the fact, because I had never seen Cox until that term of court, and the lawyers I had known for years, most of them.

F. S. LIVERMORE,

On behalf of the State, testified:

Examined by Mr. Manager DUNN:

Q. Where do you reside?

A. Fairmount, Martin county, Minnesota.

Q. How long have you resided there?

A. I do not reside right in the village, I reside in the township.

Q. Well, in that neighborhood, or in the town?

A. About sixteen years.
Q. What is your occupation or business?
A. Well, sir, I am engaged in the mercantile business at present.
Q. Do you hold any official position in the county?
A. I am judge of probate.
Q. Do you know the respondent in this action, Judge Cox?
A. Not personally, I have seen him.
Q. Well, you know him when you see him?
A. Yes, I have seen him and know him when I see him.
Q. When did you first see him?
A. At the time that he held the term of court in Fairmount.
Q. What year was that?
A. I think it was in 1878.
Q. In what month? A. In January.
Q. Were you present at that term of court, any of the time, judge?
A. I was present most of the time in the day time.
Q. Did you observe the condition of the presiding judge at that term of court in regard to his sobriety or inebriety?
A. I observed his condition.
Q. You may state to the court here present what his condition was as you observed it at any of the time?
A. Well, I didn't see anything in the forepart of that term of court that was peculiar, or different from other men. In the latter part of that term of court I did.
Q. What did you observe in the latter part of that term of court?
A. Well, there was quite a marked change in the appearance of the judge.
Senator POWERS. Will the witness speak a little louder?
The WITNESS. There was quite a marked change in the appearance of the judge in the latter part of the term; it was different from the first.
Q. What do you mean by that, in his personal appearance, or in his demeanor or actions? A. In his demeanor or actions.
Q. Well, in what respect did he differ from the earlier part of the term?
A. Well, he appeared to be considerably more free and easy in his manners, and in his actions; his countenance appeared to have a different appearance; the expression of his eyes had changed.
Q. Did you have any reason to attribute that change of appearance to any particular cause, if so, what was it?
A. I had no personal knowledge or any reason to believe so, only that it was my opinion that the judge had been drinking.
Q. You mean that you didn't see him drink?
A. No, sir; I did not see him drink.
Q. Did you see him go to saloons? A. I did not.
Q. You do not go to saloons yourself? A. Not often.
Q. Well, I mean as a practice. Of course any man may go occasionally. You have seen other men that had been drinking, that you knew had been drinking?
A. I have, sir.
Q. Well, in what respect did his conduct and demeanor compare with men that you knew had been drinking?
A. Well it had very much the appearance to me, of men that I had seen who had been drinking.

Q. Was the judge at that time in your opinion under the influence of intoxicating drinks?

A. He was, some portions of the time, in my opinion.

Q. While on the bench in court. A. Yes.

Q Did you have any conversation with him that would at all confirm your belief that he had been drinking?

A. I had at one time time, and only once.

Q. What was that?

A. I thought it strange as I had no personal acquaintance with the judge. I was in the street, either immediately after the adjournment of the court or just before the session of court, talking with another gentleman on the street, just at the foot of the stairs.

Q. Just before the session; when, at noon?

A. I couldn't say whether it was at noon or in the morniug. It was just at the close at noon, or the morning session, or at the close of the session of the court at night, I couldn't say which. The judge came down and spoke to this gentleman and myself, and made some very offhand and peculiar remarks. I cannot call to mind just what he said or what it was, but it led me to believe that the judge was under the influence of liquor.

Q. The manner of his speech? A. Yes, sir.

Q. You cannot recollect the language?

A. I cannot recollect the language. It has gone from me. It was a long time ago.

Q. Did you have any doubt in your mind at that time but what Judge Cox was intoxicated, or is it simply an impression?

Mr. SANBORN. I object to that as leading. Let the witness state the facts.

The PRESIDENT, *pro tem.* I think that is leading, and I think it is of very doubtful competency.

Mr. Manager DUNN. The respondent can take the witness.

CROSS-EXAMINATION.

By Mr SANBORN.

Q. What was your business at that time, Mr. Livermore?

A. I was living on my farm.

Q. Are you a farmer? A. Well, I have a farm.

Q. Were you a farmer them? A. I was.

Q. Were you engaged in the mercantile business also.

A. I was not.

Q. How far did you live out of the town?

A. My farm joins the corporation. It is, perhaps a mile and a half.

Q. How large a farm have you? A. One hundred and sixty acres.

Q. Did you reside on it? A. I did.

Q. How long did you reside there?

A. Somewhere—well I came into that country in 1866, and I have resided in the same place ever since, and I reside there now.

Q. Were you at that time judge of probate? A. I was not.

Q. You held no office? A. I held no county office at that time.

Q. Were you a party to any of the suits tried in the court?

A. I was not.

Q. Were you a practicing lawyer? A. No, sir.

Q. Were you a juror? A. No, sir.

Q Your attendance in court then was a matter of general interest in the proceedings of the court, without any special occasion to be there?
A. Yes, sir.
Q. Did you attend court every day?
A. I could not say that I was there every day, but think I was.
Q. It wasn't a very busy season for farmers and you attended on the court?
A. Yes, sir.
Q. And spent nearly all the time in which the court was in session in court?
A. Well, I was out and in. I couldn't say that I was there all the time, and I wasn't; but generally I was in attendance when court was in session except in the evenings.
Q. Do you know whether the court held evening sessions, generally, at that term?
A. I could not say.
Q. How were the terms held during the day?
A. I could not say the precise hour.
Q. How many recesses were there?
A. Well, they were quite frequent, I think as many as two in the morning, and as many in the afternoon, and perhaps more.
Q. The sessions opened early, as early as 8 o'clock, or half past 8?
A. I could not say how early they opened.
Q. And held until half past 12?
A. That I could not say.
Q. And opened again at half past one?
A. That is the usual hour.
Q. Can you say whether that is so or not?
A. I could not say as to the precise hour, I paid no particular attention to the hours, not enough to remember.
Q. You never had any talk with the judge, or personal acquaintance with him until such time as he spoke to you on the street?
A. I never had.
Q. And never knew anything about the characteristics of his mind, or his habits on the bench? A. No. sir.
Q. Whether he was serious and austere, or whether he was jovial, free and easy in his demeanor on the bench?
A. I never saw the gentleman until he came there.
Q. During the first week you saw nothing that lead you to believe that he was not discharging his duties properly, did you?
A. Well, as I said, during the first part of the term I saw nothing that was unusual particularly.
Q. The business was well conducted and dispatched, was it not?
Mr. Manager DUNN: Now I object to that kind of questions. I prefer that the counsel should ask proper questions.
The PRESIDENT *pro tem:* Go on with the examination gentlemen.
Q. The business was well conducted and dispatched, was it not?
A. I would not say that I am competent to judge, whether legal business was done in a proper manner or not, I was no lawyer.
Q. As far as you know it was, was it not?
A. I saw nothing.
Q. Now, on what occasion was it that you think you noticed in Judge Cox presiding upon the bench, the influence of intoxicating liquors?

A. I couldn't say the precise dates. I saw him one or two time when I thought by the judge's appearance that he had been drinking, could not say as he had been drinking. I have not seen him drink bu that was my impnession.

Q. He didn't do any outrageous act while presiding that led you t believe that, that you can remember, did he? A. He did not.

Q. He did not fail to do any of the duties as a judge to such an ex tent that your attention was called to it so you can remember it, did he

A. My attention was not called to it at all.

Q. Then in his demeanor on the bench there was no failure to dis charge his duties which led you to believe that.

A. I saw no marked failure of that kind that I thought any thing o that kind.

Q. And no act of commission on his part which led you to think he was intoxicated? A. No.

Q. You cannot call to mind the occasion when this was?

A. Not particularly, no.

Q. Can't tell what was being tried?

A. No, sir; there were very few cases tried at that term of court I remember.

Q. Can't tell what motion was being made or what action was being had in the court at any of these one or two times can you?

A. No, I cannot.

Q. Can you tell whether it was in the morning, or afternoon or even ing that any of these one or two times were?

A. Well, my recollection is, that it was in the afternoon.

Q. Well, how was it, once or twice that you thought you noticed something in his demeanor that was peculiar?

A. Well, I couldn't say how many times; I had no interest in the actions that were being tried in court, and for that reason I did not pay so much attention.

Q. When you met the judge at the foot of the stairs, before or after the meeting of the court, and he made the remarks of which you have spoken, who was with you?

A. I am not certain who was, but I am under the impression now that it was a man by the name of William M. Paine, but I would not say that it was him; that is my impression.

Q. Where is he?

A. He is living there in the township of Fairmount.

Q. What is his business. A. Farmer.

Q. How near to the village? A. About four miles.

Q. Do you know whether he and the judge were personally acquainted?

A. I think not, I don't know.

Q. When these remarks were made, was the judge walking along, going to or from court?

A. He either came from the court room, down, and was passing to the hotel, or somewhere, or coming to the court room, I couldn't say which.

Q. And this was on the street?

A. Right on the street, immediately in front of Mr. Wolleston's store, or just to the south side.

Q. And he stopped and made some remarks which you cannot exactly remember, and went on?

A. Yes he did.

Q. Did you notice as he approached, that he staggered or did not walk straight?

A. No, sir, I didn't notice him at all until he came up.

Q. He seemed to walk all right? A. He did.

Q. And as he went away he seemed to walk all right?

A. I did not notice anything in his walk at all, but what was all right?

Q. Well now what was the peculiarity of his demeanor that you noticed on these one or two occasions.

A. Well, I dont know as I can explain or exactly say what his particular demeanor was.

The PRESIDENT, *pro tem.* Hasn't the witness gone over that pretty fully? It strikes me that he has described the matter very fully once.

Mr. SANBORN. I think he did upon direct examination, but upon the cross-examination he has not been asked any questions, I believe.

The PESIDENT, *pro tem.* Go on.

The WITNESS. Well he made some peculiar remarks; they have gone from me now; it has been so long I cannot remember just what they were, but it was so peculiar, coming from a judge of the district court to a perfect stranger, that it led me to believe that it was on account of his drinking.

Q. Now you saw nothing in his appearance on the bench or demeanor in the discharge of his duties that led you to think he was drunk, did you?

A. I did see him in the court room when I supposed or thought that he had been drinking. He showed it I thought.

ROBERT TAYLOR

Sworn on behalf of the State, testified:

DIRECT EXAMINATION

By Mr. Manager HICKS.

Q. What is your name, residence and occupation.

A. My name is Robert Taylor; I reside at Kasson, in Dodge county, State of Minnesota; my business is that of the practice of law.

Q. Do you know the respondent, E. St. Julien Cox? A. I do.

Q. How long have you known him?

A. About six or seven years, I think.

Q. Were you present at a term of court held at Waseca some time in the latter part of the month of March or in the latter part of April in the year 1879? A. I was there two days of that term.

Q. Give us as near as possible the dates?

A. I was there first I think in the latter part or the 29th day of March; and then a week later than that again, on the 5th day of April.

Q. Did you observe the respondent on the bench on the 29th day of March?

A. I saw him on the bench on that day. I did not give very close attention, however, on that day.

Q. Had you any business before the court on the following week, on the 5th of April? A. I had.

Q. State what it was?

A. In a case pending in the district court of Dodge county, a mot had been made to be heard on the 29th of March before the judge in court-room in Waseca. On the 29th of March we went to Waseca affidavits and counter affidavits were read, and then upon the appli tion of one of the parties the hearing was adjourned for a week came on again on the 5th day of April. We returned home and it on the 5th day of April (which I think, if I am not mistaken, was day,) and on the 5th of April the motion was heard. At the time there were two motions in the same case; one motion was m upon the pleadings for judgment, by myself and Mr. A. N. Bentley Winona,—a lawyer who was associated with me in the case. Gen. gerton, now Judge Edgerton, was the opposing attorney.

Q. You for the plaintiff and they for the defendant?

A. We for the plaintiff and Gen. Edgerton for the defendant. motion was a motion for judgment on the pleadings, on the ground t the answer was an insufficient answer. Another motion that was to heard at the same time, was a motion made by the defense for the solution of a writ of attachment which had been issued in the suit. motion was heard—the motion for judgment on the pleadings,—and other one was not.

Q. Was there other business transacted on that morning in court?

A. There was.

Q. State what it was? A. I could not tell the case.

Q. Generally? A. There was a trial.

Q. A jury trial?

A. A jury trial that was closing when we got there.

Q. What was the condition ot Judge Cox on that day as to sobri or inebriety; state fully as far as you observed?

A. On the last day, the 5th day of April, I think he was intoxicat

Q. Did you notice any difference in the morning and in the af noon regarding his conduct?

A. Yes, sir; in the morning I thought he was then somewhat un the influence of liquor, but not so badly as in the afternoon.

Q. Did you observe Judge Cox during the noon recess?

A. I did.

Q. State what you saw of Judge Cox during the noon recess?

A. We sat in the court room perhaps half an hour before the n recess. When court adjourned for recess after some conversation, passed down to the hotel, and my associate, Mr. Bentley, and Judge C walked together, and Gen. Edgerton and myself walked together, Mr. Bentley and Judge Cox went into a building which had the appe ance of being a saloon—though I don't know that it was. Gen. Edg ton and myself walked down to the hotel. After awhile Judge Cox Mr. Bentley came in.

Q. What appearances had it which led you to think it was a salo

A. The windows of the saloon had stained glass in them and I n ed a screen by the door. We passed by ahead, and after we had pa by Mr. Bentley and Judge Cox went into that same door.

Q. Mr. Bentley was one of the counsel in this case, was he?

A. He was.

Q. You said one of these motions was heard, in which you appl for judgment on the pleadings; was there not a counter motion in t same case heard the same time for leave to amend?

A. There was. Gen. Edgerton representing the defense, asked leave to amend the answer.

Q. As all the Senators are not practicing attorneys, will you state to the Senate the ruling of the judge in those two orders and the effect of them?

A. Our motion for judgment upon the pleadings was upon the ground that the answer was insufficient to set up a defense to the action. That was resisted by the opposing counsel on the ground that the answer was sufficient; but accompanied with an application, that if the court differed from him in that respect, that he should then have leave to amend the answer so that it should be sufficient. We argued the case and after hearing the argument, the Judge decided that the answer was insufficient and he would grant the motion for judgment; but as the court was always liberal in matters of amendment, he would also grant the application of the defendant for the amendment of the answer and directed that we might write our respective orders.

Q. What did you observe about the personal appearance of the Judge, if anything, which indicated intoxication in the afternoon?

A. Well, it is pretty hard to describe the appearance of the man; his eyes were somewhat red and he talked indistinctly, he talked as if with a thick tongue, and in the remarks that he made as we were arguing the case, I was convinced that he was not aware of what side of the question each of us was on. I think that he mistook the position that I occupied when I was arguing the case. He asked me some questions that convinced me that he thought I was on the same side of the question that General Edgerton was, and at the time being he seemed to think that General Edgerton and myself were opposed to Mr. Bentley, and his general appearance and the manner in which he spoke was such, as to convince me that he was intoxicated.

Q. Had you ever, prior to this time, seen Judge Cox upon the bench when you had no doubt that he was perfectly sober? A. I have.

Q. And off the bench? I have.

Q. You say one motion was heard—the other was not argued at that time; what were the reasons tor it not being argued at that time?

A. Well, the counsel on each side thought that Judge Cox was not in a condition to hear the motion, and we preferred to postpone it and agreed that we would.

Q. And you did so postpone it?

A. We did.

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

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

Q. This was the district in which Judge Lord usually presided—to which he was elected judge, was it? A. It was.

Q. Judge Cox was sitting for Judge Lord during his sickness?

A. Yes, sir.

Senator Pow[illegible] There was one remark of the witness I could not catch; did yo[illegible] make the statement that the attorneys on both sides postponed the case because they did not consider the judge in a proper condition to act? A. Yes, sir.

CROSS-EXAMINATION

By Mr. ARCTANDER.

Q. How long did you say you had known Judge Cox?

A. About six or seven years, I think.

Q. How often have you seen him during that time?

A. Well, probably once or twice a year; I could not tell exactly.

Q. How often have you seen him on the bench?

A. I had seen him on the bench once before, and I think once sinc

Q. Have you been on intimate terms of acquaintance with him?

A. Not very.

Q. At this 29th day of March you did not argue anything befo him? A. No, sir.

Q. You was simply present in court? A. Yes, sir.

Q. Now, on this 5th day of April, you came there about half a hour before the noon adjournment?

A. As near as I can remember.

Q. A case was then on trial?

A. My impression is that the judge was charging the jury,but I a not clear in my recollection whether the occurrence of his charging th jury may not have been on the 29th day of March,—the first day w weer there. As to that I am not very clear in my recollection. I r member of hearing him charge a jury in a case that was being trie but whether it was on the second day that we were there or on the fir day, I am not very clear.

Q. Whenever that may have been, you noticed nothing out of th way in his behaviour or demeanor, at that time, did you?

A. I cannot say that the charge indicated that he was intoxicatec the language was somewhat peculiar and somewhat excited; but could not say that he was intoxicated when he charged that jury.

Q. Somewhat peculiar but nothing indicating intoxication?

A. No, I could not say that it did.

Q. Now, was it immediately after dinner, on the 4th day of Apri that you were there and argued your motion?

A. Our motion was argued soon after dinner. I think conrt ad journed about 12 o'clock. I think it was about 12 o'clock when th court took the recess; aud it seems to me that it was until three; think no other business was done in the afternoon excepting hearin our motion.

Q. Now, In the forenoon you noticed nothing particular showing an signs of intoxication upon the part of Judge Cox?

A. Well, I can't say that; I did think that he showed signs of bein under the influence of liquor, but not so as to apparently interfere wit his capacity to do business.

Q. What was it led you to believe that?

A. Well, the language in which he spoke in addressing the jury his tongue did not seem to be free. He spoke with a peculiar twan that indicated that he was under the influence of liquor, I though somewhat.

Q. Indicated to you? A. Somewhat.

Q. Would it have been any different if, for instance, he had his tw front teeth in at the time, from what it was?

A. That I could not tell.

Q. If he had not had his two front teeth in his mouth, wouldn't tha

have had the same effect upon his manner of speech, in your opinion?

A. I am not able to say that. It was not anything that led me to think of the absence of any teeth. I didn't think of it in that way; but I couldn't tell but it might have had such an effect.

Q. Is it not a fact that Judge Cox speaks rather indistinctly anyhow? A. I think that ordinarily, Judge Cox speaks very distinctly.

Q. Was he reading this charge or delivering it without reading it?

A. He was not reading it.

Q. You remember the charge, don't you? It was concerning a contract for building a church, wasn't it?

A. Well, now, the charge I have in my mind was not in that case. I recollect of there being some such matter, but it seems to me that the matter that was before the court, in regard to a contract for a church, was in an argument between some of the attorneys. My recollection is that the charge I heard, was in an action concerning some slander case. That some one was prosecuting an action for slander, and the charge I had reference to, was given in that.

Q. Did you not on the 5th day of April, hear his charge to the jury in the case of Power vs. Herman?

A. I may have heard it, but I do not now recollect.

Q. If there had been anything peculiar about that charge or anything in that charge indicating that the judge was under the influence of liquor,—anything out of the way in any way,—would you not be likely to remember it?

A. I think I would if I had heard the charge; but I can't recollect that I heard his charge in the case you refer to. And I am not certain now but that the charge I heard him give, may have been on the 29th of March,—the first day we were there.

Q. You think that the charge you heard was in that libel suit?

A. Yes, sir.

Q. The case of the Waseca Bank vs. Reese?

A. That is the charge I heard, but I am not certain as to the date; It may have been the first day I was there.

Q. Now, I ask you whether or not, on the 5th day of April, if there had been anything out of the way with Judge Cox, in his charge to the jury in the trial of any case then on that day, while you were in court, you would not have noticed it?

A. I think I would.

Q. And remembered it? A. I think I would.

Q. You have got no distinct recollection of any peculiarities in any charge he gave to the jury on that day? A. No, sir; I have not.

Q. You did not go in to the place which you think was a saloon, with Mr. Bentley and Judge Cox?

A. No, sir; I did not.

Q. You don't know whether he drank anything in there or whether he simply took a cigar, or what he did do?

A. No, I do not.

Q. Isn't it a fact that when Judge Cox came back to the hotel with Mr. Bentley, he was smoking a cigar?

A. Well, I think he smoked a cigar; I don't just recollect whether he came in smoking.

Q. After he came in didn't you all go right to dinner?

A. Yes, sir; we did.

Q. Judge Cox with you?

A. I think Judge Cox went to dinner about the same time, for I recollect of seeing him at the table. though he did not sit at the same table I did ; but I think we all went at the same time, or near the same time to dinner.

Q. After dinner what did he do ?

A. Well, I don't remember ; there was some little time,—I don't know how long had passed after dinner,—before we went to the court room ; and I don't remember now of seeing him during that interval. I may have seen him, but I don't recollect now of it.

Q. Did you walk down together to the court house ?

A. I don't remember.

Q. Now, the first thing which was taken up when you came down to the court house, was your motion, so far as you recollect ?

A. So far as I recollect.

Q. And the *only* thing that was taken up there ?

A. I don't remember of any other business ; I think the court adjourned after hearing our motion.

Q. Now, during the argument of that motion, who argued it on your side ?

A. Mr. Bentley, I think, opened the argument, and Gen. Edgerton, I think, then spoke on the other side, and I closed the argument.

Q. When was it that the judge spoke to you during the argument,—was it while Mr. Bentley was arguing, or Mr. Edgerton ?

A. Do you mean when he spoke to me ?

Q. Yes, when he spoke to you ?

A. It was during my own argument.

Q. You followed immediately after Judge Edgerton had finished his argument? A. Yes, sir immediately followed.

Q. Well, it was some time during the argument ?

A. I think near the first ; I don't remember whether it was the first or middle.

Q. How were you sitting in court ; were you and Mr. Bently together or you and Mr. Edgerton on the other side of the table ?

A. I think that Gen. Ecgerton and myself were on the same side of the table and Mr. Bentley at the end.

Q. You and Mr. Edgerton were sitting together ?

A. Near together.

Q. Now what was the remark Judge Cox made to you ?

A. I cannot give his language, but I was arguing upon the question of the sufficiency of the answer and he spoke to me saying, that he thought it was an insufficient answer and that he would have to grant Mr. Bentley's motion and spoke of it in a way to lead me to think he supposed that I was arguing with Gen. Edgerton.

Q. In what way did he speak ? That language certainly did not lead you to believe so ?

A. Well, I can't state his language now, but the idea that he conveyed to me was that he thought that Mr. Bently had the best side and I the poorest side of the question and that I need not go any farther on that.

Q. Well, the fact of it is that Judge Cox told you that you need not argue any longer, is it not ?

A. Well, there was something to that effect.

Q. That he thought Mr. Bentley was right in the position he had taken ? A. Yes ; and that I was wrong.

Q. Did he use that language ?

A. I don't know that he did; I can't give his language, but that was the purport of it.

Q. Now, wouldn't it be very natural for a judge, though ever so sober, if he had made up his mind upon the point, to tell the counsel who persisted in arguing upon the point, that he had already made up his mind, and in his favor, and that he need not go on and argue it any longer? A. That would be natural and proper, I think.

Q. That was the remark that you refer to?

A. That was the remark that he made that I speak of.

Q. No other remarks that you now think of?

A. I don't now think of any other.

Q. Now, would you swear that in that decision, granting the motion for judgment, and holding the answer insufficient, he did not state that he would also allow the defendant to amend his answer, and that if he did not amend his answer, the motion for judgment would stand?

A. That was not the decision; that is not the way it was announced.

Q. Now, give us the exact language that Judge Cox used in that decision?

A. I would not undertake to give his exact language.

Q. Well, his decision was, in the first instance, that the motion for judgment on the pleadings was well taken, was it not?

A. That was the effect of it.

Q. But that he would allow the defendant to amend his answer?

A. That was the effect of that part of it.

Q. And that you both could draw up your respective orders?

A. Yes.

Q. Did not those respective orders have reference to costs, too, Mr. Taylor?

A. No, sir; I think there was no allowance of costs to either party.

Q. Are you positive of that?

A. Well, I couldn't swear that there was not, but that is my very clear opinion of it; I am very sure of it.

Q. Did not Judge Cox at that time say something about costs?

A. I don't recollect of anything being said about costs; I don't think costs were asked by either party.

Q. Have you not frequently, during the course of your experience as an attorney, heard similar decisions made by judges upon motions for judgment upon the pleadings,—that the motion would be granted, but that the judge would allow an amendment of the answer?

A. Not in the way that that was made.

Q. Now, you say you don't remember particularly the way it was made—the language used.?

A. I said I didn't recollect the language that was used. I think I *do* recollect the decision.

Q. The *import* of the decision you mean? A. Yes.

Q. And the import of the decision was that the motion for judgment on the pleadings should be granted but that he would give the defendant leave to answer?

A. Yes, sir; and he said that each of us could draw our orders and he would sign them.

Q. You are positive that he said that each of you could draw your orders?

A. Yes, sir.

Q. Did you draw yours?

A. Well, I did not.
Q. Did Mr. Bentley?
A. I only know that from what Mr. Bentley told me.
Q. Did you see the order?
A. No, sir, it was not signed; my understanding is that my order was not signed—that our order was not signed.
Q. The judge did not offer to sign it?
A. I did not see any application made to have him sign it. I was told by Mr. Bentley what was done but I did not see it.
Q. Don't you know as a matter of fact, that at this time Judge Cox had been holding court there quite a length of time,—night and day, almost,—clear up to that time, with a heavy callendar,—some seventy cases?
Mr. Manager HICKS: Well, I object; it is alredy shown that the witness is not competent to testify to that, because it is only shown that he came there on the 29th of March. It is not proper cross-examination.
The WITNESS: I have no personal knowledge upon it, although I have no doubt that the court had been in session for two, and may be, three weeks at that time.

RE-DIRECT EXAMINATION

By Mr. Manager HICKS:
Q. You may state further to the Senate the effect which those two orders had upon the case?
Mr. ARCTANDER. That is objected to, as calling for a conclusion of law.
The PRESIDENT. I suppose that is from the standpoint of an expert, for the benefit of those who are not practicing attorneys?
Mr. Manager HICKS. Yes, sir, this is for the benefit of those who are not practicing attorneys.
The PRESIDENT. I think from that standpoint the question is proper.
Mr. Manager HICKS. Perhaps the witness has already testified on that point.
The PRESIDENT. You can ask that question.
Q. State the effect that those two orders had upon that action?
A. Well, if our motion was granted and an order to that effect granting us judgment, it is hard to see what benefit could come, then, by amending the answer; and if, on the other hand, the answer was amended so as to make it good, then we ought not to have had judgment without trial, and it is clear from a legal standpoint that the two orders were inconsistent.

RE-CROSS EXAMINATION

By Mr. ALLIS.
Q. Allow me to ask Mr. Taylor one question. Suppose the order in favor of the defendant, amending the answer, had not been granted; or suppose the amendment had never been made, then the application for judgment would have to be made over again would it not?
A. I do not quite understand you.
Q. Here were two motions pending, one for judgment and the other for leave to amend the answer. Now suppose the amendment had never

been made in pursuance of the order: suppose afterward that the defendant, had concluded he did not wish to amend his answer, then the plaintiff would have to make another application for judgment and had a hearing, would he not? What would have been the objection to the two orders being granted, one granting judgment, unless the answer was amended, and the other giving leave to amend. What is the inconsistency in that case?

Mr. Manager HICKS. That was not the case.

The WITNESS. If the order had been in the alternative, it certainly would not have been.

Mr. ALLIS. You haven't said anything about the alternatives, but what is the reason,—that is what we want to get at—that the plaintiff was not entitled to his motion for judgment, unless the defendant should amend within thirty days, say of the making of the order, and then an order be given to the defendant for leave to amend if he chooses to exercise it within twenty days, what inconsistency would there be in the two orders?

A. I suppose two orders made in the way you speak of would not have been at all inconsistent.

Q. Then they would have been both granted. Can you tell what those orders were?

A. The decision of the judge was this:—

Q. No, I don't want that; I want to know if you know what the orders were; you never saw the orders?

A. As they were drawn up?

Q. Yes.

A. Only one of them was signed as I understood.

Q. Well, did you ever see the orders, as they were finally drawn?

A. I saw an order allowing the defendant to amend?

Q. Did you see the other order? A. I did not.

Q. Very well. That is all.

By Mr. Manager HICKS.

Did you hear the decision made by the court, on the argument.

A. I did.

Q. And you stated that decision once before the court, correctly, did you not, as you recollected it?

A. I did.

The PRESIDENT, *pro tem.* Let me ask the witness a question. Was the answer actually served in that case?

A. Yes.

Q. The amended answer in pursuance of that order? A. It was.

Mr. ALLIS. Had it been served at that time?

The PRESIDENT, *pro tem.* The question was, was it served after the answer was made in pursuance of that order?

Mr. ALLIS. Yes, sir. I didn't understand it.

Mr. ARCTANDER. There is one question more that I desire to put to the witness. Was not the language of the judge, "draw up your orders, gentlemen?"

A. I think that was not the exact language.

Q. Now, can you give the exact language?

A. No, sir: I would not undertake to give his exact language, with certainty.

Mr. ALLIS. It was left with them to draw up the order, wasn't it? That is the way that the judge left it, that the order was to be drawn?

A. Yes, sir, it was left with the parties to draw the orders.

Mr. Manager HICKS. Have you stated the substance of that order already to the Senate?

A. I have.

President GILMAN here resumed the chair.

B. S. LEWIS,

Sworn on behalf of the State, testified:

DIRECT EXAMINATION.

By Mr. Manager HICKS.

Q. What is your name, residence and occupation?

A. B. S. Lewis; Waseca; a lawyer.

Q. How long have you resided in Waseca?

A. Thirteen years.

Q. Do you know the respondent, E. St. Julien Cox?

A. I do.

Q. How long have you known him?

A. I think I first knew him some five or six years ago; seven, perhaps.

Q. Was you present at a term of court held by him in Waseca county in the months of March and April, 1879? A. I was.

Q. How often?

A. Almost every day during that whole term.

A. State the condition of the respondent during the term as to ebriety or inebriety?

A. The term was three weeks long. In the first week of the term I should say he was sober, I might say perfectly sober, so far as the duties of his office were concerned. The second week I should say he was not quite sober, and the third week quite far from being sober most of the time, during the third week; some days worse or more so than others.

Q. In your testimony given in response to the last question, do you refer to his condition as he sat upon the bench in the district court at that term?

A. I do. I did not see him that week except as he sat upon the bench, except shortly before or after adjournments.

Q. Did you see him upon the bench of the district court at any time during that term when he was in your judgment totally incapacitated for the performance of his duties?

A. I thought so at the time.

Q. When and where? that is when, and the circumstances surrounding the time?

A. It was the morning of the third day of April, I think, the third morning I think.

Q. State all the facts in connection therewith which led you to form this conclusion at that time?

A. When he went into the court room that day, if my remembrance is correct—

Q. What was the case on trial?

A. The case of Power against Herman; it had been commenced the day before. When I first went iuto the court room that morning, I

think Judge Cox was already sitting on the bench, whether the court had opened or not I could not say, but if not, it opened a moment or two after I got there, for I was engaged in the case. When I went into the court room, or when I now remember of first noticing him that morning, he was sitting on the bench; his hair was uncombed and his eyes bloodshot, and I think he was in a worse condition than he was the day before. We commenced the trial of the case.

Q. One moment, right here. In what condition was he the day before?

A. He was considerably under the influence of liquor, I should think.

Q. Go on.

A. We commenced the trial of the case that day with the cross-examination of the plaintiff, Mr. Power. I was the attorney for the defense. I was interested in the cross-examination and stood up quite near Mr. Power, leaning against the corner af the judge's desk, and for the first fifteen minutes or so I did not pay particular attention to the court but paid particular attention to the witness that I was cross-examining. After about fifteen minutes Mr. Collester, the attorney for the plaintiff, got up and spoke to me, and called my attention to the condition of the court, the judge, and said "we must get an adjournment," and asked me to get through with the witness as soon as I could, and we would try some way to get an adjournment. I thereupon glanced around and looked at the judge. That was the first I had noticed after I noticed him when coming into the court room. My remembrance is that he was sitting with his face towards the jury and his feet upon the bench, and his head down and his eyes closed, apparently half asleep. In a moment or two I stopped the cross-examination of the witness before I got through with him.

Q. Pursuant to the request of the other counsel?

A. Pursuant to the request of Mr. Collester. Mr. Collester then got up and asked the court to adjourn for an hour, until he could get a witness from Janesville,—I think from Janesville,—who was coming on the train; that he thought it would expedite the business of the court, if an adjournment was granted for that witness. I understood at the time that it was a sham motion on the part of Mr. Collester. The judge did not want to grant the motion. He said,—I don't know but he used the term "unheard of." I cannot give the exact language; but the effect of it was that courts didn't wait for attorneys to get their witnesses present, and there was great expense to the county, in keeping the jury there, or words to that effect, and he was inclined not to grant the motion. But I think Mr. Collester pressed it the second time. I saw the court was not inclined to grant the motion, and as I was as anxious as Mr. Collester, to have the motion granted, I then got up myself and explained to the court, that I knew the witness that Mr. Collester wanted, and that I thought it would expedite things; that I did not want to take any personal advantage on account of the witness not being there, and that I thought the business of the court would be expedited and the case go along as fast, and the business be disposed of as quick if Mr. Collester's motion was granted; and upon that representation, the court said he would grant the motion, and the court adjourned for an hour, or perhaps an hour and a half or two; I think it was an hour.

Q. Wasn't it until after diuner?

A. The court at that time adjourned for only an hour, but it was in fact until after dinner, for the court did not come in until after dinner.

Q. What was said when the judge came in after dinner?
A. I think I was not there. It was understood that there wouldn't be any court that afternoon.
Q. Understood between whom?
A. Mr. Collester, and myself, and all the attorneys.
Q. You were the only attorney for the defense?
A. Yes, sir.
Q. This was a jury trial?
A. My recollection is that it was involved eight hundred and a thousand dollars, on the part of the plaintiff.
Q. And the jury were dismissed for the recess?
A. Yes, sir.
Q. When did you next commence the trial of that case?
A. We commenced it in the evening of that same day,—Thursday.
Q. Do you know of any other cause why that trial was adjourned from 9 or 10 o'clock in the morning until 7 o'clock in the evening except on account of the intoxication of the respondent.
A. I do not, I know that it was not on account of the witness being absent.
Q. You knew that at the time?
A. I knew that at the time the application was made by Mr. Collester.
Q. Did you at any other time during that term after that, see the respondent in an intoxicated condition.
A. I thought the next day that he was considerable under the influence of liquor; that was Friday.
Q. Were you present during the examination of Mr. Taylor, the witness just preceding you?
A. I was.
Q. Were you present in Waseca on the 5th of April, at the time the motion was made by Mr. Taylor?
A. I was.
Q. What was the condition of the judge at that time as to ebriety or inebriety?
A. I thought he was considerably under the influence of liquor.

CROSS-EXAMINATION

By Mr. ARCTANDER.
Q. How long have you known Judge Cox?
A. Six or seven years.
Q. Six or seven years ago you saw him for the first time?
A. I think it was the first time.
Q. How many times have you met him since that time?
A. At that time we were together two or three days, and I don't recollect any other time that we were until the Waseca term.
Q. Where was it that you were together three or four days six or seven years ago?
A. In Waseca.
Q. Was that at a term of court?
A. No. It was a justice court that we were engaged together in. He was associate counsel.
Q. During this term at Waseca, you didn't asaociate personally with him?

A. Well, I met him once or twice.

Q. Once or twice during the term of three weeks that he held there?

A. Well, perhaps—I met him in the hotel in the evening. I called in sometimes, I couldn't pretend to say what times. I met him as I met other judges ordinarily.

Q. Wasn't there some trouble between you and Judge Cox in regard to the case of Albricht against Long, that was tried at that term?

A. It would depend on how you define the word "trouble."

Q. Hasn't there been some feeling against Judge Cox?

A. Not on my part.

Q. Isn't it a fact that in the case of Albricht against Long, you got out a writ of mandamus, to the supreme court to have him certify a case up there.

A. I didn't get a writ of mandamus to have him certify a case to the supreme court.

Q. Isn't it a fact that in the supreme court in the argument of that mandamus, that Judge Cox accused you of trying to make a false record, and of having sworn to a falsehood?

A. I don't know but he made some remarks of that kind.

Q. Isn't it a fact that you don't feel very well towards Judge Cox, and have not felt very well towards him—not exceedingly friendly towards him?

A. I didn't think much of what he said there, because I knew what his condition was at that time when he was before the supreme court.

Q. Isn't it a fact that you and Judge Cox have not spoken since that time at all?

A. No, it is not a fact.

Q. Isn't it a fact, that part of the time you haven't spoken at all.

A. I think that when we were here before the supreme court, Judge Cox did not speak to me. I know that I watched him; I was perfectly willing on my part, but I noticed that he woudn't speak to me. From that time I dont think I met him but once when he could have spoken to me until the second time, which was a year ago now, a year ago in January. In going up to the Redwood county term. He was on the train. I think I met him once before on the train somewhere, but was not thrown into connection with him at all, so as to speak or not to speak, but going up on the train we did not speak. After we got to Redwood Falls in the evening we spoke and shook hand.

Q. Is it not a fact, Mr. Lewis, that you have denounced Judge Cox very bitterly in Waseca and other places, to attorneys and others?

A. I might have spoken rather bitterly against Judge Cox's action in relation to the Albricht-Long case, in relation to his not certifying that case as he did after the mandate of the supreme court. I thought he ought to have done it without putting me to the trouble of that mandate.

Q. Since we have got into the mandamus business, I will ask you in regard to the certifying of that case, whether or not Judge Cox did not refuse to certify it because he claimed that you had inserted in part of his charge two words which he had not used?

Mr. Manager HICKS. We object to the question as immaterial and not cross-examination.

Mr. PRESIDENT. The chair is of the opinion that the question is pertinent to the case.

The WITNESS. He refused to certify to it on the ground of the insertion of one or two words.

Q. Two words, "or his deputy?"

A. Which I thought was entirely immaterial. How they got into it I didn't know at the time.

Q. He claimed he hadn't given that charge, did he not?

A. He claimed that those two words were not in his charge.

Q. And isn't it a fact that the reason why the supreme court ordered him to certify to the case, although he claimed he was innocent was because he had acted upon the case by deciding the motion for a new trial,—upon that technical ground?

A. I think so, as I understand the decision, the attorneys had stipulated prior to that time that the case was correct.

Q. The judge claimed that his own written charge showed that it was not correct?

A. He claimed that, in those two words.

Q. Didn't you see his written charge at the time, and didn't he show you that it was not correct?

A. I don't know whether he did or not. I know he made that claim.

Mr. Manager HICKS. If I may be allowed, I simply desire to object to that kind of cross-examination to save time. The Albricht case will come up in due time when they can have the privilege of cross-examination if they desire.

Mr. ARCTANDER. Well, we are through with it. We don't want any more; we have got out what we wanted.

Q. Now you say that when you first came into court on the morning of April 3rd, you didn't notice that there was anything out of the way with the Court until you had been cross-examining the witness about 15 minutes?

A. I didn't say that. I did not say so.

Q. I understood you to say that you cross-examined the witness for 15 minutes, and didn't pay particular attention to the judge.

A. I said so.

Q. And that Mr. Collester then called your attention to it?

A. I said that, and I also said something before that.

Q. Yes, in regard to his hair, etc. A. Yes.

Q. And his eyes being blood-shot. There was nothing in his language that led you to think that he was intoxicated?

A. I don't think he said a word during that 15 minutes that I was cross-examining the witness.

Q. You don't think he said a word?

B. I don't remember of his making any remark that morning until Mr. Collester asked that question; perhaps he said something before the action commenced; but I don't recollect what it was and have not any recollection that he did say anything. It would be natural that he should say something.

Q. Isn't it a fact that Judge Cox was so very quick in his actions or motions that morning that he wouldn't allow argument upon any objection or motion that was made, but would decide right off?

A. I don't remember of any objections being raised that morning.

Q. Neither before or after Mr. Collester called your attention to it?

A. Neither before or after, because we adjourned right afterwards. I asked one or two questions afterwards and Mr. Collester made no objections to them. There may have been but I don't recollect.

Q. So that your observation was, that he was rather heavy and sleepy than anything else; he wasn't very active but was rather sleepy?

I couldn't say how he was that fifteen minutes, from the time the rt opened until I looked around.

He didn't interrupt you so far as you can remember?

He didn't interrupt me so far as I can remember.

And you didn't hear any language addressed to the court by any ou attorneys that he cut you short in?

I don't recollect of anything.

If there should have been anything of that kind, you would have apt to recollect it?

I might and probably would if it had been anything of impor-

Do you remember that he would at that time when you were -examining the witness, turn around to the witness and tell him to er quick?

I don't think there was anything of the kind that morning.

You say that Mr. Collester came to you and told you that you better quit the business there?

Words to that effect.

On account of the condition of the Judge? A. Yes.

Mr. Lewis, when you come to think of it, wasn't it *you* that told Collester first about the Judge's condition?

I know just the contrary.

You are positive of that?

I am positive Mr. Collester spoke to *me*.

Who was your client in that case? A. J. R. Herman.

Where did he live?

He lived then in St. Mary ; he is a Catholic priest living now in ta county. Mendota is his post office address.

He was the defendant in this case? A. He was.

Did he not ask you to have the court adjourned?

He did not.

Did not you and he have any talk about having the court ad-ed?

We did not that morning.

Did you any other morning? A. Not that I recollect of.

In that case of Powers against Herman, when the judge delivered harge to the jury, do you recollect the occasion of that?

I recollect there was a charge, delivered and on Saturday, I think.

In the afternoon, was it not, on the coming in of court?

I could not say whether it was the afternoon or just before noon. s along about mid-day on Saturday. It may have been just before oon recess or just after, I could not say.

Wasn't that charge in writing? A. I could not say.

Would you swear that it was not?

I could swear that it was not in writing.

Did you take any exceptions to any part of that charge?

I think not.

Don't you remember that you applied to the court to have your ptions entered upon the written charge delivered by the court and he told you to take your own time to do it?

It is possible that that might have been so, but I don't recollect it.

Well, if it had not been a writteu charge that he had delivered e at that time, you could not have done it in that way?

Yes, if it was not a written charge. The reporter took the min-

Q. Then you could have taken it on the reporter's minutes the same way?

A. Yes, I don't see any difference between the reporter's minutes and it being in writing; which way it was done I don't know.

Q. There was nothing out of the way in that charge, was there?

A. I don't recollect of anything out of the way.

Q. The judge seemed to be perfectly clear, and delivered the charge in good shape?

A. I thought he so delivered it. That is my present recollection. I might have taken some exception to some part of it; I don't recollect now. We got the verdict, and that passed entirely from my mind. My remembrance is that it was not a bad charge against the defendant; that is the general impression I have of it now.

Mr. Manager HICKS. You were for the defendant?

A. I was for the defendant.

Mr. ARCTANDER. Do you recollect of anything that was out of the way in that charge?

A. I don't recollect; I could not now point to one particular thing that was out of the way in the charge.

Mr. Manager HICKS. Do you include in that the conduct of the Judge?

A. I do not.

Mr. ARCTANDER.

Q. In giving that charge, what was his conduct?

A. I would not say his conduct was anything more than it had been during the day.

Q. Well, was there anything particular in his conduct during the giving of that charge that you remember?

A. His conduct showed all through the day that he was intoxicated.

Q. How did it appear to you?

A. By his appearance, and occasionally by his actions.

Q. What was there about his actions that day?

A. It was more in making side remarks to counsel or others. I don't recollect anything particular.

Q. Side remarks to counsel? A. Yes.

Q. Now, Mr. Lewis, have you ever seen Judge Cox upon the bench when you *knew* he was perfectly sober, when he has been constantly making side remarks to counsel; isn't that a habit of his whether drunk or sober?

A. I have seen him do that.

Q. Isn't that a habit of his drunk or sober?

A. I could not say that it was a habit. Well, from what I have seen of him I should say it was a habit.

Q. Well, isn't he in the habit of making laughable, facetious remarks, not particularly about the counsel or the case.

A. I should say it was a habit.

Q. Well, isn't he in the habit of making laughable facetious remarks to counsel not particularly about counsel or the case but jokes passing down to one counsel or the other?

A. I think he even made more the first week when I thought he was perfectly sober than he did the last.

Q. He even made more? A. Yes.

Q. Now, that habit of making side remarks made you believe that he was drunk?

A. I thought I could see a difference in his manner, I can't tell now what it was.

Q. You thought you could see a difference in his manner?

A. Between the fore part of the term and the last part of the term.

Q. Now explain that difference?

A. Well it is very hard work at the end of these years to explain the difference.

Q. I know it is but what you mean to say is, that it made an impression on your mind that there was a difference and that difference was caused by drinking?

A. Yes.

Q. Now, so far as his appearance is concerned, was there any other time except this morning that you speak of when his hair was not brushed or combed?

A. I don't recollect of any other morning when his hair was in a dishevelled condition.

Q. Do you recollect of any other morning when his eyes were bloodshot?

A. I think they were bloodshot mostly that week.

Q. Didn't you know Mr. Lewis at the time that during the whole term of that court, Judge Cox was suffering from a severe boil in the seat of his body?

A. He said he was, and I think from what he said, at different times, and from the fact that it appeared painful for him to sit in the chair.

Q. He seemed to suffer all the time considerable pain and agony?

A. I wouldn't say that he seemed to suffer pain all the while, but we know how a man would act if he has a boil, so that he can't sit down very well; I have no doubt that he had a boil, I didn't see it.

Q. Didn't he have to sit during almost the whole of that term with a pillow in his chair and turning almost his back or side to the bar getting one of his feet up against the wall?

A. He sat that way a good deal but—

Q. Didn't he do that just as well the first week as the latter part?

A. My impression is that the boil was worse the second week than either the first or third; I think that is so. I don't know about his placing his feet on the wall on account of the boil, but I know he had to sit on the edge of the chair and sideways, and occasionally he got up and stood on the floor along side of the desk and apologized by saying that the boil pained him so much that he couldn' sit in the chair; he spoke quietly to the counsel; I don't know that half in the court room heard him.

Q. Was there any day during the term except this one, that you noticed particularly his condition as to being under the influence of intoxicating liquors?

A. On Wednesday, the day we commenced the trial, he was considerably under the influence of liquor.

Q. Wednesday, what date?

A. The second of April; the day before we adjourned; I could not say what the date was at this time.

Q. His rulings all along seemed to be perfectly straight and satisfactory?

A. Not entirely so.

Q. I suppose you never tried a case in your life, where the rul were entirely satisfactory on both sides?

A. Not to both sides. I think Judge Cox's rulings were full satisfactory to me as to the counsel on the other side, however. I no occasion to find fault individually.

Q. There was nothing particularly out of the way in his rulings, the first day I mean?

A. No, I don't call anything to mind.

Q. Don't recall any particular ruling that was out of the way?

A. I don't recollect anything.

Q. Was there anything peculiar in his conduct, except this habi making side remarks, on the first or second day of April?

A. Well, we knew, all of us, that he was somewhat intoxicated, we did not press rulings very much.

Q. Who do you mean by "all of us?"

A. I meant Mr. Collester specially, in that particular case; but "all of us" I mean all in the court room, although I will say that he —a person might have come into the court room that hadn't been t before and, after staying half an hour, might not have noticed it. T was nothing of what might be called outrageous conduct, boisterous obstreperousness, or anything of that kind.

Q. There was not, except on this one day, any such condition on part as to interfere with the conduct of business, or the discharge of duty?

A. Mr. Collester and I, both of us, tried to get the judge not to h court the evening of that day. Neither of us wanted — now we t to get him not to hold court, on account of his condition.

Q. That was Thursday, the third day of April? A. Yes, sir.

Q. But outside of that day, you don't remember any day during term, where his condition, as you thought it was, interfered with business of the court at all, or with the discharge of his duties in a p er manner?

A. I thought it delayed it a good deal.

Q. Isn't it a fact, that during that term of court more business dispatched, in a shorter time, than was ever done in the county of secs, before or after?

A. That is a hard question to answer; a great many people think I thought not.

Q. A great many people think so,—you thought not?

A. Yes sir, I have given the judge the benefit of what other pe think, although it is hearsay.

Q. Do you remember how many cases were disposed of during term?

A. I do not, there was quite a number.

Mr. Manager HICKS. The docket is here and you can refer to it.

Q. Do you remember how many cases there were on the calend that term?

A. There was quite a large calendar, one of the largest calendars ever had.

Q. Wasn't there seventy-nine cases besides the criminal cases?

A. I couldn't say whether sixty-nine, or seventy-nine, but it wa that neighborhood.

Q. Isn't it a fact that all the cases, whatever number there were th were disposed of in about fifteen days?

. All the jury cases that were for trial were disposed of; quite a
ıber were removed to the United States Court, four or five of them,
ther disposition made of them, but all the jury cases were disposed

. Weren't *all* the cases disposed of?
. Several court cases were not disposed of.
. Those cases were not disposed of. Do you mean that they were
decided at that term?
. They were not heard during the fifteen days.
. They were not heard? A. No, sir.
. Do you remember any cases that were not disposed of, one way or
other?
. I could tell by looking at the calendar. I know this, that on
ırday I was called to Wisconsin by telegram and as I had two or
e of my own, that I was engaged in, they were continued.
. Then they were continued with your consent, for the reason that
could not be there to attend to them?
. Yes, sir.
. Do you remember of any other cases that were not disposed of,
ept the usual number that may have been continued during the
n?
. I don't think that there were—I understood the next court was
l on the Monday following, but I don't know what was done, I was
there.
UDGE COX. Your cases were put off on account of sickness were
y not?
. Yes, two or three cases were put off on account of sickness, but
y were court cases. We got through with all the jury cases as I re-
mber; that Herman case was the last jury case.
. On this morning when you got up, or when Mr. Collester got up;
made the motion to adjourn, the reason for the ruling of the court
efusing to adjourn the motion was a perfectly proper one, was it not?
. I think it was, yes.
. Suppose that the judge that morning had not been in the condi-
ı that you supposed him to be, but had been perfectly sober, and that
tion had been made for any such ground, would not the ruling that
then made be legal and proper; that there was no proper ground for
adjournment at the trial?
. I think so. I have heard the same ruling made a good many
es.
. The statements that you made there, both of you, to the court
n that motion, were false, were they not; they were not true?
. They were not true; at least they were not on my part, and I
't think that Mr. Collester claims that they were on his. I supposed
Collester's motion was a sham from what he said, and I have under-
od so since, and I spoke to the court on the supposition that it was a
m.
. As a matter of fact, it was understood between you?
. Just for the instant, that was all. When he came up and spoke
me, he just stopped and said to me, "stop this witness and get an ad-
rnment," and we got it.

RE-DIRECT EXAMINATION.

Q. You say you were on the train with the judge, going west to Redwood Falls; what time was that?

A. It seems to me that I was on the train, going west, going to Redwood Falls, sometime in the summer, but I am not certain. It seems to me that I met him somewhere once, and had no occasion to speak, and one time was a year ago, from now, in January.

Q. The difference between you and the respondent in regard to the settlement of the case in Albricht vs. Long, arose subsequent to these circumstances about which you have been testifying, did they not?

A. All subsequent.

Q. And subsequent to the time when the judge refused to grant a new trial?

A. Subsequent to that time.

RE-CROSS EXAMINATION.

By Mr. ARCTANDER.

Q. That case of Albricht vs. Long upon which there was a dispute between you and the judge as to what he charged was tried during the period when you, yourself, say that he was then perfectly sober?

A. I think it was tried the first week and I think he was sober, according to my recollection. I think he was sober when he tried the case.

Q. You say that was tried the first week?

A. I think it was; it may have been the earlier part of the second week, but I think it was the first week.

Q. Wasn't it, as a matter of fact, the first case that the judge took up when he came there?

A. It may have been the first case, but it was very early on the calendar.

Q. One thing that I have forgotten to ask you about is this: The first day of that trial of the case of Powers against Hermann,—the second day of April I think you said it was?

A. I think it was.

Q. You started in the forenoon?

A. That is my recollection.

Q. In the afternoon you commenced at half-past one, the regular time?

A. For aught I now know.

Q. You are sure of that?

A. We generally commenced at half-past one, and I don't see any reason why we didn't commence on that day; that is the only recollection I have.

Q. Is it a fact that after you came in that afternoon that some of you were not ready, and the judge took up the divorce case of Fuller against Fuller, and tried that between?

A. It may have been.

Q. Don't you remember that that case was tried between the empanelling of the jury in the other case and the further proceedings?

A. I was not engaged in the Fuller case and it may have been done, but I wouldn't want to say at this date.

Q. What is your recollection about it; wasn't it so?

A. I haven't any recollection; it may have been so, however.

Q. If he did try that Fuller case that afternoon was the judge drunk or sober at that time?

A. Well, I presume, I could not say; I wasn't trying that case and I don't think I was there.

Q. Well, you went on with your case sometime that afternoon, did you not?

A. I don't recollect now of any such thing happening, but still it might; I wouldn't say, because I don't recollect that it did not happen.

Q. But can you say whether or not that afternoon, the afternoon of the first day, after the Powers against Hermann trial whether or not the judge was sober or was intoxicated that afternoon?

A. I think he was considerably under the influence of liquor that whole trial.

Q. You are just as positive about that as about anything you have sworn to?

A. On my impression formed at the time. I am positive of the impression that I have of what I thought.

Q. Now, you stated that on the third day of the term, in the afternoon, you didn't go to the court house because it was understood between the attorneys that there would not be any court in the afternoon. Is it not a fact that it was understood by the attorneys that the court had stated that he could not hold any court that afternoon, but would adjourn until evening?

A. No, we adjourned in the first instance for an hour or an hour and a half.

Q. I know that, but after you adjourned for an hour and a half did you come back again?

A. I think I was there backwards and forwards, but I would not be certain.

Q. Then the case was adjourned until the afternoon, and the court adjourned until the afternoon.

A. I think the judge was in the court room that afternoon again.

Q. How late in the evening did court sit, on the second day of April: isn't it a fact that the court sat until about eleven o'clock that evening, on the Power case, on the 1st day of April?

A. Not if we commenced in the morning, we didn't; I don't recollect.

Q. You don't recollect whether you did or not?

A. I don't recollect whether we did or not. I know that on the morning of the third, we had only—

Q. I want to refresh your recollection about this, because it is of some importance. Isn't it a fact, and don't you remember, that on the second day of April, you commenced with the case of Krassin against Bishman, in which an argument was made for a judgment reversing the justice's decision, with costs, and argued by McGovern and yourself?

A. No, sir; I wasn't attorney in that case, at all. Wait a minute. I don't remember; I don't remember of being an attorney in that case.

Q. Wasn't it a fact that after that the case of Hans Rasmusson against Jacob Bukston, with Collester on one side and Brownell on the other, was taken up and a jury empanelled, and three witnesses examined, and the case argued, and the court charged the jury, and they retired. Do you remember that? A. On the second?

Q. On the second day?

A. I could not say; I think as I said before, that we commenced in the morning on the Powers and Hermann case. I want to qualify that by saying that I could not say—the Power case was commenced sometime during the second day of April, and if court held until eleven o'clock at night, and I would not say whether it did or not, then I don't think it commenced the Powers and Hermann case in the morning, and if we didn't commence in the morning there must have been something done prior to that, and I have not looked at the records or thought of it to see what it was, and I would not pretend to testify.

Q. I will refresh your recollection farther to see if you can testify. Isn't it a fact that after that case, the Rasmusson case—

A. What is the title of the case?

Q. Hans Rasmusson against Jacob Bukston. After that case had been tried and the jury sent out and two motions had been made in two subsequent cases, that then the jury was empaneled in the Power case?

A. It might have been so.

Q. And immediately after the jury was empanelled, you adjourned?

A. That corresponds with my recollection better than any other statement that has been made, as yet, of it. It is a thing I have not thought of since that time.

Q. Were you in court during the time that the Rasmusson case was tried? After I have refreshed your recollection, do you remember whether you were or not?

A. I believe I was in and out, keeping watch.

Q. You stated that on that 2nd day of April the Judge was considerably under the influence of liquor?

A. I think so.

Q. Intoxicated? A. Considerably so.

Q. He was so during the Rasmusons trial?

A. I can't specify those particular trials, I know during the day he was.

Q. During the whole of the day; you don't remember particularly any part of the day?

A. So far as my recollection is concerned, during the whole of the day he was considerably under the influence of liquor.

Q. Now, again refreshing your recollection, is it not a fact, that after the adjournment, after dinner, that you not ready, either of you, and the court got irritated and said that it was necessary to go on with the business, and that he called up the Fuller divorce case and empanelled a jury in that, and tried it, and that after that was tried you went on with the Powers case and kept on for about an hour, and then you got another adjournment———

A. You are asking a pretty long question for me to answer. I don't think there was any jury called in the divorce case.

Q. You don't think there was any jury called in the divorce case?

A. No, sir.

Q. You wouldn't swear to that positively?

A. No; because I don't recollect that I was in the case.

Q. Don't you remember that there was an adjournment asked either by Mr. Collester or yourself there in the afternoon after Mr. Powers had been examined about an hour?

A. There was none asked for by me, because I was for the defense, but one may have been asked for by Mr. Collester.

Q. Do you know whether there was any adjournment, or whether you sat until evening?

A. I don't recollect. I know that I commenced the cross-examination of Mr. Powers, the plaintiff himself, on the morning of the third. Judging from that my judgment would be—I have no recollection, however, of it.

Q. After refreshing your recollection you cannot say as a matter of fact that, on the evening of the second you held court until half past ten or eleven o'clock?

A. I could not say that we held court that evening, or, if we held it, how late we held it.

Q. You would not swear that you did not?

A. No, sir.

Q. On this third day of April besides the difference in the appearance of the judge, his hair being disheveled and his eyes being bloodshot, there was nothing particular that you noticed in his motions or conduct except his sleepiness or drowsiness?

A. Nothing else.

Q. Nothing out of the way otherwise?

A. Nothing out of the way otherwise.

Q. You adjourned, you say, after holding court fifteen minutes, until eleven o'clock?

A. The adjournment was for an hour or two hours.

Q. Well, it was again adjourned, but you don't know whether it was for the afternoon or not?

A. No; it was not adjourned; we did not meet.

Q. It stood adjourned?

A. It stood adjourned until the evening session.

Q. You were not there and don't know anything about it?

A. I was not there.

Q. Isn't it a fact that the reason that you didn't go over is that you were told by the judge, or some one for him that he had a sick headache and would not proceed with the case until the evening?

A. My impression is that before I went down some one told me that there was to be no court that afternoon; it was not the judge, however, for I did not see him.

Q. You were also informed of the reason,—that the judge was suffering from a severe headache?

A. I don't know that I was.

Q. Don't you remember that reason?

A. I don't think that was told me.

Q. Isn't it a fact, Mr. Lewis, and don't you recollect that on that day you went up to the judge, to his room, at the head of the stairs, in the hotel, and spoke to him when he was lying down, and that he told you that he was suffering severely from a sick headache, and that he could not hold court that afternoon?

A. Mr. Collester and I went up in the evening. I think there was something of that kind said. I don't know that the sick headache was mentioned. It was not disguised at all, between Judge Cox and Mr. Collister and myself, that there was a cause for the sick headache.

Q. Didn't the judge tell you that he suffered from a sick headache?

A. I think he said he had a very hard headache; it might have been a severe headache.

Q. Didn't he say he was suffering from that very often?

A. Do you want me to say what he did say?

Mr. Manager HICKS. Yes, sir, let us have it.

Mr. ARCTANDER. I want you to answer my questions; didn't he s that?

A. I don't think he said that.

Q. We might as well get it out ourselves as have the other si do so; what did he say?

A. Mr. Collester and I went up after supper, half an hour or so afte ward, perhaps, between six and seven; we both of us tried not to ha him hold court that evening, and he claimed that he was perfectly able hold court that evening, and he wanted to go down so as to show t people that he was not as bad as he was, and, at that time, expres considerable sorrow that such a thing of that kind should happen Waseca, owing to the hostility that a certain man there had against hi who would publish it; but we assured him that we would see that publication of it got into the papers, or something of that kind.

Q. Didn't he at that time state to you that he was afraid that havi a sick headache as he was, Pat Childs, the editor and publisher of t Waseca Radical, would attribute it to drunkenness, and say that he w drunk instead of having a sick headache, and that that was the reas he wanted to go down?

A. I think not.

Q. Are positive; would you swear to that?

A. As positive as my recollection is; I am quite positive that it w not so; that is my recollection.

Mr. ARCTANDER. I do not desire, Mr. President, to dismiss the wi ness now because there may be some further questions upon consult tion with the respondent, that I may desire to ask, and I would like t court to indulge me until after recess.

The Senate here took a recess.

AFTERNOON SESSION.

B. S. LEWIS,

Recalled as a witness on behalf of the State testified:

By Mr. Manager HICKS.

Q. Do you know anything farther of the intoxication of the respon dent, either upon the bench or outside of court, during the term of cou held at Waseca, in March and April 1879, that you have not alread stated?

A. I do not.

Mr. ARCTANDER. We object to that as not proper re-direct e amination.

Mr. Manager HICKS. That is all; the witness answered that he di not.

The PRESIDENT. Who is the next witness you desire to examine?

JAMES B. HAYDEN,

Sworn as a witness on behalf of the State and testified.

DIRECT EXAMINATION.

By Mr. Manager HICKS.

Q. State your name, residence and occupation?

A. My name is,—well they call me Jim Hayden,—James B. Had

den; residence, Waseca; occupation, clerk of the district court of Waseca county.

Q. How long have you been clerk of the court of Waseca county?

A. Well, I am serving my third term, and I have been ten years the clerk of the court there the first of this month. I am on my eleventh year now.

Q. Do you know the respondent, E. St. Julien Cox? A. I do.

Q. How long have you known him?

A. Well, the first time I saw Judge Cox was in 1867, I think. It was at Wilton, Minnesota. That is the first time I ever met him.

Q. How frequently have you met him since that time?

A. Prior to the time of holding court at Waseca, in March, 1879, I met him once. It was in the case of the State of Minnesota against Frank Connelly. He was attorney for Connelly, I believe. I was justice of the peace then, and issued a warrant for the arrest of Frank Connelly, and the respondent appeared before me, making a motion which I do not exactly remember the nature of now. It was a change of venue, or something. I don't remember the particulars of it, but that was the second time I ever met Judge Cox.

Q. Were you the clerk of the court, and how often were you present in the court during the term of March and April, 1879, at Waseca?

A. During every day; that is, from the time the court opened in the morning until it adjourned at night.

Q. What was the condition of Judge Cox at that term of court as to ebriety or intoxication?

A. Well, what time?

Q. During the term of court?

A. Well, I should say for the first eight or ten days I couldn't notice much liquor; that is, I couldn't notice any signs of liquor, perhaps, not until the third day of April.

Q. The third day of April was the first?

A. Well, that was the first day when my attention was called to noticing him particularly. There were other days when I thought he had some liquor, but I couldn't say so particularly as to *that* day, but as to that day I can testify positively.

Q. Do you mean to say that you remember that day, because of his being more particularly under the influence of liquor, than he was at other days?

A. Yes, sir.

Q. What was the condition of Judge Cox on the 3rd day of April, 1879?

A. Well, I thought he was under the influence of liquor.

Q. Much or little?

A. Well, I should say much.

Q. What were the actions of the judge during that day,—what time of the day did he open court?

A. I think about half past eignt; I wouldn't be certain.

Q. Will your record show? A. Yes, sir.

Q. Turn to your record and refresh your memery as to that particular day.

The witness then produced and referred to his record, at the date mentioned.

Q. Did you make that record? Yes, sir.

Q. At or about the time? A. At that particular time.

Q. And it is correct, is it?

A. It is the record that was made at that time by me; it is correct I think. I have it noted here the fifteenth day, April 3d, A. D. 1879, court convened pursuant to notice, at half past eight o'clock A. M. In the case of Patrick Power vs. Joseph R. Herman. Jury all present.

Q. What work was done that morning as shown by the minutes of the court?

A. The first witness called and examined on the part of the plaintiff was Patrick Power. Then the next minute is "court took a recess until half past one o'clock P. M."

Q. That is the minute as you have it entered?

A. Yes, sir.

Q. Do you remember or does the record state what time the court took a recess?

A. Well, no. There were some things there I did not want to appear in the record.

Q. What are those things you did not want to appear in the record?

A. Well, I didn't like the appearance of the judge at that time, and I didn't want to put in that particular thing there.

Q. Well, what do you mean by his appearance?

A. Well, I thought he was under the influence of liquor; that is what I mean.

Q. State the circumstances of the court being adjourned to that time?

A. Well, Mr. Lewis and Mr. Collester, were trying this case and the judge was sitting on the bench, the same as the Lieutenant-Governor is sitting here now, and he had his feet up against the wall. I don't know whether towards the jury or towards me, but I think sometimes one way and sometimes the other, and they got to wrangling, as you might say, over the admissibility of the evidence of Mr. Power in the cross-examination, and the judge would ask them,— don't remember the particulars now, that is, to get his language, or anything like that—I couldn't do it—because it is something that slipped my mind, but there was some rulings, anyhow, that I thought a little peculiar,—the judge as I consider, was a man of very active mind, and when a counsel would ask one question the judge would say "do you want such and such things;" and then he would rule one way in one case and then perhaps different in another instance, at least it looked different to me.

Q. The circumstances of the adjournment is what I called your attention to,—how did the court come to adjourn?

A. Well, they said they wanted a witness from Albert Lea; that is my recollection of it.

Q. Who said so?

A. I think it was Mr. Lewis; I wouldn't be certain now. It was either one or the other of the attorneys. They were waiting for a train to come in from Albert Lea,—which is sometimes at about 10, or sometimes about 10:30.

Q. Did the court then adjourn?

A. The judge said it was an uncalled-for an unheard-of proceeding, —something like that. Finally he consented to the adjournment and then the judge came off the bench and he commenced talking to Mr. Child. Mr. Child, as I presume a good many know, is editor of the *Waseca Radical* and I thought that there might perhaps be some trouble.

Q. Go on and state what occurred, what did you say to the judge?

A. I didn't say anything in particular, but I told him I wanted him to come down stairs for a moment.

Q. What was his reply?

A. Well, he said he would come down with me, but after we got down in the hall I said to him "I want you to come up street with me" or something like that. "Well" he said, "I think I have enough taken for the present," that is my recollection now.

Q. Well, what did you say in reply?

A. "Well," said I, "I want you to come up to the hotel and take a little bit of a rest; you are not hardly in condition now to hold court."

Q. Well, what did you do?

A. Well, I took him up to the hotel and put him to bed.

Q. Was there anything said as to when you would call for him?

A. I told him I would call for him about one o'clock.

Q. Did you call for him at that time? A. I did.

Q. How did you find the judge?

A. Well, he was getting up when I got there. When I got to the room at the hotel, he was after getting up. I found him washing, I think, after I got there; but he was up anyhow, and going around the room when I got there, about one or half past one o'clock; I don't know the exact time; it was somewhere in that neighborhood anyhow. I wanted to get him into the court room in time to open court.

Q. Prior to this time had you ever been in the room of Judge Lord, at the hotel, in Waseca?

A. I don't think I was ever in the room with Judge Lord when he was holding court at Waseca.

Q. By the way, did you see any peculiar furniture or any peculiar articles about the room?

Mr. ARCTANDER. I object.

Mr. Manager HICKS. Did you see any bottles in the room?

Mr. ARCTANDER. I suppose we have a right to have a bottle of beer around. We object to that as immaterial and irrelevant.

The PRESIDENT. The Chair must overrule the objection.

A. There was one day that Judge Cox sent me down to his room for a book, and he told me to go to the bureau and find it; and I went to the bureau and found the book; and in the bureau, I saw quite a number of bottles. I didn't see anythiug this day. I didn't look for anything.

Q. Where did you go with Judge Cox?

A. To his room, or what he called his room.

Q. But I mean when you went from the court room you took the Judge to the hotel and put him to bed? A. Yes, sir.

Q. When you found him getting up, where then did you go with the Judge?

A. I think he got up and we went to the court room. I wouldn't say where we went right away after that,—perhaps it was not the exact time for calling the court; but he came into the court room after dinner.

Q. What was done then?

A. He adjourned the court then on his own motion until about half past seven o'clock in the evening. He did nothing before adjourning except to listen to a little case against the Winona & St. Peter Railway Company. Mr. Chapman jumped up and said he had a little matter he would like to have attended to and the Judge listened to him.

Q. What was his condition at that time?

A. Well, not so bad as in the morning. I thought he was then feeling a little better. Court then took a recess until half past seven P. M.

Q. Did you at any other time during that term of court see Judge Cox under the influence of liquor?

A. Well, I did; there was some other times there that I thought he had a little liquor drank, but I couldn't say he was under the influence so badly that he could not attend to business or anything of that kind.

Q. Did you pay any particular attention to his condition on the 5th day of April following that you remember now?

A. Well, I think he had considerable liquor taken about the 5th; that was on Saturday, if I recollect right, because we adjourned on the 7th. He had some liquor taken that day; I thought considerable, perhaps.

Q. Was there an evening session held on the third?

A. I think there was; I will just look in a moment.

Witness here examined the record and said: Yes, there was a session held on the evening of the third.

Q. Have you any distinct recollection as to the condition of Judge Cox on that evening as to intoxication?

A. Well, I have not, although he was in a great deal better condition than he was in the morning; that is all.

Q. At what time was this that you went to his room and found the bottle in the drawer?

A. Well, that was some three or four days before that; I would not state any particular date; but it was some day that he sent me up to his office. It was before that day, I am pretty sure.

Q. How many bottles did you see there? A. I did not count them.

Q. Well, was there one or a dozen?

A. Well, perhaps three or four.

Q. Was there anything to indicate what they had been used for?

A. I should say they were beer bottles.

CROSS EXAMINATION.

By Mr. ARCTANDER:

Q. I don't suppose you knew who drank the beer that had been in those bottles?

A. No; I drank a little out of one of them myself.

Q. Didn't you take about as much as the judge did?

A. No, not quite.

Q. At that time? A. No.

Q. Not quite? A. No, sir.

Q. At the time you were there and saw these beer bottles, they were empty, were they not?

A. Yes, sir.

Q. You couldn't make a man drink from them in the condition they were in then?

A. I think they were empty; I did not examine the bottles; I did not count them; I just took what he sent me after and returned.

Q. It is a matter of fact, is it not, that the first day you noticed anything out of the way with Judge Cox at the time you say you saw any signs of intoxication upon him, was the third day of April?

A. Well, that is the time I would say he looked the worst; there might have been other days that there was some signs.

). But do you remember any day on which you noticed any signs
t indicated to you that the Judge was intoxicated?
. Well, I would say that one or two days prior to that it looked to
as though he had been taking some liquor.
). It didn't look though as if he was intoxicated?
. No; not so he didn't know what he was doing.
). I want to pin you down to the dates.
. I won't swear as to the dates.
). Do you remember what case it was?
. I don't remember; it was somewhere about the first of April,—
ut the latter part of March or first of April.
). You can't recollect any of the cases?
. No; I don't recollect any of those cases, because I never tried to
interested in any of those cases at all.
. Now, at these particular times, you say, you won't say that he
intoxicated?
. Previous to the third?
. Yes, previous to the third; you won't say that he was intoxicated,
only that he had been drinking liquors?
. Yes, sir; that is my recollection.
. That is your testimony? A. Yes.
. Now at these times what was it that made you think he had been
king; did you smell his breath?
. No; the appearance of the man was all I could tell about.
. How was his appearance?
. Well, like a man who had been taking liquor.
. Well, how did he appear?
. Well, the actions and the general appearance,—that is all I
d say.
. Well, how did he act?
. Well, I don't know as I can give you a description; he acted a
different from what he did the first six, or eight, or ten days.
. Wasn't it that he was a little more free, and got to joking a little
e than at first?
. Oh, I don't know as that would make any difference. I could
say that was the cause.
Well, I say, wasn't that all the difference in his actions, that they
a little more free and easy?
. I could not say that was the cause.
. Will you say that it was not the case?
. No, I would not say that was the case; it might have been, but
n't say so.
I ask you if that was not the only thing you noticed different in
ctions after that first week,—that he seemed to be a little more free
easy and more jocose?
Well, he might have been a little more but I thought he had
taking some liquor, because his general appearance was a little dif-
nt.
What was it in his general appearance that was different?
Well, it is very easy to tell the difference between a sober man
one who is drunk.
Well, tell it then?
Well, I don't know as I can point out to the Senate the particu-
lifference.

Q. Now, if there was anything that struck you in his appearance that time, you certainly thought it would be remarkable for a judge come into court under the influence of liquor?

A. Yes, it was a strange thing to me.

Q. Now, if there was anything in his appearance that indicated th he was under the influence of liquor when he came into court it w something that you would naturally pay great attention to, would not; and it was a matter that would fix itself upon your mind, would not?

A. Yes; the actions of the man was one thing on that.

Q. Now, we are asking about the appearances.

The PRESIDENT. Mr. Arctander, it is not well to spin out the tes mony unnecessarily on that point; he says he is unable to describe ju what his appearance was.

Mr. ARCTANDER. I think then we are entitled to come at it as near as possible.

The PRESIDENT. The witness seems to have stated his explanation fully as he is able to.

The WITNESS. I am not able to draw the distinction, so that the sena would understand it intelligibly.

Q. I would ask you this question: Was there anything in his a pearance at those dates which you now remember, which was differe from his appearance now?

A. Yes, I think there was one or two days before this 3d day April that he looked a little different from what he does now.

Q. Now, I ask you in what did he look different?

A. Well, the general appearance of the man.

Q. Where? his face?

A. Well, the general expression,—the countenance, his actions, a all those things looked a little different from what they do now.

Q. Now, what was that difference?

A. Well, I don't know what it was.

Q. Was he sleepy?

A. No, I couldn't say he was sleepy.

Q. Was his nose red? A. I didn't look at his nose.

Q. Were his eyes red? A. It was his general appearance. The is something about a man who has been drinking liquor, that you c tell. I did not examine him very particularly. I did not expect to called to testify about the matter.

Q. Now we come to the occasions to which you refer, before the 3 of April. Was there anything particular in his actions, his rulings, language or anything that you can recollect?

A. Well, the ruling I am not able to state about. It does not b come the clerk of the court to criticize the judge.

Q. Well, I suppose he won't object to that.

A. Well, I don't know anything about that; it looked to me as if had been taking a little liquor, but I couldn't say how much or little.

Q. Now, you say you couldn't say anything about the rulings?

A. No, sir.

Q. Was there anything in his actions or language that was peculi that you now can state?

A. Yes, I thought he was a little peculiar, a little different from wh he had been on other days.

Q. In his actious or his language? A. Well, in both.

Q. Now, what was there in his actions?
A. Well; I thought he acted, that is, he ruled and talked a little more rapidly than he had on other days; that was all.
Q. And that was all?
A. That was all; it looked to me that way.
Q. That was all, as far as his language and actions were concerned?
A. Well, that is all that I could say now.
Q. At these times, you say that he was not, in your judgment, intoxicated; but you could see that he had been drinking?
A. Well, what do you mean by "intoxicated;" do you mean to say that he was not drinking at all?
Q. No, I don't mean to say that he had not been drinking at all, because if he had been drinking liquor, of course he had been drinking.
A. Of course.
Q. You know what we mean by the word intoxicated? A. Yes.
Q. Were his mental faculties clouded?
A. Well, I couldn't say that they were clouded; they were not, but he looked to me as though he had taken some liquor, more or less; I don't know how much.
Q. Were his body facilities weakened in any way?
A. Well, not that I could see?
Q. Then, as a matter of fact, it was really a mere impression that you had at the time that he had been taking liquors?
A. Yes; you might say it was a mere impression, or rather a general impression.
Q. Now, we come down to the third day of April. I think you read from your book that the witness Patrick Powers was examined on the part of the plaintiff in the morning?
A. Yes, sir.
Q. That is really the fact too, isn't it? A Yes, sir.
Q There was no cross-examination before it came in the evening?
Mr. Manager HICKS. Just look at your book and see whether you testify he was examined or cross-examined?
Mr. ARCTANDER. He did that.
A. He was called on the part of the plaintiff I said.
Q. There is nothing about cross-examination, is there, at that particular time?
A. The records say he was called and examined on the part of the plaintiff.
Q. You run down further and see if at the next adjournment it does not appear that then he was cross-examined.
A. There is no record of the cross-examination of Patrick Power in the evening?
Q. On the 3rd day of April, in the morning, the case of Powers vs. Herman was called; have you got any distinct recollection of your own as to who it was that was examining the witness that morning?
A. I would not say who commenced the examination.
Q. Have you any distinct recollection of your own in regard to who examined the witness in the morning of the 3rd of April?
A. Well, I wouldn't say who commenced the examination; I was attending to my own business and I was not paying any particular attention to the examination of the witnesses; I don't recollect that particular part of the case.
Q. How long did that morning session last?

A. Well, from about half past eight until pretty nearly ten o'clock perhaps, or somewheres thereabout, I would not say as to the time.

Q. An hour and a half then, the session of the court lasted, did it that morning?

A. Perhaps, or may be not that day, I wouldn't state as to the time.

Q. But that is your best impression?

A. It is my best impression.

Q. It was at least an hour, was it?

A. It was at least an hour; it may be somewheres along there—from half to three-quarters of an hour.

Q. Did you commence at half past eight?

A. Well, I wouldn't say to that; the record shows that court opened about half past eight.

Q. Now, as a matter of fact do you know of a single morning, or a single hour, during that court, when Judge Cox was not in the court-room and at his seat when the hour fixed for adjournment arrived?

A. Judge Cox was generally pretty prompt in being there.

Q. He was more prompt than any of the others in his attendance on the court, was he not?

A. I don't know as he was any more prompt, but he was generally there in time.

Q. Now, on that morning you have no distinct recollection in regard to whether he was prompt or not? A. No, I have not.

Q. He was there at about that time anyhow?

A. I wouldn't say in regard to the precise time.

Q. Now this motion that was gotten up to adjourn for the want of a witness—when was that made?

A. Well, it was made by Mr. Lewis and Mr. Collester after the witness was on the stand there for some little time; I wouldn't say how long.

Q. You are positive it was made by Mr. Lewis?

A. I wouldn't say who made the motion.

Q. Isn't it a fact that Mr. Lewis got up and made that motion for a continuance, because he expected a witness from Albert Lea, and wanted that witness to be present to hear the examination of Mr. Powers?

A. Well, he stated they were expecting a witness in on the train from Albert Lea, and that is all I know about it.

Q. Wasn't that the reason he gave for it,—that he wanted that examination suspended in order to give the witness an opportunity to hear the testimony of Mr. Powers?

A. I haven't any recollection of Mr. Lewis using any such words in the court. He might have used them but I have no recollection of them.

Q. How long a time did it take to dispose of that motion before the court adjourned?

A. Oh it was a very short time, only a very few minutes, perhaps. It was not argued, and it was not opposed. The motion was made and there was no opposition to it.

Q. What was there in Judge Cox's conduct that morning, or in his language or appearance that makes you say he was intoxicated on the bench there?

A. Well, the appearance of the man and his actions, and the way he came in there, his eyes were just like any man's eyes who was up all night and drinking.

Q. Even if he had not been drinking but was up all night, his would have been in somewhat that same condition, would they not?

A. Well, if he had been to a wake, perhaps so.

Q. You didn't know that he had that boil on his posterior?

A. That was during the first part of the session; that, I think, was all cured by this time.

Q. Do you think it was cured by that time?

A. It would probably not affect his head in any way.

Q. I was thinking that he might be sitting up on account of the boil. Don't you remember that the silk pillow the Judge got down there to sit upon, did not come there before the second week of the term?

A. It was the first week of the term, according to my recollection, that is my impression.

Q. Now, isn't it a fact that that pillow was brought there on Monday morning, March the twenty-first, by Dan Murphy, a deputy sheriff?

A. I wouldn't swear when it was brought there, but I think it was the first week; I know that Dan Murphy took it away, and that is all I know about it.

Q. Now, you said, I believe, that the judge was sitting with his feet up towards the wall that morning; now, was not that the position he was sitting in all the time while he was suffering with the boil?

A. I never saw him occupy that same position until that morning, I saw him with his feet up on the desk in the court, but he was generally facing the jury or the bar, but this time he turned his back entirely to the jury, and also to the bar.

Q. He had his feet up where?

A. Well, on the side of the wall, first on one side and then on the other.

Q. Then he did not have his feet up on the table at that time, did he?

A. Well, he was faced one way or the other; I think he was first facing on the side towards the jurors, towards the side where I was sitting

Q. When he was turning the other way, wasn't he facing right square to the jury?

A. The jury sat on the west side of the court, and when he sat on that side I did not see his countenance.

Q. You said his eyes looked like he had been up all night and drinking, what was the particular condition of his eyes?

A. Well, he had a wild, staring look in his eyes.

Q. Did you notice anything particular about his nose?

A. No; I didn't mind his nose.

Q. Did you see anything particular near the eye?

A. No; his general appearance was all I looked at. Anybody could see that.

Q. Do you see a mark across on the nose of Judge Cox now?

A. There is a little bit of a red mark there yet.

Q. Was that very red at that time?

A. Well, I don't see much difference between that time and this time; I can't notice any.

Q. Now, was there anything else about his appearance except his eyes?

A. Well, all I can say is that he had the general appearance of a man that was drinking, having been up all night.

Q. Of a man that had been drinking?
A. Of a man that had been drinking, and up all night. You c easily tell one of those men when you meet them.
Q. You can't specify anything else but the eyes? A. No.
Q. How was it about his hair?
A. Well, his hair was kind of drooping down over his eyes.
Q. It wasn't disheveled in any way?
A. No; it was kind of uncombed like. It looked as though it h not been brushed out much that morning, anyway.
Q. Now, was there anything in his actions that day when he was the bench, that made you believe that he was intoxicated?
A. There was.
Q. What was that?
Q. Well, in what was it different?
A. Why, the general appearance of the man.
Q. We are through with the general appearance now,—wherein his manner of conducting the court that day different from what it on other days?
A. Well, as I said before, he appeared like a drunken man to me, conducting court that morning. I cannot go into the details and plain this to you thoroughly.
Q. You can't give us a single act in his conduct that was differ from any other days, can you?
A. Well, he was kind of sleepy, and his eyes were kind of closi and he was sleepy looking.
Q. Did you notice his head falling down on his breast?
A. He kind of leaned over somewhat that way.
Q. Have you not noticed that peculiarity about Judge Cox, tha times when he is in court he will close his eyes and sit back this way, down this way, when he is thinking or when he is listening to the ar ment of counsel?
A. No, sir. Judge Cox keeps his eyes on everything that is going in court.
Q. Have you ever noticed when a law argument is made to h whether or not he does not invariably, and did not at that term inv ably close his eyes?
A. No, sir; I never saw him do that before.
Q. He did not?
A. No, sir, not invariably.
Q. Now you testified a while ago that the reason why you thou he was intoxicated that morning was that he was so quick in his actio
A. Yes, a part of the time I thought he was very quick.
Q. A part of the time he was very sleepy?
A. No, well, you might say both, perhaps.
Q. You were examined before the judiciary committee on this char
A. I was; yes, sir.
Q. Is it not a fact that at that time the only evidence you gave regard to his actions on the bench that morning was that he was too tive in his mind; that he would not give the attorneys a chance to ar a motion before he would rule, and said nothing about sleepiness?
A. There is a part of the evidence that I gave that is not in there was not taken down fully, and some things that are there are not corr
Q. How as to his rulings there, you say that you would not whether or not they were correct, or whether one was contrary to other or not?

A. No, sir; I am not going to pass upon the rulings of Judge Cox or any other judge. He is my superior; I have nothing to say on that point.

Q. As a matter of fact there was quite a heavy calendar at that term, was there not?

A. Yes, sir; the biggest I think we ever had in the county. The calendar is heavy; you can look at it yourself.

Q. As a matter of fact there was some eighty cases on the calendar, was there not?

A. There were eighty-eight or eighty-nine cases; something like that. The calendar is here and you can look at it for yourself.

Q. Is it not a fact that during the whole of that term of court, from beginning to the end, Judge Cox would hold court invariably from half-past eight o'clock in the morning until twelve o'clock, and from half-past one in the afternoon until six o'clock in the evening, and from half-past seven in the evening up to nine, ten, and perhaps eleven every day?

A. Well, the first part of your question is correct and the last part, I don't think is correct. I don't think he ever held until eleven o'clock at night, but he rushed business as fast as he could all through that term; I don't remember his ever sitting until 11 o'clock.

Q. How late do you remember of his sitting?

A. Oh, until perhaps half past nine or ten o'clock.

Q. That was the run of the time, wasn't it?

A. Well, generally, perhaps.

Q. Turn to your record minutes and see if it is not a fact that there was an evening session every night?

A. Well, I think that is a fact. I know the judge run business as long as anybody was willing to stay there and work.

Q. Isn't it a fact that business during that term was dispatched,—and more quickly dispatched and with better order than it almost ever had been before?

A. I should say this, that we had worked longer hours and later; we commenced earlier and worked later than we were in the habit of doing before, perhaps.

Q. And as a matter of fact, more cases were disposed of in proportion to the length of time and importance and length of the cases than there had been done before, was there not?

A. Well, perhaps; I would have to look that over to be able to say.

Q. Isn't it a fact that there were several important lengthy and difficult cases tried at that term?

A. Yes, sir.

Q. An unusual amount of difficult cases?

A. Yes, sir; the judge was always willing to work early and late whenever anybody was willing to wait on him, so far as that was concerned.

Q. Now at the time when the court adjourned, and he was talking to Mr. Child, when you asked him to come down stairs, the reason you asked him to go down stairs was because you did not want him to talk with Mr. Child, knowing Mr. Child's radical tendencies, was it not?

A. Well, I went first I think to Mr. Baxter and asked him if he would not take him away; I don't remember what reply he made.

Q. What was he doing?

A. I was afraid him and Mr. Child would get into some difficulty. He says to Mr. Child "Pat. why don't you prosecute those whiskey cases?"

something like that; I don't know what reply Mr. Child made to him but I wanted to get him down out of the way.

Q. He did nothing out of the way? A. No.

Q. But you were afraid Pat. was a little irate and that he and the judge might get to fighting?

A. Pat. was a little quick, and—

Q. You was a little afraid of Pat. then?

A. I was more afraid of the judge than Pat. at that time. I don't know but what the judge might hold his own, but still I didn't want to have any trouble.

Q. Now, when he came down into the office you asked him to go up street with you?

A. We didn't go into the office. After we got into the hall Mr. McConnell came along, and I said to the Judge: I want you to go to the hotel with me; and go to bed; and he says, "All right; You are the clerk, and you will take charge of the court." I says, "I will do the best I can," and I took him up to the hotel, and put him to bed.

Q. Down there in the hall you told him you wanted him to go up the street? A. Yes.

Q. And he told you, "No, he had taken enough." A. Yes, sir.

Q. Now, are you positive that is the language he used?

A. I am pretty positive on that part of it.

Q. Now, wasn't what he said to you, "No, thank you, I don't want to take anything."

A. Well, "We don't want to take anything," or "We have got enough taken," something of that sort.

Q. Now, he inferred from that you wanted him to go up and take a glass of beer?

A. I never in the world asked the judge to take anything—to go up and take anything.

Q. I don't say that you asked him; but don't you think the Judge inferred from what you said there that you were going to ask him?

A. I don't understand it that way. I did not ask him up street to take a drink.

Q. No, but you said, "Come, let us go up street, Judge?"

A. Yes.

Q. And he answered either, "no, I have had enough"; or, "no, thank you I don't want any now?"

A. Yes, either one or the other; I don't know which.

Q. Now, you say you took him up to the hotel? A. Yes, sir.

Q. Did you take him by main force?

A. No, sir; I did not, we walked up together. Mr. McConnell, the hotelkeeper, was with us.

Q. Do you know Jim Murphy? A. Yes, sir.

Q. Do you know Max. Forbes?

A. Yes; M. O. Forbes it should be, I think.

Q. Isn't it a fact that at this time you walked up street together with the Judge, that you did not take him up with you but that you, and McConnell, Max and Forbes, and Jim Murphy walked up the street together? A. No, sir; my recollection is pretty distinct on that.

Q. Will you swear positively they did not go with you?

A. I am very positive to that; I swear positively that they did not go along with him.

Q. Nor any of them?

A. Except Mr. McConnell. I can tell you the particulars if you want me to.

Q. No, just answer my question. Now, you say you walked up the street together,—that is, in taking him up to the hotel, you walked up together?

A Yes sir.

Q. You said, "Judge let's go up street?"

A. Yes.

Q. And you went along? A. Yes, sir.

Q. And talked as you went along. A. Yes.

Q. He walked straight?

A. Oh, he walked straight enough, so far as that is concerned. Mr. McConnell was doing a good deal of talking. I didn't say a great deal.

Q. After he got up there did you go with him up into his room?

A. Yes.

Q. Mr. McConnell too?

A. No; McConnell stepped into the office, and I went up stairs.

Q. Did the judge ask you to go up?

A. No, I don't know as he did. When we got down stairs on the street I told him what I wanted; I told him he had better go up and go to bed.

Q. And that you wanted him to go to the hotel and go to bed?

A. Yes, because I did not think he was in a fit condition to hold court that morning.

Q. Well he had adjourned already, hadn't he?

A. Well, on this sham motion he had adjourned.

Q. Now, when you came there in his room, you say you put him to bed. Did you undress him?

A. No, I didn't undress him. He took off his coat and neck-tie, and I think he had one or two false teeth he took out; and he said he could talk. I don't know exactly what he did say; he said, "I can talk as much as anybody," or something like that. I told him that was all right, "you go to bed and take a rest, and I will come and get you about twelve, or half past twelve, or one o'clock."

Q. You didn't help him go to bed, did you? A. No.

Q. Did he go to bed with his boots on?

A. I don't know whether he did or not; I don't know anything about it.

Q. You don't know whether he did go to bed at all or not?

A. Well, when I got there, he looked to me as though he just got out of bed; and the bed looked as though some one had been in it; as soon as he took his coat off and took his teeth out I left him.

Q. And that was all your taking him up there and putting him to bed consisted in?

A. That is all.

Q. Now when you came back there at half past one that day, he stated, did he not, that he was suffering from a sick headache?

A. He did; he stated something about his condition to the jury; he hoped that they would excuse him, and that he would not get in such a condition again.

Q. Didn't he say "gentlemen of the jury, I have got a sick headache and I am very sorry to trouble you, but I can't sit here, and I hope it shan't occur again?"

A. Yes; and he said he didn't know how it occurred, or something like that; I don't remember the exact language, because I didn't pay exact attention; I never charged my mind with it anyway.

Q. Now, on the 2nd day of April, do you remember anything particular about his condition?

A. No; nothing in particular that I could swear to.

Q. There was nothing out of the way, so far as you noticed, at that time?

Q. I should say he had the appearance of having taken some liquor, but I couldn't notice anything particular in his appearance that day. He acted a little different perhaps,—a little quicker in some of his actions,—but I couldn't say that there was anything wrong, or but what he understood what he was doing. That was on the second.

Q. Will you please turn to your record, and tell us what was done in the afternoon of the second day of April? You can give us, while you are here, what was done on that day.

A. Well, "the case of Louis Krassin against Jacob Bisham was called After hearing B. S. Lewis, attorney for the defendant, and P. McGovern, attorney for the plaintiff, in the above entitled cause, ordered, that judgment of the court below be reversed with costs."

Q. That was an argument for reversing the judgment of the justice, was it not?

A. Yes.

Q. And it was argued? A. Yes.

Q. By what attorneys?

A. B. S. Lewis, attorney for the defendant, and P. McGovern, attorney for the plaintiff.

Q. Now, what was the next case, and the next thing done?

A. The next case was the case of Hans Rasmurson against Jacob Buckston.

Q. And who were attorneys in that case?

A. Mr. Collester and Mr. Brownell, I think, were attorneys in that case.

Q. What was done in that case?

A. There was a jury impanelled in that case that morning.

Q. After the jury was impanelled the case was opened, was it not?

A. Yes, sir.

Q. As appears by the record? A. Yes.

Q. And one witness was sworn for the plaintiff and two witnesses for the defendant, was there not?

A. Yes; the case was argued by counsel, the jury were charged and sent out in charge of an officer.

Q. What was the next case taken up that morning?

A. The case of John Bradish against Adelia Waterbury. That was continued. That was a motion on some little technicality in the justice court. There was a motion for a continuance, and it was continued at that time.

Q. The next case that came up was what?

A. Thomas White *vs.* B. Williams and J. Lortiss—a replevin action. That was continued.

Q. That was done after argument, was it not? A. Yes, sir.

Q. Who were the attorneys that appeared and argued that case?

A. Lewis and McGovern; Lewis for plaintiff and McGovern for defendant.

Q. Now the next thing, the jury in the Rasmurson case came into court, did it not? A. Yes, sir.

Q. And then a jury was impanelled in the case of Power vs. Herman? A. Yes, sir.

Q. And then the jury was sworn, and then a recess was taken to half past one? A. Yes.

Q. Now, when the court convened, what was the first business done?

A. There was a divorce case—George E. Fuller against Melissa Ann Fuller.

Q. Do you know why that divorce case was taken up?

A, I think I do; I recollect the particulars about that case.

Q. I mean, why was the case taken up; was it not because one of the attorneys or parties was not ready in the Power—against—Herman case?

A. No, that is not my recollection of it; it is my recollection that Mr. O'Grady, who was an attorney, living at Janesville, wanted to take it up and get rid of it, and the court, to accommodate him, took it up.

Q. Now, in this case there was a jury impanelled, was there not?

A. Yes, sir.

Q. In that case Mr. E. C. Forbes was one of the jurymen, was he not? A. Yes, sir.

Q. Now, let me ask you right here, whether or not your books do not show that Max Forbes and James Murphy were both jurymen in the case of Power against Herman?

A. I will now say that Ishmael Forbes is dead, but Max Forbes, or M. O. Forbes is the son of E. C. Forbes.

Q. Max Forbes was on the case of Power against Hermann, was he not?

A. Yes; he was on that case.

Q. Now that divorce case was one for adultery, was it not?

A. Yes, sir.

Q. Was tried by a jury there? A. Yes, sir.

Q. There were two witnesses called for the plaintiff, were there not?

A. Well, I can tell you that in a moment.

The witness here examined the record.

Yes; two witnesses called for plaintiff.

Q. Let me ask you another question. Was Mr. H. Lansing a juryman in that case of George C. Fuller against Melissa Ann Fuller?

A. I think he was.

Q. Now, after this Fuller case had been disposed of and the jury sent out, what was next taken up?

A. Well, the case of Power against Herman was taken up.

Q. The case was opened by Mr. Collester, was it not?

A. Yes, sir.

Q. And Patrick Power was sworn and examined for plaintiff?

A. Yes, sir.

Q. Then the next thing was a recess until 7:30 p. m., was it not?

A. Yes, sir; court took a recess until half-past seven o'clock p. m.

Q. At 7:30 p. m., what was done?

A. Well, the court opened again, the jury roll was called, and the examination of Patrick Power was continued; then court adjourned until half past eight o'clock, April third, 1879.

Q. Now, do you remember what time the court adjourned that night?

A. I wouldn't say.

Q. Isn't it a fact that the court held a very late session that evenin that Mr. Power's examination dragged out there for quite a while?

A. Well, it might have held until half past nine or ten o'clock, n later than that however.

Q. Probably until half past ten? A. No, I think not.

Q. Now, did you notice anything out of the way with the Judg that he was not in the possession of either his mental or bodily faculti that day and during the progress of the trial, and the proceedings th day?

A. Well, in the morning I thought there was something wrong, the might not have been, but I thought there was.

Q. But you would not be positive there was?

A. Well, it appeared so to me, but I would not swear positively u on that point.

Q. I will ask you whether this H. Lansing was not in attendance a witness in that case of Power against Herman?

A. Yes, sir. He was there to prove something about masonry workmanship, or something of that kind; I don't remember exactl what it was.

Q. In the evening of the third, the court proceeded and was appa ently all right in the possession of his mental and bodily faculties, w he not?

A. Well, yes, they went on and done some business on the evenin of the 3rd of April.

Q. For all that you saw the judge was in full possession of his men tal and bodily faculties

A. Yes, he was working along that evening anyhow very well.

Q. You know of nothing particular out of the way in his actions?

A. Well, they worked that evening anyway.

Q. Well, you don't remember anything particular that you notice out of the way?

A. No, I think he was able to run business that evening very wel anyway.

Q. Now, this Power case lasted the whole of the 4th, did it not? I was quite a lengthy case?

A. Yes, it was quite a lengthy case, the jury were out pretty near all day before they came in with a verdict.

Q. Well, it lasted the whole of the day of the 4th? A. Yes.

Q. Now on the 5th day of April, what was the first thing done i court that morning?

A. Court opened pursuant to adjournment at 8:30 o'clock April 5t 1879 A. M., in the case of Patrick Power against Joseph R. Herman con tinued by calling the jury roll. Jurors all present, case argued by cou sel for the plaintiff and defendant to the court and jury.

Q. Did the judge charge the jury before the afternoon adjournme on the 5th?

A. Yes, the case was argued that morning by the attorneys.

Q. Now, before the court adjourned for noon there were two me sentenced were there not?

A. Yes.

Q. Frank Boyd and Charles Douglas were sentenced to two years an six months in the State prison for burglary, were they not?

A. Yes.

Q. And Nels Neeland was sentenced to six months for adultery?

A. Yes, that is right.
Q. And the court took a recess before charging the jury in the Power case?
A. Yes.
Q. And the court convened at 1:30 in the afternoon and the Judge charged the jury in the Power case?
A. Yes.
Q. And then another case was called?
A. Yes, the defendant was allowed to put in an amended answer by paying the plaintiff the sum of ten dollars costs.
Q. Now, that was not the case Mr. Tyler spoke of, was it? You heard his testimony here to-day?
A. Yes, that was an outside matter and I think I made no record of it.
Q. You remember it was in the afternoon of that day, don't you?
A. Well, it was sometime during that day.
Q. It was after the jury had been charged in the Power case, wasn't it?
A. Well, I don't remember as to the time. I made no record of that case because I had nothing to do with it; it was not in our court.
Q. Then in the evening before you adjourned for supper the jury appeared with a verdict in the Power-against-Herman-case, did they not?
A. Yes, sir.
Q. Now, I will ask your to state whether or not you noticed anything out of the way with the judge in his actions or conduct during the proceedings of that Power-against-Herman-case in the forenoon of April 5th.
A. Well, I do not know; it looked to me as though he had still been taking a little whisky or something of that sort, I don't say what.
Q. It looked so to you?
A. Yes, sir, I didn't see him take any, you understand.
Q. You noticed nothing in his actions or his language on that forenoon or on that day indicating that he was intoxicated?
A. Well, I thought that he had been taking some liquor, I said; that is all I could say about it.
Q. But you did not notice anything in his language or conduct that was out of the way or that indicated that he was intoxicated?
A. Oh, there was nothing out of the way. I thought he might have been taking liquor but I couldn't see anything out of the way.
Q. Now, you heard him charge the jury in the Power case?
A. I did.
Q. Was there anything out of the way then? Did he seem to be in possession of his mental and bodily faculties?
A. I don't know anything about the charge; I couldn't tell anything about it,—because, as I said before, I don't pay anything to those things.
Q. But you have been in court for ten or eleven years; now, if there was anything out of the way in that charge,—if he had behaved in a manner that would have struck anybody else as improper, you would have been just as apt to have noticed it, wouldn't you?
A. I will answer that question by saying I never pay any attention to the charges of the judge to the jury and never get interested in the cases.

Q. So that you didn't notice anything out of the way?

A. No. I didn't pay any attention to the charge of the court,—nev have.

Q. Now, in the afternoon, at the time that other case you have refe red to came up,—the one in which an answer was allowed to be amen ed,—there was a pretty hotly contested argument, was there not?

A. Well, there was a good deal of argument about it and a go many authorities read about it.

Q. A pretty heavy outside pressure in the case, was there not?

A. I don't know anything about the outside pressure. There mig have been, I don't know.

Q. Now you noticed nothing out of the way with the judge in th case.

A. I couldn't say that there was.

Q. Did you notice anything out of the way with the judge during t argument of that case?

A. I cannot answer that except in a general way; I cannot go in the details and answer it except in a general way, I didn't notice an thing in particular only just this one time I am speaking of, still looked to me as though he had been taking some liquor, but I could state positively that there was anything out of the way.

Q. Was it in his actions or language that you noticed it?

A. That is my impression.

Q. Now, is it not a fact that you told me in your office in Wase when I was down there about two or three weeks ago (to copy th record) that the only time you could say Judge Cox was intoxicated under the influence of liquor on the bench was on the morning of t third?

A. Well, that is the only time I am swearing positively to. As said, there were other times when I thought he had taken liquor, but wouldn't swear positively to any time except that; that is what I state then and state still.

Q. Then you would not swear he was under the influence of liqu or intoxicated at any time except on that third day of April?

A. No, sir; I won't swear positively to anything but to that day.

RE-DIRECT EXAMINATION.

Mr. Manager HICKS.

Q. When you answered the question of the counsel that you notic nothing out of the way in the judge, did you mean to be understoo that you noticed nothing out of the way except what you noticed,—th the judge appeared to have been taking intoxicating liquors?

A. I say there was nothing unusual except that he had been takin some liquor.

Q. That you mean to apply to all his questions,—that there w "nothing out of the way?"

A. Yes, except as to this particular day.

Q. State the particulars about your going to the hotel; you stated counsel that you could state the particulars of going to the hotel wi the judge; you may state to them?

A. Well, I told him I went up there with him. All the particula that there were about it I took Judge Cox up to his room at the hotel a took him into his room and told him "you want to stay here until

ome after you" or something like that. "Well," he says, "you are lerk, I am going to trust you to take care of matters."

Q. During that term of court did you drink with Judge Cox?

A. I took beer with him on two occasions.

Q. When and where was that?

A. One was one evening in Mr. Hall's saloon, and the other, I should hink, was one day up at his room, my recollection is that one day at is room I took one glass of beer.

Q. Did you see him drinking anything at those times?

A. I saw the judge take beer but I wouldn't swear that I ever saw im taking any liquor.

Q. Was that on days when the Judge was holding court?

A. One was in the evening when court had adjourned, and the other as one day at noon; he took a small glass of beer.

RE-CROSS-EXAMINATION

By Mr. ARCTANDER.

Q. How many glasses of beer did he drink?

A. Oh, just one little glass of beer.

Q. A little pony? A. Yes.

Q. Now, when you said you took him up to the hotel, and took him up to bed, you meant as you have explained in your cross-examination, —that you went with him?

A. I went up with him, yes.

Q. You didn't take him by the hand?

A. No. Nor I didn't carry him up or anything like that, I merely asked or invited him.

Mr. Manager HICKS. Do you mean to say you used moral suasion instead of force?

A. Well, I invited him up there; there was no force about it.

Senator POWERS You stated in the beginning of your evidence that you had noticed before the morning of the third, on one or two days, that the judge was under the influence of liquor?

A. I said I thought he was under the influence of liquor. He appeared to me as though he had been drinking a little, that is all.

Q. And you stated, within the last few minutes that you had never seen anything wrong with him except on the third?

A. Well, he had been taking a little liquor, but still I don't think he was out of the way. Some might consider him so, but I don't think so. Witnesses have different ideas about such things and I don't confine myself down strictly except on this day of the third. That is the only day I wish to be understood to testify to strictly.

Q. There was a few days before that that you spoke of in your cross-examination. Mr. Arctander asked you if you had noticed anything wrong before the third, and you said no. He says "nothing at all" twice, and you stated "nothing at all." Do you mean to leave the impression that you never saw anything wrong with the judge excepting on the third,—nothing that indicated partial intoxication.

A. Well, nothing out of the way; that is what I mean to be understood, except that one day, the third.

Q. Then you stated afterwards that the reason you thought he was intoxicated was because he talked rapidly?

A. Yes, it appeared to me that way.

Q. And you stated in reply to questions twice that that was all that made you think so. Do you mean to say that was all, or that that is all you can frame into words? A. And his appearance, I said.

Q. His general deportment and appearance? A. Yes.

Q. And the fact that he talked rapidly? A. Yes, sir.

Q. Was there anything when his teeth were out that was different in his speech from what you took to indicate intoxication?

A. I think there was; I don't think he could talk so distinctly. That was after he went up in his room.

Mr. ARCTANDER. With his teeth out?

A. I don't think he could talk so distinctly.

Senator POWERS. But on the third, was there anything different in his speech?

A. No; I didn't know anything at all about his teeth until I went up into his room; I didn't know anything about it until he took them out in my presence.

Q. Was there any flushed or florid appearance in his countenance on the third?

A. Why, yes; His countenance showed—well, as I said before, he had the appearance of a man being up over night and having been drinking.

Q. Bleared eyes?

A. Yes, hair hanging down; his eyes kind o' hung down.

Q. Indicating a kind of muddled condition of the brain?

A. Well, I don't know as to that,—whether it was muddled or what you might call it.

Q. Well, what I want to get at is whether you really desire to leave an impression upon the minds of the members of the court that there was absolutely nothing excepting rapidity of speech which indicated intoxication, or that that was all you could frame into a description of his condition.

A. Well, I don't think he was a person competent to do business at that time,—particularly sitting in a judge's seat.

Q. Now, could the use of any narcotic poison,—anything excepting liquor ever produce the effects that you noticed,—morphine or anything of that sort?

A. Well, it would have to have been pretty powerful if it had, I should think. I don't know, I am no chemist, or doctor or anything.

Q. After having your mind refreshed with these questions and looking at your record, do you feel any moral doubt at all in reference to his being drunk at that time. A. Do I feel what?

Q. Any doubt morally?

A. I have no doubt, no, sir,—not in my own mind.

Q. No doubt at all? A. No doubt.

Q. You didn't mean us to understand that rapidity of speech was all the indication there was of intoxication?

A. No; his general appearance, and taking all the surrounding things together; that is what I mean; I say I am not able to explain this intelligently to the Senators.

Q. I think the report would show that in response to one question you answered in that way,—that there was nothing excepting rapidity of speech?

A. And general appearance. I should have added, if I did not, "and his general appearance."

Mr. Manager HICKS. In this expression you have used "nothing out

of the way," did you intend to be understood that if a person had been drinking slightly, so that he was slightly affected by liquor, yet not so affected as to behave unseemly or improperly, that there was nothing out of the way?

A. Oh, I should think so; that is the way I desire to be understood.

By Mr. ARCTANDER. That the effect of the liquor could not be noticed; that is what you mean, isn't it?

A. There was nothing out of the way, as I said before.

By Mr. Manager HICKS. Do you mean to say that it would not be noticed?

A. It might have been noticed but still I couldn't say that there was anything unbecoming or out of the way.

Mr. ARCTANDER. We desire, in connection with this witness' testimony to obtain for future use in the case a certified copy of the minutes of that term; and would ask what the practice would be in such cases,—whether the court could save us the trouble of subpœnaing the witness here again for the defense. Could the witness be directed to furnish a certified copy of the court minutes of that term?

The PRESIDENT. That course will doubtless be adopted if the record is desired.

Mr. ARCTANDER. We desire to use them.

We simply desire the clerk's minutes of the term held at Waseca, at the term specified in the articles.

The PRESIDENT. Counsel for the defense desires the witness who has just testified, the clerk of the court of Waseca county, to furnish for the use of counsel, a certified copy of the entire proceedings of the term of court in regard to which he has testified. Unless objection is made and unless it is otherwise ordered by the Senate, Mr. Hayden will be so directed by the Chair.

WILLIAM BLOWERS.

Sworn and examined on behalf of the State testified.

DIRECT EXAMINATION.

By Mr. Manager HICKS.

Q. What is your place of residence? A. I live in Waseca.

Q. Your occupation? A. I am a mason by trade.

Q. What was your business during the months of March and April in the year 1879?

A. I was marshal in Waseca at that time for two years.

Q. City Marshal? A. Yes, sir.

Q. Do you know E. St. Julien Cox, the respondent?

A. I have seen him a few times.

Q. Did you see him at Waseca during the term of court he held there in March and April 1879? A. Yes, sir.

Q. Did you, during that time, see him drinking intoxicating liquors?

A. Yes, sir; I did.

Q. How many times? A. Oh! several nights.

Q. At what time?

A. Oh! from after court adjourned until probably two or three o'clock in the morning.

Q. Did you see him drinking liquors as late as two or three o'clock in the morning at any time during the term of court?

A. Yes, sir; I have.
Q. When and where was that, as near as you can state?
A. In Hall & Smith's saloon.
Q. Did you, at that term of court, see him in a state of intoxication at any time? A. Yes, sir; I have.
Q. How many times? A. Well, once or twice.
Q. Will you state his condition; where was it and when was it, as near as you recollect? and what was his condition after?
A. It was pretty late,—or early in the morning; it was after twelve o'clock at night.
Q. And where?
A. It was in the saloon of Hall & Smith.
Q. What was his condition?
A. Well, his condition was so he was pretty well "heeled," or pretty well intoxicated.
Q. Were you in court on the day on which court was adjourned in the morning on account of his intoxication?
A. No, sir. I didn't attend court at all.
Q. Do you remember of seeing him the night before that; did you hear of the occasion at that time, of his having to adjourn court on account of being intoxicated?
A. I heard something about it. I don't know anything about it myself.
Q. Now, then, on the day or two before that do you remember of having seen the respondent?
A. Well, I have seen him several evenings,—I don't remember what evening exactly,—I know court was in session there. I can't fix the date.
Q. Do you remember the time when he first came there to hold court?
A. Yes, sir; I do.
Q. Was it during the holding of the second or the third week of the term?
A. Well, I think it was along the latter part of the term.
Q. About what part of the term was it that you saw him in this saloon, intoxicated about twelve o'clock at night?
A. Well, it was along the latter part, I don't know exactly the dates. I have no recollection of dates.
Q. Did you make any complaint to the mayor of the city with regard to the respondent's intoxication in the city during that term of court?
Mr. ARCTANDER. Wait; we object to that as immaterial and irrelevant.
Mr. Manager HICKS. We withdraw it. (After consultation with the Managers) Well, we will insist upon it.
Mr. ARCTANDER. We object to that as being incompetent, irrelevant and immaterial. Upon that I desire to say a few words. I claim, your honor, this would be manufacturing testimony. Here is not a question of fact as to anything this defendant did, but it is sought to bring before this senate here what this witness said upon some occasion to the mayor of the city, and that, certainly, cannot be material in this case; it can have no weight. Declarations upon the part of the respondent would be admissable; if he made any declarations it would be perfectly proper that those should be brought into court, but nobody else can go and

make declarations and then bring them into court. What this witness said to the mayor and what the mayor said to the witness certainly has no bearing on the case, and never would be received in any court of justice as testimony at all. Now if it cannot be received in court, I apprehend under the rules of court laid down, it won't be received here.

Mr. Manager HICKS. May it please the court—

The PRESIDENT. The Chair must over-rule the objection. If the witness had arrested him it would certainly be competent to testify that he took any steps or acted in any way by reason of the intoxication; the Chair is of the opinion that it is proper to testify in regard to the matter.

Senator HINDS. Mr. President—

The PRESIDENT. Before the Senator proceeds the Chair would state that in making these rulings the Chair does so to save time, in case all these points should be submitted to the Senate; but upon any and all occasions the Chair would be glad to hear any remarks of the Senate, and to submit to any questions if there is any doubt as to the propriety of the ruling, whether made or not made.

Senator HINDS. If I understand the decision of the Chair correctly, it is founded upon the understanding that the prosecution will show further than this question would seem to indicate, that is that the complaint made to the mayor was followed up by some direct act in which the respondent himself participated. For instance, that a complaint was made, and an arrest followed upon it, a plea of guilty followed the complaint, or something of that kind; that produces an acknowledgment on the part of the respondent. Unless the State are prepared to show something besides the mere complaint of this witness to the mayor, it would seem to me to be clearly incompetent, because it does not connect the respondent in any degree with what this witness said to the mayor, unless it was followed up by some act in which the respondent participated. For instance, the complaint may have been made in a legal form; the respondent may have plead guilty to the charge of intoxication, or to drunkenness, or disorderly conduct, or something like that. And unless, I say again, the State are prepared to follow that up with something to connect the respondent with it, it seems to me clearly incompetent evidence.

Mr. Manager HICKS. Mr. President, in behalf of the managers, I desire to state that this witness has been a difficult witness for us to find; not that he has endeavored to elude us at all, but that he has changed his place of residence lately, and it was with difficulty we produced his attendance here. He has just come into the room, and I have had no personal examination of the witness, and we are not prepared to state, nor do we expect to prove that this was followed up by any act of arrest by the marshal, or by any plea on the part of the respondent. I withdrew the question as soon as offered, because in my judgment, it was not competent, but renewed it at the suggestion of my brother managers who insisted upon it. I did hope, however, to draw out the fact as far as possible, in order to show that the respondent, when he was acting so peculiar upon the bench, was not doing so from the effects of a boil, or from the effects of the loss of front teeth, but from the effects of drinking whisky at late hours at night, and was performing in the streets of Waseca; that he was obliged to report this man to the mayor, as a person who was guilty of disorderly conduct, and would follow it up by showing that if the mayor found him again in that condition, he would

have him arrested. We cannot go to the length that the Senator from Scott says we ought to go; and in my opinion, the question is incompetent. I press it, however, on behalf of the managers.

The PRESIDENT. The matter of putting the question will be submitted to the Senate.

Mr. Manager HICKS. There is one theory upon which this might be admissible and that is that it might fix the time; or we might be able to fix the time by the mayor of the city who is a member of the Senate at this time, who may perhaps remember the day upon which it occurred. It might be competent in that light.

The PRESIDENT. The Chair did not understand the counsel to withdraw the question.

Mr. Manager HICKS. No, sir; we press it.

Mr. ALLIS. Mr. President, are you about to submit the question to the Senate?

The PRESIDENT. Remarks can be heard from members as well as counsel.

Mr. ALLIS. Suppose a complaint had been made by the marshal against the respondent in this case for disorderly conduct and that he had been arrested or convicted of it, will it be pretended that record can be offered as evidence in this Senate? The question for this Senate to determine is whether he was intoxicated or not. Now the fact of a complaint being made there, or any action had there, that question certainly is no proof whatever of intoxication, the question to be submitted to this Senate.

The PRESIDENT. The chair will state in explanation of its action, that the witness was asked to testify what he did and learned while in the performance of his duty as marshal; and it is the opinion of the Chair that this complaint that he made to the mayor of the condition of the respondent was a complaint made officially in the performance of his duty. The Chair therefore rules that it is competent for him to state what he did, but the Chair submits it to the judgment of the Senate. The question is shall the question be put?

The question was then read by the Reporter, as follows: Did you make any complaint to the mayor of the city with regard to the respondent's intoxication in the city during that term of court?

The PRESIDENT. A vote of "aye" will be taken as being in favor of allowing the question.

The roll being called, there were yeas 8, and nays 18, as follows;

Those who voted in the affirmative were—

Messrs. Johnson F. I., Macdonald, McLaughlin, Officer, Shalleen, Tiffany, Wheat and Wilkins.

Those who voted in the negative were—

Messrs. Aaker, Adams, Buck D., Campbell, Case, Gilfillan C. D., Hinds, Howard, Johnson A. M., Johnson R. B., Langdon, Mealey, Miller, Morrison, Perkins, Rice, Shaller and Wilson.

The PRESIDENT. It is decided by 8 "yeas" to 18 "nays" that the question shall not be put.

Mr. Manager HICKS:

Q. Mr. Blowers, will you state to the senate as near as you can, from the appearance of the respondent, what the degree of intoxication of the respondent was at any of these times; take the worst instance that you remember?

A. Well, I should judge that he was pretty drunk when he had t

have a gentleman take him home or take him to the hotel—the night-watchman.

Q. The night-watchman? Yes, sir; Mr. Baker.

Q. The city watchman? A. Yes, sir.

Q. Where was this he took him from? A. From Mr. Hall's saloon.

Q. At what time of the day or night was this?

A. It was at night, about—well, it was betwixt one and two.

Q. Do you remember any other instance of intoxication?

A. Well, I saw him several times there, but I never saw him as bad as that, as I know of.

Q. That was the worst instance?

A. That is the worst I ever seen him.

CROSS-EXAMINATION.

By Mr. ARCTANDER:

Q. Now, Mr. Blowers, how many times did you see him under the influence of liquor in the evening?

A. Well, sir, I would not say exactly how many times; four or five or six times I have seen him. I was around pretty late nights myself.

Q. That is, generally, at what time was it?

A. Oh! sometimes earlier, sometimes later.

Q. It was always after court had adjourned for the day?

A. Yes; all I seen him would be in the evening after court would eb adjourned.

Q. You never saw him in a state of intoxication during the day or during the time when court was in session?

A. No, sir. I did not attend court at all.

Q. Well, I mean in the recess; A. No. sir.

Q. Now, you are not sure I suppose, what day this was that you saw him at the time you claim he was intoxicated?

A. No, I am not sure what date it was,

Q. Now, isn't it a fact, or can you state whether it is a fact or not that at this time when you saw him intoxicated was in the evening that the court had adjourned in the forenoon?

A. Yes, I saw him that evening, but it was not them evenings I seen him; I seen him that evening too.

Q. Was it the evening before that night?

A. Well, it was some evening before that; I don't just know the dates or remember what evening it was because I seen him several times.

Q. What was the Judge doing generally when you saw him there in the night?

A. Well, he was playing cards and drinking.

Q. Was it in the saloon? A. Yes, sir.

Q. Wasn't it sir, in a private room back of the saloon?

A. Well, it was a room right next door; there was nothing private there about it, any man could walk out and in.

Q. Wasn't it a room that was kept off by itself,—it wasn't in the saloon that he was playing?

A. Oh, no; he was playing in a room right next to the saloon.

Q. Was the door closed between that room and the saloon?

A. Oh, it was sometimes, yes.

Q. Now, who did you see him in company there with?

A. Oh, parties around town there; some of the boys. I saw him an Mr. Dan Murphy together considerable,—Dan Murphy, the deput sheriff there.

Q. Who else?

A. Oh, I don't just remember their names; I seen a great man there.

By Mr. Manager Hicks. McGovern?

A. Him and McGovern was around considerable.

Q. Who else?

A. I seen him and Mr. Collester around considerable.

Q. George N. Baxter,—did you see him around with him?

A. Well, I don't know as I know that gentleman.

Q. Do you know Thomas White? A. Yes, sir.

Q. You saw him around with him, did you not, some of these nights

A. I think I have; yes, I know I have.

Q. Now, did you stay around in the saloon there for any length time?

A. Oh, no; I was in and out there; backwards and forwards. didn't stay there all the time.

Q. Did you ever see the Judge during any of those nights when yo were there, drinking at the bar?

A. Yes; I have drank with him at the bar.

Q. Was that this night you said he got pretty full,—"pretty we heeled?"

A. Yes, sir.

Q. That was the night you drank with him?

A. Yes, sir.

Q. How much had you been drinking that night yourself?

A. Oh, well; I drank a little.

Q. Yes; *you* was "pretty well heeled," too; wasn't you?

A. Not very bad.

Q. Now, isn't it a fact that this night you were so drunk you coul hardly see?

A. Oh, no; you are mistaken.

Q. Isn't it a fact that the boys that night put up a job upon you t have Mr Baker take you home?

A. No, sir.

Q You are positive of that? A. I am certain of that.

Q.. Will you swear Baker did not take you home? A. Yes, sir.

Q. You will? A. Yes, sir.

Q. But you had drank considerable that night?

A. Oh, I drank a little, certainly.

Q. What do you mean by a little? How many times did yo drink?

A. Oh, I drank two or three times; three or four times probably.

Q. During the day? A. That evening.

Q. What did you drink,—whisky? A. Well, I drank beer som of the time, and whisky, took a cigar.

Q. How many times did you take beer?

A. Oh, I don't just remember how many times.

Q. How many times whisky? A. Well, two or three that know of.

Q. Two or three you *know* of? A. Yes.

Q. And several others you don't remember of?

A. Well, I think I remember them.
Q. Pretty good horns? A. Well, they wasn't very large.
Q. Nothing extraordinarily large? A. No.
Q. What did the judge drink that night when you drank at the bar? Didn't he drink beer.
A. Well, he drank out of the same bottle I did; I didn't call it beer. Four or five of us drank there. We called for whisky. I thought it was; it tasted like it.
Q. Would you be positive that the Judge drank whisky?
A. Well, I was standing on one side of him and Mr. Murphy on the other side.
Q. And you remember certainly that he drank whisky?
A. Well, I think he did; he drank out of the same bottle.
Q. Now, isn't it a fact that when he was sitting there at the time in that room playing cards, in the evening, that he usually drank beer always?
A. He might have drank beer several times; I don't say but what he did.
Q. Now, this time you saw him drink at the bar was the only time you saw him drink?
A. I saw him drinking in other rooms; I saw him have bottles of beer in there. I saw him drink beer with the rest.
Q. You never saw him drink anything else except when you saw him take this glass of whisky?
A. Well, I have seen him drink other liquors,—I did'nt see him drink any more liquor that night at the bar. I saw him drink beer at the table that night.
Q. This was the time you claim he was pretty well heeled?
A. Yes, sir.
Q. And when did he go home?
A. Well, it was somewhere 'twixt one and two o'clock,—somewhere along there.
Q. Now, sir, could not Judge Cox walk?
A. Oh, he could walk—yes.
Q. Walk without taking in all the sidewalk, could'nt he?
A. Well, I don't know, the sidewalk would have to be pretty wide. It would want to be more than a six-foot walk.
Q. What kind of a night was that?
A. I don't just remember what kind of a night it was.
Q. Wasn't it a very dark night?
A. It might have been; I wouldn't say in regard to that.
Q. Don't you remember it from the fact that the watchman you speak of was the watchman from the hotel?
A. Well, he was there some of the time and some of the time he wasn't.
Q. Well, he was the watchman of the hotel, wasn't he?
A. No, he was hired by the city. He wasn't hired by the hotel.
Q. Don't you know that the watchmau there that night had a lantern there with him, do you remember that?
A. He didn't have a lantern when I seen him.
Q. Didn't you see him when he and Judge Cox went home together?
A. I seen them when they went down; he didn't have any lantern then?
Q. You didn't see him when he walked home with Judge Cox at all, did you?

A. I seen him when he went down to the hotel.
Q. With Judge Cox? Yes, sir.
Q. Now; they simply walked up to the hotel together?
A. They went down to the hotel together, yes, sir.
Q. There was no taking him up carorrying him?
A. Oh, he didn't carry him, no.
Q. Did anybody else go along except Judge Cox and the watchman?
A. I did not see them.
Q. Didn't those folks that was playing cards go up too?
A. They went up as far as the corner.
A. I met them on the corner of the street when they were going down to the hotel.
Q. Then all you know about it is that they were in company, the watchman and Judge Cox?
A. I saw Mr. Baker have hold of his arm going down to the hotel.
Q. Anybody else along?
A. I didn't see anybody else around. There was some parties came out afterwards and went down the street.
Q. Did those parties have the Judge by the arm?
A. I don't know.
Q. You wouldn't swear they didn't?
A. No, I would not; but I happened to stand right at the corner when they went along down.
Q. Now then all there is to this here of the watchman taking him around is that you saw Judge Cox and him walk arm in arm up to the hotel?
A. I saw them arm in arm. I know he was full, because I seen him inside before they came out there.
Q. But that is all you know about his taking him to the hotel?
A. That is all I know about his taking him.
Q. He went with him or took him, just which you are a mind to call it? Probably Judde Cox took *him* with him?
A. He might have, I don't think he did.
Q. Now, going up there that way, what did Judge Cox do, if anything?
A. He staggered along the sidewalk.
Q. Staggered? A. Yes, sir.
Q. You will swear he staggered will you?
A. Yes, sir, I will.
Q. Isn't it the fact that it was a dark night—had just been raining, and was slippery on the sidewalk?
A. Well, it might have been just raining; I don't remember in regard to that.
Q. Isn't it a fact away up there from Hall & Smith's saloon to get up to the hotel there is two or three places where you have to step down?
A. There is one plaae, yes.
Q. One place then? A. Yes.
Q. I noticed that, one night I was there and I wasn't drunk either! Now it was near by that wasn't it?
A. I seen them right by the corner at Trowbridge's brick building.
Q. That is one of these places?
A. No it was down four or five or six doors below, that the step is.

RE-DIRECT EXAMINATION.

By Mr. Manager HICKS.

Q. What do you mean by the expression "pretty well heeled?"

A. Well, I mean a man is pretty drunk. That is what I mean by it.

Q. Did you say you saw McGovern with the Judge there one night?

A. Well, yes, I have have seen him there with him.

Q. What is his name? A. Peter McGovern. He is a lawyer there.

Q. County attorney? A. He is county attorney or was.

Mr. ARCTANDER.

Q. The next morning you did not see Judge Cox at all did you?

A. I don't think I did—yes I did too.

Q. Do you know whether he was all right in the morring again?

A. I seen him the next morning; I saw him down at the court house; I was down there on some business; I went to see Dan. Murphy about something.

Q. He appeared all right then didn't he?

A. Well, I thought he was.

By Mr. Manager HICKS. Did you see the Judge drink at any time during the day time there?

A. No, I never did. I never was around where he was.

The name of Mr. Frank A. Newell was here called by the clerk but he did not appear.

Mr. Manager HICKS. I desire to state that Mr. Newell is the cashier of a bank which had its annual meeting on the 10th, and he requested me to give him a little lee-way if possible. I understand he will be in on the train positively as long as he did not reach here this noon. He expected to be here at noon to-day. If the senate are willing I think it would facilitate matters by letting us take up witnesses on the next charge.

Senator CAMPBELL. I move that the counsel have permission to take up the next article.

The PRESIDENT. It will be understood as the sense of the senate if there is no objection heard.

Mr. ALLIS. That will be the third article?

Mr. Manager HICKS. Yes. sir.

Mr. Manager HICKS. Mr. President, I desire to have the clerk, Mr. Hayden, called for the purpose of identifying this paper. He desires to go home. It affects a future article.

Mr. J. B. HAYDEN was then re-called and testified:

By Mr. Manager HICKS. (Witness shown a paper.) Mr. Hayden, you may state what the paper is you have in your hand?

A. This is the case of Earnest Albricht *et al.* against Seth W. Long *et al.*

Q. What is the paper?

A. It is one of the files of the court in that case.

Mr. Manager HICKS. We desire to have it marked to identify it, at this time. The paper was marked by the President, for identification, "exhibit number one."

S. L. PIERCE.

Sworn and examined as a witness on behalf of the State, testified:

DIRECT EXAMINATION.

By Mr. Manager DUNN.

Q. Your name is S. L. Pierce? A. Yes, sir.

Q. Your occupation is that of an attorney at law? A. Yes, sir.

Q. And a resident of St. Paul? A. Yes, sir.

Q. How long have you been practicing law, Mr. Pierce?

A. Since 1853.

Q. Do you know the respondent, E. St. Julien Cox? A. Yes, s

Q. Have you ever had occassion to practice before him while he h been acting as a judge of the district court, in the county of Brown?

A. Yes, sir, with one exception; I have attended his court, I believ always, since he has been judge in Brown county.

Q. Did you have a matter before him in the month of June, 187

A. Yes, sir.

Q. What was the title of the cause pending before him at that tim

A. It was Wells against Gezike; I don't remember the initial there was a number of defendants.

Q. Where was that case heard, whenever it was heard?

A. It was heard in the court house at New Ulm, in June, 1879.

Q. Was Judge Cox present? A. Yes, sir.

Q. Was it a trial of a case. A. Yes, sir.

Q. Before the court?

A. Before the court. It was a trial of two cases in one, I say Wel against Gezike,—there were two cases tried at the same time; they we heard together. I don't remember the name of the other case; I can g it though, but they were heard both at the same time upon the sam testimony and the same records.

Q. It was a matter relative to the failure of Bahnke? Henry Bahnk & Co.

A. Yes, sir.

Q. In which that question of assignment and judgments were i volved?

A. Yes, sir.

Q. Who were the attorneys that appeared at that time before th judge besides yourself?

A. Gordon E. Cole; Judge Severance of Mankato; Mr. B. F. Wel ber; J. Newhart; George Kuhlman and perhaps others. It was not a important case but there was a good many attorneys connected with i

Q. Well, you may state to the Senate in your own language, witho the necessity of questions, the condition of the Judge and the method that trial?

A. The simple facts of the case:—On the evening previous to th trial Mr. Severance and Mr. Cole arrived on the train and we were de rous of taking the case up that evening. We found that Judge Co who had taken a recess at noon of that day, had got on to a spree an he was not fit for business that evening. An arrangement was made th we should try the case before him in the morning if he was in any co dition, if not we should go into the land office and agree upon a person i the land office who was a clerk to go into the court and act as a kind an amanuensis of the court to take down the testimony and the poi and make a complete record of the various matters that were designed enter into the case. It was largely documentary; I think there w very little oral testimony in the case. On the morning following, Jud

Cox came into court and was apparently laboring under a continuation of the spree that he had been upon the day before; appeared in fact to have been on it all night and was in no condition whatever to do business. His manner and conduct indicated that he was almost entirely under the influence of liquor. So much so that by common consent of all the attorneys in the case we installed this special representative of the court, as an amanuensis or a clerk or referee or whatever you want to call it; I can't give it any name except that he was a man taken out of the land office by our common agreement and placed in the clerk's desk. Judge Cox occupied the bench. We produced our testimony, made our points, and while it was going on the judge was constantly talking, making rules and orders that were disregarded entirely by the members of the bar who where engaged in that business. I recollect escpeially Judge Severance, who represented the other party to this case, in regard to a writ of attachment. The Judge wished to see the writ or the paper connected with it. He read it a few minutes and mumbled over something.

Q. Which judge wished to see it?

A. Judge Cox, wished to see it. He looked over it and seemed to be ignorant of the fact that we were not designing to have any decision made by the court at all, but simply taking the matter down, putting it in such form as to be acted upon afterwards. He seemed to be so under the influence of liquor that he didn't understand that, and voluntarily undertook to pass judgment at once upon the merits of those records and made his decision right there against Judge Severance. And the Judge remarked to him that he didn't care about hearing from him at that time, or words to that effect.

Q. Please distinguish between the gentlemen?

A. Mr. Severance. That they didn't care about his decision being made at that time. and requested him to keep quiet; and the rest of them talked to him in just about the same way as we would to any irresponsible person. I do say it, with emphasis, that in the situation he was there, he couldn't have been recognized as a responsible person, much less qualified to act as judge. It was a very humiliating situation; and it was only our urgency to have the matter disposed of,—all having come from a distance,—that we thought of this scheme of getting the record in such shape as to be finally presented to the court and acted upon.

By Mr. Manager DUNN.

Q. Was this clerk or gentleman who took the evidence down sworn as clerk?

A. No, sir; I think it was simply by common consent that he was agreed upon as a person to write; not the court, but to act simply in the manner I have spoken of.

Q. Who was he? Do you know the name of the gentleman?

A. I never knew his name; all I understood was that he was a clerk from the land office.

Q. A clerk, or a person in the land office?

A. Yes, sir. When the matter was completed it was left with Judge Cox. I don't know how he got it, but some time afterwards the decision I know was made by him, so I took it for granted that he got this record made up on that occasion.

Q. Judge Cox finally decided the case on the record that was made thus?

A. Yes, sir. Decided it on the record that was made there in that manner.

Q. This was a matter that was regularly set down to be heard before him. It was understood to be heard at that time?

A. It was understood; it was on the calendar, I presume. I am not sure about that. I never examined it, but I presume it was on the calendar.

Q. Well, you attorneys appeared there at that time for the purpose of trying this case before Judge Cox.

A. That and other cases, but as far as Mr. Cole and Mr. Severance were concerned I think it was solely for this purpose that they were there.

Q. Had you been there before? A. Yes, sir.

Q. Before that day?

A. Yes, sir; I was there during the week; all the time during the term.

Mr. Manager DUNN. That is all we wish with this witness upon this article.

Mr. ARCTANDER. Mr. President, if it is not objectionable we would like very much to have a five minutes recess before entering upon the cross-examination of this witness.

Senator C. D. GILFILLAN, from the committee on accounts, reported the following resolutions:

Ordered, That items of expense incurred by the attorneys, arising from board bills, while in trial of this case or in preparation for it be allowed by the Committee on Accounts, as coming within the meaning of the resolution of the House of Representatives, adopted November 16th, 1881.

After argument, the further consideration of the question was postponed until to-morrow.

CROSS-EXAMINATION.

By Mr. ARCHANDER.

Q. What day, Mr. Pierce, did you arrive at New Ulm, in the month of January?

A. I couldn't tell you. I presume it was when the court opened, whenever that was.

Q. Do you remember whether or not that was not the eleventh day of January, when this court met?

A. I stated very distinctly that so far as days are concerned, or dates, I can only give you my opinion by reference to the records of the court, or its proceedings.

Q. This was an adjourned term, was it not, that you went up there to attend?

A. It must have been an adjourned term, because there was no regular term appointed for that time, as I understand the law.

Q. Were you engaged during that term in any cases, except in this case?

A. I presume I was; I generally was.

Q. Do you remember whether you were engaged in the case of Henry Weyhe vs. John Manderfeld?

Mr. Manager DUNN. May it please the court, I do not want to object too much, but we have simply directed the attention of the witnes-

as to one single case that was on trial on one single day, and I notice the objection that this is not germane cross-examination; it goes into matters concerning that term of court. The articles of impeachment speak about, and the evidence is simply directed to one particular case, at one particular time. That is all we have gone into. It is simply making Mr. Pierce their witness, and if they want to call him for themselves we have no objection to it, but it takes up the time of the court.

Mr. ARCTANDER. I would state to the Senate that that adjourned term of court was one which lasted only one and a half or two days, and I intend to show by the witness that it is not, as we are charged in this article, the third, a matter then pending in court, that it was not at a term of court; that before this matter of Wells vs. Gezike was taken up the court had adjourned *sine die*, and there was only, as I understand it, three or four cases on the calendar at that time; and I ask the question simply for the purpose of locating the time of the trial in the first instance; for the witness stated that he did not know anything about dates, and I know no other way to get at it, and follow it up afterwards by showing what time this particular transaction took place. Another reason I ask it is for the purpose of testing the recollection of the witness. I understand that in every case we are allowed—and it is the first time I have heard objection to it,—when a witness swears to a particular state of facts, to attack that witness by attacking his recollection generally by asking him what he remembered about other facts, that were before the court at the same time, or immediately before or after, and by asking him what he knows about those facts. We have a right to satisfy ourselves and the court whether or not the witness was an honest witness, and whether or not there is any liability that he remembers the things that he is testifying about. That is a well settled rule of law about which the managers, I think, will raise no dispute, and upon both of these grounds,—upon the grounds, that we desire this testimony to fix the time of the trial, so called, in the case of Wells against Gezike and to show by this witness, if we can, that it was not a trial as we are charged in this article, at a term of court; that it was not a case that was taken up and tried by the court as a court, but was a matter that was taken up at chambers to accommodate the attorney after the court had been adjourned.

It is so much more important to show this, because it is claimed here by these witnesses, in the direct examination that the judge, on the evening before this matter was taken up, went on a spree, and he has also stated that a recess was taken, and that during the recess the respondent went on a spree.

Now, if this is a fact, if only a recess was taken there, and the judge then went out on a spree, he would certainly be guilty of, at least something greater than he would if the court had been adjourned, *sine die*, and he then, after he was through with court, and did not expect any more business, went along and took his noon cocktail or anything that he saw fit to take; it would be more excusable, to say the least, and I think we have a right to show these facts to test the recollection of the witness; to show the time, if we can, in any way, when the witness has disclaimed any knowledge or any recollection of dates; that we have a right to show it in any way that is possible; and I think there can be no better way than to call the attention of the witnesses to the facts of the case that were tried at that term, that lasted only a day or a day

and a half, and ask him if he was interested in any of those cases, and in that way call his attention to the particular facts.

Mr. Manager DUNN. The explanation of the counsel really removes my objection. I presumed when he entered upon that line of examination that he was going through the same course that was gone through with in the examination of the witness Hayden,—to go through the whole term of court from beginning to end. If he is doing it simply for the purpose of testing Mr. Pierce's recollection, I have no objection to it. The other course I certainly object to.

Mr. ARCTANDER. Then you withdraw your objection?

Mr. Manager DUNN. I withdraw the objection under that statement of facts,—if that is what you are doing it for.

Mr. ARCTANDER. Yes, sir.

Q. Do you remember the trial of the case entitled Weyhe against Manderfeld, tried on the 11th of January?

A. Since you speak of that I remember such a case, and remember of being engaged in it, but I do not pretend to remember when it was tried.

Q. Do you remember the disposition of that case, or what was done with it?

A. I do not. I will say right here for I do not want any difficulty about it, that when a thing of that kind is over it gets mixed up with everything else that is over, and I cannot tell one transaction from another as to the time it has taken place, unless it is something very particular that impresses itself upon my mind.

Q. There was nothing during your connection with that case that would particularly cause you to recollect about the condition of the Judge, was there?

A. During which case?

Q. During the trial of Weyhe against Manderfeld.

A. There is nothing now that I can remember at all, one way or the other; if you call my attention to any particular instance connected with it I might remember it, but I do not now; it is entirely absent from my mind.

Q. You don't remember whether you went to work and tried that case of Weyhe against Manderfeld or not?

A. The thing is very strongly on my mind that I was engaged in trying that case, but as to when it was done I have not the least idea.

Q. Do you remember whether you appeared as plaintiff or defendant in that case?

A. I don't even remember that, I don't pretend to remember much about cases after they are over.

Q. Do you remember any other case or cases that were tried there that time?

A. I do not.

Q. Do you remember of the case of the State against Trowbridge having been brought up there.

A. What was it about? A manslaughter case?

Q. Forging, I think,—that is my impression?

A. There may have been such a case, but I don't now remember. It is quite likely that there was.

Q. You don't remember whether you were attorney in that case or not?

A. No, I do not; there are a great many cases that I am engaged in there and I don't charge my mind with them at all after they are over

Q. Do you remember anything about the Wells against Gezike case, during the term, Mr. Pieree?

A. Why, yes, I remember that case.

Q. Do you remember anything in regard to that?

A. My remembrance about that case is that Mr. Cole and Mr. Severance were expected to be there on the day train,—noon train; I could not tell when but earlier than they came, and they did not get there, and for that reason the trial was delayed.

Q. I will ask you whether or not you don't remember that on the second day of that term, on the 12th day of January, in the morning, upon coming into court that it was stated in open court that by consent of parties, "jury trial is waived in the above case of Wells against Gezike?"

A. I recollect no such thing, because it was not a jury case.

Q. It was not a jury case? A. No. sir.

Q. It was not intended to be tried by a jury at all?

A. My recollection is that it was purely a case in equity as to who should have the funds that were in the hands of the sheriff.

Q. Was not that an action to recover, upon the part of Wells, the funds collected by the sheriff on executions issued in favor of Gezike?

A. It was an action to set aside a judgment that had been taken by confession,—an action, as I understand it, purely of an equitable character, and did not involve a jury trial at all.

Q. Will you swear positively that that did not occur in court there; that a jury trial was waived there in open court by consent of parties?

A. I won't state anything of the kind, for I don't remember of any such occurrence, and I don't see how it could happen under the circumstances. I am not in the habit of waiving a jury trial where I have not a right to one.

Q. You were there in court during both of those days?

A. I must have been; I know I was there the day previous.

Q. The day previous to the trial of Wells against Gezike, you mean? A. Yes, sir.

Q. You don't know whether you were there on the 11th?

A. Only from the fact that my business required me to be there, as I remember, during the term.

Q. Now, did you notice anything out of the way with the Judge during those two days?

A. Not in the least; no sir.

Q. Is it not a fact, Mr. Pierce, that before General Cole and Judge Severance came up the afternoon of the 12th, that the court was adjourned *sine die*?

A. On that point my mind is very indistinct.

Q. You would not swear that it was; you would not swear that it was not?

A. No, as I stated, and any anybody that knows me understands that fact, I do not pretend to know very much about what took place after it is done unless there is something special to call my attention to it with unusual force.

Mr. Manager DUNN. We will admit as a fact, that it was adjourned, *sine die*.

Mr. ARCTANDER. What do you say?

Mr. Manager DUNN. We will admit, as a fact, that the court adjourned without day. This case was not tried during the session of court or

the term of court. It was tried the next day. That is the fact in the case.

The WITNESS. I was not present in the court all the time, and don't know about it.

Mr. Manager DUNN. The case was tried next day before the court.

Q. Then you will not insist upon that statement, Mr. Pierce, that the court had taken a recess that afternoon, when you claimed you found he had gone upon a spree. It might have been after the court had adjourned, *sine die*?

A. Why, from the remark made, it must have been after the adjournment. Of course I don't pretend to charge my mind with these facts.

Q. Of course, of your own knowledge, you know nothing about whether the judge had any knowledge of the case coming up the next day, or any subsequent day?

A. Well, in that regard, I am very sure that Mr. Cole and Mr. Severance were expected.

Q. Yes, you might have expected them?

A. No; it was a matter of common understanding with the court and all.

Q. But, you don't know positively, and would not swear positively that the judge knew that this case was to be taken up the next morning or in the afternoon, for all that?

A. Oh, I don't think that any body knew that. It was taken up because these gentlemen did come on the train; otherwise it would not have been taken up.

Q. Now, you say that when Judge Severance and General Cole came up in the afternoon Judge Cox had gone upon a spree; did you see Judge Cox at all from the time that court was adjourned *sine die*, until the next morning?

A. That I cannot swear to.

Q. So that you do not and would not swear that you found him upon any spree at all that afternoon, or that you saw him?

A. In that respect I think, as I stated in my direct examination, it was found that he was on a spree.

Q. You said "we found;" you don't know anything of your own knowledge as to whether he had been on a spree or not?

A. I would be utterly unable to say whether I did or did not see him that afternoon on a spree.

Q. Then you would not swear of your own knowledge that he was on a spree that afternoon.

A. Not in such form as to make it a positive fact, as to my personal knowledge. It may be that I saw him, and it may be that I did not, in the afternoon.

Q. I will ask you, Mr. Pierce, whether or not it was not in the afternoon of the day before you went on with the Gezike case,—whether that arrangement was not made by the counsel that night, or that afternoon, in regard to taking the testimony and reserving all the points? I think you so stated.

A. That is what I said.

Q. This arrangement was made in the afternoon?

A. Yes, sir.

Q. Not only about getting the clerk from the land office, but about all the points, and not to have any points decided during the

of the case, but just to introduce your testimony and save your points, as you often do?

A. Yes, sir, that was the arrangement in the afternoon.

Q. Now, is it not a fact?

A. At least, that is the way I now remember it. I don't want to be too positive.

Q. That was the arrangement made in the afternoon before?

A. Yes, sir; after the arrival of these gentlemen.

Q. So that arrangement virtually had nothing to do with the condition of the Judge the following day?

A. That arrangement, sir, had every thing to do with it.

Q. It had? A. Yes, emphatically.

Q. Mr. Pierce, do you claim that Judge Cox's condition the following day was the cause of your stipulation in the evening to submit the case in this way?

A. The condition we then satisfied ourselves he was in, at the time we made the arrangement, was the cause of making the arrangement.

Q. The condition he was in in the afternoon before?

A. Yes, sir; the afternoon before.

Q. Was it not a fact, that Mr. Severance and Mr. Cole were anxious to get away?

A. We were all anxious to get away.

Q. Now, is it not a fact that when counsel are very anxious to get away from a place where they may be to submit any matter to the court, that it is a very prevalent practice to submit cases just in that way, whether a judge is drunk or sober?

A. In the experience of a great many years I never knew of a case yet, where the judge was not able to preside and hear the testimony, when he was personally present, and make minutes of it himself and conduct it. That is the first instance.

Q. In your practice you have never run across anything like that, where the judge was sober and able to preside and had the possession of his faculties in such a case?

A. No, sir; I never had any such case before.

Q. Do you mean to be understood that so far as your practice shows that a case has never been submitted in that way; that is, to submit the case, take the proof, and reserve the decision on the different questions that may come up in the trial;—do you mean to say that that has not been done except when the judge has not been in a condition to try it?

A. It has never been done in a case where the judge sat personally.

Q. In your practice? A. No, sir, not in my practice.

Q. Is it not a fact that your desire to get away, entered into and was a part of the cause why this agreement was made in the afternoon before? A. I have so said.

Q. That entered into and was a part of the cause?

A. Not our desire to get away,—that was not the only thing. It was a case in which a large sum of money was tied up, and it was our desire to have the matter presented in such form as to be disposed of without coming back to do it again, and it was for the purpose of having the case disposed of, and not for our own personal accommodation altogether; both, no doubt, entered into it.

Q. That entered into it?

A. No doubt both entered into it.

Q. You also stated in your direct examination that there was a fur-

ther understanding between you and Mr. Cole, that if Judge Cox was in no better condition the next day, you would go to the office and have a clerk there for referee and have it then sent, after being transcribed, to Judge Cox; is that the way?

A. My impression is that that entered into the consideration. I don't want to go into details too minutely.

Q. Then when you abandoned that part of it to go to the land office to try your case, and went into court that morning, Judge Cox was not in as bad condition as you had anticipated the evening before?

A. You entirely misunderstand me; we never agreed to go into the land office to try the case. We agreed to go in there to get a man to officiate in the presence of the court in taking our testimeny and making up a record.

Q. Mr. Pierce, do you know whether or not the fact of getting a man to act as amanuensis or clerk, was not suggested by Judge Cox himself, and was the only condition upon which he would try the case?

A. I haye no such knowledge at all.

Q. You don't know it of your own knowledge, and didn't hear of it at the time?

A. No. sir. I remember something was said about him having a lame hand.

Q. Mr. Pierce, do you remember the Renville county term in November, 1880? A. When you were there?

Q. When I was there?

A. I have good reason to remember it. There was a snow storm there, and we were kept there some time.

Q. At that time Judge Cox was perfectly sober, was he not?

A. I don't recollect that he was out of the way at all at that time. I don't think that he was.

Q. Do you remember that at that time the same arrangement was made at the request of Judge Cox, and on the same excuse, that his hand was hurting him, and that during the whole of that term we had the clerk sit and take the testimony?

A. We had a party that we agreed upon to act as an amanuensis and take down the testimony instead of the judge doing so on account of his hand. It may be so, I don't recollect anything of the kind; it may be so.

Q. I will call your attention to a case where you and I were on different sides, in which Mr. Coleman took the testimony, in which there was some trouble afterwards about your client paying for it? That probably refreshes your recollection.

A. It may be all true. I cannot say. I don't remember.

Q. You don't remember the fact at all? A. No, sir.

Q. Do you remember the fact of Mr. Merrill acting as clerk or amanuensis, in a *crim con.* case, that I tried that term?

A. That was a jury case.

Q. Yes, all these cases were jury cases?

A. If there was any arrangement made it might have been in that case; I was not in that case.

Q. But you heard in New Ulm at the same time that the judge stated his hand pained him, so that he wanted an amanuensis. You heard that?

A. The only reason why I speak of that is because Mr. Cole spoke of

it on a preliminary examination here, and it is somewhat dimly on my mind that something was said about it, but I have no very distinct remembrance about that.

Q. Isn't it a fact, that in the evening or afternoon when this arrange- was made that Judge Severance, after having been out to see Judge Cox, came back and reported to you that the Judge had agreed to take it up the next morning on the condition, and only on that condition, that you would furnish an amanuensis to take the testimony?

A. I don't remember anything of that kind.

Q. Now, had you seen Judge Cox drink any that morning at the trial?

A. That morning?

Q. Yes. A. No, sir.

Q. Nor during the trial, did you see him drink any? A. No, sir.

Q. Now would you swear, Mr. Pierce, that Judge Cox was drunk during his presiding at that trial?

A. I do, sir, without the least hesitation, not only drunk, but so drunk that he was entirely unconscious—not entirely unconscious, but so under the influence of liquor that he seemed to be unconscious of the duties that were required to be performed. It was a matter—

Q. That was a matter that would be perceptible to everybody in the room, would it?

A. There was no difficulty at all for any body that was in the room to see it; it was so perfectly manifest.

Q. I have not succeeded in getting you to state what day this trial was, but there was never more than one occasion of this kind at New Ulm, where the Judge tried this case between Wells against Gezike?

A. Not that I was connected with.

Q. There was never more than one? A. No, sir.

Q. Now you say that the Judge was very much intoxicated, and I would like to have you state from what you judge that he was intoxicated at that time?

A. Just as one judges any person that is intoxicated,—by his manner.

Q. What did he do or say, or how did he act, during the trial?

A. Well, sir; I have endeavored to explain it as well as I could. The manner of the man was entirely different from what his manner is when he is sober. When he is sober and on the bench, he is careful to express himself in such a way, as to be intelligible. He is careful to make a decision only when it is proper to make one, and in all respects, when he is sober, he acts like a judge; but when he is drunk he acts like a fool.

Q. And at this time he acted like a *fool*?

A. Yes, he did, like a fool.

Q. In what?

A. In that that I spoke of, that he would mumble things over on the bench that had no relation to the subject and make decisions at a time when it was, in fact, entirely out of order to make decisions.

Q. We will come to that.

A. And make rulings of every kind conceivable.

Q. Did he, more than once, make any decision in that case, or attempt to make one?

A. Why, he was all the time talking or attempting to talk, hardly ever still.

Q. What was he talking about?

A. Just like any other person when his wits are away from hi through the influence of liquor.

Q. Not entirely gone?

A. Yes, sir—no, not entirely gone; I didn't say that,

Q. Did he talk about anything relative to the case?

A. Why, he evidently supposed that he was trying that case rig there, and that he was deciding those matters just as though the ca was on trial, when it was understood by everybody that it was not o trial for the purpose of being submitted to him, then and there.

Q. Now, as a matter of fact, is it not true that the only time that h interrupted that trial was when the papers in these attachment sui that are involved, were offered in evidence and objected to?

A. No, it was not. That was so outrageously out of order that was striking.

Q. Now, that was outrageous, you say,—now, let us see what th was. Isn't it true, as a fact, that his interruption there consisted in h saying to Gen. Cole, or whoever made the point, "Let me see the papers." Didn't he say that?

A. I think he may have said that, because he said a good man things, and I could not say what he did or did not say, altogether.

Q. After he got the papers up there to look them over, didn't he—?

A. Oh, yes; very wisely.

Q. After he had looked them over didn't he say, "I don't see, gen tlemen, what is the use of going on with this case any longer, becaus this point might just as well be decided right here, as it is decisive o the case."?

A. Yes; I think he said that.

Q. Those were the remarks he made?

A. Yes, without argument at all; right in the presence of the counse

Q. That was all the decision that he made; the making of that re mark?

A. No, not all.

Q. That was not all?

A. There were remarks similar to that all the way through.

Q. I mean at this particular time that he made a decision?

A. And he complained very much because nobody heeded what h said.

Q. You can answer my question on that point, Mr. Pierce?

A. Yes, sir.

Q. At this particular time when you say he made the decision again Judge Severance, his decision consisted in making the remark that have stated, that he didn't see any use in going on with this case; tha that question might be as well settled then as at any other time, becaus he considered it decisive of the case?

A. That is what he said.

Q. And that was all he said at that time?

A. At that particular time it was.

Q. And as to that particular question in regard to the attachment?

A. Oh, no.

Q. Was there anything more said by him in regard to that attach ment?

A. As I have said, he was all the time talking about these things.

Q. Who was he talking to?

A. Talking to members of the bar who were engaged in the case.

Q. Did he mention you by name, or anything of that kind?
A. To be sure he did.
Q. What were the nature of his remarks?
A. Well, sir, I have endeavored to tell you; they were the remarks of a man who didn't know what he was talking about.
Q. You say he made orders and directions that nobody heeded; what were they?
A. That was one of them, when he went on and said that it was decisive of the matter and there was no need to go further with that. Some one suggested, I think it was Mr. Severance, that he had better keep still.
Q. Isn't it true that at the time he made the remark, General Cole got up and said, "Your honor, we did not intend to have this decided now, and we would rather prefer to have it go over." Is not that the truth, and not what you have said?
A. I don't know what Mr. Severance said. He bore it like a major, although he swore at the same time privately.
Q. I didn't ask you what Judge Severance said?
A. Yes, you did.
Q. No, sir; I asked you about General Cole?
A. Well,—Gen. Cole conducted himself very quietly. I don't know that he paid any attention to our business.
Q. Do you say that he told Judge Cox to shut up his mouth?
A. I did not say so; he was requested to keep quiet.
Q. Was that the language that Judge Severance used?
A. That was the language that somebody used. It became necessary to quiet him or pacify him, as you would any other person under the circumstances.
Q. And that was the way you talked to him?
A. That was just exactly the way.
Q. Just told him to keep quiet, and not say anything more about it; that is the way you talked to him about it?
A. We regarded him as entirely irresponsible, and so treated him, and so talked to him. It was a matter that was certainly very unpleasant, because knowing, as we did, that Judge Cox, as a judge, was so different from what he then was, it was a very humiliating matter to appear before him in that condition.
Q. I didn't ask you for that. A. I know you did not.
Q. Well, you need not volunteer anything?
A. I say it, nevertheless.
Q. Now, we have got one of those interruptions by Judge Cox; what were the other interruptions?
A. I don't pretend to give you the language; it was his manner.
Q. But you mean that he kept on all the time, giving directions and orders, and you don't remember what they were?
A. The language was just of the character that comes from a man who is under the influence of liquor.
Q. And everybody in the room could see it?
A. Everybody in the room that wanted to see it, could see it. I have seen a good many drunken men and I think I am not mistaken about the fact that he was in that situation.
Q. If Judge Cox was so terribly under the influence of liquor, as you have stated here, what was the reason that you went on and had him preside there and proceeded with the trial of the case before him?

A. The reason simply was that we agreed to do it. It was necessar for the matter to be in the form of a proceeding before the court; th was the reason.

Q. There was no necessity for that, was there? A. There was.

Q. Couldn't a referee have been agreed upon to take the testimony

A. To be sure; but there was no referee agreed upon; it was nece sary that it should be nominally before the court.

Q. You could have found a referee around there?

A. And the record so discloses the fact, in Judge Cox's own finding these facts are stated as having been found before a referee and not befo himself.

Q. Was there no person there in that town, that was competent an qualified to take a reference, that was not engaged in the case?

A. I rather think that about all the members of the bar there we connected with that business.

Q. Now, Colonel Baason was not engaged in the case?

A. Well, he was probably drunk, too.

Q. Well, Mr. Goodnow, the man who took the notes might just a well have taken the notes as referee as to have taken them as clerk?

A, I don't remember who Mr. Goodnow was.

Q. He was the clerk.

Judge Cox. He was the receiver of the land office.

By Mr. ARCTANDER.—

Q. He might just as well have taken the notes as referee, as t have taken them in the way he did.

A. If we had gone to the formality of stipulating to have him tak the testimony as referee; but then it was not the testimony alone taken there was very little testimony taken; it was mostly matters of objec tion, and the points and all the records; very little oral testimony.

Q. He might have taken that, and reported the testimony to th court with it? A. Mr. Goodnow?

Q. Yes.

A. Why, I presume by a stipulation we could have stipulated our selves to have made up the record.

Q. As a matter of fact, didn't Mr. Goodnow report that to the court

A. I don't say what might have been done; I say what was done.

Q. Well, didn't he, as a matter of fact, report the facts to the court?

A. He took it, and the proceedings were designed to be in form, a being in court; and, as I stated, Judge Cox got that record, as I se by the decision that he afterwards made. I went away myself, as th rest of us did.

Q. As a matter of fact then there was a stipulation entered into by the counsel in writing, and while there, in regard to submitting it to the court upon argument in thirty or sixty days.

A. That was all put in the same document, and all apparently befor the court, as I now remember; but in fact before a court that was quit unconscious of what we were doing. That is, I say unconscious,—I mean to be intelligibly addressed as a court.

Q. How many witnesses were sworn in that matter?

A. I have serious doubts whether any witnesses were sworn. I think we argued to the fact, but still there may have been one or two witnesses sworn.

Q. Do you remember whether Mr. Gezike was around then?

A. I think he was.

Q. And Mr. Albert Behnke?
A. He was also a party to that suit, and I presume he was there.
Q. Do you know whether Mr. George Kuhlman was present?
A. He was there.
Q. Are you positive of that?
A. He was an attorney in the case.
Q. Do you remember of seeing him there during the trial?
A. That is my present remembrance, although I speak now in regard to him more from the fact that he was a party of the case,—and I rather think he was a witness; I rather think he was.
Q. Isn't it a fact, Mr. Pierce, that during the time occupied by the taking of the testimony and getting your case up in this way, Judge Cox spent the time sitting and talking with the clerk of the court there, Mr. Blanchard?
A. Mr. Blanchard was there and I have no doubt he did a good deal of talking with him as well as the rest of us.
Q. Didn't he as a matter of fact, move his chair down to Mr. Blanchard, and sit and talk with him, instead of interrupting, as you say incessantly?
A. He may have done that for a part of the time, but the greater part of the time——
Q. He was interrupting?
A. He was on the bench, acting in the manner I have tried to describe.
Q. And the greater part of the time he was interrupting you, as you were going along?
A. Yes, that matter is very firmly impressed upon my mind, from the unusual character of it. It was the first time in my life that I was ever in a court where the court was drunk. Well, I won't say that either, for we had a similar court here in this city; but the court finally retired.
Q. You are not very friendly towards Judge Cox, are you?
A. We were always friendly, so far as I know. I give my testimony now as a matter of duty and not of pleasure.
Q. You give it as a matter of duty and not of pleasure.
A. No, sir; I don't desire to do it. Even as a practitioner, at the bar and on the bench, our relations were always good.
Q. Is it not a fact that while Judge Cox was yet practicing at the bar you and he had a serious fracas in court once, and eame near whipping each other?
A. A. No, sir; it is not.
Q. Not at all.
Q. You never had any fracas where it came near to fisticuffs between you?
A. No, sir.
Q. At New Ulm, in the presence of Judge Hanscombe, and between you and the defendant, was there trouble?
A. No, sir. Why, it was not a very unusual thing for members of the bar, when Judge Hanscombe was presiding there, or any other judge, to have words that for a moment were exciting; but that there were words that were likely to result in blows is something that I remember nothing about. And I also say that for years, Judge Cox and I were on as good terms as any lawyer that I ever met at the bar.

Q. But on other years you were not on so good terms.

A. There was no time longer than an hour that we were not on good terms.

Q. And there has not been up to the present time? A. No, sir.

Q. You were perfectly friendly?

A. Yes, sir; and he has always been as courteous to me, and treated me as well as any man could, and I have always tried to be the same towards him.

The time for adjournment having arrived, the court here adjourned.

ELEVENTH DAY.

ST. PAUL, MINN., January 13th, 1882.

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

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

Messrs. Aaker, Adams, Buck C. F., Buck D., Case, Castle, Hinds, Howard, Johnson A. M., Johnson F. I., Johnson R. B., Langdon, McLaughlin, Mealey, Miller, Morrison, Officer, Perkins, Powers, Rice, Shaller, Shalleen, Simmons, Tiffany, Wheat, Wilkins and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, judge of the ninth judicial district, upon articles of impeachment, exhibited against him by the House of Representatives.

The Sergeant-at-Arms having made proclamation,

The Managers appointed by the House of Representatives to conduct the trial, to-wit : Hon. Henry G. Hicks, Hon. James Smith, Jr., Hon. O. B. Gould, Hon. A. C. Dunn, Hon. G. W. Putnam, Hon. W. J. Ives and Hon. L. W. Collins, entered the Senate chamber and took the seats assigned them.

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

The President announced as the special committee on rules under motion of Senator Campbell, the following :

Senators Campbell, Wheat, Shalleen, Perkins and Hinds.

The PRESIDENT. If there are no further proceedings to come before the court, the counsel will proceed with the cross-examination of the witness who was last night upon the stand.

S. L. PIERCE.

Being recalled on behalf of the State his

CROSS-EXAMINATION

was resumed.

By Mr. ARCTANDER.

Q. I have only one further question to ask you, Mr. Pierce. You were a witness, I believe, before the House committee on this charge?

A. Yes, sir.

Q. At that time you stated that on this particular occasion, during the trial of the Gezike case, Judge Cox was "crazy drunk?"

A. Yes, sir.

Q. That is what you now maintain, do you, that he was "crazy drunk?"

A. I repeat it, sir, emphatically.

Q. You repeat it now emphatically?

A. I do, sir, most emphatically; that is the very best word I can use.

Mr. Manager DUNN. That is all Mr. Pierce at this time. We shall need you as a witness on some other matters.

THOMAS WILSON,

Called and sworn on behalf of the State testified:

By Mr. Manager DUNN:

Q. Judge, are you a resident of the State of Minnesota?

A. I am.

Q. A practicing attorney? A. I am.

Q. Have you been such for a number of years past?

A. Since 1859.

Q. Do you know the respondent, E. St. Julien Cox? A. I do.

Q. Have you had occasion to appear before him at St Peter, in August, 1879?

The PRESIDENT. The counsel will please ask his questions a little more distinctly so that the Senate can hear, and the witness will also please bear that in mind.

Mr. Manager DUNN. These questions are preliminary; I supposed all the members of the Senate knew Judge Wilson and that he was an attorney.

The WITNESS. I was before him in the autumn, but I would not say the day or the month; I think it was in August, 1879. I had no intimation when I came to St. Paul that I was to be a witness, or I could have fixed the very day by my book.

Q. Please state to the court the particular matter which was engaging your attention before him at that time?

A. I suppose you have reference to a case in which we were settling what lawyers call "a case." There had been a case tried in New Ulm, the title of which was, "Brown *vs.* The Winona & St. Peter Railroad Company." It had been previously tried, and a decision was rendered against the defendant. The defendant, wishing to appeal, wished to settle a case,—what lawyers understand as a "case;" and I, as the attorney of the defendant, gave notice of the settlement of that case before the judge at St. Peter.

Q. Before Judge Cox?

A. Before Judge Cox at St. Peter. Judge Cox was the judge who tried the case at New Ulm. I supposed that was the occasion that you referred to, and it is the one that I referred to.

Q. Did you appear there? A. I appeared there.

Q. Who else appeared there with you?

A. On my side nobody else; on the opposite side there were Mr. Pierce, Mr. Thompson of Sleepy Eye and Mr. Weber of New Ulm; they were for the plaintiff; I for the defendant.

Q. What time did you arrive in St. Peter?

A. Early in the morning, I think; I found the other side there when I got there.

Q. Did you immediately proceed to the matter of business?

A. Oh, I wouldn't say immediately; but we did along in the forenoon, and we were delayed, perhaps an hour or two.

Q. In what condition did you find the Judge as to sobriety?

Q. Well, before I saw the Judge, I was informed that he was drunk, and when I saw him I fonnd that he *was* drunk.

Q. Please state to the court the circumstances attending that meeting, and what was done, and what resulted?

A. Well, to settle a case, in a matter like that, is, as all lawyers know, something of a lengthy process, and requires as much minuteness, and practicularity almost as the trial of a case. It was a lengthy case, and a case in which there had been a verdict of $6,000, and we got to work after consulting as to whether it was possible for us to go on in his state. After talking about it we went to work and went a certain length, and then I called out Mr. Webber and told him that I could not possibly risk the effects.

Mr. ARCTANDER. We object to anything that was said to Mr. Webber, unless the respondent was present.

The WITNESS. He was not present. I called Mr. Webber out of the room where the respondent was.

Mr. ARCTANDER. We object to any conference while Judge Cox was absent.

Mr. Manager DUNN. You need not state that, it would be hearsay.

The WITNESS. I declined to go on, and, on conversation with the other side, they agreed with me that it was not proper for me to insist in his state, and for that reason we adjourned and came back at some later day; I have forgotten how long after.

Q. Was Mr. Lamberton there, do you recollect?

A. Yes, Mr. Lamberton was there, and was there most of the time.

Q. A. J. Lamberton?

A. Yes, and he and the attorneys that I have mentioned, as far as I can recollect, were the only persons that were present during any portion of the time.

Q. Where was this, in the court room?

A. The place to meet undoubtedly, where the notice was given, was in the court room, but we had a parlor in the hotel where there was a fire, and which was a little more convenient,—and I don't know what other considerations entered into it, but we met there anyhow.

Q. The matter was obliged to be adjourned on account of the Judge's condition? A. It was, and it was adjourned.

Q And you all went home and left it?

A. I went home, and I think the others did,—I suppose so, because if anything had prevented I should have remembered it. We did not meet again for some time at least, after we adjourned.

Q. And the next time you met the Judge he was all right?

A. I have no doubt he was, for I remember nothing to the contrary, and I have no doubt if he had not been I should have remembered it.

Senator HINDS. I would like to enquire, Mr. President, whether this evidence is being taken under article four?

Mr. Manager DUNN. Yes, sir; we intend it to relate to article four.

Q. You may state a little farther, Judge, as to whether the matter was really opened before the Judge, and an attempt made to carry on the business?

A. Yes, sir; we proceeded some distance and for some little time.

Q. There was no objection made as to want of notice or anything of that kind?

A. Oh, no, sir; there was notice. We had noticed,—I had noticed the case, and in pursuance of my notice, Mr. Pierce of St. Paul, Mr. Thompson from Sleepy Eye, and the attorney from New Ulm, were all there, on my notice.

Q. This would be denominated a proceeding in chambers, or at special term, I suppose?

A. Well, in our southern Minnesota practice; and I don't know that at any place except at St. Paul, we don't do business that way. As you are aware the court is always open for such business, and we notice anything that can be done before the court at such time, and notify the judge of the time, or else get an order from him to show cause, one or the other of those, at a given time to do a given thing. In this case, if I had my books, I could tell whether it was an order to show cause or a notice; it was one or the other. This case was set for this time and a notice given, and I got there on the day on which it was set, and we proceeded a certain distance, as I have stated.

Q. And adjourned because the Judge was not able to go on?

A. That was the only ground of adjournment; that we had to was a matter that was regretted by all of us, all of us being some distance from home.

CROSS-EXAMINATION.

By Mr. ARCTANDER.

Q. Do you remember what day of the week this was?

A. I do not remember, Mr. Arctander, but if I had known before leaving home I could have told exactly the day, because my books would show.

Q. Are you not mistaken about your coming up there, early in the morning. Is it not a fact that you came up there before supper, and stopped at the Nicollet house for supper?

A. No, sir; I feel very sure that that is not correct. I feel very sure that I came up on the night train and that when I met Mr. Webber and Mr. Thompson,—I met Mr. Webber and Mr. Thompson and Mr. Pierce there,—and I think one or more of them came on the evening before, but I came on the night train, and got there early in the morning, I feel very sure. I don't think I can be mistaken in that, I cannot be very well.

Q. Now, you are not prepared to swear of your own knowledge that Judge Cox had any notice of this matter coming up before him?

A. No, I will state——

Mr. Manager COLLINS. We object to that question, if the court please. The law provides that the district court shall always be open, and it always is open if the judge is in a condition to do business, and it is wholly immaterial whether Judge Cox had any notice of that. We make this point at this time to call the attention of the Senate to that fact.

The WITNESS. Allow me to state, Mr. Arctander, I cannot say that I know of my own knowledge. The way this thing is invariably done in our place is this, I never give this notice myself; I have a clerk who does. I knew nothing of the matter until I came up here, but our rule of practice is, that a notice is given to the opposite attorney, or rather, first, we generally get from the judge the time that will be convenient, but if the notice is given to the opposite attorney, our invariable rule is to notify the judge, so as not to get there at a time when he is not at home; but still, inasmuch as I did not do it myself—

Q. You cannot tell whether it was done in this instance or not?

A. No, that is our rule, but I cannot say, in this case, whether that was given, but I have no doubt in my own mind.

Mr. Manager DUNN. You mean you did not give it personally?

A. I did not give it personally; it was given in our office, and that was our invariable rule.

Mr. ARCTANDER. If that was an order to show cause why it should be settled, and was given by the judge, the order would be on file in the clerk's office?

A. Undoubtedly, that would be the rule and I know of no reason why it should not be so.

Q. When you came up there and met Judge Cox first, do you remember of having any conversation, in which he stated to you that he had just returned from a hunting trip?

A. I don't remember that. I won't say anything about it, for I don't remember any such conversation.

Q. Do you remember that Judge Cox first refused to go on with the matter at that time?

A. No; Judge Cox was ready to go on when we left.

Q. When what?

A. When we adjourned and separated. It was not on account of the Judge's wishes that we did so.

Q. Was there not, as a matter of fact, a rule promulgated in that district, to the effect that no business would be taken up except at certain special terms that were fixed for the different counties?

A. I know of no such rule, I don't live in the district, you know, but I know of no such rule.

Q. Had you not received a printed notice similar to this, [handing witness a paper] as well as the other attorneys in the district, several times when there were new terms fixed.

A. I never saw such a rule as this before. I don't doubt but what there was such issued but I know nothing about it, and I never saw such.

Q. You had no communication from Judge Cox at any term before that in regard to similar rules whether written or printed?

A. No, I never heard that he has such a rule.

Q. You heard that he had special terms of court every month, in every county, the more prominent counties, to hear such matters?

A. I do not know it.

Q. Is it not a fact that at this time when you spoke to the Judge about hearing this matter, in the hotel parlor, that you told him that the case was substantially agreed upon between you, and that there would be no trouble about it?

A. I don't remember that.

Q. How many amendments were there proposed in the case, do you remember?

A. I don't remember that.

Q. Were there many or few?

A. Well, it was a case that it took some time to settle, and there was a good deal of discussion pro and con. I do not remember the number.

Q. Were there not, as a matter of fact, very few amendments proposed in the case?

A. I don't remember that. If I had notice in my office I could have brought, and I presume the other counsel could bring the very amendments in the very words.

Q. Do you remember whether or not, counsel had not, after the amendments were proposed, stipulated or agreed to a good deal of it?

A. Oh, I have no doubt; that is done in a great many cases, and may

have been in this. I have no recollection on the questions, pro or co but I know it was a case that took some time to settle.

Q. What was the reason that it took some time to settle?

A. Well, sir, it was a lengthy case and an important case.

Q. Isn't it a fact, that about the first thing you did after you ca up in that hotel parlor, was for Mr. Pierce and you to commence quarrel pretty badly?

A. No, sir, we did not commence to quarrel pretty badly. It was case in which Mr. Pierce and I may have differed, and I presume we d differ, very emphatically about certain things in the case.

Q. There was considerable feeling between you; I mean as att neys, not personally?

A. Yes, we were emphatic, I remember about some of these amen ments, I would rather not state, and you would not want me to sta why.

Q. Oh, yes; I don't care.

A. Well, in the first place, Judge Cox, if you will ask me to state, will go on and state just what I said to some of the attorneys. Jud Cox, in his way, indicated that certain things would not be allowe certain matters that I wanted in the case. Mr. Pierce at once took ho of that, and it would have been a very good thing for him and ruino to my case.

Now, I will tell you just as I recollect it. I said at once, in a very e phatic tone, that that was a thing that could not be done, and I sa that before that jury went out, and before I agreed that it should out, for fear of some quirk or quibble, that I had compelled the Jud and Mr. Pierce to sit down with me until I had made every exceptio that I wished, and I read to Judge Cox the exceptions I had writt out. There are my exceptions, and I have rights here which I sh certainly maintain, with a good deal of earnestness, and they must n be disregarded.

Then, when this matter was going a little further—I never intimat that Judge Cox meant anything wrong, but on account of his cond tion I took Mr. Webber out and told him that, on account of Jud Cox's condition, I could not tolerate the determination of any these important questions with a man who was not sober, and th if they insisted on going on—Mr. Pierce was called out—and he th rather insisted on going on, because it was in his favor. I said, "M Pierce, if you insist upon going on with a drunken man, there is power behind the throne to protect me; and I will have to resort to th power; I am not to be overridden by a man who does not know wh he is doing;" and Mr. Pierce then said, "well, if you insist he is n fit to go on;" and all the counsel agreed with me.

Q. Isn't it a fact that all the questions were settled and allowed, disallowed, except some matters in regard to the charge of the court?

A. I won't say, because the charge was lengthy; but I know th there was a great deal of it settled before Judge Cox. I won't s whether there was or not.

Q. Isn't it a fact that Judge Cox objected to a certain portion of t charge as you had it, and said he would not settle it before he got h written charge that he had in his office, and examined it?

A. No; there was nothing said of that kind; nobody objected to h getting his written charge.

Q. Well, did he say it? A. No, sir.

Q. Well, will you swear positively that he did not?

A. I will swear positively that there was nothing of that kind that interrupted the proceedings.

Q. You will not swear positively that Judge Cox refused to settle the case until he had examined his written charge?

A. I won't say that, or that he wanted to get his written charge there, but I *will* say positively that nothing of the kind interrupted the proceedings in the case; I will say that positively.

Q. Isn't it a fact that afterwards when that matter or case was finally settled or allowed, that that portion of the charge was changed to conform with Judge Cox's views, in your own hand writing, and appears in the settled case now?

A. No; before the jury went out I had written down every word, and Judge Cox agreed to it, and the other side agreed to it, and the case was settled substantially on that basis.

Q. It was settled up in Brown County before you came down?

A. Mr. Arctander, before the jury went out, as you are aware, under our statute, it is the duty of counsel to take his exceptions; he has not a matter of right to do it afterwards, and we went to work and took Judge Cox's charge, and read it over *seriatim* before the jury went out. The jury were kept sitting in the room; it was about midnight, or one or two in the morning, but still I insisted—

Q. At midnight; Judge Cox was perfectly sober then?

A. That was on the trial.

Q. At that time he was sober; we don't want to get this thing mixed?

A. I have no reason to doubt that Judge Cox was sober all through the trial, and I have no doubt he was. I saw nothing to make me think to the contrary; but I was going to explain your question. Before the jury went out, the jury were kept sitting there, and I read over Judge Cox's charge in writing, and the requests asked by Mr. Pierce and Mr. Webber on the one side, and myself on the other, and read over the requests which Judge Cox allowed and disallowed, and I took exceptions in regular form, seriatim, and wrote it down in pencil. We did not have the Judge settle it, but it was perfectly well understood that it was settled.

Q. Where is that? A. I don't know.

Q. The Judge has it now, hasn't he?

A. I presume likely it is in my papers in Winona. I presume it may be.

Q. Now, didn't that agree with the Judge's minutes on that point as to the latter part of the charge?

A. I kept the minutes that we agreed upon, and nobody else that I remember of.

Q. I mean as to the Judge's charge, he had that down in writing, had he not?

A. No, Mr. Arctander, the Judge's charge—I made very lengthy requests or considerable requests, and the other side made considerable requests. The Judge gave part, modified part, refused part, and he gave some of his own.

Q. And he gave some of his own? A. Yes, sir; he did.

Q. Now, wasn't it, as to some of his own, that the dispute was in the hotel parlor in Saint Peter?

A. If he says so, I have no doubt of it, because I don't remember the contrary; but it was as to those and other matters, and I would not pretend to give everything about it, Mr. Arctander.

Q. No; I presume so; it is a long time ago. Now, I will ask you i you remember whether or not the case that you presented was not in consistent with that part? Of course you didn't have his charge whe you made up the case, so you could not have it exactly as he had it.

A. I did have his charge before me; I had what we agreed upon be fore the jury went out, before me when I made up the bill of exception or case. I had it all before me.

Q. You made memoranda of his charge too?

A. I wrote it right out and fastened it together and put it in my papers, so that I had it every word before me when I made up the case

Q. Now, isn't it a fact that the whole of the case which is now o file in Brown county and portions of the charge are not in your hand writing, but the last leaf there in regard to the charge of the court is i your hand writing, and was taken there afterwards to St. Peter.

A. There is no case in which I have been an attorney, for many years, which is lengthy, that is to be found in my hand writing; it i always done by my clerk.

Q. Now, are not the last two pages in your own hand-writing, in re gard to that portion of the charge?

A. That may be, I won't say.

Q. Now, isn't it a fact that you drew that up at Judge Cox's sug gestion when you went up there to settle that case?

A. That is a matter that I wouldn't swear to one way or the other.

Q. Wasn't really everything but that last of his charge settled at th time when you left there, the 5th of August, after you had agreed t allow it to go on to some other time?

A. No, sir; I don't think so. I am very sure it was not.

Q. When was it settled then?

A. Well we went back some time afterwards and settled it; I don' remember the day.

Q. You settled the balance of the case afterwards?

A. Yes, sir.

Q. There was no motion for a new trial at that time, or no notice o motion for a new notice at this time, when you were sitting in the hotel parlor?

A. I won't be certain. I think now, but I won't swear positively. You know the rule would not be to make your motion for a new trial at the same time as to settle the case. But I do think that by agreement with the attorneys upon the settlement of the case, I made my motion for a new trial. That I think; but about that I would not speak positively, because it is a matter that would not impress itself upon my mind.

Q. Is it not a fact, that while you were up there—

A. The first time?

Q. Yes, sir, the first time; you drew up a notice of motion for a new trial, directed to J. M. Thompson, signed it, served upon him a motion for a new trial to be had on the 12th at St. Peter?

A. The 12th of August?

Q. Yes, sir.

A. Well, I could not swear to that one way or the other.

Q. You could not swear as to the date, but didn't you make out there a notice for a new trial, serve it on the 5th, and there state that it was made in the case settled on the 5th of August?

A. I would not say; but I know that no attorney knew that the case

was not settled that day; no attorney connected with the case knew that.

Q. Do you remember anything about that notice, whether you did not make such a notice at the time?

A. Mr. Thompson and myself may have agreed that, at a given time, —for instance, when we first went there we expected that the case would be settled that day, before we came into the room with Judge Cox, and it may be that we had agreed that the motion for a new trial should be taken up on another day; I don't know about that. But, permit me to say, Mr. Arctander, that after we got through there that nobody understood that the case was to be settled that day. We all felt, and all the attorneys agreed, that it was not proper to go on.

Q. But as to the notice you have no distinct recollection as to any such notice being given?

A. Oh, I don't know. Mr. Thompson and I, before the breaking up of this, may have thought that we would set it for that day, but I don't remember whether we did or not.

Q. Do you remember whether or not, as a matter of fact, that case is not dated as settled on the 5th day of August?

A. I don't remember.

Q. You don't know that this was the 5th day of August that you were there?

A. I don't remember.

Q. There was no special term there or no general terms of court at that time?

A. My impression is I did not know that there was any general or special term, my impression is that that was noticed for that day, and merely—

Q. Chamber business, as you would call it?

A. Yes, we do, all through southern Minnesota we notice on a given day, that has been the rule within my knowledge so far as—

Q. And it was not, I suppose, particularly on account of the convenience in regard to the fire, that in the month of August you staid in the hotel parlor instead of going into the court room?

A. Well, now, I will tell you—

Q. The month of August isn't a very cold month?

A. I have an indistinct recollection that after we found the condition of the judge that it was thought for certain reasons, that if we could get him into that room we would have him more under our control. We thought at first that if we could keep him from drinking more we could get along, and John Lamberton thought he could take charge of him, and he got up several times and suggested to him to keep still and we would get along; and I think the hotel parlor was selected because we thought we could get along better, the understanding being at first that it was to be at the ordinary place, but the hotel parlor was afterwards decided upon by—I don't remember the very words, perhaps Mr. Webber or Mr. Thompson, or Mr. Pierce would remember, but I don't remember that.

Q. During the proceedings how did Judge Cox act when you went on with him?

A. Well, now I can't tell what he said, or what he didn't say; I simply can tell you that he acted as if he was terribly drunk.

Q. Was he sleepy?

A. He sometimes was not sleepy enough; he said too much.

Q. That was rather the trouble than his being sleepy?

A. Now, Mr. Arctander, I can't tell; I know that I felt terribly di gusted, and all of us did; and we went home mortified; that is the fac He was terribly drunk; there was no doubt about that; nobody th saw him could doubt that; and he got worse after he started. W thought he might get better, and if he did we could worry along, bu instead of that he got worse.

Q. He didn't go off anywhere?

A. Now, I wouldn't swear that he went out once or twice; I am no certain about that; I think he did.

Q. But you wouldn't swear to it?

A. No, I wouldn't swear to it, but I think he did.

Mr. ARCTANDER. You are the attorney of the Winona & St. Pete Railroad Company, are you not?

A. Yes, sir.

Q. And have been for years?

A. I have been,—yes, sir.

Q. You were the gentleman that introduced the petition for the im peachment of Judge Cox in the House, and signed by two gentlemen, believe, of the 9th judicial district?

A. Yes, sir.

Q. Signed by Mr. Tyler, a land officer, and by Mr. Rogers, a preache up there?

A. I will say it was signed by Mr. Tyler, and presented to me by him; whether Mr. Rogers was a preacher, I do not know.

Q. And you presented that petition to the House?

A. That is the fact.

Q. During the investigation you took quite an active part in th matter?

A. I think about ordinarily active.

Q. You made a very strong appeal to the House, did you not, in re gard to the matter?

A. I don't think it was a very strong appeal. I urged the impeach ment.

Q. In regard to the nineteenth article; when a motion was made by one of the members, to strike it out, did you not strenuously object?

Mr. Manager DUNN. We object to that. I am inclined to think, may it please the court, that that kind of testimony is entirely out of place here, as Judge Wilson was a member of the House of Representatives and he cannot be questioned here upon that matter.

The WITNESS. I am willing to answer the question.

Mr. Manager DUNN. Well, I don't want to drag it in here.

The WITNESS. I don't ask to avail myself of any privilege.

Mr. ARCTANDER. Mr. President, I simply wanted to show,—and I think Mr. Wilson will admit it,—that when the objection was made by Mr. James Smith, Jr., one of the managers, to the insertion of any charge alleging fornication, Mr. Wilson objected to the omission of that article.

The WITNESS. I will answer that question. When Mr. Smith propos ed that that article be omitted as not being necessary, I did object to that omission.

Q. I would ask you if you did not state that it was necessary and proper that that should go in, for the reason that Judge Cox had committed the alleged offense, after he knew that the investigation had commenced before the House, concerning the charges against him?

A. I did not state that it was necessary, I think, but I did state that it was proper. And I may have stated that as a matter of aggravation; that when he came up here to look after the question of his impeachment and tried to prevent it, that, right under our face he was guilty of such conduct. I may have stated that. I presume likely I did.

Q. Did you not state that he had done that after the proceedings upon the impeachment had commenced—after the investigation by the House had commenced?

A. I won't say I did. I think it was after the session had commenced, and he came up here. You know it was spoken about that he was to be impeached. I presume I did state that he did that after he was advised that there was a likelihood of his impeachment, and when he came up here to look after that matter. I don't think I stated it was after the investigation was commenced, but after he had come up here, and after his impeachment was spoken of, and when he came up here to look after that, it was stated that he came up here to look after the matter; and indeed, as I recollect the evidence, it showed that he knew about that; but I may have stated that it was after he came up here to look after that matter, and when the legislature was in session, and when his impeachment was threatened, that he went and did these things; and that, I thought, showed—well, I thought it was wrong. I remember that I objected to the striking out of that clause.

Q. You made a very strenuous argument upon that?

A. Well, I objected; and sometimes I am pretty earnest.

Mr. ARCTANDER. Yes, I noticed that.

The WITNESS. Permit me to say, Mr. Arctander, if you desire dates, or papers, that I have no doubt that I have all these papers in my office, and I will send anything to you that you may wish.

Senator POWERS. Q. I understood you to say that the only reason that the case you have reference to was not settled, was on account of the intoxication of the Judge?

A. Oh, I am sure there was no other reason.

Q. No other reason?

A. None, whatever. I regretted it very much, because it made me a trip home and back, and the others expressed themselves equally so.

Q. Did you hear any objection at that time on the ground that it was not the usual time for holding court?

A. Oh, no; there was no such objection. The reason that they stopped, beyond any question, was simply because the Judge was not fit to decide as to matters that required the exercise of his intellect.

Q. Both parties agreed to that?

A. There was no doubt about that. That was the sole ground upon which it was put, and I never heard of anything else.

Mr. ARCTANDER.

Q. You would have had to make another trip up to make a motion for a new trial, wouldn't you?

A. I would if it had not been made there; and as I tell you, I don't remember about that. But if it had not been made there (which would not be the ordinary course) I would have had to come back for that just as I would for the second.

M. D. COLLESTER.

Sworn as a witness in behalf of the State, testified:

By Mr. Manager DUNN.
This testimony is directed to article two.

DIRECT EXAMINATION.

By Mr. Manager COLLINS.
Q. You may state you residence and occupation?
A. I live at Waseca, this State; my business is that of a lawyer.
Q. Are you acquainted with the respondent, Judge Cox?
A. I am.
Q. For how many years have you known him?
A. I think I have known him about five years.
Q. Were you practicing law in the month of March, 1879, at Waseca
A. I was sir.
Q. Do you remember a term of court held there by Judge Cox, fo Judge Lord?
A. I recollect there was one held by him.
Q. As I understand, Judge Lord was sick, that Judge Cox came down out of his district, to hold that term?
A. Yes, sir.
Q. Will you state to the court the condition of Judge Cox as to so briety during that term of court, take it from the beginning?
A. I noticed only one occasion when I thought that Judge Cox was "a little off his base" as they say. There was only one occasion that I remember when I thought Judge Cox was the worse for liquor.
Q. On one occasion you thought he was the worse for liquor?
A. Yes, sir.
Q. Was he then engaged in the trial of a cause?
A. He was.
Q. What case was it?
A. It was the case of Power vs. Herman.
Q. Will you state what attorney was upon the other side?
A. B. S. Lewis.
Q. You were trying the case for the plaintiff and Mr. Lewis for the defendant?
A. Yes, sir.
Q. Now state the circumstances connected with the matter, what transpired, and all about it?
A. The case lasted several days, I think; I don't remember the date exactly, it was somewhere near the 3d or 4th of April if I remember right. It commenced on the 2nd of April if I remember right. If I remember right Power was on the stand being cross-examined that morning by Mr. Lewis and we sat in front of the Judge's desk; Mr. Lewis was near the Judge I think, and he arose from his seat and went up to the right of the desk, the Judge sitting at the left of Mr. Lewis, and leaned on the end of the desk; and got up very near the witness and badgered the witness a good deal on cross-examination. He was my witness, and Mr. Lewis was following him up pretty sharp, and I thought unreasonably so, and I spoke to him and asked him not to pursue the witness as he was doing. He got clear up in the face of the witness and had his finger pointed almost into his eyes and I objected to it, at least, I spoke to the counsel, and asked him not to pursue the witness in that way; but he paid no attention to me, and I arose and addressed the court and undertook to get the attention of the court, but failed to do so.

Q. For what reason?
A. Well, either the court did not see me or wish to.
Q. How far off were you?
A. I was I should think probably fifteen feet from the court.
Q. Well, go on.
A. And I then saw that the Judge was at any rate sleepy and did not hear me, and I got a little out of patience with the way the witness was being examined, and one thing and another, and I went to Mr. Lewis, passed right by the end of the table, up to Mr. Lewis and touched him on the shoulder and told him "I think we had better take a recess for a while." Said I "the court is suddenly sleepy," or something to that effect, I don't know exactly what I said, at any rate I said I thought I had better make a sham motion of some kind and ask him not to oppose it, and that I would deem it a favor if he would not. He said that he would not. At the same time we agreed that in order that it should not appear strange to the jury we would continue to examine the witness for a few moments longer; and not make the motion immediately. And in the course of perhaps two or three minutes after that I arose and addressed the court and said that we needed a witness from some place, I think I said from Janesville or Mankato, which was true, we did, but did not immediately need him, not at that time; did not tell him an absolute falsehood about it but said we should need a witness from Janesville or Mankato, and asked that we take a recess for a couple of hours. The reply that the Judge made was exactly in these words,—I remember exactly what he said. He heard me when I addressed him that time. He said, "This is an unheard-of proceeding." That was his exact language. "This is an unheard-of proceeding;" to stop a case right in the middle of it to send off to get a witness. Well, I told him as the case was in the shape it was, we should be unable to proceed, and asked to be allowed to wait until that witness arrived. But the Judge hesitated and was unwilling to grant the motion for a recess or adjournment, until Mr. Lewis arose and said that he would not oppose it. He said it was sometimes an accommodation to counsel to have a case stop or to take a recess; it would be to him sometime, and he presumed it would be to me, hence, he would not oppose it. And upon that the Judge stated that inasmuch as the counsel on the other side was willing, he would allow it to be done. He turned around and spoke to the jury, telling them not to have any conversation with anybody about the case, and then the recess was taken.
Q. For what length of time?
A. Well, I can't tell that; I know I only asked for a couple of hours, and it seems to me that the recess was taken for two hours; but I wouldn't say positively about that.
Q. Now, will you state the appearance of the Judge at that time; I mean his physical appearance?
A. Well, the Judge was, I thought, at the time under the influence of liquor. He was sleepy, and whether he was asleep or not when I first addressed him, I don't know, but certainly he had his eyes closed. He sat with his side toward me so that I had a profile view and his back partly turned to the jury, diagonally to the jury, about half way around, presenting a profile view to me.
Q. Will you state to the court why you made this motion.
A. Well I made it because I thought the Judge was unable to go on with the business in the condition in which he was in.

Q. The court was then adjourned; you think a recess was taken for about two hours; was there afternoon session?

A If I remember right, the judge went in in the afternoon about half past one or two o'clock; I won't say positively about that. If I remember right he went in about half past one or two o'clock, and court was adjourned again until evening.

Q. Why was it adjourned?

A. Well, I don't know anything about that. I was not present when the court went in, if it did at all in the afternoon; I don't know that it did. I heard it did; that's all I know about it.

Q. Didn't you expect a term of court that afternoon?

A. Well, I didn't know whether there would be one or not. The court, if I remember right, took a recess for two hours and it wasn't opened then, and I didn't know when the Judge would come in. I don't think I had any notice that the Judge was going in.

Q. When did you next see the Judge?

A. I saw him in the evening. The case was continued to about 7 o'clock in the evening.

Q. At what place did you see him first in the evening?

A. I think I saw him at the hotel.

Q. In his room? A. No, sir.

Q. Was Mr. Lewis with you?

A. He was; I met him at the foot of the stairs; I met the Judge at the foot of the stairs.

Q. What conversation did you have with them at that time, if any?

A. Well, I don't remember; I can't tell in detail what it was, but I remember that the Judge remarked, that he was going down to the court house and that the case must go right along; that it wouldn't do to lose any more time on this matter. I know I didn't want to go on with it that evening, and he said it didn't make any difference, we must get along with this business. I don't know what other conversation was had; I can't remember all the details of this conversation. In fact there wasn't very much conversation.

Q. Did you go on with the case that night?

A. We did sir.

Q. State why you did not want to go on with the case?

A. Well, I don't know why I didn't want to go on with it, I am sure I am never very anxious to try cases at night; to tell the truth, I have always been opposed to it in any case, I never like to try cases daytimes and nights, too, because sometimes they run late into the night. I don't know but there might have been some other reason. I didn't think Judge Cox was unfit at that time to go on with the case; I don't think I had that impression, I certainly have not now any recollection that I had that impression at the time I met him at the door,—that he was not fit to on with the case.

Q. Now, how was he the next morning?

A. I don't remember anything unusual in his appearance the next morning from what he had been all the time previous. I don't remember that he was under the influence of liqour, I don't think he was. If he was certainly I did not notice it, I don't remember any other time during the term that he was under the influence of liquor, in my judgment.

Q. This was the only time in court; did you see the Judge about the streets of Waseca?

A. I saw him on the streets of Waseca; yes, sir.
Q. Did you see him drinking any?
A. I never saw him drink but once, that I remember of and that was in Hall & Smith's saloon.
Q. When was that?
A. Well, I thiuk he had been there about a week or ten days then, probably.
Q. What time of day was it?
A. I saw him in there about nine o'clock in the evening.
Q. After court adjourned? A. After court adjourned.
Q. Do you know how long he stayed? A. I do not.
Q. You saw him drink some beer?
A. I saw him drink some beer, and eat some bread and cheese with it.
Q. Now you left him there, did you? A. I left him there.

CROSS-EXAMINATION.

By Mr. ARCTANDER.
Q. You was an attorney in the majority of the cases that was tried there at the Waseca county term?
A. Quite a number.
Q. You was in court there almost every day during that term of court, was you not?
A. I was there every day.
Q. Every day you was in court, when you did not have business, did you sit around there and listen to the other proceedings?
A. Not very much.
Q. But there was no day you was not in court and saw the judge proceed with business?
A. I think there was scarcely a day but what I was there on some business or other.
Q. Now, on the 2nd day, wasn't you interested in that Rasmerson case.
A. I was.
Q. You tried that with Mr. Brownell on the morning of the 2nd day of April?
A. Yes, sir; I did.
Q. At that time you noticed nothing unusual about the Judge, in his appearance, manner, action, conduct or language?
A. Nothing at all; I remember it distinctly for the reason that I remember while I was trying the case the Judge walked out to the stove and stood there, and I walked out past the Judge, and he made this remark to me; he said: "This looks like an up-hill case for you:" said I, "I guess not, I think it is all right." He laughed as he said it. I know at that time there was nothing the matter with him.
Q. Then this Power case was taken up, and they went on examining Power in the afternoon?
A. Yes, sir.
Q. Then the divorce case of Fuller against Fuller had been taken up.
A. Yes.
Q. And during that afternoon he was perfectly sober in your judgment?

A. I don't remember anything out of the way only that morning o the 3d of April.

Q. Now, on the morning of the 3d of April there was nothing unusu al in his appearance except the sleepiness that made you believe he wa intoxicated?

A. I don't remember of any other solitary thing; I noticed, of course awhile before I undertook to get his attention in the matter of th badgering of the witness, the way Mr. Lewis was doing that he wa sleepy, I noticed that much and he semed to be sick and used up; and I supposed that he was drunk; that was what my impressions were.

Q. Now, if you had not known that Judge Cox was a drinking man would you, from his appearance on the bench there that morning, o from his conduct generally supposed him to have been drunk or under the influence of liquor?

A. Why, no; if Judge Lord had acted the same way I should not have thought he was drunk.

Q. What do you say?

A I say no; I can't swear that I should have known he was drunk He did not talk any and; and did not do anything except that he merely was drowsy, and I supposed that he was under the influence of liquor but can't swear.

Q. You won't swear that he was even then?

A. I can swear that he had that appearance.

Q. Now your supposition about his being under the influence of liquor at that time was based largely upon your knowledge that he was a drinking man, was it not?

A. Well, I can't say, if I had known him to be a temperate man that I should have thought he was drunk. I should have thought he was very sick.

Mr. ALLIS. I understood you to say that if Judge Lord had acted so, you would not have thought he was drunk?

A. No, sir; I would not; I should not have dreamed of it.

Mr. ARCTANDER. Now do you remember during that day of his complaining of the fact, that he suffered with a sick headache?

A. I do not.

Q. You weren't there when he opened court in the afternoon and excused the jury; I think you said?

A. No, I was not.

Q. Isn't it a fact, that that term had been running then for some ten or fifteen days, night and day, commencing early in the morning and running until late in the evening, simply taking recesses long enough for meals?

A. It had; it had done more work, a good deal than usual for the same length of time; and I know I protested against doing so much work; I know I complained about it, and I know we did considerable work out of hours, as I thought at that time.

Q. And did considerable in hours, too, didn't you?

A. Well, the business went along swiftly enough, certainly.

Q. Isn't it a fact, that there was a larger calendar and more important cases than you had ever had in Waseca before?

A. There were nearly a hundred cases on the calender.

Q. Is it not a fact, that business was dispatched in a better and quicker manner under Judge Cox at that term, than it ever had been done before in that court?

A. I wouldn't say that it was dispatched in any better manner, but I think that Judge Cox did business and it was the general remark of the attorneys and suitors at court, that he carried business along, and expedited business more than Judges usually did.

Q. You wouldn't say that it was done any better than it was before, but you don't say that it was any worse than before?

A. By no means; I don't think any fault was found.

Q. Is it not a matter of fact that his actions there during the term, elicited general commendation and praise at the time?

A. I heard nobody find any fault.

Mr. Manager DUNN. I submit that that is not cross-examination.

Mr. ARCTANDER. Well, we waive the question.

Q. Now, on the 4th day of April, you say, in the evening, when he came in there and did business, you noticed nothing out of the way with him at all. He seemed to be perfectly in possession of his faculties during the day? In the morning, and during the whole of the next day, there was nothing out of the way, was there?

A. I noticed nothing the next day at all.

Q. The case lasted until the 5th day of April, did it not?

A. I think it did.

Q. Do you remember, on the 5th day of April, that the attorneys addressed the jury in the forenoon, and that in the afternoon, upon the coming in of court, the first thing that was done was the charging of the jury by the court?

A. I remember that fact.

Q. Now, state in what condition Judge Cox was at the time that he charged that jury—in the afternoon of April 5th. Did you notice anything of his being under the influence of liquor?

A. I did not; I didn't notice anything of the kind.

Q. His charge was straight in every respect?

A. I did not, except that it was against me somewhat.

Q. But you never appealed from it, did you? A. I did not.

Q. You did not think there was any injustice in it? A. I did not.

Q. After the jury was charged, you went away from the court room?

A. I don't remember of being in the court room immediately after the jury was charged. There were some motions, if I remember right, that were taken up; court did not then adjourn. I think he took up motions right away.

Q. Do you remember of Judge Edgerton and Mr. Taylor being there at that time?

A. I saw them about that time. I think they were present at the time his charge was made to the jury.

Q. But you were not in when the motion was argued in that case immediately afterwards?

A. I was not interested in the case. I don't think I was in the court room then.

Q. That morning of the third, when he was turning his back partly to the jury, as you said, so he was sitting, you seeing his profile more than his face,—that was not an unusual position for him to take at any time during that trial, was it; did he not usually sit in that way?

A. No, the Judge always sits at various angles to the jury when he is sober.

Q. Don't you remember of hearing at that term of court about th trouble the Judge had with his boil?

A. I don't know anything about that.

Q. Don't you know that he would sit, generally, during the whole that term with one of his feet up towards the wall, so that he wou either turn his back to the clerk or partly to the jury?

A. I don't remember; I know that that morning he had his fe on the bench. I know that the Judge never sat in one position a gre while at any time.

Q. Now isn't it a fact, that immediately back of the Judge's cha back of the bench, there was a projection in the wall, a chimney some kind of an arrangement there in the wall?

A. No; the window-casings came out on each side of his seat.

Q. Now, would he not turn his feet up, sometimes to one of the wi dow-casings, and sometimes to the other,—and thereby partly have h back either to the jury, here, or to the clerk, over there; and didn't do that during the last part of the term, and move around into t different positions?

A. Well, I don't remember exactly; I know, remembering as well I can now, that the Judge did not sit in any one position a great wh at any time; that he changed positions with reference to the jury a with reference to the clerk and people in the room; what the cause it was, or why he did it, I don't know; I didn't know anythi about it.

Q. Now, I will ask you to state if, during that morning, he int rupted you or any of the counsel at all?

A. He did not; he didn't say anything at all.

Q. Did he make facetious remarks more than he is in the habit doing?

A. I don't remember of his saying anything that morning; I kn we commenced the cross-examination of that witness, and it went rig along peaceably, and there was no interference by me or the court, far as that matter is concerned, until Mr. Lewis tried to drive the w nesses in the corner; and that I objected to; that was the beginni of it.

Q. Now in regard to what the Judge said when you made that m tion for adjournment was there anything in what he said to indicate abberration of his mind or of mental faculties?

A. There wasn't in anything that he said.

Q. As a matter of fact, the remarks he made then were perfect proper, in your judgment,—upon that kind of a motion, were th not?

A. I remember the exact language just as he gave it. The langu I have repeated is the very language he used, I remember it distinct

Q. That was a correct ruling, as a matter of fact, in your opini was it not?

A. Well, it was.

Senator C. F. BUCK.

Q. The witness stated, if I remember right, that if Judge Lord h presented the appearance on the bench that Judge Cox did, he wo not have thought him intoxicated.

The WITNESS. I said so; yes, sir.

Q. Now, supposing Judge Cox had been a stranger to you,—that y knew nothing of his antecedents, and nothing of his habits at all,—th what would you have thought?

A. I say, if he had been a stranger to me, and if I had not known him at all, why there was not anything in his appearance at that time that would make me believe, necessarily, that he must have been drunk. Knowing something of what his reputation was I think I said to Mr. Lewis at that time, "The judge is drunk."

Mr. Manager DUNN.

Q. Why did you make the motion you made?

A. Because, for some cause or other,—I supposed it was drunkenness; and I said to Mr. Lewis that the Judge was drunk; because he was unfit to proceed with business that time that he was drunk.

Q. Had you any doubt at that time that he was drunk?

A. I don't know as I had.

Q. Have you any doubt now that he was drunk then?

A. Well, if I take into account the fact that he was a drinking man, I don't think I have.

Mr. Manager DUNN.

Q. From all the circumstances you saw in the court, have you any doubt now that he was drunk then?

A. I don't know as I have; No.

Mr. ARCTANDER.

Q. You mean from the circumstances which occurred and your knowledge of the man's reputation.

A. That is what I mean.

By Mr. Manager DUNN.

Q. From what you know of the whole of the circumstances?

A. Yes, sir.

By Mr. ARCTANDER.

Q. In the case of Power against Herman there was a letter from Bishop Grace to Mr. Herman that was quite important to your side of the case was it not?

A. It was.

Q. That letter you had with you when you came down to try the case, did you not?

A. I did.

Q. After you went through with Mr. Power's testimony and were going to introduce the letter you missed it did you not?

A. I did.

Q. You have never seen it since?

A. I think not; I don't remember very distinctly, I remember that I lost the letter there somewhere. It was on the table. It disappeared very suddenly; I didn't know where it went to, it was a letter from Bishop Grace to Father Herman.

Q. Connected with it were some specifications?

A. There was some kind of a contract, I don't remember exactly what it was, it was so long ago.

FRANK A. NEWELL

Sworn and examined as a witness on behalf of the State, testified:

DIRECT EXAMINATION.

By Mr. Manager HICKS.

Q. What is your full name, occupation and residence?

A. Frank A. Newell is my name; my residence Waseca; my occupation that of a banker; I am cashier of the Waseca County Bank.

Q. How long have you resided at Waseca?

A. About eleven years.

Q. Do you know the respondent, E. St. Julien Cox? A. Yes sir.

Q. How long have you known him?

A. Since he held the term of court at Waseca, I don't remember just the time it was.

Q. The only term he ever held there to your knowledge?

A. Yes, sir.

Q. Did you see the respondent while he was engaged in his duties at Waseca?

A. I did.

Q. How often, and at what times, as near as you can recollect?

A. Well, I saw him in court perhaps five or six times during the session of the full term. I was up in the court-room some five or six times during the session of the court, perhaps.

Q. At the times when you saw him, what was his condition as to ebriety or intoxication?

A. I recollect once of being in the court-room when I was impressed that the judge was under the influence of liquor.

Q. Do you remember on what day, or what circumstances transpired at that time?

A. I don't remember the date; I only remember it from the fact that I understood there was an adjournment taken for certain purposes on a certain day.

Q. On that same day? A. On that same day.

Q. What time in the day did you see him?

A. My recollection is that I was in the court-room about ten o'clock in the forenoon.

Q. Describe the condition of Judge Cox as you remember it, as particularly as you can?

A. Well, I was impressed that he was under the influence of liquor to quite an extent at the time. I saw him sitting there on the bench, and I thought he was under the influence of liquor.

CROSS-EXAMINATION

By Mr. ARCTANDER.

Q. What case was on trial at that time, if you remember?

A. I can't tell you; I only remember the impression I had by being in court at the time.

Q. What day of the month was it; do you know that?

A. No, I do not.

Q. You don't remember for what reason the adjournment was had?

A. Only from hearsay. No, sir; I was not present, and not a party at all to the adjournment.

Q. You simply heard that an adjournment had been made?

A. Yes, sir.

Q. How did the Judge act at the time you were there?

A. Well, he seemed, as near as I can describe it, drowsy to a certain extent.

Q. Rather sleepy? A. Yes, sir.

Q. Looked as if he had had no rest, or very poor rest?
A. He looked as though he hadn't had much rest. He impressed me as having been drinking heavily and,—
Q. Now, what made you think that be had been drinking heavily, if there was nothing else but the drowsiness?
A. His general appearance indicated to me at the time that he had been drinking heavily, and was still under the influence of liquor.
Q. That he had been drinking that morning or the night before, or some time previous?
A. Well, very recently; either the night before or that morning; I can't tell which.
Q. You couldn't tell from his appearance whether he had been drinking the night previous or in the morning?
A. I couldn't tell just when he drank of course.
Q. Was there anything in what he said or did, aside from that drowsiness which made you think he had been drinking?
A. Nothing from what he said; I don't know that I heard him say anything. I simply looked at him, and I made up my mind that he was full.
Q. You had heard before that, that Judge Cox was a drinking man, had you not?
A. Well, I had heard something of the kind before. I never had met him before that term of court.
Q. That knowledge probably entered into your impression, did it not?
A. I don't think it did.
Q. Was there anything about his appearance which indicated that he had been drinking?
A. Well, there was a peculiar look about him that impressed me. All that I can say about it is that he impressed me, from his general expression, and from what experience I have had in life, that he was under the influence of liquor.
A. You didn't notice that there was anything the matter with his hair?
A. No.
Q. His hair seemed to be combed?
A. His hair, I guess, was all right. I noticed the expression of his eyes and face more particularly.
Q. You noticed more particularly the expression of his eyes; what was there about them particularly?
A. Well, they looked—
Q. Staring or bloodshot?
A. No, I don't know as they were bloodshot, they were very expressive?
Q. They were rather dull?
A. They looked dull, yes, sir,
Q. There was no particular glare in the eye?
A. I don't think they glared much, no, sir; rather lacked expression.
Q. If you had seen Judge Lord with that expression in his face on the bench there, and acting the way he did, would you have thought he had been drinking?
A. Yes, I should certainly have thought he was drunk. (Laughter.)
Q. You would have thought Judge Lord was drunk?
A. Yes, according to my experience in these matters, I should have thought he was.

Q. Have you had any experience in these matters?

A. That is, I have observed a great many men in that coudition, that I thought the Judge was in.

B. F. WEBBER

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

DIRECT EXAMINATION.

By Mr. Manager DUNN.

Q. Your name is B. F. Webber? A. Yes, sir.

Q. Where do you reside? A. New Ulm.

Q. How long have you resided there? A. About nine years.

Q. What is your business? A. I am a lawyer.

Q. Are you acquainted with the respondent in this case? A. I am.

Q. How long have you known him?

A. I think about nine years.

Mr. Manager DUNN. This testimony is directed at present to article three.

Q. Were you present as attorney in a matter which was pending before Judge Cox in the case of Wells versus Gezike and others, in June, 1879, in Brown county, at New Ulm, A. I was.

Q. You may state about the time in June that that case was tried.

A. I couldn't give the date with certainty, I think about the 12th, but I am not sure about that.

Q. Well, you may state to the Senate the condition of the Judge at that time,take it up from the commencement and go through with it, in your own language, in the narrative form, what was done, and the circumstances and environments?

A. That was the last case that was tried. It was an adjourned term. Prior to that time Judge Cox had received a telegram from Mr. Cole, or Mr. Severance, or from both, that they would be there that afternoon—the afternoon the telegram was received. That is my recollection, at least. And after getting through with the other business, and waiting some time, they did not arrive. Judge Cox said he would wait no longer, but would adjourn the term, but with the understanding that if Mr. Cole and Mr. Severance arrived he would take up this case of Wells against Gezike, and another case. The two cases were tried together. Mr. Severance and Mr Cole did not arrive until the train came in in the enening—I think about 6 o'clock at that time. And at that time Judge Cox appeared to be intoxicated, and nothing was done that night. I met several of the other attorneys that were concerned in the case on the street, and we spoke of it that we could not do anything on account of the condition of Judge Cox that night, and concluded to wait until morning. In the morning, at, I think, about 9 o'clock—I couldn't state the time definitely—I went np to the court house, or up in front of the court house, and Mr. Pierce and I were standing there together. Mr. Pierce was associated with me in the case; and, after waiting there a few moments, we saw Judge Cox and Mr. Lind coming arm in arm. The Judge came up with Mr. Lind in front of the court house, up to the fence, and stopped there. He appeared to be reluctant about going into the court house. He stated, I think, that he might get into some trouble in regard to it, and looked up at us, who were standing around, with a sort

of a leer, and said: "I don't have implicit confidence in any of you gentlemen." Mr. Pierce then went up into the court house and was gone a few minutes, and came back and said that Mr. Cole or Mr. Severance, or both of them, I am not sure which, stated that if the judge felt any delicacy about proceeding with the trial that he must not do so; that they would come up some other time, but that if he chose to go on we would get somebody else to take the evidence, and that the judge need not do anything at all—simply sit there—and we would have somebody else take the evidence. Judge Cox consented to that, and Mr. Lind, I think, suggested that we get Mr. Goodnow, the receiver of the land-office, because he was a rapid penman. Judge Cox made the remark that if we wished to get Mr. Goodnow he had no objection, but he would not trust him because he had made false election returns on some occasion. But Mr. Lind went off and got Mr. Goodnow, and came back, and we proceeded with the trial.

Q. What was the condition of the Judge at the time you proceeded with the trial?

A. He appeared to be intoxicated, or partially intoxicated, at least.

Q. How did you conduct the trial?

A. Well, Mr. Goodnow—we stipulated, and Mr. Goodnow took down the stipulation. The stipulation was not signed by the attorneys, but he took a stipulation that the rulings should be reserved; that we should take the evidence, and that everything that was objected to, if it was overruled on the final decision, should be considered as excepted to; and we went on and took the evidence. It was mostly documentary evidence. I think Mr. Blanchard, clerk of the court, was sworn, and I think he was the only witness. Mr. Lind was present, Mr. Pierce was present, and several others. I think Mr. Kuhlman was there, but I am not quite certain. There were several standing around there at the court-house at the time, when the Judge made the remark that he did not have implicit confidence in any of us.

Q. Who was present at the time the case was tried?

A. Mr. Pierce, myself, and other attorneys. I think Mr. Newhart was not there at the time, although he was connected with the case. Mr. Cole, Mr. Severance, and I think Mr. Kuhlman, were there; but Mr. Kuhlman did not take much part in the trial. He was connected with Mr. Cole and Mr. Cole generally conducted the case. The clerk of the court, Mr. Blanchard, was there, and Albert Behnke, one of the defendants, was there. Mr. Wm. Gezike, one of the defendants, was there, that is, a portion of the time, and I think all the time.

CROSS-EXAMINATION.

By Mr. ARCTANDER.

Q. Do you know Mr. Fitzgerald, from Sleepy Eye?

A. What Fitzgerald?

Q. Patrick.

A. Yes; very well.

Q. He was there at the time?

A. I don't recollect of his being there, but he might have been there.

Q. As a matter of fact, when the court adjourned it was not expected that Mr. Severance and Mr. Cole would be up, was it?

A. My recollection is that we thought they would come in on the freight, and the freight had arrived and they did not come.

Q. So that you, all of you, kind o' made up your mind that the were not coming?

A. We thought it was doubtful; we did not know.

Q. Now, don't you know as a matter of fact, it was agreed betwee you attorneys and Judge Cox, in the evening, that he should go on an try that case in the morning, provided you would get an amanuensis?

A. I don't know what the other attorneys thought; there wasn't on word said, either by Judge Cox or any of the attorneys the night befor

Q. Now; this was not at any term of court—special, adjourned o general—the court had adjourned?

A. Yes; that was entered in the minutes.

Q. The court was adjourned from the 12th, and this was the 13t when the case was called up?

A. Yes, I think so.

Q. Previous to that time, during the term of court, Judge Cox ha been perfectly straight, had he not?

A. I think so, perfectly.

Q. And until the court adjourned?

A. I think so; yes, sir.

Q. Do you remember of Judge Cox speaking that morning about hi hand troubling him, so that he could not write and that he therefor wanted to have an amanuensis to take down the evidence?

A. Not to me; and I never heard of it, until I heard of it in the evidence yesterday. He may have spoken to the other attorneys about it, for all I know.

Q. Didn't the other attorneys tell you that Judge Cox had stated emphatically to them at the time that he would not take any testimony himself in a case in which Mr. Pierce was interested, on account of his past experience?

A. No they did not; I never heard anything of the kind.

Q. Now, you say at this time, on this morning of the 13th, when this case was taken up before Mr. Goodnow, Judge Cox did what?

A. On the trial?

Q. Yes.

A. He sat there; did but little. He spoke several times I recollect in one instance, when some documentary evidence was offered, he objected to it, or wanted to know if they were going to admit such evidence as that.

Q. Isn't it the fact that Mr. Cole objected to the evidence?

A. My recollection is that Mr. Cole objected to nearly all the documentary evidence, took down all the formal objections.

Q. Now, that was your writ of attachment that was offered at that time?

A. I think not mine; my recollection is that it was the undertaking for the attachment.

Q. It was at least one of the attachment papers?

A. I think so.

Q. Now the occurrence was in this way, was it not that Mr. Cole objected to that attachment paper or whatever it was and that Judge Cox said to General Cole. "Let me see that paper."

A. I think so, yes, sir.

Q. And he looked it over, did he not?

A. I think so; to some extent.

Q. And after having looked it over, his only remark consisted in this

about it, did it not; that he didn't see what was the use to go on with the case. That that objection might just as well be decided then; that that would practically end the case; wasn't that the remark?

A. I think something to that effect.

Q. Now, that was true was it not; that if that point had been decided it was decisive of the case?

A. Well, that was the other case in which I was not interested; and I didn't know much about it.

Q. Well, it was the case on trial, was it not?

A. There were two cases together I was interested in one of them and one I was not.

Q. Now, you know sufficiently about those cases to know whether or not, if that matter had been sustained it would have been decisive of the case?

A. Perhaps it would have been so, I don't know though; my recollection is that it was the undertaking on attachment in the other case but I am not sure about that.

Q. It went right to the merits in the case did it not—that objection to a certain extent?

A. Well, I don't recollect definitely what the objection was. As I said before, Mr. Cole took down the formal objection to nearly every paper that was introduced. He took the objection to each one separately.

Q. Now, I wish you would repeat over again the language that Judge Cox used at that time?

A. In regard to that?

Q. Yes.

A. My recollection is he wanted to know if we proposed to introduce such evidence as that, and called attention to some informality, and Mr. Severance made the answer that we did not care anything about that now. And that was about all that was said. Judge Cox kept still then. Nothing further was said by him in regard to that.

Q. Have you any recollection of his interrupting the trial in any way, or, what was his manner?

A. I think he spoke several times, but I don't think there was any serious interruption.

Q. You can't recollect of any now?

A. I know he spoke several times, but I can't tell what he said; I have no recollection about it.

Q. Did Mr. Severance tell him at that time, to shut up,—to keep still?

A. I think the remark of Mr. Severance was this, "we don't care anything about that now;" or that in substance.

Q. Didn't he add to it "we have agreed that all these matters should be submitted, and have it all decided afterwards."

A. I didn't understand him to say that; but perhaps he did.

Q. Now, at that time you say that Judge Cox was intoxicated. What did he do otherwise than to make these remarks that you have stated?

A. Well, my impression was formed considerably upon the remarks he made at the door, and there was but little in his appearance there; he simply sat there and said but little.

Q. Then your impression, as to his being intoxicated, while sitting there, was formed from his remarks at the door?

A. Principally, I think.

Q. There was nothing in his action in the court room, which would indicate to you that he was intoxicated?

A. Well, I stated what he did; he simply sat there. I don't recollect anything he said except making that objection.

Q. Now, was there anything in his appearance to indicate that he was under the influence of liquor then?

A. I don't think there was anything except perhaps from his looks. I knew that he had been on a fearful "lark" the night before. My impression is that he showed it somewhat, in his face; his face looked kind of stolid; I can't express it.

Q. Was his eyes blood shot?

A. No; I didn't notice that they were.

Q. Did you notice any red mark across his nose?

A. I did not.

Q. Did you notice any black scar on the left side of his face?

A. I did not.

Q. That remark that he made outside about Mr. Goodnow, making false election returns, was a correct remark was it not?

A. I don't know anything about that at all.

Q. There was nothing in his remarks outside the door that would particularly lead you to believe that he was intoxicated at the time, was there?

A. I understood from his reluctance to going in——saying that he thought he was not in a fit condition to try the case and was reluctant to go in.

Q. That is, you form your opinion more from his appearance than from his actions in the court?

A. I think so, yes.

Q. Now isn't it a fact that during most of the trial, Judge Cox sat there and talked to Mr. Blanchard, the clerk?

A. I presume that he talked some with him.

Q. He moved his seat and sat down and talked with him?

A. Well, I don't recollect about it. I was attending to the case.

Q. Judge Cox had really nothing at all to do in that case, had he?

A. I don't understand that he had.

Q. He wasn't to rule upon any of the objections?

A. So I understand.

Q. He wasn't to take down any of the testimony?

A. I so understood it.

Q. He wasn't *then* to decide the case?

A. Not at present, no.

Q. In fact, he had nothing to do but just to sit there as an image really,—an image would have done as well as he there?

A. I guess it would, yes. (Laughter.)

By Mr. Manager DUNN.

Q. Why was this stipulation entered into?

A. Well, all the conversation I heard about it was there in front of the court-house that morning and I understood that it was because Judge Cox was reluctant to try it, and did not consider himself in a fit condition.

Mr. ARCTANDER. It was because he made the remark that he had no

implicit confidence in any of you attorneys that you formed that impression?

A. Well, he said he might get into trouble; I understood by his remarks that he referred to just the proceedings that is here now taking place; that we might make some trouble, he didn't say anything about intoxication.

Q. That he didn't have implicit confidence in any of you? A. Yes.

Mr. Manager DUNN. I turn the attention of the senate now to article 4.

Q. This testimony you have given now refers to the same occasion that Mr. Pierce testified to yesterday? A. Yes, sir.

Q. Were you present, Mr. Webber, in St. Peter, in August, 1879, before Judge Cox, in a matter which was pending relative to the settlement of the case of Brown *vs.* the Winona & St. Peter Railroad Company?

A. I was present on the settlement of that case; the date I can't give.

Q. Well, about the date?

A. I think it was the last of July or the first of August.

Q. In 1879? A. Yes, sir.

Q. What time did you arrive at St. Peter?

A. I think about eight o'clock, but I couldn't say definitely.

Q. In the morning? A. In the morning, on the morning train.

Q. What condition did you find the Judge in?

A. I thought he was intoxicated.

Q. Did you attempt to settle the case? Did you appear before him with the other attorneys to settle the case? A. Yes, sir.

Q. Did you have any conversation with the Judge on the matter before you went into court?

A. I don't recollect that I did.

Q. Where did he hold his court?

A. We met at the Nicollet House. Judge Wilson suggested that we could settle the case to a considerable extent ourselves, and the Judge came in about that time, and Mr. Wilson stated that fact to him, and the Judge said it was satisfactory; the more we settled without him the better, or something of that kind. And we went on and settled a considerable part of it. The Judge was in and out considerable of the time while we were there; in a portion of the time and away a portion of the time.

Q. Did you have a hearing before the court? A. Yes, sir.

Q. State the circumstances as you recollect them?

A. All I recollect definitely about, is this matter we stopped on; we agreed on a considerable part. There was a large number of amendments proposed to the case; some of them were not very important and we agreed upon quite a large number of them, and I think Judge Cox had to settle a few for us, and we came to one we could not agree upon. At first, Mr. Wilson, as I recollect, had in the proposed case that certain instructions were given at our request, at the request of the plaintiff. In the amendment I proposed to strike that out. And we had considerable controversy with Judge Wilson as to whether we requested that or not. We all stated we made no such request, and we were sure we did not. Judge Wilson finally said that he would withdraw that portion, that it was given at our request, and stated that the court gave it on his own motion. And he tried to get the court to rule on that; whether he

did give the instruction or not. For some reason he could not get th Judge to rule on it, whether he gave the instruction or not. And the he called me out and said that he would not go on. He says: "Yo see the Judge is not in a fit condition to go on with the settlement c this case, and I want to argue a motion for a new trial when I g through; and I won't go on." He says: "If you won't consent to it, am going to tell the Judge just what the reason is, but I don't like t do it; I would like to have you consent." And I told him, as far as was concerned, I was willing if Mr. Thompson and Mr. Pierce were wil ing. We called them out and they consented to it.

Q. Then the reason the case was not settled then was on account o the Judge being intoxicated?

A. Yes, sir.

Q. Was there any other reason? A. None that I know of.

Q. Had it not been for that the motion for a new trial could hav been argued and the case settled?

A. Yes that was our intention when we went there.

Mr. Manager DUNN. That is all upon that article.

CROSS-EXAMINATION.

By Mr. ARCTANDER.

Q. As a matter of fact no notice of a motion for a new trial had been given had there?

A. I could not say.

Q. You knew nothing about a notice of a motion for a new tria having been given?

A. I have no definite recollection about it.

Q. You don't know that there was any understanding that there wa to be an argument on a motion for a new trial at the time; it is no customary is it?

A. It is not the customary way unless done by stipulation: it i often done by stipulation.

Q. That case contained about 140 or 150 folios didn't it?

A. It was a long case; I don't remember the number of folios.

Q. Had you any books there?

A. Any law books? I don't think I had; I don't recollet about it.

Q. Had Mr. Pierce any, do you know?

A. Well, I don't recollect about it.

Q. Had Judge Wilson any that you remember at that time?

A. I didn't see any; we didn't get far enough.

Q. Judge Wilson don't live in St. Peter does he?

A. No, sir.

Q. You don't live at St. Peter, nor Mr. Pierce? A. No.

Q. In fact none of the attorneys lived at St. Peter?

A. None of them.

Q. You didn't see that any of them had any law books with them at all?

A. I don't recollect that they had.

Q. When the motion for new trial was heard didn't Judge Wilson have about a hundred law books?

A. I don't think he had that number, but I think quite a number. He had a room at the hotel. I suppose he left his books there if he had any. I don't know whether he had or not.

Q. The managers tried to get out of you that court was open there at that time; was there anything about opening court at all; wasn't the whole thing an informal matter?

A. There was no formal opening of court there, no, sir.

Q. There was no clerk or sheriff there? A. No, sir.

Q. No officers of the court at all except the Judge himself.

A. None. Unless you consider the attorneys officers.

Q. Now this whole affair took place in the parlor of the Nicollet House did it not?

A. Yes, sir.

Q. And the whole matter was an informal affair? That is to say you were trying to agree between yourselves and see if you couldn't agree to the amendments?

A. Yes, sir. And anything we couldn't agree to we would refer to the Judge.

Q. The Judge did settle several of them didn't he?

A. That is my recollection.

Q. Didn't he as a matter of fact settle all of them except the last one in regard to that question of the charge?

A. No, that wasn't the last question. There were other proposed amendments as we went through.

Q. Wasn't that the only thing when you left?

A. No, I dont think it was.

Q. He settled all those you couldn't agree upon right there in the parlor?

A. Yes.

Q. Now when you came to these knotty questions about the charge isn't it a fact that you said you believed that Mr. Wilson had got something in there that was stated to be charged at your request?

A. Yes.

Q. And you kicked?

A. Yes, and my amendment proposed to strike it out.

Q. Then Mr. Wilson proposed to put it on the Judge, and then the Judge kicked?

A. Well, we all said that we made no such request or anything like it; then Judge Wilson says: "I withdraw that part,—that it was given at your request,—and state that the Judge gave it at his own motion."

Q. Then Judge Cox kicked didn't he?

A. Well, he didn't get Judge Cox to give any definite ruling about it.

Q. Did not Judge Cox say that he had given no such charge and that he would not consent to any case of that kind until he had examined his minutes of his charge that he had at the office?

A. I didn't hear him say anything about any minutes at that time, his language was, as near as I can remember, "why, all these gentlemen say they didn't give that" and Judge Wilson says, "very well, Judge, I have withdrawn that part of it; I say you gave it of your own motion; did you give it or did you not give it?" and then Judge Cox went on and said something like this: "that he did not wish to make himself ridiculous before the supreme court," but wouldn't say whether he gave it or didn't give it.

Q. Now, as a matter of fact it was taken out, was it not?

A. No, it was not taken out. When we came on finally and settled

the case Judge Cox said he had found his minutes and added somethi more to it, which made it perfectly correct, and we were all satisfi with it.

Q. Now, after recollecting that he had found his minutes at the tin you came down and had fixed it satisfactory to all of you, can you no recollect that Judge Cox at the time you first came there, told you h didn't want to put that in and make himself ridiculous before the s preme court "until he could examine his minutes?"

A. I don't remember of hearing him say anything about the mi utes at that time; he might have said it but I don't remember.

Q. As a matter of fact there was considerable sparring back and for between Mr. Wilson and Mr. Pierce, was there not? A. There was.

Q. There was a good deal of ill feeling and bad blood shown by the all through the case, as well at that time as at the trial.

A. I think so; I think there was.

Q. There was more than usual—more than you ever saw in an court before, wasn't there? A. I think so.

Q. Now, isn't it a fact that Judge Cox at that time got mad at the abuse of each other and said, "Gentlemen, if you can't behave as gentl men and quit abusing each other, I don't want to have anything to d with this; you can wait until to-morrow?"

A. I didn't hear any such thing.

Q. You won't swear that he didn't say so?

A. I will swear that I didn't hear him say so.

Q. But you don't recollect of it?

A. I didn't hear him say so.

Q. Were you out? A. No, I was there all the time: I might hav stepped out for a moment but I don't remember of stepping out at all

Q. Now at that time, you say you think he was intoxicated?

A. I do.

Q. What was there about his appearance or actions at that time?

A. Well, it was his general appearance; I don't think I could de scribe his appearance.

Q. Do you remember when you first met Judge Cox that morning

A. My recollection is that Judge Cox came down on the same trai from New Ulm but I am not quite certain about it; he did not come i the same car if we did, but I think I saw him on the platform.

Q. Did he have his gun with him? A. I didn't see his gun.

Q. You know his son? A. Yes, I know his boy.

Q. Do you know his dogs?

A. I have seen his dogs (laughter;) I don't know that I should know them.

Q. Didn't he have his son and his dogs there coming home from a hunt

A. Well, I don't remember about that; I did not see him on th train but I think he was on the train.

Q. Now isn't it a fact that you suggested to him that you had sub stantially agreed or could agree substantially on the whole thing, an that he said he didn't think he was exactly fit to go on with busine that morning?

A. I don't remember of his making any such remark. I think M Wilson made that remark to the judge, that we could, perhaps, set considerable of it ourselves.

Q. You don't remember whether Judge Cox made that remark, th he would be glad to have the case, as he had just returned from

hunt, it was really to accommodate you attorneys that he went in there; he did'nt say anything about not knowing anything about your coming.

A. Well, I said I had spoken to the Judge a few days before to call his attention to the fact that the settlement of the case was coming on.

Q. Was that when he went up to New Ulm, when he went out shooting.

A. I saw him at New Ulm; I don't know where he was going.

Q. Well, don't you know as a matter of fact that he was going out on a hunt there at that time when you spoke to him?

A. I don't know anything about it. He goes out to hunt frequiently and very likely I saw him on such an occasion.

Q. Do you remember of his taking a trip at that time over to Sibley county?

A. No I don't know anything about where he went. I saw him at New Ulm at the time.

Q. Don't you remember that you asked him at that time how many snipes he had shot?

A. No.

Q. Meaning prairie chickens?

A. No, I don't remember saying that, but very likely I did.

Q. Now as I understand you, the whole of this matter was out of court; it was an informal coming together of counsel and court in the hotel parlor there to have this business dispatched, and for the accomodation of the attorneys, so that they could get home?

A. It was out of court just the same as the settlement of any case I have ever had to do with.

Q. At the time you told Judge Cox that there was going to be a settlement of the case, it was at New Ulm, was it?

A. Yes.

Q. You don't know where he was going at that time?

A. No, I don't know.

Q. Didn't he at that time tell you that he was going to take a trip off and that he didn't know whether he could be back or not at that time?

A. I don't recollect that he did. But then it is quite possible.

Q. Now, what was the matter of his face that morning of the 5th of August, if anything; was there anything peculiar in his face?

A. Why, I don't know of anything in particular. I thought he looked as if he was spreeing it a little; I can't describe the looks of the man.

Q. As if he was spreeing or had been spreeing it?

A. Well, I don't know as there was any difference; I can't tell very well.

Q. There wasn't anything peculiar about his face that you can remember now?

A. I couldn't describe it.

Q. Didn't notice that red scar around here?

A. I didn't see any scars at all on his face.

Q. Can you see any difference in his face now from what it was then?

A. I don't think he looks just the same now as then. But I can't describe the difference.

Q. You never saw him until yesterday unless he had a beard that reached down to his shoulders, did you?

A. Well he wears a beard the most of the time. But I don't know

as I ever saw him shaved; I have seen him shaved down over his chin But I don't think I ever saw him shave on the side of his face before.

Q. Now is there any other difference in his face as it is now and as i was then, except the difference of the beard?

A. I think the expression is different, yes.

Q. Well now wherein was it different?

A. I can't describe it; it is impossible.

Q. Did you notice anything the matter with his eyes?

A. Did not, no.

Q. Or with his hair? A. No, I didn't notice about his hair at all

Q. Did you notice anything in his actions?

A. Well he appeared to be intoxicated. I couldn't describe it.

Q. Could he walk? A. Oh, he could walk.

Q. Could he walk straight? A. For anything I know.

Q. He wasn't hilarious, or singing, or raising "old nick?"

A. I didn't hear any singing; no.

Q. There was no particular hilariousness about him?

A. Nothing that I recollect of now.

Q. Now you know that every man has certain peculiarities when he is intoxicated, that some sing and some cry, some dance, some tell stories, some want to drink every five minutes; now was there anything peculiar about the Judge that you noticed at that time?

A. I don't know that I could describe anything; it is difficult to describe the appearance of an intoxicated man.

Q. You have seen the Judge when he has been intoxicated—when you was sure he was intoxicated?

A. Often—often. (Laughter.)

Q. Now, was there any peculiarities during such times, in his actions that you saw at this time, that you can remember?

A. I think there was, yes.

Q. What were they?

A. I can't describe it. I can't describe it at any time.

Q. Did you see him drink any during that time?

A. Not a drop.

Q. Now there wasn't anything unusual in his actions,—nothing wild about his actions or anything of the kind?

A. Nothing wild, no.

Q. Nothing sleepy or drowsy.

A. No, I didn't notice that there was.

Mr. Manager DUNN.

Q. You stated that this was out of court; I don't know whether you meant to be understood that this was not a proceeding in court?

A. It was an ordinary settlement of a case.

Q. Then you mean it was not a regular or special term. A. Yes.

Q. But it was a proceeding in court and before the court?

A. Yes, the court is always open for any business of that kind.

Q. It was a regular proceeding of the District Court?

A. Yes, in a sense.

Q. Of which the judge had had notice, had he?

A. I had spoken to the judge about it. As I said, I wasn't the attorney of record,—Mr. Thompson was the attorney of record, and the matter in regard to time had been arranged for him and not for me.

Q. At what time had you spoken to the Judge about it?

A. A few days before, but I don't remember just what time.

Q. The mere fact that you can't describe this intoxication is because of the fact that you can't frame it into words. Is that the idea?

A. Yes, sir.

Q. You can't frame into words the appearance of an intoxicated man?

A. I can't do it unless it is very great.

Q. You had seen the Judge before and knew that he was intoxicated?

A. That was my opinion.

Mr. Manager HICKS. There is a witness who has been examined as to the other charges, by whom I desire to identify the filings upon a paper which has already been identified; it will take but a moment. We desire to recall Mr. Lewis, as he desires to go home this afternoon.

Mr. Manager Hicks (to Mr. Lewis, who had been re-called):

Q. Will you state to the senate with regard to the paper that you hold in your hand, what the contents of it are.

A. It is the case in the action between Albricht and Long; the settled case.

Mr. Manager HICKS. We desire to show by the witness that the paper was filed by the clerk of the Superior Court, and filed by the clerk of the District Court, before it was actually certified by the Judge; and that it was certified by the Judge in October, or November, whereas the filings show that it was filed in the court in June, or months previous. We don't offer the document in evidence; it has been identified already as "exhibit one."

Q. Do you know of your own knowledge about the time when this paper was served?

A. I wasn't present, but I know when I sent it to him to be signed.

Q. By whom? A. By Mr. Long, the defendant.

Q. That is S. W. Long? A. Yes, sir.

Q. Late the sheriff of Waseca county? A. Yes, sir.

Q. State at what time it was, relatively, to the filings upon the paper?

A. It was in the October following.

Q. From what place did you take the papers to have them sent to the Judge?

A. Perhaps it will save some questioning if I say this: That Mr. Brownell and I had made up the case and agreed to it in May, and in May we took it by motion, over to Judge Cox to have him sign and certify to it. In June sometime, a month afterwards, he sent back all the papers to the clerk of the court of Waseca county, as he notified me by postal card. Up to that time this paper had not been in the hands of the clerk of court till Judge Cox sent them to him in June, 1879. I went then to the clerk of the court, to get them, and I found that they had been filed by the clerk. I borrowed them from the clerk then, or shortly afterwards, and took the proceedings in the mandamus case.

Q. Was the filing by the clerk of the district court made, then, prior to the time that he signed the case?

A. I can't say of my own knowledge that that was on there at that time. If the filing was made at the date it purports to be, then it was make prior to the time when he signed it.

CROSS-EXAMINATION.

By Mr. ARCTANDER.

Did you take it back again to the clerk? A. Yes, sir.

Q. Did the Judge send it to you?

A I sent Mr. Long, in October, after the mandamus in the suprem court came out, to St. Peter with that paper, to have it signed. H brought it back to me signed, and I gave it then to the clerk. Mr. Lon brought it back to me signed.

Q. Are you positive of that?

A. I am positive of that fact. I did not see it signed, but I gave i to him unsigned and he brought it back signed.

Q. You say you sent it up there to be signed; that was in pursuanc of the mandate of the supreme court,—that he should simply sign hi name to it, was it not?

A. That was in pursuance to that mandate.

Q. As a matter of fact, he was not to settle any case at that time, c to act upon the case, but simply to sign it?

A. I understood the mandate of the supreme court was that h should sign it, as of May, some date.

Mr. Manager HICKS. We object to this. We simply called th witness to identify that the paper wasn't signed by the Judge until aft the filings were made upon the back of them. This is not a cross-exam ination to the matter that we called out, and we therefore object.

Mr. ARCTANDER. Well, we have no more questions.

On motion the court took a recess till 2:30 o'clock, P. M.

AFTERNOON SESSION.

The Senate met at 2:30 o'clock P. M.; pursuant to adjournment.

Senator ADAMS offered the folowing resolution:

Resolved, That, when the Senate, sitting as a Court of Impeachmen closes its session this P. M. it adjourn until 10 o'clock A. M. on Tuesday January 17th, 1882.

Senator WILSON gave notice of debate, and the resolution went ove under the rules.

Senator CAMPBELL moved that when the Senate adjourn it adjourn t Tuesday next at 10 o'clock A. M., and the yeas and nays being called fo

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

Those who voted in the affirmative were:—

Messrs. Adams, Bonniwell, Campbell. Howard, Johnson F. I., John son R. B. Officer, Shaller, Shalleen and Simmons.

Those who voted in the negative were:—

Messrs. Case, Castle, Hinds, Johnson A. M., McCrea, McLaughlin, Mi ler, Perkins, Tiffany, Wheat, Wilkins and Wilson.

So the motion was lost.

B. F. WEBBER.

Cross-examination continued.

By Mr. ARCTANDER.

Q. Is it not a fact that there was, at that time, that you have bee referring to, a rule promulgated by Judge Cox, as Judge of that distric that no business but ex parte business would be heard out of court, ex cept orders to show cause which were returnable at general or speci terms?

A. There was an order of that kind, but whether it was in existenc

at that time I don't know. He gave me one personally, and sent me another by mail, but I don't know whether it was before or after that.

Q. Was it not a fact, that at that time, and prior to it, he had established certain special terms in the counties of Brown, Lyon and Nicollet for the hearing of all that kind of business?

A. I could not say as to the times. He established regular special terms, but I could not tell when they were established.

Q. This time that you were down there was not at the time of one of those terms for Nicollet county, was it?

A. I think it was not.

Mr. Manager DUNN. We will now examine the witness as to another point.

Mr. ARCTANDER. To what article will this evidence relate?

Mr. Manager DUNN. To article VII.

By Mr. Manager DUNN.

Q. Do you recollect, Mr. Webber, being at the district court on the 10th day of December, 1879, at St. Peter, in the county of Nicollet, at the time a road appeal case, entitled Dingley vs. The County Commissioners, was being tried?

A. Yes, I was there.

Q. In St. Peter? A. Yes, sir.

Q. Was Judge Cox holding court there at that time?

A. He was, in the beginning of the term.

Q. Do you recollect the trial of one case in which one Dingley was plaintiff and the county commissioners were defendants?

A. I recollect the trial of several road appeals; I didn't know the appellant except one; Henry Miller was the one I knew, but the others I didn't know.

Q. Who were the attornerys in those cases?

A. Mr. Lind was the attorney upon the part of the appellant, and Chas. R. Davis was the attorney upon the part of the county, or county commissioners.

Q. Do you remember the condition of the Judge at that time as to sobriety or inebriety?

A. I do.

Q. Will you state to the Senate the condition of the Judge at that time?

A. In my opinion the Judge was intoxicated.

Q. Was Mr. Ladd present at that term?

A. Mr. Ladd was present a part of the time, perhaps all of the time. I recollect of his being there a part of the time.

Q. How many days during that term, if more than this one, was the judge intoxicated?

A. I don't recollect of his being intoxicated when he was attending to official duties, except on the trial of those cases.

Q. Was that more than one day?

A. I think it was only one day, but I am not certain about that. I wasn't interested in those cases.

Q. Did you see him intoxicated during that term, when he was not upon the bench?

A. I did.

Q. Where was he?

A. At the hotel where I boarded, and where, I guess, he took his meals, and I guess boarded there.

Q. Do you know whether he drank any intoxicating liquors,
A. I do not. I didn't see him drink any.

CROSS-EXAMINATION.

Q. Mr. Webber, at this term the judge held court only the first two days of the term?
A. I think not; I don't remember the number of days, but he held until a certain criminal case came on that he was interested in as attorney and couldn't try.
Q, You wouldn't swear whether it was two days or not.
A. No, I wouldn't swear positively as to that.
Q. What is your impression as to it.
A. My impression is that it was two days, but I am not certain about it, or a part of two days at least.
Q. Then Judge Dickinson came and took charge of the court, did he not, to try that case?
A. Yes, sir, he did.
Q. How many days was he there?
A. I don't know; I did not stay. I went down to attend a trial that I had myself, and I remained there until these criminal cases came on, and I found they were going to be so long that my case couldn't come on at that time, and I went home and came down again.
Q. Now, it was after Judge Dickinson had started in and taken charge of the term that you claim you saw Judge Cox intoxicated, outside of the Court?
A. I could not tell you as to that, whether it was or not; I don't know.
Q. You wouldn't swear that it was during any of the two days that Judge Cox held court?
A. No, sir.
Q. At this time when you supposed, I think you said, that he was intoxicated, or thought that he was intoxicated ?
A. In my opinion, I said.
Q. In your opinion he was intoxicated?
A. Yes, sir.
Q. Now, what time was it, in the daytime or evening?
A. I thought he was somewhat under the influence of liquor during the day, but more in the evening.
Q. More in the evening?
A. Yes, more in the evening.
Q. What was done that evening?
A. Among the things that were done was a motion of Mr. Lind's to set aside the proceedings of the county commissioners on account of the want of jurisdiction, or something of that kind. Mr. Lind had discovered that the proposed road ran through what was at one time an incorporated city, the city of Redstone.
Q. [Interrupting.] Then to make a long story short, what was pending that evening, among other things, was a motion to reverse the order of the county commissioners laying out the road?
A. Yes, sir, it was.
Q. Now, was it in the afternoon that you thought Judge Cox was somewhat under the influence of liquor?
A. I think it was.

Q. It was in the court, while he was holding court, in the afternoon?
A. Yes, sir, I think it was.
Q. In the early or latter part of the afternoon?
A. My impression is in the latter part, but I am not quite certain about that.
Q. But in the forenoon you didn't notice anything?
A. I couldn't say definitely as to time.
Q. You don't remember noticing it in the forenoon?
A. No, I don't know that I did. I noticed it during the trial, but I could not say as to what time.
Q. Your recollection now is that it was in the afternoon, near the latter part of the afternoon session, that is your best recollection, that you saw him on that day before the evening, while that motion was being argued?
A. I don't have a distinct recollection in regard to that. I recollect in the evening distinctly, but as to the other time I can't say distinctly.
Q. Did the Judge decide that case there in the evening?
A. He attempted to decide it, and in some respects unsatisfactorily to Mr. Lind, and Mr. Lind requested that he suspend proceedings until the following morning, and he did so.
Q. And the next morning he gave his decision without any further argument?
A. I think I was not in there when he gave his decision in the morning.
Q. You were not in there? A. No, sir.
Q. Now, at that time in the evening, what did he do, how did he act that led you to believe that he was under the influence of liquor?
A. I don't think I could describe his appearance. I recollect more that I formed the opinion that time that he was intoxicated than I do as to how he acted. It is very difficult for me, at least, to describe his actions.
Q. Well, was there anything particularly out of the way with him—any particular action of his, or language, or anything?
A. I don't recollect his language. The way he seemed inclined to rule on that motion was, to hold the motion of Mr. Lind good as to the portion which went through Redstone, and to leave the balance of the road, the two ends of the road, to stand as ordered by the county commissioners.
Q. Now, did you believe that he was drunk from that ruling?
A. Yes, sir.
Q. Will you state to the senate the condition of Judge Cox, if he was the judge that presided at that term?
A. He was the judge that presided at that term, and, in my opinion, during the trial of that case he was inoxicated.
A. Not that alone; no, sir; his general appearance.
Q. Now, that Redstone was an incorporated village, was it not?
A. Yes, I think so.
Q. And that was the point raised in the case, that the county authorities had no right to lay out a road through an incorporated village?
A. Yes, sir; it was.
Q. Would you, as an attorney, say that that ruling was wrong?
A. I never considered it, and would not like to express an opinion.
Q. If you were judge, would you not decide it in the same way?
A. I don't think I would. It would be really two roads, if a piece

was taken out of the middle, and I don't think that two roads described as one would be good; but I never looked it up.

Q. And the objection would be good only as to that portion which was within the corporate limits of the village?

A. I must be excused from passing upon that question. If I had looked it up, I would give an opinion with a great deal of pleasure.

Q. Well, as you expect to be judge after Judge Cox—

A. No, I don't, although I would like to have it.

Q. Well, are you not a candidate?

A. I don't know what you mean by a candidate. If you mean that I would like to have it in case there was a vacancy, I am, and otherwise I am not.

Q. You have had recommendations gotten up and presented by yourself or by your friends to the Governor for that position?

A. I have never got up any, and not, to my knowledge, have my friends.

Q. Will you swear that your friends have not, with your knowledge, presented recommendations to the Governor for you to be appointed judge after Judge Cox?

A. They have not to my knowledge.

Q. That is the only thing that you can recollect that evening that makes you think that Judge Cox was intoxicated at that time?

A. No, that was not the principal thing; his general appearance led me to believe that he was intoxicated.

Q. Now, what was it about his general appearance that led you to believe it?

A. I have told you several times that I cannot describe it.

Q. You cannot; you cannot give us any particulars?

A. I don't think I can; no, sir.

Q. Did he misbehave in any particular form, shape or manner on the bench?

A. I would not say that he misbehaved, but he behaved different from what he does when he is sober.

Q. How did he misbehave then?

A. I have told you several times I could not describe his appearance.

Q. You cannot describe his behavior?

A. No, sir, I cannot.

Q. You cannot? A. No, sir.

Q. Did he say anything out of the way?

A. He talked more and and talked differently than he usually talked, I cannot give his language.

Q. Did he interrupt the attorneys?

A. I think he did a few times.

Q. Did he do it any more than he always does when you argue a point before him?

A. I think he did more, yes, sir.

Q. The jury was sitting right by, were they not, during that argument. The jury were called in the evening; and sat there in their seats and listened to the arguments?

A. I think so; I am not sure about that.

Q. Now, was he in such condition that anybody could have noticed it in the court room who had known him?

A. I could not say how others might have thought of him, but I thought it was very apparent that he was intoxicated.

Q. You were not positively of it at that time; it was simply an opinion on your mind that it was so.

A. I didn't see him drink, but that was my opinion.

Q. You didn't smell his breath, or didn't know that he had been drinking?

A. No, I didn't get near enough to smell his breath.

Q. I desire you to answer my question in regard to whether or not his condition was such that evening in court, that almost any person could have noticed and observed it,—that it was observable?

A. It is impossible for me to tell what others' opinions might be, but I thought it was very apparent that he was intoxicated.

Q. Then, in your opinion, the intoxication showed itself in such a way that no person could have failed to notice it; that is what I mean, that it was clearly noticeable?

A. I think any man acquainted with him would notice it; yes, sir, I do.

Q. You say that in your opinion the Judge was drunk at that time. Now, in your opinion, was he any worse or less so than he was on the previous occasion you have testified to?

A. Which previous occasion?

Q. You have only testified to one—no, excuse me, the St. Peter business, I mean?

A. Well, I should think there was not much difference, but he was a little more intoxicated the last time, but not much different.

Q. The last time? A. Yes, sir.

Q. He was a little more intoxicated the last time in the Dingler case than he was in the Winona and St. Peter case?

A. I should think a little more.

Q. Well, now, how is it compared—well, I don't need to ask you about New Ulm, because you said you couldn't notice anything except his own remarks. Well, let me ask you that anyway, how his drunken condition at this time in the Dingler case compared with his condition at the time the Gezike case was tried?

A. I think his apparent drunkenness was greater the last time.

A. In the St. Peter case? A. Yes, sir.

Q. Under article seven? A. Yes, sir.

The PRESIDENT. Is there anything further, Mr. Dunn?

Mr. Manager DUNN. Yes, sir.

By Mr. Manager DUNN. Did you attend the district court in May 1880, of Brown county?

A. I did; yes, sir.

The PRESIDENT. Upon what charge is this?

Mr. Manager DUNN. This is upon article eight.

Q. At the time the case of McCormick vs. Kelley was tried?

A. Yes, sir; I did.

Q. That was the general term of Brown county, held in May, 1880. Who were the attorneys on that case?

A. Mr. Lind, on the part of the plaintiff; myself upon the part of the defendant.

Q. How long did the case last?

A. A part of two days.

Q. Was he intoxicated both days, or only one day?

A. He was intoxicated I think on both days, but not as much the first day as the second.

Q. Had he been drinking to your knowledge at that term in New Ulm?

A. I don't think he had been drinking a drop.

Q. Had you seen him intoxicated on the street?

A. I don't recollect that I have, and I might have, but I don't recollect about it.

Q. There was no doubt in your mind about his intoxication at the time?

A. I have no doubt; no, sir.

RE-CROSS EXAMINATION.

Q. What day of the term did that Kelly case commence?

Q. I don't know but it was the last case that was tried, to the best of my recollection.

A. How long did that term last?

A. I can't tell you; I don't recollect.

Q. When did the term commence?

A. I don't know; I don't remember.

Q. What other cases were tried there? A. I don't remember that.

Q. What case was tried immediately before the Kelly case?

A. I don't recollect.

Q. When was it in the trial of the Kelly case that you first noticed, or thought you noticed, the apparent intoxication of Judge Cox?

A. I couldn't tell you the precise time, but it was during the first day.

Q. Do you remember when the jury were empanelled in that case, whether it was in the forenoon or the afternoon?

A. My impression is, in the forenoon, but I wouldn't say for certain.

Q. Do you know anything about the case entitled, State against Raschke, tried at that term?

A. I think I recollect the case.

Q. You don't know when it was tried?

A. I don't remember whether it was tried that term. I remember I assisted in the trial of that case.

Q. In that case the Judge was perfectly sober, was he?

A. The Judge was perfectly sober all through the term with the exception of this case of McCormick against Kelly.

Q. And he commenced to get intoxicated first, as soon as he started in on that case, and kept on as long as the case lasted and then got right again?

A. I don't knew how soon he got right, but it lasted through the case.

Q. There was considerable business after that case, motions, arguments, &c.?

A. I don't recollect of anything. I don't think there was anything in which I was interested, but there might have been something else.

Q. At any of these times can you give us the appearance or any actions of the Judge which showed to your mind that he was intoxicated at all?

A. I don't recollect anything except that his charge was somewhat peculiar, but it was his general appearance that I judged from principally.

Q. Was his charge any more peculiar than his charges to the jury generally are?

A. I think it was; very much so.

Q. Was the charge in writing?

A. Well, we had a reporter; I don't know whether he had any writing of his own.

Q. Have you ever heard Judge Cox deliver a charge to the jury unless he had it in writing.

A. I think he generally had it in writing, or at least a portion of it. I think he does not reduce it entirely to writing.

Q. Don't you recollect now, whether or not he had it reduced to writing this term?

A. I don't recollect particularly about it, but it is my impression that he had, or at least a portion of it, but I don't know.

Q. Is it not a fact that Judge Cox is sometimes somewhat eccentric in his charges to the jury, when he is sober as well as when he is under the influence of liquor?

A. I think he is somewhat eccentric when he is sober, but not so much as when he is intoxicated.

Q. Is not it a fact that the main trouble in that case, so far as the charge was concerned, and that the real dispute of law in the case was the question of special warranty, and how far a party could make a special warranty against known defects?

A. That was one of the principal points of the case.

Q. Is it not a fact, Mr. Webber, that after the Judge had given his charge to the jury you sent up a request which conflicted somewhat with the charges and asked him to give it?

A. No. I gave my request before he charged at all.

Q. Wasn't it after the argument of both counsels that the charges were presented?

A. I never presented a charge after the arguments were over in my life, that I have any recollection.

Q. Did Mr. Lind present it after the arguments were over?

A. I don't think he did, but I am not positive about that.

Q. Isn't it a fact that it was the latent conflict that there was between the two requests, or between one of the requests and the charge of the Judge, which led you and Mr. Lind to believe that the Judge was intoxicated at that time?

A. That was a part of it.

Q. Now, is it not a fact that you have observed often, that a request made during the progress of a trial, may not exactly agree in language, or may be a latent disagreement with other motions of the charge, and that such fact may not be discovered by the Judge even when perfectly sober?

A. I don't recollect of any such case, but I don't know but it would be possible that it would be so.

Q. Is it not a fact that the law books are full of such instances?

A. Well, I don't recollect of any, but very likely they are.

Q. The conflict that was latent, was not discovered by any of you until after the trial?

A. Oh, it was discovered by me. I can't say as to the other. It was very contradictory. The request that he allowed Mr. Lind to give was contrary to his own instructions.

Q. At what time did you first discover it?

A. I discovered it at the time he gave it.
Q. You were the party that was beat in that case?
A. Not before Judge Cox.
Q. Well, you were beaten in the supreme court?
A. Yes; I was beat in the supreme court.
Q. A motion for a new trial was made in that case before Judge Cox?
A. Yes, but I didn't make it.
Q. Mr. Lind made one? A. Yes, sir.
Q. Did you in the brief before Judge Cox, that you presented upon the motion for a new trial—was that point touched at all by him?
A. I didn't touch upon it; it was in my favor. The ruling he gave was too far in my favor; I should not probably object to it.
Q. Now, was that point raised by Mr. Lind?
A. On the argument before Judge Cox?
Q. Yes, sir.
A. I think he spoke in his brief, in regard to its being contradictory and not clear, not enlightening the jury.
Q. Did you answer it at all? A. Yes, sir, I did.
Q. In your brief before Judge Cox?
A. I recollect that I cited an authority that if instructions were not sufficiently clear the counsel for the plaintiff should call the attention of the court to it, and request it to be made clear. I might have said something more; I don't recollect what the brief was.
Q. Was there anything said at all in Mr. Lind's briefs about inconsistency?
A. I could not say; I am not clear enough; I don't recollect; I remember more in regard to my own brief than I do Mr. Lind's.
Q. Can you identify your brief and Mr. Lind's, if I get them up here?
A. I could identify my own, and I think Mr. Lind's, too.
Mr. ARCTANDER. Do you expect to get through with this witness to-day, Mr. Dunn?
Mr. Manager DUNN. That depends a good deal upon you.
Mr. ARCTANDER. I wanted to send for the brief that I have at the hotel, and have the witness identify it.
Mr. Manager DUNN. Our examination of him will be very short and it depends upon the length of your cross-examination, when you get through with him.
Mr. ARCTANDER. I will resume the examination.
Q. Is it not a fact that in your brief to the supreme court, you stated that there was not necessarily any conflict between the first instruction of the court, given at the defendant's request, and the first instruction given at plaintiff's request?
A. I said that, and still say it.
Q. Then you don't claim that there was necessarily any conflict between them?
A. Not necessarily.
Q. Between the ones that we have been speaking about?
A. Between the ones given at Mr. Lind's request and the one given at my own request, there is not necessarily, in my judgment, any conflict.
Q. Well, what was the judgment of the supreme court upon that?
A. I don't understand that the supreme court expressed any opinion upon that.

Q. Did not express any opinion upon it?

A. They gave my request, then they gave a larger amount of instructions given by the court, and then they said at the end "these instructions were incorrect," or language similar to that.

Q. Don't they pass upon the inconsistency in that case?

A. Yes; but they don't say whether they refer to my inconsistency, or the inconsistency of the instructions given at my request, or to those given by Judge Cox, of his own motion.

Q. Wasn't there another point which made you think that Judge Cox was intoxicated in the trial of that case, his reading in his charge from Addison on contracts, to the effect that if a person sold scarlet, and warranted it to be scarlet, and it turned out to be purple, that there is no warranty; and that he afterwards stated that that was not the law of this State?

A. I recollect of his reading the extract you speak of and of making the remark, but I did not judge from that that he was intoxicated.

Q. Didn't he say at that time that that was very good law, but not in this State?

A. Yes, he said that in substance.

Q. Didn't Judge Cox, further in that case, charge the jury that if A sold B a horse and warranted it to have four legs, and it had, as a matter of fact, only three legs, that that would hold the vendor, and that struck you as very peculiar?

A. He did.

Q. And that was one of the reasons why you thought that Judge Cox was intoxicated?

A. I thought he had made it very strong.

Q. You thought he made it very strong?

A. Yes, I thought he made it very strong.

Q. Have you ever examined that question, or had you at that time?

A. I had pretty thoroughly.

Q. Now, didn't you find, sir, that that was laid down by the authorities and by a great number of the authorities, as the law in the case of a special warranty?

A. I didn't find any such case as that. I found a general statement that there may be a warranty against patent defects.

Q. Didn't he explain "patent defects" to the jury in that case?

A. I don't recollect that he did, but perhaps he did.

Q. You don't recollect the language that he used?

A. Not in explaining patent defects, I don't; very likely he did; I don't recollect all his language.

Q. Was it not as a matter of fact, that during the trial the Judge's rulings were so fair and correct that none of the parties felt enough aggravated over them to take an exception to them, or even to touch upon them in the supreme court?

A. I think they were very satisfactory to me. I think Mr. Lind made several exceptions and argued them to the supreme court.

Q. Was there a single exception to the admission of any of the evidence in that case, taken by any of the parties, which was ever argued either upon a motion for a new trial before Judge Cox, or in the supreme court?

A. I think the exceptions taken by Mr. Lind were taken in both cases; I don't know: Perhaps I took an exception, but most of his rulings were satisfactory to me on the admission of evidence.

Q. I will ask you, then, whether or not the supreme court undertook to reverse any of the rulings of Judge Cox upon the admission of testimony, in their decision?

A. I think they did not; I don't know that they passed upon it at all. They said a new trial must be granted on account of the errors in the instructions, and did not pass on the other questions.

Q. Did not Judge Cox really try that case fairly and squarely, and seem to do it just as ably as at any time when you saw him try cases in court?

A. So far as the admission of evidence is concerned it was mostly very satisfactory to me.

Q. Didn't the Judge, every time during that trial that the jury separated caution them in a very earnest manner, as is usually his way, not to converse with anybody or talk with anybody upon the subject matter of the case, or to allow anybody to talk with them, or to talk with each other about it?

A. I don't recollect anything about it, but I presume he did; that was his custom.

Q. Didn't he give the jury in that case his usual charge, as he always does, in regard to their being the the exclusive judges of the facts in the case, and that the court had nothing to do with it?

A. I think he did; I don't recollect particularly about it.

Q. Now, there was nothing then, throughout that trial, except the fact that he gave a request of yours that was somewhat, as you thought —it was your request, wasn't it?

A. He gave a request of mine and of Mr. Lind's too.

Q. But which one was it that you claimed was a little inconsistent with his charge?

A. I claimed that the one that he gave at Mr. Lind's request was inconsistent with his general charge, plainly inconsistent.

Q. Now, with the exception of that, with the exception of his giving that request of Mr. Lind's, which you claim was somewhat inconsistent with his own charge,—with that exception, nothing improper, or what you would consider wrong, was done in the case, at all by the Judge,—nothing but what he would have done under other circumstances?

A. Why, his language was peculiar as far as the statement of law is concerned, but with that exception, I don't recollect anything particularly inconsistent; he used very peculiar language.

Q. That about this purple and scarlet; is that what you have reference to?

A. No, not that; I couldn't repeat it exactly. "If a man buys a threshing machine, he wants one to thresh grain, not boys;" and some other expressions of that kind.

Q. Wasn't that given upon the question of implied warranty? Wasn't that given as an illustration upon the question of implied warranty, that when a man bought a machine it should be fit for the particular purpose for which it was bought, and that as an illustration of that, he said, "If a man buys a threshing machine, he buys it to thresh grain, and it must do that, and not a machine to thresh boys?"

A. I think it was.

Q. Was there anything peculiar in that language more than what you have often heard Judge Cox use upon the bench towards the jury, in his peculiar or eccentric way, when you knew he was perfectly sober?

A. I think I never heard anything so peculiar as that.
Q. Have you never heard anything similar to that?
Mr. Manager DUNN. Give the witness a chance to answer.
Mr. ARCTANDER. He shall have all the opportunity he desires.
Mr. Manager DUNN. He doesn't have an opportunity. You do all the talking.
The WITNESS. I never heard him use any such language as that.
Q. You often heard him use peculiar language upon the bench?
A. Oh, he has peculiarities; of course he has.
Q. And make jocose remarks even to the jury?
A. Yes, sir.
Q. Was Judge Cox's condition at that time so peculiar and marked that he could not have failed to attract general attention, that it was noticeable to everybody that was an observer, in the court room?
A. It appeared so to me, I couldn't tell how it appeared to other people.
Q. But it seemed to you that it was of such a nature that it would be observable and noticeable to any person in the court room?
A. It was certainly very noticeable to me.
Q. Well, you don't answer my question?
A. Well, I don't know whether other people noticed it or not.
Q. Well, you know whether it appeared to you to show that he was intoxicated—no, that is not the question. But were his actions, and language and conduct and appearance at that time, of such a character, and of such a nature, as to be noticeable to every body that was in the court room and looked at him, and observed things as they were going on?
A. Well, in my opinion, it was noticeable to anybody who knew Judge Cox.
Q. Very well; that answers the question.
A. Well, you have had it two or three times.
Q. Plainly apparent?
A. Yes, I think so.
Q. Isn't it a fact that the idea first started in your head about Judge Cox being drunk when you were beaten in the supreme court, and when you had to use as an excuse to your client as to why you were beaten, that you could not help it, that it was Judge Cox's fault, because he was drunk?
A. I told my client that night, and I talked about it repeatedly before it went to the Supreme Court, I told my client that night—of course he saw the Judge was drunk—that I did not consider it a safe case, but when the case was served upon us, if we considered it absolutely hopeless, we would consent to a new trial; but I thought there was a chance to win in the supreme court, and we would take our chances on it.
Q. Didn't your client in that case tell you, when notice of motion for a new trial was given, that if you did not consider the case perfectly safe, so that they could not get a new trial, to allow them to have a new trial without going to the Supreme Court, and putting them to the expense of going up there?
A. No, sir; he did not.
Q. You state that?
A. I do, I went up to Sleepy Eye and went up to Bird Island on purpose to see him, and told him that the case was served on me, that

there are points in it that I was afraid of, but that he would have to take some chances and if he consented to a new trial he might be be but I thought he had an even chance at least to win, and he told me do as I thought best.

Q. Will you deny that you said at the time that it was Judge Co fault that you had lost the case?

A. I said because Judge Cox was drunk. I say it now.

Q. That isn't the question. Did you state that it was Judge Co fault that you lost the case?

A. I think I said something to that effect.

Q. Was J. J. Kelley your client?

A. Yes, sir; he was.

Mr. Manager DUNN. I call the attention of the witness now to spe ification four under article seventeen.

Mr. ARCTANDER. I would state, Mr. President, that we would f very much obliged to the managers if they would not press that spe fication at this time. We have, in our answer, interposed a speci objection to these specifications, and before any evidence is introduc under them we desire to argue that objection. I might say, in the fi instance, that we are not prepared to argue it now. It is a matter i volving probably some very nice questions of law and of constitution rights, and we would prefer very much if it were convenient to t Board of Managers to let the matters under the specifications rest un later in the trial. I think there is no doubt that we can present t points that we have raised in our answer in regard to the specificatio to the satisfaction of the Senate, that it will not be necessary for the to go in ten new and independent charges; that either the evidence o the charges will not amount to anything, or it will be shown to be stron enough on the charges that they have as to make it unnecessary to ta up the time of the Senate with doubtful matters; and I desire to ask a matter of courtesy upon the part of the managers, to be allowed tim to argue and present these points in a proper way before the Senate, s that we can clearly present the points involved and do justice to ou client in the matter. I do not suppose any interest will suffer by th delay.

Mr. Manager DUNN. So far as the management is concerned, w simply have a desire to put in our evidence here at the earliest practi cable moment, so to save the time of the Senate and expense to th State. This witness is an important witness upon two or more of th specifications. He is here now upon the stand ready to testify. Aft we shall have finished with this witness we shall discharge him. If h is not now permitted to testify he will have to be subpœnaed over again and come down here on some other occasion. I did not learn until thi moment that there was any legal argument to be made upon these spec fications. I had supposed that the Senate had ruled upon that, an that the ruling had been carried into effect by the Senate in introducin the evidence. I would suggest that the testimony be taken now, and if upon further argument, it should be found that it ought not to hav been received, it can, by a vote of the Senate, be struck out. But I ca not see any reason now why the testimony should not be taken. Th testimony will apply also to article 18, the habitual drunkenness article Every one of these particular acts of intoxication in the opinion of the managers, applies to article 18.

Mr. ARCTANDER. I beg leave to state that I understand that the in

indgence of the Senate in allowing the managers to skirmish around among the different articles is simply a matter of courtesy; that such was the understanding, and I apprehend the Senate is running this thing. There has been no intimation on the part of the managers as to how this evidence was to be presented. They have not deigned to ask us what we would be satisfied with. They seem to have supposed that they could bring it up in any way, shape or manner that they saw fit. I apprehend that in managing the prosecution the Senate is the proper party to say how it shall be done. I understand that the Senate sanctioned the desire of the managers to take up the articles *seriatim*, and go through with each article before they took up another one, so as to get through with the whole thing; and that it was only through the courtesy of the Senate that they were permitted to depart from that which was almost a rule; and that every time they have done so heretofore, the permission of the Senate has been asked to leave the particular article upon which they were introducing evidence, before finishing their testimony upon that article, and enter upon an examination as to another article for the convenience of witness. I do not object to it on my part, although it is inconvenient for us to have the testimony mixed up in this way, one article now, and five minutes after another article, so that we do not afterwards know where to find the testimony when we want it, and I think it will be inconvenient to the Senate when they come to consider the testimony; and we have not interposed any objection to it, because we desire to facilitate the matter so far as possible on the part of the managers.

But to these specifications before being taken up, there is a preliminary plea, not simply that they are not sufficient, or do not charge any offense, as to the other articles generally, but there is a specific objection to these specifications, and the issue is fairly raised as to whether or not the specifications are good in law, as to whether the Senate can lawfully proceed to try them. One of the objections raised is that they are no specifications at all, and that they don't come within the term specification as understood by the Senate when it ordered them to be furnished. Another point is that they are to be treated as new and independent articles of impeachment, which they certainly are, and that as such we must be served at least twenty days before our trial with specifications. I do not desire to go into the argument of it now, for I am not prepared to do it, and I don't think any of the other counsel are. The court knows, and the President knows, that we have been engaged here—at least on my part—since the trial began, and we have thought that if this trial was to be deferred over the holidays, this matter might be looked up so as to enable us to present it in a proper shape, satisfactory to ourselves and to the Senate. I don't see the necessity of doing so now. It would be, at most, only a matter of inconvenience to Mr. Webber to be brought back later in the trial, and it certainly would be only a small matter of inconvenience to him. The financial side of the question is scarcely worthy of consideration. We desire, after a full and fair hearing, to have this question decided; probably the Senate will feel it is more competent to decide the question after having heard the evidence upon the other articles that were really found by the House of Representatives, and may probably decide that it is unnecessary to go into the matters involved in the specifications and take up the time of the Senate for one, two or three weeks, in examining into these specifications. It may be that some of the Senators present did not notice the particu-

lar objections that were made to the specification, and I beg to call a tention at this time to the specific objections made to the specificatio

The answer distinctly refers to the seventeenth and twentieth artic as distinguished from the others.

I read as follows:

1. For answer to the seventeenth article, respondent protests that the same idefinite and uncertain and does not inform him of the nature and cause of a accusation against him.

2. For a second and further answer to the pretended specifications to said a ticle, served upon respondent on the 6th day of January, A. D. 1882, responde objects and protests against the same and any consideration of the same, or any the same for the following reasons:

1st. Because the same are no specifications whatsoever, and are incomplete a indefinite, and do not inform the respondent of any accusations against him wi sufficient definiteness to enable him to prepare his defense for the same.

2d. Because the allowance and consideration of the same are in violation the constitutional rights of the respondent, in this:

That the same contain articles of impeachment which the House of Represent tives have never considered or adopted.

That the constitution confers upon the House the sole power of impeachme and requires that power to be exercised by a vote of the majority of the membe elected to that body.

That the power of impeachment cannot be delegated to a Board of Managers.

That this respondent cannot be tried on any articles unless they have been serv upon him twenty days previously to the trial, and that the said pretended speci cations were only served on respondent four days before said trial.

That the pretended specifications numbered 1, 2, 3, 4, 5, 6 and 8 were never pr sented to the House of Representatives or considered by it and that the same a based on no evidence whatsoever, adduced either before the said House or befo the Board of Managers, and that no evidence whatever has ever been adduced any of said pretended specifications.

I certainly deprecate the idea of receiving this testimony now, reser ing the right afterwards to strike it out, or to its reception in any oth way. We desire to come clearly upon the record, and make our arg ments upon our objections whenever we have an opportunity, and hav a ruling upon it then. We don't wish to have testimony in, which wi afterwards be struck out.

The PRESIDENT. The question that is presented, as the chair unde stands it is as the order of testimony, whether or not the managers are be permitted to introduce testimony with reference to the 17th artic The chair will say here that it being a matter resting entirely in the di cretion of the court, and would be so held to be by a court, the cha does not feel disposed to decide the question, and when it comes to decided, will submit it to the Senate. It is a matter entirely of disc tion. The court can permit the testimony to come in in any mann that it sees fit. I make this statement, so that the Senate will, perha give a little closer attention to what argument may be introduced wi reference to the proposition.

Mr. Manager DUNN here arose to address the Senate.

Mr. ARCTANDER. I object, Mr. President, to the further hearing of t managers. I suppose there ought to be an end somewhere, and I su pose that the rules of court apply here. I understand we have the cl ing. We made the objection, and certainly have the closing argument

The PRESIDENT *pro tem.* I think it proper to hear the managers.

Mr. Manager DUNN. It is the first time, I believe, in my practice, an attorney, that I have been taken to task by the counsel for the defen ant for not consulting him as to the manner of my prosecution. I wa

to serve notice upon the counsel for the defense, that we propose to prosecute this case without consulting them in any manner whatsoever, except so far as mere courtesies may require. So far as our endeavor to put in evidence which we think we ought to put in, we propose to act without consulting the attorneys for the respondent. Now, it would be a strange proceeding, in my judgment, to stop in the middle of the case for the sake of interjecting a sort of second or double-headed demurrer to the articles of impeachment. We have had that day in court. We have argued that demurrer. Article 17 has been before this senate. The questions that have been raised are *res adjudicata* so far as this body is concerned, in my judgment. The management were ordered to file specifications under those articles. Those specifications have been filed. We come now to introduce our proof in support of those specifications, and we are met by an objection that it is not in order.

Now, Mr. President and Senators, for one, I claim that there is and can be no rule applied to the management of the House of Representatives, as to the order in which they shall put in their proof in support of these articles of impeachment. It is true that there are one, two, three, four,—a number of articles of impeachment, but the managers, as counsel for the State, must exercise their own judgment and discretion as to the order of their proof. It can work no harm to any individual. It consumes no more time. It does not interfere with the rights of any person, if we introduce evidence under article 20 before we do under article one. It can make no difference in what order we put in this proof. We did state at the outset that we were desirous of taking up the articles *seriatim*, and introducing our proof accordingly, but we find that is a physical impossibility, by reason of the convenience of witnesses. We have witnesses that have been subpœnaed that are not here; they cannot be here. We have witnesses that may not be here until a late day in the session of this court, and perhaps some witnesses that we expected to produce here may never reach here. Therefore the Senate will perceive in a moment, that it is impossible for us to take up the articles of impeachment and introduce our evidence in the direct order in which the articles are enumerated; it is an impossible thing. If we could have our witnesses here arrayed around this room, we could take up one article after another and finish them; but that we cannot do in the nature of things, and so we are compelled to put in our proof here, just according to the material that we have on hand, for the purpose of occupying the time of the Senate and not wasting it. The counsel states here that it has amounted almost to a silent rule. I have not so regarded it, and I think the management have not so regarded it, and I hardly think the Senate have so regarded it. It is true that we have called the attention of the Senate to the fact that we had witnesses upon articles not in regular numerical order, but we did say so in order that the Senators might make memoranda intelligently, and apply the evidence to the articles upon which it was produced. That was to enable the managers to introduce their evidence.

Mr. ALLIS. Before the manager sits down I would like to call the attention of the court and managers to the real point; I don't think it is quite stated here. We object to the introduction of *any* testimony under the specification in article 17. That is our objection.

Mr. Manager DUNN. We are ready to argue that objection now.

Mr. ALLIS. And we desire to be heard on it; but we are not prepared to argue it this afternoon, and there was no reason why we should expect

that it would be reached, being one of the last articles. It is an impo tant question, and we desire to discuss it and to be heard, and not drea ing to-day, that when this morning, they were on the 3rd article that were going to be brought to the 17th article before the adjournment, are not, of course, prepared to argue the question as we ought to argue in justice to the Senate, the management and ourselves. That is t real question, whether under such circumstances, the party should permitted to skip. It is a matter of discretion undoubtedly as to t order of testimony,—under the control of this court, however. It i reasonable discretion, that the managers are to exercise in accordan with the views of this court, and the question is whether it is reasonal to allow the managers to introduce testimony under the specification article seventeen, when we wish to object to the introduction of the tes mony, when it is perfectly apparent from the answer we have intr duced that we propose to object to it, and when we do not happen to prepared here, for we certainly could not be expected to have anticip ted that it was to be reached this afternoon. That is the question.

Mr. Manager DUNN. In answer simply to the anticipation of couns I would say that they have had the evidence that was taken before t House or Representatives and the evidence of Mr. Webber placed befo them, and it refers to these specifications, as well as all the evidence th we have introduced with one or two exceptions.

Mr. ARCTANDER. Let me ask the Manager if he will state upon h word that the evidence furnished us by the House of Representativ has reference to any single specification except the one given us now?

Mr. Manager DUNN. The one given you now?

Mr. ARCTANDER. Is that the general term of Brown county, 1881?

Mr. Manager DUNN. That is the one I propose to examine the w ness on now, so they are not surprised at all. They have had the e dence before them. It refers to the general term of Brown county, 18 now, so far as the general objection goes, that when we offer proof up that they wish to make an objection and argue it, I can conceive, as attorney that it is perfectly proper. Then a halt must be called a the objection argued.

Mr. ALLIS. That we are not prepared to do this afternoon.

Mr. Manager DUNN. But when they claim that we cannot introdu the evidence because it is out of order, I claim it is not a good objectio and ought not to obtain. The other objection that they want to argue as the admisability of the evidence is perfectly proper; *that* we are willi to argue now and here and go along with the case.

Mr Manager HICKS. Mr. President, I want to call the attention the counsel for the respondent to the fact that several of the specifi tions of article seventeen were testified to, all but one, I think, before committee of the House of Representatives.

Mr. ARCTANDER. There is not in the testimony furnished to us by yo

Senator HINDS. This appears to be a mere matter of convenience the part of the managers to examine and cross-examine the witness up specifications under article 17. It appears, also, that is a mere matter convenience on the part of respondent's counsel to postpone the exam nation until they can have an opportunity to make an argument upon o jections against any evidence under these specifications. It seems me we can accommodate both parties. Let the witness be examined regard to this particular specification, and hold the examination un counsel can make their objections and present their argument upon

If their arguments or objections are sustained, the evidence will not be considered; if they are overruled, the evidence is already at hand. I therefore move that the evidence of this witness in this regard be taken and held in reservation until counsel can have an opportunity to make their objections and to be heard upon the argument.

The PRESIDENT *pro tem.* Do I hear a second to the motion? The motion is, as the chair understands it, that the testimony of this witness may be taken with reference to any or all the specifications under article seventeen, such testimony being held in abeyance until the final question as to its admissibility has been disposed of. Are you ready for the question? Those who are of the opinion that the motion should prevail will say aye; the contrary minded no.

The ayes appear to have it.

Senator POWERS. Mr. President, if you will allow me a moment I would like to ask what the particular objection is now to taking evidence on article seventeen?

The PRESIDENT *pro tem.* The chair can only reiterate the argument made. The objection seems to be that in the answer of the respondent he has raised a legal question as to the sufficiency of the specifications under article seventeen, and consequently, as I suppose, that the specifications are not in accordance with the rule laid down by the Senate when they passed upon the sufficiency of that particular article. As the Senator will recollect, that article was demurred to. The demurrer was overruled; I will read it, so that the Senator will understand it.

Senator POWERS. I have it now before me.

The President *pro tem.*, read as follows:

The demurrer was overruled, but the Board of Managers was requested to furnish the counsel * * with specifications as to articles XVII and XX.

Senator POWERS. And now the objection is not to article XVII, providing the specifications are made sufficiently clear.

The PRESIDENT *pro tem.* I understood that to be the nature of the answer.

Senator POWERS. Because I observe that that was discussed very clearly in executive session, and the demurrer was voted down, but requests were made that particular cases should be specified. Now, if that has been done, then that is a question that has been settled. If they have not been made sufficiently specific—is that the point?

Mr. ARCTANDER. That is the point, that they are no specifications at all.

Senator POWERS. That they have handed in specifications?

Mr. ARCTANDER. That the contents of the paper handed in and served are not specifications within the meaning of the Senate at the time the demurrer was overruled.

Mr. ALLIS. Simply new articles.

Senator POWERS. If there are not many more witnesses to be sworn I don't know that we would have any more time to have twenty or thirty witnesses waiting for him than to keep this witness waiting for other witnesses. But if the board of managers have a number of witnesses on articles seventeen and nineteen it would better, perhaps.

Mr. Manager DUNN. There are a large number of witnesses.

Senator HINDS. Are they in court?

Mr. Manager DUNN. Yes, sir.

Mr. ARCTANDER. On these specifications?

Mr. Manager DUNN. Yes, sir.

The PRESIDENT *pro tem.* This is all out of order, but I did not propose to stop it without objection.

Senator HINDS. So far as I am concerned it is not too late. I withdraw my motion.

PRESIDENT *pro tem.* I suppose it is now too late.

Senator HINDS. At the time I made the motion I supposed that this was the only witness in attendance to testify in regard to that specification.

Mr. Manager DUNN. There are other witnesses, but they are witnesses to other charges and these specifications also, as Mr. Webber is.

The PRESIDENT *pro tem.* The chair is undecided as to how the motion had been disposed of, and therefore will put it again.

The motion having been again put by the President, it was lost.

Mr. Manager DUNN. Mr. President, I would inquire how this leaves us? What do we do now?

The PRESIDENT *pro tem.* It does nothing.

Mr. Manager DUNN. Then we will go on with the evidence.

The PRESIDENT *pro tem.* It simply disposes of one mode of procedure. The question is before the senate, however, and properly raised by the respondent's counsel in the form of an objection to the taking of testimony at this time under the so-called specifications of article 17. That question it will be proper for the senate to dispose of. The chair would hardly feel at liberty to make a ruling, as he already stated, because it is simply, as the chair understands it at this time, a matter of discretion with reference to the order of testimony. The chair would hardly care to decide for the senate, unless the senate wishes it; then the chair will have no hesitation in deciding it.

Senator CROOKS. I understand that the motion made by the counsel for the respondent is to this effect;—if I am wrong I want to be corrected. We have now argued the admissibility of evidence under this so-called specification. If it is held they can bring them in, that settles it. It must be settled some time, and I can see no objection to argument now under the specifications.

The PRESIDENT *pro tem.* The point is this, they object to the introduction of evidence at this time, out of order, upon that article, upon the ground that it was not anticipated by them that it would be reached at this time, and that they are not prepared with their arguments to sustain their objections; and it is in the nature of a request to the Senate, that further time be granted them, and that, in the meantime, no testimony be taken on these specifications.

Senator CROOKS. And to go on with something else?

THE PRESIDENT *pro tem.* That is, as I understand it.

Senator POWERS. How soon can they be prepared to argue the question?

Mr. ARCTANDER. When the holidays are over, on my part, at least.

Senator POWERS. I would like to inquire what the Senator means by the "holidays?"

Mr. ARCTANDER. Sunday, I mean. I want to get Sunday to work on it.

Senator POWERS. Will you be prepared to argue this case on Monday?

Mr. ARCTANDER. I think so.

Senator POWERS. Because I can see that it is going to keep a great many witnesses here at heavy expense, if we are delayed until we reach, in the regular order, article seventeen, and I should be disposed to give

the counsel for the respondent every opportunity necessary in examining it.

Mr. ARCTANDER. I think we can be ready by that time, and if not we will ask a day's more indulgence, and perhaps the Senate will grant it.

Senator POWERS. I move then, that the evidence on article seventeen be delayed until after Monday, so as to give the counsel an opportunity to argue it.

The PRESIDENT *pro tem.* Until after Monday, or until Monday?

Senator POWERS. Until after Monday, so that they can argue it Thursday. They wish to take the Lord's day to prepare for it.

Mr. Manager HICKS. Allow me to say it makes no difference whether you apply the testimony to article seventeen or article eighteen, we shall ask to put it in, and if they do not want it under article seventeen then we shall ask to put it in under article eighteen, as evidence of habitual drunkenness on the part of the respondent.

The question being upon the adoption of the motion of the Senator from Fillmore, the motion was put by the President *pro tem.* and was adopted.

Mr. Manager DUNN. What is the motion?

The PRESIDENT *pro tem.* The motion is that testimony be excluded upon articles 17 and 19 until after Monday.

Mr. Manager DUNN. Then we will direct the attention of the witness to article 18, habitual drunkenness.

By Mr. Manager DUNN.

Q. I would ask you, Mr. Webber, if, at any other time than those you have spoken of, you have seen the Judge of the Ninth Judicial District intoxicated?

A. Do you mean in court?

Q. No; in or out of court. And if so, give times and places so far as you can?

Mr. ARCTANDER. Mr. President, I object to this question under the statement of the managers, that if they could not introduce this under article 17 they would do it under article 18. I object to it for the reason that if this question was intended to show the charge laid in article 17, specification 4 or 5, or whichever one it was that the counsel was asking upon, or any of these specifications; I object to it, for the reason that you can not charge the offense first under article 17 and then under article 18. You cannot charge it in both of them; it must be limited to one of them. If that is the desire and plan of the managers, as would seem to be indicated by the remarks of Col. Hicks—at least it was a suggestion on his part that that was so,—I do not think, after the senate has ruled the way it has, that to do what I understand is proposed to be done would be to act as lawyers should; it would be pettifogging.

Mr. Manager DUNN. I don't know exactly how we are going to get this case before the Senate, if we are to be trammelled by the suggestions of the counsel for the respondent. We charge in article eighteen that the respondent in this case is and has been guilty of habitual drunkenness. Now, we propose to prove by this witness certain facts which will establish that charge to the satisfaction of this Senate, and we are told that it is objectionable, because it may establish some other fact which we have also alleged here. It is alleged in the specification to article seventeen.

Mr. ARCTANDER. Probably you didn't intend to prove any of the specifications under article seventeen.

Mr. Manager DUNN. If, perchance, it should so happen that the evidence directed to article eighteen shall, in addition to substantiating article eighteen, possibly substantiate article seventeen, is that objectionable?

The PRESIDENT *pro tem.* Mr. Dunn, I think unless the Senate overrules me that I will permit the testimony, for this reason,—pardon me for stopping you.

Mr. Manager DUNN. Very well, sir; I am willing to be stopped.

The PRESIDENT *pro tem.* The Senate has determined that article 18 is well charged; that it charges a public offense and so far as that is concerned, it is *res adjudicata.* That being the case, clearly, evidence would be adducible under that, without any reference to what may have been charged in anything else. Whatever the objections might be to specifications in article seventeen, I think the Senate has already held that article eighteen charges an impeachable offense and therefore, if this testimony is directed to that article, I shall admit it, unless the Senate sees fit to overrule me.

Senator POWERS. I would like to ask the counsel for the respondent, Mr. President, if they object to article 18; if they regard it as not sufficiently specific; if the objection is similar to that raised to article 17?

Mr. ARCTANDER. We raise the same one, but the other objection we speak of now is more particularly to article 17.

Senator POWERS. To me they seem substantially the same thing; "acting as Judge," etc.; "he was guilty of becoming intoxicated," etc.; and the other accuses him of particular intoxication.

The PRESIDENT, *pro tem.* There seems to be no question before the Senate, Senator.

Senator POWERS. I wish to ask the question with a view of moving a resolution. I wish to ask the counsel for the respondent, because this question may come up before the Senate if they object to receiving testimony as we pass along with reference to article 18?

Mr. ALLIS. Yes, sir; we do.

Senator POWERS. Then I move that they be requested to argue that also, if they have anything to show with reference to it on Monday, in order that we get that out of the way.

The PRESIDENT, *pro tem.* The motion is out of order. The chair has already decided and there is only one way of disposing of it. If you desire to overrule the decision of the chair, the chair has no objection. But the chair has already decided that the question having been once decided by the Senate it is no longer debatable.

Senator POWERS. I withdraw my motion.

Mr. ALLIS. Allow me a moment. I don't think that quite disposed of the question.

The PRESIDENT, *pro tem.* Perhaps I do not understand the point.

Mr. ALLIS. What was decided by the action of the Senate sometime ago was, that there was an impeachable offence charged then. Now, we make the same objection to the introduction of testimony that was made under article seventeen.

The PRESIDENT, *pro tem.* Upon what ground?

Mr. ALLIS. Upon the ground that there is no specification charged.

The PRESIDENT, *pro tem.* Is article 18 one of those upon which the specifications were called for?

Mr. Manager DUNN. No, sir.

Mr. ALLIS. No, sir, but we raised the same objection to the hearing of the testimony.

The PRESIDENT *pro tem.* The chair would hold that that objection has been disposed of by the Senate already. I think that when the Senate held that article eighteen charged an impeachable offense it closed the argument with reference to its sufficiency, and unless the Senate otherwise orders, I will admit the testimony.

Mr. Manager DUNN. Shall I proceed, Mr. President, with the witness?

The PRESIDENT *pro tem.* You may, sir.

By Mr. Manager DUNN.

Q. Mr. Webber, state whether at any times other than those you have enumerated, you have known Judge Cox to be intoxicated during the time that he has held the position of Judge of the ninth judicial district, and if so, when and where; give the circumstances and time and place, so far as you can?

A. I have, at the last May term of court in Brown county; I don't recollect the day of the month.

Q. Was he intoxicated when in court? A. He was.

Q. While cases were being tried? A. He was.

Q. In the public view of people in the court?

A. Yes, sir, he was.

Q. On more than one day?

A. Throughout the entire term; I think a part of three days. The term was very short.

Q. At any other time?

A. I saw him intoxicated often, but I cannot specify the times.

Q. Within the last three years?

A. Yes, sir, within the last three years.

Q. Do you frequently see him in the town of New Ulm,—in the town you live in? A. Yes, sir.

Q. Do you frequently or infrequently see him intoxicatad when he is there? A. Yes, sir.

Q. Which is the rule, and which is the exception, Mr. Webber, if there is any difference?

A. I don't understand the the question.

Q. As to his intoxication or sobriety?

A. Whether he is intoxicated oftener than he is sober or the reverse.

Q. Yes, sir.

A. Well, it is something that would be scarcely more than a guess, but my opinion is that I have seen him sober oftener than I have seen him drunk during the last three years.

Q. Is it his habit so far as you can observe, when he comes to New Ulm to become intoxicated?

Mr. ARCTANDER. That is objected to as improper.

The PRESIDENT, *pro tem.* I did not hear the question.

Mr. ARCTANDER. The question is, was it his habit when he came to New Ulm to get intoxicated? That is incompetent.

Mr. Manager DUNN. Was it common, or an occasional escapade.

Mr. ARCTANDER. The witness should show particular circumstances and facts.

The PRESIDENT, *pro tem.* Please state that question again.

Mr. Manager DUNN. Is it his habit when he comes to New Ulm, the

home of the witness, to become intoxicated, or is it simply an occasional intoxication?

Mr. ALLIS It seems to me, Mr. President, that he should state the facts.

The PRESIDENT, *pro tem.* If it is objected to generally I suppose the objection is grounded without inference to the point made by the counsel. There is no evidence whatever, at least the witness has not at present stated that he knows of all the occasions when the respondent goes to New Ulm; that would be pre-supposed by your interrogatory.

Mr. Manager DUNN. With all deference I will bow to the decison of the chair, and will change the form of the interrogatory.

To the witness: So far as you have observed them?

Mr. ARCTANDER. It is objected to, then, as incompetent, immaterial and irrelevant. The witness has already stated, Mr. President, the fact that he has very often seen him intoxicated during the last three years at New Ulm, and he was asked whether he had seen him oftener intoxicated than sober, and he stated that it was only a matter of guess-work with him, and that he believes that he has seen him sober oftener than he has seen him intoxicated. Now, to ask him whether it is his habit so far as he observed it, is, it seems to me, calling for a conclusion of law from the witness after he has stated facts.

The PRESIDENT *pro tem.* It is hardly in the usual form, Mr. Arctander. The objection on the part of the court is that it is asking over again what, practically, has been already answered.

Mr. ARCTANDER. I wish to call the attention of the court to an authority on that point.

The PRESIDENT *pro tem.* I should hardly think his habit was a question of law, Mr. Arctander.

Mr. ARCTANDER. I should think that the question whether a man was an habitual drunkard is a question of law.

The PRESIDENT *pro tem.* Certainly.

Mr. ARCTANDER. And the question of his habits as to being habitually drunk, and as to being an habitual drunkard, come so close together that it is hard to distinguish.

Mr. ALLIS. It is asking for the inference of the witness.

The PRESIDENT *pro tem.* I am inclined to rule out the question upon the ground that it has already been answered.

Mr. Manager DUNN. Upon that ground I bow to the decision.

The PRESIDENT *pro tem.* I am not prepared to rule on the other objection.

By Mr. Manager DUNN.

Q. Well, did you observe any peculiar incidents in the last May term in New Ulm that led you to think that he was intoxicated?

A. In his conduct in court?

Q. Yes, sir; what was it?

A. Well, in the trial of the case of Howard against Manderfeldt the court stopped me and asked me whether I had any evidence to disprove the evidence that the witness was giving; if I had not, he thought he could save the county some expense by stopping the witness right there, or language to that effect.

Q. Any other times? A. At the time when the jury came in.

The PRESIDENT *pro tem.* What court was this in?

The WITNESS. In the district court of Brown county, in May.

Mr. ARCTANDER. The May Term of 1881?

The WITNESS. It was in the May term 1881.

Mr. Manager DUNN. Are there any other instances?

A. The jury went out in the evening, and when the jury came in, it was, perhaps, 9 o'clock; quite late in the evening. I don't recollect the precise time, and the Judge was extremely drunk at that time.

Mr. ARCTANDER. At 9 o'clock in the evening?

A. I don't recollect exactly about the time, but it was in the evening.

By Mr. Manager DUNN.

Q. You say he was extremely drunk, in what manner did he exhibit it?

A. Why he talked very indistinctly. He seemed to have lost control of his under jaw; he sat with his mouth partially open; his face looked stolid, and there was no expression in his eyes, and he talked, I thought, rather foolishly.

Q. Was there not a case of Wildt versus Wildt on trial at that term of court?

A. There was.

Q. How did that come up?

A. That was a divorce suit in which I was the attorney for the plaintiff, and I had an order returnable at that time for the defendant to show cause why he should not be punished for contempt, for failure to pay over suit money or money to support the plaintiff during the pendency of the action. He took a great deal of time in passing upon that motion, and I thought he was very drunk.

Q. What did he do that made you think he was drunk?

A. In the first place he fined the defendant one hundred dollars, I think. I then suggested the defendant make some explanation, or at least I knew the defendant did not understand the proceedings,—he was a German.

Q. What did he fine him for?

A. For contempt for not paying over the suit money. The return showed that the order had been served upon him, and I made an affidavit, or his wife made an affidavit, that it had not been paid, and he first fined him $100, and I then suggested that the defendant did not understand the proceedings in court and that he give him further time to comply with the order, and that it would be entirely satisfactory to the plaintiff. The Judge said he didn't make the order for the benefit of plaintiff, and that he proposed to have the court respected, and my recollection is that he raised the amount, that he raised the amount first to two hundred and fifty dollars, then to five hundred dollars, then to one thousand dollars, and then to twelve hundred and fifty dollars, and then he finally revoked the whole, and remitted the whole.

Q. Did you intercede for the other party?

A. What is that question?

Q. Did you intercede for the other party?

A. I did when he first fined him one hundred dollars. I made the suggestion at the time that he did not understand it, and I thought he would pay it if he gave him further time.

Q. What did the Judge say to this defendant?

A. Why, he talked to him,—there was a good deal of confusion in the court; he couldn't understand any English, and talked through an interpreter—and he explained to him about his neglect in obeying the order, and then he kept on increasing the amount; there was a great deal of talk and I could not attempt to repeat it all.

Q. Did he suggest to him any way to get out of it?

A. Yes; he told him that he had got himself into a bad scrape, or language to that effect, and he would have to send for John Lind to get him out, and some one did go down after Mr. Lind, and Mr. Lind was not there, but Mr. Randall, Mr. Lind's partner came up and made a sort of affidavit,—I think he presented it to the court,—an affidavit showing that the plaintiff and defendant had made some kind of settlement in regard to their property. The Judge then revoked and made another order that he have, I think, thirty days,—some additional time to pay this amount, and in case of a default, he would be adjudged in contempt, and have to pay $500 fine, and in that manner it was left.

Q. Have you ever seen the Judge intoxicated at other places in New Ulm other than those you have enumerated?

A. I think I did once, but it was none of those stated in the specification.

Q. There is none at any other time than those you have spoken of?

A. Outside of New Ulm, do you say?

Q. Yes, outside of New Ulm.

A. I think I recollect of one outside of New Ulm; there may have been others, but I recollect of only one now.

Q. Where was that?

A. It was at Redwood Falls.

Q. How long ago?

A. I think in January, 1880, but I am not quite certain about that.

Mr. Manager HICKS. You are not certain as to the date?

A. No, sir; I am not certain as to the date.

Senator POWERS. Where was that?

A. At Redwood Falls.

Q. You recollect the trial of the case of Caster versus Caster in New Ulm?

A. I do.

Q. When was that?

A. I don't know when it was, it was not exactly a trial either; that was an order to show cause. There was a trial, but I didn't have anything to do with the trial, and he was not intoxicated at the time of the trial, but there was an order to show cause why he should not be adjudged guilty of contempt in failing to pay suit money.

Q. What were the circumstances showing his intoxication there?

A. I was not the attorney in that case, but Mr. Pierce and Mr. Newhart were; but they got the order to show cause why he should not be judged guilty of contempt, and Mr. Newhart asked me to go up and see to it; and I drew up an answer for the defendant, stating that he had no property, and I went up with him to the court house. The order was made returnable at the court house, and it was a very hot day; and I think when we got there I made the suggestion that we would stop at the steps. It was extremely hot in the court house, and the judge—I have forgotten whether I got there first or he—but he was very drunk.

Q. What took place there?

A. Well, when we first met there; when we first got there, he said,—the defendant's name was John B. Coster,—"John, you ought to treat," or something to that effect, and Coster said, "I can't, Judge, I haven't got any money." The Judge then took out of his pocket fifty cents and gave it to Coster and told him to go down and get some beer; and he went down and got it and brought it up. I drank some of it, and the

Judge drunk some, and Coster drank some, and Mr. Kuhlman was there and Mr. Eckstein was there, but I am not sure.

Q. And you drank the beer there, before the case was determined, or during the determination of it?

A. Well, before it was determined,—I think before anything was said in regard to the case. I read the affidavit, and tried to read some authorities. I had an authority, I think, in Wait's Practice, showing that an inability to comply with the order of the court was sufficient excuse for not complying with it, but the court would not listen to it, and kept telling the defendant: "I've got to lock you up, John; I am sorry, John, sorry. We're old friends, but I've got to lock you up;" and Eckstein was acting as deputy sheriff, and he told Eckstein to lock him up several times. Mr. Kuhlman became discouraged, he was the attorney for the plaintiff, and he left, and then soon afterwards we all left. We didn't make any order in the case at all, and we all went away.

Q. Why wasn't it disposed of?

A. Well, the Judge would not make any order about it. He kept talking to him in this way,—how sorry he was he had to lock him up.

Q. And the court was adjourned without any further action?

A. There was no adjournment; we went away.

Mr. Manager DUNN. Take the witness.

Mr. ARCTANDER. Is there any more with this witness upon any specifications or charges, or anything?

Mr. Manager DUNN. When we get through we will let you know. You can take the witness.

Mr. ARCTANDER. We decline to examine the witness until they get through with him.

Mr. Manager DUNN. You need not cross-examine if you do not want to. We shall not insist upon it.

Mr. ARCTANDER. We claim, Mr. President, that we have a right to know when they get through.

The PRESIDENT *pro tem.* As a general rule, Mr. Dunn, a party is bound to exhaust his witness before he turns him over to the other party.

Mr. Manager DUNN. Very true, and the case was being tried in that way. While Governor Gilman was in the chair I examined the witness upon one point and I proposed to go on with the other articles, and the chair suggested that the cross-examination of the witness upon that article should be made, so as to keep the evidence together, and at the suggestion of the president that course was adopted. We have finished the examination upon article eighteen, and if they want to examine the witness he is at their disposal.

The PRESIDENT, *pro tem.* You say that the President of the Senate directed that course.

Mr. Manager DUNN. Yes, sir, and we have followed it up to the present time. If I am wrong the President is here and will correct me.

The PRESIDENT, *pro tem.* Then we will follow the same rule.

CROSS-EXAMINATION.

By Mr. ARCTANDER.

Q. Mr. Webber, the last May term of Brown county, 1881, commenced in the forenoon of the 17th?

A. I couldn't tell you the date; I don't recollect.
Q. What was the first case called?
A. I think it was the case of Howard vs. Manderfeldt.
Q. There was no grand jury?
A. I think not.
Q. The Judge drove right to the court house and commenced the trial of the case after the preliminary call of the calendar.
A. He did.
Q. And you say that all through that trial the Judge was intoxicated?
A. All through that trial and all through that term.
Q. All the way through? A. Yes, sir.
A. Morning, noon and night it was the same thing?
Q. I don't say that there was the same degree of intoxication all the time; but I think he was intoxicated all the time.
Q. How was he when he came?
A. I thought he was intoxicated.
Q. Was he very much intoxicated then, or very little intoxicated?
A. Well, he was more than a very little, but not so much intoxicated as he was at some other time.
Q. What was that testimony—were you there for the plaintiff in that case?
A. I was.
Q. In Howard vs. Marderfeldt? A. Yes, sir.
Q. Who were the attorneys for the defendant?
A. Mr. Jones, of Rochester.
Q. R. A. Jones?
A. Yes, sir; and Mr. Brownell of Waseca, or Minneapolis, or both.
Q. Mr. Lewis Brownell?
A. I don't know his first name.
Q. You were for the plaintiff in the case? A. Yes, sir.
Q. The case was brought for the recovery of certain grain that had been levied upon by the sheriff?
A. Grain?
Q. Yes; wasn't it for grain? A. No, sir; a stock of goods.
Q. That was levied upon by the sheriff, the defendant in the action, John Manderfeldt?
A. Yes, sir.
Q. As the property of whom?
A. As the property of John F. Whiting, I think it was.
Q. This Howard claimed to own the property? A. Yes, sir.
Q. In what way did he claim to hold it?
A. He claimed to have bought it.
Q. There was a question there of the good faith of the transaction, was there not?
A. Yes, sir.
Q. Of the change of possession? A. Yes, sir.
Q. Of the delivery of the goods and the continued change of possession?
A. I don't think there was any question raised there in regard to the delivery. The evidence was all one way, I think, at that time, on that trial.
Q. What was the question then?
A. The question was as to whether it was fraudulent.

Q. Whether it was fraudulent for the reason that it was not a continued change of possession, was it not?

A. Not necessarily that it was not, but that it was transferred for the purpose of defrauding creditors.

Q. Didn't the fact of the continued remaining in possession, or a want of continued remaining in possession, enter into the case at all at the time?

A. I don't know but that may have been an issue, but my recollection is that there was no evidence on that point. Certainly there had not been at that time, because Howard was on the stand.

Q. What was the evidence that you were introducing at the time the court interrupted you?

A. The evidence was that Mr. Howard bought the goods, and took immediate possession.

Q. Was that the evidence that was being brought in when he made that remark?

A. That was the evidence of the plaintiff, and he made that remark while he was being examined.

Q. While he was being cross-examined or examined on the direct?

A. I think it was the direct; I was questioning the witness myself. It might possibly have been the re-direct examination, but I think it was on the direct. I know that I was questioning him.

Q. And he said what?

A. If I hadn't any evidence to disprove that evidence he could save the county a good deal of expense.

Q. Isn't it a fact that in his testimony it appeared there had been no continued change of possession? A. I don't think there was.

Q. Would you swear that there was?

A. I would not swear what the evidence was, but my recollection is that there was at that time no dispute about his taking immediate possession.

Q. The jury went out at five o'clock, did it not?

A. I don't recollect the time it went out; the last part of the afternoon or evening.

Q. Now, during this time, and during the time when did the trial commence?

A. It commenced—well, we impanelled the jury that forenoon after the Judge got there. He got there about eleven o'clock. My recollection is, at least, that we impanelled the jury but did not introduce any evidence until the afternoon.

Q. After the jury were impanelled, what did he say to them?

A. I don't remember anything about it.

Q. Didn't he give them the usual charge?

A. I don't remember anything about it, but presume he did. I don't remember anything about it.

Q. Didn't the trial proceed straight in every way, except the interruptions that you now speak of?

A. No. I think the trial was very irregular; but I cannot specify any instances.

Q. You cannot specify any instances in which it was irregular, except that?

A. I don't think I can.

Q. When the jury was called were not challenges interposed for actual bias, implied bias, disqualification, etc.?

A. I don't remember; very likely there may have been.
Q. Was there anything wrong in any of the rulings upon that?
A. I don't recollect that there was.
Q. During the introduction of testimony was there anything wro in the rulings in the reception of testimony?
A. I don't recollect; I don't know as there were any questions raise in regard to the admission of evidence; don't think there was. The may have been, but I don't recollect.
Q. Was there any exception taken to the ruling of the court by an of the parties upon the testimony that you remember of?
A. I hardly think that there were any objections or exceptions take to the introduction of the testimony.
Q. You don't mean to say that Mr. Brownell tried the case withou making objections and exceptions to the introduction of testimony?
A. Mr. Brownell took very little part in the case, I think the cas was principally tried by Mr. Jones. I don't say there were no objec tions; there may have been, and perhaps, if my attention was called t it, I might recollect some.
Q. Was there anything in his appearance that day?
A. Certainly; he appeared to be intoxicated; very intoxicated, a through the trial.
Q. He appeared to be very intoxicated? A. Yes, sir.
Q. That was the drunkest you ever saw him, that day, wasn't it?
A. When the jury came in that night, he was the drunkest I eve saw him in court, and the drunkest I ever saw him at any time; he wa extremely drunk.
Q. Didn't you testify before the judiciary committee that during th trial of that case Judge Cox was the drunkest you had ever seen him
A. I think I did. I considered the trial continued until the verdic was rendered.
Q. Didn't you say there that during the trial of that case, that h was the drunkest that you had ever seen him?
A. What do you mean by the "trial" of the case?
Q. I asked you if you recollected that you did swear to that?
A. I don't recollect what I swore to. I swore to the truth, as I re collected it, and I do so now.
Q. If you swore there, that during the trial of the case he was th drunkest that you ever recollect of seeing him, that was the truth?
A. It was just as I remembered it.
Q. Now, as to his appearance that day, how was it when he came h first?
A. I cannot remember his appearance, but he seemed to be intox cated.
Q. That is all you can give us; not how his hair looked, how hi eyes looked, or anything?
A. I don't think I can.
Q. Did you notice whether he staggered or not?
A. I didn't notice that he staggered.
Q. Do you know where he came from?
A. He came from Sleepy Eye.
Q. How far is that? A. It is about fourteen miles.
Q. What time was it when he got down there?
A. He got there at eleven o'clock, or just about.

Q. That was the proper time to open court, was it not; the time that he always set for the first day of the term?

A. That is the time that the jury are summoned. He has always commenced the term earlier than that,—nine o'clock.

Q. But that is the time the jury were summoned.

A. Yes, sir.

Q. Now, did you ever know him to open a term on the first day at nine o'clock?

A. I think so; he commenced earlier than judges usually do. Wouldn't say positively; but my recollection is that he does.

Q. Isn't it usually his habit to inquire when the venire is made returnable and then go into court on the hour?

A. I don't remember of ever hearing him inquire when the venire was returnable.

Q. Have you ever known him to go into court and commence court before the venire was returnable?

A. I think I have heard him begin the preliminary call of the calendar.

Q. Are you certain of it?

A. I am morally certain; I wouldn't say that I could not be mistaken.

Q. You say he drove up at eleven o'clock sharp; didn't go to the hotel but drove up sharp to the court house?

A. Yes, sir.

Q. And stepped right out of the buggy and went in and opened court?

A. There was no court in session; he went up the stairway.

Q. Went up into the court room? A. Yes, sir.

Q. And opened court immediately after coming there?

A. Soon after; yes, sir.

Q. He did not go away from there after he came in until he opened court; didn't go down and drink any?

A. I didn't notice that he did.

Q. What did he do when he opened court?

A. I think he went through the preliminary call of the calendar.

Q. Was that the first thing? A. I think it was.

Q. The court was first opened?

A. Why, he gave the sheriff direction to open court.

Q. Made a preliminary call of the calendar, and then took up this case?

A. Yes, sir.

Q. Did you notice anything about his hair, that day?

A. I don't recollect that I did.

Q. Notice anything about his eyes?

A. That evening I noticed about his eyes.

Q. We are talking now about the morning. Did you notice anything about his eyes in the morning?

A. I don't recollect that I did.

Q. Did you notice anything about his face generally?

A. He appeared as a man is when intoxicated.

Q. How is that? A. I cannot describe it.

Q. Was he red or flushed in the face?

A. He might have been a little; I cannot describe it.

Q. Nothing except such as would be caused by a man driving down

in the wind that day from Sleepy Eye; enough to make a man look a lit tle sunburnt?

A. Perhaps enough for that.

Q. There was nothing in his walk, behaviour or conduct, the way h sat, or his actions that was peculiar at the time, that you can re member?

A. Yes. There was something in his actions, but I cannot describ it.

Q. You cannot describe it?

A. No, I told you many times that he was drunk; that is all I ca describe of it.

Q. Was he sleepy?

A. No, he didn't appear to be sleepy.

Q. Were his eyes stolid and dull?

A. I don't know that I recollect about it, except when the jury cam in that evening.

Q. Now, can you give one single scintilla of evidence in regard to an item of his appearance on that morning that would indicate that he wa intoxicated?

A. I don't think I can describe his appearance; he appeared just a he did when he was drunk, and entirely different from what he doe when he is sober.

Q. It was so plain that any one there could have noticed it?

A. It was very apparent to me, and it was to others. I don't kno how it would be to all others.

Q. You say you cannot possibly be mistaken?

A. Oh, I might possibly be mistaken.

Q. Did you smell his breath, at that time?

A. No, I did not at that time.

Q. Now, you have stated that you could not mention anything at a particular in his appearance, showing why you thought he was intox cated. I will ask you now whether you can describe any single partic lar in the appearance of men generally, when they are intoxicated, whic would show their intoxication?

A. No; I don't know that I could. It is very hard for me to d scribe.

Q. At that time, did you notice anything particular with his nose Anything about a red scar I have been speaking of?

A. I don't know that I ever saw a red scar upon his nose. If I hav I never noticed it.

Q. Or a black streak upon his cheek? [Indicating right cheek.]

A. His eyes appeared to be sunk.

Mr. Manager COLLINS. The scar was upon the other cheek, and th year before, Mr. Arctander.

Q. Was there any particular glare to his eyes?

A. I don't remember that there was; I didn't notice his eyes pa ticularly, except that evening when the verdict came in.

Q. That evening. Was that the same day?

A. It was the same day of the trial; yes, sir.

Q. The same day that you commenced?

A. Yes, sir; that is my recollection.

Q. Now, that evening you seem to have noticed it? A. Yes, sir.

Q. And that evening you can describe his appearance?

A. Better than any other time, because he was so extremely drunk

Q. Then at the other times he was not very drunk?
A. Yes, he was very drunk, but not excessively drunk.
Q. Now, there was no impediment in his speech during the balance of the day, was there?
A. I didn't notice anything of it particularly.
Q. But in the evening you noted that he did not talk distinctly, and his lower jaw dropped down.
A. Yes, sir; and his mouth was open, or partially open.
Q. And his face looked "stolid," what do you mean by that?
A. I can't describe it,—no expression in his face.
Q. As if the man had been taking narcotics, or morphine?
A. I don't know much about the effect of a narcotic, or morphine; don't know much about that.
Q. And he may have been under the influence of morphine or of a narcotic at that time?
A. He may have been.
Q. What did he do when he came in there that evening at 9 o'clock?
A. He received the verdict. I then asked for a stay of proceedings.
Q. Wasn't he there before the jury came in?
A. I think the jury came in when I got there.
Q. And he was in there a little before? A. Yes, sir.
Q. As a matter of fact he had been in there half an hour before you got there?
A. No, sir; he was in there before me.
Q. Don't you know that the court was adjourned until half-past eight?
A. No, sir; I don't know that it was adjourned until any definite time.
Q. When the jury came in what did he do or say?
A. I can't recollect his language in receiving the verdict. I recollect that when the verdict was rendered I asked for a stay of proceedings, and Mr. Jones was there and consented to let me have as much time as I wanted and Judge Cox hesitated and wanted me to make a motion right then for a new trial. He said, "Make a motion right now for a new trial, and I will decide it in a minute."
Q. The jury beat you, didn't it? A. Yes, sir.
Q. Now, did the Judge say anything, make any remarks about the verdict, or say anything to the jury at all.
A. I can't recollect distinctly about that.
Q. How was it about giving you time for a stay, did he? Yes, sir.
Q. And suggested that you make it on the court's minutes. Wasn't that what he said?
A. He said, "Make the motion right now, Mr. Webber, and I will decide it in a minute." That is his language as near as I can recollect it. Mr. Jones then suggested to me that, considering the condition the Judge was in, I would not present it to-night. He would give me any time I wanted, and he would present it in the morning.
Q. You are certain about that. A. I am perfectly.
Q. The order was not entered that evening?
A. No, sir; not that I know of. I made the motion the next day, I know.
Q. The next day were you in court? A. Yes, part of the time.
Q. Was the case tried?
A. Yes, sir; I think there was a case tried in which I was not inter-

ested,—an appeal—I don't know much about it. I guess I was in there a few minutes, but I don't know much about the trial of it.

Q. Were you interested in the case of Charles Hughes against Chas. McCarthy?

A. No, sir; I was not.

Q. Were you in there when that case was brought up in the morning?

A. The Hughes case?

Q. Yes, sir.

A. I don't think I was; all I remember about that case was, that I knew one of the witnesses, and I remembered of being in there and hearing part of his examination, old Mr. Lind; I may have been in there other times, but I don't remember anything about it; I wasn't interested in it, and didn't care about it.

Q. Aren't you mistaken; didn't the case go to the foot of the calendar on a motion?

A. I don't recollect about that; I was in there part of the time during the trial of that case, but when it was tried I don't remember. I don't think it did go to the foot of the calendar, but I may be mistaken.

Q. You don't remember that the plaintiff asked leave to amend his complaint in it?

A. No, I don't know anything about that case at all.

Q. And that it was granted on condition that it would go to the foot of the calendar?

A. No, I may have been there, but I don't remember if I was.

Q. Were you engaged in the case of August Hartman against John Lee and Charles Berg?

A. No, I was not.

Q. Were you interested in the case of John Youngman against John Lind?

A. No, sir; I was not.

Q. Were you present during the trial of that case?

A. What case?

Q. The case of John Youngman against John Lind? Mr. Somerville and Thompson tried that?

A. I think I am mistaken, I think *that* was the case that I referred when I was present. I think I was present when the case was tried and that I heard the testimony of old Mr. Lind. I think that was the case.

Q. You say he was drunk all through that term, he was drunk during the trial of that case?

A. I don't remember anything about it particularly; I remember of being in there once when that case was on.

Q. Then you wouldn't swear that on the second day he was drunk?

A. I will swear that whenever I saw him he appeared to be drunk, I don't remenber very much about it.

Q. You wouldn't swear that he was drunk every day?

A. I was in the court room every day.

Q. You wouldn't swear that when you were in the court room and heard old Mr. Lind testify, that he was drunk?

A. I didn't notice him at that time particularly.

Q. Well, you have sworn that he was drunk every day during that term; and also, that you were present in the court room when that trial was in progress, and old Mr. Lind was testifying, now, could you have come into the court room and not have seen him and noticed him, knowing as you did, as you claim here, that he had been drinking the day before?

A. I didn't pay any attention.

Q. You didn't pay a particle of attention to see whether he was drunk or not?

A. I was interested in my other cases and didn't pay any attention to that case at all.

Q. Or paying any attention to the judge at all?

A. I don't think that I can.

Q. So that you can't swear that he was drunk the second day of the term, can you?

A. No; I don't remember anything about it.

Q. Were you engaged in the case of Henry Meyer against the New Ulm Sugar Factory Company?

A. I was the attorney in that case, but it was not tried.

Q. Isn't it a fact that that case came on earlier than you had expected it on the calendar, on the ground that this case of Hughes against McCarthy, which you had supposed to be a lengthy case was not disposed of?

A. That what case came on earlier?

Q. That Myers against the Sugar Company came up earlier than you had expected it would?

A. I don't remember that it did, but it was not tried.

Q. Who were you attorney for?

A. I was for defendant, the Sugar Company.

Q. Who was the attorney for the other side?

A. Mr. Lind.

Q. Isn't it a fact that it was not before Thursday morning, on the third day, that you made application for a stay of proceedings in the case of Howard against Manderfeldt, and that was the time when it was granted and an order and a time fixed for some future action, in St. Peter?

A. I made application immediately after the jury came in and the scene took place at the time I have described. I think he renewed it next day, but I am not positive.

Q. You are not positive whether it was the next day or the day after that you secured your application?

A. No, sir, I am not positive.

Q. Do you remember that in the afternoon when that case of Henry Meyer, the Meyer case, was called up, whether or not you were not in the court room, then?

A. I was; yes.

Q. Was the Judge then drunk or sober?

A. I don't recollect particularly about it. Mr. Lind and I had a conversation and agreed to continue the case and when it was called up it was continued.

Q. As soon as the jury calender was disposed of, the jury was discharged, was it not?

A. Well, I tried only one jury case; I don't think I was there when the jury was discharged or when they came in on any other case; I think that there was only one other jury case tried, but I may be mistaken about that.

Q. As a matter of fact, the court, upon convening in the morning at half past eight, discharged the jury, did it not?

A. I cannot now recollect.

Q. Were you engaged in the case of Wildt, of Sleepy Eye Lake, against J. W. McCormick?

A. I was not.
Q. That was an appeal from justice court?
A. I don't know anything about it.
Q. Were you present on the argument to dismiss the appeal in that case?
A. I don't recollect; I might have been, but I don't recollect.
Q. Now, we come to this Wildt or the Wild case as you call it?
A. It is spelled Wildt, but the Germans pronounce it Wilt.
Q. In that case there had been an order some time back, for him to pay you fifty dollars as attorney's fees, and some alimony?
A. I guess not as much as that. I asked that and the Judge would not give me as much as I wanted.
Q. There was fifty dollars to be paid by the order of the court?
A. I think I was to have thirty dollars and she was to have so much a month; I don't recollect the amount.
Q. That order had been made sometime before, and served upon Mr Wildt?
A. Yes, sir.
Q. But Mr. Wildt hadn't paid the money?
A. He paid mine, but did not pay her.
Q. You then made out affidavits, and got an order for him to show cause on the first day of the term, why he should not be punished for contempt because he had not paid over that money?
A. Yes, sir.
Q. Now, isn't it a fact that Mr. Wildt failed to put in an appearance on the term?
A. I don't remember about that, but when the case was called up he was not there, and the Judge ordered the sheriff to go and get him up.
Q. Isn't it a fact that he didn't appear at all during the trial in obedience to the order of the court?
A. He didn't appear until the sheriff was sent after him.
Q. He was cited to appear there and show cause why he should not be punished for contempt in not obeying the original order?
A. Yes, he did.
Q. He did not come on the first day of the term and show cause?
A. I don't recollect anything about that, only I recollect that when the case was called up he was not there.
Q. Don't you recollect as a matter of fact that he did not come and did not show cause at all?
A. I don't know anything about it; he may have been there and may not; I didn't see him that I recollect of.
Q. You didn't see him around the court there at all that you recollect of?
A. No; when the case was called up—
Q. Now, when the case was called upon the third day in the morning, isn't it a fact that he was called and did not respond?
A. Yes, sir.
Q. And that the court ordered the sheriff to go out ond arrest him and bring him in?
A. Yes, sir.
Q. For failure to appear on the order to show cause why he should not be punished for contempt?
A. I don't know that he used that language. I think he ordered the sheriff to go and bring him there.

Q. That was at your request?
A. No, sir; I think not at my request. I called up the case.
Q. Didn't you suggest it? A. No, sir; I don't think I did.
Q. Didn't care whether he came over there or not?
A. I wanted my money and I wanted her to have her money; I didn't care whether he was there, or not.
Q. Nothing could have been done without him?
A. I suppose it was entirely proper for the court to order him to be arrested and punished for contempt, for failing to obey the order.
Q. Now, Mr. Webber, do you really mean to be understood that you thought the Judge could order that man in his absence to go to jail—make an order recommitting him to jail in his absence—upon having issued an order for him to show cause?
A. I never looked up particularly to see; it is rather my impression that he might have done so.
Q. Now, isn't it necessary under our statute to bring the party in when he fails to appear under a warrant and then to adjudge upon him?
A. It may be; I never looked it up I guess.
Q. Hadn't you had the return made out upon the order, showing proper service upon him, and filed that in the court, and based your motion upon that to have him arrested and brought into court?
A. I had had the return on it made out and the sheriff signed it, and I think that it was in court.
Q. Didn't you bring it into court and upon that basis move the court for an order to the sheriff to bring him in?
A. I don't think I did, but I might; I wouldn't say positively.
Q. Now, when he came in there that man was virtually to answer for two contempts, was he not—for contempt in disobeying the order to pay over the alimony, and for contempt in disobeying the order to appear there and show cause?
A. Well, I don't know as to that I am sure. He was simply ordered to appear there and he didn't appear there.
Q. Didn't the Judge, when he addressed him, call his attention to the fact that he had at first disobeyed the order of the court and not paid over the money within the time that the court had ordered, and had then disobeyed the order of the court to come into court to show cause why he should not be punished for it?
A. I don't recollect. There was a very great deal of conversation there; there was a very disorderly proceeding there.
Q. You don't remember whether anything of the kind was said or not?
A. I don't know.
Q. Now, when in the afternoon was it— if it was in the afternoon—that Mr. Wildt was brought into court by the sheriff?
A. I think he made the order for the sheriff to go and get him just before dinner, and when we were going down to dinner we met the sheriff coming back with him; the matter was taken up immediately after dinner but at what time I do not recollect; perhaps half past one or two o'clock.
Q. Was there any other business before you took that up?
A. I don't remember of anything but there might have been.
Q. Did the court open in time?
A. I don't remember about that.
Q. Who where present there in court when court opened?

A. Well, I could not say when court opened who was present. During this transaction the defendant and his wife and Mr. Snyder were present and I think the sheriff was present and probably others that I don't remember. Mr. Snyder acted as interpreter; I hardly think I was there when the case was first called.

Q. Isn't it a fact that Joseph Snyder was sent for?

A. I presume he might have been sent for but I am not sure now.

Q. Well; what was the first thing that was done about this Wildt matter?

A. Well, I think the court directed the interpreter to ask the defendant why he had not complied with the order, or something of that kind.

Q. With what order?

A. With the order to pay over the money; I don't remember; as say it was very disorderly; I couldn't attempt to give the conversation that took place there.

Q. Isn't it a fact that you first attempted to get along without a interpreter?

A. I think not; because he can't speak a word of English; at least I never heard him.

Q. Isn't it a fact that this interpreter was sent for after Judge Cox sent down town to get a lawyer?

A. No, I think not; because I think he did not send for a lawyer until he had made his order for the payment of $1,250.

Q. Now, I want you to state just what Judge Cox said when he first commenced to talk to him?

A. I can't do it; I wouldn't attempt to give a man's precise language after that length of time, and especially in such a disorderly proceeding as that was.

Q. A disorderly proceeding?

A. Very disorderly.

Q. What did the disorder consist in?

A. The disorder consisted in the Judge and the defendant and the plaintiff and the interpreter, a portion of the time, all talking at once and interrupting each other.

Q. That is a matter that is very frequent where you hold court where there are Germans who don't talk English, is it not?

A. To some extent.

Q. That people interfere and make some disturbance, don't they?

A. To some extent.

Q. Especially if they are a little excited?

A. Yes.

Q. And that is the reason why you can't state the proceedings, or attempt to give the language of the Judge?

A. Why, it is pretty hard to give the language of a man after six months or more than that, for he talked so much, and there was so much said and so much confusion. I couldn't give it.

Q. Now, did the Judge first rebuke the defendant because he did not come into court?

A. I don't recollect.

Q. Do you remember whether he reproached him, and asked him why he hadn't paid that money?

A. This is my recollection the first he said to him, but perhaps he

might have asked him why he didn't appear in court; I don't remember.

Q. Then what excuse, if any, did this man give?

A. Well, I don't remember, until Mr. Randall came and made his affidavit. I think perhaps he did give some excuse, but I didnt understand it.

Q. You don't remember that he gave any valid excuse?

A. No, don't remember.

Q. What was done after the court had quizzed and reproached him, and this man had talked back to the court, and tried to explain why he didn't come in or pay the money over?

A. Why, he imposed a fine of $100; I don't recollect the exact amount.

Q. Isn't it a fact that before the Judge said anything about the $100 fine that you got up and made a speech to the court, and stated that there would be no show of getting him to pay this alimony unless the man was sent to jail, and earnest measures taken in the matter.

A. I don't think I said any such thing; I have no recollection of it.

Q. Will you swear you didn't?

A. I won't swear positively; I have no recollection of it.

Q. Isn't it a fact that before fining him this $100 the Judge asked you how much there was due of back alimony, and if there was anything due as attorney's fees?

A. I don't know whether he asked me; I think he had either asked me or I had told him without his asking me; I think he knew it.

Q. He wouldu't know it unless you told him certainly?

A. No, I don't know whether he asked me; I told him but whether it was in response to his question or whether I told him without his asking I do not remember.

Q. Now, after he had fined him the $100 and to stand committed—was there anything else besides the fine?

A. I couldn't give you the form of the order; I don't think it was reduced to writing; perhaps it was, I don't know.

Q. That order was reduced to writing, you say, I believe?

A. I don't know.

Q. Were all the other orders reduced to writing?

A. I couldn't tell you.

Q. But this one you think was reduced to writing?

A. It was my impression; I want you to understand distinctly that I won't state positively in regard to these matters; it was very confused, and I can't remember.

Q. But your best recollection is that the first order,—in regard to fining him $100,—was reduced to writing by the Judge?

A. No, I don't think the Judge reduced it to writing; perhaps he did. I think it was the clerk, if anybody.

Q. Isn't it a fact that the clerk you have got up there isn't able to write an order two inches long, unless somebody dictates it to him and tells him, and get it correct?

A. I think it is not a fact; I think he is a very competent clerk. Of course any complicated order he would not be able to make, but he writes all the orders that are made during court. That is, all the orders that are made on the minutes.

Q. Isn't it necessary to dictate to him or correct his minutes for him, if it is anything you are interested in, in order to see that it is done right, or do you rely upon him if he has a long order given by the court?

A. If it is a long order perhaps I should assist him, in a case of my own.

Q. Did you assist him in that case?

A. I don't recollect that I did.

Q. This would not be a very short order, would it, with all these things in it?

A. He made separate orders; I think they were short orders.

Q. Did the Judge tell the clerk, "Mr. Clerk, enter an order," so and so, or did he simply say to the man, "I will fine you a hundred dollars?"

A. My recollection is that he told the interpreter to tell the defendant that he fined him so and so.

Q. That he fined him first a hundred dollars? A. Yes.

Q. That is what he told him in the first instance? A. Yes, sir.

Q. You have no recollection o f his telling the clerk to enter an order imposing a fine for a hundred dollars?

A. No.

Q. Now, afterwards, when you interfered, was it not in this way: After he had told the interpreter that thing, did you not say that you didn't think that that would help the case any to fine him a hundred dollars, because you didn't think that would bring the alimony, and that you wanted the court, to change that language to make an order that if he paid it within a certain time he would not need to pay the fine for contempt?

A. I think I made the suggestion myself that I presumed he didn't understand it. When these papers were served upon him I was informed by an officer that a part of the papers he wouldn't take, but laid them on the table. I stated to the court that perhaps he didn't understand the proceedings, and it would be perfectly satisfactory to the plaintiff if he would make another order giving him time to pay.

Q. Now, the next time when the judge said he would fine him $250, that was the next morning?

A. That is my recollection; yes.

Q. That was done in the same way, was it not—telling the interpreter to tell him he would fine him $250?

A. That was the way with all of them.

Q. You don't remember that he ordered the clerk to enter that?

A. No; I do not.

Q. When he came to the next amount, what was that?

A. I think $500.

Q. Now, when he came to that, he was telling the interpreter he would fine him up to $500?

A. They were all given in substantially the same way, to the best of my recollection.

Q. The $1,250, too? A. Yes.

Q. They were all given through the interpreter to the man and none of them directed to the clerk to be entered?

A. Not that I recollect of, no.

Q. Have you ever known of any order that the Judge would give in court in any proceeding like this unless it was either in writing by himself, or specifically ordered the clerk to enter such and such an order?

A. I have no recollection about it at all. I think the orders in court are generally made in the same way as this.

Q. Have you any recollection of any other order having been made except in such a way? When he makes an order during the terms of court, will he not say, "Mr. Clerk, enter such and such an order?"

A. I think it is likely he does.

Q. Isn't that the way he does it when he does not draw them off himself and hand them to the clerk to be entered?

A. I don't remember that I ever saw him draw one and hand to the clerk in my life; perhaps he has.

Q. Now, have you ever heard anybody else (any other Judge) make any order, upon an application to show cause why a person should not be punished for contempt, simply by a verbal address to the party?

A. I don't remember now.

Q. Without ordering an entry to be made of it?

A. I don't remember now whether I ever heard any other Judge make an order for alimony at all.

Q. Now, isn't it a fact at this time, that when the Judge had told him he should fine him $100, through the interpreter, that you then interfered and told the Judge that what you were after, and what the plaintiff was after, was to get this alimony; and that you thought he should not be fined, if he would furnish that within a certain time?

A. I was after the alimony; I have stated what I said to the Judge, just as I remember it, three or four times; I don't say that I gave that language precisely; I might be mistaken—that is just as I remember it.

Q. It was not that you thought the prisoner fared badly at the hands of the court by his telling him that he would fine him a hundred dollars, that that was an excessive amount to fine him for not paying that?

A. I don't think it was very excessive. I thought he didn't understand it, I am satisfied he didn't.

Q. That who didn't understand it?

A. I am satisfied that the defendant didn't understand anything about the judicial proceedings at all.

Q. And that was what you said to the court; that all the plaintiff and all you were after was to have this alimony paid?

A. I presume I did, yes, sir.

Q. Now, isn't it a fact that all the talk about fining before you come to the final order of $500, was all between the court and the defendant,—upon the part of the court, telling the defendant what he could do, more for the purpose of scaring him, to make him pay the amount?

A. I didn't so understand it. The order was made substantially in the same language all the way through to the best of my recollection.

Q. Well, now, was there anything said about like this: "I can, or I will or I may fine you a hundred dollars, $250, I may fine you $500 or $1,250," and tell the interpreter to tell the defendant that he did fine him those amounts?

A. I might have misunderstood him for it was very disorderly.

Q. You might have misunderstood; he might have said that he could fine him so and so?

A. He might; I might have misunderstood him.

Q. Now, as a matter of fact, before he sent that man down town to get a lawyer, did he direct him to get any particular lawyer at all?

A. My recollection of the language is just as I have told you, he told the interpreter to tell him that he had got into a bad scrape, and he would have to send to John Lind to help him out, or language to that effect.

Q. That he had better send for John to help him out. A. Yes.

Q. John was the only lawyer there besides yourself that is of much account?

A. Well, I don't know as I am of very much account, there are several other lawyers there.

Q. Now, you stated upon your examination before the House committee, that the Judge had said that he had to help John Lind out?

A. What say?

Q. You stated did you not, that the Judge had stated that he had to help John Lind?

A. Help John Lind out? Oh, I never said anything of the kind.

Q. You didn't say that?

A. That the Judge would have to help John Lind out? Oh, nothing of the kind.

Mr. Manager HICKS. You are mistaken, there is no such testimony.

Mr. ARCTANDER.

Q. You understood from all of this talk that the court directed the interpreter to say to this defendant was with a view to get him to fulfil his obligation towards his wife and obey the order of the court, did you not?

A. I have given the language substantially.

Q. That was what you understood at the time wasn't it?

A. Well, I don't recollect what my understanding was; I thought he was drunk and giving very irregular orders, that is all.

Q. That is to say, the orders as you have described them here?

A. Yes, sir.

Q. Now, when the Judge told him he had better go down and get John Lind to help him out of the scrape, the court took a recess for an hour, didn't it?

A. I don't think it did as long as that; perhaps it did after John Lind came and Mr. Randall did. I think he gave Mr. Randall time to draw up an affidavit; it may have been an hour.

Q. Now, in the meantime you and Mr. Randall got together didn't you, and had got up a contract between Wildt and his wife in regard to the payment of the money?

A. No; I never made a contract. They made a contract between themselves in German; I couldn't read it; they explained it to me and they made an affidavit in regard to the making of the contract, and I guess he attached the contract to it to show his excuse for not complying with the order of the court.

Q. Now he came in there with an affidavit trying to excuse his two contempts, did he not?

A. There was nothing said about two contempts that I heard of.

Q. Now, what was it he tried to excute?

A. I don't recollect anything about the excuse for not coming into court; the excuse for not paying the alimony was that they had entered into this contract for a sort of division of the property.

Q. Now, after that affidavit was brought in, you swore Mrs. Wildt, did you not?

A. I did not swear her. I don't know but the court did.

Q. She was examined on her oath anyhow?

A. It is rather my impression she was.

Q. Wasn't you her attorney? A. I was, yes.

Q. Didn't you offer her as a witness?

A. No, I think her being sworn was in response to the Judge's request in explanation of making this contract; that is my recollection of it.

Q. Do you remember what she testified? A. I do not know.
Q. Did you examine her?
A. I think not. I think the judge examined her himself through the interpreter.
Q. Was there anything out of the way in that examination or anything that seemed to show that he did not know what he was about?
A. Not that I recollect about, unless the examination itself showed it.
Q. That he did examine her, do you mean?
A. I don't think there was any occasion for an examination at all; I think if he had been sober he would have followed my suggestion and disposed of the matter in five minutes.
Q. Don't you think it was proper where a contract was brought in written in a foreign language, and where it was attached to the affidavit to have her explain it so as to find out whether or not it was done under proper circumstances between husband and wife?
A. I don't think there was any particular impropriety in it.
Q. You would not expect him to take a German contract that he didn't understand a word of and act upon that without having some explanation in regard to it?
A. No, sir.
Q. So that he would likely have done that whether he was sober or drunk, wouldn't he?
A. My recollection is that when he introduced this contract he attached the affidavit of Mr. Wildt to it, stating the reason, and perhaps in substance, the contents of the contract; and then my recollection is he swore Mrs. Wildt as to some facts, as to whether they had made such a contract as that.
Q. He wanted to know whether that was a true statement of the contract?
A. I suppose so.
Q. Now, wouldn't you have considered that it was proper for the court in guarding the interests of a woman that did not understand our language, and in protecting the rights of the defendant at the same time, to have her sworn upon the question as to whether that contract was a proper one?
A. If it was necessary to go as far as that, there certainly was nothing improper in it; but when I made the suggestion I did, I think if the Judge had been sober he would not have gone any farther.
Q. That is a matter of opinion? A. That is my opinion, yes.
Q. Your suggestion was made before they came in with that contract and affidavit, was it not?
A. I think my suggestion was made after he imposed the first fine of $100, though I may be mistaken about it.
Q. Now, did not the Judge then and there say that that man must purge himself of his contempt before he could come in?
A. Language to that effect.
Q. That was perfectly correct, wasn't it?
A. There was no impropriety about it.
Q. And it was perfectly proper to send him to a lawyer to see if he could draw up a paper in order that he might purge himself for his contempt, wasn't it?
A. Oh, I think so.
Q. Did he not, immediately after examining Mrs. Wildt, and finding

the terms of the contract and what he had agreed to in there, let him off upon paying just what was due for alimony?

A. He gave him time to do that, yes; and in case of default fined him $500, and he was to stand committed until paid, or language to that effect.

Q. When he made the last order he turned to the clerk and told him to enter it, did he not?

A. I don't recollect about it.

Q. Don't you remember of his turning to the clerk and saying: "Mr. Clerk, you will enter this order, that the defendant, John Wildt, shall pay such and such an amount within twenty days, and if he doesn't pay it he shall be adjudged in contempt of court?"

A. I don't recollect that he did, but very likely he did.

Q. Did not the Judge, as a matter of fact, write out that order himself and hand it to the clerk?

A. I didn't see him; perhaps he did.

Q. You don't know whether it is on file there or not?

A. No, I do not.

Q. Paying that order in twenty days, if not, to be adjudged guilty of contempt?

A. The order written by the Judge himself?

Q. Yes. A. I don't know anything of the kind; it may be.

Q. You didn't see whether he did write it and hand it to the clerk or not?

A. I didn't see him write it.

Q. And that was the last scene of the term of 1881, was it not? Court adjourned when that thing was disposed of?

A. I couldn't tell you; I had two mortgage foreclosures which I took the evidence in. There was no appearance on the part of the defendant—whether it was before or after that I don't remember.

Q. Was one of them the Madlener case?

A. Both of them were Madlener cases.

Q. Did the judge sit and take evidence in the Madlener case?

A. There was very little evidence given. I read the complaint, and as I read it introduced the evidence, which was mostly documentary evidence.

Q. It was a default case, was it?

A. Yes; and Mr. Sabalia was examined on a few points. I had him sworn before I commenced to read. I read the complaint then and introduced the evidence, notes and mortgage, the proof of service of notice and appointment of the guardian *ad litem*, and when I got through I had the decree drawn up, and the judge signed the decree in both cases right then and there.

Q. Was the decree read?

A. The decree was not read. I had drawn the decree previously.

Q. The judge read it, didn't he?

A. No; he didn't read it. He said if I said it was all right he was satisfied, and signed it.

Q. He told you you could have the decree? A. Yes.

Q. And then you drew it?

A. No; I had the decree drawn up before.

Q. It was a printed form of decree, I suppose?

A. No, it was not printed. It was a complicated matter; I had to write it out.

Q. Hadn't the judge, as a matter of fact, before that time, examined all the papers in the matter, the mortgage, etc., and this was simply a matter of form—a formal decree?

A. He never saw the decree before, that I know of.

Q. No, no, not the decree?

A. The mortgage I don't know whether he had seen or not. He and Mr. Sabalia came up together in my office one evening before the suit was commenced, and he made some suggestion. I never showed him the mortgage that I have any recollection of, but perhaps Mr. Sabalia had; I don't know.

Q. Don't you remember whether, during the term of court, you had handed him the papers to look over, and this was simply to take the evidence of Mr. Sabalia right there?

A. No, I think I had not handed him the papers.

Q. After he had ordered the decree, of course that was the material part to do, he relied upon your judgment as a matter of form?

A. The decree was already drawn before the term of court commenced. I said, "Here, Judge, I have drawn the decree," and he says "if you say it's right, I am satisfied with it."

Q. That is the way the Judge usually does, isn't it?

A. I think that is entirely proper. He knew very well I wouldn't put anything in there but what was proper to be there.

Q. You are sure there was no reference made in any of those cases?

A. Referee appointed?

Q. Yes. A. No, there was not.

Q. How was the interest computed?

A. I computed the interest myself.

Q. And swore to it?

A. I don't think I did; I told the judge, I think, what it was.

Q. Wasn't Sabalia mortgagor in that case, and Madalin the mortgagee?

A. Yes.

Q. And wasn't Sabalia the one that was doing the foreclosing against himself for Madlener?

A. Mr. Sabalia gave me the mortgage, and I wrote to Madalin. Sabalia frequently made suggestions to me in regard to the matter.

Q. He was really overseeing the foreclosure against himself?

A. Yes, sir; to some extent.

Senator CAMPBELL. From the committee appointed to report such additional rules for the government of the senate sitting as a court of impeachment as should be necessary, respectfully report the following additional rules:

RULE 18.

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 on all questions of evidence and incidental questions. Which ruling shall stand on 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 Senate. Upon all such questions the vote shall be without division, unless the yeas and nays be demanded by any member of the court present, or requested by the presiding officer when the same shall be taken.

RULE 19.

That while the Senate is sitting as a Court of Impeachment, the daily sessio shall be held from 10 o'clock, A. M. till 12½ P. M., and from 2½ P. M. till 6 o'clo P. M., unless otherwise ordered by the court, and when the hour for such sittin shall arrive, the presiding officer of the Court shall so announce, and thereupon t presiding officer shall cause proclamation to be made and the business of the tri shall proceed

RULE 20.

The Clerk of the Court shall keep and cause to be published daily for the use the Court, a full and complete minute and record of all the proceedings had the trial, including all motions and the vote thereon; all objections to the eviden and the rulings thereon; a verbatim report of all the testimony taken on the tria all arguments of counsel or managers, either on the final question or on any inte locutory question, and the remarks of members of the Court.

RULE 21.

Witnesses shall be examined by one person on the part of the party producin them and then cross-examined by one person on the other side.

RULE 22.

All preliminary or interlocutory questions and all motions shall be argued f not to exceed twenty minutes on each side, unless the Senate shall by order, exte the time.

RULE 23.

The cause on each side, shall be opened by one counsel. The final argument m be made by two counsel on a side unless the Senate order otherwise, and the a gument shall be opened and closed by the Honorable Managers on the part of t House of Representatives.

RULE 24.

On the final question whether the impeachment is sustained, the yeas and na shall be taken on each article of impeachment separately, and if the impeachme shall not upon any of the articles presented, be sustained by the votes of tw thirds of the members present, a judgment of acquittal shall be entered, but, the accused in such articles of impeachment shall be convicted upon any of sa articles by the votes of two-thirds of the members present, the Senate shall pr ceed to pronounce judgment, and a certified copy of such judgment shall be d posited in the office of the Secretary of State.

RULE 25.

In taking the votes of the Senate on the articles of impeachment, the presidi officer, or clerk of the court of impeachment shall call each Senator by his nam and upon each article propose the following question, to-wit: "Mr. ———, ho say you, is the respondent, E. St. Julien Cox, Judge of the district court of t State of Minnesota, in and for the ninth judicial district, guilty or not guilty charged in the —— article of impeachment." Whereupon each Senator shall ri in his place and answer "guilty," or "not guilty."

RULE 26.

All the orders and decisions shall be made and had by yeas and nays, which sh be entered on the record and without debate, except when the doors shall be clos for deliberation, and in that case, no member shall speak more than once on a question, and for not more than fifteen minutes on an interlocutory question, unl by consent of the Senate, to be had without debate, but a motion to adjo may be decided without the yeas or nays, unless they be demanded by some mem ber present.

RULE 27.

Witnesses shall be sworn in the following form, viz.: "You, ———, do solemnly swear (or affirm, as the case may be,) that the evidence you shall give in the case now pending between the State of Minnesota and E. St. Julien Cox, Judge of the ninth judicial district, shall be the whole truth and nothing but the truth; so help you God"—which oath shall be administered by the presiding officer of the court.

On motion of Senator WILSON court adjourned.

TWELFTH DAY.

ST. PAUL, MINN., Jan. 14, 1882.

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

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

Messrs. Aaker, Adams, Bonniwell, Case, Castle, Hinds, Johnson, A. M., Johnson, F. L., Johnson, R. B., Langdon, McCormick, McCrea. Mealey, Miller, Morrison, Perkins, Powers, Rice, Shalleen; Tiffany, Wheat, Wilkins, Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, judge of the ninth judicial district, upon articles of impeachment exhibited against him by the House of Representatives.

The Sergeant-at-Arms having made proclamation,

The Managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. James Smith, Jr., Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives, entered the Senate chamber and took the seats assigned them.

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

Senator Wilson and took the chair to act as PRESIDENT *pro tem.*

B. F. WEBBER

Was re-called, and his cross-examination continued by Mr. Arctander.

(Paper handed witness.)

Mr. ARCTANDER. Look at that paper, please. Can you identify that as the brief of Mr. Lind, upon motion for new trial, before Judge Cox in the case of McCormick against Kelly, that you have spoken of?

A. I think so, yes.

(Another paper shown witness.)

Q. This is your brief upon the same motion? I think it is, yes.

Q. Now I wish you would look at those and see, after refreshing your recollection (so as not to have to introduce them in full),—look them over and refresh your recollection from them, and state to the Senate whether or not upon the motion for new trial before Judge Cox on that case, you raised or touched a point at all in the briefs, that the charges were contradictory or any of them?

Mr. Manager DUNN. May it please the court, we object to that. If

there is any evidence at all to be gathered from these written documents, we submit that the written documents are the best evidence, and if they wish to put them in evidence let them be put in. We object to any evidence as to what they are, because the documents themselves are the best evidence.

Mr. ARCTANDER. That is undoubtedly true, Mr. President, if we intended to show the contents of those documents. We don't care for the contents of those documents. The only purpose for which they are shown the witness is for him to refresh his recollection from them, and after having refreshed his recollection, then to state whether or not the particular point that he said he discovered immediately—whether it was raised by any of the parties before Judge Cox on a motion for a new trial, three or four months afterward—the point upon which he bases his idea and hypothesis of Judge Cox's drunkenness at the time that he gave the charge which he claims was contradictory. Now, it is certainly competent testimony to show that they didn't discover that at the time, even if there was any contradiction in it, and that wasn't what he based his idea on at the time; the fact that the charges were contradictory, because the witness and the opposing counsel had not discovered that at the time, and it goes strongly to show that, if they did not raise the point upon a motion for a new trial three months afterward. The documents themselves will show the points that were raised, and, indirectly, of course, show the points that were not raised. We don't desire to prove the contents of these documents; we desire to show that they don't contain any such thing as claimed.

Mr. Manager DUNN. The fact that they didn't contain it is to be gathered from the documents themselves. Now, whether they do or do not contain any particular matter is to be gained from the perusal of the documents, not from the witness's testimony. Now the whole argument of the counsel seems to be based upon the effect of the evidence. He says that because the witness has testified to certain things that he now discovers, and that he discovered at the time, and the fact that, according to his claim, they are not to be found in the brief, that he therefore wants to draw the conclusion, that because it wasn't in the brief, it wasn't discovered; and that the witness has testified falsely. That doesn't follow by any manner of means at all. The inference that he seeks to draw is an inference which he may draw in his argument to the court; it is not an inference which is properly deducible from the evidence as we claim. If the evidence is at all admissible, it is only admissible upon the production of the written documents.

The PRESIDENT *pro tem.* The objection of the managers will be sustained unless otherwise ordered by the court.

Mr. ARCTANDER. We now offer the documents identified by the witness, and we ask that the court mark them for identification.

Mr. Manager DUNN. We have no objection to them as evidence; put them in (Papers marked "Exhibits 2 and 3.")

Papers offered as a part of the cross-examination of the witness.

Q. The points made upon the motion for a new trial were all contained in the briefs, were they not, and then enlarged upon?

A. I think so; yes, sir. They were all contained in the briefs made on the motion for a new trial.

Mr. ARCTANDER. I suppose, Mr. President, that the proper way would be to have the clerk read the exhibits.

The PRESIDENT. The clerk may read them.

The clerk read the papers referred to.

Mr. ARCTANDER. Q. At the time the Judge examined both of your requests, did he not, and allowed some and refused others?

A. He allowed some of mine and refused others; I think he did the same by the plaintiff.

Q. In this allowance of those requests, did he show or exhibit a mind that was deranged by drink; not understanding what he did?

A. I think he did in one of mine which he refused. He held it up to me and said: "This is nearly right; there is something right along there that is not right. You change that, and I will give it." I told him if he wished to modify it, to modify it; I didn't know how. So he refused that charge and didn't give it. I thought the request was correct.

Q. But you would not say that it was?

A. Oh, not positively; certainly not.

Q. Did you take an exception on that refusal? A. I did.

Q. In allowing or disallowing these things was there anything else that showed his mind was wanting or that he was not in the full possession of his mental capacity?

A. I think there was one—one of my requests that he disallowed; that was the only one.

Q. In regard to the others of plaintiffs; was there anything there?

A. I don't recollect about it. He simply refused to give them, I think.

Q. Now that is really the reason that you thought he was intoxicated at the time, that he refused to allow that charge of yours, was it?

A. No, that was not the ground. I think if there had been anything wrong about it he should have modified it to suit himself, or told me just how to have it modified. But he wouldn't tell me how he would have it modified, but he simply said "there is something right along there that is not exactly right."

Q. Well, he didn't run a law-school for you folks? A. No.

Q. It was perfectly right for him to call your attention to it so you could modify it?

A. Yes, if he would have done it, but he wouldn't.

Q. Now, coming back to that Wildt case, in 1881: you said in your direct testimony that the Judge went to work and remitted all the fines afterwards. Is it not a fact that he did not use the word "revoke" or "remit," but that he simply stated the defendant should pay the alimony within a certain time, and that if he did not pay it within that time he should be adjudged guilty of a contempt.

A. After the affidavit and contract were presented, he revoked all the fines.

Q. Did he use that language?

A. I wouldn't say that he did, no; he said he remitted or revoked, or used language to that effect.

Q. Would you swear that he used language to that effect?

A. That is my recollection, yes.

Q. Isn't it possible your recollection might be mistaken in that, and that he said nothing about it?

A. I wouldn't say that it is impossible that my recollection is mistaken about anything. I simply give it as I recollect it.

Q. That Wildt case had been in court before this time, had it not; that is to say, another case in which that defendant was interested?

A. The defendant had been there in that same case; had appeared, and I got my order for suit money.

Q. Isn't it a fact that there had been another suit brought against that man Wildt, and he had at that time refused to pay the money that was ordered?

A. Never to me.

Q. Now, don't you know, as a matter of fact, that this was a second edition of that divorce case?

A. No, I don't know anything about it.

Q. Don't you remember Col. Baasen appeared in a divorce case, or was attorney in that suit before?

A. No. I had understood that she had made application to other lawyers, but I understood it was abandoned.

Q. Now how often have you seen Judge Cox at New Ulm during the years 1878, 1879, 1880 and 1881?

A. Well, I couldn't state with any degree of definiteness at all. I have seen him there often. Sometimes he does not come on his special terms,—when there is no business,—but he has a regular rule to have a special term every month, and he comes there often besides. I have seen him there often, but I don't know how often.

Q. What year was this Castor business?

A. I could not tell you. I know it was in the summer when it was very hot.

Q. This Castor business, I understand, was in 1879. Now, in 1878, can you remember any time, outside of the general term times, in which you have seen Judge Cox in New Ulm?

A. I could not specify any time, but I know I have seen him; he was there often.

Q. Could you swear you had seen him outside of the general terms in the year 1878?

A. Well, I have no particular recollection; my recollection is I saw him, I should say, as often as once a month, and probably oftener than that, but I don't recollect definitely about it; I couldn't fix any time.

Q. Would you swear that the Judge was there oftener than twelve times during that year?

A. No, I wouldn't swear that he was; I should give it as my opinion that it was oftener, but still I don't know.

Q. Now, at the general terms that year,—the spring and fall terms,—Judge Cox was perfectly sober, was he not, as far as you recollect?

A. At every term except those I have named, he was perfectly sober.

Q. Special and general, except those you have named?

A. Well, as far as I have been in court at special terms.

Q. Well, as far as you have seen it? A. In court, yes.

Q. Can you remember of a single occasion where you distinctly recollect to have seen Judge Cox intoxicated in the year 1878 in New Ulm?

A. I couldn't specify any time at all.

Q. Well, I didn't ask you to give me the day or the hour or the minute; but do you recall any occasion, in your mind, in the year 1878, at which you saw Judge Cox intoxicated at New Ulm?

A. No, I could not fix any time.

Q. I didn't ask you to fix any time. Can you recollect of any particular occasion?

A. I have seen him drunk at New Ulm often, but I couldn't fix the time in my mind.

Q. Now, by the word "often," what do you mean to be understood? During the last year have you seen him drunk there over six times that you would swear to?

A. Well, I could not specify the times; I don't know how many times I have.

Q. Well, would you swear it was over six?

A. No, I wouldn't swear it was; I think I have more than six, but I don't know.

Q. Now, can you, in your own mind, fix the occasions, or any one of them, except those you have already testified to,—the time of the Castor case, the time of the Kelly case, and the time of the Manderfeldt case,—can you recur to any other occasion upon which you have seen him drunk?

A. Yes, I can; I can't give you the time.

Q. I didn't ask for the time.

A. Not far from the time that he had that case of Picket against Picket; he was talking about the definition of the word adultery,—going back to the original word. Father Bergholz came along while he was talking, and he went off with him, I suppose talking about that. He told me he had written to several clergymen to ask their understanding of the meaning of the word adultery in the original language. I thought he was drunk at that time.

Q. You wouldn't swear that he was?

A. Only from his appearance, that is all. I didn't see him drink.

Q. Wasn't it really a fact that the language he used on the subject matter was something that was so foreign to your understanding and your education that you thought there was something strange in it?

A. I am not a Greek scholar, but I thought it was rather a queer question for a judge.

Q. Didn't he use Greek and Hebrew language to him,—that is, use words in those languages?

A. He repeated a word that he said was the Greek word; I don't know whether it was Greek or not.

Q. You are not a Greek scholar. A. No, I am not.

Q. There was nothing out of the way in what he said, so far as you could understand the conversation?

A. Well, it seemed to me an unusual course for a Judge who had a matter under consideration, to go around and ask the clergymen the meaning of words. I don't know but it was all right.

Q. It wouldn't be anything out of the way if he was not a sufficient scholar himself, to ask scholars in regard to the meaning and definition of certain foreign words?

A. Well, as to the legal definition.

Q. This Mr. Bergholz, is a Catholic priest, is he not? A. Yes, sir.

Q. And a man of high standing as a scholar?

A. I think so; yes. But I didn't hear him ask Father Bergholz; he was talking to me and one of the teachers, and Father Bergholz came along, and he went away with him.

Q. You didn't hear the Greek or Latin word he asked Mr. Bergholz?

A. No, sir; I did not.

Q. Have you not often, when you knew that Judge Cox was perfectly sober, when you have been with him, and knew that he nad not been drinking anything, heard him make remarks similar to those he made there, or that you thought was just as eccentric as that?

A. Well, I couldn't tell you; he is somewhat peculiar in his conversa-

tion, but I don't think I ever heard anything quite so peculiar as that; still, I may have.

Q. He has got rather more than the usual share of peculiarities, has he not?

A. Well, I don't know; perhaps rather more. He is a very pleasant man when he is sober.

Q. Well, he is a little eccentric? A. I should say so.

Q. A little out of the way, as a general thing?

A. Well, a little peculiar.

Q. Isn't it a fact that at this time when you say he talked to Father Bergholz, that his conversation was in regard to the meaning in English of certain Latin and Hebrew words connected with the subject of adultery?

A. Well, I didn't hear any Latin word that I recognized, and whether it was Greek or Hebrew—I don't know either language.

Q. Well, that was what the conversation, with you, was about, at the time he went off with Father Bergholz?

A. Yes.

Q. Do you remember whether he used the terms *adulterabilis* or *moechaberis*?

A. It would be impossible for me to tell.

Q. Was it something like that?

A. I should think like enough, still I don't know.

Q. And that was immediately previous to his going off with Father Bergholz?

A. Yes, sir. It is my recollection that it was.

Q. Now, can you recollect any other time at New Ulm except those you have now specified,—I don't ask you to give the time?

A. Yes. I recollect the time that Mr. Wollen and Mr. Morrell came to argue a motion for a new trial in the Tower case that had been tried at Redwood Falls. I was going along the street with Mr. Wollen, and I don't know but Mr. Morrell was with us; anyhow, we met Judge Cox, and Mr. Morrell came up and spoke to him about what the business, and he said "he had decided that already;" he said he was going to grant a new trial. In my opinion he was intoxicated at that time.

Q. Had you seen him drinking at that time? A. Not a drop.

Q. When did he come up to New Ulm at that time?

A. I don't know.

Q. Do you remember about what time that was?

A. It was in the forenoon; I couldn't tell what time though.

Q. I mean what year was it?

A. It is my impression it was a year ago this summer sometime.

Q. This matter where he spoke to Mr. Bergholz, what year was that?

A. I can't fix the time; it is impossible.

Q. Well, it is two or three years ago, isn't it?

A. Well; I should not think as long as three years ago. I should think it is two years.

A. On this occasion of the Tower case, when Mr. Wollen came down there; did you have any talk with the Judge?

A. I don't recollect except when we met him at that time.

A. You met him where?

A. I met him on the street nearly opposite Mr. Croney's store, I think, in New Ulm.

Q. Was it to you or to Mr. Morrell that he talked?

A. It was to Mr. Morrell that he addressed his conversation principally.

Q. Were both of the attorneys in that case there? A. Yes.

Q. And you? A. Yes.

Q. Were they the only ones present there?

A. I think that was all.

Q. He walked perfectly straight, did he not?

A. So far as I noticed.

Q. Was there anything about his countenance particularly that made you think he was drunk?

A. No, I don't know as there was. The most that made me think he was drunk was that he decided the motion for a new trial right there on the street.

Q. Isn't it a fact that when that case was tried the Judge told the attorneys after the verdict was brought in by the jury, that if a motion for a new trial was made he should grant it, and that if none was made he should set the verdict aside of his own motion as being entirely against the law and the evidence?

A. I don't know,—I was not there; I don't know anything about that.

Q. Now, if that had been the case, you wouldn't think it so peculiar that he should tell them on the street that he had already decided that in his own mind?

A. Certainly not. They both came down to argue it. I think Judge Cox's ruling was perfectly right.

Q. He was sustained by the supreme court? A. Certainly he was.

Q. On every point that was raised there, was he not?

A. Well, I don't recollect all the points; I have read the decision, but his order was sustained.

Q. That decision that he made, without hearing argument, was sustained by the supreme court?

A. Certainly.

Q. Would you think it curious when a verdict had been brought in by the jury contrary to the instructions of the court that the court should express his opinion upon that before hearing argument?

A. I think it would, yes; when the counsel had come down to argue it, I think so.

Q. That is the only thing that makes you think he was intoxicated?

A. No, that is not the only thing. He appeared intoxicated.

Q. You stated awhile ago that there was nothing in his complexion or face that made you think so?

A. No, it was his general appearance.

Q. Was his tongue thick?

A. No, I didn't notice that it was. He was not very drunk. He was drunk in my opinion, but not very drunk.

Q. As a matter of fact, you wouldn't swear positive he was drunk at that time,—it is simply a matter of impression?

A. It was only my opinion.

Q. And mainly gathered from that remark he made?

A. Well, somewhat from that; from that and his general appearance.

Q. Now, was that remark that, "he had decided that case already" or that it "wasn't any use to have any argument about it?"

A. My recollection is that when Mr. Morrell mentioned it to him he

said, "that is already decided; I am going to grant a new trial. I gave one wrong instruction;" that he submitted one matter to the jury that he ought not to have submitted.

Q. And he told him what?

A. He told him he had already granted a new trial, or words to that effect. He said "I shall grant a new trial in that case." He said he should or had, I could not recollect the exact language; he either said, "I shall" or "have," or words to that effect.

Q. Both attorneys were there,—both sides? A. Yes.

Q. They were both there together; it was open and above board?

A. Yes. He used the language I have stated as near as I can remember.

Q. Both of the lawyers there remarked that that was just what they expected, did they not?

A. I did not hear them. I don't think Mr. Morrell expected it. I have no doubt Mr. Wollen expected it, and had good reason to expect it.

Q. Is there any other occasion you can recall to mind at which you saw Judge Cox intoxicated in New Ulm?

A. Those are the only occasions I can recall perhaps, except that I remember of seeing him drink and hearing of certain things he did.

Q. I mean about your seeing him.

A. I saw him there intoxicated, and any particular irregularity he committed would be talked about over town.

Q. At how many occasions do you remember that?

A. I couldn't tell you, but I think several.

Q, At more than two, do you think?

A. Well, yes, I think there are more than two.

Q. How many do you think?

A. I couldn't tell you.

Q. Would you swear it was over three?

A. I won't swear to anything positively as to the number.

Q. You wouldn't swear to more than two positively?

A. Well, I don't know as I would.

Q. You don't think of more than two just now?

A. Perhaps not.

Q. You would be liable to see Judge Cox at any time when he did come to New Ulm I suppose?

A. He was frequently at my office and I used to see him come up frequently. My office was right on the main street. He has probably been up there sometimes when I have not seen him, but I have seen him often

Q. And you think he has been there at least as often as twelve times a year, and sometimes more?

A. Oh, I think it would average more than twelve times a year.

Q. Do you think he was there that number of times in 1881?

A. Well, he has been there less frequently I think since the last May term han usual. I recollect however of seeing him there two or three times since.

Q. During the last year when you have seen him at these two or three times, you noticed no inebriety?

A. No, I don't remember that I have seen him intoxicated since the last May term, in Brown county.

Q. Between the first day of January, 1881, and the May term of 1881, you have never seen him intoxicated in New Ulm, have you?

A. Well, I cannot fix any time at which I saw him intoxicated.

Q. Then it is only one time that you have seen him intoxicated during the last year in New Ulm, and that was at the May term?

A. I have not seen him intoxicated since that term, how long before I couldn't tell you.

Q. Well, you wouldn't swear you had seen him intoxicated during the year 1881 more than at that May term?

A. No, I wouldn't swear that I have, nor that I have not. I don't know.

Q. Now, outside of New Ulm, you saw Judge Cox, as you claim, intoxicated in St. Peter at the time of the settlement of the case of Brown against the Winona & St. Peter Railroad Company. A. Yes.

Q. And during the trial of the Dingler case in the evening?

A. Yes.

Q. Now, outside of those two occasions, outside the occasions at New Ulm, and outside of the occasion you spoke of in Redwood county, you have not seen Judge Cox intoxicated at any other time, have you?

A. I don't remember now any other time.

Q. When was that time in Redwood county that you saw him intoxicated? A. I think it was in January, 1880.

Q. Was it at a term of conrt up there in Redwood county?

A. Yes.

Q. Was it a regular term? A. Yes.

Q. Was it in court or out of court?

A. Well, I will give you the details of that if you want them. He was drinking in his room and got drunk there. It was during the trial of a criminal action,—the Hawk case. The jury came in in the evening and asked for further instructions.

Q. Now, I want that. You said there was being a criminal case tried.

A. Yes.

Q. What was the title of it?

A. The State of Minnesota against Hawk. I don't know the first name.

Q. Do you remember at what time the jury was sent out?

A. Well, no, I don't remember the time they were sent out.

Q. Was you engaged in the trial of the case?

A. No, I was not.

Q. When was this that he was in his room and got drunk there?

A. I can't give you the date; it was in the evening after the court had adjourned. It was while the jury were out. The court had taken a recess.

Q. Was it about supper time?

A. Was what about supper time.

Q. The time when he was drunk?

A. No, it was after; it was quite late in the evening.

Q. Was it after nine o'clock, do you think?

A. It was after nine o'clock. When the jury came in and asked for further instructions, it was about eleven o'clock to the best of my recollection.

Q. Well now, court had not taken a recess to meet for that purpose or for any purpose at all, at the time Judge Cox was drinking, had it?

A. No, I don't recollect that any time was agreed upon,—the jury were out.

Q. The court had taken a recess until the next day, had it not?
A. I think it is likely; I don't remember about that.
Mr. ARCTANDER, (To Manager Hicks.) Is this covered by any of your specifications?
Mr. Manager HICKS. No, sir; Mr. Webber would not give us the facts.
Q. Now, at that time had you been with him in his room and seen him drinking?
A. Yes, I had seen him drinking.
Q. Where was he boarding at the time?
A. He was stopping, I believe, at the Commercial House; I am not sure about the name of the house. It might have been the Exchange House, we were both stopping, however, at the same house.
Q. You think it was the Exchange House?
A. Well, I don't know there were two houses there.
Q. Was his room up stairs or down stairs?
A. It was down stairs.
Q. Are there any bed rooms down stairs in the Exchange House at all?
A. I never stopped except at this one hotel, and I have forgotten the name of it,
Q. Then probably it was the Commercial House, was it not?
A. I don't know.
Q. Do you remember the name of the man who kept the house?
A. Elijah Northrop.
Q. Now, who was there in the room besides you?
A. Charlie Ware, for one,—the reporter.
Q. Who else?
A. There was a man by the name of Orth,—I don't know his first name.
Q. Anybody else.
A. Mr. Northrop was there a part of the time; and there were two or three others; I have forgotten their names now.
Q. Were they attorneys?
A. No, there were no attorneys there except myself that I recollect of.
Q. What were you drinking?
A. I didn't drink anything; I don't know what he drank. He drank out of a bottle; suppose it was whisky, but I don't know.
Q. It might have been wine?
A. It might have been; or water for all I know.
Q. Did the bottle go around? A. Yes.
Q. And you think there were about eight or ten persons there?
A. No, not as many as that. There were four of them playing cards, and Charlie Ware was there a part of the time; there might have been one or two others in but I don't recollect as there were.
Q. Was that in his bed-room or in the public parlor there?
A. It was in his bed-room; that is, it was a room that opened out of the outside; I think he slept there, there was a bed there, I sat on the bed, I know.
Q. How many do you think were there?
A. There were these four that were playing cards and Charles Ware, and myself and Mr. Northrop, Peter Orth was one those who were playing cards.

Q. What sort of a bottle was it you had there?
A. It was a large flat bottle, one of those flasks, but a very large one.
Q. About a quart bottle?
A. I should say a quart but still my judgment is not very good about that.
Q. All of them drank except you, did they not?
A. I think they all drank except me; I dont know whether Charles Ware drank; he drank very little, if any.
Q. How many drinks did you see the Judge take at that time?
A. I don't know.
Q. Did he take more than one drink?
A. Oh, yes; he drank often.
Q. Did he drink out of a bottle or out of a glass?
A. He drank out of a bottle.
Q. You couldn't state whether he took a good swallow or not?
A. No, I couldn't tell anything about it.
Q. Well, could you remember the number of times he did drink.
A. I couldn't state; it was a good many; he drank often, I don't know how often.
Q. Would you swear that he took more than four swallows from the bottle during the evening.
A. I coldn't tell anything about the number of swallows, but I should think he drank more than four times; I should think more than twice four times.
Q. Now, the time you observed him that way continued from about seven until about eleven o'clock?
A. No, it was later when we came in. My recollection is we sat in the parlor and he played on the piano, I think, and I think Mr. Emil who was there played some.
Q. Was he in the room too?
A. No, I don't think he was, I don't recollect that he was.
Q. So you think it was about 8 o'clock when you went in there?
A. Well, I don't know the time; I have nothing to fix the time in my mind.
Q. Do you think it was later than six or seven?
A. Yes; I should think it was later than six or seven.
Q. Do you remember whether there was a gentleman there in the room by the name of Billy Smith, the clerk of the hotel,—sitting in there?
A. No, I don't know; I don't think any except those I have named staid there much. I don't think Mr. Northup was in there much, but he was in there some, I know.
Q. Wasn't this Billy Smith playing cards there?
A. Well, I didn't know those gentlemen. Billy Smith might have been one of them.
Q. The sheriff came over there, did he, and told the Judge that the jury wanted to have some further instructions?
A. Yes; I think so.
Q. As a matter of fact, when he adjourned at six o'clock he had no reason to believe that he would be called upon, had he?
A. No; I don't know that he had any more than is commonly incident to a judge of the district court.
Q. He went over to the court room, did he?
A. Yes, sir.

Q. Mr. Ware went, did he not?
A. Yes, sir. Mr. Woolen was there, I think, also.
Q. Was Col. Hooker, of Minneapolis, there?
A. I don't know Col. Hooker.
Q. Was Seagrave Smith there?
A. No, I think that was not the term he was there.
Q. Do you know Dave Thorp? A. Yes.
Q. Was he there?
A. He was there in attendance upon the court, but he was not at th hotel, I think. I don't think we found him in the court room at tha time, It was quite late. I don't think any one attended but Mr Wollen.
Q. When the judge went up to the court room he walked perfectly straight, did he not
A. So far as I noticed.
Q. Did you go up with him? A. I guess I did.
Q. Went up arm-in-arm, did you? A. I don't know.
Q. Who was the sheriff at the time?
A. Mr. Gale was sheriff.
Q. Was he the one that came after him?
A. I don't know; it might have been him or the deputy sheriff.
Q. Was Mr. Gale sheriff at that term of court?
A. That is my recollection. I may be mistaken about it.
Q. Wasn't David B. Whitmore acting during that whole term o court as sheriff?
A. I don't think he was. My recollection is that Mr. Gale came dow after supper, and the landlord hesitated about giving the jury supper and this Mr. Orth is a brother-in-law, I think, of Mr. Northrop, and h insisted they should have supper. The jury were out quite a long time I think they were out, perhaps, two nights and a day.
Q. What was this trouble about supper—did he hesitate because h was afraid he wouldn't get his pay?
A. Oh, no; the hotel was full.
Q. It was not on account of the inadvertence of the Judge that h had not ordered supper. or anything of the kind?
A. Oh, no.
Q. Now, when you came up there in court, was there anything out o the way with the Judge in what he told the jury?
A. Well, my recollection is he only read the instructions, or part o the instructions, he had already given on the trial.
Q. They wanted to find out about some particular instruction, did they not?
A. Yes; I think so.
Q. And then he read that particular instruction to them? A. Yes
Q. He did that in good shape, did he not?
A. So far as I recollect. he did.
Q. How long after that instruction was given was it before the jury came in, do you remember?
A. No, I don't.
Q. You had drank nothing at all that night, had you?
A. No, nothing.
Q. You never drink?
A. Sometimes drink a glass of beer when I am at home.
Q. Do you remember anything singular on that evening or that night in court?

A. Well, there was nothing particularly singular. There had been a performance there in the court room—some sort of a troupe, or something—and they left a melodeon there; and we waited there some time before the jnry came up, and the judge was performing on that melodeon, and he was feeling first rate.

Q. You have noticed that peculiarity about Judge Cox, haven't you, that whenever he goes into a court house where there is a piano or an organ, whether drunk or sober, he must sit down and play a tune on it?

A. I don't remember ever seeing him play but once, aside from this time in the court room.

Q. Now, that is the only time you ever stopped in a hotel with the Judge—this occasion there at Redwood Falls, was it not?

A. Oh, no; I think I stopped there at the last June term.

Q. Didn't you see him play that piano or organ there then?

A. I don't remember that I did; I might.

Q. There was nothing out of the way in his actions when he went over there and played on that melodeon, was there?

A. Oh, he acted very peculiar. He acted as though he was drunk.

Q. Well, in what?

A. Well, in the manner of his playing, the performing, the stories he gave, etc. I cannot remember them; but he was plainly drunk.

Q. He was not very drunk at that time, was he?

A. Well, he was so that it was perfectly apparent, I thought, that he was drunk.

Q. Just as apparent as it was at these other occasions in the Howard-Manderfeld case, and the Kelly and the Gezike case?

A. Yes, I think so. More so than in the Gezike case; not so much so as he was at the last part of the McCormick case.

Q. Well, he was really terrible drunk at that time, wasn't he?

A. Well, he was drunk; you may apply your own adjectives or adverbs.

Q. Now, do you remember whether or not that jury did not come back within about fifteen minutes or half an hour after the Judge had charged them?

A. No, I don't know. I don't think they did, but I don't remember.

Q. Don't you remember that you were called up there at seventeen minutes of twelve in the night, and that he gave that instruction, and then waited for the jury to come in, and that they did come in just three minutes before twelve o'clock, and had their verdict recorded, and were discharged?

A. I don't know; I don't think I was there when they were discharged, but I might have been.

Q. Now, if the Judge remembers that and you don't, you don't think he was very drunk at the time, do you?

A. Well, I don't recollect about it, and I don't know as I was there; I don't think I was there when the jury was discharged.

Q. You remember about that instruction of his? A. Yes.

Q. Is it not a fact that the instructions were of such a character that you all expected that the jury would be back in less than five minutes?

A. Well, my recollection is that they were just the same they were in the first place.

Q. He didn't explain them any? A. I don't think he did a word.

Q. When they came in they didn't ask to hear the whole of his charge, but it was only on one particular point, was it not?

A. I think it was on one particular point.

Q. They stated that there was a dispute amongst them as to what the charge had been?

A. I think so; I don't know.

Q. The Judge then just read that one particular portion, and sent them right out?

A. Yes.

Q. It was only on one point that they wanted to be informed?

A. I think only on one point.

Q. You didn't wait for the jury to come back?

A. I don't think I did; I don't state that positively.

Q. Do you remember what that point was that the jury asked further instructions upon?

A. I think I remember nearly the substance of it.

Q. Well, what was it?

A. The case was a case of embezzlement—

Q. By a clerk of the court, was it not?

A. Well, no; it was not officially. He was clerk of the court, but—

Q. He was indicted as an officer, wasn't he?

A. He might have been; I think the Judge held he was not indictable as an official.

Q. Now let us here what was the point that the jury wanted to be instructed upon further?

A. I am not positive about this, but my recollection is that he instructed the jury in regard to the ownership of the money, that it must be proved by the owner of the money himself or his absence explained; otherwise they couldn't find the defendant guilty.

Q. Isn't it a fact that they asked instructions upon was this: as to the instructions he had previously given upon the point that they must take into consideration the question as to whether or not he had received that money as an officer or as a private individual?

A. No. I think I am very clear that was not in. The money was paid in on a judgment according to my recollection, and the court held that the clerk had no authority to receive it. The question was discussed there, and in effect conceded that the clerk had no authority to receive money on satisfaction of a judgment; and that he could not be held officially.

Senator POWERS. Mr President, it lacks about an hour to the time for recess and I do not think there is more than two-thirds as many members as is necessary for a quorum, I move a call of the Senate.

The clerk called the roll as follows:

Messrs. Aaker, Adams, Bonniwell, Crooks, Hinds, Johnson, A. M., Johnson, F. I., Johnson, R. B., Langdon, McCrea, McLaughlin, Mealey, Miller, Morrison, Perkins, Powers, Rice, Shalleen, Tiffany, Wheat, Wilkins and Wilson.

Senator POWERS. I move that further proceedings under the call be suspended, and that counsel resume the examination of witnesses.

CROSS-EXAMINATION

By ARCTANDER.

Q. What day of the term do you think this was?

A. I have no idea what day it was.

Q. Was it the first or the last day of the term?

A. Well, I should think nearer the last, but still I don't know.

Q. Was Charlie Ware there as reporter all the time during the term.

A. My impression is that he was not, that his wife was sick and he had to go away ; he did one time I know, and it might have been that term, I know he was there that evening.

Q. Do you think his wife was sick?

A. She was one time and my impression is that it was that term, but I don't know.

Q. He only got married last fall; don't you know that?

A. I don't know.

Q. Well, if that is the fact, if he only got married last spring, that wasn't the term that he was away?

A. No, that wasn't the term that he went away; he was there that evening, I know, but whether he was there all the term, or not, I don't know.

Q. You testified already in this Caster business, you said you didn't remember what year that was?

A. No, sir.

Q, In that case what side were you on on that particular occasion?

A. I was for the defendant. He had been ordered to show cause why he should not be judged guilty of contempt in not paying over suit money, and I was his attorney in resisting that order.

Q. That was an extremely hot day? A. Very hot.

Q. There was no particular term of court there?

A. I don't remember.

Q. There was no special term or general term?

A. I remember I had a copy of the order, and it was made returnable there, but whether it was a special term or a general term I don't know.

Q. You stated that it was an extremely hot day?

A. Very hot.

Q. One of the hottest days they had that summer?

A. Yes, I think among the hottest.

Q. A day that people in New Ulm would drink beer, plenty of beer, generally?

A. I presume they would.

Q. As a matter of fact, in summer beer drinking runs pretty high up in New Ulm, amongst all classes of persons?

A. Well, there is more drank in hot weather than in cold I think. They drink some all seasons.

Q. You wouldn't swear whether you came up to the court house first or you found the Judge on the steps?

A. No, I am not certain about that.

Q. As a matter of fact, no proceedings took place in the court room at that time?

A. No, sir.

Q. All of it was done on the steps? A. Yes, sir.

Q. And it was an informal reading of an affidavit before the Judge; there was no court open?

A. There was no court opened.

Mr. Manager DUNN. I submit, Mr. President, he has been all over that ground once.

Mr. ARCTANDER. We have not touched upon the Caster matter.

Mr. Manager DUNN. You had the whole Caster business yesterday.

Mr. ARCTANDER. I will leave it to the witness if I have asked him a word about the Caster business.

The WITNESS. I don't think I have been cross-examined on that. I am anxious to be.

Mr. Manager DUNN. I beg your pardon; I supposed you were over that yesterday. It seems I am mistaken, for the witness corrects me.

Q. There was no clerk there?

A. No, sir.

Q. The court was not opened, or no court adjourned when you were through with your business?

A. No, sir.

Q. Isn't it a fact that it was Judge Cox that suggested to you, when you came up with Mr. Caster, and found them sitting on the steps, that whatever you had to say you could just as well say right there?

A. No, my recollection is that I made the suggestion myself. It was shady on that side, and the court room is an extremely hot room, especially in the afternoon.

Q. It was not because the Judge was intoxicated that you made the suggestion, but it was on account of the atmosphere?

A. Oh, no; I would have made the same suggestion if he had been as sober as he is to-day, probably.

Q. You sat down and waited awhile for Kuhlman, and talked back and forwards?

A. I think very soon after we came he sent Caster down after the beer.

Q. But you sat and waited awhile for Kuhlmann first; he didn't come at first?

A. No, I think Kuhlmann didn't come, at first. I think that was perhaps the first thing that was done, and we waited perhaps for Kuhlmann at the same time,

Q. And while you were waiting for Kuhlman you were having a friendly chat, and it was during that time that the judge remarked to Mr. Caster that he ought to treat, etc.?

A. Yes, I think so.

Q. That was before any business had come up, or before Mr. Kuhlman had even arrived there.

A. I think so, yes.

Q. And he then gave Mr. Caster fifty cents to go down aad get some beer; for you folks to go down and get a drink?

A. Yes, sir; he did.

Mr. Manager DUNN. For you "folks?"

A. Why he said to Caster: "You ought to treat," that was his language, and Caster said: "Judge, I haven't got any money," and he took out some money, fifty cents, and sent him down for some beer. I don't think he said for us or for him, or anybody in particular.

Q. You drank it all the same? A. I drank some of it.

Q. None of that was drank after you commenced your business; it was all done before the business was taken up?

A. I think so, but I am not certain about that.

Q. You can't recollect that anything was drank after you commenced your business?

A. No, my impression is that it was not; my impression is we drank the beer, whatever we drank, I don't know whether we drank it all or not, my impression is we drank all of it before we did the business.

Q. What was it brought in, that beer?

A. My impression is that it was a tin measure; it may have been a pitcher, that is my impression but I am not certain.
Q. Did he have a glass along?
A. A glass or mug, but I am not sure,—something to drink in.
Q. Was it not a quart measure that he brought up there?
A. No, it was—
Q. In a white pitcher, about a quart measure.
A. No, I think it was larger than a quart, but I don't know the size of it.
Q. Caster drank? A. Yes.
Q. Eckstein drank?
A. My impression is Eckstein did not drink, but I don't know.
Q. Well, he is a German, isn't it?
A. He is a German, but we have Germans who don't drink.
Q. Have you? Well, you wouldn't swear that Eckstein did not take a glass?
A. I would not swear he did not, but my impression is that he did not.
Q. And Kuhlman when he came, he had some?
A. I don't think that Kuhlman did; I am not sure about that. I did; there is no kind of mistake about that.
Q. Nobody else around that you can remember?
A. No, I don't remember of anybody,
Q. Now, how many glasses did you say Judge Cox drank there, of beer?
A. I couldn't tell you.
Q. Did he drink more than one glass?
A. My impression is that he did, but I could not be positive; he didn't drink enough to make him drunk, if he had not been drunk before.
Mr. Manager DUNN. He was drunk before?
A. He was drunk when he came there.
Mr. ARCTANDER.
Q. Drunk when he came to New Ulm?
A. Drunk when he came up there, when I first saw him there.
Q. Was he walking or sitting down when you first saw him?
A. I don't recollect about that; whether he got there first or not.
Q. Did he tell you he was drunk, or did you find it out?
A. Found it out by his appearance, and didn't have to study hard either.
Q. Was there anything peculiar about him that time that made you think so,—anything that you can describe?
Q. Why he acted just as he does when he is drunk. It is not very peculiar, he often acts that way.
Q. Is there anything that you can remember of his actions?
A. No, I cannot describe his actions when he is drunk. I wish you would make a minute of that. [Laughter.]
Q. I will. I wan't to have that "solid." You cannot describe his actions when he is drunk. Can you describe his actions when he is sober?
A. No, I cannot.
Q. Would you swear that the Judge was perfectly sober now?
A. My opinion is—I would give my opinion in any case—I think he is perfectly sober.

Q. You think he ought to be.
A. Yes, painfully so.
Q. Now, you went on and read that affidavit as you have stated?
A. I think I did.
Q. And the Judge listened to the reading of your affidavit?
A. Well, he was talking a good deal of the time, but I got through with the affidavit, and tried to read some authority, but I gave it up, and he would not listen to it.
Q. He told you it didn't apply?
A. No, he didn't pay any attention; he talked to Caster, how sorry he was that he had to lock him up.
Q. Well, it was a matter of fact that Caster was an old friend of his, up to that time?
A. I guess so.
Q. And it would be quite natural for him to say that he was sorry that he had to do it, and coax him into paying the money. Isn't that so?
Mr. Manager DUNN. We object to that as not cross-examination. It seems to be argument of counsel and takes up time.
Mr. ARCTANDER. What is the ground of your objection?
Mr. Manager DUNN. I am merely noticing an objection on account of time.
The PRESIDENT *pro tem.* I think that counsel may proceed.
Q. Isn't it true that the Judge told you at the time that he wanted to take that matter into consideration?
A. Not a word of the kind.
Q. Didn't he tell you so? A. No, sir.
Q. Didn't he take the papers then and there?
A. We had no papers to take. I had a copy of his order. That is all the paper I had.
Q. Did Kuhlman have a paper?
A. I don't know.
Q. Didn't he first read the application he had on the order to show cause?
A. I don't recollect. I think he showed it to the Judge, but perhaps he did not.
Q. That would be the natural proceeding?
A. Yes, sir.
Q. And then for you to read him your affidavit?
A. Yes, sir.
Q. Isn't it a fact that the Judge took your affidavit when he left there?
A. I don't think he did. I think I carried it away. I would not be positive about it, but my impression is that I carried it away.
Q, Isn't it a fact that he told you both at the time that he was going to take this matter under advisement?
A. No; but he was going to lock him up, and he told him so repeatedly; he told the deputy sheriff: "Joe, take him and lock him up."
Q. Didn't make a written order to that effect?
A. No, sir.
Q. Didn't order Eckstein in such a manner that he considered it an order of the court?
A. He didn't obey it. He used the language substantially as I told you.

Q. What was that?
A. "Joe," or "Eckstein,"—his name is Joseph—"Joe, lock him up?"
Q. Didn't he say, "Joe, you will have to lock him up?"
A. No, I think he gave it to him as an order.
Q. Will you swear that he didn't?
A. I wouldn't be positive, but my recollection is as I have stated.
Q. Isn't it a fact that about a week after that time, or four days after that time, that an order was sent up there, ordering him to be imprisoned, and a decision upon the order to show cause?
A. I have no positive knowledge about that; I know I went up there and found him in jail; and I presume on the Judge's order. He wanted to know how to get out, and I told him to pay his money, according to the order.
Q. You would not judge from that that the Judge had taken the matter under advisement, and that you were mistaken in your statement as to his ordering Joe Eckstein to lock him up then and there?
A. I know I am not mistaken about that; I don't know how much the Judge considered it; he simply gave the order as I have stated it, and told him repeatedly he was going to lock him up; he might have considered it all that week; I don't know anything about it.
Q. You never examined the records to see whether there was any order or not!
A. I don't think there was any record there; there was no clerk there.
Q. No record item with the clerk?
A. No record there at the time, and I had nothing to with the case. I have thought of it since, but I had never anything to do with it.
Q. You stated that Kuhlumann left in disgust before the matter was over?
A. I dont think I used the word "disgust;" but I guess I will use it now.
Q. I thought you said it?
A. I might have used it, but I don't think so.
Q. Kuhlman left it, because he was discouraged?
A. Yes sir.
Q. "And soon after we all left?" A. Yes, sir.
Q. What was Kuhlman discouraged for, if he got an order to have the man arrested; that was all that Kuhlman wanted?
A. He didn't have the order executed; he wanted to see him locked up.
Q. Time enough, wasn't there, after the court had gone away to execute that order?
A. I presume so; I only stated the fact.
Q. Is Kuhlman a lawyer at all? A. Yes sir.
Q. Would you, as a lawyer, or would any lawyer expect a man to be committed to prison on the verbal order of the court, without first having obtained a written order?
A. No, I think not. Mr. Eckstein asked me about that, whether he should put him in jail if the Judge ordered so. I told him if he gave him a written order to put him in jail; that was before I went up.
Q. Didn't the Judge tell Mr. Kuhlman there, at the time,—did Mr. Kuhlman have a written order made at the time?
A. I don't know.
Q. Didn't the judge tell Mr. Kuhlman to make his written order, and that he would sign it after?

A. Not in my hearing.
Q. Did anybody ask him there to sign a written order?
A. I don't think anybody presented any to him; not in my presence.
Q. Did Kuhlman ask him to make a written order to that man?
A. I think Kuhlman use language to that effect.
Q. What?
A. To make an order. I don't know as he said what order, or could not give his language.
Q. Did he refuse to do it?
A. Why, he didn't say he wouldn't. He kept talking to Caster, and he didn't do anything, and we all got up and went off. That was the whole of it.
Q. You wouldn't swear that Kuhlman presented an order to him to sign it, or anything of that kind?
A. No, I wouldn't. I didn't see him do it.
Q. What did you mean then when you testified on your direct examination that the Judge would not make any order?
A. Because he didn't; he did not refuse to make any; he didn't say he wouldn't but he didn't, any further than I told you.
Q. Your recollection isn't very distinct as to the occurrences right there is it, Mr. Webber?
A. I think it is pretty distinct; I don't remember the precise language, of course, but I remember the substance. We were there only a short time.
Q. Where did the Judge go to if you know, after the thing was through?
A. I don't know.
Q. Isn't it a fact that he went over to Mr. Kuhlman's office and wanted him to draw up an order:
A. I don't know anything about it. Mr. Kuhlman is here, and will answer that question.
Q. Where was it you first heard that this man had been committed to jail, afterwards?
A, I don't know, sir. He sent down word for me to come up and I went up and found him in jail.
Q. How long after that was this?
A. I don't have any idea, not very long. It may have been one week or two; I don't know.
Q. One week or two? A. Yes, sir.
Q. Was it as much as one week?
A. I should think it was as much as one week but still I don't know about that; it was some days after.
Q. Do you remember what day of the week it occurred that you were called on?
A. No, sir.
Q. Was he more intoxicated than he was in the trial of the Howard vs. Manderfeldt case?
A. Not as much so as he was at the close of that when the jury came in.
Q. Was he better or worse than in the Wildt case?
A. Well, I should think not; not much difference.
Q. In the last term of court there, do you mean whether he was about the same in the Caster case, as in the Wildt case?
A. Yes, I should think that there was not much difference.

Q. But he was not so intoxicated in the Caster case as he was at the time of the trial of the Howard vs. Manderfeldt case?

A. Not as he was when the jury came in; no, he was not.

Q. As a matter of fact, during the trial of that case of Howard against Manderfeldt, and during the whole term, he was in the greatest condition of intoxication that you have ever seen Judge Cox in?

A. Yes, in that Howard case, or when the jury came in on that Howard case, he was the drunkest I ever saw him in court, or the drunkest I ever saw him anywhere.

Mr. Manager HICKS. By that word "during" you don't mean during the entire trial?

A. No; I mean that when I saw him the drunkest was when the jury came in that evening.

Q. You have stated before that you were a witness before the judiciary committee?

A. Yes, sir; I was, whether I said so or not.

Q. You didn't testify anything about the Caster business there?

A. No; they only questioned me about cases in court.

Q. Didn't you swear that the cases that you testified to there, were the only cases in which you had seen Judge Cox intoxicated while in the discharge of his duties?

A. Please repeat that question.

Q. Did you not testify before the judiciary committee that the cases that you there mentioned, not including the Caster case in that, were the only cases and occasions on which you had seen Judge Cox intoxicated while he was in the discharge of his duties?

A. Not occasions; they only questioned me. My recollection is they only questioned me in regard to cases of that kind, and I only testified to that; but I might have misunderstood them and might be mistaken; that is my recollection.

Q. You didn't remember, or did not recollect of that Caster case at that time?

A. I think I did recollect of it, but they did not question me particularly about it, and I did not propose to volunteer any evidence.

Q. They didn't question you particularly upon anything. Didn't you give your testimony before them, telling all the cases you knew of—one after the other?

A. No, they asked me if I ever saw him drunk in court, in the trial of cases.

Q. And then you gave all the cases you remembered?

A. No, I gave one and then they asked me for another occasion, and then I gave them another.

By Mr. Manager DUNN.

Q. I have one question or two more to ask you, Mr. Webber. You have detailed on the cross-examination certain instances when you have seen Judge Cox intoxicated, and you have particularly stated relative to things that he said, that induced you to believe that he was intoxicated Now, was there anything that led you to the impression that he was intoxicated other than merely what he said?

A. It was his general appearance more than what he said.

By Mr. ARCTANDER.

Q. And that general appearance you cannot describe?

A. No, sir, I cannot.

Q. You cannot give us one iota of it?

A. Well, if he was very drunk—

Q. Yes, you have given the very drunk business; we don't want any more of it.

By Mr. Manager DUNN. I want to know if it is a fact, or otherwise, that during the year 1881, Judge Cox had been more intemperate than he had for previous years, so far as your knowledge goes.

Mr. ARCTANDER. It appears that he only saw him once, when he was intemperate.

Mr. Manager DUNN. Let him answer if he knows.

Mr. ARCTANDER. We object to his testifying from hearsay.

The WITNESS. I don't remember of seeing——I wouldn't swear that I had; I don't think I have seen him since the last May Term, and I wouldn't say that I had before that, since the year came in, but perhaps I have; I have no recollection about it.

Q. Then your have no knowledge on the subject?

A. No, sir.

Mr. ARCTANDER. You mean,——saw him intoxicated?

A. I woundn't say that I had, no.

Q. You have seen him a number of times during the last year at other special terms?

A. I saw him once at a spcial term, because I had a case before him, and I presume I might have seen him at other times, when he came at special terms.

Q. But you don't remember of seeing him intoxicated except in that May term, this year?

A. I don't remember of any since that time.

Senator LANGDON. I move, Mr. President, that when the Senate adjourns, that it adjourn to Monday afternoon at half part two o'clock.

The PRESIDENT. *pro tem.* Unless there is objection, that will be taken to be the desire of the Senate.

So the motion was adopted.

S. W. LONG

Was called on behalf of the State and sworn.

Mr. Manager DUNN. The evidence of this witness is directed to article five.

By Mr. Manager DUNN.

Where do you reside, Mr. Long? A. I live in Waseca.

Q. Were you the sheriff of Waseca county in the month of October, 1879.

A. No, sir; I was deputy.

Q. As such deputy sheriff, did you have occasion to visit Judge Cox, of the ninth judicial district, at St. Peter, upon official business?

A. I went to St. Peter to serve a paper upon him.

Q. You went to St. Peter as an individual and not as a sheriff, did you; how is that?

A. As an individual, I suppose.

Q. You went to St. Peter for the purpose of procuring the signature of Judge Cox to a paper, did you not?

A. Yes, sir.

Mr. ARCTANDER. I object to that as leading. The witness has just testified that he went there to serve a paper, and he is asked now whether he did not go there to get a signature to it.

Q. Which was it, to serve a paper or to get his signature to it?
A. Served a paper on him, a certified copy, and I wanted his signature on the original.
Q. Then you went on both purposes? A. Yes, sir.
Q. Can you give the day of the month you were there?
A. No, sir, I cannot.
Q. What year? A. 1879, in October.
Q. Can you identify the paper, if you saw it, that you were to get his signature to?
A. He called it a mandamus.
Q. Could you tell the paper again, if you were to see it?
A. I think I did.
Q. Not the paper you were to serve, but the paper you were to have him sign?
A. The original; the one that I got him to sign.
Q. In what condition and where did you find Judge Cox in St. Peter when you got there?
A. I found him very drunk.
Q. Well, where was he?
A. When I found him I think he was at a hotel, or on the stoop of a hotel.
Q. And he was drunk? A. Yes, sir.
Q. Did you have any conversation with him?
A. I did. I told him what my business was and showed him the paper, and he made a reply that it was a writ of God-damn-us, or something, and threw it down and said, "No, I won't sign anything."
Q. He refused to sign it. Did you ask him to sign it?
A. I did. I asked him if he wouldn't, and he was not inclined to. I had some talk with him in regard to signing it, and tried to persuade him to, but he would not sign anything that day.
Q. How long did you parley with him there?
A. I think half an hour or more; it may have been half an hour, and perhaps longer.
Q. You parleyed with him about half an hour?
A. Yes, sir.
Q. Did you finally succeed in getting him to sign that paper?
A. I did.
Q. What means did you take in getting him to sign it?
A. I went over to the hotel and over to the court house; I had some talk with some men about what my business was. I had a talk with Mr. Downs, the sheriff then, and some one told me that if anybody could persuade him to do it it would be Mr. Lamberton, and I had better go and see him; and I went to Mr. Lamberton, and he went with me and found Judge Cox, and got him into his store, and after a parley with him Mr. Lamberton got him to sign it, and put his signature to it, and Mr. Lamberton then did the rest of the writing on the paper.
Q. Do you recollect what conversation Mr. Lamberton had with him about signing it?
A. Judge Cox wanted to know something—if it was all right for him to sign it, and he told him of course it was and he must sign it. Well, he said, if he said so, he would sign it, and he gave him a pen and ink once to sign it, and he threw the paper down and said, "No, I won't sign it," or "I will be damned if I will." or something like that, and Mr. Lamberton says. "Well, I'll be damned if you don't sign it," or

something like that, and he finally said, "Well, if it is all right I wil sign it."

[Counsel handed witness a paper.]

Q. Look at that paper and say if that is the signature that he mad there; if that is the paper that he signed?

A. [After an examination of the paper] Yes, sir; I should think i was.

Q. This writing under the signature, did you see anyone write that

A. Mr. Lamberton wrote that right along there. [pointing to paper

Q. The writing under it? A. Yes, sir.

Mr. ARCTANDER. Will you allow me to see the paper?

Mr. Manager HICKS. It has not been offered in evidence; it has sim ply been identified as exhibit 1.

Mr. Manager DUNN. I will not read it then; I was under the im pression that it was offered in evidence yesterday.

Mr. Manager HICKS. I now desire to give notice on behalf of th Board of Managers that on Monday after the argument is closed upo the motion which the counsel for the respondent sees fit to make at tha time, the Board of Managers will move to strike out all the defenses intro duced here by the respondent, except the one of the plea of not guilty for purposes and reasons which we shall give at that time. We giv this notice in order that counsel may be prepared to argue that at th same time.

Upon motion of Senator RICE the court here adjourned until Monday at 2:30 P. M.

THIRTEENTH DAY.

ST. PAUL, MINN., Jan. 16, 1882.

The Senate met at 2½ o'clock P. M., and was called to order by the President.

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

Messrs. Aaker, Adams, Bonniwell, Buck C. F., Clement, Crooks, Gilfillan C. D., Hinds, Howard, Johnson F. I., Johnson R. B., McCrea, McLaughlin, Morrison, Peterson, Powers, Rice, Shalleen, Tiffany, Wheat and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, judge of the ninth judicial district, upon articles of impeachment exhibited against him by the House of Representatives.

The Sergeant-at-Arms having made proclamation,

The managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. James Smith, Jr., Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives, entered the Senate chamber and took the seats assigned them.

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

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

The PRESIDENT *pro tem.* Are there any resolutions or motions to be disposed of? Are the honorable Managers ready to go on with the trial?

Mr. Manager DUNN. Mr. President, I understand that this afternoon the counsel for the respondent were to make a motion in reference to the specifications of the Managers to articles seventeen and twenty, in support of their objection to any evidence being introduced thereunder.

Mr. SANBORN. Is there a quorum present?

The PRESIDENT *pro tem.* There is a quorum. Permit me to state to the spectators present that it is very desirable that we should have good order. What is said it is very desirable that every Senator should hear. As long as there is passing about and whispering in the room, it makes more or less confusion. It is very desirable, therefore, that we have perfect order.

Mr. ALLIS. Mr. President:—The question which now comes up arises under the objection which the respondent's counsel have made to the introduction of evidence under the specifications to the seventeenth and twentieth articles. The evidence that was offered under the seventeenth article applies equally to the twentieth. We objected to any evidence being introduced under the specifications of that article, or as that article now stands amended, on the ground that it is not competent to try that article, and consequently not competent to introduce any evidence under it.

I will speak of article seventeen, which is the one immediately before the Senate, but it will be understood that all the remarks which I shall make upon that, will apply equally to article twenty as amndeed.

There are several objections to that article and to the specifications of that article in addition to those which I now more particularly desire to urge upon your attention. Those objections will be presented to you more particularly by my associate Mr. Arctander. I desire, myself, in

what I have to say, to narrow myself down to a single point in this matter, and that is that no evidence can be introduced under this amended article, because the respondent cannot be tried upon it under the constitution at this time.

We have a peculiar provision in our constitution applicable to this subject. It is section five of article thirteen. I spent some little time on Saturday (which I had at my command) in looking through the constitutions of the several states in this Union both East and West; my time did not permit me to look through them all, but so far as I examined the mthere is no such provision in any other constitution and therefore we must conclude that the framers of our constitution introduced this clause, *ex industria*, for the careful protection of the rights of persons who might be charged by impeachment. Now, I desire in the first place, before I read this article to you, to say that, for the purpose of what I am about to say,—not generally,—(because this will be controverted, and is controverted by us,) but for the purposes of the argument that I am now about to present to you (which will be very brief) I shall admit that you had the power to amend this article seventeen as you did at the session of this sixteenth of December. That is, I shall admit that the amendment has been made, and consequently that article seventeen now stands as it is amended by those eight or nine specifications.

It is of course not the same article with those amendments as it was originally. If it were, there would be no necessity of amending it. It is now an amended article. It was not sufficient, in the first instance, as you decided, and you permitted the parties to make specifications if they should so wish. They have made them, and article seventeen now stands before you as amended. Now, a copy of that article, as amended, was served on the respondent in this case, on the 6th day of January; on the 10th day of January this case was set for trial, and upon that day the trial commenced.

Now, the provision of the constitution of this State which is applicable to this question, and which is section five of article thirteen, reads in this way: "No person shall be tried on impeachment before he shall have been served with a copy thereof at least twenty days previous to the day set for trial."

As I have already stated to you, I am unable to find that provision in any other constitution of any State of this Union, so far as I have examined. I have looked at those of New York, Pennsylvania, Connecticut and Massachusetts, and of some other eastern states; California, Michigan, Wisconsin, and perhaps some other western states, during the brief time that I had to make the examination, and no such provision exists in the constitutions of any of these states.

Now this is unusually explicit and clear. "No person shall be tried on impeachment before he shall have been served with a copy thereof, at least twenty days previous to the day set for trial."

Now, I understand that to be jurisdictional, and not only do I understand it to be jurisdictional, but I also understand the learned managers to claim here the same thing at the first day of the session of this court. I don't suppose anything else can be claimed. You remember, I presume, what they said to you at the time that it was proposed to prove the service of the articles of impeachment to have the record show the service of the articles of impeachment twenty days prior to the 13th day of December—the time when this court met.

Now, suppose it to be true, that this is not only jurisdictional, but being a criminal case, it is something even which the respondent cannot waive. I understood that to be the position of the learned managers here,—that this provision of the constitution could not be waived even by the respondent. That you absolutely have no jurisdiction of the case until a copy of the articles of impeachment have been served at least twenty days before the day set for trial. The reason of that is sufficiently obvious. It was thought by the framers of the constitution that that was a proper provision for the protection of persons who might be impeached, and it certainly is. It is an improvement on those constitutions from which it has been omitted.

Now, the argument, of course, must be very short, so far as this point is concerned, because that is all there is to it. The provision of this constitution is imperative—that you cannot try a respondent upon articles of impeachment unless you serve him with a copy of those articles at least twenty days before the day you set to try him upon them. This article seventeen, as it now stands amended, as well as article twenty, as amended, were served for the first time on the respondent on the sixth day of January,—four days before the tenth day of January, which was the day set for trial.

Now, it seems to me, it must be perfectly obvious to this court that you have no jurisdiction of the respondent here, so far as these two amended articles are concerned, for the reason that a copy of them was not served upon him twenty days before the day which you set for trial. Now, the observance of this provision of the constitution is of a great deal more consequence than the trial of this respondent on this or that article can possibly be. I hope, therefore, that there can be no question in your minds for a single moment about the necessity of sustaining this objection.

Now, you understand that so far as the argument is concerned, I am conceding, for the purposes of the argument that you have entire power to allow the amendments to the articles which the House of Representatives may have presented. And not only that, but for the purposes of this argument. I will allow that you may permit new articles to be introduced. I do not think this is so as a matter of fact, however; I think quite the reverse. I do not believe that in point of fact any articles of amendment, or any new articles, can be constitutionally and properly introdued after the House of Representatives has adjourned. But for the purposes of the point which I am now making to you, I will concede that you have this power,—that you have the power to allow as many specifications as you see fit,—and as many new articles as you see fit. If you have you have got to exercise your power under and in pursuance of the constitution and in such a manner as not to infringe upon its positive provisions. Now, in this case, the objections which I urge upon you is not that you have not the power to make those specifications,—to allow those amendments; I acknowlede that you have the power and that you have exercised it; and that the articles now stand before you as amended, but I say that you cannot call upon this respondent to answer those articles; you cannot try him upon them, and consequently cannot hear any evidence under them, for the mere reason that you served a copy upon him only four days before the day you set for the trial of this case.

Senator CROOKS. I understand the counsel simply admits it for the sake of the argument.

Mr. ALLIS. Simply for the sake of the argument. Mr. Arctander will be heard further. I simply want to say that if you have all the authorities that the managers can claim for you, full power and authority to introduce as many new articles and as many new amendments as you please, yet you have to so exercise that power as not to infringe upon the constitution, and in such a manner as not to infringe upon the constitutional protection of the defendant in this case. You cannot try him, you have no jurisdiction over him, so far as these amended articles are concerned, in any view of the case, unless he is served with a copy of them at least twenty days before the day set for trial, and they were only served upon him four days before the trial.

Mr. ARCTANDER. May it please the court, I regret that counsel for the respondent have not had more time than we have had to give this subject the thorough examination it deserves. We were of the belief at the time it was first suggested by the honorable Senator from Fillmore county that we might probably be prepared to bring this question up to-day, that we should have access to the library on the Lord's day; but we found that the statute was so rigidly enforced that it was not possible to get in, even by artifice, and, consequently, all the time that has been allowed to us were a few hours Saturday afternoon by the grace of the librarian, when really, under the rules, the library should have been closed, and a few hours this morning.

You will notice, Senators, that there are numerous objections interposed by us to this article. They were raised by our answer; we did not desire to waive them; those of them that were covered by the demurrer, as well as those that were not. We desired to save those points, because we considered them, not only important to the respondent in saving him expense and trouble, but also important to the State so far as saving of expense is concerned, and important to Senators so far as concerns their valuable time which would be consumed unnecessarily by taking up these specifications and going into the matter with the same effect, really, as if there had been so many new articles of impeachment introduced.

Our first point is, that the article as it originally stood, is too indefinite and uncertain, and that it does not inform us of the nature or cause of the accusation against us. I think that the Senate has already virtually ruled upon that point, and ruled in our favor. Is it true that it is questionable whether the point as to the uncertainty or indefinitness of the article, can be raised by demurrer. I am inclined to think myself, that it is not a proper subject of demurrer; that demurrer on that ground would not lie; and that it only could come in as a collateral matter upon an argument upon the demurrer.

But, undoubtedly, the Senate having overruled the other legal objections to the other articles set up by the demurrer, viz., that the articles did not accuse us of impeachable crimes and misdemeanors, nor of corrupt conduct in office, it follows, as a matter of conclusion, that when the senate said: "Although we overrule the demurrer to the seventeenth and twentieth articles, yet we find that they are not in a condition to warrant this senate to call upon the respondent to advance proof against them," that this theory of indefiniteness and uncertainty entered into the minds of the senators upon the decision of that demurrer, and that that instigated them to take the course they took, namely, to refuse to receive evidence under them unless specifications were furnished, I take is very plain. I say, then, I am taking it for granted, under the circumstances.

and under the rulings of the Senate heretofore made, that the Senate are with us upon that point, and that they find, and have found, that the article, as it originally stood, is too indefinite and too uncertain to call upon us for an answer; I mean as it stood before it was amended by this specification.

Now, it might not, under those circumstances, be necessary or of any avail to call the attention of Senators to authorities or precedents upon that subject-matter, but as we claim, as you will notice, Senators, in our objections, that the article is not any better with the specifications than without them,—that the article is just as indefinite and uncertain with the specifications as without them,—it will probably not be considered out of the way for me to read, for the instruction of Senators, what other courts, similar to the court that now has this matter under consideration, have held upon articles of this kind.

I desire to call the attention of the Senate to the trial of Horace G. Prindle by the New York Senate, and shall read a portion of the proceedings upon that trial, because I think it is calculated to throw some light upon the subject now before us.

It seems that this question arose upon the putting of a question by one of the managers to a witness upon the stand, and the same point was raised in that case upon that objection that is now raised here upon the articles, as to the generality of the article, that it is not sufficiently definite and certain.

I read from page 352 of Judge Prindle's trial. The question was asked by one of the managers, as follows:

Q. You were also the executor of the estate of Reuben Sears, were you not?
A. Yes, sir.
Mr. MYGATT. Any specifications of that?
Mr. STANTON. No particular specifications; we have a general charge which covers all fees which are illegal from the commencement of the term of office of the respondent the 1st of January, 1864; I suppose that if, under these general charges, we are able to prove other cases we may be allowed to do so.

You understand, Senators, that this prosecution was for charging illegal fees. Most of the charges at least,—I think almost all of them,—were for charging illegal fees, in other words extortion. I proceed:

Mr. MYGATT. We enter the objection that there can be no proof of any charge we have had no opportunity of examining and answering to.
The PRESIDENT. Will the prosecution present the charge?
Mr. STANTON. Yes, sir.
Mr. E. H. PRINDLE. Certainly no court would hear evidence against a man unless there was a charge. You cannot charge a man with larceny without saying when and where and under what circumstances the crime was committed.
Senator PERRY. Under what specification do you offer it?
Mr. STANTON. Fifty-first.
Senator BENEDICT. Do you offer to show, under that charge, that he has recived illegal fees in a certain case—in the Sears case?
Mr. STANTON. That was the explanation, sir.
Mr. E. H. PRINDLE. Mr. President, I understand about one hundred witnesses have been subpœnaed with reference to charges that are not specified, coming under such general charges as this one now offered.
The PRESIDENT. The prosecution will state under what specific charge they propose to prove this.
Mr. STANTON. Fifty-first. I will state that I am perfectly correct in my knowledge of the facts in this Sears case. Possibly it may come under the 12th charge instead of the 51st; one or the other will embrace this case. I will read the charges. First, the twelfth charge, which reads:

"That Horace G. Prindle, being such county judge and surrogate of the county court of Chenango county, at the town of Norwich in the said county, during the years 1867, 1868, 1869, 1870 and 1871, having one George W. Rea as a clerk in the office of said surrogate, and occupying a table in the said office, and performing the duties of a clerk for the said Horace G. Prindle as such surrogate, unmindful of the duties of his office and of his oath of office, and in violation of the constitution and laws of said State, did unlawfully, knowingly and corruptly, and in many and various proceedings and actions pending before said county judge and surrogate, allow, permit and encourage the said George W. Rea to practice as an attorney and counsellor at law before him, the said county judge and surrogate, in the matter aforesaid, and in numerous instances did demand, receive and extort from the parties to the proceedings aforesaid employing said Rea, fees for the said Rea, charged by the said Rea for his services as an attorney and counsellor at law in the actions and proceedings aforesaid.

The 51st charge reads:

"That the said Horace G. Prindle, being such county judge and surrogate of said county of Chenango, at the said town of Norwich, in said county, and at various and numerous times during the years 1864, 1865, 1866, 1867, 1868, 1869, 1870 and 1871, the particular time or times being unknown, in violation of the constitution and laws of said State, and of his oath of office, has wilfully, unlawfully, and corruptly charged and received fees and compensation other than such as are provided by law, for official services performed by him as such county judge and surrogate."

The PRESIDENT. Senators, the question now will be—

Mr GLOVER. I now desire, Mr. President, to say a word in relation to the admission of the evidence. The respondent has been arraigned here in what may, perhaps, be termed a *quasi-criminal* proceeding, for the consequences to him are of a criminal natture, and of a very serious character, and it seems to me that under none of these specifications could a party be charged in court, or that an indictment of a character so general, giving no statements as to when and where, so he might subpœna witnesses to meet the accusation, could be sustained in court. The question arises, can the respondent, with these consequences to come upon him, be arraigned and tried upon general charges; charges so very general in their nature as these, and the prosecution permitted to run through the entire county of Chenango, in a matter of which we are entirely ignorant as to what they claim, aud prepare their case and have us in a situation so that we must be entirely unprepared to defend ourselves. These charges do not specify anything, except that general recital. My associate here says that he understands there are a large number of witnesses subpœned. Your sergeant-at-arms informed me yesterterday that he had previously subpœnaed thirty witnesses, and that since the last adjournment he had received subpœnaes for over seventy more. We supposed when the list was called here on Friday last, that we had heard their list of witnesses, and that we were in possession of the number and names of the witnesses who were to be examined in the case, and we therefore made our arrangements accordingly. Certainly we can make no preparation for a defense if we are called upon to defend charges so very general as those.

"Senator D. P. WOOD. Mr. Glover, have you the answer here?

"Mr. GLOVER. I have not, unless it is in the book; (looking at the book,) it is not here, sir.

"Senator D. P. WOOD. Does the answer take any note?

"Mr. GLOVER. I don't know that I have seen the answer. I do not remember to have seen it, except it was stated in the paper what it was.

* * * * * * *

Senator BENEDICT. Mr. President, it seems to me there is scattered along through these charges a good deal of opportunity, if I may so speak, for such testimony; and if it be true there have been so many witnesses subpœnaed, why this becomes a pretty important question for the Senate to consider, and I should think it would require some little consideration before we should decide either way. Perhaps we ought to go into consultation upon the question, whether we will, under those general charges, hear testimony or not. I move we go into privite consultation.

Senator WOODEN. Mr. President, I do not want to interfere, nor suggest any interference, with any method which the prosecution have in their mind in reference to this investigation, but here we have before us some 54 charges. I submit to the counsel for the prosecution whether they are not prepared to go on and attempt to establish the specific charges that are presented and contained in the specification.

Senator BOWEN. We might as well pass upon this matter now.

Senator WOODEN. We can spend all summer's time (at least I can imagine how we can) in investigating the conduct of a public officer at three dollars a day, (however, that don't make any difference, whether $3 or $300) when, perhaps, an investigation of half a dozen charges would answer the whole purpose. For my part, I don't like the idea of spending a month here examining fifty or a hundred charges, when, perhaps, a half a dozen will have satisfied investigation.

I desire further to read only what the Senate resolved in the matter. I have read this much to show you that the exact point was raised as to the generality of the charges, that the charge was too general, to indefinite and to uncertain, and did not give the respondent the right that he had to be informed of the true nature and cause of the accusation against him.

The Senate passed the following resolution: "Resolved, That the objection to the offer of the prosecution be sustained, for the reason that the charge proposed to be proved against the respondent is not mentioned in any of the specific charges to the Senate transmitted to this Senate by the Governor."

The only other case in which we find that the managers have drawn so carelessly the articles of impeachment that the respondent saw fit to object to them, was the case of Robert C. Dorn, canal commissioner of New York, who was proceeded against in the year 1869. I will read the particular article that was objected to. That also came up in the form of an objection.

The article objected to is as follows:

That the said Robert C. Dorn, canal commissioner, and member of the Board of Canal Commissioners, and contracting board, did, at divers times, during the years 1866 and 1867 wrongfully, corruptly and unlawfully and with the intention to cheat and defraud the State, let large and valuable contracts for the repairs of said canal so under his charge, and for the furnishing of materials for the repairs as aforesaid to various and divers persons and parties at rates and prices for the works and repairs to be performed, exorbitant and disadvantageous to the State and did unlawfully and corruptly let said contracts to personal favorites, with the view and intention of sharing in the profits to be realized from said contracts and did so let and award said contracts to said parties, and execute said contracts on the part of the State, without having advertised and given the notice required by law to be given and made prior to the letting of contracts for the repairs of said canal. That by reason thereof the State was defrauded of a large sum of money to the great wrong and injury of the people of the State of New York, and in contempt of their laws and authority.

To this article the respondent interposed the following motion or objection:

The respondent, by his counsel, moves that the fourth article of impeachment exhibited against him be quashed, for the reason that nothing is therein alleged which constitutes an impeachable offense, and because those acts which constitute such, alleged official misconduct are not set forth with sufficient certainty and precision to enable the court and the accused to understand the nature and extent of the offense charged and to prepare for the trial thereof.

Upon this motion, Mr. Smith, the counsel for the respondent, made the following remark:

I assume, Mr. President, that this respondent, like every other person who is accused of a wrong, is entitled, under the constitution and by the laws,—and by that innate sense of justice by which every one is or should be actuated to know what is the high crime or misdemeanor, or other impeachable offense, with which he is charged, and to have it stated before the court to him what act of his is alleged to have been such a vidation of his official duty, or what he was required to do which he has omitted. that is believed to demand that this august and imposing court should be called to pass before it. And, sir, I am now disappointed that the chosen counsel of the chosen Representative (or, as they call themselves, in the official communications to the Assembly, the "Grand Inquest of the State,) should insist that there is such a state of law in reference to the charges of high crimes and misdemeanors that are impeachable, that the respondent is not entitled to insist that the pretended facts charged against him should be stated; that although a man charged with stealing a loaf of bread is entitled to have the accusation stated with such minuteness as to time, place, etc., that he may know exactly what act is charged upon him as criminal, before he is put upon his trial; yet owing to some peculiar state of the law here, some peculiar provision as to the organization of this court, he is not entitled to ask the court to require those persons who accuse him to state on paper the act which they allege was wrong, the act that he has omitted to do which he should have done, to the end that he may prepare his answer and under it bring his witnesses here to vindicate himself from this charge.

Mr. Smith further says:

Of course the legal purpose of this article would be to inform the respondent of the accusation made against him, with a view, in the first place, to enable him to know what preparation is essential on his part to be made to present the question for trial; with a view in the second place, to enable the court to know what the precise question is that the parties accusing desire to present, and on which they are to give judgment; and with a view, in the third place, to make a record of the proceedings of the court to the end to that, in all future time, it may appear upon what accusation and for what thing the respondent has been accused and tried.

On page 161 of the same book, we find, after an extended argument, the judgment of the court, sustaining the motion to quash that article, not with leave to file specifications, but absolutely quashing it; and we find that that ruling was made by the significant vote of eighteen to four, and that among those that voted in favor of the motion of the respondent to quash the article, were not less than seven of the eight judges of the New York court of appeals that sat in that case. Now, I maintain, Senators, that these two cases are the ouly cases that you can find in the books anywhere where the managers of the house or assembly have not pleaded like lawyers; have not pleaded facts, have not pleaded those facts definitely, clearly and distinctly, so that the respondent could know just exactly what he was charged with, so that he could go and examine as to certain facts, as to the time they occurred, the particular occasions upon which they occurred, and investigate them, and prepare himself for trial.

I take it, and I will come to that hereafter, that there was no right in the Senate, there existed no right in the Senate, nor any authority, to authorize the Board of Managers to file specifications to this article 17 or to article 20, and that the whole proceeding is *ex coram judice;* that all these specifications can be entirely overlooked, and must and should be overlooked; but at the present time, for the sake of argument, admitting, as the learned counsel that spoke before me admitted, that there existed

such a right, (and I think I can show you clearly hereafter that there never did exist any such right,) but admitting, for the sake of argument, that there *was* such a right to present the specifications which the senate ordered, and authorized the Managers to file and serve upon the respondent, I claim that you will find that the pretended specifications they served upon us were no specifications at all, that they inform us no more of the nature or cause of the accusation against us than the article itself did, or in any manner, so as to help us to discover what is charged against us, or to prepare against the charges that are brought against us.

I take it for granted that the rules laid down in the Prindle case and the Dorn case are correct, and are good law in this State. I take it for granted, I say, because the constitution upon which the judges of the court of appeals of New York, together with a majority of the senate, decided that motion in the Dorn case is identical with our constitution to this effect, that all persons accused of crimes shall be informed of the nature and cause of the accusation against them. That is, I think, the language of our constitution.

Now, it was remarked here, the other night, that this is *not* a criminal prosecution; that this constitutional provision does not apply in cases of impeachment. I take it that standing upon the broad basis of the constitution of this State,—taking the spirit of that constitution and its letter, and you can never say but what the framers of our constitution by their very language and words, as used in article seven of the Bill of Rights, denominated impeachment trials as criminal prosecutions; because they classed them with prosecutions for crime. And article six provides that "in all cases of prosecutions for crime the accused shall be entitled to be informed of the nature and cause of the accusation."

Now, I say whether that be right or wrong—whether I be right or wrong in my position—it makes no difference, it can cut no figure in this case, for the reason that the highest and best authorities upon impeachment proceedings tell us that the same rule applies.

I refer to Cushing's Law and Practice of Legislative Assemblies. On page 988, section 2565, speaking of articles of impeachment, he says: "The articles thus exhibited need not and do not in fact pursue the strict form and accuracy of an indictment; they are sometimes quite general in the form of the allegations, but always contain, or *ought* to contain, so much certainty as to enable the party to put himself upon a proper defense."

What does it mean to put a party "upon a proper defense?" It certainly can mean nothing else but that those articles shall be so explicit in their nature, that the respondent knows exactly what they charge; that he knows exactly where and when, and under what circumstances, on what occasion he is charged, and with what; so that he can prepare his defense in a proper manner; so that he can examine into the transaction and procure his witnesses before he is required to answer, and before he is required to stand his trial.

We take it for granted, under the decisions in the New York impeachment trials, and under your decision the other day, that article seventeen itself is not so sufficiently specific and definite that it informs us of the nature and cause of the accusation. Now, do the specifications improve the article any? Do *they* inform us with precision, distinctness, and definiteness of the nature and cause of the accusation against us? Let us see. Article seventeen charges this respondent with being intoxicated. When you strip it of all its legal verbiage, it charges that the

respondent has been intoxicated while in the discharge of official duties, so as not to be able to discharge those duties at a great number of times during a stated interval,—a period of three years or more. Now, do these specifications inform us any more definitely as at what particular occasions we are charged with having been so intoxicated in the discharge of our official duties? What are these specifications? The Senate ordered the managers to furnish us specifications; they did not say as to time and place, but "specifications." That was the order. I need only refer you to it, Senators. On page 63 of the Journal for Friday, December the 16th, you will find it: "Ordered that the demurrer of respondent to the articles of impeachment be overruled, but that the Board of Managers on the part of the House be and are hereby required to furnish the respondent on or before January 6th, 1882, *with specifications* as to the seventeenth and twentieth articles. Should no such specifications be furnished, then, and in that case, no testimony will be received in support of said articles seventeen and twenty."

Now, in that order the Board of Managers are not authorized to bring forward here specifications as to time or places where they allege drunkenness has taken place. I say that whould have been entirely inadequate, and therefore the Senate made no such order, but the Managers were ordered to provide "specifications." And what is meant by "specifications?" To give us full information of every occasion, so that we, from that information and from that specification, could gather exactly what was charged against us, so that there could be no mistake about it.

Senator CROOKS. I would say to the counsel if there is no objection I would like the specifications read at this time.

Mr. ARCTANDER I will read them now; I will read the particular specification, which they served upon us.

Senator CROOKS. What is *claimed* to be the specifications, I mean, under the order of the Senate.

Mr. ARCTANDER, (reading):

State of Minnesota.—ss : In the Senate, sitting as a Court of Impeachment.

In the matter of the impeachment of E. St. Julien Cox as a judge of the district court of the State of Minnesota.

Specifications under articles seventeen (17) and twenty (20), made pursuant to the order of the Senate, showing the times when, and the places where the offenses charged were commited, viz.: under,

ARTICLE XVII—SPECIFICATIONS:

I. At Marshall, in the county of Lyon, in said State, on the seventh (7th) day of November, A. D. 1878.

II. At New Ulm, in the county of Brown, in said State, on the second (2d) day of August, A. D. 1879.

III. At Redwood Falls, in the county of Redwood, in said State, on the fifteenth (15) day of June, A. D. 1880.

IV. At New Ulm, in the county of Brown, on the first (1st) day of July, A. D. 1880.

V. At Marshall, in the county of Lyon, in said State, on the thirtieth (30) day of September, 1880.

VI. At New Ulm, in the county of Brown, in said State, on the twenty-first day of January, A. D. 1880.

VII. At New Ulm, in the county of Brown, in said State, on the seventeenth (17th) day of May, A. D. 1881.

VIII. At New Ulm, in the county of Brown, in said State, on the second (2d) day of August, A. D. 1881.

Under

ARTICLE XX—SPECIFICATIONS:

I. At St. Peter, in the county of Nicollet, in said State, on the thirtieth (30) day of August, A. D. 1879.

II. At New Ulm, in the county of Brown, in said State, on the twenty-first (21st) day of January, A. D. 1881.

III. At Minneapolis, in the county of Hennepin, in said State, on the fourteenth (14) day of October, A. D. 1881.

Now, I take this position, may it please the senate, that this informs us absolutely of nothing. Why? Because it is a well-established principle of law, both criminal and civil, that time in a pleading is immaterial. These Managers can come here and charge us with being intoxicated on the bench in New Ulm, as they have done, on the second day of August, 1879, and they can *prove* it was on the 4th day of July, 1881, and there is no remedy for us, because it has always been held that time in indictments, as well as in all other pleadings, is immaterial; that variance as to time is an immaterial variance.

Now, the Managers come before you themselves, and admit,—the chairman of the Board of Managers, Mr. Hicks, stated himself in his opening argument to you that the dates were not correct, at least, some of them; and we know that they cannot be correct, as I shall explain hereafter. Now, they come, then, for the purpose of misleading us by giving us false dates, at which respondent is charged to have been intoxicated while in the discharge of his official duties, for the purpose of leading us off the track, so that we shall find out nothing about it, or else they come in here inadvertently and bring false charges against us as to the time. And they are excused in so doing by the law, because the law says that it makes no difference whether they have alleged the right time or not; they can prove any intoxication at any date during the official life of respondent prior to the finding of this impeachment.

Now, what greater degree of certainty and definiteness is there in these new articles, or in the specifications they have introduced under them in the articles as they stand, with the specifications attached to them, than what the original articles already furnished? We know absolutely no more about it than we did before, and they are not such specifications as the Senate required them to give. Now, in the Page case it is true, as I consider, a pernicious and dangerous precedent was laid down, that the board of managers had the right to bring in and to file specifications to the charges that were held not good and sufficient in themselves. But in that case the managers, at least, came in like men, and pleaded the facts like lawyers; pleaded the facts in their specifications, in order that there could be no mistake about the matter. I call the attention of the Senate to the bill of specifications filed and served in the Page case, so as to show you the difference. I will not read all of those specifications, because they are all of the same nature and of the same tenor. They are all equally full. It is not necessary to read more than one of them, because that shows to you that the managers at that time understood what the Senate said to them when it ordered them to file specifications. They understood what the Senate meant—that they should charge facts, occasions, and circumstances, that would inform the respondent, and they complied with that order; not as in this case, where they have failed entirely to do it, purposely or otherwise.

Now, the first specification furnished in that case was as follows:

"At the general term of the district court for Mower county, held in the month of March, A. D. 1877, the respondent in said impeachment proceedings, for the purpose of insulting, humiliating and injuring Mr. McIntyre, county auditor of said Mower county, falsely and maliciously instructed the grand jury of said county, in substance and to the effect that the said county auditor had permitted a band or company of musicians to practice in his office, and that such conduct on the part of said auditor was highly improper and highly reprehensible, and amounted to misbehavior in office on the part of such auditor, within the penal statutes of this State."

Then the second specification goes on and shows the particular fact that the respondent in that case insulted Lafayette French, the county attorney of that county. It gives the times and the particular circumstances. Article ten, as probably most of the Senators remember, to which these specifications were allowed, was an article that charged the respondent with a general course of conduct all through his term towards the officers of his court and other citizens of Mower county, with a habit of oppressing, insulting and harrassing them. And under that article these specifications were put in.

Now, if the managers in that case had pursued the course of the managers in this case, what would have been the result? They would simply have said that at such and such a date in the county of Mower the respondent harrassed and insulted Mr. McIntyre; that, at such and such a date, in the county of Mower, he oppressed and insulted Mr. Lafayette French, etc. That would have been the course the managers in this case would have taken. But, instead of that, the managers in that case came in and pleaded, as lawyers do, the facts, the circumstances and the occasions; not dates and places simply, of the alleged oppression or the alleged misconduct, but they specify and give the occasions, the men that he harrassed, and the circumstances under which he did it, so that there could be no mistake; so that he would know what he was charged with.

Now, that you shall not take my word for it, I ask leave to read to you from Wharton's late work on Criminal Evidence, to show you that the position I take is one that is well defined by the books, namely, that an allegation of time in the indictment is immaterial. And if it is an indictment it is an impeachment; and I mantain and say, without fear of contradiction, that the rule applies with equal force in civil cases, but of course this matter, being at leaast a *quasi* criminal proceeding, we are more particularly governed by the criminal law than by the civil law, although in this case it would make no difference, because they are both of the same effect. I beg leave to read to you from Wharton's Law of Criminal Evidence:

The time of the commission of an offense laid in the indictment is ordinarily not material, and does not confine the proofs within the limits of that period; the indictment will be satisfied by proof of the offense on any day anterior to the finding.

If you can prove the offense at any date prior to the time that the indictment was found, it is good, and it makes no difference what time you charge the crime to have taken place, unless it should come, of course, within the statutes of limitations. If the offense has been charged to have been committed at a time less than three years prior to the finding of the indictment, and it should be shown by the proof to have been committed at an earlier date and more than three years prior

to the date of the finding of the indictment, of course the statute of limitations would come in; because it would not depend upon what was charged in the indictment, but it would depend on what the facts were, as they appeared in the proof. But in all cases within the time within which you can find indictments, you may allege any day you please in your indictment and prove it on an entirely different day, and this has been done repeatedly in this country. I remember one case in my own practice when I defended a man in Hennepin county upon a charge for rape, and it was alleged that the crime was committed on the 17th day of May. I found that the defendant had not been in the vicinity where it was claimed he was upon the 17th day of May, at all, and I came in prepared to prove an *alibi*, but when I came into court I found that the prosecution, perhaps to mislead the defendant, or perhaps inadvertantly, had alleged the 17th day of May, when as a matter of fact it was the 19th of May the alleged crime had been committed. Now that proof was held perfectly good and it would be in any case. It has been held all over the United States and in England, that it is perfectly good; that time is immaterial in an indictment, and that it is perfectly sufficient if pou prove it at any time, no matter what time you may have alleged it, if it only is before the time of the finding of the indictment.

I would further call your attention to section 106 of the same book:

> When it is of the essence of an offense that it should have been committed in a particular time of the day, (e. g., in burglary,) the allegation to this effect in the indictment should be proved as laid; though it is no varience if the day proved be not the day laid, if the averment of the time of day be sustained.

Now, you see it does not make any difference if you allege the right day but, in burglary,—which can only take place in the night time,—then it is necessary to prove it was in the night time, but if you only prove it was the night time, it does not make any difference whether you prove it in a year or several months prior to the time of the finding of the indictment.

> Whether the allegation as to the time of the day is sustained is for the jury. The same distinction is applicable to cases where the gist of the offense is that it was committed on *Sunday*. In such case the offense must be proved to have been committed on Sunday. But the proof of any Sunday, before the finding of the bill and without the statute of limitations, is sufficient.

There can be no dispute about that law. The same rule is laid down very forcibly in 1st Archbold's Criminal Pleadings and Practice, page 363.

> The day and year, on which facts are stated in the indictment or other pleading to have occurred, are not in general material; and the facts may be proved to have occurred upon any other day previous to the preferring of the indictment.

And he cites upon that proposition, several English decisions, Cowen's Reports, Mississippi Reports, and numerous other authorities. In fact, gentlemen, I claim that the proposition is so well established that there can be no dispute about it, and that the managers will not, dare not, and cannot deny that it is a well settled rule that time is immaterial in criminal matters.

You can understand, then that the fact that they have given us these different dates does not enlighten us at all; that the giving us those

dates constitutes no specifications at all; because they could give us one day and go and prove it on an entirely different day. How then are we any more prepared than we were before? It is the same in effect, as the original article, and they come here and tell you even that it is not the true date, at least in some instances.

Now, the next question is, have they given us any more definite information by giving us the place? They have given the place here, —that it was at New Ulm, in Brown county,—that it was in Marshall, in Lyon county,—that it was in St. Peter, in Nicollet county. Is that any more definite, does that give us any more light, does that inform us any more fully than we knew before? Not at all. Why? Because that is immaterial too. I take it for granted that it is well established in criminal law, where you indict a man in a county if you can only show that the crime was committed within the jurisdiction of the court, viz: within the boundaries of the county, or within a hundred rods of the county line, that it makes no difference where in the county, the crime is laid; whether in one town or the other, you are not bound by that, but you may prove it in another town, if you oan only prove it within the jurisdiction of the court, which is co-extensive with the county or within a hundred rods beyond the county line.

Supposing an indictment found here in the city of St. Paul by a grand jury of the county of Ramsey, and they charge a man with having committed murder, in the proper legal verbiage, in the Fourth Ward of the city, and it should turn out upon the trial, that it was not in the Fourth Ward that the crime was committed, but that it was in the First Ward,—do any of you believe that the man could get off upon that ground? Do any of you believe that if the defence should interpose an objection, that the proof did not show the crime to be committed where it was alleged to have been committed, that the court would sustain an objection to exclude the proof? Not at all. The Court would say the place is immaterial if the crime is alleged to have been committed within the jurisdiction of the court. If it had been alleged that it was in the city of St. Paul, and it should happen to be across the boundary line of the corporation, it would be just the same. The Court would hold the man, and he would say, "Time and place are immaterial, and you are charged here with having committed that crime within the county of Ramsey, which is within our jurisdiction. That is enough;" and it would be the same way with any township of this county, or with any township of any county in which a case was pending, in which an indictment was found. Upon this proposition, I desire to call your attention to what the same celebrated author, Mr. Wharton (our greatest criminal authority in this country), lays down as the doctrine upon that point; and I read from the same book, section 107:

> We have discussed, in another volume, the important question whether it is necessary to give jurisdiction of the offense that the party charged at the time of committing it should have been within the jurisdiction of the court. It is here sufficient to say, generally, that while the place of the offense must be shown to be within the jurisdiction.

And in this case all that needs to be shown is that the misconduct took place is within the boundaries of the State of Minnesota, because that is the boundary of your jurisdiction; you are the Senate of the State of Minnesota and your jurisdiction in this case goes as far as the boundaries of the State go.

It is here sufficient to say, generally, that while the place of the offense must be shown to be within the jurisdiction, there is no necessity to prove that the facts given in evidence occurred in the *parish* or *place* therein alleged; it is sufficient to prove that they occurred within the county or other extent of the court's jurisdiction.

And I want to call your attention right here to the fact that while in the case of an indictment it would be necessary to allege the crime to have been committed within the county, because the court has got no jurisdiction except, as I said before, within one hundred rods of the boundary line of the county, yet in impeachment cases the State takes the place of the county in an indictment, and the county the place of a "town, or parish," in the language of the authority I read. So that, alleging in a case of impeachment that the misconduct took place in the county of Brown, the county of Nicollet, &c., does not make it any more definite or certain, does not make it any more reliable than in an indictment if it were alleged that a crime was committed in the 4th ward of the city of Saint Paul, Ramsey county, and as they in such a case could show that it was committed any where in Ramsey county, so in this case the managers could prove a drunk anywhere in the State, wherever they please, without being in any manner bound by their allegations at to place.

The managers, when they come to the specifications and find that they can prove none of them as they have alleged, can say: "We are not bound by any of these allegations as to time or place, and we can show that these acts took place in Mankato, at St. Peter, St. Paul, or any other place. We have alleged that the respondent was guilty, under this 20th article, of frequenting houses of ill-fame, and consorting with harlots and prostitutes, and that one of these acts was committed in Minneapolis, but we do not care anything about that, we will prove them to have been committed in St Paul; we will prove them to have been committed in Duluth; we will prove them anywhere within the boundaries of the State of Minnesota;" and you cannot refuse it to them because, if you did, you would act contrary to your oaths, because you are to decide the case upon the law and the evidence, and the law says that the time and place are immaterial in an indictment as well as in an article of impeachment.

Now, of what do those specifications give us notice? Nothing at all. We knew that before we were charged with committing those acts in the ninth judicial district, and between certain dates they need not have limited it to that time; they could prove them at any other time, because the allegation as to the time and place was immaterial if they only alleged it was within this state. But we knew that before. We know nothing more now than we knew before. We have no assurance that we are honestly informed of either the dates or the places. And we will be taken at just as much disadvantage and just as much unawares by the information we get from those specifications as if there had been none ot all.

Now, it may be claimed that this rule as to certainty of time and place does not apply in impeachment trials; that it only applies in other criminal trials. We have seen the efforts which have been made here to get away from the clear and straight propositions of law by claiming that you are not a court but that you are to make a law unto yourselves and that there is no law above you. I say it can be shown to you beyond the

shadow of a doubt that the same rule applies in impeachment cases as in other criminal cases. It should not be necessary to show by argument or authority that any such rule applies, because the rule applies as to place and time in civil cases as well as in criminal cases, and therefore with necessity must apply in impeachment cases also. In a complaint for damages for an assault and battery it may be alleged that the assault was made in a certain town or county, and you may come into court, and if your attorney has got the venue wrong, and you prove another place, the court will say it is immaterial; it makes no difference, and you can show the act to have been committed anywhere and at any time within the statute of limitations, so that the allegation as to place is immaterial as well as to time. Now, if that rule applies alike in civil and criminal cases, there can be no argument needed to convince you that it applies also to impeachment cases.

I will call your attention, nevertheless, to an argumen tmade by Mr. Webster in the Prescott case, in Massachusetts, from page 513, of volume 5, of the works of Daniel Webster. He says (that was an impeachment case):

For instance, an indictment must set forth, among other things, the particular day when the offense is alleged to have been committed, but it need not be proved to have been committed on that particular day. It has been holden in the case of an impeachment that it is not sufficient to state the commission of an offense to have been on or about a particular day.

The rule has a wider application; in cases of impeachment it is not necessary to give even the date, or the absolute date, whether it may be right or wrong,—to give an absolute date, as in criminal cases in court but you may say even "on or about" such date.

Such was the decision in Lord Winton's case as may be seen in 4 Hatsell's Precedents, 297; in that case, the respondent being convicted, made a motion to arrest the judgment on the ground that the impeachment was insufficient for that the time of committing the high treason is not therein laid with sufficient certainty.

The principal facts charged in that case were laid to be committed on or about the months of September, October or November last; and the taking of Preston, and the battle there which are among the acts of treason, were laid to be done about the 9th 10th, 11th, or 13th, of November last.

Now mind you this only refers to time, as to the facts the allegations were sufficient; they called the occasions fully to mind. They stated in what the treason consisted; they brought up the battle that the man had fought, or rather which he did not fight, (for he was a coward,) and had not done his duty.

A question was put to the judges, "whether in indictments for treason or felony, it be necessary to allege some certain day upon which the fact is supposed to be committed; or if it be only alleged in an indictment that the crime was committed on or about a certain day whether that would be sufficient," and the judges answered that it is necessary that there be a certain day laid in the indictment and that to allege that the fact was committed on or about a certain day would not be sufficient. The judges were next asked,

And here comes the material part,

Whether, if a certain day be alleged in an indictment, it be necessary on the trial to prove the fact to be committed on that day, and they answered that it is not

necessary, and thereupon, the Lords resolved that the impeachment was sufficiently certain in point of time. This case furnishes a good illustration of the rule which I think is reasonably and well founded, that whatever is to be proved must be stated, and that no more need be stated.

In this case if you do not need to prove that any of these acts were committed on the 17th day of November, 1878, then it was unnecessary to allege it, and therefore it gives us no information whatever; it furnishes us nothing we can rely upon. And in order to show you the nature and character of these specifications I desire to call your attention to the fact that the fourth specification, for instance, charges us with being drunk while in the discharge of our judicial duties at the city of New Ulm, on the 1st day of July, 1880. On that date the memorandums and the recollection of the respondent show that he was not in the city of New Ulm, but that he was in St. Peter holding a special term of court,—more than twenty-five miles distant from the place stated in the specification.

Mr. Manager DUNN. That, I suppose, is a matter of proof and not of argument.

Mr. ARCTANDER (resuming). In the sixth specification, where he is charged, also in New Ulm, on the 21st day of January, 1881, it can be conclusively shown that on that day he was present at a club dance in St. Peter, and spent the day there. The same remark also applies to the eighth specification, where he is charged with being drunk in New Ulm on the 2d day of August, 1881, he was then in St. Peter. The same as to the specification wherein he is alleged to have been in St. Peter in a house of prostitution, there consorting with harlots and prostitutes, on the 30th day of August, 1880. As a matter of fact he was at that time hundreds of miles distant,—on the prairies of Renville county, shooting prairie chickens,—or "snipes" as they probably were called at that time. The same remarks apply all through these specifications, or at least to four or five of them. Now, what information do they give to us? The learned managers say, "that is a matter of proof." I admit that, but they will not prove the act at the dates charged in those specifications; they will prove, if he was not in New Ulm or St. Peter for instance, at the time alleged, that he was there at some other time, and that he was then drunk, and you will be obliged to allow them to do it under the rules of law to which I have called your attention.

What information then, I ask, have these specifications given us? They are bound by the information, which they claim to have given us; they are not bound by the date or the place alleged; they can prove anything they please about it. Do we know any more than we did before? Is that "specifications?" It seems to be almost conclusive that this has been done for the purpose of misleading us. It strikes me that as these specifications were the result of this "smelling expedition" all through the ninth judicial district,—involving a personal examination of the records and the witnesses,—that the managers must have discovered the time they intended to rely upon as well as the fact, because they had the record before them when they were out on this smelling expedition; they could tell from the records and the witnesses what date it was and what date they could prove the act to have occurred. It seems to me I say, as though it was an attempt to mislead us; as, if these specifications are brought in in this shape so as to give us

just enough to cover the direction of the Senate yet not enough to put us upon our inquiry and to put us on our defense,—as it certainly was the intention of the Senate that they should do.

Now, how could they explain it in any other way? The easiest way in the world, senators: the witnesses come before you upon the stand, and tell you that at such and such a time,—they don't remember the exact date,—but when such and such a case was tried,—when such and such a matter was pending before Judge Cox, that then he was intoxicated. Now, why is not the occasion or the circumstances stated in the specifications? Why is it not alleged that while he had certain matters under consideration, and referring to these matters, in order that the respondent may thus have been with certainty advised of the time at which he was charged with being drunk? He could thereby have been enabled to examine the records and ascertain for himself the proper date and thereby have prepared himself to make his defense; he could then have found and examined his witnesses, and be in a position to place them upon the stand in his behalf upon a particular charge. And I say that this is the way every specification ought to have been prepared, and this is the way that every lawyer ought to have drawn these articles of impeachment from one to twenty, because by so doing they would have given us the proper and necessary information. They have done this with article seven; why did they not do it with the rest? Why did they not do it in the other articles? Why did they not do it in the specifications? Mr. Webber was upon the stand here the other day, and he told you, under the eighth specification, that at a certain divorce proceeding between Castor and Castor, Judge Cox was drunk, but he cannot give the time. Yet he gives it in evidence here upon the stand. Did he not give it to the managers, too? Why was it not alleged in proper terms in the specification? Why did they not inform us of the particular occasion upon which we are charged with being drunk?

Now suppose for instance, that in an ordinary criminal case, you were charged with having stolen certain personal property, would the fact that you are not informed of the correct date of the alleged crime make any difference, if you were informed of the particular circumstances? You are informed that upon a certain date you did take, steal and carry away, one certain gelding, for instance, of the value of one hundred dollars, then and there the personal property of James Jones. By stating the occasion the particular facts are called to your attention at once, whether you are guilty or not. But here the Managers scorn that manner of procedure. They tell you that it is not necessary to give this respondent and his counsel so much attention as to follow the instructions of the Senate when it ordered them to produce specifications under these articles in question; but they say: "We will give them times and places, and we will call that specifications."

Now, unless you locate the day and allege the facts to have occurred upon that day—unless you give the particular occasion upon which these acts are alleged to have taken place, how are we enabled to ascertain the facts to be shown in our defense? That is what should have been done. They should have told us that at a special, or at a general term, or at chambers, certain matters, naming them, were before the respondent, for trial and determination; and, if there were several matters before him on that day they should have alleged at least one of those matters and this would have put him upon his inquiry. Yet the chairman of the learned managers, who opened this case, upon four of the specifications did not

even deign to tell us what those specifications were for; he told us he should not enlarge upon them, and we do not know to-day with what we are charged, at what places or under what circumstances. We do not know it *to-day*, notwithstanding they have opened their case and have presumedly laid their evidence before you. Yet they tell us that we have been sufficiently informed; that they have complied with instructions and furnished us with specifications. Now I say that the whole of the articles, with the exception of article seven, are open to the same objection, But upon those articles we did not desire to be technical, because, although in order to get at the charges we were compelled to grope our way through the mass of testimony taken by the House committee, yet by this process we have been able to ascertain the particular occasions charged, during what particular term, and what particular circumstances surrounded the case. We could do this by sitting with the articles in one hand and the testimony in the other, but in one or two instances, even the right year during which the acts are alleged to have occurred is not given. Yet we were sufficiently notified of the facts necessary to be proven on our behalf, because we had the testimony before us. And although we had the right to come before you and demand that those articles should be stricken out and not be allowed to stand, because they were not sufficiently definite and did not inform us of the cause and nature of the accusation, we did not desire to do this because we were able although at the expense of time and labor to find out with what we were charged. We preferred to undergo that inconvenience rather than to bother this Senate with our objection. But in this case what have we to go by? Why, amongst the specifications under article seventeen there is only one on which testimony was given before the House of Representatives or their committee, as the Senate can ascertain for themselves by examing the report of the stenographer on that occasion. I say it, and I dare the managers to point to one specification except the seventh that there was one iota or scintilla of evidence adduced on before the committee of the House. I challenge the managers to state a single one, and I will show you beyond a doubt that none of those occasions, with one exception, were testified to before the House committee. All the specifications under article seventeen have been hunted up on the "smelling expedition" that the board of managers saw fit to take after the articles of impeachment had been framed and adopted; and without furnishing us any evidence from which we could find out, they have not deigned to give it to us under either of the specifications. Yet they have dared to come in here and ask you to say what that they have given us specifications that will enable us to prepare a proper defense.

Under article twenty it is the same way. I say that there was no testimony adduced before the House of Representatives or its committee to sustain these specifications. And I say this because I think I know that evidence by heart. I had to study it so hard to find out with what we were charged in these articles, that I had almost to commit it to memory. There are several specifications under article twenty, one of which charges us, at the city of New Ulm, in the county of Brown, on the 30th day of August, 1880, with having visited a house of ill-fame, and with having consorted with prostitutes, while the only evidence that was adduced before the house, was as to the May Term of 1881. So that there is a false date again. Now, I say the only evidence that was before the house committee certainly does not go to substantiate that specification; but it was the only thing there was with reference to such a mat-

ter and we must take it to mean that I suppose, because that evidence showed if anything, that Judge Cox had been trying to get into a house of ill-fame, but could not get there. The evidence does not then charge him with the frequenting of houses of ill-fame and consorting and keeping company with harlots and prostitutes, but only with trying to do so. There was not a scintilla of testimony before the committee so far as the first specification, the St. Peter charge, is concerned.

As far as the Minneapolis charge is concerned the same remark will apply.

Now, I say we have nothing to go by. We have nothing to inform us or to give us even a clue to the time or occasion at which we are charged in those specifications under that article. And I ask you under that state of facts under the provision of law, which says that the time and place are immaterial, and that they can prove any time or place they see fit—without regard to the time they have alleged, (having showed you, as we have by the managers statement that some of the dates are false,) have they obeyed your instructions when you directed them to give us specifications, undoubtedly on your part with a view to reach the same end that was reached in the Page case, when they give us this sheet of paper which is not worth that much, [striking the paper on which the specifications were written] it amounts to nothing; it gives certainty and definiteness to nothing; it makes the article not one hair's breadth better than it was before.

Now, I suppose it is the policy of the board of managers that we shall know nothing from the articles; that we shall know nothing from the specifications; that we shall know nothing from their opening argument; we shall sit here and wait patiently until it is thought proper for them to inform us what we are to meet and expect; this matter should be sprung upon us so that we could have no opportunity, even if we had the time to investigate and ascertain what the charges were, that are brought against us, so that we should not be prepared to meet them, and to subpoena our witnesses, and bring them before you.

Now, I say Senators, it must be clear to every one of you that under these specifications, as they stand, if they shall be allowed to stand, and the managers be permitted to introduce testimony under them it must be clear to every one of you, I say, that we are in a position wherein we can *never* go to trial upon those specifications, when the case closes upon the part of the prosecution. Why, in the first instance, even if they were specifications, if they informed us of anything, we had then only four days before we had to be here, with the Lord's day intervening, so that we have had no time to go to these numerous remote places and make examinations, for the reason that the defendant and his counsel had to be here; and it is clear, Senators, that, in a matter of this kind, it would not do for one of the counsel to go and examine into the charges, because it is a matter that comes within the sole personal knowledge of the respondent; he goes to the places where the offences are alleged to have been committed; he learns who were present and have personal knowledge as to the facts; he knows who to inquire of; and it is something he cannot do while sitting in St. Paul; he cannot direct us to persons whom he may not be able to name, nor examine the books and records or see persons acquainted with the facts that he knows and that his counsel does not have. I say it must be plain to every Senator, that if we are required to go on meet these specifications, and the prosecution is allowed to introduce testimony under them, then, as a matter of fact, we learn

nothing as to the meaning of the specifications or what we are charged with, until we are confronted with the evidence in court, at which time we shall have no opportunity to look up and investigate evidence to disprove that offered by the prosecution. We shall not be able to find out who were present on the occasions testified to; we shall have no time to make such investigation and if, when the prosecution closes their case, you should hold us to these articles, we should most certainly be obliged to ask you for leave of absence for a week or a fortnight to examine into and prepare our defense; you cannot do otherwise, in justice, than to grant it to us. As far as the articles are concerned those we know about, those we are prepared to meet, everyone of them; but as to these specifications, we are groping in the dark. We know nothing about them, and we can know nothing about them, until we are informed here, what they are; and we certainly cannot prepare to meet them while we are sitting here every day, absorbed in the trial of this case, engaged in cross-examining witnesses and trying to present this case before you, Senators, in a proper manner.

I now, come to the point that, for the sake of my argument, I call my second point. I consider it of less importance to us than the first one, although of more importance to the State generally, because it does not touch our personal rights so much as it does the personal rights of everybody that hereafter shall be brought to answer before this court, and that is, that the managers have no right to file here, any articles or any specifications; that the Senate has no right to grant them that privilege; that it is not in the power of the Senate so to do.

Why, it is true that was done in the Page case; I admit it; but I claim also that if a bad precedent has been established in that case, it is the right as well as the duty of another Senate coming afterwards, to correct that mistake. It is right to take a step backward, if to go backwards is to go in the right direction, a step which will lead us into the paths that we trod before, and bring us back in the paths that the experience and wisdom of ages have established. It is hazardous to branch off into new and perilous paths, which one day, when it is too late to stop, may lead to destruction.

I call your attention to the constitutional provision in regard to impeachments:

"The House of Representatives shall have the sole power of impeachments," through and by the concurrence of the majority of all the members elected to seats therein."

Now, what does your resolution, allowing the board of managers to come in and file specifications, if it has any significance, amount to? It violates a constitutional provision, because you cannot by your action take away from the House of Representatives of the State of Minnesota, the prerogative that was granted to them and to them solely, and in the strongest language too, that the framers of the constitution could find—the *sole* power of impeachment should be in them; and not only that, but that a majority of all the members *elected* to that body must concur in it before it is valid. Now, can the House of Representatives delegate to the Board of Managers the power granted solely to them by the constitution? Can they waive their constitutional prerogatives? I think it is a well established rule of law, that a party cannot waive his constitutional rights. You cannot waive yours, and the House of Representatives of the State of Minnesota cannot waive the rights that have been granted to it exclusively by the constitution. Is the Board of Managers

then the House of Representatives? They represent it, it is true, in this case, for the purposes of this prosecution; for the purpose of opening the case; for the purpose of arguing it before you; for the purpose of examining witnesses; for the purpose of making the closing argument on the part of the State; but they have nothing else to do with the proceedings. They have no other functions than what I have stated. The prerogatives of the House have not been delegated to them by any resolution of the House or by any law, and if they had been, such a delegation of power to them would have been void and utterly worthless, for even if they were once part and parcel of the House, they do and did not constitute a majority of the members elected to that body, as we all know.

Yet, you do more than that, you give them more than the rights of the House. You cannot delegate to them the power of the House, yet you give to them more power than the House possessed. The House itself can not find, vote upon and adopt articles of impeachment, except upon sworn testimony, but you allow the managers to go around the country, one here and another there, meeting and conversing with men and women upon the street, or, following some street rumor which leads into a lawyer's office, to sit down and have a chat, and upon information thus acquired upon mere hearsay to present articles of impeachment against this respondent; for it is clear that every one of these specifications, if they amount to anything, is a separate and distinct article against this respondent, an article which charges him with being intoxicated while in the discharge of his duty, so that he was not able to discharge the duties of his office.

They can do it upon hearsay; they can do it upon rumors that they pick up on the street; and I apprehend that they have done it to judge by the dates that some of these specifications bear. There is nothing in your resolution to prevent them. You tell them to bring in what specifications they please. You do not tell them to bring in specifications of articles that are based upon sworn testimony. You say "bring in your specifications, gentlemen, and we will dispose of them, and take care of them for you."

Now, either article seventeen and article twenty are better than they were before, with the addition of specifications, or they are not in the least respect better. They are either just as uncertain and indefinite as they were before, or else they are improved. If they are improved, there has been a change made in them. If they have been improved, there has been an amendment to them. If they have been improved, there is a new article in them; and they are not the same articles that the House brought in before you,—whether you call it a specification or not, I do not care. And, if that is the case, these managers have taken upon themselves to prefer articles,—not those that the House brought, but other articles that the House has not heard testimony upon, or else, in the case of one single specification, articles upon which the House, having heard the testimony, had refused or failed to vote impeachment; and if so they are new, or improved articles; if the articles are just as worthless as they were before, then you must deny to hear evidence upon them now, just as well as you denied to hear it on the 15th of December, when we were here last.

If it is not in the same shape, I say, then it is a new impeachment then it is a new article, and, under the constitution, as my learned colleague and associate, Mr. Allis, stated to you, we are infringed upon by

these managers in another constitutional right, namely, our right to have twenty days after an article of impeachment is served upon us before we can be called upon to stand our trial. Why did the constitution give us that right? Why, of course, for the purpose of giving us sufficient time for preparation, so that we could meet the charges, so that we could lay our counter-mine against the mine which the managers have laid against us. That is why that privilege is granted by the constitution, that is why the Senate is prevented by the very strictest language of that constitution from trying any man by impeachment until he has had twenty days time to prepare himself, and I say that that provision in the constitution, being a beneficial provision, should be construed liberally, construed in the spirit of the constitution rather than the letter, so that, when the constitution says that no trial can be had unless articles have been served twenty days before, it has just as well reference to cases where enlarged and better defined charges than those first presented, are brought in, as it does when the original charges are preferred. Our sacred rights under the constitution are trampled upon, and disregarded, by permitting these managers to serve the paper upon us at the time they did, giving us only four days' preparation when the constitution gives us twenty.

I dare say, gentlemen, that I have examined every impeachment case in the United States that I have had access to. I have not had an opportunity to examine thoroughly the Prescott trial in Massachusetts, but I say, with the exception of that case, I have examined every impeachment trial that has ever been had in the United States, and every one, that it was possible for me to get access to, that has ever been tried in England, and after that thorough examination I dare the managers to show that I am incorrect in saying that there is not a single impeachment case in England, or in the United States, in which the managers have ever been allowed or authorized to bring in other or different articles, or even specifications, than those that the House found, except the single instance found in the Page case in Minnesota.

I say that when that was done in the Page case, it was done unadvisedly, and improvidently it was done wrongfully and unlawfully, without warrant or precedent, and if this Senate,—yea, if Senators now sitting here, who were members of that court as well as of this,—are convinced that the Senate of 1878 erred in that matter, it is right that a halt should be made, and that that erroneous ruling should instantly be revised, that we shall not depart from the precedents established by our ancestors; it is right that we should stand by the old well established rights, the old privileges that are granted to everyone charged in such a solemn proceeding, where more than life, more than liberty is at stake.

I say, right here, that I know that you may find (for it is so laid down in Cushing) that the House may find additional articles after they have presented one set of articles, especially where the House reserves to itself, the right to do it. And you *may* find in some of the English cases,—although I have not been able to find it,—that the House adopted other articles subsequently, but they have no such constitutional provision, it will be observed, as we have, requiring that the articles must be served twenty days before trial. They have no such provision in England, and, so far as I, and my learned friend, Mr. Allis, have been able to discover, there is no such constitutional provision anywhere but in the State of Minnesota. But I say

boldly that, search as you may, you never will find one instance or one trial in which the Board of Managers has been allowed to usurpate the powers, prerogatives and privileges of the House of Representatives, or to do what is not theirs to do, to rob the House of the privileges which rightfully belong to it, except in that Page case. I challenge the Honorable Managers to find one such case. I say, gentlemen, that there are several considerations that should weigh with you in the matter. But before I come to that, let me state that I have found one case that is somewhat analogous. I have found one case, although not an impeachment trial, that involves the exact point in question, whether or not the managers can file specifications where the House has failed to find them. It is a trial in New York, not an impeachment trial, but one that is somewhat similar, in all respects, to an impeachment trial—a trial for the purpose of removing a judge by "address," as it is called; that is to say, the constitution of the State of New York provides, besides the usual provisions for impeachments for crimes and misdemeanors and corrupt conduct in office, for removal by the Governor of judges of inferior courts from office, if the Senate and the Governor concur in the matter after full examination of the facts. The Governor must first send a messenger to the Senate transmitting to that body charges which he has received, and which must be based upon evidence; and the Senate may then inform itself as to the truth of the charge, sitting as a Senate, and try that judge or officer, whoever he may be. That article was tried to be brought into our constitution.

Mr. Senator CROOKS. That is not law in Minnesota.

Mr. ARCTANDER. No; I do not mention it upon that point; I speak of it simply to explain the proceedings that I am going to refer to, as I claim that this case is analogous in practice to the New York case, mentioned by me. I refer to the case of George M. Curtis. In that case the governor had transmitted certain charges and specifications with the evidence upon which they were based, to the senate. Then it became the duty of the senate to act upon them, and to call the respondent, Mr. Curtis, before it for trial. It was, at that time, the practice of the senate of New York that the accused and the accusers (which, in this case, was the bar committee of New York; I am not certain, but it was the bar committee of some county) met before the judidiary committee of the senate and made up their issues as it was called. That is to say, the respondent would put in his answer or agree upon what the issues should be, and the judiciary committee sat as a kind of preparatory court, before the issues came to trial. Now, in that case it appears that the bar committee conducting the prosecution before the senate was the one who had made the complaint and filed the charges with the governor. The governor had sent them to the senate and the matter came up in the judiciary committee, and the respondent was there present. The bar committee filed additional specifications and served them on the respondent in the case, and in that state the case was left for six months, and until the trial commenced. When the trial commenced the bar committeee, who were the prosecutors, just as the managers are here,—they were the managers of the prosecution, and had been selected for that purpose by the bar, with the consent of the governor,—insisted that the amended charges or specifications should be filed and considered as part of the charges, and the respondent objected, and upon that objection the president of the senate ruled as has been ruled heretofore in the McCunn case, in the Smith case, and I think in the Prin-

the case, that they had no authority to consider any thing except what came from the governor; that although this prosecuting committeee occupied the same position as to the governor that this board of managers does to the house, yet, they say, the governor has to complain to us,—he has to prefer the charges—(as the house has in this case upon impeachment) and we can take no other; and so the senate extended the specifications.

There is another thing that I desire to call your attention to before reading this authority. It is this: that whenever replications have been made to the respondent's answer in any impeachment trial in the United States senate, such replications or replies have been filed by the board of managers in the senate sitting as the court, but those replies have invariably been submitted to the House of Representatives, and been adopted by the House, and the House has authorized the managers to bring them in. That was the fact in the Peck case which my learned associate, Gen. Brisbin, has just called my attention to.

Senator CROOKS. That was the Missouri case?

Mr. ARCTANDER. Yes, sir; you can see what the report says:

At the next session, Mr. Buchanan, from the managers reported to the House a replication to the answer or plea of Judge Peck, which was agreed to by the House, and the said managers were instructed to maintain the same at the bar of the Senate and the Senate were informed thereof.

And this is the fact, not only in the Peck case, but it goes through every case that has ever been tried in the United States Senate, I think. You will, upon examination of the cases tried before the United States Senate find, however,—I here call your attention to that fact, Senators,—that during the proceedings in every impeachment case that has ever been before the United States Senate, the House and the Senate have both been in regular session, and the trial has been had during that session and the reply in every case, whenever there has been a reply, has been submitted to the House, and by them voted upon, and the Managers instructed to put it in.

This goes to show that there is no authority in them; that there is not even "brief authority" in them as a board. They must derive their whole authority from the House of Representatives, and they can do nothing on their own motion, except to prosecute. As far as forming issues, and the finding of the articles of impeachment is concerned, it is the House, and the House only, and not the Board of Managers, who have power to act.

I desire, as I promised, now to call your attention to what I claimed was an analogous case, on page 62 of the Geo. M. Curtis trial. Mr. Townsend, of counsel for the plaintiff, says:

We ask that the amended charges and specifications be read. We understand that they are substantially before the Senate.

The respondent was then called, and by his counsel appeared.

Then Mr. Townsend says again:

We desire that the amended specification shall be read, as a part of these charges.

The PRESIDENT. The Clerk will read.

* * * * * *

Mr. SMITH. [Counsel for the respondent.] To that we object!

Mr COCHRANE. [Counsel for the respondent, said] Mr. President, these charges which were transmitted by the Governor to the Senate for trial, with the specifications thereunder, came down here early in May, I think, either in June or the latter part of May, and a day was fixed for the appearance of the accused before a committee of this Senate, to settle the issues to be tried. The accused, with his counsel, did then appear, and then an application was made on the part of the prosecution to supplement the specifications transmitted by the Governor, with others since made by themselves, not sustained by affidavit, not having been investigated by the Governor, not transmitted among the matters to be examined by this body.

And whenever you see here "committee," or "Governor," read instead, in the respective places, "Board of Managers" and "House of Representatives, and you will apply the full force of the argument to this case.

Now, there was some sparring about what time they were served, but it was admitted or tacitly understood, and not denied, that they had been served six months before the trial. I proceed:

Mr. COCHRANE. If the question of the propriety of that amendment is now before the Senate, then I desire to be heard very briefly, upon it. Apart from the precedent which is the only one upon this point, the precedent of this Senate's own action in the case of Judge Smith, upon principle it must be apparent to the Senate that the charges and specifications fortified by the affidavits, and confronted by the answer and opposing affidavits submitted to the governor, and passed upon by him, must limit the indictment, so to speak, which is to be tried by this body.

It seems it was so decided in the Smith case, too.

The idea of the governor—and that has been sustained by the Senate in the case of McCunn—the idea of the governor was that he must, in the first instance investigate—

Or in this case the House must do it—

And present to this body as a body, for trial, the charges alleged before him; that in so doing he acted very much in analogy with a grand jury before whom charges are preferred against any citizen.

You remember at the time when this respondent was clamoring for admittance at the door of the Judiciary committee of the House, and clamored in vain, when they were sitting in "star chamber" performance, examining witnesses in this case,—when he was knocking at that door, and asking for admittance, in order to cross-examine the witnesses and bring evidence to disprove the charges against him,—that he was told by them that they sat there as a grand jury, and the House, when it decided upon those charges sat like a grand jury, with closed doors, and nobody could get in. This respondent could not be heard before them.

That when he sent these charges and specifications to this body, they were to act as a petit jury acts upon a trial in matters included in the indictment; and it is unheard of in criminal practice, that an indictment, after issue joined and the trial commenced, can be amended, so as to include other specific charges of crime or misdemeanor.

This Senate would be without authority to try any charge or specification against any judge of an inferior court unless they were sent by the Governor to this body.

The same would be true here. You are without authority to try any judge unless the charge upon which he is to be tried is sent to you by the body at the other end of the capitol.

They cannot by virtue of having acquired jurisdiction as to certain charges enlarge that jurisdiction, I humbly submit, to other charges not passed upon by the Governor.

You cannot, because you have acquired jurisdiction over the respondent by the articles found by the House, enlarge that jurisdiction by permitting anybody, managers or others to come in here and file other and different articles or specifications against him upon charges not passed upon by the House, or, as it is here stated, "not passed upon by the Governor."

I raise the objection, therefore, upon principle and authority. It is desirable for all parties at this stage of our proceeding to know what we have to try, whether those different specifications are to be inserted, and the Senate will see that they involve a very long and bitter contest.

Now, this was argued to a great length, and I have marked here several passages to read, but I do not desire to take up the time of the Senate except so far as may be necessary to show what the action of the court was upon it; for I think I have already shown that just the same point was raised in that case that is now raised here, the only difference being that there it was the Governor that had to act upon these charges and investigate them, and here it is the House of Representatives; that it was, in that case, the committee of the bar association that tried to make additional and further specifications while here it is the board of managers. That is the only difference.

Now let us see what the President said upon that motion:

MR. PRESIDENT. Mr. Smith, I think it is not necessary to discuss that question further. It appears to the chair—it appears from the record, that the governor transmitted certain formal charges and specifications to the Senate, recommending them to inquire into the truth thereof, and to try this man upon them. In the opinion of the chair, that having been done, the accused can only be tried upon those charges and specifications—

Sent by the Governor.

They must be such as are transmitted by the governor, not by the Bar Association, or any other party outside. But having been formerly drawn up, no matter by whom,—

As they were in that case,—formally drawn up by that Bar Committee, and as they were in the case at bar by the managers.

But having been formerly drawn up, no matter by whom, and adopted by the governor as his own, and sent to the Senate, those are the charges and specifications upon which the accused must be tried. As has justly been remarked by the Senator from the third, this thing is entirely unauthorized and extra-judicial. The Senate has taken no action on it, and the accused has never waived his right.

We have not waived our rights to raise this point because we have objected to it in the answer the earliest opportunity we had.

Therefore the chair is of the opinion that the so-called amended specifications

should not be read. The issues should stand as framed upon the original specifications, charges and answer.

Now, I ask you gentlemen, if that is not a thoroughly analagous case, and it is the only case, where the question has been raised that I could find; except in the Smith case, and in the McCunn case, where the ruling was the same way. The ruling of the president was left undisturbed by the Senate in this case, and they could not of course do otherwise, because they had before them precedents where the same question had been decided in the same way by the Senate.

I desire before I lay down the book, to call your attention to the fact that the point which is raised here, or which will be raised by the Managers, was raised in this case; that the specifications simply give respondent more particular notice, and, therefore, it does not make any difference whether the House acts or not.

Mr. Townsend whose position was overuled by the Senate says in his argument:

It was enough when the Governor referred the matter to the Senate that we then made our specifications, and we did make, in this particular instance, other specifications, for the benefit of the respondent, in order that he might have full notice of what we propose to prove generally, under the fourth subdivision of our general charge.

Almost equivalent, almost analogous to the case here and the argument the managers will advance; and that argument was overruled by the President of the Senate and this ruling was by the silence of the Senate fully acquiesced in by that body.

Now, I say that it is unjust to the interest of the State, it is unjust to the respondent to allow the managers to come in here and crucify him upon eleven extra articles after they have got eighteen good and valid articles before. If they cannot convict him upon the eighteen good articles that the House found against him, it is time that they do not convict him at all. If they cannot succeed, and cannot bring proof before you that will convince you that the respondent has been guilty of what has been charged against him by the House, he ought not to be called upon to answer, nor ought the time of counsel or of the managers, or of this honorable Senate be taken up, at the expense of the State, with running around upon an expedition trying to see if you cannot fish some guilt out of these specifications upon which the defendant could perchance be convicted.

I know, Senators, that this matter is largely in your discretion. I know that there will be Senators that sat on the other trial, in which this system was introduced, who will hesitate to go back upon the ruling made there, and I say it is not necessary for them to do so if they honestly think that was a correct ruling, because in that case specifications were furnished—specifications that were specifications. You need not overrule your former action by sustaining us upon the second point. You need not hold that the House has the sole power of impeachment. You need not hold that these managers cannot bring in specifications, because what they have done under your order is not sufficient. They have not done what you told them to do. They have not brought you in specifications. What they have brought in, as a semblance of specifications, serve only to allure us out into the sloughs of dependency and uncertainty, and to nothing else. It has no tendency to guide us unto *terra*

prima anywhere. They have not followed your instructions. They have not given us the specifications which you ordered them to give, and, therefore, under your rule as it already stands, you should hold that they should not be allowed to introduce any testimony under them.

I say there is no necessity for opening the flood-gates of evidence upon 8 or 9 new articles, beside the eighteen which stand there unattacked, and under which they claim they can introduce anything they please. I refer to the charge of habitual drunkenness. Let them introduce it under that. We shall not care for them in that case. We shall not probably even want to fight them then. But if these specifications are going to stand as charges absolute and separate against us, on each and every one of them we can be convicted. We must therefore certainly, in justice to ourselves, and in justice to the respondent, bring in all the testimony that is attainable on each one of them. Is the Senate willing to drag along the time here further, for weeks and months? If the Managers are not able to stand up now and convict this respondent upon the articles found by the House, I say let them go home. I say let us all go home, for it is certainly fruitless, at least in my opinion, to go on a fishing expedition like the one the Managers have been trying to induce us to follow them on.

I know, Senators, that you are probably unable to look upon these matters,—I mean the majority of you who are not lawyers,—to look upon it strictly, as judges should, giving the consideration to technical legal questions and strict rulings that judges would do, and we must rely more upon your sound, honest, common sense and good judgment than upon your knowledge of the intricacies of the law. We must rely upon your discretion. We know that our case and our fate is in your hands; that there is no appeal from you by which any error you commit can be corrected. We know that we are perfectly at your mercy, that whatever you please you can do; that you can order a new set of specifications, or a hundred different specifications, if you see fit, if you do not think what we have is enough and more than enough, and there will be no remedy left to us. We know that you have power, we know that you have an almost inexhaustible power, a power that cannot be controlled by any person or any court, but we ask you not to exercise that power, not to exercise it to the injustice of this respondent. We ask you to give him a fair showing here. That if you feel that these specifications have not been furnished, and are not as you have required them to be; if you feel that they are insufficient, in that they give only immaterial specifications and nothing material or tangible, or anything that can inform us, then we hope that you will not use that giant power that you have to crush us. I know of no better way to address you than in the words of the immortal Shakespeare:

> Oh! it is excellent,
> To have a giant's strength, but it is tyrannous
> To use it like a giant.

Senator C. F. BUCK. I would like to ask the counsel, for I want to have it understood particularly so far as I am concerned,—I understand he objects to the specifications filed under the rule of the Senate on the ground that the specification does not make the article any more definite, any more specific, any more certain, than it was before.

Mr. ARCTANDER. Yes, sir; that is the point.

Senator C. F. BUCK. For this reason, that the Managers, notwith-

standing that days are specified, would be permitted, under the rules of evidence, to show that the drunkenness happened at any other date or time. I understand that is the position taken.

Mr. ARCTANDER. That is the main position. We do not object to the filing, for they are already filed, but we object to the introduction of testimony, for the reason that they are not specifications such as the Senate ordered them to be.

Senator C. F. BUCK. They are really not any more specific or certain than they were before.

Senator ADAMS. At the conclusions of the articles of impeachment there is a paragraph upon which I would like to have some information. It reads like this:

> And the House of Representatives by protestation, saving to themselves the liberty of exhibiting at any time hereafter any future articles, or any accusations or impeachment against the said E. St. Julien Cox, and also of replying to his answer which he shall make under the said answer, or any of them, and of offering proof to all and every of the aforesaid articles and of all other articles of impeachment or accusation which shall be exhibited by them as the case shall require do demand that the said E. St. Julien Cox, shall be put to answer the said crimes and misdemeanors and that said proceeding, examination, trial and judgment may thereupon be had and given as are agreeable to justice.

Now, the question in my mind, upon reading this paragraph is whether they have power to delegate any authority to the managers which belongs to them by virtue of constitutional right. If they have, then it would certainly place me in a position to comprehend this question more thoroughly than I comprehend it now.

Mr. ALLIS. Mr. President, I suppose the Senator understands that we maintain that there is no such power, that no such power can be delegated to the managers, and that they have not done so here.

Senator C. F. BUCK. I suppose the managers will have something to say upon that subject. I want to be understood in regard to the point that I spoke on.

Mr. ARCTANDER. I mention that point simply as *one*; that they had no right to file them in the first instance; I took that last because I thought it was less in important to us; but nevertheless to be carefully considered by the Senate, that the House only have the power, and that the managers have no power to make any specification and charges, but my main point is that even if they had such power, they have not used it by filing any specifications, that amount to specifications under the rule of the Senate.

Senator CROOKS. It is now half-past five. I understand that the honorable Board of Managers wish to argue the question raised by the learned counsel, and if they should commence now, they would be cut off before they fairly got started, and I move that we adjourn.

The PRESIDENT *pro tem.* There is still half an hour left before the regular time for adjournment.

Senator CROOKS. I know that, and that is why I ask.

Senator HINDS. Perhaps the time would be sufficient.

Senator POWERS. I would ask the Board of Managers whether they design to reply, as I suppose they do, and, if so, how much time they will require.

Mr. Manager DUNN. Mr. President, it would be almost impossible to state any definite time.

Senator CROOKS. They will want some time to consider it, no doubt.

Mr. Manager DUNN. We might get through in half an hour, but judging from the ground that would necessarily have to be covered in answer to the argument of the counsel that has just taken his seat, if we were to take as much time as he has, it would take us about two hours and a half to finish the argument. I apprehend that we will not need so much time in answering that which has gone before, as has been consumed by the argument that has been made by Counselor Arctander. I hardly think, however, that the argument can be finished in the little while that remains of this afternoon's session. It would be a matter of personal convenience, of course, to commence and finish it before I sat down.

Senator C. F. BUCK. I would ask the honorable managers if it would be agreeable to them to have time in which to look up some authorities.

Mr. Manager DUNN. This is a matter entirely new to us, one that has come upon the spur of the moment. The argument is really an objection to the reception of certain evidence, and that is what we have to meet.

Senator POWERS. Mr. President, I move the Senate do now adjourn.

The motion to adjourn was carried.

FOURTEENTH DAY.

ST. PAUL, MINN., Jan. 17, 1882.

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

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

Messrs. Aaker, Adams, Bonniwell, Buck, C. F., Buck, D., Campbell, Case, Clement, Gilfillan, C. D., Hinds, Howard, Johnson, F. L., Johnson, R. B., McCormick, McCrea. McLaughlin, Morrison, Officer, Powers, Rice, Shalleen, Tiffany, Wheat, Wilkins, Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, judge of the ninth judicial district, upon articles of impeachment exhibited against him by the House of Representatives.

The Sergeant-at-Arms having made proclamation,

The Managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. James Smith, Jr., Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives, entered the Senate chamber and took the seats assigned them.

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

Senator Wilson and took the chair to act as PRESIDENT *pro tem.*

The PRESIDENT, *pro tem.* Have the Senators any resolutions or motions to make before proceeding with other business? Are the honorable Managers ready to proceed?

Mr. Manager DUNN. Mr. President and Gentlemen of the Senate:—

The matter which is perhaps particularly engrossing the attention of the Senate at this time is upon the objection of the counsel for the respondent to hearing evidence offered by the Managers in support of the specifications to articles seventeen and twenty; more particularly, however at this time, to article seventeen. You will remember that to the questions which were asked the witness on Saturday, I think it was, an objection was interposed for the reason set forth in the answer of the respondent, in that the article seventeen had been amended by the filing of these specifications, and they made two objections: first, they objected that the article having been amended was not served within the constitutional time enabling them to have twenty days in which to answer. That objection is based upon the theory that the specifications that were made to that article made it in effect a new article of impeachment which article had not been voted by the House of Representatives, and consequently was improperly before this Senate. And even admitting that the power of the Senate, as they say, for the sake of the argument, was properly exercised in amending the article, yet it is claimed on behalf of the respondent that they were entitled to twenty days from the time of the service of those specifications, or amended articles, as they see fit to call them, in which to prepare for their defense, and before which they could not properly or lawfully be called upon to answer. I believe those are the objections which were argued here with so much vehemence yesterday by the counsel for the respondent.

Now, Mr. President and Senators, let us inquire a little and see whether there is any truth in the statements and allegations of the respondent's counsel upon those matters. Let us see where this Senate stood on the 10th day of January when we convened here for the purpose of trying this impeachment. It will be remembered that in the month of December this Senate convened for the purpose of hearing specific objections which might be interposed to the impeachment articles proffered by the Managers, and those specific objections were then and there framed into a demurrer, and were argued before this court. Among those objections was a specific objection to articles seventeen and twenty in that they were vague, indefinite, uncertain, covering the whole State of Minnesota and a period of time from the taking of the oath of office by the respondent down to the day of certifying to this Senate of these articles of impeachment by the House of Representatives. And *because* they were vague, uncertain and indefinite this Senate was called upon to overrule those articles and prohibit the Managers from offering evidence thereunder. It will not be necessary to take time to go over and argue that whole field again. It was thoroughly explored. The Senate recorded its verdict after having heard the full arguments upon both sides, and overruled those objections to those articles by their vote, declaring that those articles were sufficient in themselves; but for the benefit, and for the benefit only of the respondent in this case, directed the Board of Managers to file certain specifications relative to those articles,—directed them to be filed by the 6th day of January, four days prior to the convening of this court for the hearing of this case upon its merits; and in default by the Managers in filing those specifications that then no testimony should be received under those articles. Now, that is just the ground upon which we stood when we came in upon the 10th day of January. The Managers had complied with that order and direction of the Senate. And in in order that we may be certain in regard to that I propose to read the

der which was made by the Senate. It is found on the 63d page of e Journal of the seventh day, of December 16th :

Senator McDonald offered the following as a substitute for both those Senators lams and Johnson:
Ordered, That the demurrer of the respondent to the articles of the impeachment overruled, but that the board of managers on the part of the House be and are reby required to furnish the respondent on or before January 6, 1882, with specitions as to the 17th and 20th articles. Should no such specifications be furnhed, then and in that case no testimony will be received in support of said articles and 20.

Now, that was the order that was made by this Senate. The demurr was overruled as to those articles in absolute terms, yet the manars were requested to furnish specifications for the benefit of the resndent, as to these articles 17 and 20, otherwise no testimony should e received in support of them. So we take it Mr. President and Senars, that we appeared here upon the 10th day of January, having filed ur specifications in direct obedience and accordance with the mandate of is Senate as expressed on the 16th day of December last. And now, show to this Senate that when this matter was argued before you ere was no particular ground of difference between the counsel for the spondent then and the managers positive at this time. I propose to ad a few words from the remaks of the counselor, Mr. Allis, as found n the 35th page of the Journal of the sixth day.

Let me now call your attention in closing, to the 17th, the 18th and 20th of these rticles, which it seems to me, and I say it with the greatest respect for the person ho drew them probably in great haste, never should have been inserted. No uman being can answer to allegations so vague as these are. You can have no esitation I apprehend,—and I need not to take much of your time in dwelling pon the question involved here—in sustaining the demurrer as to these three arcles. If you will bear with me a few minutes longer I shall be done.
With regard to the right of every one accused of an offense to have the facts onstituting the alleged offense, set forth specifically and with distinct and definite ertainty, as to time and place, and every material incident, I will read to you a w paragraphs from the speech of Daniel Webster in defense of Judge Prescott, hich I have already had occasion to refer you.

Then the counsel goes on and reads certain portions of the argument of Mr. Webster in that case. I simply read that to show that the great objection which was made by the counsel for the respondent upon the 16th day of December was that these allegations were indefinite as to time and place; that it was impossible for them to go throughout the length and breadth of this State, to the North and South and the East and West to hunt out and explore every place where the respondent had held court or had perchance happened to be during that whole four years of time, and then prepare themselves on every incident of that kind with proof to present before this Senate. They claim therefore, that they must be notified of the times and of the places when and where this respondent was sought to be proven guilty under article seventeen.
Now, let us read a portion of the article in question.
After having charged the respondent in sixteen articles with direct violations of his official duty and with becoming and being intoxicated while in the discharge of such duties, then the Board of Managers of the House of Representatives, in article seventeen say:

That at divers and sundry other times and places in the State of Minnesota, not

enumerated in any of the foregoing articles, from the 4th of January A. D. 1878, to the 15th day of October, A. D. 1881, acting as, and exercising the powers of such judge, did enter upon the trial of causes and the examination and disposition of other matters and things before him as such judge, for trial, examination and disposition, and did at such times and places preside as such judge in the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, &c.

Now, bear in mind Senators that in sixteen articles prior to this the respondent was charged with having appeared in a state of intoxication and acted in the discharge of his official duties while he was in a state of intoxication. This article is framed in exact accordance and in exact substance almost with each and every of the other sixteen articles. If the other sixteen articles were good, proper, upon which the defendant should be called to answer, as this Senate by their recorded vote have so determined, the seventeenth article was only open to objection, because the times and places were not enumerated in that article. For instance, take article fourteen:

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the ninth judicial district, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Lyon, in said State, on the 21st day of June, A. D. 1881, and on divers days between that day and the 30th day of said June, acting as, and exercising the powers of said judge, did enter upon the trial of certain causes &c.

Now, the seventeenth article, standing by itself without the specifications, is an exact reprint of the fourteenth, and of the thirteenth, and of the various other articles, with the exception that it did not at that time state at what county and at what date he entered upon the discharge of his duty. That was all the difference there was between the articles; so it will be apparent to the senate at the first glance that the only objection which the respondent's counsel could have had in their minds to article seventeen, was that it did not, with the precision and certainty of article fourteen, sixteen, and the other articles, give him notice of the day and date, when and where he was guilty of that offence. Now, to amplify this a little further, what is the charge? The charge in the seventeenth article is that the respondent entered upon the discharge of his duty while in a state of intoxication, That is all there is. There is nothing else. The senate compelled the managers, not only to allege that fact, but also to allege with more certainty than they did in the seventeenth article when and when and where.

Now, take these specifications and read each one of these articles; take the first specification for instance, and read that in connection with the seventeenth article, instead of reading, "at divers and sundry other times and places in the state of Minnesota, not enumerated in any of the foregoing articles, from the 4th day of January, A. D., 1878, to the 15th day of Octorber, A. D. 1881," it would read, "at Marshall, in the county of Lyon, in said State, on the 7th day of November, 1878;" it would read, "at New Ulm, in the county of Brown, in said State, on the 2d day of August, 1879;" it would read, "at Red Wood Falls, in the county of Red Wood, in said State, on the 5th day of June, 1880;" it would read, "at New Ulm, in the county of Brown, on the 1st day of July, 1880," and so on through the whole list of specifications. It merely does what

the respondent's counsel desires the senate in these articles should do; notifies them of the day and dates when the managers would seek to give evidence under the seventh article, and the same argument applies, without going over the argument again, to the twentieth article.

Now, I ask this senate, in all candor, if that is a departure from the articles of impeachment which were voted by the House of Representatives? And I want the Senate to remember one thing, that a constitutional right and the constitutional guaranty, which the respondent has here, to be served with the impeachment is not at all infringed by any articles of impeachment that have been framed, or any amendments thereto, or any specifications that have been made by this board of managers.

What are the constitutional rights of the respondent? His constitutional right is to be served with a copy of the impeachment at least twenty days before the day when he shall be called upon for trial.

Now, what is impeachment? Is it those articles? Not at all. Is it those specifications. Not at all. The impeachment is simply the accusation that was made by the House of Representatives when they appeared here in a body before this senate (I cannot give the exact date), but when they appeared here with their speaker at their head, and when by a committee of their own number they notified this Senate that E. St. Julien Cox had, by resolution of the House of Representatives, in their name and in the name of the people of the State of Minnesota, been impeached by that House of Representatives. *That was the impeachment,*

Mr. ALLIS. That the impeachment?

Mr. Manager DUNN. That was the impeachment, and the only impeachment there was made. All the rest—articles of impeachment, specifications, etc.,—are simply matters of practice, to be regulated by the court before whom the impeachment is tried. I tell you the respondent was impeached by the House of Representatives when they resolved that he should be impeached. He was then and there impeached, and the Senate was then notified of it. But this matter of practice has been carried out by the House of Representatives in accordance with all the forms and precedents that we have been able to discover upon this line. The whole matter has been thoroughly argued before this Senate, and Senate has decided upon this matter of practice, and the management have taken notice thereof and have endeavored to govern themselves according to your wishes. The counsellor, upon the other hand, states that they should have had twenty days' notice of this.

Well, now, let us look at the record a little further and see how we stood on the 16th day of December. Let us see if there was any disagreement then, or if this is not a nice point that has been raised since in the minds of these counsellors. After the Senate had gone into secret session for a short time, and had overruled the demurrer, then the counsellor for the respondent, Mr. Arctander, and the management are represented here by some of their number, and the following takes place.

I read from page 64 of the journal of the seventh day :

> The clerk then read the following order :
> Ordered, that the demurrer of respondent to the articles of impeachment be overruled, but that the board of managers on the part of the House, be and are hereby required to furnish the respondent on or before January 6th, 1882, with specifications as to the 17th and 20th articles. Should no such specifications be furnished, then and in that case, no testimony will be received in support of said articles 17 and 20.

The PRESIDENT. I will further inform the counsel that articles 18 and 19 were afterwards acted upon, and that the motion for demurrer was also overruled.

Senator RICE. I would like to ascertain from the respondent how much further time will be necessary to transact what business they may have at this time.

The PRESIDENT. The chair would state that it having been announced to the Senate that the counsel had given notice of further motions, it would be desirable on the part of the Senate, to know whether much time would probably be taken in the discussion of those motions.

Mr. ARCTANDER. Mr. President, I suppose upon the preliminary motion concerning which I spoke to the President, it would probably take an hour or two; but we apprehend that that motion can just as well be raised when the Senate meets again for the consideration of the case. We make this suggestion in order not to occupy further time of the Senate at this time.

Mr. Manager COLLINS. Does that motion go to the question of jurisdiction in any way?

Mr. ARCTANDER. It does not. I would state that I apprehend the Senate will not require us to answer before. We shall, of course, ask leave of the Senate to answer to these articles of impeachment, the demurrer having been overruled, as I understand, except as to two articles.

The PRESIDENT. The demurrer is overruled as to all.

Mr. ARCTANDER. With the reservation, as I understand, that no evidence will be allowed under articles 17 and 20, unless further specifications are presented by the managers. I suppose there can be no question about our being required to file any answer before this bill of particulars is furnished by the managers, and that we shall have a reasonable time, after the service of the bill of particulars in which to file our answer.

The constitutional point certainly was not thought of at that time.

Mr. ARCTANDER. Go on further, Mr. Dunn.

Mr. Manager DUNN. I will go on further and you will have the whole benefit of it. The constitutional point was not thought of at that time. That they had twenty days to file their answer. And they acknowledged that this was a mere matter of practice wholly within the control of the Senate and they were conforming themselves to your decrees.

Mr. ALLICE. Mr. President, I would suggest that some time be limited by the Senate in which the bill of particulars shall be served, and that we may have a certain time afterwards in which to file our answer.

Senator RICE. Cannot counsel arrange that matter between themselves, so that when we meet here on January 10th, the trial can proceed, and that counsel for the respondent may have such time as may be agreed between them and the managers, to file their answer, and we take up the matter of these specifications, say at the last end of the trial?

Mr. ARCTANDER. Well, I apprehend, Mr. President, that our answer should not come in by piece-meal, but that we should file an answer to all of the charges at once. It would hardly be proceeding in the way in which courts generally do to file an answer now and then afterwards to file an answer to some other articles Of course we cannot answer the specifications of which we know nothing at this time.

The PRESIDENT. That is a matter to be determined by the Senate, or by the counsel with the consent of the Senate. Senator Rice suggests that those specifications be filed at an early day during the progress of the trial, or even prior thereto, and that then the consideration of those articles, or the examination of the witnesses under them, be postponed until the last of the trial, thus giving time for counsel to respond.

Mr. ARCTANDER. May I ask, Mr. President, whether is was not the order that those specifications should be served upon us before the 6th of January.

The PRESIDENT. That is the recollection of the chair.

Mr. ARCTANDER. I would suggest, then, that the Senate give us leave to file our anwer on the 10th of January at the re-convening of the Senate.

The PRESIDENT. A motion to that effect will be in order.

Mr. Manager COLLINS. There will not be any objection to that, Mr. President,

and gentlemen, providing their answer is to be as we anticipate it,—an answer of not guilty. The object of this session was to settle the issues in order that the State might be saved expense in the way of subpœnaing witnesses. If the issues are now substantially settled although there is no formal answer filed, I apprehend that that course would be perfectly satisfaetory. We, in that case, should assume that the plea of not guilty would be entered to all of these charges and would prepare for a trial accordingly. Perhaps the counsel might indicate what their plea would be, or, that it would be that, and it would be perfectly satisfactory to us.

Mr. Arctander can state this, that so far as we know now, except as to these two special articles, our plea would be a general denial, and I suppose this will be taken with the undrstanding that any agreement in regard to the answer at this time upon our part, will not waive any objections that we may desire to take to the filing of any other or further articles or to any of the specifications or bill of particulars which the learned managers may see fit to file under this order; that we may be allowed to enter our objections to their filing any specifications or bill of particulars at that time.

Mr. Manager COLLINS. We will not claim that we could file any additional articles; we apprehend that we have no right to do that. Our bill of particulars, however, might perhaps be defective, in the minds of the Senate, and that would be a matter for further discusion. I apprehend that on that we substantially agree, that we may file our specifications when we see fit, but before the 6th of January, and if their answer is filed upon the 10th, we shall then be ready to go with the trial.

The PRESIDENT. I think we can assure both parties that they will be allowed a reasonable length of time for the performance of any duty in the matter of pleadings.

It was then agreed by and betwen the managers and the counsel for the respondent, that the bill of particulars might be served personally or by mail upon Mr. Allis, of counsel for the respondent.

I am now arguing this point as to the twenty days' notice,—not that they have not the right to interpose their objections that these specifications are not specifications, but this part of my argument is addressed to that portion of their argument that they are entitled to twenty days before they can be called upon to answer these specifications. It will be seen from this colloquy that took place when these specifications were ordered to be filed, that all the respondent asked for, all that he claimed at the hands of this Senate was the privilege to be allowed to file his answer to these specifications by the 10th day of January.

Now, let us look back for a moment and see in what position this respondent stood, and see whether he is in position to come here at this time, and seek by any technical objections to throw any doubt around the legality or the propriety of these proceedings. How did he stand when his demurrer was overruled. He stood here before the Senate a convicted Judge. He admitted by his demurrer that the facts and statements set forth by the Board of Managers in these articles were true; he stood here, then, upon that demurrer, simply denying the legal effect of the commission of those offences or "pecadillos," as the counsel for the respondent saw fit to denominate them. The senate then had the legal right to proceed at once to judgment, and remove him from the high position which he holds in the State of Minnesota, and to forever disqualify him from further holding office. That was the strict legal right of this court of impeachment. They had the right to proceed to that extreme, and to deny him the further right of coming in and filing an answer to the merits. The Senate did not see fit to adopt that rigorous course. The respondent was allowed to file an answer to the merits, not by any right that he exercised or held, but by the mercy of this Senate, sitting as a court of impeachment by the grace of this Senate, and by no other means whatsoever. We are met also by the

objection that these specifications are in no sense specifications; tha because time is immaterial,—and I would state here that my friend, Mr Arctander, consumed a great deal of very valuable time yesterday argu ing a point upon which no other lawyer ever disagreed with him Something like an hour, I think, was taken up to read authorities i order to prove that time was not material; that a time certain might b alleged in an indictment, and another time proved after the commissio of the offense, and it would be held no variance. It was very valuabl time, and very improvidently used, I thought. But because he argue what all agree upon, that time is not material, that therefore these speci fications are not specifications. Well, now, why are they not? I hav shown you from the arguments and the remarks of my friend Mr. Alli that time and place were about the only thing that they were particula about. As to the seventeenth and twentieth articles, that has been fu nished them, and after a long argument, and after listening very atte tively to find out what further they wanted in order to make the speci fication sufficiently specific to suit their hair-splitting ideas and theorie what further they wanted,—why, they wanted the case that was on tri to be spoken of in those specifications. That was *want* number one. looked a little further, and I expected every moment that we would b asked to put in the ages of the parties that were litigant,—the color o their eyes, the color of their hair; whether they were male or femal I expected to see him go through the whole category as to the speci fications, as to what might be injected into them, to give them more fu notice of what they were called upon to meet. But he stopped merel with the case on trial, and whether it was a general or special term.

Now, gentlemen of the Senate, look through any of the other sixtee articles. In none of these articles do you find the case except in one a ticle where the case of Albricht against Long was mentioned becaus that was not in the court at all either special or general term or at chambers but it was on the street. No, you cannot find it. Then why shoul this Senate sit down upon these managers and say we must notify the of the actual proceeding that was being had in court, at the time w charge that the respondent was intoxicated? Why is it not sufficient i we allege in that article, in connection with the specification, with th same certainty and the same definiteness that we do in any of the othe articles? Why should we be called upon to allege with any greate certainty as to the seventeenth and twentieth articles than we do as t any of the other article? "Time and place are not material" he say (which we admit). My friends were obliged upon the argument of the de murrer in this case to lift a great weight of responsibility from the should ers of his respondent and place it upon their own shoulders; they admitte that as technical lawyers they had hunted up and dug out that theor of demurrer in which the facts were admitted but the legal conclusion were denied; they lifted that weight of infamy from the shoulders o the respondent in this matter taking it all upon themselves, and I wan them to do the respondent the same equal justice in this instance that the did in that and admit that the respondent in this action is perfectly willin that his Senate shall hear evidence from one end of this land to the othe and shall find out whether he has been guilty of drunkenness, whe in the discharge of his official duties or not, and not skulk behind mere technicality that they have not sufficient notice of the time an place or the case on trial, and for fear that the management may prov that he was drunk at one time and not drunk at another, and in all th

as with some of these specifications that they object to being intro-
. He is afraid that a drag-net may be encircled about this State and
erhaps it may catch the Judge of the ninth judicial district, in some
f its meshes, in some part of the State from the city of Duluth to
uthern part of the State when he was in one of his drunken moods.
t them to take that responsibility off the respondent's shoulders
ut it upon their own, for I dislike to believe the respondent is
to stand up and meet any one of these charges. I want them to
e it themselves.

are met with another point, that these articles of impeachment
never voted by the House of Representatives. They claim these
w articles. Article seventeen, as appears by the record here, re-
l the majority vote of the House of Representatives, and has been
rtified to this Senate. The specifications under that article are
matters of practice, as I have before stated, and have been deter-
l by this Senate. We are told that the Page impeachment case is
bad precedent; that there the attorneys for the State plead like
s in answer to the demand of the Senate to file a certain bill of
ications. I now desire for a moment to call the attention of the
e to the difference between the Page impeachment case and this
o show the necessity there of the kind of specifications that were
. I read from the first volume of the Page impeachment case, at
20. I do this to show you the difference between this article, un-
hich a bill of particulars was required to be filed, and the article
consideration.

icle ten in the Page impeachment trial declared that—

ughout the term of office of said Sherman Page as judge of the district
in and for said county of Mower, to-wit: Since on or about January 1st,
he, the said Sherman Page, as such judge has habitually demeaned himself
ds the officers of said court, and toward the other officers of said county of
r, in a malicious, arbitrary and oppressive manner, and has habitually used
wers vested in him as such judge, to annoy, insult and oppress such officers,
l other persons who have chanced to incur the displeasure of him, the said

w, it will be seen that there was a charge by which Judge Page was
d to have done certain things to certain individuals, and, as a mat-
f course, when the managers came to file specifications under that
e, they had, in addition to setting forth the day and date, and when
where, they had to set forth the name of the individual towards
n he had conducted himself in such a manner as to incur the lia-
of conviction upon that charge. It was a fact necessary, under the
mstances of the case; therefore the managers in that case specified
llows:

st. At the general term of the district court of Mower county, held in the
h of March, A. D. 1877, the respondent in said impeachment proceedings, for
urpose of insulting, humiliating and injuring Mr. McIntire, county auditor
id Mower county, falsely and maliciously instructed the grand jury of the
ounty, in substance and to the effect that the said county auditor had permit-
band or company of musicians to practice in his office, and that such con-
on the part of said auditor was highly improper and highly reprehensible and
nted to misbehaviour in office on the part of said auditor, within the penal
tes of this State.

Now, turn to article seventeen in this case, and you will find that is an offense which was committed against the public by a judge i own person; not by any words that he had used to somebody else,- by insulting language used to some other officer,—not by any parti exhibition of his person that he had made to the public, but that h simply intoxicated, an act personal to himself. And the only spec tion that could possibly be made under that article is to notify hi the time and place, when and where he was guilty of that intoxica There is no individual charged with having been particularly aggrie there is no wrong order charged in that article of impeachment tha been made by the Judge; there is no particular act that he has charged with in that article, except the act personal to himself, of b in a state of intoxication while he was in the discharge of his of duty.

Therefore I say that that article was voted just as it stands; an the lack of a little certainty, the Senators demanded it to be made certain. They say they are not able to meet the charge. They gi a reason that at least twenty days should be allowed them. The that they are not able to fix up their case as to their defense. justify themselves as to the other articles because they have had this mony before them. Well, now, they have simply had that testimon the grace of the House of Representatives. They were not entitled They were no more entitled to it than a person indicted in the di court is entitled to a copy of the evidence that is produced befor grand jury upon which a bill of indictment is found. By mere cou it was voted that the respondent should have this privilege. Ther they have been able, as they claim, to meet these other charges, and claim that as an excuse why they were not more persistent in obje to the want of particularity to the other articles of impeachment as as to the seventeenth article. I think that is an argument which des little consideration by this Senate. When they come in here and papers given to them by grace and mere favor, and then allege because they have been favored in one thing they ought to be favore the way through, and to a like or greater extent.

Now, Mr. President and Senators, the counselor cited a case yeste from the State of New York upon which he put great stress—the of Judge Curtis, of the marine court, before the Senate of the St New York, and he claims that the case bears a very close analogy t case now upon trial. If Senators will take the time to examine that they will find that it arose under a provision of the constitution o State of New York providing that the Senate might upon the re mendation of the Governor remove any of the inferior judicial of upon proceedings to be had before them. And the constitution provides that a copy of the *complaint* shall be served upon the resp ent before he shall bo called upon to answer.

Mr. ARCTANDER. A copy of the charges, you mean?

Mr. Manager DUNN. A copy of the *complaint*. I have read that stitution within twenty-five minutes. *Not* a copy of the charges. will find it in the constitution of the State of New York, in articl section eleven—the constitution as it was in existence before 1875 which was adopted in 1846. A copy of the *complaint* should be se and upon that ground, and for that reason, the Senate refused to the Bar Association (which it is claimed by the counsel for the resp ent here stands in a similar position to the Board of Managers in

), to file new specifications or new charges against that respondent. case bears no analogy whatever to this case. We do not stand here bar association representing individuals only; we stand here as esenting the House of representatives, and through them the whole ple of the State of Minnnesota; and the Senate is here simply to try case by virtue of the constitutional requirements, and you have, as have already done by your oaths, decided that you have a right to e all rules necessary for the proper procedure in this matter; you e made those rules and have acted upon them. Therefore, there is nalogy here, because there is no constitutional prohibition here to r receiving any specifications or any light which you may desire. adopt any rule as to the order of proof which the managers will seek troduce.

think, Mr. President and Senators; we have disposed of about all e is in this case. I do not desire, to take up the time of the Senate guing a question, which has been, in my judgment, already decided, I will not allow this opportunity to pass without replying to the sug- ion of the counsel for the respondent inpugning or reflecting upon the grity and good faith of the managers on behalf of the House of Repre- tatives. We have been met very early in this *game*,—for you may call it ,—we have been met here by insinuation, first, in the House of Re- entatives, that money was being used to procure these charges, — strong corporations were using their influence to unseat an inflex- judge. Next it was insinuated that we had been around the southern of the State as a sort of "smelling committee" and putting ourselves places which were unseemly and where we had no business to be in discharge of our duty;—all for the purpose of making it appear that respondent was being persecuted rather than prosecuted. And on erday the climax was reached by the counsel for the respondent, n he stated to you that we had put in these specifications here in this ner for the purpose of misleading this respondent. Now, I want to l all such insinuations and all such charges. So far as I am individ- y concerned, (and I know full well that I can speak for every mem- of this Board of Manager,) that there is no desire to persecute the e of the 9th judicial district; there is no desire to mislead this Sen- in any particular; there it no desire to do aught than that which our y compels us to do; and we do hope that from henceforth charges insinuations and statements of that kind will not have a place in mind or the memory of eithor of the connsel for the respondent, or ast if they do have a place there, that they will not give them utter- e again before this Senate. It is not becoming to try this case in any h manner. It is a case of too great dignity, of too great importance, counsel should be bickering and slandering and abusing each other. e don't want to descend to the level of a police court to try a case of importance and magnitude. It ought to be on a higher plane; and ust the counsel for the respondent in the future will so conduct the e on their part as not to call for further rebuke from the managers n that score.

submit, Mr. President, and Senators, that our evidence as to these ifications is perfectly admissible; that there has been no argument no reason shown why the managers should not be permitted to carry the mandate of this Senate in making these specifications and to in-

troduce their proof, if, perchance, they have any, which will substa tiate them to the satisfaction of the Senate, and will record a verdict he as to the guilt or innocence of this respondent.

Mr. Manager HICKS.—Mr. President. I desire to call attention to on fact which was inadvertently omitted by the honorable manager wh has just spoken. The counsel for the respondent yesterday stated, believe, that we had only, in two or three instances, referred to the tim or place, or to the circumstances connected with the time and place o the offences charged in the several specifications to the seventeenth a ticle. I desire to call the attention of the Senate to the Journal of Jan uary 11th, in which, in the opening, five specific instances were given the time and place, and not only of the time and place but of the actua suit that was being tried at the time and place referred to in these se eral specifications, so that there can be no question but that we desire to give the respondent full information of the facts which we expecte to prove.

Farther, there are two specifications which were not alluded to in th statement, and the reason stated at the time for not alluding to the was the true one,—that the manager who presented that opening ha not conversed personally with the witnesses, and did not, therefore, ca to speak concerning them.

Now, one word further with regard to these objections. The couns for the respondent descended to the level of remarking that the manage were "pettifogging this case." If there was ever an instance of sublim pettifogging it is in the three objections which are offered here to th Senate to-day: "First, The specifications are new articles, and therefo the respondent cannot be tried upon them, because," forsooth, "he ha not had twenty days' service." Second, "The specifications are *not* ne articles because they do not specify, and therefore ought to be stricke out." "Third, the managers have no right to present *new* articles. First, they *are* new articles, and they creep out under one cover there second, they are *not* new articles, and they endeavor to befog the Sena by their argument upon that point, And, again, "they *are* new articles. It is first fish and then flesh.

One word farther. The Senate, by a unanimous vote, as has alread been stated, has decided that the first sixteen articles were good. No then, if there was anything which could lead this board of managers believe that what was wanted to make the 17th and 20th articles goo it was the fact that this Senate, by a unanimous vote, had said that th first sixteen articles were good, and they only differ from the 17t and 20th articles by stating time and place. Mr. Allis said that all the wanted was the time and place and incident.

Mr. ALLIS. "And the material incident."

Mr. Manager HICKS. "The time and place, and the material incident

The time and place, Mr. President, we have given you in the speci cations; and the material incident was that this respondent was *dru* while in the discharge of his his duty.

Mr. ARCTANDER. Mr. President and Senators: If that was the mat rial incident that we wanted, and that my colleague, Mr. Allis, called fo I think we had that objection, and need not have called for it, becau it had been first charged in sixteen separate and specific articles that h was drunk, and then it was charged again in the seventeenth article th he was drunk. We had that "material incident," and we had no reas to call for that fact again as a "material incident." It is true it w

very material to the case that the respondent should have been intoxicated at those particular times and on the particular occasions that they sought to prove it. But that was already alleged. His drunken and intoxicated condition had been already alleged in the several articles preceding, and when we called for the "material incident," we did not call for what we had already. We called for something we did *not* have. That is to say, we called for *specifications*. As a matter of fact, we did not *call* for anything; we simply said that the article was insufficient, uncertain and indefinite. We did not call for specifications. We did not ask the managers to furnish us with specifications; there was no encouragement from the lips of any of the counsel fer the respondent that any specifications should be introduced, because we considered then, as we consider now, that it was beyond the pale of the authority of the Senate; and beyond the pale of the authorities of the managers to furnish such specifications. We maintained simply that they were insufficient because they did not give the time and place, and every material incident. And what was the material incident that we wanted? The facts stated so that we could identify the occasion, because we knew then, as we know now, and as every criminal lawyer must know, that time and place being immaterial, they were not sufficient to give a sufficient specification, that it was necessary to give the material incident to fix the time in some way, so that the managers would be bound by it, and so that we should know that we could rely upon the statements they had before them.

I will waste no time in addressing the Senate upon the constitutional right with reference to the twenty days that we are entitled to have before we are called upon to answer and proceed in this case. I take it that it is clear, if these articles are new articles, or, in other words, if the specifications contain something which the original articles adopted by the House did not contain; that is to say, if the original articles were bad and of no legal effect or sufficiency, and in case the specifications made them good and gave them a legal effect, then, I say, that it is in the nature of a new article. It is in the nature of a new and independent article, and it is charging us with something with which we were not charged before, because if the charge that was against us before was insufficient in law, we were not charged at all. If they have made a sufficient legal charge against us, then it is a new charge, and something that was not contained in the articles before, and therefore we are entitled under the constitution to be served with a copy of the charge twenty days before we proceed to trial.

Now, the counsel says that the constitution does not give us that right; that the constitution gives us the right simply, the right to be served by the resolution of impeachment; that that is all.

Mr. Manager HICKS. Mr. President, one moment. I must beg leave to call the counsel to order. The counsel for the managers has made no such statement.

Mr. ARCTANDER. (to Mr. Manager HICKS:) I guess you were not here Col. Hicks, and did not hear it; I heard it, and I think the members of the Senate heard it; and I appeal to the Senate, whether it is not the fact that the honorable manager, Mr. Dunn stated before you in your presence that not more than thirty minutes before he had read that in the constitution of New York, it was provided that a party should be served with a copy of the impeachment, and that it simply meant the *resolution* of impeachment that was passed by the House of

Representatives and presented to the bar of the Senate. He said not one word about articles and claimed that we are not entitled to be served with a copy of the articles of impeachment even. I do not wonder that the chief of the managers said this was not the statement of his associate, because any lawyer would turn away with a flush upon his cheek to hear a brother lawyer make such an assertion in a court or justice.

Mr. Manager DUNN. I would like to have the reporter read the record of my remarks upon that subject.

The stenographer here read the portion of the opening argument of the honorable manager, Mr. Dunn, as follows:

> What are the constitutional rights of the respondent? His constitutional rights is to be served with a copy of the impeachment at least twenty days before the day when he shall be called upon for trial. Now, what is impeachment? Is it those articles? Not at all. Is it those specifications? Not at all. The impeachment is simply the accusation that was made by the House of Representatives when they appeared here in a body before this Senate, (I cannot give the exact date,) but when they appeared here with their speaker at their head, and when by a committee of their own number they notified this Senate that E. St. Julien Cox, had, by resolution of that House of Representatives, in their name and in the name of the people of the State of Minnesota, *been impeached* by that House of Representatives. That was the impeachment.
>
> Mr. ALLIS, *That* the impeachment?
>
> Mr. Manager DUNN. That was the impeachment. The only impeachment there was made. All the rest—articles of impeachment, specifications, etc.,—are simply matters of practice, to be regulated by the court before whom the impeachment is tried. I tell you the respondent was impeached by the House of Representatives when they resolved that he should be impeached. He was then and there impeached; and the Senate was then notified of it. But this matter or practice has been carried out by the House of Representatives in accordance with all the forms and precedents that we have been able to discover upon this line.

Mr. Manager DUNN. That is correct; I will stand by that.

Mr. ARCTANDER. Now, I suppose I have been vindicated, on that matter at least. I have not been in the habit of misstating or misquoting. I will ask, if that be the law, in what position would the respondent be placed? In what position would the impeachment be against him in case the House should fail to find articles of impeachment? If it be so that articles of impeachment are simply matters of practice, and that the impeachment has become complete when they resolve to impeach him, and if that is all that the constitution means when it says "he shall be served with a copy of the impeachment," what would become of the impeachment in case no articles should perchance be found by the House after having passed such a resolution? Why, the very argument kills itself, and it is not necessary to waste words upon it.

Now the counsel takes the position that we demurred to articles seventeen and twenty, and that our demurrer covered the point that they were indefinite and uncertain, and that the senate, by their unanimous vote, overruled the objection that we interposed. Gentlemen, when that demurrer interposed, one of the grounds of objection to the seventeenth and twentieth articles, was that they were indefinite and uncertain. The point was not raised upon any of the other articles. It is time the demurrer was put in with other grounds, but my opinion is and always has been, that they were not proper grounds of demurrer. In a criminal case they would not be proper grounds of demurrer. I take it that if an indictment is indefinite and uncertain, you are not obliged to make

that point until you come to offer evidence under the points upon which it is indefinite or uncertain, and that then the objection must be taken if at all. I take it that the Senate, consisting mostly of laymen, has, by the action it took upon that demurrer to the two articles referred to, shown itself composed of better lawyers than either of the counsel for the respondent, because the senate held it was correct law, that it was not a ground for demurrer, but it said, "Wait until you come to your evidence under these articles, and then you may object upon the ground that they are indefinite and uncertain, and we will then sustain your objection unless the managers before that time make them more specific and definite."

That is what the senate did by the order which they adopted. They held that the position taken by the counsel for the respondent, was good, but that it was not a good ground for demurrer, that it could not overrule the articles; that it was not proper to bring the question up in that way; and we say the Senate acted as lawyers and as judges would when they made that ruling. I think that is the true and correct construction of the law, and the position that the Senate took upon that question was correct. By their ruling they said: "It is the conviction of the Senate that that article is indefinite and uncertain, and we will not hear evidence under it unless it is made more definite and certain; but we will not sustain the demurrer because it is not a proper ground of demurrer." That was exactly what the senate did, and I claim they did right in the matter.

The counsel for the State further claims that all the stress in the argument upon the demurrer, as made by Mr. Allis (so far as this uncertainty is concerned as to these two articles), was laid upon the fact that they did not state time and place. He did so, probably, unwittingly. It was not upon that point that he (Mr. Allis) was addressing the Senate particularly, but when he did make that statement he did not limit it as to time and place, but he added to it, "*And every material incident.* But it makes no difference what our position was there; it makes no difference what we stated there; we need not have exhausted our law there; we need not have brought forth every point that was in our mind, or that was not in our mind, which ought to have been brought before the Senate at that time. We have waived nothing by that. We did not tell the Senate we would be satisfied if we got time and place specified. We did nothing of the kind. We were guilty of no laches; we made no waiver of our rights whatsoever. And the fact that we did not mention it and did not particularize, and did not, in our argument, bring forth what we did yesterday, is no ground why we should not have the relief and the redress that we ask.

The learned manager takes the further position that the other sixteen articles are definite enough; that that has been held and so decided by the Senate; and that why the articles were held by them not to be definite enough was because there was no time and place stated and that that was all; and that when that deficiency was supplied, it would make them just as good as the other articles. I admit gentlemen, for the sake of the argument, that by putting in time and place it would make them just as good as the other articles, but because they are just as good as a set of other *bad* articles does that make this article good? Not at all.

Now, I take issue with the learned manager upon the statement that the Senate has decided that those other articles were good as to form,—

I mean that they were sufficient and definite enough,—because that point was never raised. The demurrer to the first sixteen articles was simply that they did not state facts sufficient to constitute an impeachable offense, that they did not contain facts sufficient to constitute a crime or misdemeanor, or corrupt conduct in office. And we did not see fit to interpose to those articles any objection that they were indefinite and uncertain. We do not now. I say we had a right to do so at that time, and we have a right now just as well to object to the other articles on account of their indefiniteness and uncertainty; but we do not desire to do it.

We do not desire to try this case upon technicalities where we can help ourselves out by searching the evidence and finding out what the proper occasions are; but the Senate never decided upon that question. They did not do so for the simple reason that that point was never before the Senate. We did not raise it before the Senate, and therefore the Senate could not decide it; all that the Senate decided, by overruling the demurrer, was that the fact stated in those articles—drunkenness upon the bench—was an impeachable crime and misdemeanor; that was all that the Senate decided by overruling that demurrer. The counsel ridicules the idea that we have a right to demand anything more than times and places. We have a right to demand to know, before we are required to answer here before the bar of this Senate, whether we are charged with being intoxicated under this article seventeen, at a special or general term of court, and what case was before us at that time. Now, I submit to the Senate, (and I do it in all candor) whether that is not the only way under the law that I read to you yesterday, (and which is conceded by the managers to be good law to-day) whether that is not the only way by which we could be informed on what time, or under what circumstances, we are charged to have been intoxicated on the bench. I submit whether there is any other way by which it could be done. If it is stated one day and proved another day, as they have a right to do,—if it is granted that time and place are both immaterial, how are we to find out at what time or at what particular occasions, we were guilty of the offense alleged? They have not given us the occasion, as I said before, if they had done so we could find out from the records, what attorneys and what parties were there, and we could prepare for our defense.

Now, I desire to call the attention of the Senate to this fact, that you will find hardly an impeachment trial in the United States, unless you find the facts and the circumstances up to the minutest details set forth in the articles of impeachment. I refer you simply to the Page impeachment case. Look at what minuteness the facts were pleaded there. They went farther than pleadings were ever required to go. They not only pleaded the facts but the evidence. And the Senators that were members of that court will bear me out in my assertion, and the fact is, that in that case, as I said before, they pleaded like lawyers; they pleaded after precedents which have been laid down in impeachment trials all through the United States. They gave the minutest details, so that there should be the fullest information to the respondent as to what was charged against him; and I desire to call your attention, in regard to the question of the titles of cases being given to the impeachment trial of Judge Hubbel in Wisconsin, which took place in 1853. I will read one or two of the charges to show you how the managers pleaded in that case. And I will here take occasion to refer to the

et that the managers in that case had, as counsel, the most celebrated wyer that Wisconsin has ever produced—the late Chief Justice Ryan, man who knew what he was about when he was drawing legal papers; man who knew what he was doing when he was drawing a legal docu-nt; a man who knew what he was doing when he was drawing an icle of impeachment. And how does *he* charge? Take charge eight, instance (and they are all alike.) It is drawn with specifications der it, and the specifications give what? Times and places? Not at They give the very cases that were tried and the title of those es; just as we have desired the managers to do in this case, and what y undoubtely would have done if they had thought of it, or if it had n suggested to them by some criminal lawyer.

So it is in every case. You may turn to the Chase trial, the Peck l, the Andrew Johnson trial, and you will find the particular circum-nces and data, not only all the dates and places set forth, but the par-ular circumstances and occasions pictured with almost painful accu-y. Let me refer you, as I said before, to charge eight in Judge Hub-l's impeachment trial on page 15 of the proceedings:

hat he, the said Levi Hubbell, so being judge of the second judicial circuit has d his judicial station and influence for the purpose of inducing females to sub-themselves to be debauched by him, contrary to public decency, and to the ifest corruption and scandal of the administration of justice.

PECIFICATION 1. In the case of Mrs. Howe, set forth in the second specifica-n to the seventh charge.

We will look at that second specification and see how they pleaded re:

PECIFICATION 2. That while an indictment was depending in the circuit court Waukesha county against one William H. Howe, for the crime of perjury, he, said Levi Hubbell, had, contrary to public decency, and against his duty and gations as such judge, a private and indecent interview with the wife of the William H. Howe, sought by her to solicit, and wherein she did solicit him, behalf of her said husband, in the matter of said indictment; and did after ds, as judge of the said court, bring about the acquittal of the said William H. we of the crime charged by the said indictment.

Now, let us go farther on charge eight. Let us read the third specifi-ion to this charge:

PECIFICATION 3. That he, the said Levi Hubbell, judge as aforesaid, knowing t one Eliza C. Wyman, the wife of one William W. Wyman, was living apart m her said husband, and was desirous of obtaining a divorce from him, had, trary to public decency, and his duty and obligations as a judge, a private and cent interview with her, and in such interview did counsel and advise with , in relation to such divorce; and that he, the said Levi Hubbell, did after-ds permit the said William W. Wyman, who was also solicitous to obtain a di-ce from his said wife, to exhibit affidavits to him in support of such divorce, did thereupon advise the said William W. Wyman, that such affidavits did not blish grounds for a divorce, but that he, the said William W. Wyman, could mplish his end by permitting his said wife to obtain such divorce; to which William W. Wyman assented, informing him, the said Levi Hubbell, that he, said William W. Wyman would suffer his wife to obtain such divorce; and afterwards he, the said Levi Hubbell, well knowing such collusion between said William W. Wyman and his said wife, did, as judge of the circuit court Jefferson county by collusion and favor, and contrary to law and justice, and hout justifiable cause and against his duty and obligations make a decree of the court granting a divorce against the said William W. Wyman, in favor of his wife.

You will observe that the charges and specifications in this impeachment gave the title of every case in which it was claimed there was any indecency or improper act upon the part of the respondent. Now, I say if that was a good rule to adopt in that case, it would be a good one to apply in the case at bar, and the learned Managers should have gone to work and drawn up these specifications in the way that Chief Justice Ryan did,—they should have given the title of every case, and in what court it was tried, thus calling attention to the occasion and the particular circumstances surrounding it. You will notice that the framer of the impeachment in the Hubbell case did not give the dates,—and for a good reason: the courts have held that what was immaterial to prove is immaterial to allege.

Now, I say that is the fact with every impeachment trial in the United States. And you never saw an impeachment trial proceeded with upon the theory which has been adopted by the managers here, and you have never seen articles of impeachment drawn as these have been.

We do not complain, as I said before, as to the sixteen articles. We are willing to be heard upon them. We want no technicalities as to those, because we have been able to find out the facts and prepare our defense under them. We want no technical defense interposed to them. We have not objected to the introduction of any testimony under them, although we had a right to do so, and I think a right to have them stricken out, for the reason they were indefinite and uncertain.

But we do claim that we have a right to assert our constitutional rights, to be informed of the nature and cause of the accusation against us when it is attempted to take advantage of us, as has been done by these specifications. We are willing to answer to all that the House of Representatives have brought forward against us; we are anxious to answer to it, and vindicate ourselves, but we do not care to answer the specifications that are brought forth by a "smelling committee;" that are brought forth upon hearsay testimony. We have too much to do to come here to answer every newspaper rumor, or every rumor that every saloon in the district of the respondent here produces. We are not here to answer that, we do not want to answer that, and we ask the Senate to relieve us from answering that. But where the House of Representatives, under evidence solemnly taken before them, have charged us with certain offences, have charged us with intoxication, on certain occasions, we are anxious and desirous to answer to the charge, and show that it is false; and we certainly ought not to be required to answer to anything more.

I don't know that it is necessary for me to dwell upon the position taken by the counsel that we have no rights in this matter at all, that we have no right to make this objection or motion; that we have been guilty of laches in not presenting it before, when it has been shown by the very proceedings that he read before you that at the very time the order was made by the Senate we reserved to ourselves all right to object to the filing of any specifications at all, or to the consideration of them. We reserved that right on the memorable night when you decided that the demurrer should be overruled. We reserved that right then, and we took occasion to bring it forward to your notice, and the notice of the managers, at the earliest moment possible, after we appeared here again. The first thing we did was to file our answer, in which those objections to those specifications were solemnly declared. I don't know that it is necessary for me to controvert the statement of the man

r that the respondent had no right to come in here and answer; that his demurrer he admitted his fault. I don't think it was worthy of honorable manager to make such a statement, especially as it may ve influence with the laymen of this court, who do not understand, obably, as thoroughly as the lawyers do, the legal fiction that is con-ted with a demurrer.

It is true that in olden times it was a fact that when a demurrer was erposed to a criminal prosecution that it was taken to admit the facts, d it admits them for the purposes of the demurrer to-day. It is true it in olden times if a man interposed a demurrer to that indict-nt, and failed on that demurrer, that the court did not allow him interpose a plea of not guilty, and judged him guilty; but that is far ck, gentlemen, of the time we are in now. If my memory serves me ht that rule was changed in the 16th century, and the managers would ve us go back of the sixteenth century to find precedents to bring before u and prejudice your mind. I think it is unfair and unjust on the rt of the managers so to do. We all know, and all of you, gentlemen, wyers or no lawyer, know, I apprehend, that under our statute in every minal trial you may interpose, first, a motion to quash the indictment, d if the first motion to quash is overruled you may interpose a demur-r, and if that is overruled you may introduce the plea and go to trial; d I apprehend that you have said that we are to be guided by the les of law in this trial, and that it was no mercy to this respondent to allowed to come in and answer. It was something that he did not ask. e had reserved that right. He had it under the statutes, and under e precedents for the last three centuries. He had that right and you uld not deprive him of it, and it was no mercy for him to be allowed come in and answer. He had reserved the privilege expressly by his murrer, and that is the practice not only in criminal trials, but in all e impeachment trials on record, as you will find when an answer has en interposed, even an answer such as ours was, the last pleadings we terposed.

It has always been the practice, as you will find, in the United States nate, in impeachment trials, every one of them, for the president of the urt to get up and ask the respondent whether the answer filed is his al answer that he would stand and be tried upon in the case;—his final swer taking it for granted that he has a right to interpose several; that e has a right to change his plea.

Now I say this can be introduced before you by the managers for no her purpose than to prejudice your minds. Although you feel in your earts and consciences that our position is correct, and that the managers ave not furnished us such specifications as they were required by you o do; although you wanted us to be informed of the offenses charged gainst us, and they have not specified the particulars or obeyed our command to them, that to overwhelm you, to take away that con-iction of yours, they attempt to show to you now that we have no right o make that objection, that we have no right to answer, and that we ave had mercies enough. I think the mercies we have had so far have een far and far between; I don't remember anything that we have sked for so far that we have received; so I don't think it can be said hat we have been overwhelmed by the mercy of this court.

The counsel refers to the authority that I read yesterday upon the uestion that the Senate had no right to authorize the managers to file pecifications, that it must be the House that must adopt and file new

specifications or new articles, and the learned managers say that th reason why the bar committee was refused permission to furnish ne specifications was because the constitution provided that a copy of th specifications should be served, and it had not been served.

Now, I will call the attention of the Senate without sending for th book now, for it is in an adjacent room, to the fact, and I have already cal ed the attention of the Senate to it, that a copy of these additional spec ifications and charges had been served upon the respondent six month prior to the trial; that it had been served at the time when they wer settling the issues before the judiciary committee. I think the Senat remembers it, without my sending for the book and again reading.

Mr. Manager DUNN. That was not the complaint that was preferre to the Governor.

Mr. ARCTANDER. No, sir; the point in that case was that certain charg (you may call it a complaint, or whatever you please,)—certain charg accompanied by affidavits,had been forwarded to the Governor as it alway was in those cases. The Governor does not act on his own motion. Yo will find charges and specifications in every one of these cases, the McCan case, the Smith case, and the Prindle case. The charges are preferre by some bar committee, or some individuals who prosecute, to the Gov ernor, and the Governor sends them to the Senate, and the Senate the orders them to be served by the judiciary committee on the respondent and the respondent appears before the judiciary committee, that is t prosecute, and the issues are settled. Thus we appeared the other da when our answer was filed. Now, at that time, before the meeting o the judiciary committee, they served the charges upon him, and the ad ditional specifications, at the same time that they served the othe charges; and the reason why the Senate refused to receive those, an said they were improper, was because the charges must emanate fro the Governor; that it made no difference who in the first instance dre the original charges, whether the bar association or not, they must r ceive the Governor's sanction before they can be acted upon by the Se ate. And that is our position here, if the same parties who presente the additional charges presented the first ones to the Governor,—just a the managers here presented these articles of impeachment to the Hou of Representatives, and the House of Representatives adopted those art cles, just as the Governor in that case adopted and confirmed the charg and recommended the Senate to investigate them. In that case th Senate said these additional charges have never come from the Governo It makes no difference by whom they were drawn; if they were draw by the same committee and the others were drawn by the committe who drew the first ones, it is the approval and adoption by the Governo that gives jurisdiction. And so here, I say, it is the adoption and a proval by the House that gives you jurisdiction over an article, and makes no differencc that the men who drafted those articles and presen ed them to the House, in the first place, are the men who drafted th specifications. It makes no difference. I claim that it is a completel analogous case, and a case which was not called to the attention of th Senate in the Page case, because the counsel at that time, had not foun the authority for use before the Senate. In fact the counsel at th time had no authority whatsoever. I say, therefore, that may be an e cuse for the ruling in the Page case, as it was, that specifications coul he received and filed by the managers without submitting them to th House. It is going probably upon the theory, that no authority ha

been shown that it could not be done; upon the theory that when it never had been done before it was probably because the matter had not come up, and that it would be done in the future. But this is of course, simply upon my second point, that the authority of the House, the prerogative of the House, as you might call it, cannot be delegated to any one else. As far as my first point is concerned, I don't care whether they have the authority or not. I don't care to ask the Senate to go back upon the ruling that they have made in regard to their power to give the managers the right to file additional articles or specifications; and I most certainly maintain, that if those specifications are good,—if they amount to anything at all, then they are new articles. If they are identical in shape and form and effect with the other sixteen articles found by the House, and they are of the same kind and nature exactly; then there are eight articles that the House never had anything to do with; and I think that the counsel even admitted that before you,—that they were really in effect eight new articles instead of one. If you can make eight out of one, and yet say it is the same thing, it is beyond my comprehension.

But be that as it may, whether they have the right to do it or not, the specifications are not what you ordered them to produce, Senators, because you wanted us to be informed in accordance with our constitutional rights, of the nature and cause of the accusation against us, and they utterly fail so to do. They inform us of nothing. The counsel says it is to throw a slur upon them to say that this has been done for the purpose of misleading us. I don't know whether it has or not. I don't charge that it has, but it looks to me very suspicious, to say the least. It looks to me very suspicious that the counsel should come up here four days after these specifications were drawn, and after they were served upon us, and tell us that they did not know as to the time and places themselves, or that they knew that some of the times and places stated in those specifications were wrong. If they knew they were wrong, why did they put them in? If they knew it four days afterwards, how did they learn more about it than they knew before? And whether it was intended to mislead or not does not make much difference. It does mislead. It is an admission on their part that they do not rely upon the dates and charges made there, but may show others; and, if that is so, then it goes to show that my argument all the way through has been on a correct basis; namely, that we have not, and are not, by these specifications, and cannot be sufficiently informed, and that they give us no sufficient information to prepare our proper defense. And I read yesterday from Cushing to show that it was necessary that every article of impeachment, should contain enough to enable a party to prepare his proper defense. Now, we know no more now,—we absolutely know no more,—than we did before. We knew then when you said you would receive no evidence under articles seventeen and twenty as they stood, that we were charged within a certain time with these things; we know now that we are charged with certain things, but we do not know which ones they are. We cannot prepare against them for the specifications given to us are *all* as to immaterial matters, and are, therefore, no specifications at all.

I thank the Senate for the attention they have given me in this matter. I have probably been more lengthy than I ought to have been; and I am very sorry that the counsel yesterday who thought that I wasted an hour in laying down the rule of law to the Senate in regard to the immateriality

of time and place in both civil and criminal proceedings, did not then call my attention to the fact that he admitted it, and thus have saved me an hour's time. If he had admitted that, that much time would have been saved. Possibly I may have, unnecessarily, reiterated statements in this matter that could just as well have been avoided; but the Senate well know that we have not had the time to prepare for this matter as we should desire. If we had had it we probably could have avoided much of the delay. I hope that it will not in any way prejudice the minds of senators upon this motion if we have not been able to present it in the manner it should have been.

Senator D. BUCK. Before you sit down, Mr. Arctander, allow me to ask you a question: Suppose a man was indicted for being a common vender of intoxicating liquors, or for conspiracy, could not a court, although only one day was mentioned in either indictment, order a bill of particulars as to time to be furnished, without going back and having a new indictment drawn?

Mr. ARCTANDER. I think, Senator, if that question is asked me, that you will find no case of a common vender of liquors in which a bill of particulars has been asked for or furnished; my researches, at least,—of course I have not made any on that point, particularly, but as far as my general reading is concerned I do not remember of any case.

Senator D. BUCK. Then let me read you a few lines from a work I have in hand, and then let me hear what you have to say to it. I read from a criminal work, "Wharton's Criminal Law:"

> Whenever the indictment is so general in which a bill of particulars has been asked for as to give the defendant inadequate notice of the charge he is expected to meet, the court, on his application will require the prosecution to furnish him with a bill of particulars of the evidence intended to be relied on, and that indictments may be thus general and yet in entire conformity with precedents has been heretofore abundantly shown. It is allowable to indict a man as a common barrator or as a common seller of intoxicating liquors, or as assaulting a person unknown, or as conspiring with persons unknown to cheat and defraud the prosecutor by "divers false tokens and pretences," and in none of these cases is the allegation of time material so that the defendant is obliged to meet a charge of an offense apparently undesignated, committed at a time which is not designated at all; hence, has arisen the practice of requiring, in such cases, bills of particulars; and the adoption of such bills, instead of the exacting of increased particularity in indictments, is productive of several advantages. It prevents much cumbrous special pleading and consequent failure of justice as no demurrer lies to bills of particulars, and it gives the defendant in plain unartificial language, notice of the charge he has to meet.

Now, what have you got to say to that?

Mr. ARCTANDER. I think the Senator will find by reference of the foot notes there, that that is a Massachusetts case, is it not?

Senator D. BUCK. No, sir. It is laid down in all the criminal books.

Mr. ARCTANDER. No, but the citation?

Senator BUCK. No, it does not; it cites Roscoe's Criminal Evidence, and a large number of authorities.

Mr. ARCTANDER. I will say in answer to that, that my understanding is that, for instance, in the case of a common vendor of liquors, the courts have held that it is proper to indict him for, and he can only be indicted for being a common vendor of liquors between certain times; that that was following the particular statute which made it unlawful to be a common vendor of liquors, and that it was said he needs no more

information, because, if it alleged when the offense was committed, and between what times, the defendant knows whether or not he did keep a saloon, or did actually sell liquor, within the time and at the place. It is a course of conduct which is within his own knowledge. I apprehend, further, that whenever a bill of particulars is given, under such circumstances, in such a case, that it is no bill of particulars, and does not need the requirements of a bill of particulars to allege that he sold at a certain time and place, but that it was necessary to add thereto, as has been held by our own supreme court, in the case of the State against Schmail, the name of the person to whom he sold it, and that alleges the thing with sufficient definiteness and certainty. If that had been done in this case, if it had been said that in such and such a place, during the consideration of such a case,—for instance, the case of Caster against Caster, which was tried at one of these times, there could have been no complaint. Our complaint upon the question of the bill of particulars or specifications is not that that cannot be done in criminal cases,—not that a bill of particulars cannot be demanded and ordered by the court, because we know it has been done. I think, however, it has never gone to such a great extent as in the case of Tilton against Beecher, and in that case it went further than giving the dates and places; it gave the houses, and the particular occasions at which the alleged intercourse with Mrs. Tilton had taken place. And, so far, the bill of particulars was proper. I do not claim that the courts cannot order specifications without sending it back to the grand jury, but I claim that when the prerogative has been given to the House by the constitution, to find and vote upon articles of impeachment—not only that, but where the constitution has expressly limited that power to the House, and has said that articles shall not be found unless a majority of all the members elected to the House concur in it,—that then there can be no authority given to this Board of Managers, and that the Senate have not the right to change the situation in that particular. But, be that as it may, and I take it that the question as to the bill of particulars applies only to the right to furnish them, it does not obviate the main objection that I make in this case, viz., that the specifications which they have given us under the order of the Senate, for I take it for granted that the Senate had a right to order, and the Board of managers had a right to make them, yet that the bill of particulars is not what the Senate demanded. The Senate demanded specifications, and these specifications do not specify at all, because they give only the date and place, both of which are immaterial, and the prosecution are not bound by what they allege there.

Now, sir, if you should be called upon in a criminal case to furnish a bill of particulars, and you did furnish one particular of the conduct, you would be held to that; you would, in the first instance, be compelled to furnish a bill of particulars that *was* a bill of particulars, and you would be held to it, and you would not be allowed to show anything but what your bill of particulars specified; and I think the Senators will fully agree with me in that position, that that is the authority. Besides, under this charge—the seventeenth—the defendant is not charged with a course of conduct; he is not charged with being a common drunkard. That is under article eighteen to which we have not objected, and that is the article which the Senate found it was not necessary to file specifications under, and I do say that I do not believe the Senate will find any case in which, in any court of justice, a bill of particulars has been demanded, and in which that bill of particulars simply fur-

nished the date on which the crime was done, and the place in which it was done. I don't think you will find a single bill of particulars in that shape; a bill of particulars is intended to specify facts, and to give us the occasion with definiteness and certainty, so that we can be bound by it.

Senator HINDS. Mr. President, the argument is now closed, and I move that the court go into secret session.

Senator POWERS. I second the motion.

The motion to go into secret session was carried.

PROCEEDINGS IN SECRET SESSION.

Senator POWERS. I beg leave, Mr. President, to submit the following resolution:

The PRESIDENT. The Clerk will read the resolution submitted by Senator Powers.

The clerk read as follows:

Resolved, That while we see no good and sufficient reason for reversing our former article when, on the 16th ultimo, on articles seventeen and twenty of this impeachment, or striking out arbitrarily any one of the articles submitted to our respectful consideration by the honorable House of Representatives, and refusing to receive evidence thereon, we, nevertheless, reiterate our positive conviction that it would be a manifest injustice to the respondent to receive any testimony on such charges, except in cases where distinct specifications giving the exact day and date have already been furnished to the said respondent, as directed by said body, and we shall, as heretofore indicated, reject all such testimony if submitted, as being irrelevant, and prevent its going upon the record.

Senator POWERS. Mr. President, it seems to me that there has been a good deal of time taken up in discussing that question unnecessarily, unless it has been done with a view of leading us to reverse the action which we took upon the matter on the 16th of December. I, for one, have heard no argument which should lead me to go back upon the decision that we came to at that time, with reference to the impeachability of articles seventeen and twenty. To reduce three or four hours arguments to a single point, the main objection that is raised now is that although we required the managers to make their articles specific as to day and date, that the law does not require them to be thus specific, and that they can submit evidence here, and we shall be compelled, under the law and precedents, to receive that evidence.

I believe that we have a right to rule in that matter ourselves, and I am prepared to carry out scrupulously and religiously the decision that we came to a month ago, to receive no evidence with reference to the general charge of drunkenness, unless the proper time and occasion have been furnished. My motion, I think, sustains the position that I took before, and reiterates the point that we will receive no evidence here.

The PRESIDENT *pro tem.* That is contained in article eighteen.

Senator POWERS. What is that, sir?

The PRESIDENT *pro tem.* The charge of habitual drunkenness is in article eighteen.

Senator POWERS. The other is substantially the same. It charges that from a certain day in one year until a certain day or time in another year that the respondent was guilty of habitual drunkenness in divers places and at divers times, so that it amounts to habitual drunkenness. I move the adoption of the resolution.

Senator HINDS. Mr. President, I move the following resolution.

The PRESIDENT *pro tem.* The Clerk will read the resolution offered by Senator Hinds.

Resolved, That the objection of respondent to the introduction of evidence under articles seventeen and twenty, and the specifications thereof be overruled.

Senator HINDS. This is in substance what was intended to be accomplished by the resolution of the Senator from Fillmore.

The PRESIDENT *pro tem.* That is what you intended, Senator Powers.

Senator POWERS. I do not understand the question.

The PRESIDENT *pro tem.* Your resolution contemplates the same thing that is contemplated by the resolution of Senator Hinds.

Senator POWERS. The end to be attained is the same. I would like the resolution a little more suggestive of what we mean, however, than that; and I have worded mine with that object in view. It goes on to assure the respondent that although, as he claims, law and precedent in some cases allow them, when they specify a certain time and occasion to prove some other time and place, that we have already decided, and reiterate that we will not receive such evidence as being admissible, and because of that I would prefer the resolution that I made on that account. I think it is a little more suggestive of our feeling, than simply to vote down the objection.

The PRESIDENT *pro tem.* I did not understand that the resolution of the gentleman from Fillmore was seconded, or that the resolution of the Senator from Scott was.

Senator D. BUCK. I seconded the resolution of the Senator from Scott.

Senator HINDS. The resolution of the Senator from Scott is seconded and the one of the Senator from Fillmore is not. The question will be on the resolution of the Senator from Scott.

Senator C. D. GILFILLAN. I would like to offer an amendment to the resolution offered by Senator Hinds.

Senator HINDS. In support of the order that is now under consideration I would briefly state the reasons why I have come to a conclusion in accordance with the proposed order. The first articles of impeachment state the charge to be intoxication while in the performance of official duties. That is in substance, briefly, the charge of the first seventeen articles. The first sixteen articles state the time and place of the intoxication while in the performance of his official functions. Each one of those articles states only one occasion of such intoxication. The seventeenth article states that at other times and places, aside from those sixteen instances specified, he was also intoxicated while in the performance of his official functions, but it gives neither time nor place. Now, the Senate, as has been said, during the discussion which we have heard, unanimously overruled to the sixteen articles, and I am still satisfied in my own mind that the action of the Senate was correct. Still, I preferred then, and would have preferred now, that each one of those sixteen articles had particularly specified the occasion that called for his official action during the alleged intoxication; that is, I would have preferred that the articles had particularly specified the place, or the cause, or the particular official act that he undertook to perform while in that state of intoxication, but I don't believe that it is a necessary requisite of an

article of impeachment. If the respondent had been charged with the commission of a public crime, as the article of impeachment; if he had been charged with having wrongfully performed an official duty, contrary to his judgment, and in violation of his discretion——

The PRESIDENT *pro tem.* As a crime?

Senator HINDS. As as a crime,—I think then it would have been necessary to have alleged all, or a sufficient number of the alleged crimes that he was charged with, in order to identify them from any other offenee, but that is not the charge made in either one of those seventeen articles. He is not, in either one of the seventeen articles, charged with the commission of a crime. He is simply charged with having entered upon the discharge of his official duties while intoxicated. He has not been charged with having wrongfully decided any case that was before him in that state of intoxication. If it had, then I think specifications showing wherein and how he had wrongfully decided the matter, would have been necessary; but he is simply charged with having been intoxicated while liable to be called upon for the performance of an official duty. Now while he was assuming to act in this state of intoxication, there may have been one or a dozen different matters that were pending before him during that time, and yet there would not have been a dozen different offenses committed. It is simply one continuous offense on the occasion that is alleged, though he may have had, during that time pending before him a great number and variety of different cases or different matters; but there is but one offense, namely, intoxication while performing his official duties. Now, if this is correct, and the holding of the Senate correct in regard to the sixteen articles, the specifications that the managers have served, made the seventeenth article sufficient, because with these specifications, it gives him all the information in regard to each one of these particular acts of intoxication, that either one of the sixteen articles give, and the court had held that those 16 articles were sufficient.

I think that is the whole substance of the matter, as presented to the Senate, so far as article seventeen is concerned. If we were to go beyond that, and consider whether the House of Representatives may delegate its power to the managers to bring in new articles of impeachment, I certainly would very seriously doubt, and I should not be satisfied that the House of Representatives may delegate its power of impeachment to its managers. That is an act that the House of Representatives, by a majority of its members, must perform itself or not at all. I do not however, understand that these specifications, under articles seventeen and twenty, are, in either case, an article of impeachment. It does not change one solitary fact that article seventeen alleges. It does not add to article seventeen a single new proposition; it merely identifies more particularly the time and the place in which the act of intoxication, while performing official duties, took place. That is the way I view it.

The PRESIDENT *pro tem.* Let me ask you a question, Senator Hinds, before you sit down. Have you any doubt as to the power of the Senate to legally instruct the managers to offer specifications under the seventeenth or twentieth articles?

Senator HINDS. I do not; but if they require an amended article, I should doubt it very seriously. It is neither a new article nor an amended article. It merely adds an explanation to it for the information of the respondent. That must have been the view of the Senate,

unanimously almost, because they did pass upon the sixteenth article with precisely the same phraseology, identifying the impeachable act that is charged with the 17th article, with merely the deficiency of the time and place, and they required that to be made more definite, for the benefit of the respondent.

Senator POWERS. Have you any doubt, Senator, with reference to the sufficiency of notice between the sixth of January and the tenth?

Senator HINDS. I don't think it requires any notice. If it were possible for the House to delegate its powers to its managers to introduce new articles of impeachment, I think that the constitutional right of twenty days' interval exists, and that he could not be brought to trial, until twenty days after he had been served with the articles exhibited against him; so that if this were a new article, or if it were amended in any of its features so as to make it a new article, I think the objection of time, notice or service would have been valid. But it looks as though the managers had merely specified the time and place, and nothing more, for that is all the specification give us. The only new light that it throws upon the articles is the time and place of the occurrence of the intoxication, for the purpose of avoiding the necessity of any further notice. The notice that the Senate required to be given was a notice, in order that the defendant might be in possession of the additional information that the specification required, before the sitting of the court.

Senator C. F. BUCK. Mr. President, I would like to say a few words on the subject. The Senate ordered the other day that the Board of Managers furnish specifications under article seventeen. Now, what was the object of that order on the part of the Senate? What was the purpose; what was the design? What did the Senate undertake to do? It was for the purpose of furnishing facts so as to enable this respondent to come here and defend himself; that was the object. It was in the interest of the respondent. Now, what do the specifications that have been filed here do? Do they furnish him with facts?

The PRESIDENT, *pro tem.* Will you allow me to ask you a question, and then yon can explain what I want to get at. The whole labor of Mr. Arctander was to show that the specifications were no specifications, and, as I understand it, in the seventeenth article there is a charge of drunkenness on several occasions, and these specifications were brought in simply to show at what time and places he was drunk. Do you consider those specifications definite?

Senator C. F. BUCK. So far as I understand it, I do not so regard them, under the law and rules of evidence. They charge him with drunkenness in Marshall, in the county of Lyon, on the 7th of November, 1878, and supposing they should come here and show that he was drunk on the 8th day of November, 1878,—suppose they attempted to show that; that testimony would be admitted here, under the rules of evidence, as the gentlemen know very well. But do you not see that by giving the dates here the respondent would be misled in enabling him to ascertain any facts that would aid him in making his defense.

He comes here to prove, and ready to prove, that on the seventh day of November, 1878, he was not in New Ulm or in Lyon county at all. He can prove that fact. Then you see that this respondent is misled and deceived here, by these specifications. What I complain of is that these specifications do not do what the Senate ordered the board of managers to do. They ought to have stated the circumstances; the

acts and the particular circumstances when this respondent was drunk and not the day, because if you come here to prove that he was drunk on a certain occasion and they cannot prove that, and you permit the board of managers to prove it on some other day, it is doing a great injustice to the respondent here and I don't believe, Mr. President, that the Senate ought to regard these specifications as a compliance with its order.

Senator MILLER. Will the Senator allow me to ask him a question? Do you consider it sufficient that the respondent should say in his answer that he is going to prove certain things, and take that as proof, or are you going to find out whether he is able to prove it?

Senator C. F. BUCK. No; it is very well understood that if the board of managers produce a witness here to prove that the respondent was drunk on the 7th day of November, in Lyon county, and the witness swore that he was drunk on the 9th day, it would answer their purpose, and this court would have to admit the evidence here.

Senator C. D. GILFILLAN. Further than that, if they prove that he was drunk in Nicollet county on that day, that would answer their purpose.

Senator C. F. BUCK. That answers their purpose; and I insist that the specifications are not sufficient under the order of the Senate, and that the board of managers have not furnished him with specifications sufficient to enable him to come in here and make his defense.

Senator CAMPBELL. I would like to have the resolution offered by Senator Hinds read again. I did not hear it distinctly.

The Clerk read the resolution.

Senator C. D. GILFILLAN. I move to amend by striking out the word "overruled" and inserting the word "sustained."

Senator CROOKS. I second the motion.

Senator RICE. Mr. President, It seems to me that it is a piece of foolishness upon the part of this Senate to take up time in hearing testimony and argument upon article twenty. It does not charge the respondent with anything. I don't think that any senator will claim that it charges an offense, or an indictable offense. Article nineteen charges him with consorting with harlots, and cohabiting with them. That is clear enough. Article twenty simply states that at certain places in said State he conducted himself in a lewd and disgraceful manner "in this, that he, the said E. St. Julien Cox, did then and there frequent houses of ill-fame and consort with harlots, whereby he, the said E. St. Julien Cox has brought himself and his high office into disrepute to the manifest injury of the morals of the youth and good citizens of the State of Minnesota, and the disgrace of the administration of justice, and is thereby guilty of misbehavior in office and of misdemeanor in office." That is all it contains, and the only charge that it contains. Now I do not think that this Senate would ever convict him upon an article of that kind, and if there is nothing in the article that would convict him, why take up the time of the Senate in this manner, in hearing argument and testimony? I should be glad to have this question decided.

The PRESIDENT *pro tem.* You have the right to call for a division. I desire to call the attention of the Senate to one matter. I see that the reporter is taking notes of all that is being said, and I believe by an order previously passed, that debates such as this, are not to be published.

Senator HINDS. That related only to immaterial matters, to matters that did not relate to the merits.

Senator D. BUCK. I suppose, Mr. President, this is a matter that ought not to be printed in the record.

Senator CASTLE. This is a matter of considerable importance, and I am sure that no Senator here is ashamed, or has any reason to be ashamed of his opinions, and it is the right of any Senator voting upon this question to give his reasons for his vote, and if gentlemen do not wish their speeches reported a request to that effect will be sufficient to have them excluded.

Senator CAMPBELL. I should object to that, most emphatically. I should object to any Senator saying anything on this question, that he would not be willing to have go upon the record.

Senator POWERS. So would I.

Senator D. BUCK. I have seen nothing of the discussion that we had here on the last night of the argument, when we voted upon the quesеion of sustaining the demurrer. I never saw any of the argument. It may have been printed but I have not seen it. I supposed, when we went into secret session, that the proceedings were not to be published; that was all.

Senator CASTLE. There seems to be a very indefinite report with reference to what occurred in secret session, not even the vote was given nor how any person voted, nor the decision, nor anything of that kind; but simply the general statement that such a resolution or order was made, and it seemed it devolved upon the Secretary or President to settle what had been done. That was all that appeared with reference to what occurred at the time we took up the original demurrer to the articles of impeachment.

The PRESIDENT, *pro tem.* What necessity is there of a secret session if everything that is said here is to be reported for publication.

Senator ADAMS. The idea of a secret session necessarily carries with it the idea of secrecy, as to the discussion that is had: if that were not true, discussion upon any of these matters pending before the court had better be had before the entire body. It certainly matters not whether the public are present and listen to the speeches, or whether they read them; it amounts to the same thing. If your speeches are to be published verbatim, then it certainly is no secret session. Secret sessions are held for that reason, and that we may have an interchange of ideas and talk without publicity upon all these various points, upon some of which public discussion would not be desirable to say the least. That is what is intended by secret session under the usages of all deliberative bodies of which I have any knowledge; and that was evidently the idea of the Senate when it directed the stenographer not to report anything except that which that pertained directly to the legal points in the case, and was designed for an open Senate as well as a secret one. As far as my opinion is concerned, upon the question raised, I would vote if the world were here as quickly, gentlemen, as I shall in a secret session, and at any time would give my opinion, and my reason for casting my vote, under the solemnity of my oath as a Senator, but as to publishing all the proceedings, or the debate of the secret session (and we may have many of them) I disagree with the gentlemen and say that it would not be either politic, or right, or proper, or consistent with the character of this Senate, nor in consonance with the idea of a secret session.

The PRESIDENT, *pro tem.* The question will be upon the amendmen of the Senator from Ramsey.

Senator POWERS. I would like to ask, Mr. President, if the Senato from Kandiyohi called for a division upon the question?

Senator RICE. I did, sir.

Senator POWERS. Then Senator Hinds will amend his resolution t touch only article seventeen.

Senator HINDS. In regard to the publication of the proceedings of th secret session, I would call the attention of the Senator to rule sixtee which provides "that all proceedings shall be had by yeas and nay which shall be entered upon the record, and without debate, excep when the doors shall be closed for deliberation." That is simply why under the rules, a secret session was necessary, because that rule pro vided that the discussion or deliberation should not be public.

The PRESIDENT, *pro tem.* My object in calling the attention of th Senate to it was that I could not conceive any object in having a secre session if the proceedings were to be published for everybody to read.

Senator HINDS. It is not published in the newspapers, hnt merely i our records.

Senator RICE. The Senator from Scott is reading from the supple mental rules, and I think they have not been adopted.

The PRESIDENT, *pro tem.* My rememberance is that they were ordere printed, but have not been acted upon.

Senator HINDS. Then they are not the rules.

Senator D. BUCK. Mr. President, I desire to say a word in regard t that motion. It seems to me that the motion of the Senator from Scot ought to be sustained. Article 17 accuses the Judge of drunkennes between certain times. All of the allegations, necessary to an article o this kind, are in, unless it be as to the date and as to the time. The of fense itself is all contained in article seventeen, and the only omission, i there is any is the time that the offense was committed, and the plac where it was committed. Now the specifications designate the place, an the time. Now, what more certainty do you want in a charge than th offense, the place, the time, and the party, who committed it?

Senator C. F. BUCK. Will the gentleman allow me to ask him question?

Senator D. BUCK. Certainly.

Senator C. F. BUCK. Does this specification furnish to the respond ent any greater opportunity, any more facts, to prepare his defens than it did before?

Senator D. BUCK. He has the time.

Senator C. F. BUCK. But the time does not make any difference, if yo can prove it at anytime. It misleads him, instead of furnishing hin with data, upon which to produce his proof.

Senator D. BUCK. Under any of these other specifications, I sup pose you will admit that on the charge that it was on a certain day you can bring proof of any other fact. I understand you admit that

Senator C. F. BUCK. I understand that to be the law.

Senator D. BUCK. Then will the gentleman tell me where it is insuf ficient?

Senator C. F. BUCK. I will tell you. Under the order of the court here, the managers do not furnish the specifications with minuteness enough to answer the objections of the respondent.

Senator D. BUCK. Will you tell me in what respect the specifications are insufficient?

Senator C. F. BUCK. Because they are not definite enough.

Senator D. BUCK. Well, I wish you to tell me wherein they are lacking?

Senator C. F. BUCK. Because they do not state the circumstances, the cases.

Senator D. BUCK. The cases. What cases?

Senator C. F. BUCK. The cases of drunkenness?

Senator D. BUCK. Yes, it does.

Senator C. F. BUCK. Or the circumstances when he was drinking.

Senator D. BUCK. It tells the time.

Senator C. F. BUCK. I know, but the circumstances, what was he doing, what cases were being tried, and under what circumstances, does not appear.

Senator D. BUCK. It is not necessary for them to state what cases were being tried, in order for him to meet the charge itself. If it is alleged as of a certain time, what more is necessary?

Senator C. F. BUCK. Yes; but if you allege a certain time or place, and the other side can come in and prove that the offense was in another county at another time; that is what I want to say.

Senator D. BUCK. That is where the mistake is. If you allege it was in Lyon county, the proof must be confined to Lyon county.

Senator C. F. BUCK. Under what theory?

Senator D. BUCK. Because you cannot prove but one offense, under one charge, when you allege a single offense at one time.

Senator CASTLE. Let me ask a question, Senator, I have not been here through the discussion, and I desire to ask Senator Hinds a question also.

Senator D. BUCK. You have been here, Senator, through as much of the discussion as I have been.

Senator CASTLE. Would you hold, under the specifications that have been filed, that the managers would be restricted to that time?

Senator D. BUCK. I would hold not in the particular case; but they cannot prove two offenses under one date, am I not right there?

Senator CASTLE. I am only asking for my own information.

Senator D. BUCK. Unless there is a continuity of action.

Senator CASTLE. Simply this: let us say that the charge here is,—I haven't the specifications here before me, but we will say that the charge here under the general charge, is drunkenness at divers times and places. Now the specifications says, that on the tenth day of November, 1878, in Nicollet county, the defendant became intoxicated etc. Now, then, when they come to offer their evidence will they be confined to that time and place, or will they not?

Senator D. BUCK. To the time and place?

Senator CASTLE. Yes, sir.

Senator D. BUCK. I think it would be a better rule to confine them to the time and place, but I don't think it will depend upon the question, whether you cannot deviate from the place, provided you do not allow them to select but one place; that is the point; that is where the difficulty arises; we can not prove half a dozen offenses.

Senator CASTLE. I would like to ask Senator Hinds, if you will permit me, what the rule would be. I would like to ask the Senator, who has offered the resolution, overruling the objection, whether or not, when

the managers came to offer their evidence, as to this ninth day of September, 1878, if they propose to offer evidence to show that not on the ninth day of November, but that on the 12th day of November, 1878, such an act was done, will the Senator hold in that case, that the evidence should be received or not received.

Senator HINDS. May I answer?

Senator CASTLE. Yes, sir; if you will.

Senator HINDS. I think it would be received.

Senator CASTLE. I understand that Senator D. Buck holds substantially the same things.

Senator D. BUCK. At those times?

Senator CASTLE. Because, if a majority of the court follow the lead of the Senator in this matter of the resolution, they will follow them in the reception of testimony. I want to have that matter understood definitely.

Senator D. BUCK. Does the Senator from Washington county claim that if there was a continuity——

Senator CASTLE. I don't claim anything. I am only asking what the Senator understood.

Senator D. BUCK. I doubt very much, if the charge was made in Nicollet county, that I should vote to admit one, although it may have been on the same day, in the county of Brown or Lyon. I understood some of the Senators to say that they thought that could be done, even on the other side, but I doubt, myself, whether I should vote to admit any such evidence as that, out of the county where the offense was alleged to have been committed. We all know that, on a question of time, that time is immaterial. Our law books laid down the rule. I believe it is admitted by all lawyers that we can charge an offense to have been committed on one day and then introduce evidence to show that it was committed another day, but we cannot prove three or four different offenses. It must be only one offense, unless it is a case as where a man is indicted as an habitual drunkard, or in a case of a conspiracy, or a case where a man is charged with being a common seller of liquors, or, as is laid down here, in the case of Cowley—the Rev. Mr. Cowley, that some of you may have heard of, who had been guilty of cruelty to children in the State of New York, where he was charged with having been cruel to a child in an institution under his superintendence and care, on a certain day, the 26th day of Decembor, 1879,——

Senator CASTLE. The name of the child was given?

Senator BUCK. The name of the child was given, but the question arose whether they could introduce evidence of a series of acts, running through weeks and months, without specifying particular times, and the court of appeals in 1881, this last year, or within a year, (it was in January, 1881, I believe) decided that all they needed to specify was the one thing, that all the series of acts of cruelty on the part of the Rev. Mr. Crowley towards that child, went to constitute and make the offense of cruelty, notwithstanding that there was only one day specified.

The PRESIDENT *pro tem.* That is common sense if it is not law.

Senator D. BUCK. There are two pages here, in which numerous authorities are cited. We want to understand that in this charge of habitual drunkenness, it is the only way. In regard to this charge here I say everything is specified sufficiently definite to sustain it. Wherein do you need to have things more specific and definite than you do in an article of this kind? The charge here in the seventeenth article is of such a nature, that

when the House have presented it to the Senate, it constitutes of itself an article of impeachment. It will stand alone as an article of impeachment. Now the Senate have seen fit, in order that the respondent might be more safe in his trial, to compel the managers to designate the time and place, and that is all you want. Why it does not seem to me that there can be any question about it at all. If this man has committed this offense, it seems to me that, sitting as a Senate, it is our duty to investigate it, and not to allow him to get out of it on any justice's court technicality or quibble.

Senator C. F. BUCK. We have already sixteen articles to investigate.

Senator D. BUCK. I know that, but if necessary we want sixteen more, and when counsel get up and say that this is a "smelling committee" sent around the State, I, for one, am for sending smelling committees on just exactly such expeditions as this, if men are guilty of such offenses, and if they are they ought not to escape upon any technicalities or niceties arising upon these questions. The eyes of the people of the State are upon us, looking to see whether we will take hold of this charge and investigate it. If the man is guilty, convict him; if he is innocent, acquit him; but do not let us come down to the technicalities or niceties that are required in police or justice court practice. I say it is all wrong to say to these managers that their evidence upon these questions shall be thrown out.

The PRESIDENT *pro tem.* The Senate will indulge me a minute if I talk, for I have a vote upon this question as well as the rest of you. I desire to vote right, and I watched very closely the long argument of Mr. Arctander on the point that these specifications were no specifications, and I could not see it, and I cannot see it now, and I wish the lawyers here, who speak upon that point, will enlighten me as to the point I cannot see, if there is any point in it. He contended that under article seventeen they were entitled to specifications; that the specifications the managers had interposed were not specifications. Now, what is charged under article seventeen, and what are the charges, for there are several? It charges that on divers and sundry dates and occasions and places he was drunk. The counsel for the respondent come in here and claim that that is not definite enough, and ask the Senate for specifications, and the Senate instructed the managers to introduce specifications under article seventeen, which they do. They say, in the article, that he was drunk on divers and sundry occasions, and then the specifications go on and say that at New Ulm, on such a day, and at St. Peter, on such a day,—specifying eight times. Now, I cannot see what else they could have specified, and if you can tell me what is lacking in it, do so, so that I can see it. In the case of this kind that has just been cited as to the superintendent of the Children's Home in New York, the name of the child was given, but I don't see as that was material. Why was it material, if he was cruel in that institution, whether he was cruel to John Doe or Richard Roe? The object was to ascertain whether he was a fit man to be superintendent of that institution. The object here is to ascertain whether Judge Cox is a fit man to occupy the position and dispense justice as judge of the ninth judicial district. I believe that as a court this Senate is not confined to the niceties that a circuit court would be.

Senator CROOKS. I do not think the question is whether he is a fit man or not, but whether or not he is guilty of this crime.

The PRESIDENT *pro tem.* That is it.

Senator POWERS. I would like to ask the Senator from Scott, if he would have any objection to adding to his resolution, these words or something equivalent to them, "It is our understanding, however, that no evidence should be received on article seventeen to prove intoxication on any other day or days, except those specified in exhibit B, on January 10th, by the managers." I think that will bring the thing, perhaps, right to a point, and show us how near we can agree. I want to vote for the resolution of the Senator from Scott, but on the 16th of December we had this same subject up, and three resolutions were moved. One was moved by Senator Adams. The resolution was that the demurrer of the respondent be sustained, as to the 17th, 18th, and 20th articles. Senator A. M. Johnson moved, that the honorable managers should be allowed to so amend articles seventeen, eighteen, and twenty, that they should be definite as to time and place or places; so the respondent can safely put himself on trial under said articles. The two resolutions that I have read were voted down. Senator McDonald moved the following resolution which was adopted:

Ordered, That the demurrer of the defendant to the articles of impeachment be overruled, but that the board of managers, on the part of the House, be and are hereby required to furnish the respondent, on or before January 6th, 1882, with specifications as to the seventeenth and twentieth articles. Should no such specifications be furnished, then, in that case, no testimony will be received in support of said articles seventeen and twenty.

This order, which was adopted by the Senate, stated that they specify as to the time; but that was the only thing that was in my mind, and I presume in the minds of most of the Senators, that the charge or charges in article seventeen were not specific enough; that it should be put in such a way by the managers, that the respondent should know how to prepare himself for his defense. I voted for Senator Johnson's resolution on the supposition that they were to be made specific, and I think the board of managers so understood it; and they come on, and in their exhibit B, which they put in on the 10th day of January, stated eight different occasions on which they charge that he was drunk. If we have a right, or rather, if, when we come to prove these charges, or the managers do,—to take number one, which is a specific charge, that at Marshall, in the county of Lyon, in the State of Minnesota, on the 7th day of November, 1878, he was drunk, he is prepared, from having had that specification before him, to prove an alibi. He says he is, but the managers turn around and say "no, we don't want to be held to that date; we don't want you to prove that you were off in some other district, or county, at that time; we did not mean on the 7th day of November; we meant two or three days before that, or two or three days after that." Now, I don't call that a specification; I voted not to sustain that demurrer, but that the charges should be made specific; I voted with the express purpose that the defendant should have an opportunity to prove his innocence, if he could do so, and establish that beyond a doubt. It strikes me that we ought to stick right to that. The question of charging a man with drunkenness on the 7th day of January, meaning that he was drunk on the 10th, is no specification at all to me, supposing that law and precedent do say that it is admissable, it is not satisfactory to me; it was not the light that we had

before us when we voted upon that question; I want to vote, as I said, for Senator Hind's proposition, but I want to make it specific.

Senator D. BUCK. Suppose a man was charged with murder on the 10th day of January, 1882, and you should prove that it was on the 9th or 11th, do you say that the man could escape because it was not proven to have been committed on the 10th?

Senator POWERS. I do not think the cases are at all analogous.

Senator D. BUCK. Well that is the only way you can get out of it.

Senator POWERS. And I do not want to get out of any place, because I do not feel hide-bound, and do not want to be, but here we have sixteen specific charges of drunkenness at various times and then a general charge of intoxication. The Senate say that charge must be tried, but you must make it more specific in this case; and I think they have done it. I think we are right in the position we took at that time. I think the managers were right. I think it was our understanding which was not perhaps expressed fully at the time, that when a manager stated that a man was drunk, and gave the day that he should be held to that, or that the evidence against him be rejected because the respondent in that case is not in a position to defend himself upon the charge; and hence I would ask again, if the Senator, for, as I said before, I want to support his resolution, would have any objection to add this, or something equivalent to it. It is our understanding, however, that no evidence should be received on article seventeen to prove intoxication on any other day or days except those specified in exhibit B, on January 10th by the managers.

Senator C. F. BUCK. That is simply changing the rules of evidence.

Senator POWERS. It is simply stating what I understand, and did understand at the time the resolution was passed.

The PRESIDENT, *pro tem.* Senator Powers, the counsel for the respondent say that that is immaterial.

Senator POWERS. What is that, sir?

The PRESIDENT, *pro tem.* They have acknowledged that the date is immaterial.

Senator POWERS. I do not think it is immaterial; so far as I am concerned I think this very material.

Senator HINDS. In answer to the question of the Senator I would say this, that the contingency may never arise. The managers may not undertake to prove that he was intoxicated on any other day than those named in the specification. If they do, however, undertake so to introduce proof in relation to some other day, than those that are named, then would be the time to raise the objection. If the counsel for the respondent do not raise the objection, it seems to me that the court should not. It is not for the court to interpose objections, and if the counsel for the respondent in such a contingency when it arises, should not interpose an objection to it, it seems to me that there would be no objection by the court.

Senator POWERS. The respondent understands and has served notice on us, and a very lengthy one too, that they feel they are not bound as to time and place and date, and it is a very significant fact that the managers did not allude to that at all; and inasmuch as we are discussing that matter now, it would, perhaps, be well that both sides should understand how we regard that matter.

Senator HINDS. The managers touched upon it, so far as to admit that counsel for respondent was correct, in the position that he assumed,

and therefore that he need not have spent so long a time in stating to the court that it was not correct.

Senator CROOKS. I call for the regular order.

The PRESIDENT, *pro tem.* The Senator from Winona has the floor.

Senator CROOKS. I rise to a point of order, Mr. President; it is now long beyond 12:30, the time at which under our rules, the Senate should be adjourned by the Chair.

The PRESIDENT, *pro tem.* The reason why I did not do this was that I thought it would be better to get through with this.

The question before the Senate is on the amendment of the Senator from Ramsey. The time has arrived at which, under the rules, we should adjourn.

Senator C. F. BUCK. There is evidently a mistake made, and I think the mistake was made by the Senate in requiring the Managers to offer specifications, but the Senate did require the Managers to file specifications, under article seventeen for the purpose of furnishing data to the respondent, or for the purpose of enabling him to make a proper defense. I submit to the Senator from Blue Earth and to the Senator from Scott, whether these specifications furnish any data, I submit on the contrary whether it does not tend to deceive and mislead the respondent here, if you can sustain these charges made in specifications by proving that he was drunk on the 9th day of November instead of the 7th day. What I object to is that these specifications do not comply, and consequently no evidence should be received in support of those specifications. I don't suppose the Senate wants to go back upon its order now; they cannot, but as long as we made that order, as long as the Senate made that order,it is the duty of the Senate to require the managers to furnish data that would enable defendant to make his defense.

The PRESIDENT, *pro tem.* Do you understand that the Senate has the right to order them to do it at all.

Senator D. BUCK. I do not, sir.

The PRESIDENT, *pro tem.* In the trial of cases in court counsel every day move to amend.

Calls of "question! question!"

The PRESIDENT, *pro tem.* The question is upon the amendment of the Senator from Ramsey.

Senator CASTLE. I was not here this forenoon and have not heard the arguments on either side—

The PRESIDENT, *pro tem.* Excuse me; does the Senate wish to take a recess now, or to finish this matter.

Senator ADAMS. I move that we take a recess now.

Senator POWERS. No, let us finish this.

The PRESIDENT, *pro tem.* The counsel will probably be here ready to go on this afternoon, and I think you can proceed.

Senator CASTLE. I remarked, Mr. President, that I was not here and did not hear the argument. I feel, that I owe to this court, and owe to myself the duty of carefully examining the merits of the objections made by counsel for respondent to the introduction of evidence under these articles seventeen and twenty as amended, and upon such examination I shall give my vote upon the pending resolution. In the first place, it seems to me that it is desirable to conform as near as may be to the universal precedents; and universal practices without reference to special cases. I am not aware that special cases have been cited. I have found none. Our constitution, article five, section thirteen, provides, that the

pondent shall be served with the articles of impeachment twenty days fore the day set on which he shall answer. On the consideration of articles seventeen and nineteen, they were objected to, as being too in-inite. The Senate adopted an order which, in effect sustained the ob-tion. In other words, the Senate held that the article as drawn was l; that no evidence should be introduced under it; unless the articles re amended. That the articles were bad, I think, there is no manner question. In no court or tribunal, which had any regard whatever the rights of parties, would articles of that kind be sustained. Charg-; that, for a period running through years, a defendant had been guilty certain specific offenses, "diverse and sundry" charges. I say in ef-t this Senate held, what the law undoubtedly was, that these articles re absolutely void. In charging an offense, it is charged or it is not arged. Now, under the laws of some states parties may be charged h being common sellers of liquors, vendors of liquors. That is a ticular statute, which provides that a party may be charged with, and nished for, offenses of that kind. There is no law, either common or tutory, that provides that a party may be punished for any such of-ses, as was attempted to be charged in articles 17 or 20. The Senate held. Now, then, they were required to be amended. I think a great or was made in the requirement that they should be amended and ved within the time that they were. Admitting, for this point in the ument, that they are definite and specific and certain, and changed accordance with the decision of the Senate, the character of the origi-l articles, making a bad one a good one. In that case, the respondent fore he could be compelled to answer under the constitution of this te, should have been served twenty days before the day of trial. To strate, the House of Representative only find two charges, like the es that we have before us; they come before the Senate, and are ob-ted to as being no charges, as being bad and void. They are required be amended. In other words, you shall make good articles out of l ones; new articles out of old ones. They are served two days, three ys or four days before the day set for trial. Does the respondent get rights guaranteed to him by the constitution? Not the least in the rld. If you could have made the order you could have made the ler on the day set for trial, that they be amended then and there, and respondent be required to go to trial on them. The principle is the ne, and the difference is but a difference in degree. Hence I say, Mr. airman, upon that point, if upon no other, I should vote against per-tting evidence to be introduced on charges furnished in that way, and ught before the Senate in that way, and of which notice has been en only in that way.

With reference to the charges having been complied with the order ant something or nothing. If it meant something, it has not been nplied with. If it meant nothing, it was no order at all. If it meant nething it has not been complied with, for this reason, that it is as specific to-day, with these amendments, construed according to the ll recognized principles of criminal law, or any law, as it was in first place. Why? Because I recognize a principle of law running ough all cases, that in charging a criminal offense,—for instance, is a crime, no matter of what character, the court may say, that the tter of time cuts no figure; but that the rule alone obtains, Mr. airman and Senators, when the character of the offense is set out cifically and certainly. You charge the defendant that he murdered

John Brown, in the county of Renville, by then and there shooting him with a pistol, and you charge him with a distinct, specific and certain offense, and the time is immaterial. Why? Because the offense with which he is charged is hurled at him. It is the offense of murder. Now, he is bound to know, whether he killed John Brown or he did not, and whether he killed him, on the tenth, or the twentieth, is utterly immaterial. None of the elements that go to make up the offense, however, are charged here at all. If the Senate meant anything by its order it must have meant that these specifications should be made as specifications, running from one to sixteen which were general; which were in my judgment, bad according to well recognized principles, but which the Senate saw fit to overrule, because they charge something specifically at sometime; I say that if the Senate meant anything it meant that there should be a specific charge of a particular act, which entered into the gravamen and made up the offense itself, and in order to have done that it would have been necessary to charge the occasion and the act constituting the offense; that while certain cases were being tried before him,—identifying some proceeding by which the act could be identified, something going on in the court room in which he was presiding, necessary to direct the mind of the respondent, or to call the attention of the respondent to the occcasion. The day is immaterial, but the occasion upon which the offense occurred is material.

Senator MILLER. Suppose they are going to prove that he has been drunk at Marshall, on the second day of November, on the street. Do you want them to show here that he has been seen on the street drunk, or anything of that kind?

Senator CASTLE. There is nothing of that kind charged. He is charged of acting as judge while drunk.

Senator MILLER. I understand that it is the charge of habitual drunkenness that is being discussed.

Senator CASTLE. We are considering article seventeen.

The CLERK. No; it is article eighteen.

The PRESIDENT *pro tem.* One at a time, gentlemen.

Senator CASTLE. We are considering article seventeen, which is substantially this, namely: "That unmindful of his duties as such Judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at divers and sundry other times and places in the State of Minnesota, not enumerated in any of the foregoing articles, from the 4th day of January A. D. 1878 to the 5th day of October A. D. 1881, acting as and exercising the powers of such judge."

I say in order to have charged a particular fact, it should have charged with sufficient definiteness to have directed the mind of the respondent, and the attention of this Senate, to some act of his as judge occurring at that time, or it is not charged at all. You leave out the question of place, and you leave out the question of time and occasion; you leave out everything.

The PRESIDENT *pro tem.* Is not a man always acting as judge, from the time he is sworn in into office until his term of office expires?

Senator CASTLE. Why, no; I would not suppose that any sane man would say that he was. Could it be said that he was acting as judge when he was in the city of Washington, outside of his jurisdiction, or the state or commonwealth, while he was down there attending the ses-

n of the legislature? Would any one say that he was then acting as lge?

The PRESIDENT *pro tem.* When they went to Waseca to get a *mandamus* served upon him, and found him drunk, was he acting as judge en?

Senator CASTLE. I do not recollect whether he was or not. I think was. I think he was holding a term of court. Well, if he was not, was not acting as judge.

The PRESIDENT *pro tem.* I thought he was always acting as judge—

Senator CASTLE. I would like to ask Mr. President a question within e scope of his jurisdiction. If a man is acting as school teacher—

The PRESIDENT *pro tem.* Is Mr. Keihle acting as State Superintendent the time?

Senator CASTLE. Is he acting as State Superintendent when he is ending camp meeting at Red Rock?

The PRESIDENT *pro tem.* He has no business to be there.

Senator CASTLE. Is he acting as State Superintendent when he is atding a camp meeting at Red Rock, or a horse race at Minneapolis?

The PRESIDENT *pro tem.* He is supposed to be.

Senator CASTLE. Then it is a most violent presumption, the most liculous one in the world. Then, again, Mr. President, is it rational to y that a man is acting as school teacher, teaching a district school, hen he is away from school, outside of the town, outside of the school strict, outside of the county, or outside of the State? Is he then acting as a school teacher under the laws of Minnesota?

Senator D. BUCK. Suppose he got drunk several times while he was ay from school, wouldn't it be a good cause for annulling his contract?

Senator CASTLE. No, sir, that was not within his bailiwick; he was t acting as teacher. If the charge is that while acting as teacher,—and will ask Senator Buck, or any other man with brains in his head, hether if you charge him, while acting as teacher, with being drunk, d it was shown that he was drunk in the city of Washington, he would stain the charge? Why, Mr. President, the idea is preposterous on e face of it. District courts are always open, it is true, but for what rpose? District courts may be called at any time; motions may be ard at any time, and the court is at the time that motions are being ard and the business transacted open, and the judge is discharging his ty as judge; but he is not discharging his duties when he is not acting in that capacity any more than your school teacher is discharging e duties of a school teacher of a public school when he is off fishing hunting.

Mr. President, I have said all I care to say about this matter, and I ve made about all the argument that I care to make, I think however, belongs to us to do this, to so conduct this trial that, in the event of e impeachment of Judge Cox, that the slow moving finger of scorn d intelligence shall not be pointed at us, and this man made a martyr inead of being convicted of a crime. I think, Mr. President, it is dearable to so conduct this court, and so conduct these proceedings that ould Judge Cox be convicted, it would not lie in his mouth, nor in e mouth of his friends, to say that we have ignored all law, all custom d all rules in accomplishing that conviction. I shall vote upon this cording to my judgment. I do not ask any other man to be bound y it. If I do not furnish good and sufficient reasons for the vote that I ve, I certainly will not care to influence any man. But I do say this,

Mr. President, and I say it with all earnestness and seriousness that no only is the remark of the Senator from Blue Earth true, that the eyes o the people are directed here, but it is not only the eyes of the people o this state, but the eyes of the people of all states are upon us. We ar making up a record here of proceedings that is going down to all poster ity. Impeachments fortunately are very rare, and the result is, that al impeachments that have taken place, everywhere and anywhere, are re ferred to when trials of that character are going on. I say this, that it behooves us, Mr. Chairman and Senators, that we shall conduct thi trial in such a way that it will bear the scrutiny of intelligent observation, and I dare say further, and say it in all candor to my brother senators, that we cannot do it and ignore precedent and law. We cannot do it and ignore well established principles and well established usages. We cannot make laws unto ourselves that will reflect credit upon us, if they conflict with and are not in accordance with the intelligent rules that have been established in proceedings of this character for all time. I would say that a mere technical objection,—and the senator from Blue Earth has referred to technical objections in justice courts, and all that sort of thing, that they should not obtain; but, I say this, Mr. President, that every trial should savor of fairness, of justice; that the rights of every man, however low he may be, no matter how degraded he may be, should be protected, and he should be tried in accordance with well established principles of law and none other. I dare to say further that it is the principle that has obtained everywhere, where jurisprudence has obtained, where civilization has obtained, where law has obtained, that you cannot deviate from the well established principles and usages that have obtained the sanction of time without manifest danger.

Why, Mr. President, take this matter here, if you please, as an illustration. Politics may change. It may be desirable to get rid of some one who occupies a high office. It may be desirable to get rid of some man who is Governor. It may be desirable to get rid of some man who occupies a prominent position in our commonwealth. You can come here and make such vague and general charges as are made in articles seventeen and twenty. The time for trial is set. That article is served upon him twenty days before he comes up prepared to answer, all that he can be. The Senate orders that specifications shall be filed of just such a kind and character as you have here, and he has to go to trial at once, without his twenty days' preparation of, entirely and utterly at the mercy of any man, or any few men, who may desire his removal and his degradation from his high office.

One thing further, Mr. President, while I am upon the point, with reference to that. I believe it is a principle that universally obtains in matters of impeachment that nothing is recognized as a crime and misdemeanor except such as existed at the time of the adoption of the articles of the constitution appertaining to it. I believe, Mr. President, it has not been shown here, I believe that it cannot be shown here, that these matters, at the time of the adoption of our constitution, constituted crimes at all. It is claimed that the act of 1878 was created for the purpose of reaching cases of this kind. What will that accomplish? Why, Mr. President, it will accomplish this: If this be a precedent, if that is to be recognized as a rule, and a party desires to get rid of a governor, what would be necessary for them to do? Why, to provide that if he was a member of a certain church, if you please, or if he was in a certain

occupation, that he would be ineligible to an office; or to provide that if he has certain practices,—for instance, profanity is a misdemeanor under our law, to perform labor of any kind and character on the Sabbath is a misdemeanor under our law,—we can make any kind of an offense, and then, upon a charge of that offense, remove him from his office; which is but an illustration, gentlemen, to show how dangerous it is when we depart from universal precedents.

Senator RICE. With the consent of the Senator from Ramsey, I move the adoption of a resolution which I desire to have read, and we will take a vote upon that before we vote upon the article.

The Clerk read as follows:

Resolved, That the objection of the respondent be sustained as to the twentieth article.

The CLERK. A division in that form would bring it upon the seventeenth article first.

Senator RICE. With the consent of the Senator, I offer that resolution now: That the objection of the respondent be sustained, as to the twentieth article.

I do this because I do not think that the twentieth article charges anything contained in the impeachment.

Question! Question! Question!

Senator CAMPBELL. I call for the ayes and nays.

Senator TIFFANY. Will the Clerk read the resolution and the amendments.

The CLERK. The order offered by Senator Hinds is as follows:

That the objections of respondent to the introduction of evidence under articles seventeen and twenty and the specifications thereof, be overruled.

Senator Gilfillan's amendment is a substitute for the following:

Resolved, That the objection of the respondent be sustained as to the 20th article.

The PRESIDENT *pro tem.* The roll will be called upon the question as to the twentieth article.

The Clerk called the roll.

The roll being called, there were yeas 15, and nays 13, as follows:

Those who voted in the affirmative were—

Messrs. Adams, Bonniwell, Buck C. F., Campbell, Castle, Crooks, Gilfillan C. D., Howard, McCormick, McCrea, Morrison, Officer, Peterson, Powers and Rice.

Those who voted in the negative were—

Messrs. Aaker, Buck D., Case, Clement, Hinds, Johnson F. I., Johnson R. B., Miller, Shalleen, Tiffany, Wheat, Wilkins and Wilson.

When the name of Senator Powers was reached on the call of the roll, he arose and spoke as follows:

Senator POWERS. Mr. President, I have been trying for the last half hour or more to satisfy myself whether these specifications are specifications under the law at all, and I cannot find out from any of our legal friends that the 7th day of November means the 7th day of November, or the 5th, the tenth day, or any other day. If that is the fact, and we are tied down by it,—I voted here on the 16th day of December that I would not attack any man without giving him an opportunity for defense, and I meant it, and when I called for specifications, I meant specifications; I did not mean, what a man by the exercise of good com-

mon sense would call specifications, but that the law lets him out of when it comes to the task. I will vote for the resolution of the Senator.

The roll having been called, the motion was carried.

The PRESIDENT *pro tem.* The question will now occur as to the seventeenth article.

Senator C. D. GILFILLAN. The motion will now come up on my amendment, offered, that we sustain the objection.

The PRESIDENT *pro tem.* The roll will be called upon the amendment.

Senator RICE. Please read the amendment.

The Clerk read as follows:

That the objection of the respondent be sustained as to the seventeenth article.

The PRESIDENT *pro tem.* The roll will be called.

The Clerk read the roll, as follows:

The roll being called, there were yeas 10, and nays 18, as follows:

Those who voted in the affirmative were—

Messrs. Adams, Bonniwell, Buck C. F., Campbell, Castle, Crooks, Gilfillan C. D., Officer, Peterson and Powers.

Those who voted in the negative were—

Messrs. Aaker, Buck D., Case, Clement, Hinds, Howard, Johnson F. I., Johnson R. B., McCormick, McCrea, Miller, Morrison, Rice, Shalleen, Tiffany, Wheat, Wilkins and Wilson.

When the name of Senator Miller was reached on the roll call, he arose and spoke as follows:

Senator MILLER. Mr. President, I did not intend to say anything upon this at all; but it appears to me that this is a queer way of getting at the charges. Mr. Cox's friends and he himself, have assured me many times that all the charges were malicious and false; that they were trying to disprove them, as I had confidence that they were trying to disprove them, as they said they were, and I could, with the greatest of pleasure, vote for an acquittal, but the idea of coming in here and trying to get out of this thing in the way he does, I think is absurd, and I vote no.

The PRESIDENT, *pro tem.* The roll being called, the amendment is lost.

Senator C. D. GILFILLAN. Mr. President, I would like to bring up the matter of the compensation of the board of managers. Out of respect to them, we ought to dispose of that.

The PRESIDENT *pro tem.* The question is now upon the adoption of the resolution, and the ayes and nays will be called upon that.

Senator CAMPBELL. I supposed the matter was disposed of.

The PRESIDENT *pro tem.* This is on the amendment to Senator Hinds' resolution.

Senator CAMPBELL. This is a substitute as I understand it, and it settles the question, at least.

Senator HINDS. The order substituted by me, was amended by Senator Rice. Now the question arises upon the order as amended.

Senator CAMPBELL. I hope now, that we will get at it without a division.

The PRESIDENT, *pro tem.* Our rules require the ayes and nays.

Senator CAMPBELL. I would like to have the resolution read as amended.

The CLERK. I do not know anything about it if that is the case.

Senator CAMPBELL. Well, we had better find out before going any further.

The CLERK. Senator Hinds offered the resolution which related to two specifications, on a demand for a division of the question; this resolution was offered by Senator Hinds, and Mr. Gilfillan moved an amendment. It was an amendment, but afterwards he changed the language of it, and it became a substitute, and in pursuance of the division of the question, these two resolutions were offered.

Resolved, that the objections to the respondent be sustained as to the twentieth article.

That was carried on a division.

Resolved, that the objection by the respondent be sustained as to the seventeenth article."

And that was lost.

The PRESIDENT *pro tem.* The chair does not understand that that is offered as a substitute, but as an amendment.

Senator CAMPBELL. I will move you, sir, as the result of this controversy, that the President of the Senate inform the Board of Managers, and the counsel for the respondent, that the Senate has overruled the objections of the counsel for respondent as to article seventeen, and has sustained the objection as to article twenty. I move you, Mr. President, that that be done.

Senator ADAMS. I second the motion.

The PRESIDENT *pro tem.* State the motion again, if you please.

Senator CAMPBELL. I move that the President be requested, upon the assembling af the court again, to inform the managers and connsel for the respondent that the objection has been sustained as to article twenty, and overruled as to article seventeen.

The PRESIDENT *pro tem.* That will be considered as the sense of the Senate, unless objection is made.

Senator CAMPBELL. Mr. President, I now move that we take a recess.

Senator C. D. GILFILLAN, from the committee on accounts, called up the matter of the compensation of the managers, and upon motion of Senator Rice, it was taken as the sense of the Senate that the board bills of the managers be disallowed.

Senator C. D. GILFILLAN also called up the question of compensation, of the page of the Senate, and upon motion, his compensation was fixed at $2.50 a day.

Senator CAMPBELL. I move that we take a recess.

Senator POWERS. Mr. President, I move that the discussion before the House to-day be printed in the same manner as any other discussion.

Senator CAMPBELL. That does not require a motion; that has already been decided.

Senator POWERS. That question came up, but I did not understand that it was decided.

Senator CAMPBELL. Our rules require that discussions such as have been held to-day should be incorporated in the record.

The Senate here took a recess until 3:30 P. M.

AFTERNOON SESSION.

The Senate met at 3:20 o'clock, P. M., pursuant to adjournment.

The PRESIDENT. There is now a quorum of theSenate present.

Senator BUCK D. offered the following resolution:

Resolved, That witnesses in this proceeding be allowed fees for the day they are subpœnaed to attend this court, if they so attend, and for such time as they necessarily remain here, not, however, to exceed four days' attendance unless otherwise ordered.

Senator CAMPBELL gave notice of debate.

Senator RICE moved to suspend the rules that the resolution may be considered at this time.

And the roll being called, there were yeas 11, and nays 15, as follows:

Those who voted in the affirmative were:—

Messrs. Bonniwell, Buck C. F., Buck D., Case, McCrea, Morrison, Peterson, Powers, Rice, Tiffany, and Wheat.

Those who voted in the negative were:—

Messrs. Aaker, Adams, Campbell, Castle, Crooks, Gilfillan C. D., Hinds, Howard, Johnson F. I., McCormick, McLaughlin, Mealey, Miller, Wilkins and Wilson.

So the rules were not suspended, and the resolution went over under the rules.

The PRESIDENT. The Chair is informed that during the recent secret session of the court certain action was taken that should be made known to the attorneys connected with this case; the chair would call upon Senator Wilson who was presiding during that session, in the absence of the present Chair, to state what action was had.

Senator WILSON. Mr. President. The Senate directed the president *pro tem.* to notify the counsel for the respondent that the Senate in secret session sustained their objections to the specifications under article 20 and overruled them under article 17.

Mr. Manager GOULD. Mr. President and Senators, at the close of the session last Saturday the chairman of the managers gave notice that upon the disposition of the question then pending concerning the specifications to articles 17 and 18, the managers then would move to strike out certain portions of that answer of the respondent in this case, and I rise for the purpose of making that motion with regard to that portion of the answer included in the following words found at near the close of their answer:

> Respondent respectfully objects to the jurisdiction of this court either of respondent's person, or of the subject matter of this proceeding, and protests that this court has no jurisdiction, authority, or right whatsoever, to proceed with the trial of this respondent or to make, announce or enter any order or judgment in this proceeding; for the reason that the Senate of the State of Minnesota, pursuant to a joint resolution by the Senate and House of Representatives therefore duly adopted, did on the 19th day of November, A. D. 1881, adjourn *sine die*, and that the same has never since said time been lawfully or otherwise convened, and that bysaid adjournment, the Senate of the State of Minnesota and this court became and ever since has been *functus offico*, and has no legal existence whatsoever.

It is thought by the management that while the question of these pleadings has been raised by the respondent, it might be to the advantage of all concerned that all questions relating to the pleadings be at this time disposed of, in order that hereafter——

Senator HINDS. Will the manager excuse me a moment?

Mr. Manager GOULD. Certainly.

Senator HINDS. I would inquire of the managers whether it would not be as well for them to postpone this motion until we can dispose of some of the large number of witnesses who are present and let them go. We have examined quite a large number of witnesses already. Now, will it not serve the purpose of the managers just as well to discuss this question after these witnesses have been disposed of?

Senator GILFILLAN, C. D. That was a suggestion I was about to make. I understand there are thirty or forty witnesses here now, and it seems to me, in justice to them, we ought to dispose of them as quickly as possible, and, if necessary, come here some evening and hear these law questions.

Mr. Manager GOULD. Mr. President and Senators: — You will, of course, settle this matter as will best suit your convenience; but it has occurred to the managers that we will facilitate the business if we can have these legal questions all disposed of before we proceed, and in an special manner in regard to this question which I now raise, to-wit: whether this court has any jurisdiction to proceed in this matter.

It will naturally occur to you that if, upon reflection and after argument, this Senate should come to the conclusion that it was acting here without jurisdiction, this case will be ended, the witnesses will be no longer wanted, and further expense to the State will be suspended. If, on the other hand, the Senate shall conclude that they have jurisdiction in this matter, why, then, we can proceed. But Senators will readily see that we are going to a useless expense and to an unnecessary amount of trouble, if you are going to examine the witnesses who are now present and others that are to come, while we are yet unadvised by the Senate as to the action which they propose to take upon this portion of the answer. The number of witnesses in attendance I do not know; I think the gentlemen have overstated the number. My understanding is that there are some twenty witnesses present, but as to that I am not particularly advised.

Senator POWERS. How long will it take to discuss this question on the part of the managers?

Mr. Manager GOULD. On the part of the managers it will take but a few moments in opening, but argument may be offered on the part of the respondent. Of course, we do not know how long; and the length of our reply to them will be in accordance with the force and amount of the argument which they produce in support of their position.

Senator HINDS. Mr. President, I would like to submit to the court the question as to whether we shall now proceed with these law matters, or with the examination of the witnesses; and in order to have that settled at this time, I move that the managers be requested to proceed at this time with the examination of the witnesses and that the law matters be postponed till a future time.

Senator CASTLE. I second the motion, Mr. President.

The PRESIDENT. It is moved and seconded that the managers be requested to proceed with the examination of witnesses, leaving the law questions to be decided subsequently. Is the Senate ready for the question?

Mr. Manager GOULD. Mr. President, I would suggest, as an order of exercises, whether or no the motion I have made here will be heard and disposed of, or laid upon the table, or some disposition made of it? It is a mere question as to the method of proceeding, but that motion has been

made, and I suppose, on the part of the managers, we have a right t make a motion here; and a motion having been made, I suppose i should first be disposed of.

The PRESIDENT. The chair was not aware that a motion had be made in regard to that matter. Will the reporter please to read th proposition made by Mr. Manager Gould?

The reporter then read the motion of Mr. Manager Gould with refe ence to striking out certain portions of respondent's answer.

Senator HINDS. The proposition is simply to postpone the hearin of that until a future time. We are not to dispose of that now, but t hold it in abeyance until a more convenient time.

The PRESIDENT. While the motion made by Mr. Manager Gould wa properly before the court, it was also proper for a member of the cour to move to postpone its consideration; and such was the purport of th motion made by Senator Hinds. It was a motion to postpone the con sideration of the motion brought up by the learned managers. Th question is upon the motion of Senator Hinds.

Mr. Manager HICKS. Mr. President, one word. It may be very prope for the purpose which the gentleman has named, that this be postponed but it seems to me that we are all working for the same end, and tha this matter should be settled in the speediest manner possible. Now supposing the gentleman's motion obtains here, and the Senate say tha they will postpone these questions for a period of two weeks, and, afte having examined the witnesses, come to the conclusion that you have n jurisdiction, then we must go home; and all this expense has gone fo naught. Now, this objection to the jurisdiction, if you maintain it here or if you decide by your vote that you have no jurisdiction over thi subject-matter, we can pack up our papers and go home and stop the ex pense at once. Not simply the expense of twenty witnesses that may happen to be here, but the expense of forty-one Senators, and the man agers, and the officers of this court can be at once stopped. The mana gers feel that it is due to them that, on behalf of the House of Repre sentatives, which they represent here, if there is a jurisdictional question it should be decided at once; that if you have no jurisdiction here it is bes to go home, and that it is your business to go home, and to go home a once. This question whether we have jurisdiction should first be con sidered. And therefore we hope this matter will be settled now, and, in order that, if the motion should be denied, no more expense will be nec essary. If, in other words, this Senate decides that the objection to the jurisdiction is a valid one, that ends the whole suit, and Senators, wit nesses and officers are at once relieved, and the expense to the State stops.

The PRESIDENT. The Chair would suggest that the Senators are all aware that the jurisdictional question has been raised, and that it is hardly probable that they would vote to postpone the consideration of that question and go on with the examination of the witnesses, if, in their opinion, there were any validity or virtue in the question.

Mr. Manager HICKS. If, upon this question, fourteen Senators shall vote that there is no jurisdiction, then, as I understand, that decides the question. If the minority, fourteen in number,—which constitutes one-third of the whole Senate,—by that vote shall say that you have no jurisdiction, then it will be the duty of the Board of Managers to at once dismiss this proceeding, so far as they have any power, because one-third of the Senate voting that you have no jurisdiction, at once, in

y opinion, ends the case. Because no Senator would so stultify himself upon the floor here as to vote that you have no jurisdiction, and en vote to convict the respondent. It is not possible so to do.

Senator POWERS. Mr. President, I think that the position that is ken by the Board of Managers is clearly and unconditionally correct. at either we have jurisdiction here or we have no business here. And is, in the place of being a legally constituted or organized court, is a rlesque and a farce, and the sooner we know that the better it is; and as just been said it does not require a majority to decide that, because have got to have a two-thirds vote at the winding up of the whole air in order to bring in this respondent guilty. Now, I think that as matter of economy that question had better be settled first, and I agine it will not be a very lengthy or tedious thing to satisfy the nate whether they have jurisdiction or not. I hope that the motion go on with the witnesses will not prevail as long as it is a doubtful estion whether we have jurisdiction here or not. Let us settle that in e first place, and then go on. There is a time coming when we shall through with these interminable law questions, and then we can go and dispose of the case.

Senator HINDS. Mr. President, a decision upon this question, that the nagers propose to submit, would not determine the ultimate idea that e defense have in interposing that clause in their answer. It is there rely to reserve any rights that they may have; striking it out does improve the matter in my estimation at all. It simply calls the attion of the Senate directly to the question as to whether in their opinn they have jurisdiction or not. It determines that in their opinion. s that not already been determined? It seems to me it was determined in the very outset by assuming jurisdiction over the matter. It s broached upon the argument upon the demurrer and it has been ceded upon both sides without again raising it by going on here and amining fifteen witnesses; if it has not been directly determined, it has ctly.

Mr. Manager GOULD. On the part of the managers we are willing to mit our arguments in this matter to thirty minutes in opening and irty minutes upon the part of the defense and thirty minutes in closg; or even less unless the case will develope more strength than I nk it will.

Mr. ALLIS. With the permission of the counsel I desire to make a gestion here; and that is that this motion will not reach the question all, which the counsel seem to have in view. It is a motion to strike t a portion of our answer,—that portion which presents the issue of isdiction. How can this Senate strike out our answer if it is a proper e; if we had a right to interpose it. That disposes of nothing. We can terpose the objection again. The objection to the jurisdiction of this rt can be interposed at any time, from the beginning to the end of e trial, if it has reference to the subject matter. Now of course the nate can say, and the Board of Managers can take it up upon a proper owing, when the Senate pleases to hear it; but to strike out a portion our answer, which we had a right to interpose, reaches nothing. The terposition of the plea of not guilty presents an issue of law, but you not determine it by striking it out, nor has this Senate any right to ike out any portion of our answer, unless it is scandalous or impertint. We have a right to interpose an answer, objecting to the jurisdic- and we have a right to have it remain here.

Mr. Manager GOULD. Mr. President and Senators: No one has di puted that the respondent in this case might interpose an objection the jurisdiction of this court; but if he has a right to put that into h answer, certainly it is competent for this Senate to decide it. And wh the managers want to know is, whether the Senate takes the same vie of the question as the respondent does. If they do, as has been alread suggested, we need go no further. Now, the object of this motion is raise that question here. And now, before we go to any further expen or trouble in this matter, and it seems to me the proper time and t proper stage of the proceeding to have it settled, whether we are acti as a court or merely as a town meeting. I desire further to suggest th the proper time really for the settlement of this question was before t evidence commenced. We did not have the answer of the respondent until we had arrived here for the purpose of trial, and had the witness here in waiting. We had no time to consider it, and now, that the d fense has appeared here, we thought it appropriate that the whole que tion be settled, and the fog and mist that may surround this case, asid from the mere questions of fact, might be brushed away.

Senator ADAMS. Mr. President, I have a resolution to offer which think will dispose of the matter in a few moments.

The PRESIDENT. Senator Adams offers the following resolution.

The clerk then read the resolution as follows:

Resolved, That the Senate, sitting as a court of impeachment, hereb asserts its jurisdiction, and denies the objections raised by the respo dent in relation thereto.

The PRESIDENT. The chair would state that a motion had been mad by Senator Hinds to the effect that the Senate proceed to business to th examination of witnesses. The chair is of the opinion that the resol tion offered by Senator Adams could not be considered while the m tion is pending. The question is upon the motion of Senator Hinds.

Senator WILSON. Mr. President, I would ask Senator Hinds if h would not withdraw his motion and let us take a vote upon this resol tion, which would dispose of the question?

Senator HINDS. I would; I am willing to withdraw it.

Senator D. BUCK. Wouldn't that bring on the very argument that w were talking about before?

Senator CASTLE. That is my idea; it would bring up the matter f argument. For my part, I don't care to sit here with forty or fifty wi nesses, as I understand, behind us, who have come long distances, an perhaps many of them who cannot afford to remain here any longer. trust, Mr. President, that the motion of Senator Hinds will be adopte that we shall go on with the business.

The PRESIDENT. The chair understands that Senator Hinds wit draws his motion.

Senator HINDS. No, sir; I do not, unless the vote is to be taken upo the resolution without argument.

Senator WILSON. That is my understanding, Mr. President. Th managers, as I understand, are willing to submit this matter witho argument. As has been said once or twice, the Senate has already d cided this matter, that they have jurisdiction; and so far as I am co cerned, I want to hear no argument, and I want a vote upon it, and ha it settled now, and settled finally for the purposes of this trial.

The PRESIDENT. If Senator Hinds is willing to withdraw his motio in order that the resolution proposed to be offered by Senator Ada

be submitted, it is a question whether the attorneys on both sides willing we should submit the matter without argument.
enator CAMPBELL. I understand the honorable counsel for the re-ndent would not be willing to submit it without argument.
enator CASTLE. Mr. President, I am not prepared to vote here with-argument. I would like to have some time taken when we are not sed with witnesses behind us. It seems to me that we should pt the motion of the Senator from Scott, [Senator Hinds], and let us along with the business.
he PRESIDENT. Does the Senator from Scott withdraw his motion?
enator HINDS. I insist upon my motion.
he PRESIDENT. The motion of Senator Hinds is before the Senate. he Senate ready for the question.
he ayes and nays were then ordered.
he PRESIDENT. The motion is that the managers proceed to the ex-ination of witnesses. The roll will be called.
he Clerk then called the roll. When the name of Senator Adams called he arose and explained his vote.
enator ADAMS. In explanation of my vote on this question I desire ay that as long as this question of jurisdiction remains undetermined implication could be cast on the Senate as acting without authority law; and certainly if in the end the objection of the counsel for the pondent should be sustained, it would place the members of this Sen-in a very peculiar position before the people of this State. Now let take the question of jurisdiction first, as that is a most important stion connected with the sittings of this court; and after that pro-d with the testimony until the final disposition of this case. I vote ."
The roll having been called.
he PRESIDENT. Upon the motion of Senator Hinds there were yeas, teen and nays twelve; so the motion prevails.

S. W. LONG,

called as a witness testified:
Mr. ARCTANDER. I would ask the President before proceeding th the examination, for a subpœna, *duces tecum*, for Mr. S. H. Nichols, Clerk of the Supreme Court, to bring with him the original peremp-y writ of mandamus in the case of the State of Minnesota, *ex rel.*, S. Long against E. St. Julien Cox, judge of the ninth judicial district, hat it can be identified by the witness. I don't suppose we have any ht to bring the Supreme Court records here except upon such a sub-ena.
The subpœna was then duly issued.
Mr. ARCTANDER. I am just informed by a gentleman that Mr. Nich-has gone away home, almost a mile and a half away, and that the ice of the Clerk of the Supreme Court is locked up. I would suggest the President whether this witnesses could be put aside to be cross-amined to-morrow morning, and in the meantime we could have Mr. ichols here with the original writ.
Mr. Manager HICKS. Perhaps we will admit what you want.
Mr. ARCTANDER. We desire to have the witness identify the orig-al writ of mandamus that he served upon Judge Cox at the time when e signature to this paper, [exhibit No. 1.] was obtained, and to show

by him that that was the writ that he served upon him immediately
fore Judge Cox placed his signature upon this writ and offer the writ
a certified copy of it as a part of the cross-examination of the witne
Mr. Manager HICKS. In the case to which the gentleman alludes
managers will admit that the peremptory writ of mandamus has b
filed in the office of the clerk of the supreme court, is the writ which
Long served upon the respondent at that time; and you can produce
at any future time you choose; that the original is the one he had,
though there is nothing on it that shows that Mr. Long produced
But we will admit that; and you can produce the writ at any time
part of the cross-examination of the witness. There is no dispute ab
it—we will admit it.
Mr. ARCTANDER. That will be satisfactory to the respondent's coun

CROSS-EXAMINATION

Q. By Mr. ARCTANDER. Mr. Long, when you came up there to
Peter—in October, 1879—you can't state what time it was, you say?
A. What time?
Q. Yes. A. It was in October. That is all I can tell.
Q. That is as near as you can come to it? A. Yes.
Q. When you came there what did you have with you?
A. I had a paper, to get Mr. Cox's signature to it.
Q. You had this paper with you, did you? A. Yes, sir.
Q. A copy?
A. A copy of that; I think I served a copy. I could not say as it
one of *them;* I think it was.
Q. Isn't it a fact that you had the original writ of mandamus wh
you delivered to Judge Cox with you, and that you served that on h
then and there?
A. I think I did.
Q. And that you had this paper with you, being the case that
attorneys had stipulated upon?
A. The attorney that sent me told me that he wanted to get his sig
ture on that paper.
Q. To leave with Judge Cox the other paper? A. I think so.
Q. Now, it was not a certified copy you left with Judge Cox but
original writ of mandamus, was it not?
A. I couldn't tell you as to that, because I didn't,—
Q. Didn't it have a great big golden seal on it?
A. I never looked at them.
Q. They were done up?
A. I carried them in my pocket.
Q. You didn't know which paper you should have back and wh
you should leave?
Mr. Manager COLLINS. Now, Mr. President, that is wholly imma
rial testimony.
Mr. ARCTANDER. I wan't to show this respondent knows
about it.
Mr. Manager COLLINS. It don't make any difference if Mr. Long d
not understand it, it does not make any difference about the respond
being drunk there.
Mr. ARCTANDER. I think this is proper cross-examination. It wo
be in any court, and I flatter myself I know what is proper and what

proper cross-examination. Now, it is claimed here that the Judge he ninth judicial district, when this paper was served upon him, when he made this signature to the case (which is the paper they e here) was intoxicated so that he did not know what he was doing. article charges that he was obliged to, and should as Judge certify approve or disapprove of certain matters and things, and that he , on account of his intoxication, unable to approve and certify to e matters, in a proper manner. Now, the witness has already testi- that the Judge did not seem to know anything about this thing, or d to draw that inference. Now, I claim it is perfectly competent us to show that the Judge was not in that condition,—to show by this ess that he himself did not know anything about this paper and : he had the wrong paper with him, for all he knew, but that the ge was in his senses,—to rebut any presumption of a state of intox- ion which disqualified him from attending to his business, to show t the Judge told this witness what paper he should have with him. ink it is proper cross-examination; we intend to follow it up here and how that this witness did not know anything about it and then the ge told him.

he PRESIDENT. The Chair thinks it proper for the witness to answer question.

Q. As a matter of fact you did not know which paper you should e with Judge Cox, and which one you should get back?

A. Yes, I did.

Q. You did? A. Yes.

Q. You say you don't know what paper you left with him? You n't know whether it was this or the other, do you?

A. Yes, sir; I know that is the one the lawyer told me to get his sig- ture to; and that there was a certified copy to give to him.

Q. Of this paper here? A. No, sir.

Q. A certified copy of what?

A. A certified copy of that paper.

Q. Are you sure of that? A. Yes, sir.

Q. Just as sure of that as of anything you have sworn to?

A. Yes, sir. That is I don't know that the whole of it was there, it ght not have been all attached together at that time I couldn't say.

The PRESIDENT. The Chair is of the opinion; that that last question not a proper question to ask.

Senator D. BUCK here took the Chair to act as President *pro tem.*

Q. Now, when you met Judge Cox, did he not say, just as soon you met him, "Ah, ha! You are up here with a writ of God-damn-us w, are you?" Isn't that what he said?

A. Yes. He said, when I told him my business,—what I wanted,— took the paper and looked at it an said: "Ah! a God-damn-us" or a lamn-a-ram-us," or something of that kind.

Q. Didn't he say mandamus? A. I think not.

Q. You wouldn't swear that he didn't say mandamus?

A. He nicknamed it.

Q. Did he say to you that he understood what it was, after looking over?

A. He!

Q. Yes!

A. Well he appeared to understand what it was and he says "a writ [illegible]"

Q. Well—

Mr. Manager COLLINS. Hold on; let the witness answer.

Mr. ARCTANDER. We are willing to get it all.

The WITNESS. "A writ of mandamus-God-damn-us." he said; "That is some of that boy's work," he said.

Q. Now what did you say to him next?

A. I told him I wanted to get his signature to it.

Q. To what,—To the "God-damn-us?" What did you want to get his signature to?

A. I wanted to get the signature on the order,—on the mandamus.

Q. On the mandamus? A. Yes, sir.

Q. Well, he told you then, did he not, that he would not sign any papers that day?

A. Yes, he did.

Q. He said he wouldn't sign it, wasn't that what he said?

A. No, I think not. He might have said "that day." He said "I am not signing any such papers."

Q. Didn't you testify upon direct examination that he said he wouldn't sign anything,—"anything that day?" Didn't you use that language?

A. I don't think I did.

Q. Wasn't that what you testified to in the direct examination?

A. I might have said that, but I had reference to that paper.

Q. Very well. He used those words,—"that day," did he not, that he would not do it on "that day?" or that particular time?

A. Yes.

Q. Didn't he give you the reason why he couldn't sign it that day?

A. No, sir; he did not.

Q. You are sure of that?

A. Yes, sir.

Q. Didn't he say to you at the time that he was under the influence of liquor, and therefore did not want to sign any papers that day?

A. No, sir.

Q. He did not? A. No.

Q. But he told you he did not want to sign any papers that day?

A. He told me "he wa' n't a-signing any papers to-day."

Q. That is it,—"he wasn't signing any papers to-day." Now, you talked to him there for quite awhile?

A. I talked with him quite awhile, probably half an hour at that time.

Q. Where was this?

A. He was right on the stoop of a hotel or saloon. There was a saloon inside; it was called a hotel in St. Peter.

Q. That mandamus you delivered to him, didn't you—you served it on him?

A. There is where I first—

Q. Now, what did you say to him when you talked with him for about half an hour. Did you tell him you were anxious to get off that day, and did not want to wait until the next day?

A. Yes, sir; I told him I wanted to get home, and I did not want to come over again, and I would like to have him sign it.

Q. But he said he wouldn't?

A. He said he wouldn't, yes.

Q. Now, isn't it a fact,—(I think probably you so testified,) that you

went to Mr. Lamberton, and got him with you to hunt up Judge Cox afterwards?

A. I went to Mr. Lamberton after that, some time after. Somebody told me they thought perhaps Mr. Lamberton—

Q. Never mind what somebody told you; you went and got Mr. Lamberton, and Mr. Lamberton went with you to the Judge, did he?

A. Yes, sir; he got Mr. Cox to go into his store.

Q. What conversation occurred in there?

A. Mr. Lamberton told him that he had better sign the papers, and he wanted Mr. Lamberton to look them over and see if they were all right.

Q. He wanted him to read them to him, didn't he?

A. Yes, he did.

Q. Isn't that the fact, that he asked Mr. Lamberton to read that writ of mandamus for him?

A. He read a part of them; he read that order in it, I think.

Q. He read the order, or a part of it?

A. Yes, sir; the last part, and he—

Q. Then didn't Jack Lamberton—

Mr. Manager HICKS. Wait a moment, the witness has not got through.

Mr. ARCTANDER. Well, he has answered my question.

The WITNESS. Mr. Lamberton told him it was all right, and for him to sign them.

Q. Aren't you mistaken, now,—didn't Mr. Lamberton ask the Judge whether or not that paper was such as it had to be signed that day, or had to be signed immediately?

A. No, sir.

Q. Didn't he? A. No, sir.

Q. Are you sure of that? A. Yes, sir; I am sure of it.

Q. But Mr. Lamberton told him he had better sign it?

A. Yes, sir.

Q. And Judge Cox told him that "he wasn't signing it that day," did he?

A. He first said,—well he said "if you say it is all right I will sign it;" and he told him it was, and handed him a pen and the paper for him to sign it; and then he hesitated and threw it down, and said, no; "he hain't signing any papers to-day; he would be d—d if he would sign it," and Mr. Lamberton said "I will be d—d if you ain't going to sign it," or something like that. "You *shall* sign it."

Q. Then, after a while, the Judge signed it, did he? A. Yes, sir.

Q. He studied upon it a while before he signed it?

A. Well, he throwed the paper back to Mr. Lamberton.

Q. And then he picked it up again?

A. Yes, he handed it back. He stood at one side of the counter in his store and Mr. Lamberton on the other. He passed it over to him and told him to sign it, and gave him a pen and he wrote his name on it.

Q. How many times did he write his name?

A. Once; that is all I seen him.

Q. Didn't he write his name to more than one paper?

A. I didn't see him.

Q. Isn't it a fact that you had with you a copy of that mandamus, and that he acknowledged service on that copy that you had with you?

A. I said I handed him a copy.

Q. I thought you said you handed him a copy. I guess you didn't do that. You handed him the *original*, very likely, because that is what you should do. Now, hadn't you a copy with you upon which he acknowledged service?

A. I said I had a copy.

Q. Hadn't you a copy besides this thing here? Hadn't you more than one paper? A. Yes, sir.

Q. How many did you have? A. Why, I had the two.

Q. You had two; that is all you had, is it?

A. I had two—the original and copy.

Q. Well, now, you don't know whether you had an original or a copy, do you? You didn't look and compare and see if they were the same papers?

A. I am not a judge of that; I didn't read the papers.

R. So you don't know whether it was a copy or not, or whether it was two different papers?

A. I have served a good many papers which the lawyers have given me; he told me one was the copy and the other the original.

Q. Was the writ of mandamus and the other papers all together.

A. I didn't open the papers; I didn't see them open until I got there.

Q. He opened it, did he?

A. The lawyer told me what he wanted done.

Q. Now, when you handed it to Judge Cox, was all the papers in one envelope?

A. In one package. The two were put together; each one was doubled separately.

Q. But they were both in the same envelope and you handed him the whole envelope did you?

A. No, sir; I guess not; I took them out.

Q. Did you hand them both to him at the same time.

A. I don't know whether I did or not; I know that is the paper I got his signature to.

Q. Now, I want to be certain about this, as to whether what you served on Judge Cox was a certified copy or was the original writ of mandamus?

A. I served the certified copy on him.

Q. Did you look at it to see whether it was a certified copy or not?

A. No, sir; I didn't.

Q. Then you don't know whether it was a certified copy or not?

A. I didn't know by the looks, only the lawyer told me which was which.

Q. Which you should give to him, and which you should get back?

A. Yes, sir.

Q. Now, that other paper was it just one sheet, or a few sheets?

A. I couldn't tell you, sir; I had no thoughts of ever having my attention called to it again.

Mr. ARCTANDER, to Mr. Manager Collins. I suppose your admission covers the service of the original writ of mandamus does it not?

Mr. Manager COLLINS. Well, yes. That is the provision of the statute, you know.

Mr. Manager HICKS. The facts were that the original mandamus was

left with Judge Cox, and this paper was taken back. We admit that fact. There never was any return made. Judge Cox signed that afterwards, as the writing will show. The other signature is sober.

Mr. ARCTANDER, to Mr. Manager HICKS. The original was returned by Judge Cox.

Mr. Manager HICKS. Yes.

Mr. ARCTANDER. This copy should have been returned by the sheriff?

Mr. Manager HICKS. Yes, sir; but we are not trying the sheriff here.

By Mr. ARCTANDER. At this time Judge Cox walked straight, did he not?

A. Not very straight.

Q. Did he stagger! A. Some.

Q. You saw him walk did you? A. Yes, sir.

Q. Did he take you by the arm and walk, with you when he went down?

A. I don't know; we might have walked arm in arm; I don't recollect.

Q. Now, Mr. Long you had some feeling towards Judge Cox, because he wouldn't certify that case of yours to the supreme court, did you not?

A. No, sir.

Q. You did not? A. Ne, sir.

Q. Never had a bit of feeling, at all?

A. No, sir, no hard feelings.

Q. Don't have any now?

A. I have always been a friend to Mr. Cox.

Q. You havn't known him long, have you?

A. I have known him twenty years.

Q. Where have you lived before you lived in Wasecа?

A. In Wasecа county.

Q. How many times had you seen Judge Cox during those twenty years?

A. Since I lived there.

Q. How many times had you seen him during those twenty years, two or three, or three or four times?

A. I have probably seen him,—do you mean since I have lived in the county?

Q. No, during those twenty years?

A. I couldn't tell you; I've seen him a good many times.

Q. He isn't an intimate acquaintance of yours, is he?

A. No, sir; no intimate acquaintance; I have known him about ever since I have been in the country, that is by sight.

Q. You know him by sight?

A. Yes, I used to go to St. Peter frequently when he was practicing law.

Q. Now, did Mr. Lamberton or Mr. Cox use any language to each other at the time you were in there, and they were together in your presence, except what you have testified to now; did they speak of anything else? A. I did'n't understand you.

Q. Did the Judge and Mr. Lamberton talk any together in your presence except what you have testified to now?

A. I don't recollect anything. They talked back and forth. I am a little deaf, and they might have had talk that I didn't hear.

Q. You might be mistaken in some of this too, as deaf as you are, unless they talked pretty loud?

A. No, sir, I am not mistaken in anything on that.

Q. How near were you to them when they talked?

A. I couldn't tell you; I dont remember, I stood in the store and Mr. Lamberton was leaning over the counter at the desk.

Q. If you didn't stand right close by you couldn't hear an ordinary tone of conversation?

A. Yes, sir, I could. I could hear most of the conversation they had. They talked pretty plain and loud on both sides.

RE-DIRECT EXAMINATION.

By Mr. Manager COLLINS. Paper shown witness.

Q. As I understand it you went up to St. Peter to get the Judge to certify to this paper? A. Yes, sir.

Q. And this is the one he did certify to? A. Yes, sir.

Q. And you brought that back? A. Yes, sir.

Q. You had other papers which you were to serve as directed by the attorney?

A. Yes, sir.

Q. One you left with him?

A. I left one with him, a certified copy.

Q. Now, when you handed the papers that were given you by the attorney to Judge Cox, what did he do with them, if anything, or what did he do with these papers, if anything?

A. He throwed it down on the sidewalk.

Q. Threw down the papers on the sidewalk?

A. This one; said he wouldn't sign it.

Q. And then afterwards he was persuaded to sign it?

A. I picked it up, told him he needn't throw it away if he wouldn't sign it; that I would like to have him sign it that day, as I wouldn't like to come over again.

Q. Now, he took this paper and threw it down on the sidewalk and you picked it up?

A. Yes. I had the conversation while it was in his hands—something—but he threw it down pretty soon after I gave it to him.

Q. Now, the counsel has questioned you about this being your case. This was a case brought against you as a sheriff, was it not?

A. Yes, sir.

Q. It was not a case that you were interested in except as an officer?

A. No; nothing except as an officer. I was interested, however, in the case.

Q. It was an action brought against you as an officer for duty performed by you as an officer?

A. Yes, sir. It was claimed to be a wrong duty.

RECROSS-EXAMINATION.

By Mr. ARCTANDER.

Q. You were deputy sheriff, were you, at the time you were sued on this?

A. I was deputy sheriff at the time.

Q. At the time you made the levy that the suit was about?

A. No, sir; I was sheriff.
Q. You were sheriff at the time? A. Yes, sir.
Q. Isn't it a fact that you didn't have any bond at that time, and had pay the whole amount of the judgment yourself?
A. Yes, sir; it is.
Q. You were a good deal interested in it then, wasn't you?
A. I was somewhat interested, of course.
Q. Now, Mr. Long, might you not have been mistaken,—you saw se papers on the sidewalk, did you?
A. Yes, sir.
Q. How far from Judge Cox?
A. Oh, he throwed them right down at his feet.
Q. Now isn't it a fact that he lost it, instead of throwing it as you ?
A. No, sir.
Q. That he lost it out of his hand?
A. No. I picked it up myself.
Q. Yes; but isn't it a fact that it fell from his hand,—that he didn't ow it away?
A. No, sir, he *throwed* it.
Q. You are certain about that?
A. I *be* certain about that.

A. J. LAMBERTON.

orn on behalf of the State, testified:

DIRECT EXAMINATION.

By Mr. Manager COLLINS.
Q. Mr. Lamberton, where do you reside?
A. St. Peter, Nicollet county, Minnesota.
A. How long have you lived there?
Senator HINDS. To what article does this testimony refer?
Mr. Manager COLLINS. The first part of the testimony relates to arti- four.
The WITNESS. Twenty-three years.
Q. Are you acquainted with the respondent, Judge Cox, and if so, what length of time have you known him?
A. I am; for upwards of twenty years.
Q. Now, during your residence in St. Peter have you attended terms court there held by him? A. Occasionally.
Q. Were you present at a term of court, or rather at some business nacted by him as a Judge, on or about August 5th, 1879, in which e case of Brown against the Winona & St. Peter Railroad Company s under consideration?
A. I can't fix the date. I was present when there was some business ne in the case of Brown against the Winona & St. Peter Railroad Co. now it was over two years ago.
Q. Whereabouts was that business—whereabouts in St. Peter?
A. In the parlor of the Nicollet House.
Q. Who was present beside Judge Cox and yourself?

A. Judge Wilson, of Winona; Mr. Pierce, of St. Paul; Mr. Webb of New Ulm; and Mr. Thompson, of Sleepy Eye.

Q. Will you state now what transpired there?

A. I went into the room; they were all sitting at the table. M Thompson was sitting back near the window; Judge Cox was sitting the head of the table; Mr. Pierce and Mr. Webber, on one side, a Judge Wilson on the other. They were discussing some matters abo making up a case.

Q. Well, go on, and state what took place there, further.

A. Well, there was considerable sparring between Judge Wilson a Mr. Pierce,—some pretty rough talk. Mr. Pierce was a little the roug est, but Judge Wilson's was about as sharp with the corners took o Judge Cox was not paying much attention to what they were doing, a he was making facetious remarks occasionally, and jabbering away li a parrot.

Q. You say Judge Cox did not pay much attention to what w done, but was making facetious remarks, and jabbering away like parrot?

A. There was nothing that he had to decide.

Q. Will you state his condition at that time as to sobriety or i ebriety?

A. He was considerably under the influence of liquor.

Q. At the time that you speak of?

A. He was sitting at the head of the table. I don't remember of se ing him at all that day before I went into the room.

Q. But he was considerably under the influence of liquor?

A. I judged so.

Q. Now, why did you?

A. It was more from his conversation than anything else.

Q. Do you know how long they stayed there?

A, Probably an hour.

Q. Did you stay as long as they?

A. I think I did. I don't know how long they had been there whe I went in.

Q. Do you know whether they finished the business that they ha under consideration or not?

A.. They adjourned until after dinner.

Q. And then what took place? A. I didn't go back.

Q. But during this time Judge Cox in your opinion, was under th influence of liquor?

A. Yes, sir.

Q. Considerably?

A. Yes, sir; not so much so as I have seen him at other times.

Q. Now, Mr. Lamberton, did you at that time say anything to th court yourself?

A. I whispered to the Judge to keep his mouth shut.

Q. It was necessary was it?

A. Well, I thought he wouldn't show his condition as forcibly if h didn't say anything.

Q. Please speak a little louder?

A. I say I thought his condition would not be so apparent if h kept his mouth shut as it would if he kept on talking. I will go on an say that the only part I saw Judge Cox take in the matter was at abou the winding up before they adjourned. They referred the papers to hi

something about his charge. Pierce and Webber were claiming it one way and Judge Wilson had it another; that was about the

Now, about what time in those proceedings did you make that remark to the Judge?

Oh, I had probably been in there fifteen or twenty minutes.

Some time then before they got through?

Yes, sir; but they went right along.

CROSS-EXAMINATION.

By Mr. ARCTANDER.

Well, you were there when they adjourned?

That is my recollection.

And there had been some business transacted before you came in?

They were at the table when I came in.

As a matter of fact they were disputing among themselves; that they were trying to settle and agree between themselves. There was hing submitted to Judge Cox?

There was nothing I heard him take any part in. There was hing presented to him except with reference to this matter of the rge.

He was sitting there with nothing to do, and he was making some es, was he?

I don't know; he didn't appear to be addressing his remarks to body in particular.

Nor to the crowd, generally?

No; I couldn't say they had any application to anything that was ng on there.

Now, did it have any application to the business that was going ?

Well, the others were busily engaged jangling over the phraseol- of the papers.

Do you remember what the Judge said?

No, sir; I don't.

You don't remember the nature of the remarks?

I don't—

Except that you thought it had no application to the case?

Mr. Manager COLLINS. Now, I don't like this way of shutting the ness off; he stopped him right in the middle of his answer by a ques- n.

Mr. ARCTANDER. I don't think I examine unfairly.

The PRESIDENT *pro tem.* The Chair will see to that if there is any- ng wrong.

Senator BROOKS. I would say that it is necessary for the witness to ak louder.

The PRESIDENT *pro tem.* Those in the lobby will please keep quiet.

Mr. ARCTANDER. Isn't it a fact that the Judge was making jokes?

They may have been intended for jokes; I didn't realize it in the ndition he was in.

Well, as a matter of fact, you don't remember now what it was?

No, sir; it is only the impression that it had at that time, that remarks were entirely out of place.

But as a matter of fact at the time that he made his remarks, he nothing to do but to sit there and look wise, did he?

A. Well, I don't know whether he did or not. The lawyers were discussing matters between themselves. He wasn't called for any discussion.

Q. Now, do you remember of the Judge saying, when they commenced to quarrel and calling each other names and using other nice and appropriate epithets towards each other, whether the Judge didn't get mad and say that he didn't want to go on with it any longer if they did not behave themselves?

A. Nothing of that kind to my recollection.

Q. It might have happened and you not recollect it though?

A. No, I don't think it could while I was there.

Q. Don't you remember that the Judge said he had had enough of their quarrels in the trial at New Ulm, and that he was not going to stand it any longer?

A. No, sir; I don't remember it.

Q. Now, when this question was submitted to him he did not decide that then and there, did he—that is, at least just at the adjournment?

A. He would not admit that that was the words in his charge; he said he didn't know.

Q. Didn't he say at the time that he had the charge in writing and that he would consult that before he did decide?

A. Not to my recollection.

Q. He might have said it though?

A. Well, I heard all that was said and I have no recollection of that.

Q. But he said he didn't know whether that was the charge or not?

A. He didn't decide it there.

Q. You was there until they broke up, until they left?

A. I believe I was.

Q. Isn't it a fact that the Judge took the papers?

A. I don't remember that; I remember saying to Judge Wilson that I thought after he got his dinner he would be in condition to go on with the case.

Q. You saw nothing from any action or ruling of his there that showed that he could not follow or understand what they said, to use his judgment. I understand you to say, that he did nothing there as a matter of fact?

A. He didn't make any ruling there that I heard.

Q. Now, isn't it a fact—I don't know whether you remember distinctly, but you probably do—that this occurred right before the breaking up? Judge Wilson wanted to saddle a certain request onto the plaintiffs' attorneys, Mr. Pierce and Mr. Webber, that they had asked the Court to give certain requests, and that they claimed that they didn't do any such thing, and that that created a good deal of ill-feeling between them; do you remember?

A. There was some discussion about them making a request, and afterwards Judge Wilson rather admitted that it might have been in the Judge's charge without a request.

Q. Isn't it a fact that after they had denied it so strenuously he said he would take back that portion that they had requested him to do, but that the judge had charged it upon his own motion, and that then the Judge got mad and said he would not admit he had charged any such thing, before he had examined his charge?

A. I don't remember of his saying anything about his examining his charge.

Q. Or that he had his charge at all? There was a good deal of bad feeling exhibited between Judge Wilson, Mr. Webber and Mr. Pierce and a good deal of talk?

A. The Judge did not participate in that at all.

Q. In fact all that he said or addressed to counsel in the matter was simply that he would not admit that he had charged that?

A. It was something in the wording of the papers; he would not admit that he had made that charge; that is my recollection. There was nothing to call it to my attention until this thing came up, and it has been sometime ago and I don't pretend to remember the minutia of it at all.

The PRESIDENT *pro tem.* You stated here that he was under the influence of liquor. I wish you would state whether in your opinion he was drunk or sober at that time?

A. Well, I would say he was intoxicated; drunk.

Mr. Manager COLLINS:

Q. You say you spoke to him. Now, after you spoke to him, did he keep still?

A. No, sir.

Q. The counsel said to you in his cross-examination that the Judge got mad during this affair. Did he get mad?

A. I don't recollect of him getting mad.

Q. And he also said that the Judge wouldn't admit that he had made a certain charge. Now, did he make any ruling on that at all?

A. Oh, they had some talk over it; there was no ruling, I think. I think they left it just standing there. He would not admit that he made it, ner would he say he did make it. He wouldn't admit that that was his language.

Q. Did he say that it was his language?

A. No; and he didn't say it was not. It was in that shape when they adjourned.

Mr. ARCTANDER.

Q. The fact of it was that Judge Wilson wanted that in his case, did he not, and the Judge wouldn't allow it?

A. It was in Judge Wilson's papers, I believe.

Q. Judge Wilson wanted that in his settled case?

A. They didn't agree whether it would be allowed or not; that quit at that.

Q. Mr. Pierce and Mr. Webber would not admit it, and the Judge insisted upon it, and Judge Cox wouldn't decide one way or the other. He said he couldn't tell whether he did charge that or not?

A. That is my recollection of it. I supposed they were going to settle that in the afternoon when they came together.

Mr. Manager COLLINS.

Q. Did you hear Judge Wilson's testimony here the other day?

A. No, sir.

Q. Did you hear Mr. Pierce's? A. I believe I did.

Q. Did you hear Mr. Webber's?

A. I heard a good portion of it.

Q. Now, did they testify about this same affair?

A. They did; well, I don't know about Judge Wilson, for I didn't

hear him. Mr. Webber and Mr. Pierce did. It was the case of Brown against the Winona & St. Peter Railroad Company.

Mr. Manager COLLINS. We now direct our testimony to article five.

Q. Mr. Lamberton, did you hear the testimony of the last witness, sheriff Long? A. Yes, sir.

Q. Will you state what you know about that affair, if anything?

A. Mr. Long came to me and told me he had some papers to serve on Judge Cox; that he was drunk, and he coldn't get him to accept service. I asked him what they were. He asked if I couldn't get him to do it.

Mr. ARCTANDER. We object to what Mr. Long said.

The PRESIDENT *pro tem.* The objection will be sustained so far as what he said.

Mr. Manager COLLINS. State what you did.

A. I went and got Mr. Cox; I don't remember where I got him, and brought him to the store.

Q. To your store?

A. I brought him to my store to get him to sign these papers for Mr. Long.

Q. Now, who was present in the store?

A. I don't remember of anybody but Mr. Cox and myself, and Mr. Long; my clerks were probably there.

Q. Now state what was said and done there at the store?

A. I don't recollect what I did say. The Judge refused to sign the papers, and I was very emphatic in insisting that he should; I don't remember what I said to him.

Q. He refused to sign the papers and you insisted that he should?

A. I insisted very strenuously that he should.

Q. Did he sign the paper.

A. He signed a paper that Mr. Long handed to me, [Exhibit No. 1. shown witness.]

Q. Look at that?

A. That is the paper that was signed at that time.

Mr. Manager COLLINS. We now offer this paper, Exhibit No. 1, in evidence.

Mr. ARCTANDER. You don't care to have the whole of it go on record.

Mr. Manager COLLINS. Oh, no.

Mr. ARCTANDER. We probably could agree upon it, that it was a case stipulated by the attorneys.

Mr. Manager COLLINS. It is a case on motion for new trial in Albricht & Co., against S. W. Long, and others; upon a motion for a new trial.

Mr ARCTANDER. We will stipulate and admit that it is the paper; it has the signature, but I suppose you won't offer anything but—

Mr. Manager COLLINS. The signature and just what follows it.

Mr. ARCTANDER. We will admit that this paper here (without letting it go on record) contains that certificate; that that is the case referred to in the writ of mandamus which is considered to be in evidence already, is the case stipulated to by the attorneys; it is Ernest Albright and others against Seth W. Long and others; and that it was the identical paper that the respondent was asked to sign.

Mr. Manager COLLINS. I find below this signature, Mr. Lamberton, some writing there. Will you state in whose handwriting it is?

A. That is my writing.

Q. Just read what you wrote there.
A. "Judge of the 9th Judicial District of Minnesota, acting as Judge of the Fifth Judicial District of the State of Minnesota."
Q. Now, you wrote that yourself? A. I wrote that.
Q. State how you came to write it.

Mr. ARCTANDER. That we object to as immaterial.
The PRESIDENT *pro tem.* The chair is of the opinion that it is material.
The WITNESS. He was so much intoxicated that he could not write; that is the reason I wrote it.
Q. He signed his name here and then you added this designation?
A. Yes, sir. But still, I will say I think he told me what to write.
Q. You think he told you what to write?
A. I think he told me what to write.
Q. Now, Mr. Lamberton, was he drunk or sober at that time?
A. He was very much intoxicated that day, at that time.
Q. I understood you to say that you do not remember where you found him. Do you remember where you found Judge Cox that day?
A. I have an impression where I found him, but no distinct recollection.
Mr. ARCTANDER. We object to impressions.
The WITNESS. I can't say positively where I did find him.
Q. Can you say where you think you found him?
Mr. ARCTANDER. We object to that as incompetent.
Mr. Manager COLLINS. That is certainly proper.
The PRESIDENT *pro tem.* I think he has a right to say where he found him; to give his best recollection.
The WITNESS. It it is my impression that I found him at Fritzner's saloon, or at a saloon down the street.
Q. And you brought him from there up to your store?
A. I am not positive about this thing. I went down the street somewhere to get him.
Q. I believe you stated that the Judge first refused to sign that paper?
A. I want to say my recollection is not distinct about where I found him.
Mr. Manager HICKS. That is, simply as to where you found him, it is not distinct?
A. Yes, sir; that is the only part.
Mr. Manager COLLINS. You said he refused to sign it?
A. He re used to sign it. He said he wouldn't sign .t.
Q. Now, give us the language he used, as near as you can.
A. Well, I can't remember; there was nothing I charged my memory with in regard to it. It would be only the prominent parts of it I recollect.
Q. Well, give us that.
A. Well, he said if I said it was all right he would sign it. I told him it was right, and that he ought to sign it. He appeared to know what it was, though.
Q. Were there any other papers besides this that you saw?
A. Yes. There was a paper that he put in his pocket.
Q. Do you know the nature of it? A. No, sir; I don't.
Mr. Manager COLLINS (to Mr. Arctander). You may take the witness.
Mr. ARCTANDER. Now——
The WITNESS (interrupting). Probably I did at the time know what

it was. I looked at the papers in Mr. Long's hands, but did not look at them at the time they were delivered.

CROSS-EXAMINATON.

By Mr. ARCTANDER.

Q. Now, Mr. Lamberton, at this time you say that the Judge seemed to know perfectly well what the papers were about and what his business was with him?

A. My recollection is he appeared to know it was a writ of madamus.

Q. He knew it was a writ of mandamus and knew that that was a case that should be signed. You did not point out to him where he should put his signtaure, he knew where to put that, himself?

A. Yes, sir.

Q. And that was on this case. On the case he wrote the name himself, found the place himself and wrote it, and then after he had written it he asked you to write this title did he not?

(No answer.)

Q. What you wrote there afterwards he dictated to you?

A. I asked him what I should put there.

Q. And he dictated it to you didn't he?

A. He told me what to write.

Q. At the time when you found him was he so that he staggered?

A. I *never* saw him stagger.

Q. Did he stagger at that time?

A. Not to my recollection, and I have no recollection of ever seeing him staggar.

Q. Mr. Long went with you when you went for him?

A. I don't remember. It all occurred in a few moments. I don't remember whether Mr. Long went with me when I got him or not.

Q. Well, if the Judge had been so drunk that he staggerd when Mr. Long came up and saw him there and then Mr. Lang went into your store, could he in the meantime, have so sobered off that he didn't stagger any more?

Mr. Manager COLLINS. Hold on a minute. We object to that.

The PRESIDENT *pro tem.* That is very objectionable.

Mr. ARCTANDER. All right; we don't care very much about it.

The PRESIDENT *pro tem.* That is undertaking to make an expert out of the witness.

Q. Do you know how long a time it was after Mr. Long stepped into your store that you went and found Judge Cox?

A. The whole thing was only a few minutes.

Q. A few moments after Mr. Long came into your store you went and fonnd Judge Cox?

A. I immediately got Judge Cox.

Q. Now, the Judge did not ask you, whether or not it was right for him to sign it as a legal opinion?

A. No, I don't know as he did; I don't think he asked it as my opinion, if you say it is a proper thing to sign, I will sign it. He did not ask me for a legal opinion; he simply said if I said it was right he would sign it; and I told him it was right and that he ought to sign it.

Q. Isn't it a fact that immediately before that he had stated to you that he would not sign that paper, because he didn't think he was in a

condition to sign any paper that day, and that it was in reference to that as to whether you thought it was right for him under the circumstances and in the condition he was to sign the paper that he asked you that question?

Q. Oh, I thought it was drunken talk; that is what I thought.

Q. You thought he knew all the time what he was about?

A. Yes, I think he knows what he is saying always when he is drunk. But he says a great many mean things when he is drunk that he wouldn't say when he was sober.

Q. But here he seemed to know what he had to do as to finding the place to sign, did he not?

A. I have no recollection about that; I remember of handing him the pen to sign it.

Q. Would you know enough to know where he had to sign?

A. Well, I would know pretty well where he had to sign it, if I read it; but still I have no recollection of showing him where to sign.

Q. After he came in there did he throw the papers down?

Mr. Manager COLLINS. There is no testimony of that kind.

Mr. ARCTANDER. Why your first witness swore to that.

Mr. Manager COLLINS. Our witness swore that he threw it down on the sidewalk.

Mr. ARCTANDER. The witness said that he threw the paper over to Mr. Lamberton.

The WITNESS. Oh, well there was some little skirmishing around before he signed it, but I don't remember just what it was.

Q. You don't remember the fact that he threw the paper over back to you, do you?

A. No, I—

Q. You are a brother of Hon. H. W. Lamberton, are you not?

A. I am, sir.

Q. The present, and for a number of years, the Land Commissioner of the Winona & St. Peter Railroad Co.?

A. Yes, sir.

Q. Is it not a fact, Mr. Lamberton, that you have always taken an interest in the suits and proceedings in court concerning that railroad company in Nicollet county?

A. I never have, sir.

Q. Have you not always been around whenever they had any business?

A. Not that I remember of.

Q. And helped to challenge jurors, etc.

A. Not that I remember,—yes, I have, too,—not of the Land Company though; I havn't known of any suits of the Land Company.

Q. No, I mean the railroad company?

A. Well, the land company is a different institution from the railroad company.

Q. It is the same road, is it not?

A. No; a different institution altogether. The lands are owned by the Barneys, and the railroads are owned by the Northwestern Company. Not even the same employment.

Q. It is a fact then is it not that the railroad company has had suits there, and that you have taken an interest in their behalf and helped them to challenge jurors, etc.

A. I have. It was always by request of Judge Wilson, or Judg Mitchell when he was a practicing attorney. They would ask me my—

Q. Well, never mind; you just answer my question?

The WITNESS. Well, I wanted to explain why I did it, they came t me as a friend among strangers there.

Mr. ARCTANDER. I think we have a right to have an answer to ou question.

The WITNESS. I don't want to answer the question so as to make ou that I was interfering.

Mr. ARCTANDER. Oh, no, we don't claim that.

The PRESIDENT, *pro tem.* The answer should be responsive to th questions and beyond that of course the witness should not go.

RE-DIRECT EXAMINATION

By Mr. Manager COLLINS.

Q. Mr. Lamberton, do you remember anything about the pen bein thrown down at that interview in your store, by Judge Cox?

A. I have no recollection of it. It is somcthing I did not charg my memory with at all.

Q. I want to ask you whether or not you have always been and no are friendly to Judge Cox?

Mr. ARCTANDER. We object to that as immaterial and irrelevant.

The PRESIDENT *pro tem.* Certainly it is proper in response to th question they put, to show that there was no ill feeling.

A. I have always been particularly friendly to Judge Cox; I woul do anything for him I could.

Q. And you are now. A. I am now.

Q. I desire now to call your attention to article eleven, to an occasio at a general May term, 1881, during the trial of the case of John Pete Young against Charles R. Davis; do you remember that?

A. No, sir; I don't think I was in the court house while it was being tried. I might have been in and out, but I wasn't present to listen t anything in regard to it.

Q. Now, Mr. Lamberton, were you present during that term of court?

A. I may have been in the court room once or twice. The only dis tinct recollection I have of being in the court room was on the morning that Judge Dickinson was on the bench, when I went down to hea Loomis sentenced. I think that is what I went for.

Q. Was Judge Cox present in court?

A. He was sitting inside of the bar the morning I went in; inside o the railing.

Q. He was not presiding.

A. Judge Dickinson was on the bench.

Mr. Manager COLLINS. I now desire, Mr. President, to call the atten tion of witness to article eighteen. the charge of habitual drunkenness.

Mr. ARCTANDER. Is this all you want on article eleven?

Mr. Manager COLLINS. Yes.

Mr. ARCTANDER. Well, I wish to cross-examine on it.

Mr. Manager COLLINS. All right.

Mr. ARCTANDER.

Q. Mr. Lamberton, you said Judge Cox was in court that morning?

A. Yes, sir.

Q. You have known him for how long a time, you say?

A. I think twenty-three years; perhaps twenty-four.
Q. You have lived in the same town with him?
A. I have lived in the same town for twenty-three years.
A. At that time when you came into court that morning, in what condition did you consider the Judge when you saw him?
The PRESIDENT *pro tem.* There has been no evidence as to his condition there, and why take up that? That is a part of your own case.
Mr. Manager COLLINS. We don't object, Mr. President.
The PRESIDENT *pro tem.* The question is whether the Court wants to hear cross-examination when there has been no direct examination.
Q. Well, in what condition did you consider him to be when you first came into court?
A. Well, when I looked at him I thought he was intoxicated.
Q. You went up to him and spoke to him, did you not, afterwards; and sat down and talked with him?
A. I sat down and told him he "looked like hell," and to go home; that was my remark. (Great laughter.)
Q. Now, when you talked with him there you changed your opinion as to his intoxication, did you not?
A. Yes; he was not intoxicated.
Q. He wasn't intoxicated at all?
A. He said he had not slept any all night; that was his reply to me. I would give my reason why I thought he was intoxicated, was from his appearance.
Q. Well, we don't care for that, unless they do.
Mr. Manager COLLINS. Well, we do.
Mr. ARCTANDER. Well, all right; we are through.
Mr. Manager COLLINS. Mr. Lamberton, you say you thought he was intoxicated?
A. Looking at him before I went up.
Q. You went up and spoke to him?
A. I went up and sat down alongside of him.
Q. And told him he had better go home?
A. I told him he "looked like hell;" he had better go home.
Q. Now, in what condition did you find him?
A. His hair was uncombed; his face unwashed, and he had a dirty shirt on, and I was ashamed to see him there.
Q. Now, after talking with him, what did you conclude about him as to his condition.
Mr. ARCTANDER. That we object to.
The PRESIDENT *pro tem.* Well, he can state his opinion as to whether he was drunk or sober, as to whether he thought he was drunk or sober.
A. Well, I thought he had been drinking the night before, and that the whisky was about dead in him, and he was a little stupid; but he wasn't drunk then.
Mr. ARCTANDER.
Q. Was he under the influence of liquor there at all?
A. I think the liquor was dead in him, and he was feeling bad.
Q. Had no more effect on him?
A. No, I think the effect was gone. (Laughter.)
Mr. Manager COLLINS. Now, you say you have been acquainted with him twenty-three years?
Mr. ARCTANDER. Is this under article eighteen?
Mr. Manager COLLINS. Article eighteen.

Q. Mr. Lamberton, I desire to call your attention to Judge Cox's condition since the 30th day of March, 1878. We don't want to go back of that. How many times since that do you suppose you have seen him?

A. Oh, I can't say that; that is three years,—nearly four years. I see him as frequently as I see any other citizen when he is in town.

Q. Now, is he in town most of the time?

A. Well, he is away very frequently. He has been more away this summer than any time. I noticed this summer I saw him less than ever I have since he has been judge.

Q. Now, you may state his condition at the times you have seen him, not going back of the 30th of March, 1878?

A. Well, a large majority of the times he is sober.

Q. But frequently have you seen him intoxicated?

A. I have seen him very frequently intoxicated.

Q. Upon the streets in St. Peter? A. Yes, sir.

Q. Now, within the last year, how many times do you think you have seen him?

A. I can't say; I can't go back further than last May. I wouldn't fix any date beyond that. I have seen him three or four times. I noticed that he was away during most of the summer.

Q. What was his condition at those times? You say you think you have seen him three or four times since last May?

A. Including May?

Q. Yes, sir.

A. That was about the termination of the court. I saw him very frequently before that

Q. State his condition.

(Speaking in an undertone.) Perhaps five times I have seen him. Well, I have seen him twice very drunk.

Q. Well, what was his condition at the other times?

A. I think twice very sober and once kind of so-so. (Laughter.)

Q. Then, in the five times that you have seen him, that you remember, twice he was very drunk, twice he was painfully sober, and the other time he was about so-so?

A. Well, when I say about twice I saw him drunk I mean it was two days in succession. It was the same drunk. It was two evenings; I think it was Tuesday and Wednesday.

Q. What is his behavior when he is drunk?

A. Well, when he is a little drunk he is very genteel—painfully genteel. He straightens up and acts a little over-polite when he is a little drunk; when he is very drunk he is annoying, by hugging and clawing over you and talking—talking nonsense. I have never heard him abusive when he is drunk.

Q. But you have seen him very drunk? A. Yes, sir.

Q. He doesn't stagger when he is very drunk?

A. I never saw him drunk in his legs. I don't think he gets drunk in his legs. (Laughter.)

CROSS-EXAMINATION.

By Mr. ARCTANDER.

Q. These two days in succession when you saw him, you don't mean to say that is any estimate of how often Judge Cox is drunk,—these

es you have seen him since May. How does it compare with other rs, for instance?
. Well, I can't say; I kept no account of when I would see him nk.
. Well, isn't it a fact that Judge Cox, when in St. Peter, was, a ma-ty of the time, sober, and attended to his business?
. Yes, sir; I will say that.
. A majority of the time?
. Yes; a large majority of the time too.
. Isn't it a fact that Judge Cox—
he WITNESS, (interrupting.) Well, I will say when he has these nks, they were kind of periodic and lasted a week may be.
. Isn't it a fact that they would only come at long intervals—a nk for a week or so, perhaps?
. Well, sometimes they would come pretty thick, and then there ıld be long intervals that they wouldn't come; you couldn't scatter m over the year. He might be drunk two or three times in a month l then there would be two or three months that he wouldn't be nk, that he would be sober.
. It is a matter of fact then, that Judge Cox's drinking is periodi-, is it not? I mean that he gets a spell in that way.
. Well, I don't know about that; I keep no track of it; I would see n drunk, and then I would see him sober; I take no liquor.
. Isn't it a fact that, whenever he was drunk in St. Peter, he would ariably go down where you could have a good show at him?
. He would invariably keep out of my way; that is, if he could.
. He would go to the postoffice, and right by your store, would not?
. He would go to the postoffice, but he wouldn't come about me en he was drunk.
. He wouldn't go into your store?
. He would not come where I was if he could avoid me, but when would get drunk he would make it a point to go where the prominent n were and talk to them.
. So that everybody would see him every time he happened to be nk?
. Well, I would see him.
The PRESIDENT *pro tem.* Will the cross-examination of this witness be gthy?
Mr. ARCTANDER. No, I think not, Mr. President.
. Before last May you saw him very frequently, did you not?
. I have seen him very frequently all the time. I missed him more s summer than ever.
. He was more away this summer than he had been before?
. I have seen him probably more than four or five times, at a dis-ce. I didn't come in contact with him more than three or four, or r or five times, since last May until this.
. Between the 1st of January and the 1st of May do you think that u saw Judge Cox pass the Nicollet House over five times?
. I wouldn't say I did.
. Drunk, sober, or any way?
. I wouldn't say I saw him between the 1st of January and the 1st May, for I have nothing to call my recollection to it.
. And as a matter of fact, as to prior years, you can't tell what por-

tion of time or how many times you saw him, nor how many of those he was drunk?

A. No, not unless there would be something particular would occur when he was drunk that I would now remember. If he would be drunk six times a week it would pass out of my mind unless there was some occurrence that took place while he was drunk that fixed it on my mind.

Q. But you are of the impression that the great majority of times you saw him during this year that he was sober?

A. Yes, sir.

Q. Now I will ask you whether or not Judge Cox is very gentlemanly and affable, and so forth, even when he is sober; very pleasant and gentlemanly in his behavior? A. Yes.

Q. I would ask you whether or not he is not gentlemanly when he is drunk?

A. No, sir, he is not ungentlemanly when he is drunk.

Q. I understood you to say if he was a little drunk he got painfully polite?

A. Oh, that is when he is a little "over the bay."

Q. But he is gentlemanly when he is sober?

A. Yes, he is gentlemanly when he is sober; he is polite when he is sober.

Q. Is it not a fact that when Judge Cox is drunk he is never sleepy; whisky has not that effect upon him, has it; isn't it rather the contrary?

A. Well, I don't know what occurs when he goes away. When I see him drunk, he isn't sleepy then.

Q. He is far from sleepy, isn't he?

A. He isn't sleepy when I have seen him. I have never seen him when he was away getting over his drunk.

Q. But I mean when he is under the influence of liquor—when he is intoxicated?

A. No, sir, he is not sleepy; he is very talkative.

Q. I ask you if you don't know, as a matter of fact, that Judge Cox could drink from five to six good horns of whisky without getting as you would call it, under the influence of liquor?

A. Well, he could drink five or six good horns of whisky and I wouldn't consider him drunk.

Q. Would you consider him under the influence of liquor so it would show itself?

A. I think it would show itself a little.

Q. Would show itself a *little!*

A. Yes, I don't think it would show it in his mind.

Q. It wouldn't show it in his mind?

A, No, I don't think it would.

Q. His mind would be capable to perform its functions?

A. I have seen him very drunk in the evening and at nine or ten o'clock in the morning I would say he hadn't been drunk for a week. He was perfectly bright and able to attend to business in the morning.

Q. If you hadn't known that he had drank the night before and had met him in the morning you wouldn't have known that he had drank at all?

A. I wouldn't have said that he was drunk the night before, if I hadn't known it. His appearance, his actions, or his talk would not have indicated it. I never saw him so drunk that he didn't know what he was talking about, in business matters.

Q. You did not?

A. I nevor saw him so drunk as that, and I have seen him *awful* drunk.

Q. Do you think he could be pretty full and yet have his wits and mind about him?

A. Well, he wouldn't have many wits, but he would have considerable mind; his wits would be "a little off."

The PRESIDENT *pro tem.* This court stands adjourned till to-morrow morning at 10 o'clock.

FIFTEENTH DAY.

ST. PAUL, MINN., Jan. 18, 1882.

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

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

Messrs. Aaker, Adams, Bonniwell, Buck C. F., Buck D., Campbell, Gilfillan C. D., Hinds, Howard, Johnson A. M., Johnson F. I., Johnson R. B., Langdon, McDonald. McCormick, McLaughlin, Mealey, Miller, Officer, Peterson, Powers, Rice, Shaller, Shalleen, Tiffany, Wheat, Wilkins and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, judge of the ninth judicial district, upon articles of impeachment exhibited against him by the House of Representatives.

The Sergeant-at-Arms having made proclamation,

The Managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. James Smith, Jr., Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives, entered the Senate chamber and took the seats assigned them.

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

The PRESIDENT. Is there any business for the consideration of the court before proceeding with the examination of witnesses?

Mr. BRISBIN. If the Court and Senate please, before proceeding to the regular order of business, I desire to make a motion on behalf of the respondent to this effect, that when the managers have concluded their case upon the evidence, the court adjourn for from eight to ten days, for the purpose of enabling the respondent to procure and marshal his evidence; and I apprehend, or at least infer, from the uniform courtesy which has been extended to us by the managers, that it will hardly be resisted. It is not necessary for me to recall the fact that by order of the Senate, after the argument of the demurrer, the managers were required to file their specifications under articles seventeen and twenty, on or before,—I don't know that I can give the precise language, but on or before the 6th of the month following. Those specifications were served upon my associate, Mr. Allis, and I am informed by him that they were not received by him until about the last law hour of the sixth. If I am mistaken, my learned friends, the managers will correct me; this is merely hearsay. There is no complaint of this, however. It will be seen, therefore, that the respondent and his counsel were allowed only

three working days between that and the interval when the regular an serious business of the trial commenced.

It is a further fact, which I suppose will be anticipated by all th members of the court, that some breathing spell, some interval will b required between the closing of the case upon the part of the manager and its commencement on the part of the respondent. It would be a least a very great hardship that the respondent who, it may be prop for me to say, is not a man of abundant circumstances, should be com pelled to be present here with his witnesses in array waiting the conti gency when the conclusion upon the part of the managers should be ar rived at.

It is not disrespectful for me to say that the decision of the court on ye terday was somewhat a surprise to us. We had anticipated to have been re lieved of the necessity of arraying ourselves with witnesses upon som five or six new aricles—I don't know that I can give the number of th specifications—but do we not see how the court could arrive at the conclu sion it has. I am free to remark that from the course that has bee taken by the court, and by the managers, in the unpleasant task whic exigencies of public duty has imposed upon them, that we have no doub that we are going to receive at least fairness, and we expect justice, in th disposition of this matter.

I am also informed although not familiar with the geograph of the country, that Marshall is some two days distance from here that it requires at any rate two days to get there and back, an the same is true in regard to Redwood Falls, so that it would b almost impossible, without an adjournment, for the respondent ad equately to prepare himself to meet the very important issue with which he is confronted here. I do not know what the rul is with reference to the pay of members during an adjournment o this character, but assuming that their pay does not go on, it would be apparent that the economy of the situation would be best served by the adjournment. I am requested to say, and it is fair to infer, that members of the court, business members, have their own homes to see and business to require their attention, and it would require not an adjournment over the Sabbath or Sunday—which is no adjournment at all—but an ad journment of some days. I appeal to the justice of the members, founded upon the absolute necessities of the respondent. As I have re marked, here, that under the circumstances it is a matter of absolute necessity that this trial, upon the part of the respondent, and his coun sel should be progressed with as fast as the attainment of the ends of justice will permit. I do not desire to take much time in a motion of this kind nor go into details. The members of this Senate are, presum ably, the picked men of the state, and entirely able to comprehend our position. As has been suggested to me, it is proper for me to say that these charges are new issues that have been precipitated upon us and we were not advised and have not been until thismoment, what prepar ation would be required; and therefore we throw ourselves upon the courtesy of the court.

Mr. Manager HICKS. The managers do not desire to object to the re quest, or to the Senate allowing the request of the counsel for respond ent, provided the same courtesy is allowed to the managers to procure their witnesses in rebuttal. I might, however, correct one statement which the honorable counsel for the respondent has just made and that is, that these specifications are entirely new to them. One of the specifi-

cations relate to the Brown county term in May 1881, of which they have the most complete and full report furnished them by the order House of Representatives. Of the other three specifications which it is proposed upon the part of the managers to present evidence upon they have also had a statement of certain facts, although perhaps, not as fully as the managers have been informed. But, as I said, in the first instance, the mangers do not desire to object to the Senate allowing their request provided the same courtesy is allowed to managers in obtaining their witnesses for rebuttal.

Mr. BRISBIN. If the Senate will permit me a word to set myself right. I am speaking only of my own ignorance, and without any consultation with my associates. I stated the truth so far as I am concerned.

Senator C. D. GILFILLAN. Mr. President, I have an order to present, which I desire to have read by the Clerk.

The PRESIDENT. The following order is sent by Senator Gilfillan to be read.

The Clerk read as follows:

Ordered that the clerk call at the morning session the names of the witness subpoenaed upon the part of the prosecution and not heretofore sworn, and again at the opening of afternoon session, and that the witnesses so called answering to their names, upon appearing upon the witness stand and dismissal therefrom, be paid the per diem established by the court for the actual time in attendance upon this court, and for one day's additional time while coming to and a like time in returning from the court, and four cents a mile for the necessary distance traveled in coming to and returning therefrom.

The motion of Mr. Senator Gilfillan was put by the President, and was adopted by the Senate.

The clerk called the roll of the witnesses that had been subpœnaed.

Senator Campbell, from the committee on rules, called up the report of the committee made to the Senate, and moved its adoption.

Senator CASTLE offered an amendment, striking out from the report of the committee rule twenty-three, as reported.

The PRESIDENT Upon request of Senator Castle the consideration of rule twenty-three will be postponed until the next secret session of the Senate, unless otherwise ordered.

The PRESIDENT. Is there any other business before the Senate. If not, the counsel will proceed with the examination of witnesses.

Manager COLLINS. We desire to recall Mr. A. J. Lamberton.

Mr. BRISBIN. I regret to be compelled again to call the attention of the Senate to the request made by the counsel for the respondent. My reason for urging it at this time is obvious. That we would like to know at what date consistent with the best judgment of the court—

The PRESIDENT. What time was requested?

Mr. BRISBIN. The suggestion was eight or ten days. Of course, whatever the court regards as proper in the matter will be satisfactory. Without any knowledge of the geography of the country, or of the localities where the witnesses are, I am unable to state exactly what time will be required, but I am informed that the witnesses must be sought for at remoe distances.

The PRESIDENT. The court has heard the request of the counsel for the respondent.

Senator CASTLE. To cut this matter short, Mr. President, I move that at the close of the case for the prosecution, or when the prosecution rests, the court take a recess for one week.

Mr. Manager COLLINS. Mr. President, if I may be allowed, I desire to suggest that the prosecution will undoubtedly ask the same favor or indulgence when they conclude their case so far as time is concerned, in which to get witnesses for rebuttal. I hope in determining the matter that the Senate will take that under consideration; although we do not make a motion at this time.

Senator CASTLE. I would say to the counsel that we will take that into consideration when the time comes. Perhaps the defense will not put in anything that will require rebuttal.

Mr. Manager COLLINS. I assume that they will.

Senator CASTLE. Possibly they may, but I don't think that any member of this Senate desires to cut off any party here from an opportunity to present the case fairly. I make the suggestion now in order that the defense may know when to prepare for trial, and I also state to the managers in this case that I will make a similar motion in their case, if it becomes necessary. It is suggested by my learned friend, the Senator from Blue Earth, that my motion was for recess for a week. If we should finish up the evidence on Thursday or Friday it might be desirable to postpone it a little longer than that; but if we could finish on Monday I would say a week.

The PRESIDENT. A week, more or less.

Senator CASTLE. Yes.—No, that is hardly the motion of a lawyer,—I will say a week; but the proper adjournment can be determined at the time the question comes up.

Senator WILSON. Before the question is settled I would like to inquire of the managers if they cannot tell with reasonable certainty what time they will be through with the presentation of their case, so they can notify the counsel for the respondent, and give them at least three or four days' notice of the time that their witnesses will be required to be here. So far as I am concerned, I do not desire to occupy all the coming year in this case, because I have something else that I wish to devote my time to. If we are to have a week's delay between the time the case is presented on the part of the State and the beginning of the evidence upon the part of the respondent, and then there is to be a week's interval between that and the rebutting testimony, when, for heaven's sake, are we going to get through with this case? It does appear to me that the managers can tell within a reasonable time when they will finish their part of the case, so that the respondent may be ready to go on at that time, without any delay.

Mr. ALLIS. Mr. President, I would suggest also to the Senate that if we had this week, or seven or eight days delay, whatever is necessary, that it will not be necessary for us to summon any witnesses until the prosecution have rested, and that considerable expense can be saved in that way.

The PRESIDENT: Is the Senate ready for the question? The question is on the motion of Senator Castle, that on the completion of the direct evidence, adduced upon the part of prosecution the Senate take a recess for a week. As many as are of the opinion that the motion prevail, say aye; those of the contrary opinion, nay.

The chair is in doubt.

The yeas and nays were called for.

Senator CASTLE. I would say that I did not suppose that the question would call for any debate. The Senate will permit me one word. I did it in the interest of economy. No manager can tell how long the case

will last, because so much time may be taken up by longwinded speeches, motions, etc., that it will be impossible to tell. Now, if we have a recess for a short time, then the respondent can, at that time subpœna his witnesses to meet on the first day, and from that time forward we shall have no difficulty, and we shall save probably a good deal of time by it, and there would be less time taken up with nonsense.

Senator C. F. BUCK. What I have to say is in the interest of fair play. This is a very important proceeding. It is a very important proceeding for the State. It may be important for the people who are to come after us. It is a very important proceeding for the respondent here. Now, I am free to confess, that I hope the respondent will be able to so vindicate his character as to justify me in voting not guilty here. I suppose that every Senator would rather be justified in voting not guilty. Now, so far as I am concerned, I shall vote to extend to this respondent every facility, every reasonable favor, asked for, for the purpose of giving him an opportunity to vindicate his character and his manhood; and in the interest of fair play and justice, I hope that this request, upon the part of the respondent, will be conceded. But mind you, in the meantime, I would not vote at any time to cripple the prosecution. in the attempt to prove the charges that are made against him.

The PRESIDENT. Is the Senate ready for the question?

Senator HINDS. I presume, as a matter of fact, it will make no difference to the respondent whether he makes his effort to have his witnesses here immediately upon the close of the case in chief, or at the end of a weeks adjournment; but it is impossible for the respondent to tell when the prosecution is going to end. He therefore might make mistakes and have his witnesses here for a week or ten days sooner than they are actually wanted, in order to have them here in time. The delays are almost interminable; hence it is impossible for the respondent to fix upon the exact day that he shall have his witnesses here, unless there is an interim of a few days, after the prosecution rests, and, as a matter of economy, upon the part of the State, I think we had better have that interim for a week at least, so there will be no plea of any neecssity, of expediting the attendance of witnesses but to have them here at the time when it is known by them, and by him, that they are wanted.

The PRESIDENT. Is the Senate ready for the question?

The clerk will call the ayes and nays upon the motion of Senator Castle.

The roll having been called there were ayes 28, and nays 2, as follows:

Those voting in the affirmative were Messrs. Aaker, Adams, Buck, C. F., Buck, D., Campbell, Castle, Gilfillan, C. D., Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson, R. B., Langdon, MacDonald, McCormick, McCrea, McLaughlin, Mealey, Miller, Morrison, Officer, Peterson, Powers, Rice, Shaller, Shalleen, Tiffany and Wilkins.

Those voting in the negative were Messrs. Wheat and Wilson.

So the motion was adopted.

A. J. LAMBERTON.

Recalled and examined, testified:

By Mr. Manager COLLINS.

Q. Mr. Lamberton, I find there is a misapprehension here as to your

testimony yesterday, and I desire to have it corrected. There is an impression here that you testified that Judge Cox always had his wits about him, even when he was the drunkest. Did you testify to anything of that kind? A. No, sir.

Q. What did you say about it?

A. I testified that he knew what he was doing and saying, but that his intellect is clouded when he is drunk. That would be my definition of it.

Q. You mean this, that he does not become insensible, unconscious?

Mr. ARCTANDER. We object to that as leading.

Mr. Manager COLLINS. Well, it's a leading question; there's no doubt about that.

The PRESIDENT. It is somewhat leading.

The WITNESS. I do not mean that he has all his wits about him. I mean that he has sense enough to know what he is saying or doing, but his intellect is clouded, and he does not do it understandingly. That would be what I would say.

Q. Mr. Lamberton, will you say whether or not Judge Cox has been an habitual drunkard since the 30th day of March, 1880?

Mr. ARCTANDER. Wait a moment. That we object to as incompetent and irrelevant.

Mr. Manager COLLINS. That it is incompetent and immaterial?

Mr. ARCTANDER. Yes, sir; incompetent and immaterial.

Mr. BRISBIN. It includes a fact that the court will draw from the testimony. That is the very question before the court.

Mr. ARCTANDER. Do you insist upon the question, Mr. Collins?

Mr. Manager COLLINS. I do.

Mr. ARTANDER. Then I ask leave to send down for an authority.

Mr. ALLIS. The objection, Mr. President, is that it calls for the opinion of the witness instead of a fact.

Mr. Manager HICKS. We will show that the witness can give an opinion as to the intoxication. The Sergeant-at-Arms has taken the books back to the library, and I will have to get them again.

Senator MACDONALD. What is the court waiting for?

The PRESIDENT, They desire to present an authority to the court upon the question asked.

Senator MACDONALD. There has been no ruling on the objection. I think the chair should rule upon that objection and let us go on.

Senator HINDS. Cannot we go on until the authority arrives.

Mr. Manager COLLINS. This is the only question that I desire to ask the witness.

Senator HINDS. What is the question?

Mr. Manager COLLINS. State whether, since the 30th of March, 1878, Judge Cox has been an habitual drunkard.

The PRESIDENT *pro tem.* And the question has been objected to.

Mr. ARCTANDER. The ground of our objection to this question is, that it is incompetent; that it calls for an opinion of the witness instead of the facts. Our opinion is that the fact or non-fact of habitual drunkenness is a question of law, upon which you cannot ask a witness his opinion, or ask him to testify, but that the witness must testify to the facts, what the facts are in the case, to the series of intoxications or to the fact as to whether the spells of intoxication are more or less frequent, and how frequent, or how much of the time; and after hearing that testimony the senate, as well as any court, is the judge as to whether the facts

proven under the law, make up the legal conclusion of habitual drunkenness.

I do not stand alone in that view. It is too well established at the present day, almost to admit of dispute, that that is not the rule. You may go into any of our courts of justice, in divorce cases, where habitual drunkenness is the ground of divorce, and those are the only authorities that you will find on the subject as to what proof is competent, and it would of course be an entirely analogous case, because the same questions are involved; there the charge would be habitual drunkenness, here it is only that this being a quasi-criminal proceeding, it would be necessary to make it out with stronger and more strict proof than in divorce cases perhaps. I say that in divorce cases in this country, at this date, I don't think there is an attorney that ever practised in court that has not noticed the fact, that the opinions of witnesses are never called for, and that judges will not allow it. Even on *ex parte* examinations, whether the party is or has been for the period limited by statute an habitual drunkard. But that the questions upon examination invariably go to this extent, to show how much of the time the defendant in the case has been under the influence of liquor, and intoxicated so as not to be able to take care of his business; that the question of whether a party is an habitual drunkard or not is never allowed to be put by a court, and it is right that it should not be, because no well regulated court would allow it, if calling for a conclusion of law, and not a statement of fact.

Now, Bishop in his work on Marriage and Divorce, page 813, says,—and I submit that he is the leading authority on that subject,—

> What amounts to habitual drunkenness is a question of law. Therefore, on the hearing of the cause witnesses should not testify in general terms, that the defendant is an habitual drunkard, but they should state the particular facts and circumstances, leaving the court to judge of their sufficiency.

Now, I take it that is just the law, and that no law can be produced against it; that is the law as Bishop lays it down in his work, and it is the law as you will find it laid down in the works of evidence generally, because it comes in under a well settled principle of law. It is not in the case alone, but whenever a state of affairs is a conclusion of law then you cannot call from the witness the conclusion of law, because it is not competent for any witness to testify to a conclusion of law, he must testify to the fact, and not to conclusions of law.

Now, the same rule was laid down in the case of Golding vs. Golding, 6th Missouri Appeals, and also in the case that I hold in my hands, the 14th New Hampshire Reports, the case of *Bachellor* against *Bachellor*.

Mr. Manager COLLINS. From what page did you read Mr. Arctander?

> The libel for divorce alleged that the husband, the libelee, is and has been for more than three years an habitual drunkard. The libel stated that the partie swere married at Lowell, Mass,, in 1833.
>
> * * * * * *

Of course that has no bearing on this case. Now we come with evidence that has a bearing in this case.

> As to the fact bearing upon habitual drunkenness, the facts were stated to some extent in the libel or complaint. But the evidence in the case went no further than that several witnesses swore in general terms that he is an habitual drunkard, grossly so, one of the most beastly they ever knew.

That is pretty strong evidence for a conclusion of law; but the court says:

> The proof is also insufficient as to the fact of drunkenness. The witness testified in strong general terms that the libelee is an habitual drunkard, but this is not enough. They should have given the particular facts and instances of drunkenness, and left it to the court to judge whether or not they amounted to habitual drunkenness.

That is what we claim in this case; that this witness should testify to the facts as he has done, and upon the facts I submit, under the rule of law as to what constitutes habitual drunkenness, that the facts he has already testified, go to show that in law this defendant is not guilty of habitual drunkenness, and therefore he should not be allowed to give his opinion upon a question of law before this Senate. It is not right. I take the position, that the established law is that a man is not an habitual drunkard unless he is drunk or under the influence of intoxicating liquors the major portion of the time. Some authorities, I think, have gone so far as to claim that he must be almost continuously under the influence of liquor; but I don't believe that is law now. I believe the law is that he must be the greater portion of the time, the major portion of the time, so under the influence of liquor that he is unable to do business. I think another case in Michigan, goes farther than that, that to be an habitual drunkard he must be such a man as not to be near where liquor can be had, and have money in his pocket, so as to be able to get at it, without getting drunk; but I don't think that is the right doctrine. I think that a man must be, during the major portion of the time, drunk and unfit for business. I think that constitutes him an habitual drunkard.

Now, the fact shows that the greater portion of the time, the defendant is sober; so that the facts are not sufficient under the law to show that he is an habitual drunkard, and if any one can draw that conclusion it is this Senate, and not this witness. It is the opinion of the Senate upon the facts proven and not the opinion of this witness, that is to be sought.

I have sent for the Missouri case but I don't think it necessary to wait for it, as it lays down the same doctrine cited by Bishop.

Mr. Manager COLLINS. Mr. President and gentlemen, it is frequently difficult, at least courts have found it difficult, to determine just when opinions might be given in all cases, just when the conclusion of a witness should be excluded, and I have no doubt that there are cases, in fact, this one in New Hampshire is a sample of that class of cases,—to which I refer,—where it has been held that an opinion cannot be had from a witness of that character, because he does not come within the rule permitting experts to testify. This man is not an expert, but courts have yielded and are yielding gradually to a different rule and it is by reason of this yielding that we are now permitted to ask whether or not a man is intoxicated, for then you call for just as much of an opinion as you do when you ask a witness whether a man is an habitual drunkard.

The counsel, with just as much reason, just as much logic, might say, when we ask here was this respondent intoxicated, "you are not permitted to ask that question; that is a conclusion of law to be arrived at from the facts and circumstances; state how he looked, how he acted, what his behavior and language was, and the Senate sitting as a

court of impeachment, will determine whether or not the man is intoxicated."

I say that the same reasoning and the same logic will apply practically; and I say further than that that while some courts have held this, that other courts have held differently; for instance, the sister State of Vermont holds exactly contrary to the doctrine held in the New Hampshire case; and I call the attention of the court further to another thing, that in the eastern states they are very strict and very severe upon these matters of divorce and that they have held to much stricter rules, on many matters in divorce cases, than they have in criminal cases.

So far as the general rule is laid down, Mr. Bishop, the authority cited by the counsel, does not say that you cannot prove that, that it is incompetent, but he says that it should be proved by evidence of facts and circumstances, just the same as if you wish to prove that a man is intoxicated by showing, in addition the opinions of witnesses that he was intoxicated, what he did, how he acted, and, as it were, make a picture of the man in his intoxicated condition. Mr. Bishop does not say that this evidence is not permissible, but he does say that we should prove it in a different manner.

I said a moment ago that there had been some question as to the proper manner in which to prove intoxication, and there has been so much question about it as to make it necessary for the courts to decide upon it. Now, Mr. Abbott, in his work upon Trial Evidence, a work that is undoubted authority, speaking of the fact of intoxication, says:

> Any witness though he be not an expert, who saw the alleged drinking, may be asked whether or not he was, in the witness' judgment, intoxicated or drunk or under the influence of liquor, and it does not render the evidence incompetent that the witness was unable to state all the constituent facts which amount to drunkenness.

I say that it has become necessary for the courts to hold upon this just as—

Mr. ARCTANDER. What page is that?

Mr. Manager COLLINS. Page 779; just as it is necessary for the court to hold upon this question of habitual drunkenness. The counsel has undertaken to state his definition of habitual drunkenness. I differ from him a good deal, and I think the courts differ with him. I have not been able to find any of the decisions which the counsel alludes to, where courts have held that a man must be drunk nearly all the time. I might say that every man in this room is an habitual smoker, and to make that statement truthfully it is not necessary that a man should sit all day with a pipe in his mouth. If he has acquired the habit of smoking he is an habitual smoker. If he has acquired the habit of drinking, I don't care whether he is drunk once or twice, or a dozen times a month, he is an habitual drunkard, and we shall cite a number of cases upon that, but not now, because it is not necessary to do so. I only refer to it beeause the counsel has taken occasion to do so.

I find a case in Vermont, a decision written by Chief Justice Poland, a man whose views on this matter is law, I take it, and this was a criminal case.

Mr. ARCTANDER. From what page do you read?

Mr. Manager COLLINS. From page 223, 34th Vermont.

> The respondent was tried in the county court, upon a general complaint of vi-

olation of the lipuor law under which the jury may return a verdict--a verdict f so many offenses as are established by the evidence and was convicted by these o fenses. * * * No question is now made but that the convi tion was proper for the furnishing of the liquor to Ordway.

It then goes on to say that there are some objections to the rule, b they made no point upon that.

No question is now made, but that the court correctly defined to the jury wh would constitute a man an habitual drunkard, or make a private dwelling a pla of public resort, but the defendant insisted that there was no legal testimony intr duced by the prosecution legally tending to establish either of those propositions and that, therefore, the court should have directed an acquital for those allege offenses, and that it was error to submit the case to the jury at all, as to tho charges. That requires us to look into the testimony, and to enable us to see ju what the evidence was, the minutes of the presiding judge are attached to the ex ceptions.

The only testimony—and I call the attention of the lawyers of th to this:

And that was all the testimony there was in the case upon this point. The supreme court, in its decision by Chief Justice Poland, held that that was sufficient. They did not require in these criminal cases that they should go into the facts and circumstances and show how he got drunk; how he appeared when drunk; how many times he was staggering in the streets, every day or every month, or how many times during the month he went to bed sober. Nothing of that sort. They simply received and determined upon these conclusions, and the supreme court held that that was sufficient. This is a case that is more in point, from the fact that it is a criminal case, and it is not a divorce case. The court says, and I will read a little more in this connection:

But the fair definition of *habitual* drunkenness, as used in the statute we suppose to be one who is in the habit of getting drunk, or one who commonly or frequently is drunk. And we do not suppose it necessary, to satisfy those terms, that a man should be constantly or unwisely drunk. The common term or phrase used *liquor to excess* when applied to a person is ordinarily understood to mean the same as saying that he gets intoxicated or drunk and saying that such a person did so at particular times would generally be understood as meaning that these times occurred about as often he had an opportunity to do so. So the common understanding of the statement that a man is a dissipated man, is, that he uses intoxicating drinks frequently and excessively, in plainer terms, that he is often intoxicated.

The language of these witnesses, by the strict rules of lexicography might not necessarily mean quite this, but the jury would have the right to understand the language in its common or popular sense, because they might well presume the witness used it in that sense, and they would also have the right to draw all fair and reasonable inferences from the facts stated by the witnesses.

We think this evidence did legally tend to show that Hadley was an habitual drunkard. Its sufficiency in amount was wholly a question for the jury.

In other words the supreme court held that these words, "Hadley used liquor to excess, at some particular time; have seen him worse for liquor some number of times" and "Hadley is a dissipated man" was sufficient to show thnt he was an habitual drunkard.

Mr. ALLIS. Did they allow the witness to give an opinion there?

Mr. Manager COLLINS. Did they allow him to give an opinion?

Mr. ALLIS. Yes, sir.

Mr. Manager COLLINS. I don't see that it appears anywhere in the

that they had lawyers who attempted to raise that question, but the reme court held that it was sufficient. It does not make any difference they arrived at that conclusion. If there had been an objection e that it was improper, the supreme court would have come to the e conclusion that it was insufficient, because if it were improper and incompetent of course it could not have been sufficient. That ld follow, and I do not care whether an objection was raised or not. ppose the counsel there did not think it was a matter of sufficient ortance to take up time to argue it.

Mr. ALLIS. He did not ask the question it appears.

Mr. Manager COLLINS. I do not know exactly how they got at it, ther they asked the question or whether this witness went on and nteered it. I suspect, however, that they asked the question because is generally the way things are done, especially in these cases, and etimes we have to ask more than one question to get at it. But the rt holds that it it is sufficient; so that the quantity and weight of testimony is for the jury to determine. When this witness answers question, as I apprehend he may, or as we suspect he may, it will or this court to determine, from a cross-examination, what founda- there is for that conclusion, and it is upon that theory that the s-examination as to the behavior of this respondent when he is nk has been gone into by the counsel for the respondent. If we ain the answer that we expect here, they can go on and ask the ness to state how many times the respondent has been drunk' to e the circumstances, and it will then be for the jury or court to de- nin whether or not there is an amount of testimony sufficient to jus- his opinion.

apprehend that the same rule attaches when you ask a man if ther is intoxicated. If a witness should say that a certain man in room was intoxicated, and he could not give any reason for that nion, I apprehend that the evidence would not have very much ght. It would not be considered of very great importance. But le it is difficult, perhaps, to describe how a man acts when he is in- icated, it is a matter that can be described generally. I think the stion is permissable. I think it is a perfectly proper one, and I nk it would be asking too much in cases of this kind, or in cases where question of habitual drunkenness arises,—(for instance, in cases of character that I speak of in Vermont, where a man was prosecuted selling liquors to an habitual drunkard,) to compel the prosecution put a cloud of witnesses upon the stand, and to show how many times an was drunk in the last four or five years, to get his neighbors or ers in to show it. It is a matter about which a person is just as cap- le of testifying as he is capable of testifying that a certain man is lame, that he is blind in one eye, or that he was intoxicated at a certain e.

Senator D. BUCK. Is this matter submitted to the court.

Mr. BRISBIN. I want to say one word, and I regret that it is necessary me to consume the valuable time of this court. It seems to me a f-evident proposition of law, which is not impugned at all by the thorities which the gentleman here has cited, that except in certain es, which are excepted,—cases of experts,—nothing but the facts can allowed, and the court or jury, as the case may be, is to draw its con- sions from the facts proven. The gentleman has read an authority,

—one which I have not thought of sufficient importance to charge m memory with,—the Vermont case, in which the opinion was deliver by Judge Poland. In that case the facts were given. It was stated the witnesses that the man, whoever he was, although very dissipat had frequently been seen drinking. Those were the facts, and the cou found upon the facts, and did not reverse the decision. There were exceptions taken as the gentleman stated. Those who claim to be e perts in the law, know the very great difference between that state things, and what we have here. The learned manager suggested in t course of his argument that every day almost, men are allowed to sta that their neighbors are drunkards. That is the *reductio ad absurdum* the rule. If it was suggested that such a question was objectionab perhaps it might be rejected under a strict adherance to this rule. B there is a very great difference between a thing which is of daily occu rence, which is before you all every day, and a thing which is very ra in the experience of human life. There is not a day but what some us see cases of intoxication, and it is for that reason that this is disti guished from other cases. If a man asks me if the sun shone, it woul be a *reductio ad absurdum* to ask me why I knew it, or why I knew m friend Dunn. That involves, of course, to a certain extent, a conclusio from the facts. But, as was well remarked by Manager Dunn, in h opening—(if I remember right it was Manager Dunn)—habitual drunk enness is a condition, a condition which is brought about by long e cesses. That is the scientific definition of habitual drunkenness. Nov to ask Mr. Lamberton this question, unless it is predicated upon fact or to ask this court to come to a conclusion as to Mr. Lamberton's stat ment, whatever that might be, is entirely inconsonant and discordan with the current of authority upon the subject. The statute, as I hear it read in this Vermont case, under which this gentleman appears t have been convicted, is a statute which provides that a man may b charged so and so if he is commonly drunk. That indictment wa under statute. For that reason it appears to me, as I stated at the ou set, that a question so self-evident as this ought not to occupy the atte tion of the court. It would lead to interminable objections and cros examinations, as the gentleman says, to find out what the witness mean by habitual drunkenness.

Mr. ARCTANDER. I would ask leave to call the attention of the cou to a Missouri case, entitled Golding against Golding, sixth volume Mi souri Appeal Reports, page 602. That case was decided in 1879; a la case. The opinion in that case to which I call attention was by Hay den, judge. There were three points in the case, and as to the secon point the court says: "Testimony of experts, and familiar acquain tances as to whether the defendant in the divorce suit is an habitua drunkard is properly excluded."

"Experts" even, "and familiar acqaintances, as to whether" he is "an ha bitual drunkard is properly excluded." I desire to call your attention t that. Here, in the first instance, is the authority of Bishop upon the very point, that it is not proper, and Bishop doesn't say that it might no be done, He says that it should not be done, but that the facts should be proven; that it is a legal conclusion to say that a man is an ha bitual drunkard. It is a question for the court, and for the court alone The New Hampshire case says the same thing. Against this I claim that the counsel has adduced nothing, because there is a difference be tween testimony as to intoxication, and testimony as to being a

tual drunkard. The one is testimony of a fact. Intoxication is a
Whether a man is intoxicated or not is a fact, perceptible to the
, but whether a man is an habitual drunkard or not depends on
t view the law takes of the term "habitual drunkard," and it is to ask
gentleman, or any other gentleman who comes up here, to tell you
er the law, when the law is not even settled yet, was or was not the
ondent an habitual drunkard? I say that it is proper to ask the
tion whether a man was intoxicated or not at a certain time, because
ther he was intoxicated or not is a fact, but it is not a fact, or state-
t of fact to say that a man was an habitual drunkard. It is a con-
on of law which cannot be testified to by, or fall from the lips of,
esses. It must fall only from the lips of the court. It cannot be
m even by expert witnesses. The court alone can pronounce judg-
t upon that. As to the case cited in Vermont, I call the particular
ntion of the court to the fact that the case decides nothing of the
. It does not decide that you may ask a witness, an expert or other-
, whether a man is an habitual drunkard. It holds only that the
mony on questions of fact, as given there, was sufficient to establish
fact of habitual drunkenness, at least so far that the court would not
urb the verdict. The language used is, "that Hadley used liquor."
e of these witnesses swear that he is an habitual drunkard or a com-
drunkard. It is not here. The language is, "that Hadley used
or to excess at some particular time," as has been proved here. That
ad "seen him worse for liquor at some particular time," as has been
ed in this case. These are all facts. Dr. Richmond says, "Hadley
dissipated man." That, too is a fact, whether or not a man is dissi-
d; but when you come to apply legal definitions of legal terms, not
erms of fact but terms of legal conclusions, then it is apparent there
o such testimony here. All the court held in this case was that the
lence of facts, although they were meagre, were yet sufficient to war-
a jury in finding, as they did, that the defendant was an habitual
nkard. I think I dare say that no criminal lawyer who has ever
ecuted (as I know my friend Collins has) a man for selling liquor to
abitual drunkard, has ever dared to insult the court by asking the
ess the question whether or not the party was an habitual drunk-
He introduces the proof, and then rests upon the instructions of
court as to whether or not the facts stated constitutes habitual drunk-
ess in the eye of the law. It is then for the jury to decide the ques-
s of fact under the law, as laid down by the court, and not to take
from the witness.

enator D. BUCK. This matter was submitted to the court, was it not?

he PRESIDENT. It has not been, but will upon the request of any
nber of the court.

enator D. BUCK. I did not understand. I was not paying any atten-
, so I wanted to inquire.

he PRESIDENT. The view of the chair is, that the question calls for
pinion or conclusion where only facts should be given, upon which
court should draw a conclusion, and the chair is of the opinion that
question is improper; but it will be pleased to submit it to the court,
ny member of the court desires it. The objection is sustained.

Ir. Manager COLLINS. That is all, Mr. Lamberton.

Ir. ARCTANDER. There was one question drawn out on re-direct ex-
nation which I should like to examine the witness upon: whether it
his statement last night that when the Judge was drunk,—even when

he was the very drunkest,—he would have his mind about him, but n his wits?

A. I said he would have his mind about him and know what he w doing, according to his state of intoxication. When he is a little drun I think he is a little brighter than when he is sober.

Q. When he is a little drunk he is brighter than when he is sober?

A. When he has a few drinks in him I think he is a little bright than when he is sober. When he gets drunk his head gets a litt muddled, but still I think he knows what he is doing.

JOHN LIND

Was sworn on behalf of the State.

By Mr. Manager COLLINS.

Q. Where do you reside? A. Tracy, Lyon county.

Senator HINDS. Upon what charge is this witness being examined?

Mr. Manager COLLINS. Article three.

Q. You may state your occupation.

A. I am receiver of the land office at present.

Q. Have you a profession? A. I have.

Q. What is it? A. I am a lawyer.

Q. How many years have you practiced?

A. I have practiced since 1876.

Q. State where. A. At New Ulm.

Q. Brown county in this State? A. Yes, sir.

Q. For how long? A. Well, I have resided there since 1874.

Q. You have practiced since when? A. Since 1876.

Q. And now practice there? A. I do.

Q. Are you acquainted with the respondent, and if so, for how man years have you been?

A. I am; I have known Judge Cox since the spring of 1873.

Q. Were you present on or about the 15th of January, 1879, at term of court held at New Ulm, in Brown county?

Mr. ARCTANDER. What time, Captain?

Mr. Manager COLLINS. About the 13th of January, 1879. I spea now of the Wells and Gezike case.

Mr. ARCTANDER. You are not right; don't you mean June?

Mr. Manager COLLINS. Yes, I mean June.

The WITNESS. I was present at the trial of that case, but I don' recollect the date.

Q. The case of Wells against Gezike? A. Yes.

Q. Was it the trial of a case, or what was being done?

A. Well, I hardly know whether you would call it a trial or a hear ing, or what you would call it. It was an arrangement between th attorneys by which the evidence in the case was to be taken.

Mr. ARCTANDER. We object to what the arrangement between th attorneys was.

The WITNESS. And the court also?

Mr. ARCTANDER. It seems to me that it would be immaterial unles he was present and heard the arrangement.

Mr. Manager COLLINS. I don't think it is; I think it is just as com petent as to show where it was.

Mr. ARCTANDER. Well, go on.

The PRESIDENT. The witness will answer the question.

THE WITNESS. The arrangement as I understood it, was that the evidence of the witness, (I think there was only one sworn, Mr. Blanchard, our clerk of court,) should be taken, and also that the documentary evidence in the case—there were two cases pending—should be submitted before the Judge at that time, and the objections to the introduction of evidence also noted, with exceptions, and submitted; then that the Judge should afterwards, at his leisure, pass upon these things and decide the case. That was my understanding of it.

Q. Now will you state who the attorneys engaged in the case were?

A. Judge Severance, B. F. Webber, Mr. Pierce, Mr. Newhart, Gordon E. Cole.

Q. Were you an attorney in the case?

A. I was an attorney in cases growing out of the same transaction this did, but not that particular case.

Q. These are the cases that were testified to by Mr. Pierce and Mr. Webber the other day, are they not? A. They are.

Q. Will you state the condition of Judge Cox at that time, as to sobriety?

A. Well, Judge Cox was not sober at that time, nor would I say that he was drunk.

Q. He was under the influence of liquor, was he?

A. He was. If you will allow me to express my opinion, or rather my views, I can express it in the language of Mr. Lamberton more fully than anything I have heard heretofore. Judge Cox was intoxicated the evening before, and he felt dull; he had "*katzenjammen*," as we call it at New Ulm.

Q. What?

A. We call it,—well, in my opinion he had the "re-action" of the drunk; I don't think he was drunk.

Q. But you think he was suffering from the effects of the drunk of the night before?

A. I do.

Q. You would say he had been drunk the night before?

A. Yes, sir.

Q. Did you see him? A. I did.

Q. Now state how drunk he was, and the extent he was intoxicated the night before.

A. Well, he was drunk.

Q. Whereabouts in New Ulm did you see him?

A. I saw him at different places. He was at my office. I saw him going up town from my office; I saw him in front of Mr. Bergman's saloon, below my office; and I saw him at the Merchant's Hotel, in the evening just about dusk.

Q. Was this during a term of court, or had he come there to try this case?

A. It was during the term; still I think just before dinner on the day previous to the trial of this Gezike case. We had finished all other business that was pending and it was understood, between Judge Cox, Mr. Webber and myself, that in case Judge Severance and Gordon E. Cole should put in their appearance, as they had telegraphed they would, then we would go on and try these cases the next day, but if they did not come, of course, the principal business of the term having been completed, there would be no further court. That is my impression; that is my best recollection about that matter.

Q. Then, as I understand, you had finished the regular business of the term about noon, and it was agreed that you would take up this Gezike case if the lawyers came the next day.

A. That is my best recollection about that matter. Now, whether it was at noon or before noon, I don't pretend to recollect.

Q. It was some time during the day? A. Yes, sir.

Q. And that night Judge Cox got drunk? A. He did.

Q. And the next day he was present when they were trying the Gezike case?

A. He was.

Q. Under the influence of liquor taken the night before?

A. Yes, sir.

Q. Now, did he try that case that day?

A. Well, he presided. It was not understood that he should try the case that day, nor did he.

Q. It was not understood that he was to try it that day?

A. No, sir.

Q. When did you come to that conclusion, that he should not try the case that day. It was agreed the day before that he should try it if the lawyers came?

A. I can't say when we came to that conclusion, but the state of Judge Cox was undoubtedly talked over that evening and the next morning. At the same time, even if the Judge had been absolutely sober, the case was of such character—so much documentary evidence, and so many technical questions, that no judge could be expected at once to pass upon the evidence and give judgment.

Q. He would take it under advisement.

A. He would take it under advisement. I think they always do, in cases of that character. I was an equity case.

Q. Now, the next day did he take the testimony?

A. He did not.

Q. State why he did not.

A. I can't tell you exactly why. I did not hear the judge himself give any reason; and what the attorneys told me and what was said when he was not present, I don't suppose would be evidence.

Q. But the testimony was taken by a man agreed upon?

A. It was.

Q. Was Judge Cox in a condition to take testimony?

A. I should say——

Mr. ARCTANDER. We object to that. I don't understand that it is a part of the duty of the Judge to take testimony.

Mr. Manager COLLINS. Well, *I* do, when he tries a case.

Mr. Manager HICKS. It is his duty to be in a *condition* to take it.

Mr. Manager COLLINS. And it is his duty to take it; when he tries a case. That is what he is paid $3,500.00 a year for.

Mr. ALLIS. To take testimony?

Mr. Manager COLLINS. Yes, sir.

Mr. ARCTANDER. Well, we object to it as immaterial irrelevant and incompetent, and calling for a conclusion of the witness.

The PRESIDENT. Similar questions have been answered. The chair would rule that he can answer.

Q. Was he in a condition to take testimony?

A. I can hardly give you an opinion; I know that all the conversa-

tion that we had was on the theory that he would not and that he could not.

Q. And he *did* not, I suppose.

A. And he did not. Still I don't wish to be understood that he could not, because that I don't know.

Q. What was his behavior during the taking of the testimony?

A. Oh, I think, as I have stated before, his condition was such that he did not feel well. He felt edgewise. I don't know that I noticed anything extraordinary about his behavior on that occasion.

Q. How late did you see him the night before?

A. I don't remember. I saw him quite late. I know when I left my office to go home, he was at the saloon that I have spoken of, and it must have been 9 or 10 o'clock.

Q. And he was then drunk?

A. He was then drunk.

Q. At what hour in the day did you first see him drunk?

A. During the afternoon.

Q. You saw him in the afternoon, about what time?

A. Well, it was not long after dinner.

Q. And he was then drunk?

A. He was then drunk. Well, I wouldn't say drunk, I will say *intoxicated*,—if there is any difference between intoxication and drunkenness.

Q. Would you have submitted a case to Judge Cox for trial in the condition in which he was on that day, that you speak of,—the day of the trial of the Wells and Gezike case?

Mr. ARCTANDER. We object to that as immaterial, irrelevant and incompetent testimony.

Mr. Manager COLLINS. That is the same character of testimony.

Mr. ARCTANDER. There is certainly a great difference.

The PRESIDENT. The chair is of the opinion that that question is objectionable.

CROSS-EXAMINATION.

Examined by Mr. ARCTANDER.

Q. Now, your idea of Judge Cox's condition that day is that he was suffering from a reaction from the excitement produced by liquor the night before?

A. That is my idea; still, I think he had taken something that morning.

Q. Were there any visible signs of that—that he had drank so that he was under the influence of liquor that morning?

A. It is my impression that when I went up to the court-house I fell in with Judge Cox down in the business portion of the town. The court-house is up on the hill, some distance from the business part of town, and it is my impression that I saw him in Bergman's saloon, or that he came out of that saloon. I know we walked up together to the court-house.

Q. You would not be certain about his coming out of that saloon, would you?

A. I am not certain; no.

Q. Now, you used a term to describe his condition that is used in New Ulm?

A. I did.

Q. The condition that is intended to be described by the word "*katzenjammen*" consists in a heaviness or dullness of the head, does it not, that follows generally after the spree is over?

A. That is the import of the term, as I understand it.

Q. Then, as a matter of fact, it was when that condition set in with Judge Cox, in this case, so that the liquor was really dead in him?

A. I think so.

Q. So that you could not, strictly speaking, say that he was then under the influence of liquor?

A. Well, I don't know whether he was, or not, but then it was the relapse of the drunk.

Q, The drunk was over and the relapse had set it?

A. The active part of the drunk was over.

Q. Now, there was no want of judgment, and there would not naturally be, under such circumstances any want of judgment in the man, would there?

A. Well, as to whether there was any want of judgment in Judge Cox's case, I can only say that his judgment was hardly called for. I don't remember of a single instance during the taking of the testimony and submission of that case, that his judgment was called for. But, in my opinion, I should say that a man would not be fit to give a judgment, or rather express an intelligent opinion, or as good an opinion, when he is in that condition as he would be, if he were perfectly sober.

Q, Did you notice any derangement of his intellectual faculties that morning?

A. Why no, I did not particularly, only he was in this condition.

Q. He wasn't particularly sleepy, was he?

A. No, I think not.

Q, Nor drowsy in any way on the bench?

A. He was feeling mean.

Q. The same as he would feel when thoroughly sick?

A. I think so; I think he was feeling bad.

Q. That is about the upshot of it?

A. Well not all; I think he was in the condition that—

Mr. Manager COLLINS. Well, now let him answer.

The WITNESS. I don't think he was in the condition to transact business or do anything that he would have been in if he had been sober the day before.

Q. You think he was less capacitated than if he had been sober the day before?

A. Why, yes, I think so. I think if a man suffers from ordinary sickness to the same extent that I believe Judge Cox suffered that day, his mind would be in better shape than *his* was. That is simply my opinion though.

Q. Do you mean that if he was suffering from some kind of sickness to the same extent, that his mind would be in a better shape than it was at this time?

A. I think so.

Q. But you noticed nothing of a clouded judgment or a clouded mind?

A. There was nothing to call for his judgment, as I tell you.

Q. Now, is it a fact, in your opinion, that Judge Cox, on that morning was "terribly drunk?"

A. Not terribly drunk, no, sir.

A. Not "crazy drunk?" A. No, sir.

Q. Did he act in any way so as to warrant any such description of this condition?

A. Well, I don't know how it might impress others, who are less acquainted with him, than I am. I know it did not impress me so,—not that forenoon.

Q. Now, as a matter of fact did not the Judge sit and not interfere with the progress of the taking of the testimony there, except on one occasion?

A. Well, I think he did. That one occasion, I presume you refer to, was when an undertaking in attachment was offered. And it is my recollection that an objection was made by Gen. Cole, and his reasons given for the objection, and I think the Judge suggested "If those reasons are true, if those things you state are facts, we might as well settle this case here." That is my best recollection..

Q. Well, now, that was on an undertaking in an attachment case?

A. Yes.

Q. Did that exhibit any evidence of lack of judgment, in your mind?

A. Well, it did in this: It was not carrying out the understanding that had been previously entered into, that all the questions should be submitted and then passed upon at the Judge's convenience and leisure, when he had time to study it.

Q. But there was nothing in the remark showing lack of judgment as a lawyer except it was contrary to the agreements that you had made?

A. If that scene had occurred during the trial of a jury case, I should not have considered it improper.

Q. Isn't it a matter of fact that the attachment in that case was the very foundation of the plaintiffs' claim.

A. I think so.

Q. And that if the attachment was bad the plaintiffs' case must fall?

A. I think so, although there were other questions in connection with that very question that in my opinion would require more deliberate judgment than Judge Cox intended to give.

Q. But you saw nothing wrong in the opinion at the time,—I mean nothing that was not the law?

A. Well, nothing absolutely wrong, but I think it was improper under the circumstances.

Q. On the sole ground that it was not following out the agreement that you had made?

A. No, not on the sole ground of that, but because the case couldn't have been, on that point, determined off-hand.

Q. Well, that is your opinion, that he could not determine it off-hand. You don't know Judge Cox's capability for doing things off-hand?

A. My opinion is that neither myself nor anybody else could have done it. I don't say that it could not have been done, but that is my opinion. You have asked my opinion and I have given it to you.

Q. Now, that was the only time, and the only way, in which he interrupted, according to your recollection, was it not?

A. No, it was not. As I say, Judge Cox felt bad; he felt out of sorts and I remember he acted nervous; still I didn't notice him particularly I didn't notice his actions at all times. Mr. Goodnow, the receiver o the land office, took the evidence at that time for the court, and I took duplicate copy of it for my own use; so that I was empioyed the mos of the time, excepting when my attention was called to him.

Q. Now, isn't it a fact that Judge Cox sat the most of the time an talked with Mr. Blanchard, the clerk of the court, during that trial?

A. Well, whether he did it the most of the time, I couldn't answer you

Q. Didn't he a part of the time?

A. I think he did a part of the time.

Q. It is quite customary in cases of that importance, and when there were many intricate questions of law involved, to act just in the way you did there,—to submit the case,—take the evidence,—make your objections—not have any rulings, and reserve the decision of the court, and have an exception noted on each point in favor of whoever gets beat when the case is decided?

A. Well, I have already stated that in cases of that importance, and especially in cases where there is so much documentary evidence, I think that is the rule; still it has been modified in our practice to this extent: That the court will rule immediately on palpably frivolous or immaterial questions, or anything of that kind.

Q. There were no such questions raised, I suppose, with such eminent lawyers as Gen. Cole and Judge Severance against each other?

A. I don't think there was.

Q. Now, do you remember of the Judge making any orders or rulings while he was sitting upon the bench, and if he had made any such orders or rulings wouldn't you have remembered them?

A. I don't remember of anything of that kind.

Q. If he had made foolish orders or rulings there, during the progress of the trial, wouldn't you be liable to notice such things?

A. Why, I think so.

Q. And you would remember it now? A. I think so.

Q. Did Mr. Severance at that time, or at the time this attachment matter was brought up, tell Judge Cox to "shut his mouth" or use any such language?

A. I don't think he did; but we were seated on the platform occupied by the court, being similarly situated as the platform here. We were seated on the right hand side, at one or two small tables, I think,—all the attorneys; and I recollect hearing Judge Severance make use of an expression,—it was not to the court, and whether the court heard it or not, I don't know,—but he made use of an expression to the effect, that if he would only keep still, or something of that kind, we would get along better.

Q. Was that said in such a tone as to come to the ear of the Judge?

A. Well, that I couldn't answer.

Q. That was the very question upon which Judge Cox proposed to rule and beat him out of his case right then and there, was it not?

A. I think not; I think it was after that; I think it was after the objection had been made.

Q. He didn't say anything to indicate who he referred to?

A. I did not repeat his language exactly.

Mr. Manager HICKS. Well, repeat it.

A. Well, I don't remember it well enough, and I don't desire to give my impression.

Mr. Manager COLLINS. You were about to say to whom he did refer?

A. He referred to the Judge.

By Mr. ARCTANDER.

If the Judge had been all the time talking and mumbling over orders and decisions upon the bench there, and deciding the case on trial all the time, you would have noticed it, wouldn't you?

A. I would.

Q. And you would have remembered it, wouldn't you?

A. I would.

Q. You don't remember any such thing, do you?

A. I don't remember anything of the kind that you put in your question..

Q. Did you, at that time, hear the Judge complain very much or at all, about nobody *minding* him during the trial?

A. Well, the Judge didn't feel right.

Q. I did not ask you that.

A. He didn't want to take up the trial that morning.

Q. No; but during the trial, did he sit on the bench and complain that nobody minded his rulings, or anything of that kind?

A. No, I did not hear anything like that.

Q. Now, this was an adjourned term, was it not? A. It was.

Q. The case of Wells against Gezike was one of the cases set for trial at that term of court?

A. It was, sir.

Q. Now, the parties did not come in time when the case was tried during the term, did they?

A. Mr. Severance, I think, was there, but I don't think he was there before the court adjourned.

Q. As a matter of fact, the court did adjourn at noon that day, did it not?

A. Well, I don't mean to say that the court adjourned *sine die*. I think it was held open conditionally, that if the attorneys put in their appearance this case would be tried; if they did not, it would stand adjourned.

Q. Was it not understood that if they came that case should be taken up before the Judge at chambers, and that court was adjourned *sine die*?

A. No, sir; I didn't understand anything to the effect that it should be taken up at chambers. It was simply left in that way that if they came in, as Mr. Cole had telegraphed they would, they wonld take it up and dispose of it.

Q. Have you noticed the record?

A. I have not. I have not looked at the record since that time.

Q. You wouldn't swear that the court was not adjourned *sine die*?

A. I woulnn't swear absolutely, still my recollection is it was kept open for the purpose of trying the case if the attorneys came.

Q. During the time you were sitting there in that trial, did Mr. Severance, in your hearing, or any one else, ever get up and request the court to keep quiet?

A. Not that I recollect of, unless it was on the presentation of that undertaking; and then it wasn't in the language you put. It was different,—to the effeot that the court would have an opportunity to decide upon that thereafter.

Q. That they did not desire to have it ruled upon now that it w too important a question?

A. Yes, sir.

Senator D. Buck here took the chair to act as President *pro tem.*

Examined by Mr. Manager COLLINS:

Q. You said in response to a question put to you a moment ag when counsel asked you if during this trial the Judge mumbled an complained that he was not well treated that you did not hear anythin just like that; won't you tell us just what you did hear?

A. Well, my recollection is, that Judge Cox was cross with himsel and cross with everybody else. Cross with the suit. He didn't wan to start in on it, when it was first taken up, I don't remember of any re marks in particular nor do I remember of anything he did except as have stated more than that he acted a little contrary, I don't mean much but a little contrary.

Q. Did he make any remarks?

A. Not that I remember now.

Q. By Mr. ARCTANDER. In short, he was out of humor; that is you idea, is it not?

A. Yes, and he displayed it. As I have described it substantially.

Mr. Manager COLLINS. We now take up article seven.

Q. I call your attention now either to a general term of the court, o some proceedings before Judge Cox at St. Peter, on or about the 10t day of December, 1879, in which there was a motion for a new trial i the case of Dingler against the county commissiohers. Do you remem ber that case?

A. Not a motion for a new trial; it was the trial of a case on appeal I remember the case well. I was the attorney for the appellant. Th attorney on the other side was Mr. Davis, the county attorney.

Q. And it was tried at this general term?

A. It was; there were four appeals; one had been tried and this wa the Dingler case.

Q. State what the condition of Judge Cox was during the trial as t sobriety.

A. It is my recollection that the case was taken up during the fore noon or forepart of the day. The jury may have been impanelled th evening before, but I don't think it was. We proceeded with the case t some extent during the forenoon and the middle of the day; and whil I thought that the Judge had drank some, I did not *then* consider hi under the influence of liquors to such an extent as to embarrass us par ticularly. In the afternoon, probably about three o'clock, I moved t have the order of the county commissioners in laying out the roa reversed, and the points raised were unexpected, I think, on the part o the county attorney particularly. So a recess was taken for an hour, o two hours; I don't remember which, probably two hours, a little longe time than usual, to give the county attorney and myself an opportunit to present our points more concisely afterwards. And court convene again, I think, about six o'clock. I think supper was taken by all of u during this recess that I speak of, and then I noticed that the Judge wa intoxicated.

Q. You noticed it at supper time?

A. Yes, when we commenced again after this recess.

Q. That was after supper?

A. I think it was after supper, but it is possible we might have ha

he recess during the afternoon, commenced again, and then had supper. There may have been two recesses, but I am not clear on that point. But in the evening, after supper, is the time I noticed more particularly hat he was intoxicated.

Q. Then he was in an intoxicated condition while engaged in the rial of this case?

A. He was.

Q. A jury case? A. A jury case.

Examined by Mr. Arctander.

Q. At what term was that?

A. I think it was the fall term of 1870. I can't give you the date I lon't remember it. It was the Nicollet county term.

Q. It is the only time at which there have been any cases with that itle?

A. Yes, sir. It was the only cases of that title that I have been employed in.

Q. It was the second day of the case?

A. It is my impression it was the second jury case tried.

Q. Do you remember if it was the second day of the term?

A. I couldn't tell you whether it was the second or third, but I think it was the second case tried.

Q. Do you remember who were on the jury?

A. Not on that case; I don't happen to remember one.

Q. Do you know who the attending sheriff was there?

A. Mr. Downs, according to my recollection. He was the sheriff, and I think I saw him there that morning,

Q. In that case the fact is that the jury were impanelled before dinner, is it not?

A. That certainly seems reasonable to me; that is, according to my recollection, I think it was sometime during the afternoon, but I haven't looked at the record. I don't pretend to give the exact time of any occurrence.

Q. When you came in in the afternoon there was no evidence adduced, or anything of the kind. The first thing was your motion?

A. I think not, I think some evidence had been adduced.

Q. Then there was either one or two recesses, but not on account of the judge at that time?

A. No, sir.

Q. Those recesses were not taken on account of the conduct of the Judge?

A. Well, one recess was for supper, of course; and it is my impression that a recess was taken during the afternoon to enable the county attorney to look up points and authorities on the motion I had made; but whether that recess went with the supper recess I could not say. But in either event, neither of those recesses were taken on account of the condition of the Judge.

Q. Now, you came back after supper, and the jury were in their seats, were they not?

A. I think so.

Q. Sat there during the evening?

A. I think so. The discussion of these points necessarily took some time and it was understood by all of us; and it is possible that the Judge

may have excused the jurors until the next morning, but I don't think it was done, I know we have done that in some cases.

Q. Is the jury-box any further from the Judge's bench there in St. Peter than it is from where the attorneys sit usually?

A. It is about the same distance.

Q. Very close up, is it not?

A. Yes. The nearest juror to the court is not much farther than I am from the President. [a distance of about three or four feet.]

Q. The bench there is somewhat elevated, so that a man who sits upon it could be observed by every one in the court room?

A. He could be observed by the jurors, yes, sir, necessarily is if he is sitting erect?

Q. Now, at that time you say, in your opinion, Judge Cox was intoxicated?

A. He was.

Q. Was it so that others in the court room could notice it that had their eyes in their heads?

A. Any person who was acquainted with Judge Cox and had anything to do with him, so as to have his attention called to it could not fail to notice it. That is my impression; but whether they did, as a fact, I don't know.

Q. But it is your opinion that any one sitting there and listening to the proceedings could not have failed to notice he was intoxicated at the time?

A. Well, you are putting that pretty general. There are a great many proceedings that are going on in a court room, and a great many discussions carried on between counsel and the court that every person who had an opportunity to see might not have formed the same opinion, or come to the same conclusion that most of us did. But I say that any person acquainted with Judge Cox in a business capacity, who had anything to do with him could not help noticing.

Q. Now tell me was there anything in his appearance that would indicate to you at that time that he was drunk?

A. Well, nothing more,—well it is very difficult to describe any appearance; I can't tell you why Judge Cox looks sober now any more than I can tell you why he looked drunk then. It is in the eyes, the expression and his actions.

Q. He is rather eccentric anyway naturally; it is hard to draw the line between his eccentricities when sober and when drunk, is it not?

A. All those peculiarities are presented in greater relief, as you might say, when he is intoxicated.

Q. Did you notice anything about Judge Cox making desperate efforts to appear sober at that time?

A. Well, not desperate efforts, but then, and on other occasions, I have seen him do things that I thought he did to leave that impression.

Q. Did he at that time?

A. Yes, I think he tried to look straight.

Q, Well, how did he do it?

A. Well, I can't go into the details aud delineate my impressions, or rather what I see in a man whom I consider intoxicated.

Q. No, but if there was any effort on his part to appear straight or sober particularly,—if you remember there was an effort, you might remember what that was.

A. Well, it is a peculiarity of his that I have often noticed, and I

iced it at that time. I don't know as I can mimic it, no more than cribe it in words. You have often seen men when they were intox-ed who would brace up and try to walk straight; can you describe exactly the actions they went through?
). Well, was that it?
.. Well, in this case, according to my recollection, it was not a phys-effort to brace up, but was an effort to brace up his appearance and ons or rather expression so as to act a Judge.
). Now, was there anything in his actions at that time which would w him to be a man that was intoxicated?
.. There was.
). What was that?
.. All these things that you call eccentricities or peculiarities in his racter were magnified, as you might say.
). Can you mention anything?
.. Why, yes; I can mention lots of things.
). Well, that is what we wan't.
.. For instance he will talk to the attorneys and he will—well, I 't do it justice. (Great laughter.)
). Make side remarks?
.. He will make side remarks very often when he is sober; and he l make them more frequently, and not so happily, when he is tight. ere is not the witticism in him that there is when he is sober. And will—
). I am asking your attention to what he did at that time?
.. He did those very things at that time. He made suggestions to that he would not have made when he was sober.
). Do you remember any of those suggestions?
.. I remember one suggestion during the forenoon which convinced that he had been drinking during the forenoon; but, mind you, I n't say that he was drunk there during the forenoon. And during evening it got so that I became greatly embarrassed by the way the dge ruled, because I knew he was drunk.
). That was toward the last?
.. Yes, that was toward the final winding-up of the farce; the whole ng was a farce.
). A farce upon the part of the whole of you?
.. Well, I presume I was as big a fool as any body, because I was barrassed; and if it had not been for Mr. Ives and Mr. Ladd—
). Well, you need not state that.
Mr. Manager COLLINS. Well, let him answer that question.
Mr. ARCTANDER. Well, he has answered my question. I don't want mp speeches every five minutes.
Q. Well, you started in and argued that case in the evening, did you t?
A. I did not.
Q. You hadn't argued it before; you just made the motion?
A. I had argued it to some extent.
Q. You finished your argument?
A. I finished my argument in the evening.
Q. That was the first thing done? A. Yes.
Q. Mr. Davis then followed in behalf of the connty? A. Yes, sir.
Q. You then followed him and closed the argument, did you not?
A. I presume I did; that is the ordinary course.

Q. Did the Judge act in any way so as to draw your attention to the fact that he was intoxicated?

A. Why, of course he did.

Q. Did he interrupt you? A. He did frequently.

Q. When he interrupted you what was it upon—questions of law or questions of fact?

A. Well, now let me tell you that one of the signs of Judge Cox's intoxication during the trial of the case is, that he will make suggestions that have no relevancy, but that appear foreign and absurd; and he often made such suggestions to me that evening while I was arguing the case, that I know he would not have made if he had been sober.

Q. Now, do you remember any one of those suggestions now?

A. Well, I don't remember any particular suggestions, but I remember the final ruling that he made.

Q. Well, we will come to that by and by. Now, you don't remember any one of those suggestions that he made at the time?

A. I can't recall any one in particular, but it was in relation to matters brought out by my suggestion.

Q. Is it not a fact with you young attorneys—you were at that time a young attorney——

A. I am *now*.

Q. That without regard to Judge Cox's condition, he would frequently make these remarks on account of the eccentricities of his mind?

A. Yes, he did.

Q. They were not, probably, what you would call really good and valuable suggestions?

A. Yes, he did.

Q. That is the fact of the case, is it not?

A. Yes; but it is more common, and becomes a nuisance, when he is intoxicated.

Q. Did he interrupt you, or was it so as to make it noticeable, while you were arguing the question?

A. He did to all such parties as I have mentioned to you before. I can't see how such parties as I have designated before could help noticing it. Whether all did, I can't answer.

Senator BONNIWELL. It is now half past 12 o'clock, and, according to the rules, it is time we adjourned.

The PRESIDENT *pro tem.* My watch has run down. This court stands adjourned until half past 2 this afternoon.

AFTERNOON SESSION.

JOHN LIND,

Recalled as a witness, testified:

Examination resumed by Mr. ARCTANDER.

Q. At this particular night there was a perceptible difference in the Judge's condition from what it was prior during that day, was there not?

A. Yes, sir; there was.

Q. At that particular day there was a perceptible difference in his condition, his appearance and actions, from what there was of the days of the term while you were there, was there?

A. Well, I left the next day: and to a portion of your answer I

ould say yes,—as to the evening; but as to the forenoon of the day I ink he was in the same condition the first day when the court opened.
Q. You think there was no difference between the first day and the ond day, so far as the forenoon is concerned?
A. No, I think not.
Q. How was it in the afternoon of the second day?
A. Well, you mean in the afternoon of the day of the trial of the ıl cases?
Q. Yes, the Dingler cases.
A. Well, I have told you already, after supper.
Q. No, I mean in the afternoon; not after supper?
A. Well, so, so.
Q. Do you remember that particularly? A. I do.
Q. Were there any rulings of the court during the afternoon?
A. Well, as I told you before, in the afternoon including the supper ess, there is quite a time that we had no session. My present recollection that perhaps we did not have over an hours' session during the after-on.
Q. Isn't it a fact that you had no session at all?
A. No, sir; I am positive that we had a short session.
Q. Is it not a fact that immediately upon the coming in of the court ıu made this motion, and that as soon as you had made it, Mr. Davis ked for a short recess to examine the record?
A. I told you before that my best recollection was that some evi-ice was adduced, (my impression is that it was not a great deal) in gard to this as I stated, I am positive; that is my best recollection.
Q. Did you, during that afternoon, observe any particular action or nduct on the part of the respondent, which you can call to mind?
A. I was off in the law office looking up the law.
Q. I mean during the afternoon, while you were in court?
A. Yes; a little; the Judge acted, what I would call flighty; showed gns that he had drank some; still I might say, he could have tried the se satisfactorily to myself, if he had remained in that condition only.
Q. How did he show that flightiness?
A. Well, in his expressions, in his appearance and his actions.
Q. Now, that is giving it pretty generally; can you give any expres-ons now?
A. Well now, a gentleman on the stand, I believe it was Mr. Lam-erton, referred to the fact that the Judge is at all times affable, pleas-ıt and courteous; and his whole countenance expresses it. When he under the influence of liquor, the muscles of the face will express the ıme feeling, but the eye lacks; there is where I see the drunkenness; ıe eye fails to express what the muscles try to express.
Q. What does the eye express; is it a loss of vision or stupor?
A. It expresses nothing at all. It expresses drunkenness; it fails to ırrespond with the muscles of the face, and that is as near as I can ex-lain it.
Q. You have given that generally as being the case when Judge Cox ıas intoxicated. Now, I want to know whether you noticed that that fternoon?
A. I didn't notice that fact?
Q. How were his eyes that afternoon, were they stolid?
A. They are never stolid; and they were not exactly staring. Now,

I am not expressing this satisfactorily to myself, it is only comparatively that I can convey my idea when I think Judge Cox is intoxicated, and when I think he is sober. As some witness remarked (and this is my testimony) he is always pleasant and courteous, and more so perhaps when he is a little intoxicated. But you can notice the intoxication in this, that the eyes fail to follow the muscular movements of the face, that is as nearly as I can remember it.

Q. That was all, was it, so far as his expressions were concerned, that you noticed that evening?

A. I cannot tell you all the expressions that he used; these flighty remarks, and so on; he did use them. That is one sign that I judged by.

Q. Can you give us any of those flighty remarks?

A. Well, I can give you this, in the case preceding this,—that also was a road case, growing out of the same order of the county commissioners,—when I was arguing the case to the jury I made the remark that the jury should not blame me or my client for endeavoring pretty strenuously to get his dues for the land they had taken, and described his farm; that it was a long, narrow strip, comprising forty acres; twenty acres wide; and I made the suggestion that while his farm was small, and perhaps insignificant, he had come a great distance, perhaps three thousand miles, to get it. He was a German, and the Judge turned around and said: "Mr. Lind, was your client born in the Sandwich Islands?"

Q. Was that while you were arguing?

A. Right while I was arguing to the jury. Now that is not exactly a sign of drunkenness in Judge Cox. He might possibly have said that sober, but I know that if he had been sober then he would not have said it. That was in the case of Fehrling.

Q. Was that on trial at all that day?

A. It was the case which preceded this; whether it was the afternoon before or the same morning, I can't tell you. Perhaps it was the day before.

Q. Didn't you say the Judge was sober the first day?

A. No, sir; I told you he was in the same condition the first day, and at the opening of court, that he was in the forenoon of the day that the adjournments were taken. I came down on the train with Judge Cox.

Q. Well, will you say that he was intoxicated during that day?

A. I will not say that he was intoxicated, but he had been drinking some.

Q. Would you say that he was under the influence of liquor at all, so as to show it, I mean.

A. Well, I *knew*. He showed it to *me;* whether he would to others, I can't say.

Q. Now, you heard Judge Cox make remarks, probably as unnatural as that was when you knew he was perfectly sober?

A. I have. Well, I won't compare it with that. I have heard him make very odd remarks, that people who are not acquainted with him would call very odd.

Q. Isn't it a fact that Judge Cox is a man that is so odd in his behavior on the bench,—I don't mean anything wrong,—but in not being so dignified that many people, seeing him, would think he was drunk without it being the fact?

A. Well, I don't believe that his actions would impress a stranger as foolish when he is sober, or anything of that kind. It would probably impress a stranger, that there was more levity about the court, not so much decorum, as we usually see in courts. But of course we were rather accustomed to it.

Q. Well, you don't mean us to infer from what you said about there not being so much decorum and more levity, that the attorneys are allowed to put their feet on the table, or put their hats on their heads, or to smoke in court?

A. It is a standing injunction with Judge Cox to allow no attorneys to rest their feet on the tables. I never knew of a term of court yet but what we are cautioned against it.

Q. Do you mean it is in the way or manner of expression, that there is more or less joking between counsel and the court, and that there is not so much strictness about the proceedings or dignity about the Judge as there is in some courts?

A. No, there is not.

Examined by Mr. Manager COLLINS.

Q. Mr. Lind, you have remarked that attorneys might notice the condition of the Judge when others would not. Won't you explain to the court why that should be, and what you mean by that?

A. Well, what I mean is this: that it has been my experience that farmers and others, who often come into a court room and hear us discuss law points and questions of practice, and such things, pay no attention to it, and probably look upon the whole thing as a sort of a farce, even if it is carried on with the utmost decorum; that perhaps they would not be so apt to notice as one who was interested in what was going on. He would necessarily notice the condition of the Judge more acutely than one who did not understand the subject-matter of the controversy, or what was going on; that is what I mean. I think the statement I made was this: that attorneys or others, who had business or were actually in contact with the Judge, could not fail to notice his condition at the time I have testified he was intoxicated, and that is the testimony I desire to stand by.

Q. You mean his physical and mental condition; and they would notice it because they were transacting business with him?

A. Yes.

Q. And knew what was going on?

A. Yes; or, if by reason of anything else, their attention was particularly called to the Judge, or to the matter under consideration.

Q. You said that this trial finally became a farce. Won't you tell us further about that, and what transpired? How it became a farce?

A. Well, I can't tell you without going to some extent into the details of the case, as I recollect it.

Q. Did you finish the case that night? A. We did not.

Q. State why you did not.

A. This was an appeal from the order of the county commissioners, laying out a county road. There were four apellants; I represented all. One case had been tried; and, when the second case was called up, as I recollect, after some evidence had been introduced, I made a motion to the court to reverse the order of the county commissioners in laying out the road, on the ground that a portion of the road had been laid out through an incorporated town; and for that reason the county commis-

sioners, as I claimed, had no jurisdiction. Right opposite New Ulm is an old town site called Red Stone, which was an incorporated tract, in 1854 or 1856, by special act of the legislature, and that corporation or town site had never been vacated; and that was the basis of my motion. A portion of the road ran through that section, which I think was section 35. The county attorney was taken somewhat by surprise, in this motion, and that was the reason of the adjournment, that I have referred to. We took a recess, and the county attorney looked the matter up, and I did some further; and we argued the case to some extent, and in the middle of my argument in the evening, as nearly as I can recollect, the Judge stopped me and said that he would hold the road void, as to that portion which ran through section 35, or the incorporated town, and hold it valid as to the balance. Well, of course that entirely nonplussed me. I didn't know what to make of it at all. I tried to argue with him that it could not be the law and it was not possible, because the county commissioners' order was an entirety, and should be entirely reversed or sustained; and the Judge and myself talked back and forth. I represented that it would be ridiculous to say that the county commissioners could go and lay out a piece of road that commenced nowhere, and ran nowhere, and take a man's private property; and we talked back and forth, and I was very much embarrassed indeed, and I went to G. S. Ives, who happened to be there, and said I, "Mr. Ives, what can I do?"

Mr. ARCTANDER. Well, we object to any conversation between you and Mr. Ives.

The WITNESS. Well anyway I concluded, if we could have an adjournment, or take a recess until morning, it would be all right. The Judge made an order that the road should stand, except as to that part in section 35. I then asked for a recess until morning. The judge refused it at first. The county attorney told him that he would not oppose it. He realized the situation of things and I asked him, and plead with him, and begged him to grant me a recess and he did. And in the morning he reversed the order without any argument and granted my motion vacating the action of the county commissioners.

Q. You say the morning he opened the court he was in about the same condition as when you came from New Ulm?

A. I did; when he came down to open the court. But whether it was the day before or two days before, I can't tell you.

Q. And you know he was under the influence of liquor?

A. I *know* it, but perhaps it would not have been perceptible to ordinary men.

Q. The counsel asked you a moment ago, concerning these orders about attorneys putting their feet on the table. The judge is strenuously opposed to that sort of thing, is he?

A. He is.

Q. And speaks of it frequently?

A. He has often mentioned it.

Q. Won't you explain an expression of yours a moment ago, that this was perceptible to you but would not be perceptible to an ordinary man. As a matter of fact you have not associated with Judge Cox?

A. A good deal with the Judge, and knew him well; would notice, while perhaps others, who were stangers, would not.

Examined by Mr. ARCTANDER.

Q. You have associated with him very much, socially, have you, ex-

cepting in court, when you have been there in your own county, and in a few of the other counties occasionally?

A. Why, yes; I have associated with Judge Cox a good deal; quite frequently.

Q. Have you associated with him socially to some extent?

A. He lives at St. Peter and I at New Ulm. I have been out hunting with him.

Q. You were not down frequently?

A. I never was at his house in St. Peter, but always called upon him of course, when I was there, at his office.

Q. Well, you would only be there at general terms, and once in a while, I suppose, upon a motion, at St. Peter.

A. Yes; it is an adjoining county, and the line runs up to New Ulm. I have been down there quite often.

Q. Have you been down there over half a dozen times a year that you could swear to?

A. Well, some years I might have been down a great many more times than that, and some, perhaps, not more. It is my impression though that I have been down to St Peter (I could tell you very nearly within one or two times) oftener than half a dozen times in every year. That is my judgment, but I don't know so as to swear to it.

A. Now, last year, do you remember how many times you were there?

A. Why, I presume if I had an hour's time I could tell you very nearly, within one or two times.

Q. Isn't it a fact that you have only been there three or four times during the last year?

A. No, sir; I have been three more times than that. I know that I have been there more than six times during the last year. I didn't see the Judge every time I was in St. Peter.

Q. Are you positive that any order was made there in the evening in regard to that road?

A. It is my best recollection.

Q. Will you swear it was?

A. I will swear it was my recollection.

Q. You are not positive of the fact?

A. No I am not.

Q. That he made a decision in the evening and reversed it in the morning?

A. I have not examined the records. I have given the matter no consideration except that I have thought of it within the last three or four days. I don't say absolutely that it was done but it is my best recollection.

Q. Now, isn't it a fact that whatever Judge Cox said about vacating, or holding the road void, as to where it passed through the incorporated village, and valid as to the other parts,—that that remark was made to you on the argument, so as to elicit from you some reason why it should be held void as to the whole road, and wasn't that all Judge Cox had reference to that evening?

A. No, sir.

Q. Isn't it a fact that during your argument and while you were arguing about the illegality of the road, that Judge Cox interrupted you and said, "Mr. Lind, I don't care to hear any argument as to the fact that that road is illegal as far as that village goes, because I am convinced

of that in my own mind, but I desire to hear you upon the question as to whether I have a right to vacate the other,—as to whether that illegality vacates the whole road."

A. Well, he may have said that. That is a very consistent ruling.

Q. That was the way he interrupted you, was it not?

A. Well, that was undoubtedly one way, but there was—

Q. Now, if there had been an order made to that effect, if there had been more than a suggestion to you, wouldn't that order have been directed to the clerk and entered on the records?

A. All orders, as I understand it and as my recollection is, of course are given to the clerk, and I presume it was done in this instance.

Q. If there was an order given then it would be on the record would it not, according to your knowledge of the way in which business was carried on there?

A. Certainly, certainly, it would.

Q. Now, if there is no such order, but, if it appears upon the face of the record, that the case was argued and submitted and taken under advisement until the next morning, you are mistaken about that, are you not?

A. I am not mistaken about my testimony. I tell you that my recollection is that such an order was made, and whether it was put on the minutes by the clerk or not I don't know, and I don't care. There may be a possibility that I am mistaken, but my recollection is that I am not.

Q. Well, I say if it appears—

A. No, sir, that makes no difference,

Q. If it should appear so on the record you would say you were mistaken on that point, would you not?

A. No, sir, I testify to the thing just as I recollect.

Q. Do you think your recollection is infallible?

A. I do not.

Q. You have told us, have you not, that there is every reason to believe that if that order was made it would be entered on the record?

A. I say that is so with reference to the ordinary course of business

Q. Isn't it a fact that that Dingler case was not up more than one night? A. That is all.

Q. That is the time you claim this order was made? A. Yes, sir.

Q. And it was reversed the next morning?

A. It was reversed the next morning.

Q. Now, isn't it a fact that there was a judgment recovered against the county in the previous case for damages for laying out of the same road?

A. That is a fact.

Q. And that at the time when this motion was argued in the Dingler case, there was no motion for a new trial, and that as a matter of fact the verdict stood?

A. How do you mean?

Q. There had been no motion made for a new trial in the previous case?

A. No.

Q. A verdict stood there against the county for a large amount of damages for the laying out of that road?

A. It did.

Q. Now, under these circumstances would it strike you as a matter of

rise that the Judge would hesitate in setting aside the order so as to r the whole road while a verdict was outstanding against the county lamages for laying out that same road?

. I want you to understand that I gave the county attorney notice in case that order was reversed I would consent to the vacation of verdict in the former case, so that certainly could not enter into that

. I think the clerk made an entry in the second case that if the nty commissioners' order was finally reversed, that the verdict in the rling case should be vacated.

. Now, isn't it a fact that in the evening before adjourning, Judge asked the county attorney if he should be satisfied if he set aside whole order, or if he had any objection to his setting aside the order n entirety laying out that road, instead of as his ideas were, that the l was only as far as it went through the incorporated village?

. My recollection is that the county attorney did not urge the court et aside the road to the extent of section 35, or any other part of it, than the whole. The county attorney coincided with me in that.

. He argued against you, didn't he?

. He did not on that point.

. Didn't he argue against you as to the validity of the proceed-?

.. He did, but not as to the partial setting aside of the proceed-?

. No; he did not argue upon that at all,—as to the partial setting le of the proceedings?

.. No, sir, he did not.

. Now, isn't it a fact that, when he did not do that, that after he ed the Judge asked him whether the county would consider itself sfied with having the whole order set aside, if he found it had to be aside as to a portion, and that Mr. Davis told him that that would atisfactory to the county?

.. Well, that is very possible; I don't recollect hearing that, but it ery likely.

. Now, right after, the next morning how was the Judge then? must have been sober if he reversed the rulings of the prior day, was not?

.. Well, I should call him pretty sober.

. Now, isn't it a fact, that he was as far as you know, perfectly so-?

.. Well, I think he showed partial—my recollection is that he show- the previous evening's condition, pretty well.

. Kept it up did he?

.. No, I don't mean to say that he drank anything that morning.

. Did you notice anything in his conduct, behavior or actions that rning that showed you he was under the influence of liquor.

.. Well, his condition was somewhat as it was in the Gezike case, I tried to describe it to you, and showed the next morning that he l been tight during the evening.

. But you couldn't see any signs of present intoxication, conld you t morning?

.. I don't remember that I did.

. Now, isn't it a fact that the next morning after he had granted ur motion in the Dingler case that he entered an order partially set-

ting aside the road order, as far as the Fehrling case was concerned, afterwards?

A. Not to my knowledge; but it was agreed, as I told you, that the verdict in the case should stand vacated.

Q. Now, isn't it a fact that an order was entered at that time in the following way: That the order of the court is, that the appellant's motion in this action is sustained, and the order of the Board of County Commissioners laying out the road, so far as it relates to the south half of section 35 is concerned, is reversed; and the court further orders that the order laying out this road is reversed, for the reason that the county commissioners had no jurisdiction to lay out said road?

A. That is in the Fehrling case; I presume that is what took place. Will you please read the final order in the Dingler case. That is the one on which we had the controversy. I told you what my recollection was and I wish you would read it. If it differs with my recollection I want it; if it does not I don't want it.

Mr. Artander then read the order called for by the witness.

Q. Now, then, his decision in the morning was the same as it was in the evening, according to your recollection?

A. No, sir; it reverses that order that he made the evening before, holding it void as to section 35 only, and holds it void as to the whole road, as I understand it. That is my recollection.

Q. Well, it is your recollection that that was the order in the morning; that the order reversing it only as going through the south half of section 35 was reversed?

A. Yes, sir.

Q. That the order he had made himself was reversed? A. Yes, sir.

Q. And that the whole road was vacated?

A. Yes, sir; that is my recollection.

Mr. ARCTANDER. I guess you are mistaken.

Mr. Manager HICKS. The possibility is that the clerk made a mistake who entered that order.

Q. Is the village of Redstone exactly opposite New Ulm?

A. Well, you can call it opposite. It is on the opposite side of the river from New Ulm.

Q. Well, that village was located on the south half of section 35, mentioned in the order, was it not?

A. That is my impression.

Q. About three miles east from New Ulm, is it not?

A. No, it was not so far as that. I can't tell you how far.

Examined by Mr. Manager COLLINS.

Q. You say the Judge made a ruling there. I don't know what the practice may be in that court, but, as I understand, you were trying this case to a jury?

A. We were.

Q. You moved to dismiss for want of jurisdiction on the part of the county commissioners; the Judge said he would sustain the road as to two ends of it; he would sustain the action of the county commissioners as to two ends, but would reverse as to the middle?

A. No; he didn't state it in that way. He stated he would sustain my motion as to a portion of the road, which, of course, would leave a part taken out.

Q. Well, that is substantially the same thing. Would that kind of an order, under the practice of the court, go upon the records—that kind of a ruling?

A. Well, not the final judgment that is entered, but I think our practice is——

Q. Now, he makes a ruling of that kind there, and I ask you if that is a ruling that would go on the records of the clerk under your practice up in that district?

A. Well, I am hardly clear on that. I think that ordinarily the prevailing party draws up a regular order and gets it signed, and subsequently enters judgment upon it. And I think cases of that kind have been disposed of in that manner by simply the clerk making an order, or the court making an order in its own minutes.

Q. If this matter had been disposed of upon an order made that way you think the order would have been filed in that shape?

A. Well I don't know that any order had been filed in that case that night, or at all.

Q. Well, I am speaking of the order that the clerk incorporates in his record. Was there any order of that sort made and entered in the clerk's book?

A. I think there was.

Q. When you speak of the order that was not filed, you mean one that was.

A. Yes. I don't recollect of any such order being prepared in the case. It may have been though.

Q. You speak from your recollection of the matter and not from the record?

A. I kept no record and I have not examined the record of the court.

Examined by Mr. ARCTANDER.

Q. Isn't it a fact, Mr. Lind, that whenever an order is made in that court, that it is the invariable practice of the judge to turn to the clerk and tell him to enter that order?

A. In dismissing a case that is the invariable rule.

Q. Isn't it a fact that the jury came in in that case the next morning and sat in their seats again, when the judge made the final order, the reversing order as you call it?

A. Why, certainly they did.

Q. Now if the judge had made the order the night before, wouldn't the jury have been dismissed till then?

A. Well, it was left, you understand—a recess was taken and it was not left final; but a recess was taken with the understanding that we should go on with the case in the morning.

Q. Now, isn't it a fact that if he sustained the action of the county commissioners only as far as the village of Redstone was concerned that you would have to go on with your case and prove your damages; nevertheless, you had not got what you wanted in your case?

A. Why no; certainly not.

Q. So that you would have to go on and try the case, whether he sustained that order or dismissed it?

A. Why, yes.

Q. The point you raised in the case was that the road going

through an incorporated village,—this road that had been laid out by the county commissioners,—that they had no authority to lay out roads through an incorporated village; that the village authorities had sole power and right to lay out streets and roads through the corporate limits; was not that the point?

A. That was it,

Mr. Manager COLLINS. We desire to call this witness under article eight.

The PRESIDENT *pro tem.* Before you proceed any further the chair desires to say this: Unless ordered otherwise by the court you will be kept to the order of getting through with your side and letting the other side get through with theirs, and then you have opportunity for explanation; with this see-sawing back and forth, occupying the time of this court, in this way, we shan't get through all summer. And as I say, unless the court orders otherwise, you will be restricted, and when you have had your last examination upon a matter it will close; no new matter will be brought up. We have got to have some order and regularity in our proceedings, if we ever intend to get through.

Mr. ARCTANDER. That was our proposition the other day, but it was overruled.

The PRESIDENT *pro tem.* Well, you understand what the order is now unless it is overruled. [Laughter.]

Mr. ARCTANDER. Yes, sir.

Mr. Manager COLLINS. I desire now to call the attention of the witness to a general term of court held in May, 1880, in New Ulm, Brown county. Do you remember that term?

A. What case have you reference to?

Q. Particularly to the case of McCormick against Kelly. A. I do.

Q. Will you state to the court the condition of Judge Cox during the trial of that case as to sobriety?

A. In the latter part of the case he was intoxicated.

Mr. Manager COLLINS to Mr. Arctander. You may take the witness.

Mr. ARCTANDER. We don't care to cross-examine on that.

Mr. Manager COLLINS. (To the witness.) I call your attention now to article eleven.

Q. At the term of court held at St. Peter on or about the 5th of May, 1881, do you remember that term of court; it was when the case of John Peter Young against Charles R. Davis was tried?

A. I do.

Q. Will you state the condition of the court during the trial of that case?

A. During the trial of the case, I think the Judge was pretty sober, until the last part; but when the jury brought in a verdict on the case a motion was made to set aside the verdict and for a new trial on the minutes; and that was argued immediately. At that time I thought he was intoxicated.

Q. That he was intoxicated at that time? A. Yes, sir.

Mr. Manager COLLINS (to Mr. Archander.) You may take the witness.

Mr. ARCTANDER. I don't want to ask him anything.

Mr. Manager COLLINS (to the witness.) The next is article fifteen, in Lyon county,—the general term in Lyon county, about the 20th of June, 1881. Do you remember that term of court? A. I do.

Q. Will you state the condition of the Judge during that term?

A. I wasn't there the whole of the term. While I was there the Judge was intoxicated.

Q. Were you there at the beginning of the term?
A. I was there at the beginning of the term.
Q. Was he intoxicated at the beginning of the term?
A. He was.
Q. How long did he remain intoxicated?
A. I think I left on the third day of the term, in the afternoon,—that is my impression,—and during the time that I was there he was intoxicated.
Q. Did he go upon the bench in that condition? A. He did.
Mr. Manager COLLINS (to M. Archander.) You may take the witness.

Examined by Mr. ARCTANDER.
Q. Now, Mr. Lind, what time did you go up to Lyon county?
A. At noon the first day.
Q. Did you go up on the train with the Judge?
A. No, not with the Judge. I came up a little before noon, I think, on a freight. There is a freight that leaves Tracy, I think, about 11 o'clock, and it is my recollection I got to Marshall before the Judge did. I think he came upon the passenger, although I don't know whether he did or not.
Q. Did you see him when he opened court?
A. I think I did, but I am not certain whether I was there when court was opened or not.
Q. Was you there in the afternoon of the first day? A. I was.
Q. Did you hear the grand jury charged? A. I did.
Q. Were there any cases tried that afternoon?
A. I do not remember; I think a case was commenced, but that is simply an impression.
Q. Wasn't the case dismissed after argument and after evidence had been introduced?
A. Well, that might have been. My recollection is that a case was brought on that afternoon.
Q. You have no distinct recollection of the action of the Judge during the trial of that case, have you?
A. Well, I could tell you more about it if you would give me the title of the case. I can't tell you what took place on the first or second day but I remember more facts in connection with the cases that were heard.
Q. Did you hear the grand jury charged?
A, I think I did; I know I did.
Q. Have you any distinct recollection of it?
A. Not particularly; no, sir.
Q. Was it his usual charge that he gave?
A. It was shorter, I think.
Q. Was there anything that you missed out of it?
A. I think there was; but I don't remember what part now, but I do think it was shorter, in fact, I am positive it was.
Q. You are positive it was shorter? A. Yes.
Q. Otherwise, it was the usual charge, was it?
A. Well, it was a little different.
Q. Do you remember anything in particular wherein it was different.
A. Yes, I think I do. He enlarged more. Do you wish me to state what my recollection of it is?

Q. Yes, if you will swear to it, that is all I care about it.

A. Well my recollection is that he enlarged more upon the duties of grand jurors as to examining into officials, from the highest station to the lowest, and more than he usually does.

Q. You have heard him do that in other counties, have you not?

A. I have.

Q. Do you remember at the 1880 term of court in Renville county, that he gave substantially the same charge there.

A. A little different; I know the charge, but this was different.

Q. In your opinion was it not a good, clear charge that he gave?

A. Well, I never found any fault with it.

Q. I mean at this term at Lyon county?

A. I thought it a pretty good charge. It was not as good as some that he has given.

Q. You have reference to that charge he gave on the lunatic asylum matter, I suppose?

A. Well, that for one. I thought that was a very good charge.

Q. Did they have an evening session that day?

A. My recollection is not clear, but I think so. I think an evening session was held while I was there, but whether it was that day, or the next, I am not certain.

Q. Now, Mr. Lind, how did his intoxication exhibit itself the first day if you remember anything about it, or don't you claim he was intoxicated the first day?

A. Well, that was the impression I received when I was in the court house, but I recollect less about that first day than the subsequent days I was there.

Q. Then you are not willing to swear to it as a positive fact but it is simply an impression you have that he might have been slightly intoxicated that day?

A. The impression I formed at the time was to that effect, but there was nothing particularly to change my memory. I had no interest in anything that was going on on the first day.

Q. But you would not swear to it as a positive fact, that he was intoxicated at that time, but it is simply your impression.

A. Well, I happened to know outside matters which of course would—

Q. Well, I don't care what you have heard from others, or anything of the kind, but I mean from what you saw there, would you swear, from what you saw and knew, of your own knowledge?

A. Yes, I should swear he was under the influence of liquor.

Q. Now, how did it exhibit itself in the court room that day?

A. Well, in various ways.

Q. Was he hilarious and making remarks?

A. No, not particularly.

Q. Was he drowsy?

A. Well, he looked pretty hard for one thing.

Q. Where did he go from that term?

A. Whether he came immediately from Lake Benton or Tyler, I don't know, but he had been there the week before holding court.

Q. Now, don't you know that the Judge adjourned court there the night before, at two o'clock in the morning, or thereabouts, and at 6 o'clock went up on the train and traveled until 2 o'clock, until he came there at Marshall?

A. I don't know that is the fact, but I think I have heard talk to the effect that that was the case.

Q. Isn't it a fact that the Judge had held court previous to that; you are acquainted with the terms of court up in that district?

A. Oh, yes.

Q. That he had held terms, previous to that from four to six weeks steadily.

A. The cause you referred to at St. Peter was the beginning of the spring circuit.

Q. And since that time had he held terms all the way through?

A. Yes.

Q. Up to Marshall? A. Yes.

Q. As a matter of fact the Judge is pushing things considerable is he not in his district, holding night sessions, etc.?

A. Do you want my opinion on that, or do you ask me as to the fact?

Q. As to the fact?

A. My opinion is that he never made anything by it; he has night sessions and all that.

Q. We attorneys don't like that business anyway. I mean in the way of saving time.

Q. Isn't it his practice to start court early in the morning, keep on until 12 o'clock, then commence again at half past one in the afternoon, then commence at half-past seven, and run until 10 o'clock in the evening?

A. That was very frequently done.

Q. It is the rule, is it not?

A. I would hardly say that but it is very often done by the judge.

Q. Do you know anything about the fact of this seige immediately before that, starting with the term in St. Peter?

A. I answered that question. I said that he had terms continuously.

Q. Do you know anything about whether or not as a matter of fact he made a practice during last summer at those terms to hold evening sessions.

A. I think he did, very often.

Q. Did you see the Judge when he came from the train?

A. I did not.

Q. The first time you saw him was in court?

A. I think I saw him at the hotel of Mr. Hunt's, I am quite sure I did; but I have no particular recollection about it.

Q. Was that before or after dinner?

A. Well, I think I saw him there at dinner.

Q. Now, is it not a fact that the Judge, at that time, looked somewhat fatigued?

A. I think he did, considerably, well, not fatigued from legitimate work, I thought he looked fatigued from drinking.

Q. That was your idea of it. Do you claim to have such a fund of knowledge when you see a man, when he looks fatigued, as to know whether it is from excessive drinking, or whether it is from excessive work?

A. I don't claim to have any such particular knowledge, and I don't claim I can tell in every instance, but that was the impression that was left on my mind.

Q. It was an impression that you had, and that was all?

A. Yes, sir.

Q. You had heard there at Marshall that the Judge had been on a spree down to Tyler, did you not, before you saw him?

A. Yes, sir; I had.

Q. Didn't that enter into your impression to a great extent, and make quite an impression on your mind?

A. Why, I heard or knew that he had been spreeing during the whole spring.

Q. I don't ask you that, Mr. Lind?

A. And I have no doubt that that entered into my judgment in coming to that conclusion, I hadn't the least doubt.

Mr. Manager COLLINS. Did you say you knew that?

A. I did.

Q. Know that he had been spreeing all the spring? A. Yes, sir.

Mr. ARCTANDER. He didn't say that he knew it?

Mr. COLLINS. I understood him to say so.

Mr. ARCTANDER. You know, Mr. Lind, what is proper testimony, and when I ask you a question which calls for proper testimony to be given in court, I do not wish you to volunteer what is improper testimony, testimony of that kind.

A. You asked me for my opinion?

Q. I asked you whether you had heard that the Judge had been on a spree in Tyler; you answered yes to that, didn't you?

A. I did.

Q. I asked you whether that didn't enter into your impression?

A. No, sir;—yes;—and then I also stated—

Mr. ALLIS. He volunteered a statement that we shall have to ask him to explain hereafter.

Mr. Manager COLLINS. I don't think he volunteered.

Q. Although you were in court on the second day, you have no distinct recollection of anything happening there, particularly which showed that the Judge was intoxicated except his looks; that he looked pretty hard, as you expressed it?

A. I have no other recollection.

Q. Now, if he had done anything there out of the way wouldn't you have been apt to have noticed it?

A. I think so.

Q. Now, Mr. Lind, is it not a fact—this was, I believe—in June?

Mr. Manager COLLINS. In June, I believe.

Q. Is it not a fact that during that term of court, the week previous, it had been an extremely hot season and was during the term there?

A. I don't remember that.

Q. Don't you remember that during that term and the first days of that term, that it was almost impossible to stay in that court room up in Marshall, on account of its being so suffocatingly hot?

A. I have no recollection of suffering myself; it may have been so, but I say I have no recollection of it.

Q. Now, the second day, did you try any cases there?

A. I think not

Q. Were you in court the second day? A. A portion of the time.

Q. Do you remember any cases tried there?

A. I remember one replevin case. I don't remember the parties, the names of the parties.

Q. Is that the one about the piano? A. I think so.

Q. Was that tried the second day

A. I think that was in the afternoon of the second day. I don't remember what cases were tried during the afternoon.

Q. Was Charlie Andrews one of the attorneys in that case?

A. Mathews was one of the attorneys in that case. Mathews was on one side and Seward and Forbes on the other, whether Andrews was in it or not I don't know.

Q. Was Mathews a party to the suit?

A. Perhaps he was, but he acted as attorney.

Q. You don't remember that you had any cases there the second day?

A. I think not. I think it was on the third day.

Q. What was the case you refer to?

A. The case of Bradford against Bradbury.

A. The case I remember particularly was the replevin case in regard to a piano. I don't remember whether that is the name, but it sounds familiar.

Q. Do you remember whether Mr. Matthews was one of the parties?

A. I don't remember that, but I remember that he argued a motion in the case.

Q. That Matthews argued a motion in the case, and that Virgil Seward was on the other side, was he?

A. He was.

Q. And argued on the other side and appeared also?

A. And Forbes also.

Q. Was there anything particular during that case, that is, the only one you remember, the second day?

A. The only case that I remember of particularly?

Q. Was that the case in which judgment was ordered for the defendant upon one of these iron-clad notes? A. Yes, sir.

Q. That is the case? A. Yes.

Q. Was there anything in that case that particularly called your attention to the Judge's condition?

A. I thought, and think still, that he was under the influence of liquor.

Q. There was nothing in his ruling that showed that he didn't know what he was doing, or how to act?

A. No, there was nothing to show that he didn't know what he was doing.

Q. There was nothing to show that he could not catch a point, or understand a point, when it was argued or presented to him?

A. Well, I noticed one thing, that he picked up a point that was not thought of by either attorneys.

Q. He sent them out of court kiting, didn't he? A. He did.

Q. Now, did you consider that an evidence of his intoxication?

A. In answer to that question I will have to give an opinion, which, perhaps,——

Q. Well, did you at the time consider it as an evidence of intoxication? A. Yes, sir, I did, to some extent.

Q. Was the action which the Judge took, and the point he picked up himself, in conformity with the subsequent rulings of the supreme court of this State? A. I think not.

Q. Can you state?

A. Now, I may be mistaken about the point, but as I recollect the

point, that is, that there was a variance between the pleadings, the pleadings alleging it to be a note, and the instrument presented was one of these property notes; and if that recollection of mine is correct, it is my opinion that the supreme court has not changed it.

Q. That they have not what?

A. That they have not held that such a variance is fatal; they may, but my recollection is to the contrary.

Examined by Mr. ALLIS.

Q. Which way was the holding of the Judge?

A. According to my recollection—

Mr. ALLIS. I did not understand you.

Mr. ARCTANDER. He said it was one of these property notes.

Q. You said it was one of these property notes; probably the Senate does not understand that fully. You mean one of these instruments in which is coupled that the title and ownership of certain property which is the consideration of the note, shall not pass.

A. Yes, what we call a chattel mortgage note.

Q. The iron-clad property note.

A. Yes, sir. A note and a consideration.

Q. Now is it a fact that this note had been transferred to a third party by the payee, and that there was no evidence offered of the ownership at the time,—the title or ownership of the instrument?

A. I didn't hear that point raised or discussed at all.

Q. Wasn't that the point that the Judge raised.

A. No, sir, I think not; now, I am not absolutely certain about that but the only point, that I recollect was the point of variance in the pleadings.

Q. Is it not a fact that that matter came up, Mr. Lind,—when the plaintiff rested after having introduced that note, and did not the Judge ask the plaintiff, "Are you sure, have you nothing more to offer, have you no further evidence to offer, have you nothing further to offer?" and the plaintiff stated he had not, and the Judge asked him, "Are you sure that you have nothing more."

A. I recollect that language well.

Q. Is it not a fact, that then the Judge told him, I shall nonsuit you, in that case, isn't that the way it came up.

A. I think so; that is my recollection of it, very nearly.

Q. Now, do you remember any other case on the second day?

A. I think this case was in the forenoon, but I don't remember;—this case was in the afternoon, this case we have been talking about.

Q. The afternoon of the second day?

A. I think so; but what was done in the forenoon I don't recollect.

Q. Were you in court during the forenoon?

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

Q. If there was anything particular that you noticed in regard to the condition of Judge—

A. I didn't notice anything that I recollect now.

Q. Were you in court any time except during the trial of that Bradford case, any time during the afternoon?

A. I don't think I was.

Q. Were you in court during the morning or forenoon of the third day?

A. I was.

Q. Were you engaged in any trial there then?
A. I think it was the third day that I was engaged in the trial of a case there.
Q. You say the third day, you think you were engaged in a case there in court?
A. It may, possibly it may have been the fourth, but it is my recollection, that it was the third day.
Q. If it was the fourth day, was he drunk; was the Judge? You say that it may probably have been the fourth day.
A. Yes, sir.
Q. If it was, was the Judge intoxicated at that time?
A. He was intoxicated that day.
Q. He was intoxicated the fourth day too?
A. He was if it was the fourth day. I don't remember anything about the third at all; I have no recollection of it; I have no recollection of any particularly between the beginning of the term, and the day on which the grand jury came in, except this piano case that I have spoken of.
Q. Before the grand jury came in were you trying any case?
A. I was.
Q. What case was that that you was trying then?
A. It is a case of Charlie Main as administrator, against the Winona & St. Peter Railway Company.
Q. That was tried the third day, you think?
A. The third or fourth.
Q. Probably both?
A. No; I think not.
Q. It was only one day?
A. Yes, sir.
Q. You proceeded with the trial in that case, I suppose?
A. We did.
Q. It was in the usual way?
A. Pretty much, yes.
Q. You raised objections to the evidence, or there were objections raised. You were attorney for the plaintiff?
A. I don't think there was a great deal of controversy.
Q. There wasn't a great deal of controversy?
A. Not on the introduction of the evidence. I don't think there was
Q. Do you remember any trouble about the introduction of evidence or any rulings of the court which indicated that he was intoxicated?
A. Not from any ruling; I don't recollect that.
Q. So far as you remember now, every one of his rulings were correct?
A. No; I won't say that.
Q. So far as you remember, that is what I want to ask you, you don't recollect of any ruling?
A. I will not say that I thought one ruling was wrong, but that was simply my opinion.
Q. You have had numerous cases, have you not, before the Judge, when you thought he was perfectly sober, when you thonght he ruled wrong against you?
A. We would have no use for a supreme court if he hadn't.
Q. Now, that was the only time you thought he ruled wrong, and that ruling was against you, during that trial?

A. That was against me.

Q. And that was the only one that you can recollect of now which you thought he was wrong?

A. That was the only one I can recollect of particularly.

Q. You wouldn't say whether that was made as it was because his intoxication, or whether it was Judge Cox's opinion anyhow?

A. Oh, he might have made the same ruling when sober, but the guage that he used in expressing his order and in making his ruli convinced me, together with his actions, that he was drunk.

Q. What was that language?

Q. Do you want me to repeat it?

Q. Oh, we ain't particular; we want the whole thing; just answer m question.

A. Well the case was an action which my client brought against th Winona & St. Peter Railroad Company for running over a man, killi a man, and killing his team, by reason of his getting on the road in t dark. The railroad company didn't have the road fenced, and he dro on the road in the night time and was killed. That was the cause action; and in granting the motion for a non-suit the Judge dwelt ve largely on the duties of a railroad company as common carriers, t duty that they owed their passengers to safely carry and take eare of th comfort and safety of the passengers, and that of course had nothing t do with the question at issue at all.

Q. Isn't it a fact that he referred to that largely as he did, to com pare it with their entire want of duty as to strangers that came and tre passed on their road?

A. I did not so understand it.

Q. Didn't the facts in that case show that this man was driving o the track when he was killed, that he was drunk and got out half a mi below where the highway crosses the track, and was really driving dow the track when he was killed?

A. No, sir; it did not.

Q. Didn't the evidence tend to show that?

A. It did not, in my opinion.

Q. Wasn't there evidence to that effect. Wasn't their evidence t the effect that he was drunk?

A. Now, it is my impression that questions were asked on cros examination that indicated that would be brought up by the defens but there was no evidence of it. Questions were asked that indicate that there would be such a course pursued by the defense, but there wa no evidence.

Q. The cat was let out of the bag by the defense on cross-examina tion, as to what the facts of the case were?

A. I think not.

Q. Is it not a fact that it appeared in evidence that the place where the man was killed was about half a mile from where the nearest highway crossing was?

A. No, sir, it did not; it appears that it was less than or about thirty rods.

Q. That ruling of the court decided that case then and there?

A. It did.

Q. You never appealed that case?

A. I did not. Now, I wish you to understand in this connection that I don't say that that ruling was wrong absolutely. The Judge might have made the same ruling if sober.

. The remarks that the Judge made in regard to the liability of the road company was in giving his reasons for the decision that he was g to give upon that motion to non-suit you?
. I think so, partially.
. Now, is it not a fact that he commented these upon the relative itity of a railroad company as a common carrier, to its passengers, to passers, to strangers, and compared the different liabilities as the sure by which you had to guage their liability in every instance?
. No, sir.
. You swear to that positively, do you? A. I do.
. You swear that what he stated came in entirely irrelevantly, that nade no connection between that, and his reason for the ruling?
. Yes, sir, I do.
. As a stump speech, in other words?
. Yes, sir, very much?
. Isn't it a fact that the reason that the Judge gave for one of his itions was that the testimony had shown contributory negligence upon part of the plaintiff, and that he had to non-suit you, and beat you he case, on account of the decision of the supreme court upon that ject matter?
. I think he referred to something of that kind.
. The 21st Minnesota, and other railroad decisions?
. I think he did.
. It was true, was it not, that there had been evidence of con- utory negligence, it was claimed so by Mr. Gale, the attorney on the er side, was it not, and argued by him on the evidence brought ward?
. Yes, sir; of course it was claimed differently by me; that was the nt in controversy.
. Did not both of you, both Mr. Gale and yourself, take rather a le range in the argument of this, not only as to contributory negli- ice, but also to the liabilities of railroad companies under different cumstances?
. No; nothing different from what I should do in a similar case, in y instance.
. Well, isn't it a fact that you did take a wide range; I don't refer rticularly to you, but either you or Mr. Gale; I suppose if one did the ier one would refer to it, in answer to him?
. Well, I have no recollection of that.
. Let me refresh your recollection. Did not Mr. Gale lay stress on the difference of the liability of a railroad company in case it acted a common carrier and towards its passengers, and their liability in e case of strangers and trespassers?
. I have no recollection of that.
. You wouldn't swear he did not?
. No, I will not swear, but I have no recollection of it, because the her question had nothing to do with the case at all.
. Was there any other thing during that trial of that case from ich you judged or formed the impression, that the Judge was intox- ated and not able to discharge his duties to the best of his abilities?
. Yes, sir.
. What was it?
. Well, nothing more particularly; a great many things that I can-

not recall, in words; but I had that impression during the whole ter and had it when I was in that case.

Q. But you cannot give the reason why you have that impressi now?

A. No, I cannot in words.

Q. Except one ruling and the language he used?

A. That is part of it.

Q. Isn't it a fact that you were quite bitter against the Judge f that ruling, and felt very bitterly against him, and expressed yours bitterly?

A. No, sir, it is not a fact.

Q. Did you not feel sorely disappointed in that case?

A. If I ever made an expression, I think I made this expression—

Q. Well, I didn't ask you what you did, but whether you didn express yourself as disappointed towards the Judge?

A. I never expressed myself as bitter.

Q. Did you express yourself bitterly?

A. Not bitterly, but I may have expressed myself that I was di appointed.

Q. That you were disappointed? A. I may have.

Q. As a matter of fact, you took particular pride in that case?

A. I did not.

Q. Isn't it a fact that all the attorneys, and even your client, had n faith in the case, and that you were——

The PRESIDENT *pro tem.* It seems to me that you are carrying on th cross-examination on that point a good deal farther than is necessary.

The WITNESS. I would like to answer it.

The PRESIDENT *pro tem.* Well, then, answer it, but let it go no further We are consuming too much time on immaterial matter.

The WITNESS. Your question was whether I didn't——

Q. I don't remember now what it was; I don't care about it. I as you now to state, Mr. Lind, if it isn't a fact—were there any other case than this Main case during the third or fourth day, at which yo remember to have been present in court, and seen the Judge?

A. I left after these cases were disposed of—these two.

Q. The Main case?

A. No, I didn't leave immediately, but I left in the afternoon of tha day.

Q. So that you know nothing more after the Main case was dis posed of; you wern't in court and don't know anything more about his condition after that time?

A. No, that was disposed of in the forenoon and I remained until the afternoon.

Q. Until noon? A. Until afternoon; I went down on a freight.

Q. Did you hear any other cases tried then that day?

A. I don't remember; it is my impression that about that time the court took a recess.

Q. So you can't tell anything about the Judge's condition after that time, after that case? A. No, sir,

Mr. ARCTANDER. That is all upon this charge.

Examined by Mr. Manager COLLINS.

Q. Let me inquire who this attorney, Mr. Gale, is?

A. It is Gale, of the firm of Wilson & Gale, of Winona.

Mr. Manager COLLINS. We will now take up specification seven, under article seventeen.

Q. I now call your attention to the general term of court held at New Ulm, in May, 1881.

Mr. ARCTANDER. I desire to object to the introduction of any testimoney under that specification, Mr. President, and I desire to raise the point which I think is a good one in law. When on Saturday, I think it was. it was attempted to introduce evidence by Mr. Webber, under article 17, the prosecu ion stated that they wante l to prove intoxication under this same specification, and also under another specification in New Ulm. I don't remember which case,—Castor against Castor, we asked them to do us the favor, to withhold that testimony until we could argue our objections to the specifications, and they refused to grant us leave, and we then requested the Senate to order that no testimony should be introduced under that article at the present time. The Senate upon that request being submitted to it, so ordered, and excluded the testimony under any of the specifications under article 17. The managers then, to get the testimony in, offered the testimony under article 18, the charge of habitual drunkenness, under which we could not object to their bringing itin, because they could show any act of drunkenness, on or off the bench, under that article.

Now, we claim that the managers, having elected to introduce the evidence under article eighteen, the proof as to the intoxication in court at New Ulm, as well as in the Castor against Castor case, are bound by their election, and cannot now introduce it under article seventeen; that they have waived their rights under these two specifications of article 17, to introduce any testimony under them, because they have taken the evidence under these specifications, and transferred them to article 18. I claim that it is a well established rule of law in criminal cases, that if you have two charges against a man, you can show any charges the allegations will fit, in your indictment, at one time just as well as the other; but if you have elected and chosen one, and introduced testimony under one of the charges, for instance, as an instance, in an indictment for larceny—

Mr. Manager COLLINS. Did you ever draw an indictment to prosecute a man and charge him with two offenses?

Mr. ARCTANDER. I did not say so, my dear sir.

Mr. Manager COLLINS. Why, you are giving us that as an illustration, and you cannot do it.

Mr. ARCTANDER. If I indict a man for stealing a horse, on a certain day, the horse being the property of such a person, and the man happens to have stolen two horses, one on one day, and one on another, and from the same man, I maintain that if I come in and prosecute that man under that indictment that I have a right to prosecute under either of the two larcenies, if they fit the allegations in the case,—if it is the same kind of property, if it is the same owner,—that the time is immaterial, and I can come in and prosecute him under either one of them. But, if I introduce my proo under one of them, introduce part of it, I thereby elect which one I will proceed on, and I cannot, if I fail in that, or see that I have no outcome in the case, step back and withdraw the evidence and be allowed to introduce proof of the other larceny. I understand that that is a well settled rule, and I claim that it is applicable in this case. When the Senate refused to receive evidence under the specifications of articles seventeen, they said, "we don't want it under-

that; we want it under article 18;" and we are willing that it shall stand now on article 18. They elected to do that, and I claim that they cannot go back and claim to introduce it under specifications under article 18, because they were forbidden to do so by the Senate; having chosen the course they have, they must abide by it, and cannot go back to another The court will see that it makes little difference as to the introduction of evidence, but it does when we come to act upon the articles. Article 17 charges intoxication in court, each one of the specifications being sufficient to convict upon on that article. Article 18 only charges habitual drunkenness, which takes a number of drunks, and it makes no difference whether it was in or out of court to constitute the act.

Therefore we have been prejudiced in our rights, if the prosecution shall now be allowed to go back upon the position which they took in introducing testimony under these specifications to introduce them under article 18, and that once having elected and taken the position they did that they must stand by it, and that we have a right to insist that they should.

Mr. Manager COLLINS. The Board of Managers desire me to say that the position taken by the counsel of the respondent is so ridiculous, and the argument so frivolous as to need no reply.

The PRESIDENT *pro tem.* Do you intend to say that the Senate refused to hear any evidence under the specifications under article seventeen.

Mr. ARCTANDER. The Senate in passing the order held that it would refuse to receive any evidence under specifications under article 17 till after Monday, when counsel could be heard. Then the managers turn around and say, we don't care for the order of the Senate; we will introduce it under article eighteen. They did introduce testimony as to the May term of 1881, and as to the Caster case, the ten specifications they had, in circumvention of the order of the Senate. Now, I say that when they have circumvented the order of the Senate in that way—

Mr. Manager COLLINS. Do you pretend to say that the managers said anything of that kind.

Mr. ARCTANDER. I said that—

Mr. Manager COLLINS. Answer my question. Do you pretend to say that the manager said anything of the kind?

Mr. ARCTANDER. That you were circumventing the order of the Senate?

Mr. Manager COLLINS. Yes, sir.

Mr. ARCTANDER. Yes, sir; but Mr. Manager Hicks stepped up and said—

The PRESIDENT *pro tem.* Gentlemen, one at a time.

Mr. ARCTANDER. And when the Senate sustained our ruling, or made the ruling, then Mr. Dunn immediately stepped in to introduce the testimony, and stated, "we will now introduce it under article eighteen," and I objected and the Chair overruled my objection, and it went in under article 18,

The PRESIDENT *pro tem.* Suppose the evidence had been introduced Saturday, under these specifications—what is the number of it?

Mr. ARCTANDER. Article seventeen.

Mr. Manager COLLINS. Specification seven of article seventeen.

The PRESIDENT *pro tem.* Suppose they had introduced the evidence of this witness on that article, upon these specifications, and gone on, and today they wanted to introduce it to show the habitual drunkenness under article 17, can there be be any possible question but that it would be proper?

Mr. ARCTANDER. I claim that if you can do that it would be to charge a man double; it would be to convict him of two offenses.

The PRESIDENT *pro tem.* That results from the fact that he has committed two offenses. If he is charged double, it is his misfortune. I don't say that he has, of course; but if we have not a right to charge different offenses at different times, as this is charged here, one on a certain day and a second upon another, and shut him off——

Mr. ARCTANDER. But it is the same offense, and you want to punish us twice for the same offense. You will give the Senate by that, may it please the President, the privilege to convict us under article 18 on this evidence, and convict us under article 17 on the same evidence.

The PRESIDENT *pro tem.* Is it not a familiar principle of law that because a man has perpetrated one act that constitutes two offenses that he can be punished for both?

Mr. ARCTANDER. Very true; that is, where there are two offenses.

The PRESIDENT *pro tem.* That has been officially decided by the Court of Appeals in New York, where he has committed one act.

Mr. ARCTANDER. I understand that; that an act may be a crime against the sovereignty of the State, and against the sovereignty of the United States, at the same time—the one act. But I do not understand that is the case here. If this is a crime at all it is a crime against the State, to be publicly drunk at New Ulm, whether a judge or not, or to be drunk at all. It is not two distinct offenses. But I don't care to argue it.

The PRESIDENT *pro tem.* The Chair ruled once that unless otherwise ordered, proof can be introduced to show that he was drunk under article 18—the charge of habitual drunkenness, and proof of the same act to sustain the specifications of article 17, and it feels no doubt on the subject, but if the Senate wishes to pass upon the question it can do so. Therefore your objection is overruled. I feel very clear upon the question myself.

Mr. Manager COLLINS. May I proceed?

The PRESIDENT. Yes, sir.

Q. I now call your attention to the general term of court held at New Ulm, in May, 1881; do you remember the term?

A. I do.

Q. Will you state the condition of Judge Cox during that term of court, as to sobriety?

A. He was drunk.

Q. For what length of time? A. Drunk during the entire term.

Q. Drunk the entire time? A. He was.

Q. How long did it last?

A. It lasted two days and a portion of the third.

Q. And then, was the business finished?

A. No, sir; it was not.

Q. Why?

A. Well, the attorneys who had cases, then got together, I among the rest, and I agreed to have all our cases continued.

Q. Did you agree to have all cases continued? A. Yes, sir.

Q. For what reason?

A. Because, in our judgment, he was not in condition to try the cases.

Q. And you did continue the case? A. We did.

Q How many cases were continued?

A. Well, we had two cases in which Mr. Webber was the attorney for the other side; they were continued; and I had one in which J. M. Thompson was the attorney on the other side. In that case we had a great number of witnesses down from Sleepy Eye, in the western part of the county.

Q. Were there any other cases continued?

A. Yes, by the other attorneys.

Q. Now, how many cases altogether were continued for the reason that you have given?

A. I can not tell you.

Q. Quite a number? A. Yes, sir; quite a number of them.

Q. How many cases did you try, in the two days or part of a day?

A. There was only one tried; that was a case of Howard against Manderfeldt.

Q. Did you see Judge Cox during that term, upon the streets of New Ulm?

A. I did.

Mr. Manager COLLINS. Mr. President, this is hardly within the scope of the specification, and I will take a ruling of the Chair, as to whether I shall go on. I desire to show his condition at that term of court at times when he was not presiding.

The PRESIDENT *pro tem.* Under what article?

Mr. Manager COLLINS. Probably under article 18.

The PRESIDENT *pro tem.* You had better finish this specification.

Mr. ARCTANDER. I have no objection to their asking this question; it is within the same period of time.

The PRESIDENT *pro tem.* Very well, proceed.

Q. Did you see Judge Cox upon the streets of New Ulm during this time?

A. I did.

Q. What was his condition then? A. He was drunk.

Q. Did you see him in any saloons? A. Yes, sir, I did.

Q. What was his condition in the saloons?

A. I remember one place where I was outside on the sidewalk; I was not inside; he was noisy, very noisy.

Q. What was his condition as to sobriety?

A. Well, I have told you he was drunk.

Q. He was drunk? A. Yes.

Q. Now, I want to call your attention, Mr. Lind, to some conversation that you had with Judge Cox, I think, in the presence of the sheriff of that county, about visiting a certain house; do you remember it?

Mr. ARCTANDER. That is objected to.

Mr. Manager COLLINS. For what reason?

Mr. ARCTANDER. For the reason that the specification has been struck out.

Mr. Manager COLLINS. What specification?

Mr. ARCTANDER. About visiting any houses.

Mr. Manager COLLINS. I think probably the house that you are talking about is not the house that I am talking about.

Mr. ARCTANDER. It is not a house of ill fame.

Mr. Manager COLLINS. I don't know whether it is or not; we will find out.

The President *pro tem.* No evidence can be introduced showing hat he committed any offense by visiting houses of ill fame or anything

of that kind, but any conversation that showed his drunkenness, even if it related to houses of ill-fame is admissible.

Mr. Manager COLLINS. That is it, precisely.

Q. Do you remember that, Mr. Lind? A. I do.

Q. Will you state to the court what Judge Cox said, what you said, and all about it; tell where it was, in the first place.

A. Well, what do you wish me to state?

Q. Do you remember having a conversation with Judge Cox about going with him to a certain house?

A. No, I didn't have any conversation with him about going with him. I was going down from the court house in company with the sheriff, and we met him and he commenced to talk about such matters.

Q. Tell us what he said?

A. Oh, I don't remember what he said exactly; he was intoxicated, and talked about going to places of that character—a house of ill-fame, but I don't remember.

Q. He talked about going to a house of ill-fame? A. Yes, sir.

Q. What did he talk—about going himself?

A. Well, he wanted us to go with him.

Q. He wanted you to go with him? A. Yes, sir.

Q. To a house of ill-fame there in the city? A. Yes, sir.

Q. Well, what did you say about it?

Mr. ARCTANDER. We object to it.

Mr. Manager COLLINS. The conversation was had in the presence of the Judge. It is one of the facts and circumstances, Mr. President, going to show the condition of the man. The counsel here have been aching for facts and circumstances showing his drunkenness, and we propose now to show by the witness just what was said and done, and I apprehend that it will show a condition of drunkenness pretty clearly, when we get through with it.

Mr. ARCTANDER. What this witness said would not show it.

Mr. Manager COLLINS. It will tend to show it.

The PRESIDENT *pro tem.* You can state the conversation if it has any bearing on his drunkenness.

Mr. ARCTANDER. Suppose the witness knows——

The PRESIDENT *pro tem.* You may proceed.

Q. State the conversation as near as you can, Mr. Lind?

A. That was the substance of it; he wanted us to go with him to a house.

Q. He wanted you to go with him to this house of ill-fame. Was the name mentioned,—the name of the person who kept it?

A. I think so.

Q. Well, what did you say about going?

A. I don't remember whether I said anything particularly, but I remember the sheriff, and I think both of us, told him——

Mr. ARCTANDER. I submit that what the other persons said could not prove anything.

The PRESIDENT *pro tem.* It was part of the transaction itself; the Judge was present.

Mr. BRISBIN. Permit me one moment. Is not all of this irrelevant? For instance, we have the example of King David. We have heard that he did many such things, *acce*, the instance of the Shunamite woman.

Would such proof indicate that he was a drunkard? I should not interfere except that it is annoying to me and is discordant with the æsthetics of trials to have this pettifogging business introduced.

Mr. Manager COLLINS. Counsel and I differ very much about what pettifogging means.

Mr. BRISBIN. Well that is my opinion.

Mr. Manager COLLINS. Possibly it is. I have this to say,—that we have a perfect right to draw out all this conversation; and if these gentlemen, the sheriff of Brown county and this attorney, (who, it seems, was present, and was asked by Judge Cox to go to that house,) remonstrated with him and said to him that he ought not to go, that a man holding his position ought to be ashamed to go to a place of that kind, and he persisted in requesting them to go, and persisted in going himself, it characterizes that drunkenness, and shows not only that he was drunk, but that he was beastly.

Mr. BRISBIN. Let them ask how drunk he was, and not attempt to illustrate it by bringing in these matters. I beg your pardon, Mr. Collins; I supposed you were through.

Mr. Manager COLLINS. I would ask the gentlemen whether, if we were to ask how drunk he was, they would not object as they have been doing right along. I am now trying to show the extent and character of the drunkenness, and to show that he was beastly drunk.

Mr. ARCTANDER. We do not object to that.

Mr. BRISBIN. How does that show it? A man may be

"Chaste as the consecrated snow
That falls on Dian's lap,"

and still a wine-bibber. I say this bringing in of evidence here in such a matter is entirely unprofessional, and unworthy of the counsel and of the great commonwealth that he represents.

The PRESIDENT *pro tem.* The counsel seems to say that he might go to such places whether drunk or not.

Mr. BRISBIN. I do so say that millions of men have gone to such places who

"Never shed the blood of Scio's vine."

The PRESIDENT *pro tem.* The chair has ruled upon that point and the ruling will not be changed unless the Senate orders otherwise.

Mr. ARCTANDER. Does the rule permit counsel to ask for the judgment of the Senate upon any question?

The PRESIDENT *pro tem.* Certainly.

Mr. ARCTANDER. Then I would ask for it in this case.

The PRESIDENT *pro tem.* If a motion is made by any Senator the President will refer the matter to the Senate.

Senator CAMPBELL. I would say that the rules give to the chair the right to submit it without a motion.

The PRESIDENT *pro tem.* Then the chair will not submit it.

Senator CROOKS. I move to submit it.

The PRESIDENT *pro tem.* Then the chair will put the question.

Senator POWERS. I do not see the necessity of that unless some Senator differs from the ruling of the chair.

Mr. Manager COLLINS. We would like to have the reporter read the question.

The reporter read the question and the objection to the same.

The PRESIDENT *pro tem* The question is, what conversation took place at that time, to show his condition?

Mr. Manager Collins. Yes, sir; I claim that we have a right to all the conversation.

The PRESIDENT *pro tem.* Are the ayes and nays called for.

Senator CAMPBELL. The ayes and nays are not called for.

The PRESIDENT *pro tem.* As many as are in favor of sustaining the chair—

Senator HINDS. The rules require the calling of the roll.

Senator CAMPBELL. I would like a statement from the chair as to whether the vote "aye" sustains the objection or overrules it.

The PRESIDENT *pro tem.* The chair would understand that "aye" sustained the chair. The question is now upon the adoption of the decision of the chair.

Senator C. D. GILFILLAN. I hardly think that is the fair way. The question is whether the objection shall be sustained, not whether the chair should be sustained. The question of the admissibility of the evidence is before the court, and we call for a vote of the Senators as a court.

The PRESIDENT *pro tem.* Very well, put it in that way, whether the objection of the respondents counsel shall be sustained or overruled.

Senator CAMPBELL. Then those that wish to sustain the chair will vote "no."

The PRESIDENT *pro tem.* Those who wish to sustain the chair would vote "no." The clerk will call the roll.

The Clerk called the roll.

The roll being called, there were yeas 5, and nays 20, as follows:

Those who vote in the affirmative were—

Messrs. Adams, Bonniwell, Crooks, Gilfillan, C. D., and Mealey.

Those who voted in the negative were—

Messrs. Aaker, Campbell, Case, Hinds, Howard, Johnson, A. M., Johnson F. I., Johnson, R. B., Langdon, Macdonald, McCormick, McCrea, McLaughlin, Miller, Morrison, Powers, Shalleen, Tiffany, Wheat and Wilkins.

And so the objection of the respondent to the introduction of the testimony was overruled.

Mr. Manager COLLINS. State all the conversation then. You have stated what he said, but you were about to state what the sherriff and yourself said to him.

A. Well, we told him that it was nonsense for him to talk such stuff as that,——

Q. What further?

A. We talked a good deal, and I recollect his saying that we were afraid, scared that our wives would see us, or something of that kind. I don't remember the exact language.

Q. Anything else?

Mr. ARCTANDER. I did not hear what you said last time. Speak a little louder.

The WITNESS. My recollection is that Cox said that we were scared, afraid, afraid that our wives would see us or something to that effect.

Q. What took place then; what was said?

A. Oh, we left.

Mr. Manager COLLINS. Where did you go Mr. Lind?

A. I went to my office.

Q. Did Judge Cox go along with you.

A. He did not.

Q. Did he go with the sheriff?

A. I think not.

Q. What time in the day was this?

A. I don't remember, I think it was about noon?

Mr. ARCTANDER. What was that question?

Mr. Manager COLLINS. I asked the witness what time of the day, about what time of the day, the conversation took place, and he said about noon.

The WITNESS. Or some time after dinner, perhaps.

Q. Was it during the term of court, or after the court had adjourned?

A. I don't know whether it had adjourned that day or not; it was the lastday of the term.

The PRESIDENT, *pro tem.* Are you through, Mr. Collins?

Mr. Manager COLLINS. Yes, sir.

The PRESIDENT, *pro tem.* Mr. Arctander, you can cross-examine.

CROSS-EXAMINATION.

Q. This was at the May Term, 1881?

A. It was.

Q. That commenced the 17th day of May, did it not?

A. About that time of day.

Q. Do you remember how many cases there were on the calender at that time?

A. I don't remember exactly, but I think eight or ten trial cases. I think there were twelve in all.

Q. Twelve cases, criminal and civil?

A. That is my impression.

Q. The case of Howard against Manderfeldt, was tried, was it?

A. Yes, sir.

Q. How long a time did the trial occupy?

A. I think the verdict was brought in on the evening of the second day, or it might have been the evening of the first, but—well, that I don't remember, whether it was the evening of the first or the second day, but I am inclined to think that it was the evening of the first day.

Q. That is the only case that was tried? A. Yes, sir.

Q. There was another case commenced?

A. And then it was put to the foot of the calendar, and went over to the next term.

Q. What was the second case upon the calendar, Charles Hughes vs. George McCarthy?

A. Yes, sir.

Q. In that case there was some trouble with the pleadings, was there not?

A. Something of that kind.

Q. The case was called, and the jury was about to be impaneled when the objection was raised to the pleadings?

A. The jury had been impaneled.

Q. The jury had been impaneled, and some objection was made, and the court gave them leave to amend on condition that the case should go to the foot of the calendar?

A. I think so.

Q. The fact that the case was disposed of in that way, brought up the other cases earlier than was anticipated?

A. No, I think not; it may have been a couple of hours or such a matter as that.

Q. Was that a case that would take only a couple of hours to try, if it was tried?

A. Considerable time was consumed in proceedings that had been taken in it, and I don't think that it would have taken much more than a couple of hours or three to finish it.

Q. Isn't it a fact that that case was finally continued over the term when you reached it at the foot of the calendar, because the term was so short, and they had not amended their pleadings?

A. Yes; because all the intervening cases—

Q. All the intervening cases had gone off?

A. Had been continued by consent.

Q. They had been disposed of? A. Yes.

Q. And they came earlier to it than they had anticipated; so they did not prepare their pleadings.

A. Certainly.

Q. And that was the reason that case went over?

A. I presume so.

Q. What was done in the case of Charles Youngman against Charles Lind.

A. I don't remember what disposition was made of it.

Q. Isn't it a fact that that case was tried—?

A. I think it was a law case.

Q. Isn't a fact that that case was tried before a jury that term?

A. Well, if it was, I have some recollection of such a case being tried, but whether it was tried at that term or not, I can't say positvely, but I don't believe it was. What was the nature of the case?

Q. Well, I was not there and don't know.

A. Was it replevin for a horse?

Q. I don't remember, Mr. Thompson and Mr. Somerville were attorneys; an appeal case?

A. I don't believe that it was a jury case if it was it was not tried; but I think there was an appeal case of that title.

Q. You wouldn't be certain about it?

A. Well, I am not quite certain.

Q. If the records of that county show that it was tried by a jury at that time—

A. I should say that I was mistaken.

Q. Do you remember the case, 51st on the calender of Pfænder and Miller vs. German Feiton, Kuhlman and Thompson were attorneys?

A. Yes, sir.

Q. Isn't it a fact that case was continued at the very opening of the court, at the preliminary call of the calander?

A. I can't say; I wasn't interested in the case.

Q. But you would not swear that it was not?

A. No, sir, I would not.

Q. Isn't it a fact that the seventeenth case, the case of Bernhardt Blomcke vs. John Mischaud was dismissed, and in that way disposed of on the calander?

A. I don't know anything about the case; that is my impression, that it was correct. I wasn't an attornev in it.

Q. Isn't it a fact that the two cases No. 8 and 9, Fridolei Madlener against John Berthier, and Fridolei Madliner against John Berthier were tried and decrees made

A. They were *ex parte* cases on the forclosure of a mortgage.

Q. They were disposed of at that term?

A. On the last day of the term; just the same as any other case.

Q. Those cases involved about thirty thousand dollars worth of property, did they not?

A. I presume they did.

Q. Well, they were not continued, any of them? A. No, sir.

Q. They were on the calendar, were they not, both of them?

A. I presume they were.

Q. Do you remember who was the attorney in the case?

A. Mr. Webber—

Q. Isn't it a fact that the tenth case on the calendar was this motion in Rosalia Wildt against John Wildt, the case of Wildt vs. Wildt?

A. That was not a case; that was simply an order to show cause.

Q. And that was one of the twelve cases on the calendar?

A. I was not aware that that was on the calendar, but it may have been.

Q. Isn't it a fact that the case of the State of Minnesota against Blasius Haala, a bastardy case, was stricken from the calendar?

A. I don't remember any such case at all. There was a bastardy case against Jacob Dhein.

Q. Well, we will come to that afterwards. You wouldn't swear that this eleventh case, the State of Minnesota against Haala, was continued?

A. Oh, there may have been such a case, but if there was I don't know what disposition was made of it.

Q. Isn't it a fact that you were engaged in cases that I have not mentioned, that were on that calendar, number three, August Hermann against John Lee and Charles Berg,—you were engaged in that?

A. I was.

Q. Henry Myers against the New Ulm Sugar Manufacturing Company, were you engaged in that?

A. I was.

Q. The State vs. Jacob Dhein, bastardy case; in which you were also attorney for defendant?

A. I was.

Q. Isn't it a fact, that those cases, in which you were interested, were the only three cases that were continued at that time?

A. Those I think were the only jury cases, except the one that Somerville and Thompson had. All the others—

Q. The ones that Somerville and Thompson had were the ones that were continued, because it was reached too early; they had no other cases on the callandar?

A. Then I am mistaken.

Q. I will give you a copy of the calendar to refresh your recollection?

A. Oh, no, it is not necessary; I remember the cases.

Q. Then it is a fact that the only cases that were continued there, ex-

cept that case of Mr. Kuhlman's, which was continued at the opening of the court, the vendor case, were those three cases I have mentioned, and in all of those you were attorney?

A. I think one other, I tell you was continued, and that was between Somerville and Thompson; that is my recollection.

Q. Is it another case you have reference to, than the one I have mentioned,—Charles Hughes against McCarthy?

A. I think so, but I don't remember distinctly.

Q. You wouldn't swear to that positively? A. No, sir.

Q. Isn't it a fact, Mr. Lind, you said that this was continued,—the cases in which you happened to be interested were all continued by you and the other attorneys, because you considered Judge Cox in an unfit condition to try those cases?

A. That is my testimony.

Q. Isn't it a fact that immediately or soon after the motion for a new trial had been granted in the Davis and Young case in St. Peter, that you stated to C. D. Davis in the village of St. Peter, that you were going to play a trick on Judge Cox, that if, when he came to New Ulm, he showed the least signs of intoxication at the next coming term, or showed the least sign of liquor, that you were going to get the attorneys there to stipulate to continue cases on him or to get him in a fix, or words to that effect?

A. No, sir, I never made any such statement, or words to that effect.

Q. You didn't say that you would get the attorneys to continue the cases upon him, at that time?

A. Will you allow me to state what I did tell Charlie, according to my recollection?

Q. Now, I ask you if you didn't state that? A. No, sir.

Q. You didn't state that you were going to get the attorneys to continue the cases?

A. Not in the manner you have suggested, I did not.

Q. Never mind, I was simply laying a foundation. Were you interested in the case of Howard against Manderfeldt?

A. I was not.

Q. Were you there in court during the trial of that case?

A. I was.

Q. Were you there during the whole of that trial? A. I was.

Q. Were you up in the court room when the Judge came driving—?

A. From Sleepy Eye?

Q. Yes.

A. At the opening of court?

Q. Yes. A. I was.

Q. You say that he drove right up, instead of driving up to the hotel and stopping, he drove right up to the court house?

A. I did.

Q. That was at the hour set for the opening of court?

A. It was.

Q. He was right there at the minute?

A. I think so, just at the time.

Q. At that time when he came there was he drunk? A. He was.

Q. You swear to that, positively? A. I do.

Q. Was he any drunker at any other part of the time when you saw him in court than he was when he came there at that term?

A. I think he was in the evening, when the verdict was delivered in the Howard vs. Manderfeldt case.

Q. You think he was a little drunker then? A. I do.

Q. But, at any other time than that was he any drunker than when he came.

A. Yes, sir. I think he was in the afternoon of the trial of that case, when he charged the jury in the case of Howard vs. Manderfeldt.

Q. The way he was when he came there, when you saw him first stepping out of the buggy, and went into the court-house, he was in that condition that everybody who was there and knew him, as you did, and had been acquainted with him for any length of time, would notice that he was intoxicated?

A. They would, I think.

Q. What was his appearance at the time he arrived—flushed in the face?

A. I don't remember that he was particularly.

Q. Was he washed? A. I think he was.

Q. Was his hair combed?

A. That is my impression. I don't remember as to that, but it is very seldom that I saw Judge Cox negligent about his personal appearance.

Q. Well, there was nothing in his personal appearance that led you to believe it when you saw him there. A. Not particularly.

Q. Was there anything in his actions when he came there first that led you to think that he was drunk?

Q. What was that?

A. Well, his ways, and the way he acted and looked; his looks. I cannot explain it.

Q. You cannot tell us any way that he did act in particular?

A. Not particularly until the trial of that case. I remember that he acted——

Q. I mean when he came there, there was nothing in his manner of walking or behavior when he came that you can particularly call to recollection now, when he came up to the court-room?

A. No isolated fact that I can pick out.

Q. He went right on to business and called the calendar immediately, as soon as he came up?

A. I think so.

Q. Went right from the buggy into the court room, and commenced the call of the calendar?

A. I think he did.

Q. And called the jury that same forenoon in the Howard against Manderfeldt case?

A. I think he did, either in the forenoon or soon after dinner.

Q. He charged the jury, I don't mean finally charged, you have been practicing before Judge Cox—I mean he charged the jury before he got up, as soon as they were sworn, whether they got out or not. You remember that fact, just in the usual manner?

A. I think I did; I never knew him to fail in that respect.

Q. In all questions that were presented to him for ruling during that case, that first afternoon, for instance, did you notice anything out of the way in his rulings, or anything that showed a wandering mind, or anything that showed he he had not possession of his mental ability?

A. I did notice a great deal more than at any other time I have testified to, or ever saw him.

Q. He was drunker that afternoon than he was any time that you ever saw him?

A. Yes, in my opinion.
Q. Was he wild in his actions, or sleepy?
A. He was not sleepy.
Q. He was wild? A. I think by spells.
Q. During the progress of that trial that afternoon, while the trial was going on, he acted in a wild and incoherent manner?
A. He did.
Q. In fact, he was in such a condition that afternoon, his actions were so apparent, that any person who knew him would know that he was under the influence of liquor, if they were there, and saw him in the court room and observed him?
A. I think so.
Q. All of this that I have been talking about is during the trial of the case against Manderfeldt?
A. Yes, sir.
Q. We are talking about the first afternoon. A. Yes, sir.
Q. Were you there in the afternoon when the court adjourned?
A. I do not remember with any degree of certainty whether I was or not. You mean in the evening when it adjourned for supper, do you?
Q. I mean before evening, I understood that the court adjourned as soon as the jury had gone out at 5 o'clock that afternoon?
A. I was there the time the charge was delivered.
Q. The jury went out? A. Yes, sir.
Q. Now, do you remember whether or not it was not a fact that at the time the jury went out, whether that time was that afternoon,—it was before supper that they went out?
A. My recollection is not distinct as to that; I couldn't swear.
Q. Do you remember whether the court did not adjourn until 8:30 the next morning?
A. No, I think there was something going on in the evening; now that you have spoken about it I think the jury brought in a verdict that same evening.
Q. Yes, but wasn't the Judge sent for to come up there to receive that verdict; hadn't the court adjourned until 8:30 in the morning after the jury went out in the evening?
A. I don't remember distinctly about that.
Q. You don't remember of having been in court the second day of the term do you?
A. Yes, I was there part of the time.
Q. That was when the Youngman against Lind case was tried?
A. No, the case of somebody against Hughes.
Q. The Hughes case was the first case in the morning and occupied the first ten or fifteen minutes?
A. Oh, longer than that.
Q. How much time?
A. A jury was empanelled and some evidence introduced and then discussion about the pleadings commenced.
Q. You wern't there when any other business was taken up, except that case?
A. It is my impression that I was not there in the afternoon.
Q. It is your impression that you were there that afternoon after that case was disposed of, and heard another case taken up and proceeded with?
A. No, I don't recollect what was done in that, because I think the

calendar was called after that, and other cases continued after that, as stated before.

Q. You left? A. I think so.

Q. As a matter of fact, you were not in court after that?

A. Not until Mr. Webber had these ex-parte cases.

Q. Then you came into court when Sabalia was around there?

A. Yes, sir.

Q. The Judge was drunk then, was he?

A. I didn't notice. I had nothing to do with those cases; I didn notice particularly, but I remember he looked and acted just about th same as he had before.

Q. You wouldn't swear that he was drunk at that time?

A. Well, there was nothing at that time to call my attention to it, s I would not.

Q. That was all the time you were in court during the third day when these mortgage forclosure cases were up for a hearing and Sabali was there?

A. I don't remember of any other instance. The court had adjourn ed then, and the jury had been discharged at that time.

Q. Well, you thought from his appearance in the court room, that h was just as drunk that time as during the trial of the Howard agains Manderfeldt case, did you?

A. Oh, no; I don't wish to be understood that way; my impressio was that he was still drunk, but I don't remember that I noticed him d anything at that time that I considered out of the way, or say anythin either.

Q. Everything went on all right, so far as you saw, during the tim that you were in there during the proceeding of these default cases?

A. I don't remember anything to the contrary.

Q. Do you know whether or not the case of Willis of Sleepy Ey Lake, against J. W. McCormick was not argued and the appeal dismisse in that case, at that term?

A. I think it was sometime during the term. I think I overheard portion of the argument, but I don't remember when.

Mr. ARCTANDER.

Q. Are you going to examine the witness upon any other article?

Mr. Manager COLLINS. I am going to ask him one question unde article 18, whether he has seen him drunk at any other time.

Mr. ARCTANDER. With that understanding as the witness will b recalled on the 18th article, we are through with this.

Mr. Manager COLLINS. This evidence will be under the eighteenth article, Mr. President.

Mr. Manager COLLINS.

Q. Mr. Lind, have you seen Judge Cox intoxicated at any othe time, than those mentioned since the 30th day of March, 1878, either of or on the bench? A. I have.

Q. Can you tell how many times? A. No, I cannot.

Q. Can you give us an idea of how many times?

A. No, I don't believe I could.

Q. Can you tell us how many times a year you have seen him eithe sober or intoxicated, in the past three years?

A. Well, the Judge has had special terms at our place frequently, and general terms, and he usually passed through there, or rathe stopped off on his visits west. I presume I have seen the Judge a great many times during the year; perhaps thirty or forty times; well I may be mistaken.

Q. Now, how many times have you seen him intoxicated in the past ear?

A. I cannot give you the number; I have seen him intoxicated and ave seen him sober.

Q. Well, you have seen him thirty or forty times: now what pro- ortion of the time have you seen him under the influence of liquor, ntoxicated? A. I cannot state that

Q. Have you seen him intoxicated frequently. A. I have.

CROSS-EXAMINATION.

Q. Is it not a matter of fact, that during the periods of the terms of ourt—you have attended a great number of them, have you not, since his Judge was elected? A. I think I have.

Q. Is it not a fact that you have attended almost a majority of the erms in that district? A. I think probably I have.

Q. Is it not a fact, that the occasions you have spoken of here now, hen the Judge is charged with having been intoxicated while in the ischarge of his duties, are the only occasions on which you have seen im, when holding court on the bench, intoxicated?

A. No, they are not the only ones; but they are the only ones that would call flagrant?

Q. That you call to mind—

Mr. Manager COLLINS. That he would call flagrant.

Q. Now, is it not a fact that during a greater portion of the time Judge Cox is sober?

A. Why, undoubtedly.

Q. By far? A. Yes, sir.

Q. Whenever he drinks it is by spells, now and then, isn't it?

A. Yes, I think so.

Q. Is it not a fact that Judge Cox has, all through his term rather prided himself upon and been incorruptible and impartial, and has known no friend or foe, in the discharge of his duty?

Mr. Manager COLLINS. We object to that.

The PRESIDENT *pro tem.* The objection is sustained.

Mr. Manager COLLINS. That is a duty that devolves upon him?

Q. I will ask you whether or not it is not a fact that the tone in his character has been the same, during the last four years, as it was be- fore; that there has been no perceptible diminution of the goodness of the tone of his character—?

Mr. Manager COLLINS. I object to it as being not only inadmissible, but indefinite. I cannot understand it myself.

Q. I will ask him whether or not—I will waive that last question—I will ask the witness, whether or not he has noticed, during the last four years, any loss of tone, in the character of the defendant?

Mr. Manager COLLINS. I object to that?

Mr. ARCTANDER. Well, sir, I will state for the benefit of the chair—

The PRESIDENT *pro tem.* I do not see that it can injure your side of the question, Mr. Collins. He swears that he was drunk for four years, and if he swore that he was drunk before that, and that would be the effect of it anyhow, if he answers it in the affirmative, it would certainly not impair your side.

Mr. Manager COLLINS. Well, let it go.

A. I have seen no change.

Q. Have you seen any particular blunting of the moral preceptions of the defendant during the last four years?

A. I have not been his moral guardian, and cannot answer that.

Q. Have you noticed, during the last four years, at any time since you have known him, a decreased sympathy with what is good or excellent?

Mr. Manager COLLINS. We object to that.

The PRESIDENT *pro tem.* The objection is sustained.

Mr. ARCTANDER. We desire to argue the point, if the court will hear me, after having made a decision.

The PRESIDENT *pro tem.* If you have good reason for your question, the court will hear you.

Mr. Manager COLILNS. He has a catchism in his hand from which he is reading.

Mr. ARCTANDER—

I base this question upon the rules laid down by eminent medico—juridical authorities showing what is the natural effect of habitual drunkenness. Now, it is laid down, I think, by one of the best writers upon the subject, by Brown upon Insanity that the sure and infallible signs of habitual drunkenness are "loss of tone of character, blunting of moral preceptions, decreased sympathy with what is good and excellent, increased wishes, craving for what is unworthy and debasing, and that the power of intellectual indiscrimination is much impaired." I ask it upon cross-examination under the article charging the respondent with being an habitual drunkard.

They have offered testimony for whatever it is worth upon that article, and I claim that I have a right to cross-examine for whatever the testimony may be worth, upon that charge. I do not think it would be contended, that that is laid down as a rule, by a standard authority, if that is the natural and necessary consequence of habitual drunkenness, that we are not entitled to show, when we come to our defense, that these natural and reasonable consequences do not exist, and that that will tend to disprove any charge of habitual drunkenness.

The only question in my mind is, whether it is proper cross-examination of this witness, and of course if the court rule against as upon that. I shall not desire it, because the court may hold that the evidence has not brought out anything that shows habitual drunkenness directly, or that tends to show it. If that is the ruling of the Chair I submit, and sit down, and do not ask to be heard upon it any more. If the Chair, on the other hand, holds that it is immaterial and incompetent for us to show that at any time, then I claim that the ruling of the Chair is in contravention of these authorities that lay that down, and if that is true, if the authorities lay that down truly, and if that is an established scientific fact, that is, I might almost say, accepted by the law as an established principle, then I claim that we have a right to show it to countervail any proof that may exist, or be introduced in regard to habitual drunkenness. I think there is no doubt about it, that we not only will show hereafter by the authorities, that that is the fact, but that we, by calling upon the medical gentlemen upon this floor, if we should see fit to do so, will establish the same facts and the same rules, and that we will be able to establish the same rule, by the testimony of medical gentlemen of high standing in St. Paul.

The PRSIDENT *pro tem.* Your question assumes that this witness has known all about his character previous to the four years testified about, and that you have not shown at all.

Mr. Manager COLLINS. That is just it.

The PRESIDENT *pro tem.* It would be inadmissible on that ground, and if it is allowed, that would allow them to go all over his past life previ-

ous to that time, and show that he has been drunk for ten or fifteen years, certainly, before. In order to show that the tone has been changed it is necessary to go over his previous life. I apprehend that this court does not want to hear that; and if there is no objection, the ruling of the Chair will be sustained.

Mr. ARCTANDER. I will ask this question, if the court, please. I will submit this to the witness: Whether he had noticed any decreasing, during the last year or two, of the respondent's power of intellectual discrimination?

The PRESIDENT *pro tem.* Answer the question.

The WITNESS. What is the question?

Mr. ARCTANDER. I have forgotten it. The reporter will read it.

The reporter read the question.

The WITNESS. I haven't noticed any difference.

Q. It is a matter of fact, is it not, that Judge Cox is a very bright man upon the bench, sees a point quick?

A. When he is sober, yes, he is.

Q. I will ask you whether it is not a fact that you did, in the streets of St. Peter, on or shortly after—have your relations towards Judge Cox during the last year or half a year been very friendly?

A. I know of nothing to the contrary.

Q. Rather unfriendly?

A. The first time I met Judge Cox so as to have a chat with him, we had a very friendly chat.

Q. Mr. Lind, you are the receiver of the land office up at Tracy, are you not?

A. I am.

Q. And have been so for a year or more?

A. No, sir; only since last May.

Q. You were such receiver last October? A. Yes, sir.

Q. Who is the register of that office?. A. Mr. Tyler.

Q. He was one of the two gentlemen who signed the petition to the House to have Judge Cox impeached, was he not?

Mr. Manager COLLINS. That I object to as wholly immaterial. We do not see what that has got to do with it.

Mr. ARCTANDER. We intend to follow it up by showing the intimate relation—

The PRESIDENT *pro tem.* I do not see that the question itself has any materiality, unless it is followed up. The objection is overruled; you can answer the question.

The WITNESS. He is one of the two officers; he is the register.

Q. He is one of the two gentlemen who signed the petition to the House to have Judge Cox impeached?

A. Yes.

Q. Have you not had considerable talk with Mr. Tyler about this case, and about Judge Cox's condition of late?

A. I did not; I have not; I did not know that he had gone down to St. Paul to prefer the charges until I saw it in the paper. I had talked with him, of course, but nothing in particular.

Q. Isn't he around almost every day with you in the land office at Tracy?

A. No, he is not; not at that time.

Q. And hasn't been during the last year, has he?

A. Not every day; no, sir.

Q. Hasn't he been there a greater portion of the time?

A. No, not the greater portion of the time.

Q. Does he not live at Tracy? A. How is that?

Q. Doesn't Tyler live at Tracy?

Mr. Manager COLLINS. I would like to know what that has got to do with it?

The PRESIDENT *pro tem.* Its only bearing upon it is, that if he has been promoting this feeling, it would be material to show his feeling.

Mr. ARCTANDER. Yes, sir.

Mr. Manager COLLINS. But I don't think that where he lives is material.

Q. I ask if you have not labored very actively for the last two or three months in the interest of Mr. Webber as judge in that district?

A. It is not a fact that I have labored for Mr. Webber. When there has been a conversation on the subject I have expressed my preference in case there was a vacancy.

Q. Isn't it a fact that you have tried to get the attorneys up there—Mr. Main and others—to be disposed favorably towards Webber for judge?

A. It is not true that I have tried anything of that kind.

Q. Is it not a fact that you stated, in the streets of St. Peter, immediately or shortly after the order granting a new trial in the Young vs. Davis case, in the presence of Sumner Ladd, speaking of the respondent, Judge Cox, "I would like to cut his damned drunken guts out," or words to that effect?

A. What is that?

Q. State whether or not, in the streets of St. Peter, immediately or shortly after the order granting a new trial against Davis, in the case of Young against Davis, in the presence of Sumner Ladd, speaking of this respondent, you said, "I would like to cut his damned drunken guts out," or words to that effect?

A. I did not, and I never used such an expression in my life, or anything like that.

Q. Did you not, at that time, state to him, "I would like to cut his," referring to respondent, "damned heart out?"

A. I never— [turning towards the Chair] I believe that is malicious; I believe that is malicious.

The PRESIDENT *pro tem.* Answer the question.

A. I did not; I never used such language in my life.

Examined by Mr. Manager COLLINS.

Q. The question was asked whether you had talked with Mr. Tyler in regard to this matter. I will ask you if this matter is not talked of frequently by every body in this district?

A. It is.

Mr. ARCTANDER. I object to it for the reason that the witness stated that he had not talked with Mr. Tyler about it.

The WITNESS. No, sir; I did not. I stated that I talked with him about it, but not particularly. That is the language I used.

Q. Have you talked with Mr. Tyler about it, more than you have with others about the matter?

A. Less than I have talked with lawyers.

Q. You talked about sprees that Mr. Cox had been on, state to the court the duration of them, the length of them?

Senator CROOKS. The question is not heard in this part of the room.

Mr. Manager COLLINS. Speaking of the sprees of the Judge, I asked the witness to state the duration of them, the length of time they lasted.

The WITNESS. Oh, I have not kept track of all his drunks. I know

he has been on a spree at New Ulm for more than a week at a time. He was last January—

Q. Drunk continually?

A. Yes, I think it was in January. It was after Christmas, last year.

Q. Was that at a term of court?

A. A special term, or something of that kind.

Q. Came up there to this special term and then got on a spree, and it lasted a week? A, He did.

Q. Senator CROOKS. I suppose the witness means a year ago last Christmas time?

The WITNESS. Yes. about a year ago, or a little later.

Mr. ARCTANDER. In 1881.

Q. Mr. Lind, as a matter of fact, is it not a fact that those sprees have been more frequent of late years, last year, than formerly. A. Yes, sir.

The PRESIDENT *pro tem.* I think that the counsel is infringing on the rules that were laid down, to go back over the evidence again.

Mr. Manager COLLINS. This word spree was used the first time in cross-examination.

The PRESIDENT *pro tem.* Well. if you want to explain the word "spree," it is all right.

Mr. ARCTANDER. He said he could not say how many times he had been drunk, but a number of times, and I only asked him on cross-examination whether it was not occasional.

The PRESIDENT *pro tem.* It was in relation to the same matter.

Mr. ARCTANDER. It was in relation to the same matter, that they brought out.

Mr. Manager COLLINS. I want to trespass upon the rule in justice to the witness. He was asked whether he did not state certain things upon specification seven. Upon that cross-examination the foundation was attempted to be laid for impeachment in relation to certain matters that he told Chas. R. Davis. He desired to explain what he had said to Davis, and I forgot to ask him what that was, and I desire now to ask him if he has any explanation to make as to what he did say to Davis on the occasion referred to, if it will be permitted.

Mr. ARCTANDER. I am not particular about it, but it seems to me that the rule is, where a foundation is laid, that the witness must answer yes or no; whether he did or not, and then you can show if you can, that he did state it, and he can say in return that it is not true; but he cannot, under any circumstances, say what he did state. I understand that to be a rule of evidence.

Mr. Manager COLLINS. The witness is always permitted to explain what he did state.

Mr. ARCTANDER. It is immaterial as to what he did state, if he did not state that.

The PRESIDENT *pro tem.* The chair is not very sure about that, but the court is inclined to think that Mr. Arctander is right, and the witness can be re-called afterwards. I would like to hear from Senator Hinds on the question submitted to the court.

Senator HINDS I think the question is not competent at this time.

The PRESIDENT *pro tem.* That would be my idea.

Mr. Manager COLLINS. Then I ask for permission to the witness to say now what he did say. The Senator says it is not competent at this time. Evidently it is competent at some time, and I would like to have him say what he did say, so that it will not be necessary to recall him in rebuttal, and bring him two hundred miles to say what he can say as well now.

The PRESIDENT *pro tem.* The chair will submit that to the Senate. It is evident that he can say it at some time.

Mr. ARCTANDER. If it is asked as an accommodation to the witness, or as a matter of grace, we do not object to it; he may answer.

Mr. Manager COLLINS. It certainly would be an accommodation to the witness.

The PRESIDENT *pro tem.* Ask the question.

Q. Explain what you did say to Mr. Davis?

A. My recollection is that I had a talk with Mr. Davis, and I told him, that if Cox undertook to try any case when he was in the condition that he was in when the motion was heard in the Young case, that I should try my utmost to get the case adjourned, because I would not ever go before him in that condition and embarrass the rights of my client; that statement I think I made and I felt that way.

Examined by Mr. ARCTANDER.

Q. You said at that time, when you saw Judge Cox up at New Ulm, did you, that he was there at a special term. Isn't it a fact, that he was there snow bound, trying to get to Marshall, and that he had no business at all at New Ulm, except that he was snow bound?

A. Since you remind me of it, I think that is true.

Q. So there was no special term?

A. I think you are correct, but he was there a long time; I think about two weeks.

Q. He could not go one way or the other?

A. He could get east; he could get to St. Peter.

Q. Isn't it a fact, Mr. Lind, that from the 29th day of December, until the 5th day of January, that year, there was not a single train that went up and down past New Ulm; that everybody that went out, went with teams?

A. From the 29th day of December to the 5th day of January, but this was later than the 5th day of January.

Q. It was? A. Yes.

Q. But you agree that it was so, that there was no train from the 29th day of December till the 5th day of January?

A. I think about New Years we had a blockade.

Q. About a week, was it not. A. Not so long as that.

Q. Wil lyou swear that the Judge was there, drunk or sober, one single day after the fifth day of January, during that month?

A. Well, it is my recollection that it was later than that, that he was up there.

Q. You said it was in the month of January. A. Yes.

Q. Right after New Years?

A. I think it was later than the fifth, but I may be mistaken as to the time he was there.

By Mr. Manager COLLINS.

Q. You may be mistaken as to the dates, but you are not mistaken as to the drunk? A. No, sir; I am not.

The PRESIDENT *pro tem.* Is that all with this witness?

Senator C. D. GILLIFLAN. I move that when the court adjourns it adjourn until half past seven this evening.

The ayes and naes being called for, the Clerk called the roll as follows:

The roll being called, there were yeas 10, and nays 14, as follows:

Those who voted in th affirmative were—

Messrs. Case, Gilfillan C. D., Hinds, Johnson A. M., Macdonald, McCormick, McCrea, Tiffany Wheat and Wilkins.

Those who voted in the negative were—

Messrs. Aaker, Adams, Bonniwell, Buck D., Campbell, Crooks, Howard, Johnson F. I., Johnson R. B., McLaughlin, Mealey, Miller, Morrison and Shalleen.

And so the motion was lost.

A. C. FORBES

Mr. Manager DUNN. Mr. Forbes is called as to specification one, of article seventeen.

Was called and sworn.

Q. Where do you reside? A. Marshall, in Lyon county.

Q. Do you know the defendant, Judge Cox? A. I do.

Q. How long have you know him?

A. Since July, 1878; the month of June.

Q. Did you ever appear before him, where he acted in a judicial capacity, in Marshall, in the county of Lyon, in December, 1878?

A. I did. Did you say December?

Q. Yes.

A. Well, in December was the regular term of court.

Q. Well, a special proceeding, a supplemental proceeding before Judge Cox,—I wish to call your attention to that?

A. That was, I think, about November, the 7th of November, 1878.

Q. Instead of December?

A. Yes, sir. I will say that I think my name does not appear as attorney of record in the case, but I was associated with Judge Weymouth.

Q. You were associated with Judge Weymouth, who was attorney in the case? A. Yes, sir.

Q. Can you give the title of the case?

The PRESIDENT *pro tem.* Under what article is this being received?

Mr. Manager DUNN. Specification two of article seventeen.

A. That was the case of the Cleveland Co-operative Stove Company against Robinson and Maas.

Q. What was the proceeding before the Judge?

A. The proceeding was a case of supplemental proceedings.

Q. Supplemental proceedings, supplementary to the execution?

A. Supplementary to the execution in the case.

Q. Who was before the Judge besides yourself?

A. There was Judge Weymouth, Samuel Whaley, and myself, as attorneys for the plaintiff; on the defense there was Judge Gove, E. A. Gove, now residing at Campbell, in this State.

Q. You may now state to the court what the condition of the Judge was, when that proceeding was before him, as to sobriety?

A. Well, I thought the Judge had been drinking some at that time.

Q. Well, was he sober, or was he intoxicated?

A. I could not swear that he was intoxicated; I can simply swear that he had been drinking, and probably drinking considerably. That was not at a special term, nor yet was it at a general term.

Q. Do you know how the proceeding came to be before him at this time; you were one of the attorneys associated?

A. Yes, sir; the execution was issued upon a confession of judgment in the case, and we sent—the execution was returned unsatisfied, and we sent a Mr. Langworthy, who was agent at that time for Sebastian, Brand

& Co., of Milwaukee, who were interested with other creditors in this payment, and we sent him to St. Peter with the affidavit in order to be signed, and if possible to bring the Judge with him; and I think he brought him with him on the four o'clock train in the afternoon.

Q. What time did you begin the proceeding before him?

A. My recollection is that we began in the evening about half past seven o'clock.

Q. Had the Judge been drinking any that day to your knowledge?

A. Not to my knowledge, I didn't see him drink any.

Q. But you say he was under the influence of liquor at the time?

A. I thought he had been drinking some at the time.

Q. Well, did that thought amount to a conviction, or was it a mere occasional impression?

A. Well, I was not very well acquainted with the Judge at that time; I had only known him from July, and I had not appeared before him, at that time, I think, in any case; I don't think I had, and I only judge from his appearance.

Mr. Manager DUNN. Take the witness on that charge.

Mr. ARCTANDER. I don't think we want anything of Mr. Forbes.

The PRESIDENT *pro tem* That is all, sir.

Mr. Manager DUNN. No, sir, there is still another charge.

By Mr. ARCTANDER.

Q. I have one question to ask. You are the county attorney of Lyon county?

A. Yes, sir.

Mr. Manager DUNN. We have no further examination of this witnesss.

M. SULLIVAN,

Sworn on behalf of the State, testified.

Examined by Mr. Manager DUNN.

Q. Where do you reside?

A. In Marshall, Lyon county, Minn.

Q. Do you know Judge Cox the respondent in this case.

A. I have seen him.

Q. Were you present at the general term of the district court, held by Judge Cox in Marshall, in Lyon county, last June. A. I was.

Q. Were you on the jury. A. I was.

Q. On which jury. A. The grand jury.

Q. Were you the foreman of the grand jury? A. Yes, sir.

Q. Did you see Judge Cox when he came into court? A. I did not.

Q. When did you first see him?

A. When I came into the court room.

Q. He was in the court on the bench?

A. He was in the court room on the bench when I went in there.

Senator HINDS. Upon what article was this?

Mr. Manager DUNN. Upon article fifteen.

Q. You may state what the condition of the Judge was as you observed him during that term of court, during the first portion of that court, the first day or two say,—as to sobriety?

A. I thought he was intoxicated the first day.

Q. The first day? A. Yes.

Q. To what extent?

A. To this extent, that he was incoherent in his speech somewhat, and his general appearance.

Q. How was he the next day?

A. The next day he was—I didn't hear him make any remarks this day, but his appearance was the same; I heard him make this remark to the clerk, saying to the clerk, "Mr. Clerk, enter this in the presence of the grand jury; that is the extent of his remark on the second day that I heard.

Q. How was it the next day?

A. The next day he was in better condition I thought than the previous day.

Q. Did the grand jury—what do you mean by better condition, Mr. Sullivan?

A. I don't think he was so much under the influence of liquor as he was the two former days.

Q. Was his condition noticeable by the grand jury?

A. It was by the grand jury.

On motion the court adjourned.

SIXTEENTH DAY.

ST. PAUL, MINN., Jan. 19, 1882.

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

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

Messrs. Aaker, Adams, Bonniwell, Buck C. F., Buck D., Campbell, Chase, Castle, Clement, Gilfillan C. D., Hinds, Howard, Johnson A. M., Johnson F. I., Johnson R. B., Langdon, Macdonald, McLaughlin, Mealey, Miller, Morrison, Officer, Peterson, Powers, Rice, Shaller, Shalleen, Simmons, Tiffany, Wheat, Wilkins and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, judge of the ninth judicial district, upon articles of impeachment exhibited against him by the House of Representatives.

The Sergeant-at-Arms having made proclamation,

The Managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. James Smith, Jr., Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives, entered the Senate chamber and took the seats assigned them.

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

The PRESIDENTT *pro tem.* Have the Senators any resolutions or motions? Are the honorable managers ready to go on with the testimony?

Mr. Manager DUNN. We are ready to proceed but I ask, on behalf of the management, the indulgence of the Senate to place upon the stand a witness, perhaps out of order, with the consent of the respondent's counsel, who is sick and becoming worse all the time. He is here this morning and would like to be examined so that he can go home.

Mr. ARCTANDER. There is no objections on our part.

The PRESIDENT *pro tem.* Will the Senate comply with the request? There being no objection we will go on.

OLE O. SKOGAN.

Sworn on behalf of the State, testified:

Mr. Manager DUNN. This witness is called to article ten.

Examined by Mr. Manager DUNN.

Q. Where do you live?

A. I live pretty close to Minneota, in the State of Minnesota and county of Lyon.

Q. How long have you lived there? A. About 8 years.

Q. What is your business? A. Farming.

Q. Do you know Judge Cox of the ninth district?

A. Yes; I do.

Q. Were you at Marshall in the month of May last,—about the 12th of May?

A. Yes, sir.

Q. Did you receive your naturalization papers there? A. I did.

Q. Who was the Judge that was present at that time?

A. Cox, I guess.

Q. This gentleman here, Judge Cox? A. Yes.

Q. Do you know that to be the fact? A. Yes.

Q. Who was the clerk of court? A. Charlie Patterson.

Q. Marshall is in your county, is it? A. Yes.

Q. The county seat? A. Yes, sir.

Q. You found the Judge when you first went into town?

A. I found him in a saloon.

Q. What saloon? A. At the saloon bar of the hotel.

Q. What was the name of the hotel?

A. The Merchants' Hotel.

Q. What was he doing there at the bar of the saloon?

A. Well, he stood in the saloon at the time I came in there.

Q. Did you ask him to go to the court house with you? A. Yes.

Q. What did he say?

A. Well, he said he didn't know if there was any clerk or court in this town.

Q. You knew he was the Judge of the court, didn't you?

A. Yes, I did.

Q. You had seen him before?

A. No, I never saw him before, but I asked him if he was the Judge and he said yes.

Q. What was his condition; was he sober or was he drunk?

A. Well, I think he was drunk.

Q. Did he finally go up to the court room with you? A. No.

Q. What did you do?

A. I went back to the clerk and told him about it.

Q. Well, did the clerk go with you then? A. Yes.

Q. Did the clerk talk with the Judge? A. Yes, he did.

Q. What did he ask him?

A. He told him he had some business to do; and he went out with him and went right along.

Q. The Judge went with the clerk and went with you? A. Yes.
Q. And he was drunk then, was he?
A. Yes; I think he was.
Q. What conversation occurred between the Judge and the clerk after you got into the room where you held the court?
A. Oh, not much. He came in and he said he couldn't do anything before court was open, so he asked if the court was open.
Q. Who did he ask? A. He asked the clerk, I understood.
Q. Whether the court was open?
A. And he said the court was open again.
Q. Who said so? A. The Judge.
Q. Then you proceeded with your business, did you?
A. Yes; the clerk done the business.
Q. What did the Judge do?
A. Well, he was standing on the floor and talking with Judge Weymouth.
Q. Was there anybody else there at that time? A. Yes.
Q. Did you have your witnesses there? A. Yes.
Q. Who examined the witnesses, the Judge or the clerk?
A. The clerk.
Q. The Judge didn't do hardly anything, did he?
A. Not as I know of.
Mr. Manager DUNN. May it please the court, we have two other witnesses to this same specification. We would like to call them now.
Mr. ARCTANDER. If it is a convenience to yourself and witnesses we certainly won't object.
The PRESIDENT *pro tem.* You may call them unless objection is made.

WILLIAM MARX,

sworn on behalf of the State, testified.

Examined by Mr. Manager DUNN.
Q. Where do you reside?
A. Town of Clifton, county of Lyon, in this State.
Q. Is Marshall the county seat of your county? A. Yes, sir.
Q. Do you know Judge Cox, the judge of your court there?
A. I do.
Q. Were you present at a term of court in your county about the twelfth day of May last?
A. Well, that is about the time I seen the Judge; I don't recollect whether that was the day or not.
Q. That was in the month of May last. A. Yes.
Q. I refer to the time you were naturalized and became a citizen of the United States, and got your last papers? A. Yes, sir.
Q. At that term of court? A. Yes, sir.
Q. Where did you first see the Judge when you got to town?
A. I seen him first on the street; I did not know him when I first seen him on the street,
Q. Was he pointed out to you by some person? A. He was.
Q. Did you have any talk with him? A. Not at that time.
Q. Where did you next see him?
A. Next I seen him in a saloon.
Q. Whose saloon?

A. Well, I could not tell who owned the saloon; it is a saloon next to the hotel there.
Q. Was it a saloon where they sold liquor, or an eating saloon?
A. It was a liquor saloon.
Q. How did you come to be in the saloon?
A. I was looking for the Judge.
Q. You found him there? A. I did.
Q. Did he drink anything while you were there?
A. I did not see him drink.
Q. What was his condition as to sobriety, was he sober or intoxicated? A. Well, he acted pretty wild.
Q. Do you know whether the Judge was drinking any liquor that day at all?
A. Yes, he drank some.
Q. You know he drank some, do you? A. Yes, sir.
Q. In that same saloon? A. No, not in that same one.
Q. Another one? A. Yes.
Q. Did you go up to the court with the Judge? A. I did.
Q. Now, when you first saw the Judge what did you tell him?
A. I asked him to go up to the court-room with me.
Q. What did he say?
A. Well, I don't know as he said anything particular; he went along after a little.
Q. Well, didn't he say something to you at that time or ask you some questions?
A. Well, I think he did.
Q. Well, what was it?
A. I think he asked me what I wanted him to go there for.
Q. Well, what did you tell him?
A. I told him I wanted to get my citizen papers.
Q. Well, what did he say to that?
A. Well, I think that he then asked me if I had my first papers.
Q. Well, what did you tell him?
A. I told him I had not, but I had a discharge, and that would do for the first papers.
Q. Well, was there anything else said?
A. Well, not that I recollect of in particular.
Q. Wasn't there anything else said at all at that time?
A. Well, not in that saloon.
Q. Well, in any other saloon did you have a talk with him?
A. Yes. I talked with him going up on the street.
Q. Well, what was it that was said?
A. The Judge wanted to know if I had a quarter, going up the street.
Q. What did you tell him? A. I told him I had.
Q. Well, what did he say?
A. Well, he went into the next saloon and spent the quarter.
Q. Whose quarter was it?
A. It was mine.
Q. Who drank? A. Well, the Judge and myself.
Q. At that time was the Judge intoxicated or was he sober?
A. Well, he was wild.
Q. Well, when you say "wild" what do you mean by that?
A. Well, I think he had some whisky in him.

Q. Well, what was it you drank?
A. We drank brandy, I think.
Q. You went up to the court then, did you? A. Yes, sir.
Q. And who was present in court?
A. The clerk of the court, Mr. Patterson and the Judge and Charles Marks, a brother of mine, was there.
Q. Did you see Mr. Hunter, the deputy sheriff, there at any time?
A. Well, I didn't know Mr. Hunter at that time; there were several men in there.
Q. Well, after you got your papers, or while you were getting your papers, who did the business, the Judge or the clerk?
A. The clerk did it.
Q. Did the Judge do anything about it that you remember of?
A. Not what I know of.
Q. Did you have any trouble there with the Judge at that time?
A. Well, the Judge slapped my face.
Q. What did the Judge do for that?
A. I could not tell.
Q. Was the Judge standing up or sitting down when he slapped your face?
A. He was standing up.
Q. Close up to you, was he? A. Yes.
Q. Did he strike you pretty hard?
A. Well, it smarted pretty well for a while.
Q. What did you do then?
A. Well, I took hold of him and asked him if he was going to slap me any more.
Q. What did he say? A. He said he wouldn't.
Q. Did you take hold of him pretty solid and severely?
A. Well, I took a pretty good hold on him.
Q. Where did you take hold of him?
A. Up towards the collar of his coat.
Q. Did you push him back? A. I did.
Q. What did you tell him?
A. Well, I asked him was he going to slap me any more and he said he wouldn,t; and he said he thought we had better quit that fooling.
Q. That is all you told him, was it?
A. That is all.
Q. Well, did you think it was fooling when he slapped your face?
A. Well, I thought it was pretty rough fooling.
Q. There was nothing to call for any fooling, was there, between the court and you; you hadn't been joking with him, had you?
A. I wasn't talking to him at that time at all.
Q. Well, what was his condition at that time, do you think?
A. Well, about the same as it had been right along.
Q. Then, after that what occured, anything?
A. Nothing what I remember, the Judge went out and I went on about my business.
Q. Do you know where the Judge went? A. I do not.

Examined by Mr. ARCTANDER.
Q. You say that he went up to the court room with you?
A. He did.

Q. How large was that court room, where you went with the Judge? Isn't it a fact that the room to which you went with the Judge was in Wilcox's drug-store up there,—into a place about three feet by five which had been partitioned off?

A. Yes.

Q. Where Mr. Patterson kept his books, and in which all the packages of the Express office were kept?

A. Yes.

Q. A little bit of a cubby hole, wasn't it?

A. Yes, sir.

Q. There was quite a number of men in there, wasn't there?

A. There was some in there.

Q. Do you remember Judge Weymouth being in there?

A. No; I don't remember him being there.

Q. Do you remember Charles Marsh being in there?

A. I did not know him.

Q. Isn't it a fact that there was quite a number of men in that little hole and you had to stand right on each other to get a place?

A. I did not see anybody in there in the place where the clerk of the court was; at least I did net notice anybody in there except the clerk.

Q. Wasn't you all in there?

A. No, we were in front of this little place, in the store.

Q. Did the Judge stand right by the hole in that partition; there is a hole in the partition, isn't there?

A. He stood a little at one side of the hole. I stood back of the hole a little ways.

Q. Now, isn't it a fact at the time you say the Judge slapped you in the face, that he stood right close to you?

A. He did not stand right close up to me but he walked up toward me and slapped me.

Q. You had not done anything to him at all A. I had not.

Q. He did not say anything to you when he slapped you?

A. Well, he was talking a good deal right along; I did not pay any attention at all to what he said.

Q. Isn't it a fact that he was talking and threw his hand out in this way, and in that way came to slap you in your face?

A. Well, I don't know.

Q. You don't mean to say that the Judge intended to slap you in the face?

A. Well, after he slapped me, he told me he could knock me some distance. After he slapped my face he made a fist and he told me he could knock me some distance; I don't recall now how far he did say.

Q. There was no business going on there except you people were swearing out your naturalization papers?

A. That was all.

Q. When you came to town there to the saloon where you found the Judge, didn't he tell you that there had been no business transacted that day and that court had adjourned?

A. I don't think he did.

Q. He did not say anything about that that you can remember?

A. Not what I remember of.

Q. Now, isn't it a fact that at the time you took hold of him there and said "You don't want to slap me," that he apologized to you and said, "I did not intend to slap you, my dear sir; I apologise to you."

A. Well, he might have took it in that way, but—
Q. Wasn't it this way?
Mr. Manager COLLINS. Hold on; let the witness answer the question.
The WITNESS. The word he said, I think, was, that he thought we had better quit that fooling.
Q. Now, isn't it a fact that he told you, "My dear sir, I did not intend to hit you. If I had intended to hit you I could have knocked you some distance?"
A. Well, he did not use any of that kind of talk at all.
Q. You are positive of that, are you? A. Yes, sir.
Q. You are positive he did not apologize to you and did not make this remark in apologizing to you?
A. Yes, sir.
Q. Was there anybody with you when you walked off up with the Judge?
A. Yes. Charles Marks was there.
Q. Anybody else? A. I guess that was all.
Q. Mr. Patterson wasn't there?
A. Do you mean when I walked up with the Judge to where the clerk was?
Q. I mean to the office of Mr. Patterson, in that cubby hole up there?
A. There was nobody but myself and my brother when I got the Judge to go up.
Q. What time of day was it that the Judge went up there?
A. I couldn't tell you.
Q. Isn't it a fact that it was pretty late in the afternoon?
A. Well, I don't think it was very late.
Q. Isn't it a fact that it was considerably later than the train got in that day?
A. Well, I couldn't even tell what time the train came in.
Q. Can't you tell what day of the week it was? A. I could not.
Q. You can't tell what month it was, nor what day of the month?
A. It was in the month of May.
Q. Now, what day was it in the month of May; do you know that?
A. I do not.
Q. Now, when you said you had your discharge as a soldier down there, the Judge said it would do for first papers, did he not? Did I understand you right?
A. Well, whether he said it or not I could not tell, but the way I understood it, I thought he thought that would do.
Q. This place you met him and where that conversation was, was in the bar-room at the Merchants Hotel, was it not?
A. Yes.
Q. There was a couple of billiard tables there, wasn't there?
A. Yes.
Q. Wasn't he playing billiards with Mr. Marsh at that time?
A. No; I saw him with a cue in his hand, but he was not playing when I came in.
Q. How many drinks did you have that day yourself?
A. I don't think I had but one before that.
Q. How long had you been in Marshall that day before that?
A. I had not been in more than half an hour I don't think.
Q. Didn't you tell Judge Cox, when you came down there to the bar room that you had been waiting for him there since morning?

A. I don't think I did.
Q. Where was that saloon in which you spent that quarter?
A. That was at Mahoney's.
Q. What did you drink while you was there?
A. I drank brandy.
Q. The drink you had had before was brandy too wasn't it?
A. I don't think I had had any before that day.
Q. I thought you said you had had one before?
A. Oh, that was the first one I had had that day.

Examined by Mr. Manager DUNN.
Q. Had you come from home that morning, to Marshall?
A. I had.
Q. How did you come, with a team, or how?
A. I came with a team.
Q. How far? A. Seven miles.
Q. What time did you leave home?
A. Well, I left home in pretty good season; I think about six o'clock in the morning.
Q. And when you got there you found the Judge after you had been there about half an hour or so?
A. I did.
Q. Now, where this occurrence took place there were other persons in the room, were there not, but you don't know who they were?
A. There was a good many in there but I didn't know any of them.
Q. At the time he struck you in the face was Charles Marks there?
A. He was.

C. M. WILCOX,

worn on behalf of the State, testified:

Examined by Mr. Manager DUNN.
Q. Where do you reside? A. Marshall, Lyon county.
Q. What is your businsss. A. Drug business.
Q. Do you know Judge Cox? A. I do.
Q. Were you present at a term of court,—at a proceeding in court when the last witness was on the stand, William Marx, was present and received his naturalization papers?
A. I was.
Q. You may state if you saw the judge there at that time?
A. I did.
Q. Was that court held in your store. A. It was.
Q. You had no court house at Marshall at that time,—no regular court house had you?
A. No, sir; we had not.
Q, This was last May was it? A. It was.
Q. Well, you may state what the eondition of Judge Cox was at that time as to sobriety?
A. The Judge was intoxicated.
Q. Did you see any altercation between the Judge and this last witness that was on the stand?
A. I did.
Q. You may state to the Senate what you saw?

A. Mr. Marx was waiting for his papers to be made out and the Judge was talking to him in a cranky sort of a way and using language that there was no sense in. Mr. Marx was paying no attention, and to make what he said more emphatic, or something of that kind, the Judge threw his arm back and slapped him vigorously, a sharp slap on the cheek, so that it sounded across the store.

Q. What next took place?

A. Mr. Marx took hold of the Judge; one hand about his throat and the other on his shoulder and pushed him about eight feet back in the store, up in the corner by the partition and the stove.

Q. Was there anything said or done then that you recollect?

A. Mr. Marx said if he was a Dutchman he couldn't slap him, or words to that effect, The Judge crawled out of the place and didn't seem to know what happened. He made no apology.

Q. Anything further?

A. Mr. Marx seemed inclined to resent the slapping and the clerk of the court by motions and a few low words persuaded him not to do anything about it. I guess that is about all.

Q. Had you seen the Judge that day before that? A. I had not.

Q. Did you see him when he came into the court room? A. I did.

Q. He was intoxicated at that time, was he? A. He was.

Examined by Mr. ARCTANDER.

Q. Do you state that they held court there in that store of yours?

A. Well, so much court as was necessary to give the person his naturalization papers.

Q. Well, do you know what is necessary in holding court, to give a person his naturalization papers?

A. I think I know as much about it as the Judge did at that time, and that is very little.

Q. Well, that is not answering the question. You know nothing about what is required to give naturalization papers, do you come right down to it? A. I don't know that I do know the rules.

Q. Now, as a matter of fact, there was no court called, no minutes read, no witnesses examined, no case tried. and no attornrys there to attend to any business, was there?

A. The clerk of the court was there, and this Marx and his brother as witness. The clerk did all the business, filled out the forms and asked all the questions, and the Judge stood silently by. The Judge was standing by there so as to be present.

A. Yes, sir.

Q. Now, can you describe the position that they severally occupied at that time?

A. I can.

Q. Well, describe it then?

A. The clerk stood behind the partition in the room used as his office.

Q. You mean the cubby hole that is partitioned off?

A. If you so wish to term it. It is a room about 11x16. In one corner of that office is a sort of opening with a table, or not exactly table, but a place where persons can write, a place about three by four I guess. In front of that about six feet there is a counter, near the end of the counter Charles Marks, the brother of the one who was getting his naturalization papers, stood. About two feet from Charles Marks William Marks stood and the Judge was talking to him, giving him some sort of

a war reminiscence, I think, I got no sense from it, and he was walking backwards and forwards and William Marks stood there paying no attention to what he was saying at all that I could see. The Judge was talking in a sort of a wild manner. The clerk was standing back of the partition. The two Marks' were standing near by the hole and were sworn or examined at that time when the clerk asked them questions.

Q. I suppose that you mean that he administered the oath to them?

A. Yes, sir; I think he did.

Q. That is what you mean by asking questions?

A. Yes, sir.

Q. Were they at that time, when the slapping took place, as a matter of fact, proving upon their lands before the clerk, or getting their naturlization papers?

A. They were getting their naturlization papers I believe. I don't think they were proving uy on their land, still they may have been at the same time.

Q. How far from that hole was Marks standing when the Judge slapped him?

A. About eight feet. Eight or nine feet.

Q. Was Charlie Patterson swearing him at that time?

A. Charlie Patterson was writing at that time.

Q. Inside the partition?

A. Inside the partition.

Q. Was he standing at the table or standing up at the desk.

A. He was standing up at the desk.

Q. And could see what went on there.

A. He could, or part of the time. I don't know as he could see the Judge when he pushed up in the corner. He could see most all that was going on, I think.

Q. Was there anybody else near where the Judge was when Marks pushed him up in the corner.

A. There wasn't any one only the brother, Charles Marks.

Q. Was there anybody in the room there besides those men and you?

A. The clerk, the Judge and the two Marks'; myself and Mr. Hunter and one other party. I don't recollect who it was.

Q. Was it Judge Weymouth? A. It was not.

Q. Do you know Charles Marsh? A. I do.

Q. From Lake Benton. I do.

Q. Was it him? A. It was not.

Q. You are positive that Judge Weymouth was not there?

A. I am morally certain that he was not there; I am positive he was not there.

Q. Are you a brother-in-law of Mr. Patterson, the clerk?

A. I am not.

Q. Are you related to him in any way? A. I am not.

Q. Your store was occupied at the time, was it not, by you? You kept a drug-store?

A. Yes, sir.

Q. And there were shelves and counters, &c., there?

A. There was.

Q. And show-cases? A. Yes, sir.

Q. And in this partition, back where Mr. Patterson kept himself, all the matters of the Express office were kept, were they not?

A. Yes, sir.
Q. Have you talked with any one about this matter before you came down here?
A. The subject has been brought up very many times.
Q. I mean about this particular time? A. Yes, sir.
Q. Isn't it a fact that you had a talk with Mr. Patterson soon after he came back from St. Paul, after he had been before the judiciary committee, and that you told him you was not present at that occasion and didn't remember anything about it?
A. No, sir; most emphatically.
Q. You will swear then that you have remembered this and known this all the time,—that you was there on that occasion and episode?
A. I do.
Q. What were you doing there at the time when this thing went on?
A. Watching them.
Q. Were you not attending to your own business? Did you not have business to attend to?
A. I had nothing at that time to do; I was watching very particularly.

CHARLES MARKS,

Sworn on behalf of the State, testified.

Examined by Mr. Manager DUNN.

Q. Where do you live? A. Town of Clifton, Lyon county.
Q. In Minnesota? Yes, sir.
Q. Do you know Judge Cox, judge of the ninth district?
A. Yes, sir.
Q. Did you see him in Marshall in the month of May last, at the time you received your naturalization papers?
A. Yes, sir.
Q. Where did you see him the first time that day?
A. In Mahony's saloon.
Q. What was he doing there?
A. He was coming in with my brother.
Q. You was in the saloon? A. Yes.
Q. And he came in with your brother? A. Yes, sir.
Q. What is your brother's name. A. William.
Q. The man who was on the stand a minute or two ago? A. Yes.
Q. Your business there that day was to obtain your naturalization papers?
A. Yes, sir.
Q. Did you go to the court room with the Judge? A. Yes.
Q. Where did they hold the court?
A. In Charley Wilcox's store.
Q. In the store of the last witness here? A. Yes.
Q. What was the condition of the Judge; was he sober or intoxicated at that time?
A. Well, I think he had a ltttle whisky in him.
Q. Did he have much or a little, in your judgment?
A. Well, I guess it was quite a lot.
Q. Was he what you call intoxicatcd or sober?
A. Well, I call it drunk.

Q. Did you notice any altercation or trouble he had with your brother there?

A. Yes, sir.

Q. Now state to these gentlemen what he did and what was said?

A. My brother told him, said he, "You keep your hands back of me; if you don't I shall knock you over." And at that time my back was kind o' turned to him. I was talking to the clerk of the court, and as soon as this word was said I turned around, and my brother had him by the coat pushing him back.

Q. You didn't see the blow? A. I didn't.

Q. Did you hear it? A. No, sir.

Q. You didn't hear it and didn't see it. You was talking with the clerk of the court, and you turned around when you heard your brother use those words?

A. We was only two or three feet apart.

Q. How did you say he had him?

A. By the coat collar.

Q. What did the Judge say? A. He said we better quit this.

Q. What else did he do or say?

A. I stepped up and told my brother to quit that; he might get into some trouble about it.

Q. That was all you said? A. That was all I said.

Examined by Mr. ARCTANDER.

Q. What were you doing at that time; were you proving up on your land, or getting your citizen papers?

A. Getting my citizen papers.

Q. Did you prove up at the same time? A. Yes sir.

Q. While you were in there that day?

A. No, a few days afterwards.

Q. Did you prove up on your land the same day you were in there, or after you got your citizen papers?

A. I couldn't prove up that day.

Q. Now you said you went to the court room; you don't mean to say that it was a court room. It was in the store?

A. It was in Charley Wilcox's store.

Q. There was no court going on there, was there; no court called and opened, etc.?

A. Not any more than what business the Judge had there to attend to.

Q. Well, all the business he had to attend to was to stand by you and to see that you got your naturalization papers, was it not?

A. I suppose so.

Q. There was no business transacted before him there, was there?

A. Only a little trouble he had betwixt him and my brother.

Q. That was not business transacted before him, I suppose?

A. I thought it was pretty rough business.

Q. Were there any attorneys there arguing any cases, or anything done except simply the naturalization papers you got from the clerk?

A. Not that I know of.

Q. When court is held there in Marshall, have you been present at any time?

A. Yes, sir.

Q. They don't hold court in drug stores nor any such cubby-holes as that was up there do they?

A. They hire a hall somewhere? A. Yes, sir.
Q. Then you have no other reason for saying that they held court in Wilcox's store than the fact that he was standing there while you were getting your citizen's papers, have you? You didn't see him perform any judicial duties?
A. Well, people said he wasn't fit for duty.
Q. Well, I don't care what people said, that is not proper testimony and that is not answering my question. I ask you if you saw him perform any duties there at that particular time—any official duties?
A. Only he signed his name to my papers.
Q. He didn't sign his name to your papers did he?
A. Yes.
Q. That was Mr. Patterson that did that wasn't it?
A Charlie Patterson wrote the paper and told him to sign it, or handed it over to him to sign.
Q. Aren't you mistake, about the Judge signing your paper?
A.. No, sir.
Q. Who do you mean that the clerk handed the paper to? You understand my question don't you?
A. I don't, exactly.
Q. Will you swear that the Judge signed any paper at all there at that time?
A. I couldn't.
Q. And you saw him do no other official business? A. No, sir.
Q. by Mr. Manager DUNN.
Q. They called that a court didn't they?
Mr. ARCTANDER. We object,
Q. By Mr. Manager DUNN. Yon understood it to be a court did you not?
A. Yes, sir.
Q. That was called a court, was it not?
A. That is what it was called.
Q. You understood it to be a court?
Mr. ARCTANDER. We object to that question; it is certainly incompetent what it was called.
Q. The clerk of the court was present, was he not?
A. Yes, sir.
Q. Now, I ask the witness if he understood that to be a court?
Mr. ARCTANDER. That is objected to as immaterial, irrelevant and incompetent.
The PRESIDENT. I shall sustain the objection, if it is left to me.

W. G. HUNTER

Sworn on behalf of the State, testified:
Mr. ARCTANDER.
Q. Where do you reside?
A. I reside at Marshall, Lyon county, Minnesota.
Q. What is your business?
A. I have been acting as deputy sheriff.
Q. Who is the sheriff of the county?
A. John A. Hunter, a brother of mine.
Q. Were you acting as deputy sheriff in May last? A. I was.
Q. Do you know the respondent in this case, Judge Cox?
A. I do.

Q. Were you at Marshall in May last, at the time there was a special term of court, at which William Marx and Charles Marks received their naturalization papers?

A. I was.

Q. Where was that court held?

A. It was held in C. M. Wilcox's drug store.

Q. That was called a special term of court, was it not?

A. So I understand.

Mr. ARCTANDER. We object to that.

Q. It was a special term of court, was it, as you understood it?

A. As I understand it.

Q. Were you present all the time? A. I think not.

Q. Were you present when court opened? A. I was not.

Q. About what time of the day did you get there?

A. I can't say positively as to the time of day; I have the impression that it was about 2 o'clock.

Q. Were you present at the time William Marx was in the court room?

A. I was, sir.

Q. Did you see any altercation between him and Judge Cox; and if so, what did you see; state fully?

A. As I came into the door, I saw Judge Cox's hand up in this way, (witness indicates) and I saw from what I heard that there was going to be a disturbance, and I didn't wish to see it. I turned my back, sat down in a chair, and looked out of the window. I heard William Marx tell him to keep his hands out of his face. Said William Marx, "I don't care if I be a Dutchman, I am just as good as you are, if you are a judge." That is all I saw or heard.

Q. What was the condition of the Judge at that time, as to sobriety?

A. I considered the Judge was drunk at the time I went into the store and I was more fully convinced after I had seen him on the street.

Q, You saw him afterwards, did you? A. I did.

Q. How long afterwards

A. I should judge it was inside of an hour.

Q. Did you see him in any saloon

A. I did not.

Q. Whereabouts did you see him

A. I think it was on the street near J. P. Watson's hardware store or Eph. Mahoney's saloon. It was in that neighborhood.

Q. You have seeu the Judge when he has been sober.

A. I have.

Q. And you can distinguish between when the Judge is sober and when he is drunk.

A. I think I can.

Examined by Mr. ARCTANDER.

Q. Were you there during the following June general term of court?

Mr. Manager DUNN. We object to that with this witness, as not cross-examination. We simply called him as to this one charge.

The PRESIDENT *pro tem.* The objection will be sustained.

Q. Do you remember who the Judge was with at this time you saw him on the street?

A. I do not know who he was with.

Q. Was he alone?
A. I don't think he was; I think there were other people around m.
Q. Do you remember whether or not, it is a fact that Judge Weyouth, and Charles Marsh from Lake Benton were in the store at the ne?
A. Charles Marks was there, but I did not see Judge Weymoth.
Mr. Manager DUNN, (to the witness.) He says Charles Marsh, of ke Benton.
A. I did not see either of the parties.
Q. You didn't see either of them as you remember.
A. No, sir.
Q. You wouldn't swear that they were not there in the store?
A. I will not swear positively that they not there.

CHARLES PATTERSON

Was called and sworn on behalf of the State.

Mr. Manager DUNN. All this testimony is on article 10.
Mr. ARCTANDER. We object, under the rule, to hearing any more itnesses on that article. There have been already five witnesses exam-ed on this charge.
The PRESIDENT *pro tem.* The rule was that the testimony should be nfined to five witnesses unless otherwise ordered. It is for the court determine whether this witness shall be heard or not. What is the easure of the Senate?
Mr. Manager HICKS. Mr. President, one word. We desire simply to ove by this witness, in connection with the court records, that at the me and place of the occurrences which have been recited by the five itnesses just preceding, that there was a special term of court held at is county at that time, and that is all.
Mr. BRISBIN. Oh, well, we make no objection.
The PRESIDENT *pro tem.* Do the counsel for the respondent withdraw eir objection?
Senator POWERS. I move, Mr. President, that this witness be heard.
Mr. ARCTANDER. I will say, Mr. President, that we object to this be-ause we desire to preserve our rights. If the managers say that we hall have the privilege of calling the same number of witnesses on our art, we shall not object to this witness.
Mr. Manager DUNN. I would like to say one word upon this point. s I understand the rule adopted by the Senate, we are limited to five itnessas for the purpose of avoiding unnecessary expense. Now, I do ot understand that rule to be a rule to the effect that the Senate will ot hear testimony if we have five witnesses or ten witnesses here who ave evidence which may be pertinent to any charge, if they are wit-esses to other charges. I don't understand the rule to be that we can ot ask them relative to any other charge, upon which five witnesses ave already been examined. That is my understanding of the rule.
Mr. ARCTANDER. With that understanding of the rule, I will with-raw my objection.
Mr. Manager DUNN. This witness is a witness to this charge, and to everal other charges. Mr. Hunter also is a witness to other charges.

We have produced them here, and their testimony will dove-tail in four or five different charges.

Mr. ARCTANDER. The objection is withdrawn.

The PRESIDENT *pro tem.* It is unnecessary, then, to put the questio

Senator HINDS. I raise the objection to the examination of any mo than five witnesses under the rule.

Senator MACDONALD. The object of the rule was not only to save e pense but to save time. If we propose to go on and examine six wi nesses under this charge, the respondent will come in and claim the sam right, and then time will be extended indefinitely.

Senator HINDS. I give notice of debate. Under the rule debate ma be had in secret session. I desire to discuss this question. That is wh I give notice of debate.

Senator POWERS. I would like to ask if notice of debate will nec sarily apply in a matter of this kind, and in that way hold back a wi ness here under expense for twenty-four hours. The rule we have pr vides that only five witnesses shall be examined upon any one artic unless by permission of the court. Now here is a man on the stan ready to give evidence,—a man who is subpœnaed and held here, to giv evidence upon other matters, and in less time than we have taken in di cussing it already he could probably have put in the testimony nec sary. It seems to me that clause in the rule was put there for the pu pose of giving flexibility to it and that it was not intended to be a ru that could not be changed, or that, if brought up during the progr of the trial that notice of debate would throw the thing over and ha the witness here on expense. It seems to me that would be a ver strained interpretation of this rule. Now, I confess, for one, that I want have all the light I can get on this subject.

Senator HINDS. Mr. President, I rise to a point of order. This di cussion is out of order. I call the attention of Senator Powers to ru 26: "All orders and decisions shall be made and had by 'yeas' an 'nays' which shall be entered on the record without debate, except wh the doors shall be closed for deliberation."

Senator CAMPBELL. In this connection I would like to call the atte tion of the President to the fact that we have practically done away wi secret sessions. We, in fact, haven't any such thing. The proceedin are all published and all made public, and the necessity for secret se sions has been done away with.

Senator HINDS. I move that this court be by itself when it is delibe ating on any subject. If they can take a vote without deliberation, th it does not require the closing of the doors; but if there is to be deliber tion it is to be had with closed doors, and that is the usual practice courts of impeachment.

The PRESIDENT *pro tem.* Do you consider that clause in the rule, "unless otherwise ordered,"—would cut off the giving of notice debate.

Senator HINDS. The court can otherwise order without debate. I any member of the court desires deliberaton it necessarily requir closed doors.

The PRESIDENT *pro tem.* Well, I refer to the motion of Senator Pow ers, whether or not that clause in the rule,—"unless otherwise ordered, would affect the question of notice of debate.

Senator HINDS. If any Senator desires deliberation upon either o them it must be had with closed doors. Now the Senator himself de

to consider that motion and was proceeding to argue upon it. I re to consider and discuss it. I think there should be deliberation n it and whatever action the Senator takes upon that proposition it ıld be with deliberation, because it will guide in the future. It may ict or enlarge the privileges of both sides.

enator POWERS. I would like to ask the Senator from Scott, if he ks that every time the question comes up of allowing six witnesses e sworn, we have to go into secret session, or if he will point out ching in our rules that compels us, at any time, or under any cir- stances, to go into secret session.

enator HINDS. If there is to be debate it can be had only with ed doors under the rules. Now, whether the question will arise in future or not, will depend on altogether how it is decided this time. ou allow an unlimited number of witness as to each article, there ably will be no objection in the future for each side to have as ıy witnesses as they see fit to call. Now, I say when we start out ating from that rule, it should be done with deliberation, in order to guide for the future.

Ir. Manager HICKS. Mr. President, may I call the attention of the ator from Scott, to the fact that all we desire of this witness, in the ld, is simply to identify the records of the court and then read them vidence.

enator HINDS. If there is no other point I will waive my objection as some other senator desires to be heard.

enator MACDONALD. I object, Mr. President.

enator POWERS. Mr. President, I insist that we have a decision of court here and now.

he PRESIDENT *pro tem*, I would hold that under our rule, the chair not decide it The rule says "unless otherwise ordered by the Sen- " I shall decide that the witness cannot be allowed to testify, unless Senate order it.

enator POWERS. I would like a decision of the court as to whether t clause means that we have to have a secret session in order leliberate. I have been deliberating for the last two or three min- s, and I presume others have, and I am just as well prepared now ive an opinion upon that as I shall be after a secret session.

enator D. BUCK. Mr. President, I move to suspend the rules in re- d to this matter.

enator C. F. BUCK. Mr. President, will you please read the rule?

he Clerk, (reading) "Rule twenty-six. All orders and decisions ll be made and had by yeas and nays, which shall be entered on the ord, and without debate, when the doors shall be closed for deliber- on."

enator D. BUCK. For the purpose of determining the question of the nissability of this evidence, I move that the rule be suspended.

enator MACDONALD. Is that the only question involved?

enator D. BUCK. It is the only question. I move to suspend the e.

enator C. F. BUCK. That is not the rule I desired to hear. It was the e in regard to the number of witnesses.

he PRESIDENT *pro tem*. The rule is that the number of witnesses shall restricted to five, unless otherwise ordered by the court.

enator C. F. BUCK. Now, all it requires in my judgment, to allow s witness to testify, is to have the rule suspended.

The PRESIDENT *pro tem.* That was the motion of Senator Powers a notice of debate was given by Senator Hinds. The question will be p upon the suspension of the rules, the roll will be called.

Senator CAMPBELL. I suggest that it does not require a suspension the rules.

Senator HINDS. Rule 26 has no such condition to it. It is an abs lute rule.

The President *pro tem.* You are discussing two different rules; one one time; and one at another. This rule is an absolute rule.

Mr. Manager HICKS. It is fair that the Senators should have th further information from the managers on behalf of the State. Here w have a witness that we have taken especial pains to call, not only b cause he can testify to this charge upon this minor point, but that h can also testify to half a dozen others, or several others. We have take pains to call that class of witnesses in order to save expense to the Stat It is only a minor point upon this charge; but he is an important wi ness upon other charges, and has been subpœnaed for that reason.

The clerk then proceeded to call the roll on the suspension of the rul When the name of Senator McDonald was called, he arose and addresse the chair as follows :

Mr. President, I vote "no" on this question, because I am opposed t increasing the number of witnesses on these articles under the rule; an I think it is establishing an improper precedent.

When the name of Senator Miller was called he arose and addresse the chair as follows:

Mr. President, I shall vote "aye" on this question; because it has bee claimed that the respondent will be restricted and an insufficient oppo tunity given him to bring in his testimony. I want to give him all th chance he asks for within reasonable bounds, and to establish a prec dent, and, therefore, I vote "aye."

When the name of Senator Powers was called, he arose and addresse the chair as follows :

I vote to suspend the rule; I don't think it is necessary, but at presen I vote that way.

The roll being called, there were yeas 22, and nays 10, as follows :

Those who vote in the affirmative were—

Messrs. Aaker, Adams, Bonniwell, Buck C. F., Buck D., Clement Crooks, Hinds, Howard, Johnson, R. B., Langdon, Miller, Morrison Peterson, Powers, Rice, Shaller, Shalleen, Tiffany, Wheat Wilkins an Wilson.

Those who voted in the negative were—

Messrs. Campbell, Case, Castle, Gilfillan C. D., Johnson A. M., John son F. I., Macdonald, McLaughlin, Mealey and Simmons.

Senator GILFILLAN, C. D. Mr. President, I think in order to suspend the rules it requires 28 ayes.

The PRESIDENT *pro tem.* Does it require two-thirds of the whol Senate or two-thirds of those voting ?

Senator CAMPBELL. It has always been held two-thirds of the entir Senate.

Senator D. BUCK. The will of the Senate is that it requires two-thirds of the Senate, and we have adopted the rules of the Senate.

Senator CROOKS. Except on special occasions. This is a special occasion.

The PRESIDENT *pro tem.* The motion to suspend the rules is lost.

Senator POWERS. I renew my motion, and I call the attention of the Senate to Rule 26. I think if the members of the Senate will read those rules they will find that it does not require closed doors in order to dispose of this question.

Senator MACDONALD. The action of the Senate just taken disposes of this question.

The PRESIDENT *pro tem.* I so decide. The managers can go on and examine the witnesses on other points if they see fit.

Senator MORRISON. I would like to enquire if there have been forty-one Senators sworn as members of this court.

The CLERK. They were all present except three on the first day, and took the oath, and the next day the balance came in and took the oath.

Senator C. D. GILFILLAN. Mr. President, I think perhaps there is some misapprehension on the part of Senators in regard to the effect of this vote.

The vote was directed to the exclusion of this witness upon a certain article. The managers can go on and examine him upon other articles if they see fit.

Senator CAMPBELL. Mr. President, I move that we go into secret session.

Senator HINDS. I second the motion.

The ayes and noes were then called for, and the Clerk called the roll.

The roll being called, there were yeas 21, and nays 11, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Adams, Bonniwell, Buck D., Campbell, Castle, Crooks, Hinds, Johnson A. M., Johnson R. B., Langdon, Macdonald, McLaughlin, Mealey, Miller, Powers, Rice, Shalleen, Simmons, Wilkins and Wilson.

These who voted in the negative were—

Messrs. Buck C. F., Case, Clement, Gilfillan C.D., Howard, Johnson F. I., Morrison, Peterson, Shaller, Tiffany and Wheat.

So the Senate went into secret session.

PROCEEDINGS IN SECRET SESSION.

Senator MEALEY offered the following resolutiou, which was adopted:

Resolved, that it is the sense of this Senate that the proceedings in secret session upon interlocutory proceedings be not published, but the result shall be entered into the record.

Senator CASTLE offered the following order as a substitute for the motion of Senator Powers:

Ordered, that the objections to the examination of the witnesses be sustained.

The order was adopted.

Senator BUCK C. F. offered the following amendment to rule 16 of the court, adopted Nov. 28, 1881:

Amend rule 16 by adding to the end thereof, the following:

And that question shall be submitted to the Senate without debate.

Which amendment was adopted.

Senator MACDONALD offered the following additional rule, which was adopted:

Rule 28. The rules adopted for the government of the Court of Impeachment, shall control the proceedings of the Court, unless otherwise ordered by a two-thirds vote of the Senators present and voting.

The Senate adjourned till 2 o'clock P. M.

AFTERNOON SESSION.

The Senate met at 2 o'clock P. M. Senator WILSON in the chair.

The PRESIDENT *pro tem.* Is there any business for the court, before proceeding to the regular business?

Senator MACDONALD. I suppose the order ought to be read for the information of counsel.

The PRESIDENT *pro tem.* Yes, the order of the Court, as to the witness last on the stand, be sustained.

Mr. ARCTANDER. If there is no business now I desire, on behalf of the counsel for respondent, to make an application to this court for an order allowing the taking of the written deposition of R. A. Jones, of Rochester, in this case, on behalf of the respondent. I desire to state to the court that the respondent and his counsel, believe that it is of the utmost importance to him to have the testimony of Mr. Jones, as he is a lawyer of high standing in the State, and a man who is entirely impartial in this fight; one who is not generally practicing in that district, and one who has no ambition to satisfy by his testimony, or any interest whatever, and therefore, presumably, will be one of the most important witnesses that the Senate could get before it. It so happens that Mr. Jones was present in court and tried a case at one of the times that we are here charged with having been intoxicated,—I think the one specified in the fourth specification for the seventeenth article, the case of Howard against Manderfeldt, tried at New Ulm. Immediately after those charges were brought up, and as soon as the specification was filed under the evidence taken before the judiciary committee, the respondent in this case went to Rochester to see Mr. Jones, and found that he was absent in Dakota Territory, and addressed a letter to him asking him about his knowledge in regard to the matter, and received from him a letter in response to that, which, although it is not evidence, (for if it was we could offer it without reading it,) I desire to read now so that the Senate can understand better the reason for our application.

He writes as follows:

"As to being tight, I was obliged—"

Mr. Manager DUNN. We object to the reading of that letter; it is not in evidence and cannot be read here.

Mr. ARCTANDER. I don't claim that it is, and Senators will know better than to consider it as evidence.

Mr. Manager DUNN. Then you ought not to read it, for it will go into the record.

The PRESIDENT *pro tem.* The objection being made, unless ordered by the Senate, it will not be read.

Mr. ARCTANDER. It appears then from Mr. Jones' statement that he was called by a member of the judiciary committee, and stated to him what he knew about the matter, that he had noticed no signs of intoxication in court, and therefore was not called by the judiciary committee of the House. He was there during the whole of the trial which has been testified to by Mr. Webber, and also by Mr. Lind, more particularly by Mr. Webber. Now we ascertained two days ago by rumor, that Mr. Jones left the State. That was the first intimation we had of the fact, and we immediately telegraphed to Rochester to ascertain whether or not it was so, and received a dispatch from Mr. Jones' partner, Mr. Gove, that it was a fact; that he had gone to New Mexico. Immediately upon receiving that dispatch, we wrote to Mr. Gove to ascertain

the whereabouts of Mr. Jones, and at what time he would return, and in answer to that, we have received the following letter this morning, from Mr. Gove, his partner. This has no reference to the case, so I suppose you donot object to my reading it.

Mr. Manager DUNN. I do not object to your statement of its contents.

The PRESIDENT *pro tem.* State the substance of it.

Mr. ARCTANDER. I will state the substance of the letter. That in the absence of Mr. Gove in St. Paul, Mr. Jones had gone away and left word for him that he was going to New Mexico and Texas, and mentioned several places in which he stated he expected to stop; among other places, where he expected to be on February sixth is the place of Ysleta, Texas; that he didn't expect to return until after March first, and that any letter directed to him at that last named place in the care of W. N. Vilas, M. D., would be likely to reach him.

Now we know no person in Texas, and I suppose the managers do not, and our application would be, (as this is the only man we know, having obtained our information from Mr. Gove's letter,) for an order of this court appointing W. N. Vilas referee or commissioner, to take, and report to this Senate, the testimony of Mr. Jones, upon interrogatories and cross-interrogatories to be transmitted by him, under seal, to the clerk of this court. As I said before, we expect to prove by Mr. Jones that he was lhere in court during the whole of that time; that he saw Judge Cox when he came in from Sleepy Eye; that he saw no indications of intoxication during any portion of that trial, and that there was nothing unusual or improper going on during the trial, more particularly as to what is testified to taking place at the time of the coming in of the jury.

I suppose, probably, that it would be proper that such commission of inquiry should be issued to a notary public who was authorized to examine parties upon oath or to administer oaths; but as we know the name of no notary public in that town, we submit to the court that it is proper for it, and this court has power to authorize and appoint that man commissioner. to take this testimony, of course subject to the duty to take oath, as such commissioner, before somebody authorized to administer oaths in that State The court will understand that from now to the 6th of February there is hardly time to write down there and find out the name of some notary public, and then apply to this court, that may not then be in session. There will hardly be time at least to reach there again before Mr. Jones has gone away. I don't think there ought to be any objection to that course. Of course we all know, and we feel it more than anybody else, that it is rather inconvenient not to have the witnesses present in court, and we had expected no such thing. If we had expected Mr. Jones to go away, we should have obtained a subpœna before he went, but as I said, the first intimation we had was after he was gone.

The PRESIDENT *pro tem.* The Senate has heard the application of the respondents counsel.

Senator D. BUCK. I move that the application be granted.

The PRESIDENT *pro tem.* It is moved to grant the application of counsel.

Senator D. BUCK. My motion is not to sent a commissioner but a commission.

The PRESIDENT *pro tem.* The application was not to send a commissioner.

Mr. ARCTANDER. The application was to have this Senate appoint the

gentleman named in Mr. Jones' letter as a commissioner to take the testimony of Mr. Jones, after he has been sworn.

Senator D. BUCK. He is not to go to any other place.

Mr. ARCTANDER. No, sir.

Senator D. BUCK. The Senator from Scott understood it differently; you wish it upon interrogatories?

Mr. ARCTANDER. Yes, sir.

Senator D. BUCK. And the interrogatories are to be agreed upon by counsel on both sides.

Senator HINDS. Where does the commissioner reside?

Mr. ARCTANDER. Ysleta, Texas.

The PRESIDENT *pro tem.* The motion of the counsel was granted by the Senate.

Mr. ARCTANDER. I suppose we can draw up, at a proper time, the commission, when the interrogatories are agreed upon with the managers.

Senator HINDS. Arrangements can be made with the managers to draw up cross-interrogatories.

The PSESIDENT *pro tem.* Is the Senate ready to go on?

M. SULLIVAN,

Was re-called.

Senator HINDS. Under what article is this testimony to be taken?

Mr. Manager DUNN. Under article fifteen.

Mr. Manager DUNN. You stated that you were a member of the grand jury, at that term of court?

A. Yes, sir.

Q. You stated that the grand jury took some action with reference to the Judges' condition?

A. I did.

Q. State what that action was.

A. Mr. Rogers appeared before the grand jury—

Mr. BRISBIN. Wait a moment; that is objected to.

Mr. ALLIS. We object to that. It is incompetent for this man to state the proceedings of the grand jury. There must be some record of it.

Mr. Manager DUNN. We propose to show by this witness that there was action taken by the grand jury, and that there was no record of it, so far as the records of the court is concerned. That there was action taken censuring the Judge and that the grand jury presented their findings to the Judge and proposed to follow it up by further proof not by this witness, but by further proof that that finding of theirs, or censure or resolution or the result of their actions was never spread upon the records, but was pocketed by the Judge. We propose to show by this witness that there was a duplicate of that finding made and signed by every member of the grand jury, and that this witness was the clerk of the grand jury, and one copy was given to the Judge, and one retained by him as clerk. We have the record here that was made by the grand jury, and we propose through this witness, to offer it in evidence, because the Court record itself contains not a particle of matter concerning that transaction.

Mr. ALLIS. What does that tend to prove? What is the charge, the eighteenth.

Mr. Manager DUNN. Drunkenness on the bench.

Mr. ALLIS. I cannot imagine how the proceedings of the grand jury can be evidence that a man was intoxicated.

Mr. Manager DUNN. It is evidence that he was intoxicated, and that it was open and notorious, under our charge.

Mr. ALLIS. Counsel cannot introduce the action of the grand jury in proof of anything to sustain this charge. It is for this body to determine whether he was intoxicated or not on any particular occasion from the evidence of the facts. The action of the grand jury upon facts known to them, is no proof of such facts, and does not tend to prove them it seems to me, very clearly. It is immaterial what the opinions of the grand jury may have been in regard to Judge Cox.

The PRESIDENT *pro tem.* I submit the question to the Senate without debate, whether the witness should answer the question.

Senator D. BUCK. Mr. President, I move that the objection be sustained.

The motion being put by the President, the objection was sustained.

Mr. Manager DUNN. Mr. Arctander, you may take the witness.

Mr. ARCTANDER. We do not wish to cross-examine him.

Mr. Manager HICKS. Mr. President, I desire to know whether we are limited under the rule of the Senate, to five witnesses. I desire to say simply this——

The PRESIDENT *pro tem.* You are not limited under article eighteen; that was excepted from the order.

Q. Mr. Sullivan, you may state under article eighteen—

Senator CAMPBELL. I understand that they are limited unless the Senate otherwise orders. I am not aware that they have ordered otherwise. I simply rise to have this matter understood correctly.

The PRESIDENT *pro tem.* My understanding was that by motion of Senator Hinds, at the time these rules were adopted, article eighteen was excepted.

Senator HINDS. It was not in terms excepted; the general opinion was that it ought to be. I now move that article eighteen, charging habitual drunkenness, be excepted from the operation of the rule limiting the number of witnesses to five.

The motion having been seconded, it was put by the Chair and was adopted.

Q. You may state, Mr. Sullivan, whether at any other time than this term of court, that you have spoken of, under article eighteen, you have seen Judge Cox intoxicated at Marshall, or elsewhere?

A. I have.

Q. Frequently or otherwise? A. I have seen him——

Mr. ALLIS. Are you inquiring as to the time?

Mr. Manager DUNN. Article eighteen.

Mr. ALLIS. There is no particular time.

Mr. Manager DUNN. No, sir; the habitual drunkenness charge.

The WITNESS. I have seen him drunk in the village of Marshall, Lyon county, last May.

Q. At any other time than last May?

A. I think it was in August.

Q. At any other time?

A. At one other time. I cannot give the exact date. It was along in the winter or spring of 1879.

Q. Was any of these times that you saw him drunk there, a time

when he was there to hold court, other than the article that we have just been talking about?

A. I could not say, I didn't pay any attention to it. I saw Judge Cox there. I saw him drunk, and I cannot say whether he was holding court, or having some fun with the boys, or what.

Q. Was his drunkenness open or notorious, or was it private?

A. Oh, it was public on the street.

Q. To what degree of intoxication was he reduced.

A. In May it was to a very great extent. He was very drunk and in the autumn of 1880, he was also exceedingly drunk. He was——

Senator POWERS. Speak a little louder, Mr. Witness, please.

The Witness. I say that in 1881—

Mr. Manager DUNN. August or autumn?

A. Autumn 1880, he was exceedingly drunk and Judge Weymouth had to assist him to get to the train.

A. Judge Weymouth is an attorney there?

A. Yes, sir.

Q. Was he drunk more than one day at a time?

A. I couldn't say.

Q. All that you know is that he was drunk when you saw him?

A. All I know is that he was drunk when I saw him.

Examined by Mr. ARCTANDER.

Q. Mr. Sullivan, was it in the evening that you saw him last May?

A. It was in the afternoon. I didn't see him in the evening.

Q. How late in the afternoon?

A. Between five and seven o'clock.

Q. Between five and seven o'clock?

A. Probably it was about six o'clock, when I was going to my supper.

Q. Was there anybody with him?

A. There was

Q. Who was it? A. James Buabier.

Q. Who else.

A, I didn't see anybody else in particular.

A. Of course you don't know whether or not this is the same time that is testified to by the other witnesses here, in regard to the month of May.

A. I don't know.

Q. It may have been the same day.

A. It might have been; I presume it was.

Q. Do you know of his being there more than once in the month of May?

A. I do not.

Q. And the next time, you said, was in August, 1880?

A. I didn't say August, I said autumn.

Q. Now, what time do you think it was in autumn?

A. I think it was in the month of August.

Q. In whose company did you see him that time?

A. I saw him in the company of Judge Weymouth.

Q. Was that the time you saw him go to the train? A. It was.

Q. Did you see him any more up there that fall?

A. I couldn't say whether I did or not.

Q. What time of day was it? A. It was in the afternoon.

Q. Where was he going? A. He was going to the train.
Q. Did the train go east in the afternoon?
A. The train went east.
Q. In the afternoon? A. Yes, sir.
Q. Is it not in the morning that the train would leave going east to your place?
A. What, then?
Q. I thought it was in the morning?
A. Did you! The train left then after dinner,—after twelve o'clock.
Q. Very well. I asked for my own information. Where were you when you saw him?
A. In my office.
Q. You didn't talk with him? A. No, sir.
Q. Didn't hear him talk? A. I heard him jabber.
Q. Now, what did he jabber. A. I couldn't tell.
Q. You mean that you heard him talk, don't you? A. Yes, sir.
Q. You don't know what it was about? A. No, sir.
Q. Was he on the other side of the street from you, or right by your office?
A. My office. I was standing on the platform; he went right along the street about as far from me as the rear part of the room.
Q. As far from you as the rear part of the room is now? A. Yes, sir.
Q. So that you couldn't hear what was said?
A. I could not distinctly. I paid no attention to it.
Q. But, nevertheless, you say it was jabber?
A. Nevertheless, it was jabber.
Q. You couldn't hear what he said or talked about?
A. I couldn't distinctly what he said.
Q. Did he stagger?
A. Mr. Weymouth had his arm in the Judge's arm.
Q. They walked down arm in arm?
A. Holding him up.
Q. Holding him up? A. Yes.
Q. The Judge staggering down and he holding him up?
A. The Judge was very, very drunk.
Q. Very drunk?
A. Very drunk; so that—
Q. You don't answer my question, whether he could walk, whether he staggered or not?
A. I don't think the Judge could walk alone without staggering that day.
Q. And you swear that Weymouth held him up when he had him under the arm?
A. I will swear that Judge Weymouth had his arm under the Judge's [Cox's] arm, and apparently holding him up.
Q. Now, at this time in May last did he stagger then?
A. No, sir.
Q. Did you see him walk?
A. I did not.
Q. Did you hear him talk?
A. I heard him say something, but I cannot tell what. I heard him speak more to Mr. Beaubier, and I passed right along; I didn't speak. I came around the corner and passed along.
Q. Can you remember where it was, this May time?

A. It was in front of the Merchants Hotel, in the village of Marshall.
Q. In front of the Merchants Hotel, was he standing up or sitting down?
A. I think he was standing up by one of the posts of the porch or piazza.
Q. What made you think he was drunk that time?
A. By his appearance.
Q. What was his appearance?
A. His appearance was pretty high.
Q. Well, what do you mean by "pretty high?"
A. He looked drunk.
Q. Well, did he look drunk in his dress or in his face?
A. His dress was all right; in his face, yes, sir.
Q. Now, how did he look in his face, what was there particularly about his face that you noticed?
A. Well, he looked wild.
Q. His eyes looked wild?
A. Yes, sir, he looked just as all drunken men look.
Q. What is that?
A. He looked just as all drunken men generally do.
Q. That is the nearest you can come to it?
A. That is the nearest I could come to it.
Q. Did you notice those eyes of his in passing right by him?
A. Yes, sir.
Q. Had no talk with him at all, yourself, there? A. No, sir.
Q. Didn't stop to speak at all? A, No, sir.
Q. Didn't stop at all; passed right by? A. Yes, sir.
Q. Did you pass slow, or fast?
A. I passed at my usual gait. I didn't change my movements in the least.
Q. For how long a time did you see him that time?
A. I couldn't say how long a time.
Q. Did you turn a corner before you got up there? A. I did.
Q. And he stood right by the corner, did he not?
A. Right by the corner. I turned the corner and he was out here in front of the hotel.
Q. Well, the hotel is almost on the corner, isn't it? A. Yes, sir.
Q. Only a few feet distant? A. Yes, sir.
Q. You didn't see him make any move at all—no motion?
A. I said I didn't see him move, or make any motion.
Q. In August, 1880, you didn't see him stagger in the autumn there when he went down to the train with Judge Weymouth?
A. Yes, sir; I did.
Q. You did see him stagger?
A. They couldn't walk straight; he pushed the Judge around.
Q. Pushed the Judge around?
A. Pushed Judge Weymouth.
Q. So that he actually staggered at that time?
A. So that he really staggered; he didn't walk along straight.
Q. How long a time did you notice him that time?
A. I noticed him from the time my attention was called to it, from the time he was in front of my office until he passed up to the depot.
Q. How long a distance is it that you had him in view?
A. Twenty rods, more or less.

Q. You kept him in view all that time. A. I did.
Q. You were standing outside of your office, you say. A. I was.
Q. You cannot tell whether it was in the fore part or after part, or iddle part of August?
A. Understand me, I don't swear that it was in August.
Q. I understand, but you think it was. Now the next term was hen? You have testified to three terms, I believe?
A, One was in May and one was in June—
Q. Well, we didn't inquire about that; that was on your first exnination.
A. Well, the other time was in the winter of 1879 or the spring of 80, I cannot give the time, it was in cold weather I know.
Q. Was it during a term of court, or after a term of court, or anying?
A. I cannot tell you. Not having any business in the court I uldn't tell you whether it was in court time or not.
Q. What is it that makes you recollect that occasion, when you cant recollect when it was?
A. Going into a store and seeing Judge Cox in there.
Q. What store was it? A. A. C. Chittenden's.
Q. You say there was snow on the ground at the time?
Q. It was during cold weather, anyhow?
A. It was cold weather.
Q. Who was with the Judge there. A. I cannot tell.
Q. Was Mr. Chittenden there?
A. I think Mr. Chittenden was in the store; I wouldn't be positive bout that.
Q. Is he there now? A. Yes, sir.
Q. You wouldn't be positive anyone else was there? A. No, sir.
Q. You wouldn't be positive anybody else was there?
A. I am positive there was some one in that store.
Q. But you cannot tell who it was?
A. No, sir, I cannot tell who it was; I simply passed in as a matter of usiness, and passed out again.
Q. What was the Judge doing there?
A. I think the Judge was sitting down.
Q. In a chair? A. A chair, stool or box, I cannot tell you what he as sitting on.
Q. What did he do?
A. I think he had some socks in his hands, or on his knee, or somebing. I simply passed in and saw him there, and did my business and assed right out.
Q. You did not say anything?
A. I didn't hear him say anything, yes, he said something; but he lidn't say anything to me. He made some remark.
Q, Was there anything out of the way in his remark?
A. I can't tell you what he said; he was drunk.
Q. Was there anything out of the way in his remark,—anything out f the way that you noticed?
A. Yes, sir.
Q. What was it?
A. Why, some silly remark, I can't tell you what it was.
Q. Some silly remark?
A. Yes, sir.

Q. You remember now, that it was silly, but you don't remember what it was.

A. I don't remember what it was.

Q. Might you not be mistaken as to the silly part when you cannot give us an idea what it was about.

A. Perhaps my idea of silly would not be proper.

Q. It is more probably in your idea than in his language.

A. I don't know as to that; I considered it silly.

Q. That time was about the first time that you saw Judge Cox, was it not, Mr. Sullivan?

A. No, sir.

Q. When did you see him before?

A. Why, I have seen him numerous times.

Q. Where?

A. At New Ulm, and on the train.

Q. You never had any acquaintance with him?

A. No, sir.

Q. You have no acquaintance with him now?

A. No, sir.

Q. Never met him socially or otherwise, except the times that you have mentioned.

A. Yes, sir.

Q. How many times?

A. Three times.

Q. You have met him socially?

A. I don't know as I will call it socially. I have met him on the train and conversed with him. I have met him at a dance in the village of Marshall. They gave him a supper or something, in the village of Marshall, or a dinner, and I was present at the time and talked with him all three of those times,

Q. It was not a very extended talk that you had with him at those times?

A. No, sir.

A. Those are the only times that you have met him socially, or outside of this, except in passing by? A. Yes. sir.

Q. Now, at this time, when you saw him sitting here and heard him make this remark that you thought was silly,—at that time you had no personal acquaintance with the Judge at all?

A. Not more than I have at present.

Q. Didn't you have less than you have at present? A. Less.

Q. Haven't you met him socially since, and you had not met him socially before? A. Probably; yes.

Q. Now, what was he doing with the socks that he had?

A. I couldn't tell you that; I couldn't tell.

Q. Just sat with some socks there, either in his hand or his lap?

A. Yes, sir.

Q. Trying to get them on his feet?

A. I wouldn't swear that I saw him trying to get them on his feet—

Q. Did he have his boots off. A. I think not.

Q. Do you think he was pulling them on over his boots?

A. I didn't see him trying to pull them on over his boots.

Q. Then you didn't really see him do anything with the socks, that you can now recollect of? A. Nothing particular, no.

Q. Did anybody attend upon him at that time?

A. I was not in there hardly a moment.
Q. You don't know what was remarked before you came in, by anybody else, and whether Judge Cox's remark was an answer to any remark that had been made to him?
A. I couldn't certainly tell what was remarked before I came in.
Q. And you couldn't tell whether or not this remark was a jocular remark made by the Judge in answer to a remark made to him?
A. No, sir.
Q. The Judge didn't walk at all, or get up while you were there?
A. No, sir.
Q. He seemed to be wideawake? A. He was wide awake, yes, sir.
Q. What was there about him particularly at that time, that made you think he was drunk?
A. His appearance, and that remark.
Q. At that time when he was sitting there, did he have a hat on his head?
A. My impression is that he did.
Q. What kind of a hat was it; do you remember?
A. I couldn't tell you.
Q. Was it a straw hat? A. I think not.
Q. He had on a light gray suit, did he not?
A. I wouldn't presume to say what kind of clothes he had on, the color or anything of the kind. I passed right in and passed right out.
Q. Did he have a fur overcoat on, that you remember?
A. I wouldn't swear that he did, and I rather think he did.
Q. You rather think he did.
A. I don't testify that he did. I paid no attention to what he had on.
Q. What was it you paid attention to?
A. I paid attention to my business. The Judge was sitting there and made this remark, and I did my business and passed right out.
Q. As a matter of fact you went through and glanced at the Judge?
A. That is it.
Q. And from that one glance and the remark which you cannot remember, but which you think was silly, you would infer that the Judge was drunk?
A. Yes, sir.
Mr. Manager DUNN.
Q. Had you seen him that day before? A. I think I had.
Q. Was he sober or intoxicated when you saw him before?
A. He was intoxicated.
Mr. ARCTANDER. We object to that. The witness does not state exactly that he did.
Mr. Manager DUNN. Yes, he did.
Mr. ARCTANDER. He says he *thinks* he did.
Mr. Manager DUNN. Well, it isn't for you to say what the opinion is worth.
Mr. Manager DUNN.
Q. You had seen Judge Cox sober before that? A. Yes, sir.
Q. And you were able to draw a comparison from what you had seen?
A. That is what I drew a comparison from.
Q. Was his appearance much different from what it is now?
A. Very different.
Q. You wouldn't say now, that he was intoxicated? A. No, sir.

By Mr. ARCTANDER.

Q. In what was his appearance different from what it is now; he had on a different beard, didn't he.

A. I couldn't say whether he had or not; I rather think he did.

Q. Is his appearance now the same as it was when you saw him?

A. No, sir.

Q. Wherein is the difference?

A. He looked altogether different; his face was red.

Q. That was a cold winter's day, was it not? A. It was cold.

Q. Do you know how long he had been in there?

A. I do not.

Q. Did he sit near the stove? A. He did not.

Q. Did you see him speak at the time he made that remark?

A. His face was sideways; I couldn't swear that I saw him speak.

Q. You couldn't swear that you saw him speak? A. No, sir.

Q. Now, that was the time you looked at him, was it, when he made that remark?

A. The time I looked at him?

Q. Yes.

A. No, sir; it was about the time that I came in that he spoke, and then I looked at him, and did my business and went out.

Q. You didn't look at him afterwards when you went out?

A. I don't think I did.

Q. Could you have noticed his mouth, or any thing about his mouth, at that time?

A. I didn't pay any attention to his mouth particularly.

Q. Did you pay attention to his eyes?

A. His eyes are just what I noticed.

Q. Could you see both of his eyes?

A. I don't think that I could, both of them.

Q. You think he was drunk in the eye you saw, do you?

A. I do; yes, sir.

Q. Were his eyes stolid, or were they glaring?

A. They were stolid.

Q. The one you saw? A. Yes.

Q. What was the color? A. I couldn't describe the color.

Q. Now, what time of the day was this, in the evening, was it not?

A. It was not; it was in the forenoon.

Q. How early in the forenoon?

A. I could not say; I think it was in the middle of the forenoon; I couldn't say as to the time.

G. I. LIDGERWOOD

was called and sworn, testified.

Examiued by Mr. Manager DUNN.

Q. Where do you reside, Mr. Lidgerwood?

A. Mankato.

Q. How long have you resided there? A. About eight years.

Q. What business were you in up to a year ago, say in Mankato?

A. I was in trade a merchant there.

Senator HINDS. Is this evidence on article eighteen?

Mr. Manager DUNN. Article eighteen, Senator.

Q. You were a merchant at Mankato up to a year ago? A. I was.

Q. What is your occupation now?
A. I am salesman in Lindeke's, Warner & Schurmier's, in this city.
Q. In this city? A. Yes.
Q. Do you know the respondent, Judge Cox? A. I do.
Q. State when you first saw Judge Cox, and under what circumstances; when was it; about when was it?
A. I think it was the latter part of June; about that time, 1880.
Q. Where was it? A. Mankato.
Q. Do you know whether it was a time when he had been holding court at Mankato?
A. I think he had been holding court there that week.
Q. Where did you say,—the circumstances under which you saw him, please relate them.
A. I saw him on the street looking for a hotel.
Q. Day or night? A. It was in the evening.
Q. Were you passing along the street?
A. I was going home at night.
Q. Had you a lantern with you? A. I had.
Q. Anything attracted your attention, and if so, what was it?
A. I was passing along the walk, and I heard something at the side of the walk, in the street, and I turned my lantern and saw a gentleman there.
Q. Was he standing up or laying down, or on his knees, or how was he?
A. Well, he was trying to get on the sidewalk.
Q. Was he on his feet?
A. No, I think not. I think he was on his knees.
Q. Trying to get up on the sidewalk? A. Yes, sir.
Q. How much of a rise was there to the sidewalk?
A. Well, perhaps two feet.
Q. Did you assist the gentleman up? A. I did assist him up.
Q. What did you do, and where did you go?
A. I asked him where he was going, and he told me he was looking for a hotel, and I took him to the hotel.
Q. What was his condition, the gentleman that you met there?
A. Well, I judged he was intoxicated.
Q. Acted intoxicated, did he? A. Yes, sir.
Q. Could he walk readily without your assistance?
A. He could get along over the ground.
Q. Could he get along as straight as a sober man? A. Not exactly.
Q. Made zig-zag movements? A. Yes, sir.
Q. Did you take him by the arm? A. I took him by the arm.
Q. Where did you take him? A. To the Clifton House.
Q. Did you know who it was? A. I did not.
Q. Did you go the next morning and find out?
A. I was interested in his appearance, and I went the next morning and learned who he was.
Q. Did you see him the next morning? A. Yes, sir.
Q. Did you find out who it was? A. Judge Cox, of St. Peter.
Q. This gentleman here? A. Yes, sir.
Q. Was he intoxicated the next morning?
A. He was, to some extent.
Q. Did you ever see him intoxicated at any other time and place than this?

Q. Well, I have seen him when he has been under the influence of liquor.

Q. Not so much so at that time? A. Yes, sir.

Q. But still you would call him intoxicated? A. Yes.

Q. Whereabouts? A. St. Peter.

Q. How did you come to be in his office; did you have any business there?

A. No, sir; I went in there because he invited me in there.

Q. Did you have any conversation with him? A. I did.

Q. You had no particular business there?

A. No business whatever.

Q. Did he have anything to show you while you were there?

A. He entertained me awhile with some newspapers he had.

Q. What kind of papers? A. Illustrated papers.

Q. What kind of illustrations?

Mr. ARCTANDER. We object to that.

Mr. BRISBIN. We object to that; it is taking up time for nothing.

Q. He was intoxicated at this time?

A. He was, to some extent; he had been drinking.

Mr. Manager DUNN. I don't know that I care particularly about the kind of illustrations. The gentlemen object to it.

Mr. BRISBIN. It is taking up time.

Mr. Manager DUNN. That is your ostensible objection.

Mr. ALLIS. Well, we withdraw the objection, Mr. Dunn.

Mr. ARCTANDER. We would rather have the evidence than the insinuation which has been thrown out.

Q. Mr. Manager DUNN. Well, they withdraw the objection, and you may state what the class of illustrations was, that he was exhibiting to you?

A. I think they were a foreign publication—a Paris paper.

Q. Well, were they obscene or otherwise.

A. No, sir; I judge not, they were something that illustrates—well, something similar to our Police Gazette; that, perhaps, is the best description I can give of them.

Q. He had a large quantity of them?

A. He had several of them.

Q. Now, at this time when you met him there on the sidewalk, when you were passing along with your lantern, you said you heard a noise; what do you mean by that?

A. I heard a noise which attracted my attention. He was attempting to get on the walk, I suppose, and it attracted my attention and I turned my lantern that way.

Q. Was he able to get up on the walk without your assistance.

A. I didn't wait to see; I assisted him up. He was a stranger to me, and I was rather attracted by his appearance and I assisted him up.

Q. How far was that from the hotel? A. Perhaps three blocks.

Q. Was where you met him between the court house and the hotel?

A. No, sir, in the southern part of the town, in the opposite direction from the hotel and from the court house.

By Mr. ARCTANDER.

Q. I would like to ask you, Mr. Ledgerwood, if this night was not a very dark night?

A. It was.

Q. It was a night in which you might have fallen off the sidewalk yourself, without the assistance of a lantern?

A. Well, if a man was very well acquinted with the sidewalk, it wouldn't be necessary to walk from it.

Q. No, a man who lived there and who knew all about it, wouldn't have fallen down there. Was it a slippery night, too; was the sidewalk slippery?

A. I judge not.

Q. Had it rained? A. I think it had not been raining.

Q. You don't think it had been raining? A. No, sir.

Q. You had never seen the Judge before that time?

A. No, sir.

Q. When you took him to the Clifton House, did you take him up there and put him to bed, or did you leave him at the door?

A. No, sir; I left him at the door.

Q. Was there anybody else there?

A. I didn't stop to see; I merely took him to the hotel and left him at the door.

Q. Where did you find him the next morning?

A. I think I met him the next morning in the saloon.

Q. Where was that? A. Near the hotel.

Q. Near the Clifton House? A. Yes, sir.

Q. How did you happen to go into the saloon?

A. Well, sir, perhaps I went in to get a drink, and perhaps I went in on business. I cannot tell you now.

Q. Well, you didn't go in to find Judge Cox? A. No, sir.

Q. That is what you were out hunting for that morning?

A. No, sir.

Q. What did you go to the hotel for?

A. I went to the hotel to ascertain who he was, but afterward went into the saloon on my own business.

Q. What hotel did you go to?

A. To the Clifton House.

Q. Did you go to see if he was registered there? A. No, sir.

Q. How did you ascertain?

A. Because I found him shortly afterward in the saloon and I knew he was the same gentleman that I had met the night before.

Q. How did you know it was Judge Cox?

A. Because I was told by people who knew him.

Q. At the hotel, or at the saloon? A. At the saloon.

Q. Then you didn't find out at the hotel, and don't know whether he slept there?

A. No, sir; I could not say that.

Q. This was in the month of June? A. Yes.

Q. And your impression is that it was after the court had adjourned?

A. I think it was after the court had adjourned.

Q. For good?

A. Yes, I think the Judge told me himself that the court had adjourned.

Q. This time you saw him in St. Peter, did he talk sensibly?

A. Yes, sir; he was full of sport.

Q. Just a little hilarious? A. Social.

Q. Would you say that he was under the influence of liquor; or that he was drunk at that time?

A. I should say that he was under the influence of liquor.

Q. You judge that his sport came from liquor?

A. Yes, sir.
Q. That that made him hilarious? A. Yes, sir.
Q. He knew what he was doing?
A. I think he did.
Q. And could walk straight and behave himself properly?
A. He behaved very well.
Q. You were there during the month of June?
A. I was.
Q. Do you remember the time of the cyclone?
A. I do.
Q. Was it after the time of the cyclone?
A. I think it was.
Q. Several days, wasn't it?
A. I could not say; I think it was after the cyclone, about that time—yes, after the cyclone.
Q. At this time, in St. Peter, I understand you to say that you don't mean to be understood as saying that the Judge was drunk at the time. but had been drinking?
A. Yes.

By Senator POWERS.
Q. At the time you assisted the Judge on the walk, did he complain or say anything about having slipped or fallen, or anything?
A. He did not.
Q. Did you assist him any after having helped him onto the sidewalk and in going to the hotel?
A. I walked with him arm in arm to the hotel.
Q. Did he seem to need assistance?
A. He did.
Q. Was he drunk or sober?
A. I considered him drunk.

Mr. Manager DUNN. I will ask the witness one question.
Q. Was the direction on which you went with Judge Cox on your way home or away from home?
A. On my road from home.
Q. No, from where you met him, and took him to the hotel, was that in your direct route home?
A. No, sir, I went back with him.
Q. That was going back on your route?
A. Yes, sir.
Q. So that you went to the hotel simply for the purpose of assisting Judge Cox?
A. I did.
Senator C. D. Gilfillan here took the chair, to act as President *pro tem.*

M. J. SEVERENCE,

was called and sworn, testified.
Mr. Manager COLLINS. We will examine Judge Severance first on article three.
Q. Judge Severance, where do you reside?
A. In Mankato.

Q. How long have you lived there?
A. Twelve years.
Q. What position do you hold at the present time?
A. I am judge of the district court of the 6th judicial district.
Q. How long have you been judge of that court.
A. Ever since June last.
Q. And before that, what business or profession were you engaged in?
A. Attorney at law.
Q. Practicing at Mankato?
A. At Mankato and other places. I lived there for several years.
Q. Are you acquainted with the respondent, Judge Cox?
A. I am.
Q. For how many years have you been acquainted with him?
A. Fifteen or twenty.
Q. Were you present at a term of court held at New Ulm, in Brown ounty, on June 1879?
A. I was.
Q. During the trial of the Wells vs. Gezike case?
A. I was there then, sir.
Q. Were you there before that trial?
A. The night before.
Q. Will you state the condition of Judge Cox the night before that rial as to sobriety; state all about it, all the circumstances?
A. There was a case of Wells against Gezike, and another of Evans, 'eake & Co. vs. Gezike and others, and these cases were to be tried together. I was attorney for Evans, Peake & Co; Mr. Pierce was attorney or W. B. Wells & Co.; and Gordon E. Cole and some others were on the ther side. There had been some arrangement made before about the rials of these causes in the district court at New Ulm. Mr. Cole and myelf were detained at Owatonna, in the trial of a case, beyond the time that re expected to be and we telegraphed over to Judge Cox, or to some person nterested in the cause, to wait until we could arrive there. We arrived here on the afternoon of the 11th or 12th, I think, of June, and ascerained, that is, we were told, that the court had adjourned, but we were ery anxious to try these causes. I was informed—
Mr. ARCTANDER. I object to what the Judge was informed.
The PRESIDENT, *pro tem.* The objection is sustained.
The WITNESS. After consultation with the other attorneys on both ides of these causes, I went in search of Judge Cox myself.
Q. State where you found him?
A. I traced him about until I found him standing in an alley, the irst alley I think back of Main Street, in New Ulm, leaning on the ence talking with somebody in the back yard.
Q. State his condition at the time.
A. I approached Judge Cox for the purpose of ascertaining whether ie would try these causes. Judge Cox was then very much under the nfluence of liquor, very much. We sat down, or I sat down on the eat of an old wagon body that was lying on the ground, and Judge Cox ither sat on the seat with me, or on the wagon body. and, we talked the natter over.
Mr. ARCTANDER. What was that last?
A. He either sat down on the seat, with me, or on the side of the vagon body, I don't remember which. He said he wouldn't try the ases; he said court had adjourned, that he wouldn't try the causes. I

urged him to do so,and after talking with him some time, he said he woul finally, if we would get somebody to write the testimony; that he cou not write the testimony. I am very sure that something was said the about writing the testimony; that he would try the causes, if we wou get someboby to write the testimony.

Q. State what transpired that night, if anything, Judge.

A. I left there. I don't remember whether Judge Cox went wi me at all, or not. I left there and went back to the hotel, and reporte that we would go on with the trial. That is all I saw of him that nigh I don't recollect whether he walked away with me or not; I have no r collection about it.

Q. Did you see him the next morning?

A. I did not see him the next morning, until it was about in th vicinity of nine o'elock, when we went to the court house to try th causes.

Q. State his condition at that time?

A. He was very much under the influence of liquor; very muc indeed.

Q. Now, what was done with the cases?

A. We tried the causes. Mr. Goodenow, Charles C. Goodenow, wa employed to write the testimony. The arrangement when we entere upon the trial of the cause to my recollection, was that Mr. Goodeno should write the testimony, merely in the place and stead of Judg Cox; that it should be handed over to Judge Cox as the testimony i the case. That was my understanding of it; I don't know what othe attorneys might have thought, but it was the understanding that he wa simply to write the testimony down, and it should be handed over t Judge Cox, and that Judge Cox was to take all questions and objection under advisement, and determine the whole when it was submitted The case was not to be decided then, but he was to take the whole cas away, and decide it afterwards.

Q. The Judge sat there during the proceeding?

A. A portion of the time.

Q. Do you know where he went when he was not sitting there, yo say he was sitting there a portion of the time?

A. My recollection is that he left the room a couple of times durin the taking of the testimony; but where he went I have no persona knowledge.

Q. You say he was intoxicated during the taking of the testimony did he remain intoxicated during all the proceedings?

A. I think his intoxication increased very sensibly during the tim we were trying the case.

Q. You thought it increased as he came back? A. I thought so.

Q. How long did it take to do this work?

A. I think we were engaged from somewhere about 9 o'clock until noon; then we adjourned until after dinner, and went back there and remained, perhaps an hour, and I don't know but something more.

Mr. ARCTANDER. What was that, half an hour?

A. An hour or more, I think we were four or five hours in taking all the testimony.

Q. During these proceedings, did Judge Cox have anything to say?

A. Yes, sir.

Q. What was the nature of his talk?

A. All the attorneys engaged in the trial of these cases, upon the

: of the plaintiff, were conducting them upon the theory that it was ssary that the plaintiff should have a lien upon the property in stion in the action, in order to maintain their suits at all. There e attachments and had been execution levies, especially in my , and, I think, in the others. The papers were all in court, the writ ttachment and all files, and the undertaking for attachment laid, I ık, on the Judge's desk, if not on a table near it. The Judge took the undertaking and wanted to know who was the author of this :uced" or "infernal" thing, or something of that kind,

. He wanted to know who was the author of that deuced or infer- thing?

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

. Were there any further remarks made by him?

. I don't recollect any particular remarks. I think he spoke occa- nally, about the cases, but nothing very material, and nothing that I ıember now. He didn't occupy his seat on the bench much of the ıe. He sat in front of his desk a good portion of the time, leaning on desk.

Mr. ARCTANDER. Q. In front of the bench?

. I think in front of it. There was no particular occasion for his ing his seat.

Senator D. BUCK. It is almost impossible to hear over here.

The WITNESS. He was not taking the testimony; he was not par- ipating in that at all. The testimony was being written by another, l it was to be turned over to Judge Cox; that is, that was my under- nding.

. Judge Severance, was he intoxicated to such a degree as to be able to comprehend the legal points in that case?

. I thought he was, unless he differs from all other men that I ever ew. We did not submit any of the legal propositions to him any y. There were none submitted to him, only the question that he sed himself about that writ of attachment; no other proposition was bmitted. When he said anything about the case we at once all ined in and said everything was taken under advisement. We didn't nt any discussion of the point there at all.

By Mr. ARCTANDER.

Q. As a matter of fact, Judge, when you came up there—I mean when this thing was taken up by the Judge, it was merely a matter of accommodation to you and Mr. Cole?

A. Well, so far as I knew, and from the information I had, I supposed that we were trying this case as in vacation.

Q. He refused to take it up at first, and then to accommodate you he said he would in case you could get some one to write for him?

A. Yes, I think so.

Q. Did he say anything to you, at that time about his hand paining him so that he could not write?

A. He said that he could not write, but I don't recollect that he gave any reason for it.

Q. Let me refresh your recollection, Judge; did he not say at the time to you that you would have—if he should take up the case at all—that he wanted somebody to take the testimony, for he wouldn't take the evidence in any case that Pierce was interested in at all?

A. I recollect this fact about it alone, that is about the writing, that he would try the cases if we would get some body to do the writing; that he couldn't do it.

Q. You don't recollect that statement about Mr. Pierce?

A. About Mr. Pierce?

Q. Yes, you said that he could not do it; that that is what he said?

A. He said so.

Q. You don't recollect of his mentioning Mr. Pierce's name on that occasion?

A. I don't recollect that he said anything about Mr. Pierce.

Q. Is your recollection distinct about that occasion when you met him there in the evening, Judge? A. Is it distinct?

Q. Yes.

A. Well, of course my recollection is very distinct, as to the place that I met him, but just exactly how it was located with regard to any street there, I may be mistaken. I went up the front street, the principal street in New Ulm, and I think I turned up to the left, and as I was going up a cross street I saw him standing out, I think, in an alley, leaning over a fence, and I think he was talking with somebody that stood at the rear part of the house.

Q. You don't know who that was?

A. Well, I didn't know then who it was.

Q. But then you are positive, in your recollection, that that was the location, the place where you met him in at the time, or under those circumstances?

A. I know that he was standing in a street or alley, with his arms over a fence talking with somebody.

Q. You recollect that distinctly? A. I do.

Q. Was it near by the Dakota House?

A. Well, I don't know, I am not very much acquainted with localities in New Ulm. I know where the Dakota House is. I think that when I turned off from the alley or street, whatever I was on, that I was going then towards the Dakota House,

Q. You stopped then at the Dakota House?

A. No, sir, I stopped then, I think, at what they call the Merchants.

Senator D. BUCK: Please speak louder.

A. I think they call it the Merchants, where I stopped. I didn't stop at the Dakota House.

Q. But you can't tell what distance it was from either of those two houses, this alley so that we could locate it?

A. No, sir; I can not. I am not very much acquainted there. I started out to find him, and I got track of him and found him; and that's all I wanted.

Q. Do you remember whether it was near a livery stable there, or do you recollect more than one?

A. I recollect only this one, that he sat down on.

Q. You testified, I believe, before the Judiciary Committee?

A. Yes, sir; I saw no evidence of there being any livery stable in that immediate vicinity. I think this was an old lumber wagon,—the box of a lumber wagon. There may have been a livery stable near, but I don't recollect.

Q. Didn't you testify before the Judiciary Committee that you found the Judge sitting or lying in an old barn, back of some buildings?

A. No, sir; I did not.

Q. You did not?

A. No, sir; I didn't testify to any such thing—

Q. Well, now—Do you wish to say anything?

A. —and I say I didn't so find him.

Q. You did not find him sitting or lying in an old barn?

A. No, sir.

Q. At this time when you had a talk with him in the afternoon, you say he was rather intoxicated?

A. He was very drunk.

Q. Very drunk? A. He was very drunk.

Q. Did he tell you, as an objection, that he didn't want to go on and try this case, because he was on a spree?

A. He told me that he was God-damned drunk, at the time I found him there.

Q. Did he tell you that was the reason he didn't want to go on with the case?

A. No, sir; he did not.

Q. When he got in court the next morning, was he not in about the same condition as in the evening?

A. He was not as drunk.

Q. Was he very drunk in the morning?

A. He was very much under the influence of liquor the next morning.

Q. But you wouldn't say that he was drunk or intoxicated the next morning?

A. Oh, I couldn't say whether it was liquor immediately drank, or whether it was the old drunk; I don't know.

Q. Did he act and look sleepy during the proceedings there in court?

A. He looked like a man that is drunk.

Q. Do you remember anything particular in his appearance that you can describe to the senate, judge?

A. Well, I recollect that his eyes looked red, that his eyelids were swollen, that his face had a swollen, inflamed appearance. I recollect that.

Q. Red in the face? A. Not particularly.

Q. Was there anything in his actions, on the bench, outside of what you have spoken, there in court, that you particularly noticed, at the time?

A. Oh, there was erratic talk, incoherent talk, talking when the was no necessity for it, and no propriety at all under the arrangement generally uneasy, nervous, eccentric movements, too, that didn't belon to Judge Cox when he was sober.

Q. At this particular time, the only time you can remember that h interrupted you at all, was in regard to these attachment papers?

A. It was in regard to the writ of attachment; that is all I remem ber about it.

Q. Is it not a fact, Judge Severance, that Mr. Cole made an objectio to the introduction of this attachment paper?

A. Mr. Cole made an objection to the introduction of all our record the attachment paper—

Q. I know that, but didn't he make a separate one to these matters he didn't make a general objection?

A. My impression is that he did make a separate objection to eac one, as it was offered.

Q. Didn't he, at the time he objected to the attachment papers, spec ify the grounds upon which he objected, and specify the defects in these preceding papers.

A. Mr. Cole objected to the papers generally on the ground that they were all immaterial, I think. I think he did; but he pointed out par ticular objections to the papers, and I think particularly to this writ o attachment.

Q. Wasn't this one of those that he pointed out particular objections to?

A. Yes, I think he pointed out particular objections to the writ o attachment.

Q. Wasn't that Judge Cox's remark when he made that objection, and immediately following that objection by him?

A. I think very likely. The first time Judge Cox spoke of the writ of attachment was at the time that it was offered, and that objectio was made.

Q. Didn't he say then, "Let me see that paper," wasn't that his re mark, when General Cole made that objection?

A. I don't know, I have no recollection about that; one of the parti cular objections that you asked me about that was made was that it had but one surety.

Q. It had but one surety?

A. It had but one surety, I am not certain whether Mr. Cole pointed out the objection or whether I made the objection myself, but I think it was embraced in the objection anyway.

Q. And did not Judge Cox at that time say that he did not see why, if that was the case, if the objections made by General Cole were correct, why there was any necessity for going on with the case any longer, that that was decisive of the case?

A. Well, I can't tell you the exact language. He said that, in his opinion, that undertaking was not good for anything, and intimated that it ought to defeat the case.

Q. But you think he used also the expression: "Who drew that deuced or infernal paper," at that time?

A. What is your question, sir?

Q. You think that, at the same time, he made also the further re mark, "Who drew that deuced, or infernal paper?"

A. That he made oath?

Mr. Manager DUNN. No, that he made use of that remark.
A. Oh; made *use*,—no, he didn't ask who drew that paper. He nted to know who was the author of such a deuced thing as that; and upposed he was talking about an undertaking, about the form of an dertaking instead of a bond.
Q. It was an undertaking, was it not?
A. It was an undertaking instead of a bond?
Q. And that was the one that the writ of attachment was based on?
A. Yes, sir.
Q. With only one surety?
A. Yes, sir.
Q. If that objection of Gen. Cole had been sustained, it would have led all further proceedings before Judge Cox, any way, whether he s right or wrong in his rulings in the case?
A. It would, had it not been for the lien of the execution.
Q. But was not the question, in that case, Judge, whether or not the n of the creditors accrued before the execution of the judgment of nfession had been issued and levied?
A. No, sir; that was perhaps one question in the case.
Q. Wasn't the action to set aside an execution issued under a judgnt upon confession?
A. Yes, sir.
Q. Your execution was not issued after the execution of the judgnt on confession?
A. The execution was not issued until the execution of the judgnt by confession; it was issued afterwards
Q. Now, then, was it not necessary for you to show, in that case at you had obtained the lien under your attachment, prior to the levy nder the execution?
Q. Well, that's a question of law. I don't think there was any cessity for that at all.
Q. There might be a dispute about that in the law?
A. Why, you can dispute about anything; but we thought if we had ien at all, before the goods were disposed of, under the levy, that we d a right to try the questions that were raised in the case.
Q. And Gen'l Cole evidently took a different position, did he not?
A. No, he didn't take a different position; he said he would make e objection to save the question; but he said at the time, probably e lien we got after the levy of the execution would enable us to raise the questions that we wanted to.
Q. Suppose somebody would take the opposite position from the one u took, would not then the failure of a jurisdictional paper upon hich the attachment was based, as the undertaking undoubtedly was, cide the case then,—taking a different position in law than you ok?
A. Why, if it was necessary that there should be a valid writ of atchment in order for the maintenance of our action, of course if it was, valid we couldn't maintain it.
Q. And of course, if any papers upon which it was based were invalid, that would work to invalidate the attachment, too, would it ot?
A. Yes, ordinarily.
Q. Any jurisdictional paper like the bond and and ittachment?

A. All such papers, are subject to amendment at any time, *nunc pro tunc.*

Senator CROOKS. I submit whether this is material evidence.

Mr. Manager HICKS. It having been held that the respondent could go into this the managers have not considered it proper to offer further objection. We have considered it immaterial and irrelevant.

Q. Are you positive, Judge, that the Judge used any such language as "deuced" papers?

A. I think the words that he used, in speaking of the writ of attachment were a deuced thing, such as he had not seen or used in his practice, as he knew.

Q. But you are positive that he swore,—used the word "deuced" or "infernal," or anything?

A. *Swore?* No, sir.

Q. Well, that would be swearing, wouldn't it?

A. No, sir, not according to any moral code that I know anything about, it would not.

Q. Now, isn't it a matter of fact that that was the only time in which the Judge interfered with you at all?

A. No, sir, he came in and took up the same writ of attachment two or three times after that, and went through the same performance again.

Q. Went through the same performance again?

A. Yes, sir.

Q. Now, as a matter of fact, he kept on interrupting there incessantly, did he not?

A. No, sir.

Q. He did not?

A. No, sir; not incessantly, I would say to the best of my recollection, that we had difficulty about the writ of attachment three or four times, as many as three, I think. prehaps more; but I wouldn't say positively, we didn't pay much attention to it. We were very anxious to get the case closed and get away and we were hurried, and whenever he undertook to say anything about it we all suggested that nothing was to be decided there, we wanted to get away.

Q. And was there any other point that he would undertake to determine in the case?

A. I dont recollect of any now. I don't recollect of any point.

Q. Now, his state was so at that time that anybody who was in the court room and was observing, would notice that he was intoxicated?

A. I think so.

Q. Do you agree with Mr. Pierce, in his statement, that he was crazy drunk at the time?

A. Crazy?

Q. Yes, sir.

A. Why, he didn't act like a maniac. I don't know whether—it depends upon what a man means by "crazy" drunk.

Q. Was he terribly drunk; what you would term terribly drunk?

A. Do you mean in the court room, or the night before?

Q. I mean in the court room.

A. I mean that in the court room Judge Cox was very much under the influence of intoxicating liquor. He could walk and did walk; walked out and walked in; and I didn't notice that he staggered; I didn't pay any attention to that. I couldn't say that he left the building. I know what my impression was at that time.

Q. Is it a fact that you got up there at that time and told him "to shut his mouth," or "keep his mouth shut?"

A. No, sir.

Q. Did you use any such expression?

A. No, sir; I didn't use any such language to him or anybody else; that is, I didn't get up and tell any body so. I might possibly have spoken to somebody beside me, and said that I wished he would.

Q. But you didn't tell the Judge that you wished he would?

A. I did not.

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

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

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

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

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

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

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

Mr. ARCTANDER.

Q. Judge, is it not very often the case, and hasn't it been your practice, when you have been away from home, to submit cases in that way,—to have all the testimony taken down, and to reserve all the rulings?

A. It is a very common way to try a case; I don't know that I ever tried one under the same circumstances,—where the court had adjourned, and I had to go and find the court to try it. It is a common occurrence in this State.

Q. It is a matter of every day occurrence?

A. Yes, sir.

Q. Not to have the Judge decide upon any point,—to reserve his decision upon every point and let it go?

A. Yes, sir.

Mr. ALLIS. The term had been adjourned?

A. I understand so.

Mr. Manager HICKS. That was admitted. The records will show it.

The WITNESS. That is what I supposed. I supposed we were trying the case as if in vacation.

By Mr. Manager COLLINS. The counsel asked you whether it was a common thing in this State to try cases in that way. I will ask you whether it is a common thing to try and submit cases to a Judge in that condition?

Mr. ARCTANDER. We object to that as impertinent.

The PRESIDENT *pro tem.* The objection is sustained.

Mr. Manager COLLINS. We pass now to the consideration of the 18th article, and take up the testimony with regard to the charge of habitual drunkenness.

Q. Judge Severance, have you seen Judge Cox under the influence of liquor at any other time than the one you have mentioned, since the 30th of March, 1878?

A. I have seen him drunk I would say. I have seen Judge Cox under the influence of liquor at other times than the one I have spoken of.

I saw him under the influence of liquor at St. Peter at the time of the trial of the case of the State against Loomis.

Q. During the trial of that case?

A. Yes, it was during the trial of the case, but he wasn't on the bench. Judge Dickinson was on the bench.

Q. It was during a term of court in Judge Cox's district and a term that was held by Judge Dickinson for him?

A. Yes, sir. Judge Dickinson had tried that case, because Judge Cox had been counsel for Loomis before.

Q. Was he drunk or sober?

A. Well, at times during the three or four days, during the time I was there trying that case, I saw him very much under the influence of liquor.

Q. You were there three or four days?

A. I was there as much as that.

Q. And you saw him at different times during these three or four days in that condition?

A. I did.

Q. You may state the degree of intoxication?

A. Oh, well, he was so much intoxicated that anybody that knew him would notice it at once and recognize it. He had been drinking altogether to much.

Q. He was having a spree wasn't he?

A. Well, I don't know what he called it. I saw him frequently during those three or four days.

Q. Was he in and about the court room in that condition?

A. I did not see him in the court-room during that whole time.

Q. Where did you see him? A. I saw him at the Nicollet House.

Q. When was this, did you say?

A. I think it was in the year 1880.

Q. Have you seen him at any other times?

A. Well, I can't say that I have; I saw him at Mankato when he had evidently been drinking, at another time; I think in June, 1880.

Q. What was he doing?

A. When he was holding court there for Judge Dickinson.

Q. Had come up to Mankato to hold a term for Judge Dickinson?

A. Yes.

Q. Was he then drunk or sober?

A. When he came up he was sober. He was sober all through the term until the last day. He had a matter of mandamus up before him and my recollection is that that was all there was tried before him that day. I had tried cases before him before during the term and he was sober and gave no indication of having drank anything until that morning. When we were arguing that case I discovered that he had been drinking and was somewhat under the influence of liquor; not very much, but he had evidently been drinking intoxicating liquors.

Q. Did you see him afterwards at Mankato, I mean at that same time afterwards, during the day?

A. I do not know that I did that day, but I think Judge Cox remained there several days after the court adjourned; a portion of the time I was away. I saw him several times during that time but at a distance, and I avoided him because I thought—

Mr. ARCTANDER. Never mind what you thought.

The WITNESS. Well, I avoided him on account of what I thought might be his condition, but don't know how it was.

Q. You don't know his condition?

A. I do not know. I do not know what his exact condition was: I saw him about in various places, going into saloons and coming out, and I was not within a block or two of him at any time.

Q. Let me call your attention to about the time he held a term of court at Waseca; did you see him at Waseca?

A. I did.

Q. State what his condition was there?

A. Well, when I was at Waseca—

Mr. ARCTANDER. This is under what article?

Mr. Manager COLLINS. It is under article eighteen.

The WITNESS. I was at Waseca a portion of the term only; I do not recollect whether it was the first or the last. I tried one case before Judge Cox there. I saw one or two other cases tried before him. During that time he was perfectly sober, and I didn't see him any other way at Waseca.

Q. Have you ever seen him at any other times or places than those mentioned when he was drunk?

A. Well, I do not recollect of any now.

Q. You say that after the Mankato term you saw him around there for three or four days, or a week, as I understand?

A. I did.

Q. You saw him about the streets and going in and out of saloons?

A. Yes.

Q. Frequently? A. Not very frequent; I did not see him more than three or four times during that whole time.

Q. But when you did see him he was going in and out of saloons?

A. Well, I would not say that he was all the time; I remember one particular time of seeing him going into a saloon near the Clifton House, or coming out. I saw him at other times and from his appearance I did not want to meet him; I avoided him. Perhaps it was as much on mere rumor, from what people told me, that I avoided him as anything.

Examined by Mr. ARCTANDER.

Q. What case was it you were trying at St. Peter at the time you referred to?

A. State against Loomis.

Q. Was that simply a motion or argument, or was it a trial?

A. No, sir; he was tried for larceny of wheat tickets.

Q. And it was the trial you were attending there at that time?

A. It was.

Q. It lasted four or five days, didn't it?

A. It lasted several days. I am not certain it was in 1880, but I know it was after 1878.

Q. Whatever year it was, it was the year the Loomis case was tried, was it not?

A. It was during the trial of the case of Loomis, I feel very sure.

Q. Isn't it a fact that Judge Cox did, a day after Judge Dickinson had come down there, go up and take Judge Dickinson's place at Mankato and consequently was only around there one day after the Loomis case commenced?

A. I do not know whether that is a fact or not.

Q. Do you remember for certain of having seen him there more than one day?

A. I think I did; I think I remember that I saw hin there more than one day.

Q. Would you be positive about it?

A. Not perfectly positive, but I think I saw him more than one day.

Q. You stated that once you saw him there, you remember it was at the Nicollet House? A. Yes.

Q. Do you remember of any other places that you saw him during that time? A. No, sir.

Q. There is only one occasion that stands out in relief in your mind?

A. I think I saw him there three or four times in that condition.

Q. But you can't place him in any other place?

A. No, I don't recollect of seeing him at any other place. I did not anywhere myself.

Q. Now, at that time you state he was under the influence of liquor, but you would not say he was drunk, I understand?

A. Well, that depends altogether upon what you call "drunk." If you call a man drunk when he is so under the influence of intoxicating liquor that he is less capable of exercising his reason than when perfectly sober, he is drunk.

Q. Did he seem to know what he was talking about?

A. Oh, yes, I think he did.

Q. He could walk straight? A. Apparently.

Q. You have never seen him when he could not walk straight, have you?

A. Well, I think it would have troubled him a good deal that night that I found him up at New Ulm to have walked a crack.

Q. That is the only time you can remember of.

A. That is the only time, yes.

Q. Now, at this time at Mankato,—the time you speak of in the court room,—you would not say at that time that the Judge was intoxicated at all, would you?

A. He was some under the influence of liquor. He was not perhaps what anybody would call drunk—perhaps the most of people would not call it drunk, but he was a little excited on intoxicating liquor, evidently.

Q. So you could notice he had been drinking but you could not say it influenced his judgment?

A. As well as I knew Judge Cox I knew that he had been drinking liquor.

Q. But you couldn't say that he had been drinking to such an extent that it clouded his judgment or his mind in any way could you. I mean to say that it would have been,—to excess?

A. Well, I could not tell. I do not think it would have entirely destroyed his judgment or reason; but what condition of intoxication will affect a man's reason *some*, I could not very well tell you.

Q. But you noticed no evidence at the time, of his mind being clouded?

A. I could not say that his mind was particularly clouded; he took some contradictory positions very certainly, as if he passed an opinion without stopping to think long enough.

Q. What is that?

A. I thought he gave some contradictory opinions—several of them in a few minutes—as though he did not stop to think sufficiently before he expressed an opinion.

Q. Well, you have heard him do that sometimes when—

A. He is a little apt to do that.
Q. When you knew he was sober?
A. Yes, he is a little apt to do that.
Q. Isn't it a fact, that whenever he makes a decision or passes an opinon that he gives it in an off-hand way, and probably with not as much onsideration as some men would do?
A. Yes, I think that is true of him.
Q. Judge, what case was it that was taken up there at that time, in fankato?
A. My recollection about it is that it was the case of Jacob Gunther gainst the city of Mankato.
Q. Was you attorney in that case?
A. Yes, sir; I was in that proceeding that was had that day.
Q. What was the proceeding had there?
A. I think it was a mandamus to compel the city to pay the costs axed in the action. That is my recollection of it.
Q. You said it was a mandamus to the city?
A. I think it was.
Q. To do what?
A. To compel them I think, to pay the taxable costs in a consideration proceeding.
Q. Now, this was at the general term, that was held in June, when this cyclone was there, was it?
A. Well, I think it was in June.
Q. Do you remember who was present in the court-room during the time? Was it before or after that cyclone?
A. I think it was after. I think it was the last business done that term.
Q. It was that term during which the cyclone was?
A. I think it was, and I think it was the last business done at the term. I remember J. E. Porter was present. There were others present, but I don't recollect who they were.
Q. Isn't it a fact that Judge Dickinson was present at the time?
A. I could not say.
Q. Was the clerk of the court present? A. I could not say.
Q. Well, he was present during the whole of the term, was he not?
A. Who?
Q. The clerk of the court?
A. The clerk of the court is supposed to be present the most of the time, but he frequently steps out, and is frequently out during half of the trial of a case.
Q. This was in open court, was it not?
A. It was in open court.
Q. In the court-room? A. In the court-room.
Q. Now, are you positive, Judge, that this occasion on which you appeared before him to argue that mandamus, was not at the clerk's office?
A. It was not at the clerk's office. Immediately Judge Cox decided the case then and there, and he stepped down off from the bench, and walked over to me and Porter, and said, "Somebody has got to be beat anyway in every lawsuit."
Q. Who got beat in the case? A. I did.
Q. Did he make his order right then and there?

A. I don't know whether—

Q. That wasn't a trial but simply a hearing upon the mandamus?

A. I think the hearing of the mandamus was upon a writ and upon a return. I do not think any evidence was put in at all.

Q. Did anybody appear for the city of Mankato?

A. I appeared for the city and J. E. Porter for the relator.

Q. You say it was to compel the city to pay the taxed costs?

A. That is my recollection about it. There had been a co demnation proceeding commenced by the city against Jacob Gunther, and on the stipulation of some of the attorneys costs had been taxed, and the city refused to pay the costs. The suit was withdrawn afterward and they did not take the land, and the city refused to pay the costs.

Q. But you are positive it was on no other occasion than on this occasion that the mandamus was brought up, that you thought Judge Cox was "excited" with liquor, during the term of court in Blue Earth county?

A. Well, it was when that matter that we argued there about the costs in that case, that I thought he was under the influence of liquor; whatever time it was or wherever it was that is the time.

Q. Do you remember the oocasion of proof and order being made in the case of D. A. Dickenson against J. H. Hartman, and D. A. Dickenson against D. A. Taylor, and wasn't that at the same time?

A. I do not recollect anything about that at all,

Q. Were you interested in the matter of condemnation proceedings, petition for condemnation of lands for railroad pnrposes by the St. Paul & Sioux City Railroad Company—to have commissioners appointed for that purpose?

A. At that term of court?

Q. At the same time those mandamus proceedings were up?

A. I have no recollection whether I was or not.

Q. You do not recollect whether this mandamus was at the same time—you made the application for these commissioners?

A. I do not recollect make any application before Judge Cox in any such case, and still I might have done it.

Q. Did you ever appear before him at more than one occasion, on that mandamus case?

A. I think not.

Q. Bnt you are positive that this proceeding you have reference to, was not at the clerk's office, but was in the court room?

A. I know it was in the court room.

Q. And that it was at this June term?

A. Well, I think it was. I think it was an adjourned term. I think it was an adjourned term that commenced about the 1st of June and lasted six or seven days.

Q. At the time that that libel case was up, that Mr. Baker was interested in it?

A. I think so.

Q. When that was tried and continued on account of the sickness of a witness?

A. I think so; on account of the sickness of Gen. Baker's wife, not sickness of a witness.

Q. The court adjourned *sine die*, after those mandamus proceedings had been brought up, did it not?

A. Well, that is my recollection.

Q. You have no recollection of any other business before the court?
A. I have not; my recollection is that it was the last thing.
Q. Did you and the Judge walk down together after that?
A. I do not recollect.

PETER J. CLANCY

sworn on behalf of the State, testified.

Mr. Manager HICKS. Mr. President, I would state that these witnesses are called to facilitate public and private business. The witness is called this afternoon out of order, to facilitate public business, and the present witness has important engagements to-morrow, and we call him to relieve him.

Senator WILSON here took the Chair to act as President *pro tem.*

Mr. Manager DUNN. This witness is called particularly to article 18.

Mr. Manager HICKS. Mr. President, I will explain while it is in reference to article 18, it is comprised principally within the twelve hours preceeding the beginning of the Brown county term, in June, 1881.

Examined by Mr. Manager DUNN.
Q. Where do you reside?
A. At Granite Falls.
Q. Did you ever reside at Sleepy Eye, Brown county?
A. Yes, sir.
Q. Were you residing there last June? A. Yes, sir.
Q. What is your business?
A. Livery business.
Q. Were you residing in Sleepy Eye last May? A. Yes, sir.
Q. What was your business there? A. Livery.
Q. Any other business at that time?
A. At that time I was in partnership with another man running a hotel.
Q. Do you know Judge Cox? A. Yes, sir.
Q. Did you see him in Sleepy Eye at any time during the month of May last? A. Yes, sir.
Q. When did you see him there?
A. I saw him there the morning court opened in New Ulm—that term of court.
Q. Did you see him there the day before?
A. No, sir; not to my knowledge.
Q. What time did he get to Sleepy Eye that day?
A. I don't know exactly; on the afternoon train however.
Q. Did he stop at your hotel?
A. Not when he came to town—when he came in; he came there during the night and took a room.
Q. What time of night did he get into your hotel?
A. I don't know; it was after I had gone to bed.
Q. Well, what time did you go to bed?
A. I could not say exactly; but quite late; probably about eleven o'clock.
Q. In the morning you found him there? A. Yes, sir.
Q. What time did you wake him up in the morning?
A. About 8 o'clock.
Q. Where was he?

A. He was in bed when I first saw him.
Q. Did you wake him up personally or did some one else do it?
A. I went and asked my partner who was sleeping in the sitting room. He told me it was Judge Cox.
Q. Was he in the sitting room? A. Yes.
Q. Was he in bed there? A. Yes, sir.
Q. There was a bed there was there? A. Yes, sir.
Q. He was in bed? A. Yes, sir.
Q. Did he get up when you woke him?
A. Well, we went in the room and woke him up and he got up; my partner said he had to go to New Ulm to open court.
Q. Did he have his breakfast there at your house? A. No, sir.
Q. How did he get to New Ulm? A. I took him.
Q. With a buggy? A. Yes, sir.
Q. How far distant is it from Sleepy Eye to New Ulm?
A. About fourteen miles.
Q. What time did you leave Sleepy Eye?
A. Between eight and nine o'clock.
Q. What time did you arrive at New Ulm?
A. A few minutes before court opened.
Q. About what time was that? A. About eleven o'clock.
Q. Did you procure any liquor before you started from Sleepy Eye?
A. Yes, sir.
Q. At whose request did you procure that?
A. Judge Cox asked me to get it.
Q. You took it with you, did you? A. Yes, sir.
Q. What was the Judge's condition when you started,—was he sober when you started from Sleepy Eye that morning?
A. He was then.
Q. Perfectly sober?
A. Well, I don't know as perfectly, but I would call him sober.
Q. You mean to say he was not very drunk?
A. I mean to say he was not drunk at all.
Q. How was he when he got up in the morning as to sobriety?
A. He was sober, to the best of my knowledge.
Q. Do you know whether he had been intoxicated the night before?
A. I don't know.
Q. You had not seen him, had you?
A. I don't remember seeing him the night before.
Q. How did he act when he got up?
A. Well, he acted nervous, and in a hurry to get away.
Q. Did he drink any of this liquor on the way down to New Ulm?
A. Yes, sir.
Q. How was he when he got to New Ulm; was he under the influence of liquor any when he got to New Ulm?
A. Well, I would say slightly under the influence of liquor.
Q. When you drove up to the court house? A. Yes, sir.
Q. Do you know whether he had any breakfast that morning or not at all? A. Well, not to my knowledge.
Q. Did he tell you that he had or had not?
A. If I am not mistaken, my partner asked him if he would not stop for breakfast, and he said "no, he was in a hurry to get to New Ulm."
Q. And he had nothing to eat on the way?

A. No, he had nothing to eat.

Examined by Mr. ARCTANDER.

Q. You mean that he had taken a drink or two of liquor on the way down. A. I mean several.

Q. You took some too? A. Yes, sir.

Q. Every time that he took, you took, didn't you?

Q. Well, I don't know as to that, he went into a honse on his way to New Ulm; I don't remember whether he took the bottle with him or not, or whether he treated that farmer. He had a social talk and the farmer came out to the buggy; but I don't remember whether that farmer drank any liquor or not.

Q. You don't remember whether Judge Cox took any at that time?

A. At that time I don't remember whether hc did drank any or not.

Q. Now, did you and he drink about the same amount on going down there—you were abont in the same condition, weren't you?

A. Well, that I cannot say.

Q. Now, you didn't notice anything out of the way about the Judge in any of his actions or appearance showing that he was intoxicated, or anything of the kind?

A. Well, from his actions and talk on the way down I would say that the whisky was working on him.

Q. But you would not say that he was intoxicated at any time on the way down, or when he came to New Ulm, but simply that he had been drinking, and that you could see the effects of the liquor on him?

A. Yes, sir.

Q. Who was your partner? A. Cy. Conrad.

JAMES M. THOMSON

Sworn on behalf of the State, testified:

Examined by Mr. ManagerDUNN.

The witness is called to article 4, at a special term in Nicollet county, August 5th, 1879.

Q. Mr. Thomson, where do you reside? A. At Sleepy Eye.

Q. What is your profession or business?

A. I am an attorney at law.

Q. How long have you resided at Sleepy Eye?

A. Eight or ten years.

Q. Were you practicing law there the most of the time, if not all of it?

A. Five or six years of the time.

Q. Do you know the respondent in this action, Judge Cox?

A. I know the Judge.

Q. You may state if you were present at a term of court or at a proceeding in his court held at St. Peter, in August, 1879, at which the case of Brown vs. the Winona and St. Peter Railroad Company was being settled.

A. I was present at the time referred to; I think it was the latter part of July. The case was finally settled on the fifth of August.

Q. You think the case was finally settled on the fifth of August?

A. That is my recollection.

Q. Who were present as attorneys besides yourself?

A. Judge Wilson of Winona, Mr. Pierce of St Paul, and Mr. Webber of New Ulm.

Q. What was the condition of the Judge at that time as to sobriety?

A. The Judge was very much under the influenee of liquor; very badly intoxicated.

Q. Did you hear Judge Wilson's testimony in this case? A. I did.

Q. Did you hear Mr. Webber's testimony? A. I did.

Q. Did you hear their testimony upon these points, about the settlement of this case?

A. I did.

Q. Is the evidence you are giving now relative to the same matter they testified to?

A. Yes, sir; the same cause and at the same time.

Q. The Judge, you say, was very much intoxicated?

A. He was.

Examined by Mr. ARCTANDER.

Q. This was in the Nicollet House parlor was it?

A. It was.

Q. There was no term of court,—special or general?

A. No; merely for the settlement of this case.

Q. Did you come down that morning?

A. I believe I did.

Q. Was any notice served upon you of the settlement of it?

A. I think Judge Wilson served a notice.

Q. Was it not a matter of fact that he wrote you a letter and asked you if you could take it up at such and such a time?

A. He either served a notice or we stipulated as to it.

Q. Thore was no notice given of any motion for a new trial at that time—it was intended to settle the case at that time and nothing else was done was there?

A. I am iuclined to think that by stipulation we were to finally appear and settle the case and argued the motion for a new trial.

Q. Do you state that as a fact or just as your impression?

A. That is my impression; I would not state it as a fact.

Q. There was quite a number of amendments proposed to this case at that time, was there not?

A. Quite a number.

Q. I desire to ask you whether or not you came down on the train with Mr. Webber.

A. I believe I did.

Q. Wasn't Judge Cox and his boy on the same train going down?

A. I think Judge Cox was on the train. I am not positive that was the time I saw Judge Cox on the train.

Q. And soon after you arrived in St. Peter you met him and went into the Nicollet House parlor, didn't you?

A. The attorneys in the case met there first.

Q. And Judge Cox came in soon after, did he not?

A. We met there for the purpose, thinking that we could settle the case without the Judge, and if we could we would not have called upon him; but we found difficulty, and went out to where the Judge was and brought him in.

Q. That was soon after you had arrived there?

A. Well, I think the Judge went in about 10 o'clock.

Q. What time did you arrive in the morning?
A. Not far from say 8 o'clock. I am not positive regarding the time however.
Q. Do you remember if you found Judge Wilson and Mr. Pierce there when you came, or whether they came on a later train?
A. We found Mr. Pierce there. I think Mr. Wilsom came soon after.
Q. He came on the freight? A. No; he came on the passenger.
Q. That gets in there about half an hour later, does it not?
A. I believe so. I believe the two trains meet at Kasota.
Q. And take breakfast? A. Yes; I am not positive regarding this.
Q. Now, you went in there first as soon as Judge Wilson came, without looking for the Judge; you went in there to see if you couldn't settle the case between yourselves as attorneys sometimes do in such cases?
A. Yes.
Q. And you found you couldn't do it, and then you called the Judge in?
A. That is the way of it.
Q. Now, after the Judge came in didn't he settle some of those questions that you disagreed upon?
A. I think not any.
Q. When he first came in I mean?
A. No; I think not any; I don't think Judge Cox settled any questions at that time.
Q. Now, isn't it a fact that after a very short time after he had got in there that Mr. Pierce and Mr. Wilson got into a quarrel and commenced to abuse each other pretty thoroughly.
A. Well, they had some sharp words.
Q, Don't you remember, Mr. Thompson, of the Judge speaking up and telling them to keep quiet, and if they did not keep quiet he would not go on with the matter any longer that day; if they could not behave or words to that effect?
A. I think he reprimanded them somewhat.
Q. You don't remember this language that I give or the import of it?
A. I think not.
Q. That he would not go on with it if they did not behave themselves?
A. No, I don't remember that language at all.
Q. Didn't the Judge have a great deal of trouble with those men at the trial of that case?
Mr. Manager DUNN. I object to that.
Mr. ARCTANDER. I offer it simply to show the reasonableness of our theory.
Mr. Manager DUNN. That is a matter of—
The PRESIDENT *pro tem.* Judge Wilson is not on trial.
Mr. ARCTANDER. We don't claim it for that; it is simply a justification for us.
The PRESIDENT *pro tem.* The objection is sustained.
Mr. ARCTANDER.
Q. Don't you remember after the Judge came in there you kept on settling and agreeing all you could agree upon, and argued between yourselves, and the Judge sat over at the table and had nothing to do for the most of the time?

A. The Judge had very little to do while we were there; he did some talking. I say I don't think he settled any point; possibly he did.

Q. The most of the business, if not all of it, was done right between you?

A. Yes, sir.

Q. And he sat there and waited?

A. I think that the point he was called in to settle was passed over at that time. I don't think it was settled at that time at all.

Q. You don't think he was called upon to settle it after he came in?

A. Yes, I think he was; but it was not settled.

Q. Has the judge of that district a habit of settling these matters right off at the time you argue them for settlement, or does he take them under consideration?

Mr. Manager DUNN. We object to that.

Mr. ARCTANDER. I desire to show that this has been the practice of the judge of that district. I think that the President probably understands those legal terms, "of settling the case," etc., and what was done; if not I will explain it so that it can be understood thoroughly.

The PRESIDENT *pro tem.* You need not explain it; I understand it.

Mr. Manager DUNN. My objection is that it is not cross-examination.

Mr. ARCTANDER. The witness has stated that they did not settle it at that time, leaving the inference that it was because the Judge was not in a condition to settle it. Now, I desire to show whether or not it was the practice of the Judge of that district to take under advisement the settlement of cases when they were proposed with amendments, and not to decide and settle the case at the time of the argument when the settlement of the case was noticed?

The PRESIDENT *pro tem.* You may ask him.

The WITNESS. Oh, it is quite usual to settle the case when it is first presented, if it is possible.

Q. You have known other instances where the Judge was perfectly sober, where he took it under advisement too, haven't you?

A. Well, I have not known any, there may have been.

Q. Have you had any cases at all except this?

A. Not that came before him.

Q. So that you dont know what the practice is in that respect?

A. Well, the practice there for a number of years back, since we have had a reporter, is to settle the case and make the motion for the new trial at the same time. It is easily done. There is very little difficulty when we have a reporter.

Q. Do you mean to say that is the usual practice to settle it right at once when you are there for argument of the case, and not for the Judge to take it under consideration at the time?

A. At the present time, I say.

Q. Well, at that time I mean, and prior to that time?

A. Well, I think it was usual to settle the case and then bring up the motion for a new trial; and that it was usual also to allow the Judge, and the Judge took time to consider the motion as to what amendment should be allowed. A. He might of course.

Q. Now, is it not a fact, that the main question that came up there, and upon which you broke up, was the question of what the Judge had charged, that Mr. Wilson tried to get into the case?

A, That was one of them.

Q. That was at the time you adjourned the matter? A. Yes.

Q. Is it not a fact, at that time that Judge Wilson claimed you had requested the court so to charge, and that he had charged it?
A. I would not say positively regarding that.
Q. Is it not a fact, that the Judge said he would not settle that point before he could examine his minutes? A. I could not say as to that.
Q. You would not swear that he did not?
A. I remember that the Judge refused to proceed and we consented to adjourn.
Q. You did not argue that matter any more?
A. Oh, there was no argument; it was a sort of a wrangle between ourselves.
Q. I mean you didn't argue that matter any more after this time; you did not present any argument to the Judge afterwards as to whether the amendment should be allowed. A. Not at that time.
Q. Well, you didn't thereafter, did you either?
A. The case was finally settled.
Q. Well, wasn't it settled in your presence by the Judge and no argument had upon it?
A. I could not tell you about it.
Q. Well, what is your best recollection about it?
A. Well, I was thinking that it was settled by agreement between Mr. Pierce and Mr. Wilson; however I may be mistaken.
Q. Did you hear Mr. Webber's testimony? A. Yes, sir.
Q. State whether or not it is not a fact that the Judge when you met next time modified that thing in such a shape that it was satisfactory to all of you? A. Now, that may be so.
Q. He had modified it when you met so that when you saw the settled case it was satisfactory to Judge Wilson and satisfactory to you?
A. If that was so it was when the argument was had for a new trial; I think that was on the 5th day of August.
Q. You think the motion for a new trial was the 5th of August?
A. I think it was.
Q. Isn't it a fact that at that time when you were down there to settle this case with Judge Wilson, that Judge Wilson served a notice upon you of a motion for a new trial, to be heard about eight days afterwards?
A. I think he did.
Q. Upon the settled case?
A. No, the case was not settled at that time.
Q. Well, it is your recollection that it was not settled at that time?
A. Yes, sir.
Q. Nor before you left St. Peter? A. No, sir.
Q. You received due service of that notice of motion for a new trial?
A. Yes, that is my recollection.
Q. That was after you had left the Judge was it not?
A. Well, it was after.
Q. The Judge took all the papers, did he not at that time—the proposed case and the amendments?
A. I think he did; I could not say positively.
Q. You would not swear positively. The Judge did not tell you he would look over his minutes and see whether that was correct and settle the case in accordance with the minutes as to what he had charged?
A. I don't remember any such thing.
Mr. Manager DUNN. The testimony of the witness is now directed to specification seven under article seventeen.

Q. I call your attention to the general term of court held in Brown county in May, 1881?

A. I was present there.

Q. Were you present when the Judge drove up to the court house?

A. I was in the court room when he came in.

Q. You may state the condition of the Judge as to sobriety?

A. The Judge was badly under the influence of liquor during the whole of that term.

Q. You had cases to try there, had you? A. Yes, sir.

Q. Were any of them tried?

A. We tried two cases—that is two jury trials.

Q. Were any of your cases continued?

A. I continued two of my cases.

Q Why were they continued?

A. The reason we alleged was the condition of the Judge.

Q. There were no affidavits for continuance, were there?

A. No; they were continued by consent of parties.

Q. Was there any other cause for continuance of the cases except the fact of the condition of the Judge?

A. No other cause that I am aware of.

Q. No other that you are aware of. A. No, sir.

Q. Both cases were ready for trial were they?

A. Yes, sir, I continued one with Mr. Lind who had quite a number of witnesses there; the other one I continued with Mr. George Kuhlman; I believe there were very few witnesses there. His client resided in New Ulm. I think I had two witnesses there.

Q. You had witnesses there on both sides, and had prepared for your trial?

A. Yes, sir.

Q. And had it not been for the condition of the Judge those cases would have been tried?

A. We were ready for trial.

Q. Well, you say that the Judge was under the influence of liquor at that term of court, or did you say intoxicated, during that term?

Mr. ARCTANDER. He said under the influence of liquor.

The WITNESS. I say when the Judge came into court that morning he was very much under the influence of liquor—intoxicated; and at that time during the term I should say he was what I would call drunk.

Q. Was that during the trial of any cause or proceeding?

A. It was in the evening—I think about 9 o'clock, when we went up to the court-room to receive the verdict of the jury; court was adjourned.

Q. Did you see him on the streets of New Ulm, at any time during that term of court?

A. Oh, I saw him walking up to the court house and down again.

Q. Did you see him drinking liquor during the term of court?

A. No, sir, I didn't see him drink anything.

Q. Were you present when liquor was being drunk when he was present?

Mr. ARCTANDER. That we object to as immaterial and irrelevant.

The PRESIDENT *pro tem.* The objection will be sustained.

Mr. Manager COLLINS. I would like to ask this witness what distinction he makes between being under the influence of liquor—being intoxicated and being drunk?

The WITNESS. Well, I will say when a man has drank any liquor, he

is under the influence of it. And I suppose there is really no difference perhaps between the meaning of the words intoxication and drunkenness, yet I would use them a little differently.

The PRESIDEN *pro tem.* How different; as to degree?

The WITNESS. Well, I should say intoxication was drunkenness, yet I mean to be understood when I say drunk, that he was very much intoxicated—to a greater degree than I mean to be understood when I say intoxicated.

Q. It is an exaggeration of intoxication, is it, in your idea? A. Yes.

Q. Did you see Judge Cox have a bottle of liquor there at that term of court?

Mr. ARCTANDER. That is objected to as immaterial and irrelevant. He may have had a bottle of liquor and not drank anything.

Mr. Manager HICKS. We propose to follow it up by showing that he drank out of it and passed it around.

The WITNESS. I didn't see him drink.

Q. Did you see him have a bottle of liquor? A. Yes, sir.

Mr. ARCTANDER. That we object to.

The PRESIDENT *pro tem.* I submit the question to the court as to whether it should be answered.

Mr. Manager DUNN. We propose to show by this witness that he saw him have a bottle of liquor and saw it passed around.

Senator POWERS. Saw him drink, do you mean?

Mr. Manager DUNN. We shall show by other witnesses that were present at the same time that they saw him drink.

The question was put to the Senate and the objection was overruled.

The PRESIDENT *pro tem.* You will answer the question.

The WITNESS. I saw him have a bottle of liquor in one of the rooms, in the court house used for a jury room. My impression is that it was after court had adjourned.

Q. Well, at what adjournment, night or noon or recess?

A. I think at night. I was about to go home myself at the time.

Q. Who was present?

A. Mr. Somerville was present, the only one I remember.

Q. Well, what was done with the bottle of liquor?

A. Well, he took it out of his coat pocket, presented it to Mr. Somerville and myself.

Q. Did you drink out of it either of you?

A. I could not say whether Mr. Somerville did.

Q. Well, what did you do?

A. I tasted the liquor, so that I know that it was liquor.

Q. What did the Judge say when he handed it to you?

A. Well, I don't remember his exact words, I am sure. He presented the bottle for the purpose, of course, of drinking.

Q. Did he say anything to you? Ask you to take a drink?

A. Oh, he said something of that nature, I don't know what it was.

Q. It was an invitation to take a drink, wasn't it?

A. It was that understanding, of course.

Q. Where did you start from to go into the jury room?

A. I started from the court room to go home.

Q. Where did the Judge start from?

A. We were all in the court room. My impression is that court had just adjourned. It may be that it was merely at intermission, but I am under the impression that the court had adjourned for the night.

Q. Where did he get this bottle?
A. I say he took it out of his coat pocket.
Q. Which coat, his overcoat or his dress coat?
A. Out of his dress coat.
Q. The coat that he wore on the bench? A. Yes, sir.
Q. Which pocket? A. Out of his inside pocket.
Q. How big a bottle was it?
A. Oh, it was a small bottle; perhaps a half pint bottle, not larger.
Q. How much liquor was there in it?
A. I don't remember, sir; there was liquor in it.
Q. It wasn't full was it? A. I think not.
Q. And you went from the court room right into that room, you and Mr. Somerville and the Judge and he presented this bottle to you and you took a drink, but you don't know whether they did or not?
A. I did not say I drank, I say I tasted the liquor.
Q. You don't know whether they did or not?
A. I am quite sure the Judge did not; that is while I was there; possibly Mr. Somerville might.
Q. Did he put the bottle back in his pocket?
A. Well, not while I was there. I think I went out.
Q. You went out then and left the Judge with Mr. Somerville, did you? A. I believe so.
Q. And the bottle was still in sight when you went out?
A. That is my remembrance.
Q. Now, did this occur more than once during that term of court?
A. I never saw it at any other time.
Q. You dont know whether that was at a night adjournment or recess?
A. That was at night, because I was going home. The train comes up I believe about 6 o'clock.
Q. You went out and back there night and morning, did you not?
A. No, sir; not every night.
Q. Well, was that the only adjournment of the court?
A. I couldn't say.
Q. Did you go back the next day?
A. No, I went home and stayed; I think I was through. It was not the final adjournment, however.
Q. Was the Judge under the influence of liquor at the time you went into the room there?
A. I considered him under the influence of liquor during all my stay at the court.

Examined by Mr. ARCTANDER.

Q. You were only there for those two days?
A. I think two days.
Q. One of those causes was continued because of the alleged condition of the Judge. You did not get up in court and state anything of that kind did you?
A. No, sir.
Q. You do not mean that was the reason that was alleged for it to get an adjournment?
A. That was merely the reason alleged between the attorneys; that was all.
Q. The causes were continued by consent? A. Yes, sir.
Q. One of the two cases continued, was Charles Hughes against George McCarthy, was it not?

A. No, sir; that was finally continued but then not by—
Q. Was not that your case? A. Yes, sir, that is my case.
Q. What causes was it you continued?
A. I continued with Mr. Kuhlman the case of Pfœender and Miller against Freeton.
Q. Isn't it a fact that the case of Pfœender and Miller agaiust Freeton was continued upon the opening of the court upon the preliminary call of the calendar, by consent?
A. It was continued by consent.
Q. Wasn't it at the opening of the court upon preliminary call of the calendar before you had had time to ascertain anything about the condition of the Judge?
A. That case was continued after Mr. Kuhlman and myself had talked in relation to it.
Q. But wasn't it at the opening of court before any business had been transacted? A. I think not.
Q. Are you positive about it?
A. I am not positive, but I don't think there was any of us that talked about continuing cases upon the opening of court.
Q. Well, I know as to the other case, undoubtedly you continued that later and for some ground or other, but was not this continued either at your own request or Mr. Kuhlman's upon the opening of the court?
A. It might have been although it was continued after Mr. Kuhlman and myself had thought the matter over. I don't think though it was continued upon the preliminary call of the calendar.
Q. If the calendar should so show wouldn't you think you were mistaken about that?
A. Oh, I might be. I am not mistaken, however, as to the reason assigned between the attorneys for continuing the cases.
Q. The first thing that the Judge did as soon as he came in that court room was to make a preliminary call of the calendar, was it not?
A. I believe so.
Q. If that case was continued upon the opening of court, and upon the peremptory call of the calendar you wouldn't have had much time to talk it over, would you? A. Not a great deal.
Q. What other case was it that you continued; that one that Mr. Wollin had?
A. I have forgotten the plaintiff's name. It was the case of Hartman against Bergh and Lee.
Q. Mr. Lind suggested to you that you continue that case, did he not? A. He told me that he would continue it.
Q. That case of Hughes against McCarthy was continued, for the reason that it was called too soon and you hadn't got time to amend the pleadings in that case, was it not?
A. No, sir; the jury was empanelled in that case.
Q. And the point was raised upon the pleadings? A. Yes, sir.
Q. And an amendment of the complaint was allowed, was it not, on condition that it should go to the foot of the calendar, so as to give you time to prepare the amended complaint? A. Yes, sir.
Q. The foot of the calendar was reached earlier than you expected, and the amendment had not yet taken place, had it?
A. Yes, sir; the pleading was amended instanter, and when it came up I asked that it be continued upon the ground of surprise.
Q. Of surprise in the new complaint? A. Yes, sir.
Q. That was the ground on which you continued that?

A. That was the ground.
Q. Were you engaged in the trial of Youngman against Lind?
A. Yes.
Q. Do you mean to say that the Judge was intoxicated, drunk during the trial of that case?
A. Well, he was intoxicated; not to that extent that he had been before or afterwards however; in the commencement of the case he was more intoxicated in my estimation than he was when it ended, when he charged the jury.
Q. It was the second day that you tried that case, was it not?
A. Yes, sir.
Q. That was the first case taken up after the case of Charles Hughes against George McCarthy—I mean that second day? A. Yes, sir.
Q. That case didn't take but a very short time, did it, to dispose of it? A. It was disposed of I think, by 11 o'clock.
Q. Court met that morning at half past 8, did it not?
A. I don't remember.
Q. If it did the case was disposed of sooner?
A. I don't think that case lasted an hour.
Q. Those other cases you continued was before you went to trial with the Youngman against Lind case, was it not? A. I think so.
Q. That same morning after the case of Hartman against Lee, for instance? A. I believe so.
Q. Now, why was it that you continued one case for the reason of the alleged intoxication of the Judge, and then went to trial and tried another one?
A. There were different attorneys on these other cases. Mr. Somerville was in the last case mentioned.
Q. Then you had no hesitancy in going in and trying the case even with the Judge in the condition he was in, so far as you were concerned?
A. Not that case; no, sir.
Q. You say you thought the Judge was not intoxicated later in the day? A. I say not so much so.
Q. You mean to infer, then, that the Judge was intoxicated when he came there at half-past eight o'clock in the morning? A. Yes, sir.
Q. Now, you were present during the trial of the Howard against Manderfelt case, were you not, the first day?
A. I was associated with Mr. Webber in that case.
Q. Now, during the trial of that case, do you mean to say that the Judge was intoxicated also? A. I do.
Q. Drunk?
A. Well, I say he was drunk when he received the verdict from the jury; that was at nine o'clock at night.
Q. He was more intoxicated then, than he was during the trial of the case proper? A. Yes, sir.
Q. But he was also intoxicated during the trial of the case proper?
A. Yes, sir.
Q. So it could be noticed by every one in the court-room, you think?
A. Well, I think any person that was acquainted with Judge Cox would notice his intoxication.
Q. It was a matter that was apparent from his actions and appearance? A. Yes, sir; I think so.
Q. Did you notice whether he had a clean shirt on when he came down to open court that day?
A. My recollection is that his personal appearance was all right.

Q. Do you remember anything about the condition of his hair that morning when he came in?

A. I don't remember anything out of the way.

Q. Do you remember anything about whether he was shaved or not?

A. I don't remember.

Q. Now, what did you form your opinion from that he was drunk at that time?

A. Well, I have seen the Judge previous to that time when he has been sober, a great many times.

Q. Now was there anything in his appearance at this particular time that you can specify to us as an indication of his being intoxicated?

A. When Judge Cox is not intoxicated, he is very gentlemanly; would not pass through that court room when he would not stop and shake hands with the attorneys engaged; and at that time he went directly to his desk. That I remember; and he had other appearances on his face and in his eyes.

Q. Isn't it a fact that you have noticed peculiarities with the Judge, —that you have noticed that he is very anxious and desirous of opening court upon the minute that it is set for,—always to be prompt?

A. Well, it is one of his peculiarities to rush business.

Q. Isn't it one of his peculiarities always to open court at the time fixed,—upon the minute?

A. I think the Judge is very prompt about that, usually.

Q. You have never known him to open court a minute later than the time he had fixed for the court?

A. That is perhaps a little too fine; near the time, however.

Q. Isn't it a fact that at this time he came up there without going to his hotel and drove right up to the court house and that he hurried up to the bench because the hour of eleven had arrived, and that will explain why he didn't shake hands with the attorneys?

A. I understood that he had just arrived from Sleepy Eye.

Q. Don't you remember his remarking just when he opened court, "gentlemen, I have traveled fifteen miles; and I have just saved it by a minute."

A. Well, I presume he may have said so; don't remember it, however.

Q. Now, you were going to state something further from which you thought that he was intoxicated at the time. What was that?

A. Well, it was his whole manner and especially the cast of his countenance, his eyes and his manner during the call of the calendar.

Q. Well, what was his manner during the call of the calendar, for instance?

A. Well, he is more nervous when under the influence of liquor than at other times.

Q. He was more nervous than usual at that time? A. Yes, sir.

Q. Might not that nervousness have been caused by the desire to make up for any minute that he had lost in coming there, and his wanting to get there quick?

A. The Judge was intoxicated at the time; I am convinced myself; and we all thought so.

Q. But then, that is not an answer to my question.

A. Well then, I have seen the Judge upon the bench sober. As I say, he is very gentlemanly and mild and cool and not nervous; although he has some peculiarities.

Q. Isn't it a fact that he has a nervous disposition generally, for instance, when calling the cases and such things?

A. I think when the Judge is sober he is not very nervous on the bench.

Q. During the trial of the Howard against Manderfeld case you say it was manifest to everybody that knew Judge Cox that was in that court-room, that he was intoxicated?

A. I don't say it was; it was manifest to me and I think it would be to everybody.

Q. Now, was he drunker during the trial of the Howard-Manderfeld case than he was during the next day when you tried the Youngman vs. Lent case or *vice versa*.

A. Well, it is my impression that he was a little more intoxicated during the first trial, however, there was not much difference.

Q. Now, at this time was he drunker than he was at the time you met him at St. Peter, when the Howard against Manderfeld case was tried? A. I think not.

Q. You don't think it was more manifest?

A. No, that is, during the trial of these causes—he was more intoxicated when he received the verdict from the jury than I ever saw him.

Q. I want to compare? A. Well, about the same.

Q. About the same at that time as he was in the Howard-Manderfeld case? A. Yes, sir.

Q. The jury was sent out at 5 o'clock in the Manderfeld case?

A. Yes, sir.

Q. Court then adjourned to the next morning? A. I believe so.

Q. There was no evening session? No, sir.

Q. The Judge had no expectation of being called up there. He merely went up there to receive the verdict of the jury; he was called up from town without previous notice and informed that the jury had agreed? A. I presume that is correct.

Q. Who did he come up with, do you remember?

A. I don't know; he was there when I arrived.

Q. Mr. Jones was there—Mr. Brownell was there?

A. I don't know whether Brownell was there or not. Mr. Webber was there.

Q. During the third day you wasn't there? A. I think not.

Q. During any of these trials there was nothing in his rulings that showed any beclouded mind, was there?

A. There was something in his charge, I thought.

Q. Was there anything in his rulings at that time upon the admission of evidence, &c.—anything that showed that he didn't have his judgment about him?

A. Nothing that I remember particularly.

Q. The court went on just as in the usual manner when the Judge is sober—charged the jury, and cautioned them, as when they first were sworn? A. Oh, yes.

Q. And when they adjourned he cautioned them against talking about the case?

A. I think so; that is his rule.

Q. You don't recollect any deviation from his usual practice in that matter during those two days?

A. No, sir; I do not.

Q. Were his eyes red?

A. No, I don't remember that they were red.

Q. Was his face flushed when he came in that day?

A. Well, I don't remember that his face was flushed. It had a different expression from what it has now.

Q. Have you noticed sometimes, when a man drives through the wind, in a windy morning, that his face gets to look more inflamed and swollen, etc.? Could that have been the expression on his face that morning? A. No, sir; that was not his expression.

Examined by Mr. Manager DUNN.

Q. You have spoken of times when you have seen Judge Cox intoxicated. Have you seen him intoxicated at any other times than those two times?

A. Never but once, to my recollection.

Q. Where was that? A. At Sleepy Eye.

Q. When was that?

A. Well, I believe it was the Monday previous to the opening of the court on Tuesday.

Q. You saw him in Sleepy Eye then, prior to opening the court on Tuesday, and at that time he was intoxicated, was he? A. Yes, sir.

Q. Much or little?

A. Well, he was in my office, I believe, for a moment; he could walk straight, but I called him pretty drunk.

Q. You had some talk with him, did you? A. A very little.

Q. Well, enough to distinguish that he was not right? A. Yes.

Q. You don't live at any county seat? A. No, sir.

Q. What time of day was this that you saw him?

A. I think it was in the afternoon; I would not be positive whether it was forenoon or afternoon.

Q. That is the only time you recollect of seeing him under the influence of liquor, except these two times?

A. Yes, sir; the only time that I remember now.

GEORGE W. SOMERVILLE.

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

Examined by Mr. Manager DUNN.

This is to article 17, specification 7.

Q. Mr. Somerville, where do you reside?

A. Sleepy Eye.

Q. In Brown county in this State? A. Yes, sir.

A. Do you know the respondent, Judge Cox? A. I do.

Q. Are you a practicing attorney? A. I am.

Q. Were you such last May? A. I was.

Q. Did you attend a general term of the district court held in New Ulm last May? A. I did.

Q. Were you at the court-house when the Judge arrived there?

A. I was.

Q. Did you observe the condition of the Judge as to sobriety when he arrived there? A. I did.

Q. What was his condition? A. I thought he was intoxicated.

Q. Did you have cases on that term calender to be tried?

A. I did.

Q. Were there any of them tried? A. I tried one case.

Q. Were any of them continued?

A. Yes, sir. Well, I will say, I tried one case. I tried one jury case and I disposed of some motions.

Q. I mean jury cases? A. I tried but one jury case.

Q. Did you have any cases that were not tried?
A. I had one case that was not tried.
Q. A jury case? A. Yes, sir.
Q. How was it disposed of?
A. Well, there was some question about the pleadings; they wer amended and the case went over under motion of opposing counse Mr. Thomson.
Q. What case was that? A. Hughes against McCarthy.
Q. What was the condition of the Judge during that term—take as a whole?
A. I thought he was intoxicated during the most of the term.
Q. To what extent?
A. Well, toward the evening of the first day and the second day co siderably intoxicated.
Q. On the second day more than the first?
A. Well, no; I would not say that.
Q. I thought you said so?
A. No; I said on the first and second days I considered him consid erably intoxicated.
Q. After that how was it? A. Well, he was not so much so.
Q. Did you stop at the same hotel with him?
A. Well, I really don't know; I know the Judge was at the hot that I was.
Q. Did you see him around the streets of New Ulm?
A. I think I saw him on the street once or twice.
Q. Did you see him to know whether he had been drinking or wa not drinking? A. I could not tell from that.
Q. You didn't see him in any saloon?
A. I don't remember that I did.
Q. State to the court and Senate, sitting here how that was; explai it.
A. Well, there were several of us in a room that is used as a gran jury room; it is adjoining the court room, and among those present wa Mr. Thomson, and there were others but who there were I don't re member, I knew at the time; they were not members of the court.
Q. Not members of the bar, you mean?
A. Yes. And the Judge took a bottle from his pocket and aske some of us to drink.
Q. Did he ask you? A. He did.
Q. Did you taste of it or drink of it? A. I did.
Q. Was it alcoholic liquor? A. I think it was.
Q. Do you know whether the Judge drank any of it?
A. I think he did.
Q. Where did he take this bottle from?
A. He took it from his inside pocket.
Q. Business coat or overcoat?
A. The coat he wore—his inside coat.
Q. The coat he wore in the court room?
A. Yes.
Q. Did he go from the court room immediately into that room?
A. I think he did.
Q. What was his condition then; was he sober?
A. No; I considered him intoxicated.
Q. When he handed you the bottle?
A. Yes, sir.

Mr. ARCTANDER. I would state, Mr. President, that the cross-examination of this witness may be somewhat lengthy, I would prefer, unless the Senate urges me to go on to-night with him, to resume it in the morning.

The PRESIDENT *pro tem.* You have four mintues before it is the regular time to adjourn.

Senator HINDS. Would there be any objection to having an evening session? It will be Saturday soon. If we can have an evening session to-night, we can probably get through with the witnesses that are now in attendance by Saturday afternoon. I move that we have an evening session this evening from 7:30 until 10 o'clock.

Mr. ARCTANDER. I would state with the permission of the court that I am willing, far as I am concerned, and I suppose I can stand almost anything; but the respondent is in very poor health and it is almost perfect agony for him to sit here, and I do not feel at liberty to go on with the cross-examination of any witnesses unless he is here. I do not think it would be just to him.

Senator HINDS. I withdraw the motion.

On motion adjourned.

SEVENTEENTH DAY.

ST. PAUL, MINN., Jan. 20, 1882.

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

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

Messrs. Aaker, Buck C. F., Campbell, Case, Clement, Gilfillan C. D., Hinds, Howard, Johnson A. M., Johnson F. I., Johnson R. B., Macdonald, McLaughlin, Miller, Powers, Rice, Shalleen, Tiffany, Wheat, Wilkins and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, judge of the ninth judicial district, upon articles of impeachment exhibited against him by the House of Representatives.

The Sergeant-at-Arms having made proclamation,

The Managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. James Smith, Jr., Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives, entered the Senate chamber and took the seats assigned them.

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

The PRESIDENT. Is there any business to be presented to the court before the examination of witnesses?

GEORGE W. SOMERVILLE

Recalled as a witness on behalf of the State, testified:

Examined by Mr. ARCTANDER.

Mr. Somerville, you were there when the Judge came in from Sleepy Eye that morning, were you, on the opening of the court?

A. I was; yes, sir.
Q. Did you notice anything peculiar about him at that time?
A. In regard to what?
Q. His appearance or actions or anything?
A. Well, I thought he was intoxicated.
Q. Did you notice anything about his clothes—his dress?
A. I did; yes, sir.
Q. Did he have a clean shirt on?
A. No, sir. I think his hair was uncombed.
Q. And he had a dirty shirt on, did he not?
A. Yes, sir, but it was not from that that I judged.
Q. Was his face shaved?
A. I don't remember as to that.
Q. Washed? A. Well, I didn't notice that his face was dirty.
Q. Well, he had come riding in the dust, from Sleepy Eye, had he not, that morning?
A. He had.
Q. He did not go to the hotel before he came up? A. No, sir.
Q. He came right out from the buggy and into the court room?
A. He did.
Q. Now, was there anything in his appearance except the unbrushing of his hair and the dirt that might possibly be on his face, that made you think that he was intoxicated?
A. I think there was.
Q. What was it?
A. Well, it was the expression of his eyes and his conduct.
Q. Of what?
A. The expression of his eyes, or rather, the lack of expression in his eyes.
Q. You noticed that? A. I did.
Q. They were dull? A. Well, rather glaring.
Q. And his conduct, what was that?
A. Well his talk and his general behavior.
Q. Well, can you give us any instance of that deportment?
A. Well, not any instance that I can think of; no particular ones, that is, during the morning.
Q. Now, during the trial of that case,—you were present during the trial of the case of Howard vs. Manderfeld, were you not?
A. I was; yes, sir.
Q. During the whole of the trial of that case, in your opinion the Judge was considerably intoxicated?
A. He was; yes, sir.
Q. So that it was apparent and manifest to every one that was in the court room?
A. Well, it was apparent to me, and I think it would be to anyone who *would* see him.
Q. Well, anybody that would observe him, could not fail to have observed that he was intoxicated?
A. Oh, I don't know about that; any one who had business before him certainly would know it.
Q. Well, was it a thing that showed itself only to parties that had business before him?
A. No, I don't think it was entirely. I think that any person present would certainly have noticed it.

Q. You would say that he was not only at that time under the influence of liquor, but intoxicated, and badly intoxicated?

A. I would say he was very much intoxicated toward the latter part of that trial.

Q. That was in the afternoon, was it not, at four or five o'clock.

A. Yes, sir.

Q. Then you mean that after the noon adjournment he got worse?

A. I think he did.

Q. Did he interrupt counsel, or anything of that kind?

A. I think he did; yes, sir.

Q. Will you swear positively that he did on any occasion?

A. I don't know that I would say that he interrupted them, but at the close of the plaintiff's case I thought he made some remarks that were probably impertinent.

Q. Do you remember them. A. I do.

Q. What were they?

A. Well, he told the plaintiff that if he hadn't any witnesses that he could disprove the testimony of that one, that he could save the county a good deal of costs by not going any further with it.

Q. That was after plaintiff had closed his case? A. I think it was.

Q. You were there and listening attentively to the trial, were you?

A. Oh, not particularly so, no.

A. Have you had any conversation with Mr. Webber about that?

A. I have not.

Q. You heard his testimony here? A. I did.

Q. Did you remember that fact before you heard this testimony?

A. I did.

Q. You didn't testify to any such fact before the Judiciary Committee?

A. I did not; I was not asked concerning it.

Q. Now, was your testimony right, or Mr. Webber's, upon that point?

A. I don't know, sir.

Q. The next day you said he was intoxicated, too.

A. I thought he was intoxicated the next day.

Q. He was about as bad then as he was the first day, was he not?

A. Oh, I don't think he was as bad the second day.

Q. And the third you think he was almost sober?

A. Well, he wasn't so bad.

Q. He wasn't so it could be noticed the third day, was he?

A. Well, the third day, I was there all the time. I went up in the morning and I think I went home in the afternoon.

Q. How long did the court last the third day? A. I don't know.

Q. You went home after the noon adjournment or after court had opened in the afternoon?

A. It is my opinion that I was not up in the afternoon.

Q. During the forenoon you don't recollect anything particularly on the third day which would indicate to you that the Judge was intoxicated?

A. I don't recollect anything only his appearance. I don't recollect any of the proceedings.

Q. That case you testified to that you were in was continued on account of the alleged surprise of the defendant at your amendment of the complaint, was it not?

A. I testified it was, yes, sir.

Q. You went on and tried the case of Youngman against Lent, on the second day, did you not?

A. I did.

Q. During the trial of that case was there anything to indicate the Judge being intoxicated? I think you have said he was less intoxicated than the first day?

A. I did.

Q. Was there anything in his rulings, as the case went along, that seemed to show he was not competent to transact business?

A. I didn't see anything in his rulings.

Q. Was there anything in his charge that showed that he was incompetent to transact his business as Judge?

A. I think not.

Q. In fact he went on and tried the case that you were engaged in fairly, squarely and impartially, just as he always used to do, did he not?

A. I don't know that there was anything then done.

Q. You won the case, didn't you?

A. I didn't.

Q. The jury won it for you?

A. No, the jury didn't win it for me, I lost the case.

A. C. FORBES,

Re-called as a witness on behalf of the State, testified:

Examined by Mr. Manager HICKS.

Q. Were you present at the June term of court held at Marshall in 1881?

A. Yes, sir, I was.

Q. You have testified before in this case, I believe, have you not?

A. Yes, sir,

Mr. Manager HICKS. Mr. Forbes will testify to the charge of general drunkenness, article eighteen.

Q. Mr. Forbes. have you ever seen the respondent under the influence of liquor, or intoxicated at any other times and places than the ones named the other day?

A. I think I did.

Q. You may state when and where?

A. I think it was in the month of May, 1881.

Q. At what place? A. Well, it was in Marshall.

Q. Where did you see him?

A. Well, I have reference to the time that Mr. Sullivan mentioned in his testimony. It was at the same time, sometime in the month of May. I was going down from my house to my office about eight o'clock in the morning and I met Judge Cox on the street at Mr. Whital's butcher-shop, and we walked up together to Mr. Chittenden's store, and went into the store, and I stayed with him quite a while in the store.

Q. What was the condition of Judge Cox that day?

A. Well, I thought he was intoxicated.

Q. How do you recognize it as being the time that Mr. Sullivan testified to?

A. Well, I have nothing to fix it particularly as connected with that time, but I know that is the time.

Q. Was that the time that he had the socks on his knees?

A. Judge Cox was talking about buying some boots, and was right between the show case and the other part of the store.

Q. At what other times and places have you seen Judge Cox under the influence of liquor?

A. Well, I have seen Judge Cox many times when he was perfectly sober and as sober as he is now; and I have seen him at other times when he was a little under the influence of liquor and perhaps in different stages.

Q. During the year 1881 in June, did you see him under the influence of liquor?

A. I really thought he was under the influence of liquor during the first day or two of the general term of the district court; I thought he was under the influence of liquor at that time.

Q. You stated to me the other day that you desired to correct your testimony that you gave the other day; if you desire to do so, you have an opportunity now to do so.

A. I did not wish to correct it any further than this: I stated I would not swear that Judge Cox was intoxicated at the time; I mean I don't want to swear positively to the fact. I swear at that time I thought he was intoxicated.

Q. That time referred to was November, 1878?

A. Yes, sir; on the supplementary proceedings. It would be a very difficult matter for me to swear that Judge Cox was intoxicated, because I have seen him when I thought he was very drunk and yet transacting business, as I thought, correctly, but I have seen him so, drunk, at different times.

Examined by Mr. ARCTANDER.

Q. You say that you thought the Judge was under the influence of liquor the first day of the June term? Did you mean to be understood that you thought so at the time,—that that was your idea at the time?

A. Yes, sir.

Q. I will ask you to state whether or not you have changed that opinion since.

A. Well, I have not changed my opinion or perhaps my convictions but as I stated to Mr. Manager COLLINS, my partner and myself were interested in the first case that was tried there, the case of Bradford against Bedbury, and I don't know whether it will be necssary to explain the full circumstaunes connected with the case.

Q. No, no.

A. But we were non-suited in the case, and this question was put to my partner, who was trying the case: during the trial; he said, "Mr. Seward have you any more testimony in this case on the part of the plaintiff," and Mr. Seward said, "We have not, your honor." I prepared a case for the supreme court. expecting to take it to the supreme court, and we settled the case in the month of September following. Mr. Mathews, who was opposing attorney, and myself, stipulated as to the case, and I intentionally, whether it was proper or not, omitted the question of the Judge, and Mr. Seward's answer.

Q. You had omitted that from the case?

A. Yes, sir, I had purposely omitted it I say, because it was at the point where my partner had made the mistake. I say Mr. Mathews and myself had stipulated as to what the point the case was, and took it to Judge Cox for his signature.

Q. When he was up there attending a special term in Saint Peter?
A. And the Judge inserted the question and Mr. Seward's answer.
Q. As a matter of fact the Judge called your attention to it when he saw the case?
A. Yes, sir; and he inserted it in his own handwriting in the settled case.
Q. Now, his remembering the exact words he used and what Mr. Seward had used at the time of the trial, when you had thought him to be intoxicated, convinced you that he could not have been intoxicated?
A. Well, it didn't convince me, but I thought it very strange. I will just tell you my impression exactly. I thought, from his general appearance, that he was quite strongly under the influence of liquor at the time we tried this case, but afterwards I thought the fact that he could remember this, and remembering his general appearance, I thought it very strange in my own mind that a man so drunk could do that. I knew that I could not.
Q. It seemed strange to you that a man so drunk as he appeared to be could remember things so distinctly three or four months afterwards.
A. Yes, sir, whether that would be peculiar to Judge Cox, is a matter I can't say.
Q. So that now you have very strong doubts about his being intoxicated at that time?
A. I couldn't say I have strong doubt, but simply the doubt that that circumstance would create in my mind. Because, as I say, I have seen Judge Cox perfectly sober on the bench a great many times. And his actions at that time were different I think from what I had ever seen him, and I, of course, attributed it to drink.
Examined by Mr. Manager HICKS.
Q. Then I understand, Mr. Forbes, that at the time you made up this case, you thought at the time Judge Cox tried it, he was so drunk he wouldn't remember the question, and afterwards you convinced yourself he was not so drunk but what he did remember it.
A. That was about it.
Q. That is the sum and substance.
A. Yes, sir, that is why I omitted the question.

Ezamined by Mr. ARCTANDER.
Q. Mr. Mathews, the attorney on the opposite side, had forgotten it, had he not?
A. I think he had, because we stipulated it, and our stipulation omitted it.
Q. Mr. Mathews was prefectly sober at the time, was he not?
A. Yes, sir.
Q. He is a temperance man anyhow, isn't he?
A. He is always sober.

By Mr. Manager HICKS.
Q. A very careful man?
A. Yes, sir, he is rather a technical man.

GEORGE CHAPMAN,

Sworn as a witness on behalf of the State, testified:
Mr. Manager DUNN. This testimony is directed to article 14.

Examined by Mr. Manager DUNN.

Q. Mr. Chapman, where do you reside?

A. In Marshall, Lyon county, Minnesota.

Q. Do you know Judge Cox, the judge of the ninth district?

A. I have met him.

Q. Where have you met him?

A. At Tyler, in Lincoln county.

Q. When was that? A. In June, 1881.

Q. Was there a term of court being held there at Tyler, in Lincoln county, at that time? A. Yes sir.

Q. You were present at that term? A. Yes, sir.

Q. What time did you get there at court; I mean what day of the term? A. I think upon the 17th day of June.

Q. Did you meet the Judge when you got there, or shortly afterwards? Yes, sir.

Q. You had some talk with him, did you?

A. Yes, sir, I was introduced to him that evening.

Q. What was the condition of the Judge when you met him there, was he sober or intoxicated? A. I thought he was intoxicated.

Q. Did you meet him after that day? A. Yes, sir.

Q. What day was it? A. The next day.

Q. What was his condition that day?

A. About the same as the day before.

Q. Intoxicated? A. Yes, sir.

Q. Did you have a case in court there? A. I did.

Q. An interested party in the case? A. Yes, sir.

Q. Well, you may state to the Senate without my asking particular questions what took place for the first day between yourself and the Judge in the conduct of that case until it was finally determined; or any conversation you had with the Judge after the first day?

Mr. ARCTANDER. That is objected to as immaterial, irrelevant and incompetent under the charge. I do not understand that we are charged in this article with any irregularities at all except the charge of drunkenness.

Mr. Manager DUNN. Yes; it is the charge of drunkenness.

Mr. ARCTANDER. That is all the witness can testify to. We are not charged in this article with doing anything wrong, as a judge, in any form, shape or manner whatsoever; nor in any of the articles, and it seems to me if the Judge had any conversation with a witness there, a party there having a case on trial, that it is entirely immaterial and irrelevant.

The PRESIDENT. Unless it could have a bearing upon the question of his condition as to being sober or not.

Mr. Manager DUNN. That is just it Mr. President, the evidence is intended to disclose to the Senate all the conversation and acts of the Judge connected with this case, to show the fact whether or not he was intoxicated. It characterizes his condition and it is perfectly competent evidence.

Mr. ARCTANDER. I submit whether or not that would not be proper cross-examination.

The PRESIDENT. The chair is of the opinion that if the learned manager would frame his question so that the response would bear upon the question of the sobriety of the respondent, that it would be proper.

Mr. Manager DUNN. I ask the witness, in order to save time, to go on

and make his statement. If the court desire me to ask every question specifically I will do so.

Q. You had a case in court, and you may state what took place the day your case was called in court. State, in the first place, what took place between you and the Judge before the case was called in court, without reference to the first day; I don't care anything about the first day.

A. Nothing.

Q. Then your case was called in court, and then what took place?

A. We asked time to plead.

Q. And it was granted, was it? A. It was granted.

Q. Then what took place?

A. This was on a Saturday, I think, that the case was called on, and time was given us until a Monday morning.

Q. On Monday what took place? A. The case was called on.

Q. Well, what did you do?

A. The complaining witness was sworn in the case.

Q. Well, what was said or done then? A. We offered no evidence.

Q. Why not?

A. Well, we hadn't plead was one reason, and another reason was that when the county attorney turned the complaining witness over for cross-examination the Judge made the remark that that wasn't necessary.

Q. By Senator CAMPBELL. Made the remark that what wasn't necessary?

A. That it wasn't necessary to cross-examine the witness.

Q. Did the Judge charge the jury? A. He did.

Q. The jury went out? A. Yes, sir.

Q. Brought in a verdict of what? A. Guilty of a simple assault.

Q. Then what done? A. The Judge fined me $10.

Q. What was done next?

A. The county attorney objected to the finding of the court upon the ground that we had not plead.

Q. Well, what was said?

A. Well, I think the Judge turned to the clerk of the court and asked him if that was the fact, and he told him it was, and he then continued the case until half past one in the afternoon.

Q. Did you see the Judge in the recess? A. Yes, sir.

Q. What took place then? A. He called me to one side.

Q. Where did he call you to?

A. I met him in front of a saloon in Tyler; he called me just to the north end of the saloon and informed me there that if I didn't step up and plead guilty when the case was called on, that he would fine me fifty dollars.

Q. Did he use any profane language or other improper language, to you at that time?

A. Well, he said that he did not propose to have any damned Connecticut blue laws played upon him. I think he used the word "damned," but I won't be certain as to that.

Q. What was his condition at the time?

A. I thought he was intoxicated.

Q. Well, how strong is that thought in your mind; does it amount to a conviction?

A. He said he was going to stick the cost of that jury onto me anyway.
Q. He said if you didn't come in and plead guilty he would fine you fifty dollars?
A. Yes.
Q. Did he say anything else?
A. He said he was going to stick the cost of that jury on to me anyway.
Q. Did he tell you what he would do if you did plead guilty?
A. I don't think he did.
Q. He didn't tell you how much he would fine you if you did plead guilty?
A. No; but I inferred from—
Q. You had already been fined ten dollars? A. Yes, sir.
Q. He said if you didn't come in and plead guilty he would fine you fifty dollars?
A. Yes, sir.
Q. Well, you went in then and did plead guilty, did you, to a simple assault? A. I did.
Q. How much did he fine you?
A. He fined me ten dollars and costs then.
Q. Do you know whether the Judge drank any liquor during that term of court?
A. I do.
Q. Did you see him drink liquor? A. I did.
Q. How many times? A. Oh, I can't tell that.
Q. Well, were there many times? A. Yes; several times.
Q. Who did he drink with? A. Several different parties.
Q. Did he drink with the officers of the court, county attorney and others?
A. Yes, sir; I saw him drink with the county attorney.
Q. The clerk of the court?
A. I don't remember seeing him drink with the clerk of the court.
Q. Did he drink with you?
A. The first day that I came here, the first evening he drank with me or I drank with *him* rather.
Q. Who furnished the liquor?
A. Well, we were in his room at that time, or in the county attorney's room,—I won't say that it was Judge Cox's room; but I understood from his conversation it was the county attorney's room. And his secretary was there. He introduced him as his *scratchetary!*
Q. Who was it that he introduced as his "scratchetary?"
A. I think his name was Whitney.
Q. He introduced him as his "scratchetary?"
A. Yes, sir; to the different ones in the room.
Q. He had the bottle, did he?
A. He had the bottle in his hands.
Q. And you all took a drink?
A. I don't think all in the room took a drink.
Q. Was there any other time when you drank with him, or he with you?
A. No, sir; I think not.
Examined by Mr. ARCTANDER.
Q. Mr. Chapman, at this time when your case was called on Monday

without your being called upon to plead, the county attorney moved your case, did he not? and the county attorney got up and said, "I move the case of the State against Chapman?"

A. I can't say as to that.

Q. Do you know whether the case had been put on the calendar?

A. I can't say as to that; I am not an attorney.

Q. The fact of the case is, that all the evidence shown against you was that you had kissed the girl, wasn't it? What was the charge against you?

A. I think that you have stated the evidence.

Q. Well, what were you charged with?

A. Oh, I was charged with a great many things.

Q. Well, I mean in that indictment.

A. Well, I was charged with—

Q. It was an assault with intent to commit rape, was it not?

A. That was the charge.

Q. And all the evidence brought out, was that you had taken hold of the girl, and kissed her, was it not?

A. That was what she swore to. That was all the evidence that took place upon the witness stand.

Q. Was there any evidence of an attempt at rape, or your trying to do anything else with her, besides kissing her?

A. Not that I am aware of.

Q. Isn't it a fact that when the county attorney got through with that witness, the Judge told him he didn't want to hear any more evidence of that rape; that that was rather a rapee case?

A. Well, he said that it wasn't necessary for a cross-examination.

Q. Arn't you mistaken,—that he did not address himself to your attorney, but addressed himself to the county attorney?

A. I think he addressed himself to the county attorney; still I am not positive who he addressed himself to.

Q. You are not positive whether he addressed himself to the county attorney, or to your counsel, but his language was simply deprecating the weight of the evidence, so far as going to convict of the charge of intent to commit rape, was it not? It was making light of the evidence so far as committing rape was concerned?

A. Yes, sir; I think it was.

Q. Now, at this time when the matter was called to the attention of the court, that you had never pleaded, he turned to the clerk and asked him to see what his record showed upon that point?

A. Yes, sir.

Q. And he found that the record did not show that you had not plead? A. Yes, sir.

Q. It was after he had fined you that your counsel called his attention to the fact, that you had not plead? A. Yes, sir.

Q. Are you sure of that?

(The witness here produced some papers from his pocket.)

Q. What is that you have there? A. A copy of the proceeding.

Q. A copy of the record do you mean? A. I think so.

Q. Now, at this time, when Judge Cox met you outside, at the noon recess, was your attorney, Mr. Matthews, with you? A. No, sir.

Q. You were alone? A. I was alone.

Q. Was Judge Cox alone?

A. I think that he was not at the time we met.

Q. Who do you think was with him?
A. I think that Mr. Strong, of Tyler, was on the steps at that time.
Q. Anybody else? A. I don't remember.
Q. You say it was on the sidewalk near the saloon there?
A Yes, sir.
Q. He called you aside, did he? Yes sir.
Q. Or did you call him aside? A. He called me aside.
Q. Now, is it not a fact that what Judge Cox said to you at the time was this or about this, that you had a right now to plead and to have another trial by jury; but that if you did, after the evidence had now been in, and shown that there was an assault that he should feel like fining you heavier, and at least fifty dollars if you put the county to expense, especially as he was going away the next day?
A. No, sir, that is not the fact.
Q. He didn't mention anything about the expense to the county by another trial. A. Not a word.
Q. He didn't say anything about that? A. No. sir.
Q. But you do swear to this other conversation as you have already sworn here, that that was correct? A. Yes sir.
Q. Now, I wish you would reiterate that, and say what it was that he said. What was it Judge Cox said to you?
A. He told me if I did not step up and plead guilty, that he would fine me fifty dollars, that he was going to put the cost of the jury on to me anyway.
Q. He didn't give any reason?
A. He said furthermore, that he didn't propose to have any Connecticut blue laws, or any damned Conneeticut blue laws (I won't say that he used the word damned, but I think he did,) played upon him.
Q. You might just as well put that word in?
A. I think it would not be improper, but he might not have said it.
Q. When you came in there the Judge fined you ten dollars and the costs of the suit, did he not? A. Yes sir.
Q. About one hundred and fifty dollars, was it not? A. No, sir.
Q. How much was it?
A. Forty-seven-dollars and ten cents was the fining and costs.
Q. You have cheap courts up there?

Examined by Mr. Manager DUNN.
Q. You say Mr. Strong, of Tyler, was present when you met Judge Cox; was he present when you had the conversation? A. No, sir.
Q. The Judge took you to one side? A. Yes, sir.
Q. Away from everybody? A. Yes, sir.
Q. Have you seen Judge Cox intoxicated at any other time?
A. No, sir, I never did; I never saw him before that, and but few times since.

EDWARD CASEY

Sworn as a witness on behalf of the State, testified:
Mr. Manager COLLINS. This testimony is directed to article eighteen.
The PRESIDENT. The chair would state that it is not inclined to rule against general questions; it is the opinion of the chair that specific questions upon all these points are quite objectionable and that general

questions might be asked, under which the witness might testify, and thus facilitate the business. The general questions should be so worded as to call for a response relative to the subject matter of the charge, and yet not be so general in its character and so without point that the witness might go on for a long time to relate matters not pertinent to the case at all.

By Mr. Manager COLLINS.

Q. Mr. Casey, state where you reside.
A. New Ulm, Brown county, Minnesota.
Q. How long have you lived there?
A. I have lived there pretty near 15 years.
Q. What is your occupation?
A. I have kept livery there, and now I am sheriff of that county.
Q. How long have you been sheriff?
A. I have been sheriff a year this month.
Q. Are you acquainted with the respondent, Judge Cox?
A. Yes, sir.
Q. How long have you known him?
A. I have known him about 14 or 15 years, I think.
Q. I desire now to call your attention to a general term of court held in May last, at New Ulm, were you present?
A. Yes, sir.
Q. Acting as sheriff? A. Yes, sir.
Q. Did you see Judge Cox there? A. Yes, sir.

Mr. ARCTANDER. Isn't this specified under specification 7 of article seventeen?

Mr. Manager HICKS. This is under the charge of habitual drunkenness. We could examine him under specifications 6 and 7 of article 17, but we prefer to take it under article 18, and to drop specification 6.

Mr. Manager COLLINS. We drop it entirely except so far as this evidence may go to prove it.

Q. Will you state Judge Cox's condition as to sobriety at that general May Term of court, 1881?
A. Well, I consider that he was under the influence of liquor.
Q. During all of the term?
A. Well, more or less under the influence of liquor during all the term.
Q. Now to what extent was he under the influence of liquor during any part of the term?
A. Well, I could not swear that he was really drunk. But I should judge he was under the influence of liquor.
Q. More or less intoxicated? A. Yes, somewhat intoxicated.
Q. Now, I call your attention to a time out of court, but during that term—one evening—do you remember being sent for by Judge Cox?
A. Yes; the deputy sheriff came after me in the evening and said that Judge Cox wanted to see me.
Q. You went to see Judge Cox, did you? A. Yes, sir.
Q. Where did you find him?
A. I found him down town, on the street, on the side-walk.
Q. What time of night was this?
A. It was, I should think, somewhere about 10 o'clock.
Q. What was his condition as to sobriety?
A. Well, I thought he was somewhat under the influence of liquor but not very bad at the time.

Q. You thought he was under the influence of liquor?
A. Yes.
Q. Now, what did he say to you?

Mr. ARCTANDER. We object to that, under the ruling of the court heretofore. This witness has said "I thought he was somewhat under the influence of liquor. but not very bad at that time."

The PRESIDENT. I understand they ask him, what Judge Cox said to him, not what he said to Judge Cox.

Mr. ARCTANDER. Yes, I understand; but I claim when they undertake to introduce this under article 18, that they must show not that the Judge drank upon occasions—not that he was drinking occasionally, but they must show instances of his drunkenness. To make him an habitual drundard, they must show, I claim, instances of drunkenness—not of the influence of liquor, nor of taking liquor at occasions, but it must be drunkenness that must be shown. The witness has already testified that the Judge was under the influence of liquor, but that he was not drunk, "not very much" was the language that he used. Now they have got at the condition of the Judge at that time, and I claim that no language or conversations can properly be shown under this article. If it is the conversation that I apprehend it is—as the testimony of the witness shows before the judiciary committee—it is in regard to the frequenting of houses of ill-fame, which has been stricken out by the Senate, and I say it is not a fair way to treat us, to try to get it in here now, under the charge of habitual drunkenness, and especially upon a charge upon which the witness himself says that he was not very much under the influence of liquor, but he was some. I don't think it is fair on the part of the managers toward this respondent nor towards the Senate under their prior ruling to try to get in that evidence now.

Mr. Manager COLLINS. Mr. President, I do not care to enlighten the counsel as to what this evidence may be. I do not think that it is a proper way to get it before this court. But I say that when a witness testifies that a man is under the influence of liquor I feel inclined to adopt the rule that has been insisted upon by the gentleman whenever he has found it convenient to insist upon it, that he shall have the facts and circumstances in the affair to show and characterize and indicate the degree of drunkenness. Now I apprehend that if a man goes upon the witness stand and says that a certain person is under the influence of liquor, and we can show that at that time the person was so under the influence of liquor as to use indecent language—such language as none but a drunken man would use, that it indicates the witness is slightly mistaken—that the man is not only under the influence of liquor, but that he is very drunk. Nay, if we go to the time when the witness says that the party was in his opinion slightly under the influence of liquor and show that the man was so drunk that he was not able to get out, I apprehend that the court would differ with the witness and say that he was a very drunk man. Now, we have a perfect right, and the counsel has insisted upon that right in his cross-examination, to show the condition of the man as indicated by his language and by his acts, and we have a right in the direct examination to follow up the opinion of the witness by showing the language of the man, his appearance, his mental and physical condition for the purpose of showing to the court just how drunk he was, indicating to the court that there is something more about this matter than the mere opinion of the witness; that the man was drunk; that by his language and his acts he clearly was drunk. That

is the object of it; and we have a perfect right in my opinion to get at it. Now, so far as the form of this question is concerned, I do not know but that it may be faulty, but what we desire is, that the witness shall state to the court the language of Judge Cox at that time. I would say, however, for the benefit of the counsel that we do not propose to show by this witness that Judge Cox frequented houses of ill-fame; that is not the object of it. The object is to indicate by the language he used then that he was in a drunken condition, and if it should show that he visited houses of ill-fame, why so much the worse for the Judge. That is all I have to say about that.

Mr. ARCTANDER. Well, I would state, Mr. President, in answer to the learned manager, that it is perfectly correct that we should use those tactic, upon cross-examination to find out the appearance of the party—his actions, his language, his conduct, etc. And what is that done for? It is perfectly proper on cross-examination so to do. It is perfectly proper because it tests the opinion of the witness. We have never in one instance yet, I think, objected to the opinion of witnesses that the prosecution has put upon the stand as to whether the Judge was sober or drunk, or intoxicated or under the influence of liquor. We have never objected to any such question, nor to any answer that the witness has given. We have simply attempted by legal and proper and legitimate cross-examination to show if we could, by the witness, upon what he based that opinion. That is proper for cross-examination, but it is not proper for a party to cross-examine his own witness, unless that witness is unwilling. Now, this witness certainly has not shown any unwillingness, and I don't believe it will be charged that he is. He has now given his testimony and opinion as to what condition the Judge was in, and has stated he was under the influence of liquor, in his opinion, but not very much. Now, I claim, to drag in here testimony which really and virtually has been shut out by the ruling of the Senate upon specifications under article twenty, is not right. Because it cannot enlighten; it may tend to prejudice this Senate against this respondent—may put him in such a position that he cannot get his evidence to meet it, because it is brought out only as an incident and not as a charge, and I think it is liable to tend to do him injustice.

Now, I maintain that the fact whether or not the Judge has used profane language or not, is not evidence, and would not be evidence to any sane man, of drunkenness. I, for my part, have never been drunk in my life, and I dare say I use more profane language in one hour than the Judge ever did in his whole life.

Mr. Manager COLLINS. I hope not.

Mr. ARCTANDER. And I should most solemnly protest against the fact of my using profane language beisg taken as evidence of my drunkenness; and I think that to any sensible man it will be clear and apparent that the fact of certain language used by the Judge there, profane or otherwise, or having reference to houses of ill-fame, or otherwise, would be entirely irrelevant and immaterial upon the part of the State to show that he was drunk at this particular time, under their charge of habitual drunkenness.

Mr. Manager COLLINS. This question was under discussion here yesterday as to our right to show language used by the Judge in this condition, in the examination of John Lind, and the Senate then held that we would be permitted to show it.

The PRESIDENT. The chair having been absent at that time is with-

out knowledge as to that. The witness has testified that in his opinion the respondent was somewhat intoxicated and it is the opinion of the chair, that it is proper to show what his acts and language were at that time, so as to indicate to the court whether the judgment of the witness was well founded as to the respondent's intoxication. In the opinion of the chair the question is a proper one. You may proceed.

Q. You may state now, Mr. Sheriff, what Judge Cox, said to you when you found him at 10 o'clock at night, as you have stated.

A. He said he wanted me to go down to Mrs. Shields and arrest everybody that was there in the house.

Q. Who was this Mrs. Shields, and what sort of a house did she keep?

A. Well, she is a woman that is supposed to keep a house of ill-tame.

Q. He said "Go down there and arrest everybody that is in the house?"

A. Yes, sir.

Q. What further did he say? A. Well, that was about all he said.

Q. What did you say to him?

Mr. ARCTANDER. That is objected to.

Mr. Manager COLLINS. We have a right to all of the conversation if we have a right to know that, and so has the counsel; that is the rule.

The PRESIDENT. The witness may answer.

Q. What did you say to him in response to his direction to you to go down there and arrest these people?

A. Well, I don't remember what I did say to him at the time; but I made up my mind that I would go and see the county attorney and find out from him what was best to do—whether to go or whether to disobey the order.

Q. You saw the county attorney, did you? A. Yes, sir.

Q. Did you return, and see Judge Cox? A. Yes, sir.

Q. What did you say to him then?

A. Well, I told him if he would get me a warrant I would go.

Q. Well, what did he say to that?

A. Well, he called for some paper, some ink and a pen, and——

Q. Now, at the time you came back——

Mr. ALLIS. [Interrupting.] Let him finish his answer.

The WITNESS. He called for some paper, a pen and ink and commenced to write. And then they got to talking some way or other. Finally he gave up writing the order. I believe the marshal was in there at the time and they got to talking the thing over and finally he gave up writing the order.

Q. Now where was this?

A. They kind of talked him out of the notion of writing the order.

Q. Where was this? A. It was in a saloon.

Q. Then Judge Cox got a sheet of paper and some ink in a saloon and sat down to write an order for you?

A. Well, that is what I supposed.

Q. What was his condition at that time compared with when you left him before?

A. I should consider him more under the influence of liquor.

Q. Was he drunk or sober at that time?

A. Well, I don't know as I could swear positively that he was drunk, but he was pretty badly under the influence of liquor, I should say.

Q. Did you see him drink? A. Yes.
Q. In that saloon? A. Yes.
Q. At about the time he was getting up this order?
A. Well, before, I think.
Q. How long before?
A. Well, it may be 10 or 15 minutes or so.
Q. Now how many times did you see him drink in the saloon at that time?
A. I could not say how many times.
Q. More than once?
A. Well, I don't know as it was more than once; I could not swear positively that it was more than once; it may have been once or twice or something like that.
Q. What did he drink?
A. I could not say, what he was drinking. Some kind of beer or liquor he generally drinks, you know.
Q. What time of night was this?
A. I should think that was somewhere about 11 o'clock. It may be 11, or from that to 12 o'clock.
Q. How late did you stay in the saloon?
A. Well, I think I went home pretty soon after that.
Q. Did you stay in the saloon after mid-night?
A. I don't think I did.
Q. When you went away, where did you leave Judge Cox; did you see whether he staid there?
A. I believe we all went together out of the saloon.
Q. Where did you do to?
A. I went home, I think.
Q. Do you know where he went?
A. I think either the marshal or somebody wanted him to go to the the hotel. It seems to me as though somebody went with him to the hotel; I could not tell.
Q. When you left the saloon what was Judge Cox's condition as compared to his condition at the other time you speak of?
A. Well, I thought he was considerably more under the influence of liquor than he was the first time I saw him that evening at ten o'clock.
Q. And during all the time he had been growing worse?
A. Well, he had been growing worse from the time I first saw him until the time I left him.
Q. During the conversation do you remember about the Judge having said anything about having been down to that house of prostitution that night?
Mr. ARCTANDER. That we object to as immaterial and irrelevant.
Mr. Manager COLLINS. It seems to me that if Judge Cox at that time stated that he had been down to that house of prostitution, that while it might not be admissible under this charge as evidence of having visited a house of ill-fame, it is proper evidence to show to this court, his condition, because I apprehend that a sober judge would not go to any such place. I apprehend that a drunken judge might, but I do not believe a judge when he is sober would not do anything of that sort, although I am free to admit with brother Brisbin, that sober men do sometimes go to those places.

The PRESIDENT. The chair is of the opinion that the objection should be sustained.

Mr. Manager COLLINS. We would ask the opinion of the Senate upon that.

The question was then called for and read by the reporter.

The PRESIDENT. The court will vote as to whether the question shall be put; the chair will not have it put as to whether the court sustains the objection. The chair for the time withdraws the ruling, and leaves it for the court to decide; so that there is no ruling to sustain.

Senator CAMPBELL. I ask the chair when he submits the question to state in what manner we shall vote.

The PRESIDENT. The question is, shall the question asked by the counsel be put?

Senator WILSON. Is this under the article to prove habitual drunkenness?

The PRESIDENT. Yes, sir.

Mr. Manager COLLINS. We don't attempt to prove by this, that Judge Cox visited a house of prostitution; we simply claim that we have a right to show by this question, if it is answered in the affirmative, that he did something he would not have done in his sober moments; it characterizes the offense, and shows that he must have been drunk at the time.

Mr. ALLIS. Our objection is, Mr. President, that that does not have any bearing upon the question of intoxication, as everybody can see.

Mr. Manager COLLINS. It seems to me that it does have a very great bearing. I claim, Mr. President, that the Judge would not have visited a house of prostitution if he had been sober; and I claim if he had been sober and *had* visited the place, he would not have admitted it.

Senator ADAMS. I would remark that under the rules the question is to be submitted without any discussion.

The PRESIDENT. The chair is not aware that any such rule has been adopted. The question is for the Senate to decide whether the question put to the witness will be answered by the witness.

Senator C. D. GILFILLAN. Mr. President, what is the question?

The PRESIDENT. The question will be read by the reporter for the information of the Senate.

The reporter read the question, as follows:

Q. During the conversation, do you remember about the Judge having said anything about having been down to that house of prostitution that night?

Senator CAMPBELL. I move that the objection be overruled, Mr. President.

The PRESIDENT. Senator Campbell moves that the objection be overruled. That is equivalent to a motion that the question shall be put to the witness. The motion of Senator Campbell is that the objection of counsel be overruled.

Senator CROOKS. I call for the ayes and nays.

The PRESIDENT. The Clerk will call the roll. Those who vote aye, I understand, vote in favor of putting the question. Those who vote no vote in favor of sustaining the objection.

Senator C. D. GILFILLAN. To vote aye is to vote in favor of the motion made by the Senator from Meeker county?

The PRESIDENT. That overrules the objection made by Mr. Archander.

Senator GILFILLAN. That allows the testimony to come in?

Senator CAMPBELL. Yes, sir.

The roll being called, there were yeas 9, and nays 17, as follows:

Those who voted in the affirmative were—

Messrs. Campbell, Case, Clement, Johnson R. B., McLaughlin, Shaller, Shalleen, Wheat and Wilkins.

Those who voted in the negative were—

Messrs. Aaker, Adams, Gilfillan C. D., Hinds, Howard, Johnson A. M., Johnson F. I., Langdon, Macdonald, Mealey, Miller, Morrison, Powers, Rice, Simmons, Tiffany and Wilson.

When the name of Senator Powers was reached upon the roll call he arose and said:

Senator POWERS. I regard this, Mr. President, as an indirect way of putting in evidence that which we have ruled out, and shall vote no.

The PRESIDENT. The question being on the motion of Senator Campbell that the objection be overruled, there were yeas 9 and nays 17, and so the objection interposed by Counsellor Arctander is sustained.

Mr. Manager DUNN. Mr. Sheriff, I want to call your attention now to the 30th day of March, 1878, and ask you if you have seen Judge Cox drunk at any time, other than the time mentioned, since that date. I don't want to go back of the 30th of March, 1878. I want to know if you have seen Judge Cox drunk at any other times than the times you have now mentioned?

A. Well, I should consider that I had seen him badly under the influence of liquor; some might call it drunk and some might not.

Q. Now, state where and when?

A. Well, once at Bergman's saloon, and another time at the Union Hall.

Q. In New Ulm? A. Yes, sir.

Q. Once at Bergman's saloon? A. Yes, sir.

Q. And once at the Union Hall? A. Yes, sir.

Q. What was going on at Union Hall?

A. Well, nothing, but some fellows were drinking together.

Q. It is a saloon?

A. It is a saloon, a hall that they use there as a kind of drinking place. There was a saloon there.

Q. When was this?

A. I couldn't tell exactly the date.

Q. Within the past year?

A. Somewhere from a year to two years ago.

Q. From one to two years ago? A. Yes, sir.

Q. Do you know of Judge Cox having any protracted sprees in New Ulm lasting more than one day?

A. Well, I know that he has been under the influence of liquor, for more than one day at a time.

Q. At New Ulm? A. Yes, sir.

Q. For how many days in succession?

A. Oh, I don't know; two or three sometimes. I couldn't tell certainly.

Q. How far, Mr. Casey, must a man be under the influence of liquor, in your opinion, before he would be what you would call drunk?

A. Well, I would expect that he would be so much under the influence of liquor that he was not able to attend to his business. I should consider that he had to be so much under the influemce of liqnor that

he wasn't able to attend to his business, or able to go on with his business.

Mr. ARCTANDER. Before you would call him drunk?

The WITNESS. Yes, sir.

Q. Well, have you seen Judge Cox in that condition?

A. Well, I couldn't swear to that positively because he might be where he hadn't any business to perform.

Q. Well, give us your opinion?

A. I never saw him when he was in the line of duty, I never saw him quite so far gone that he didn't attend to his business.

Q. You never saw him quite so far gone that he couldn't attend to his business?

A. Oh, I have thought that he was pretty near to it, if he would drink a little more he might be.

Q. So as to be wholly unable to attend to business?

A. So that he might make blunders and not be able to go on with his business.

A. BLANCHARD,

Called and sworn.

The PRESIDENT. To what article is this testimony to be directed?

Mr. Manager DUNN. This is specification seven, of article seventeen.

Q. Mr. Blanchard, where do you reside?

A. New Ulm, Brown county, Minnesota.

Q. What is your occupation? A. I am clerk of court.

Q. How long have you been clerk of court?

A. Since January, 1875.

Q. You have been clerk of the court since January, 1875?

A. Yes, sir.

Q. Are you acquainted with the respondent, Judge Cox? A. I am.

Q. I call your attention to this document, what is it? (handing paper to witness.)

A. It is a paper in the case of Rosalia Wild versus John Wild.

Q. What is the paper?

A. It is a certified copy of the minutes of the court that day, that trial.

Mr. Manager DUNN. We offer the paper in evidence.

Mr. ARCTANDER. We object to the introduction of this for the reason that the clerk's minutes is not such a record as proves facts. It is not one of the records.

Mr. Manager DUNN. I would like to have you show me a statute upon it. We offer it in evidence, Mr. President.. It is a certified copy of the clerk's minutes, kept by him at the term of the district court.

Mr. ARCTANDER. I understand, Mr. President, that there is a decision of our supreme court, if I am not greatly mistaken, upon that point, holding that the minutes of the clerk of the court are not admissible as proof of the facts that transpired in court. I understand so; I am not certain; but I would like to have time to look it up. I think the question came up in a case that Senator Hinds was interested in, from Scott county, as to what constituted the records of the court. I think it was held there that the judgment-roll was not such a part of the record of the court as to show, for instance, what the judgment was; that that had to be shown by the book. Now I take it, if it should be

anything at all, it should be the original minutes taken, not as they have been transcribed or changed, but as they were originally, at least. I take it that the minutes kept by a clerk who is under no obligation, in law, to keep them correctly, are not minutes revised by the court, or by anybody in authority, but are simply the minutes of an individual. The clerk of the court might put anything in the minutes that he was pleased to. If he had undertaken to copy the life of George Washington, or of Abraham Lincoln, into these minutes, it would certainly be proof of nothing, and there is nothing to prevent him from doing it. It seems to me the minutes prove nothing. They prove the perceptions, not under oath, of an officer of the court at the time; not verified by the court or anybody. I think in that district court—at least it is so in our district, and I think universally throughout the State—these minutes are not verified by anybody. I think you cannot bring in this man's statement in writing, as to what occurred at the time when you have him under oath and can prove by him orally what did occur, that is better testimony. The other thing is not in the nature of a record. I may be mistaken, Mr. President, in my view of the case, but it impressed me so forcibly that I felt compelled to make the objection.

Mr. Manager COLLINS. Perhaps Senator Hinds can inform us if there any such case as the counsel has referred to.

Senator HINDS. I don't remember of any case of my own that involved that point.

Mr. Manager COLLINS. I don't remember any.

Mr. ARCTANDER. I don't mean that the records of the court were not to be taken as evidence of what transpired in court. I don't remember the particular case, but it is the case in which the judgment roll was stolen.

Mr. Manager DUNN. The clerk, as I understand it, is obliged to keep a record of the proceedings in court, showing the cases that are on trial, the witnesses that are sworn, when the jury is charged, and all that sort of thing, and I apprehend that the records that are obliged to be kept in any public office in this state, by force of statute, can be admitted, and a certified copy can be received.

Mr. ARCTANDER. Can you show any statute requiring him to keep a copy?

Mr. Manager DUNN. I think so. I think Mr. President, that during the trial the counsel has enlarged upon that himself, especially during the examination of John Lind, and then we learned for the first time that this Judge was in the habit of directing the clerk to make minutes. It seems they regarded it as very important.

Mr. Manager HICKS, And the respondent has directed the clerk of Waseca county to make a copy of the minutes, at his own request.

Mr. ARCTANDER. I simply make the objection, Mr. President.

The PRESIDENT. The chair is of the opinion that there is no question as to the admission of the testimony, but will submit it to the court.

Mr. ALLIS. I would ask the counsel if the minutes here are approved by the court?

Mr. Manager DUNN. I think not. I don't see anything.

Mr. ALLIS. Then I would add that objection.

Mr. Manager DUNN. I don't know of anything that requires it.

Mr. ALLIS. They are to be read every morning.

Mr. Manager COLLINS, Have you ever heard them read in the district court in Ramsey county, in your life?

MR. ALLIS. I have heard them read in the supreme court. They ought to be read in the district court.

Mr. Manager COLLINS. I don't know but they ought to be, but I never knew them to be.

The PRESIDENT. The paper will be received in evidence and will be marked exhibit "2."

Mr. Manager DUNN. I will read it. [Reading.]

EXHIBIT 2.

ROSALIA WILD VS. JOHN WILD.

Defendant ordered to appear before the court to show cause why he should not be fined for contempt of court, in not paying money to his wife, per order of court. Defendant not appearing on such order the sheriff was ordered by the court to arrest the said John Wild, defendant, and bring him before the court forthwith.

Court adjourned till half past 1 o'clock P. M.

Half past one o'clock P. M. Court convened pursuant to adjournment.

At 2 o'clock P. M. John Wild was brought before the court by the sheriff and was before the court for contempt, and was asked by the Court why the order of the court, commanding him to appear before it, was not obeyed.

Not being able to give to the court any good excuse why the order of the court was disobeyed, he was, by order of the court, fined one hundred dollars, and to stand committed until paid in the county jail, not exceeding three months.

B. F. Webber then moved that the defendant be relieved of the fine imposed by the court on condition that he comply with the former order of the court and pay his wife the sum of thirty dollars. The court then remitted the fine of one hundred dollars and fined defendant $1250.00

Court here took a recess of one hour.

Court came to order after recess of one hour.

F. Randall, attorney for John Wild, appeared and presented to the court an affidavit of John Wild, asking to be purged of the contempt of which he is held.

Mrs. Rosalia Wild was sworn and examined.

A contract made and entered into and signed by John Wild and Rosalia Wild, was presented to the court for inspection.

The court then made the following orders:

1. That the order for John Wild to show cause why he should not be committed or fined for contempt of this court, is absolutely discharged.

2. Ordered, that John Wild pay to Rosalia Wild $45, as temporary alimony within twenty days from the date of this order, and if not paid within twenty days, he stands adjudged guilty of contempt to this court and unless he pays a fine of $500, will be committed to the county jail of Brown county for the term of six months, and the sheriff of this county is ordered to see that this order of the court is obeyed.

and then follows the certificate.

Q. Mr. Blanchard, it is in testimony, here by Mr. Webber, that between this fine of $100 and the fine of $1250, there were other orders of the court in respect to the fine?

A. I have read Mr. Webber's testimony in regard to that, that after he fined him $100 that he fined him $250, then $500, and then $1250; but I heard no such thing.

Q. You heard no such thing? A. No, sir.

Q. Wasn't there a good deal of confusion?

A. Yes, sir; there was a great deal of confusion. The man couldn't talk the English language, and he was a little crazy anyhow, and he made quite a circus.

Q. So these orders of the court might have been made, and you not heard them?

A. It is possible, but hardly probable. I think I should have heard

them. I sat here all the time, and I heard these; and if that had been made, I should have thought that I would have heard them. I have no recollection of any such order being made.

Q. Your recollection is that he increased the fine from $100 or $150.—which was it?

A. From $100 to $150.

Q. Right off?

A. That is what I wanted to explain. It appears so in the minutes; but there was a good deal of talk between the interpreter and John Wild. He came there with an interpreter, and the interpreter wasn't much better than himself, and that caused a good deal of confusion.

Q. What else?

A. He came there with the interpreter; I am pretty positive he did.

Q. What was it you said about the interpreter?

A. I said he was not much better than John Wild himself.

Mr. Manager COLLINS. He was an interrupter, was he?

The WITNESS. And after a good deal of talk between counsel, and what Judge Cox said, then he made this order, but he didn't make it immediately afterward.

Q. Mr. Blanchard, will you state to the court the condition of the Judge, as to sobriety, at the time of this prosecution.

A. Well, I considered him intoxicated.

Mr. Manager COLLINS. We now offer in evidence, Mr. President, the certified copy of the clerk's minutes in the case of C. H. and L. J. McCormick against J. J. Kelly. That was in the May term of 1880.

Mr. ALLIS. Under what article is this to come in?

Mr. Manager COLLINS. It is under—well, I've forgotten, but we are simply introducing a copy of the clerk's minutes, in that case of McCormick vs. Kelly.

Mr. ARCTANDER. What is that offered to show, Mr. Collins?

Mr. Manager HICKS. It will be under article eight. It is to show that these cases were tried at that time.

Mr. ARCTANDER. We will admit that and save getting that into the record. There is no dispute. We will admit that that case was tried at the May term, 1880.

The PRESIDENT. That will be preferable, to have it admitted by the counsel for the respondent. It will save making quite a long record.

Mr. Manager COLLINS. Have you any objections to this exhibit—McCormick vs. Kelly?

Mr. ARCTANDER. We object to it as incompetent and immaterial; that it has no bearing in the case, and offer to admit those cases were tried at the May term.

Mr. Manager HICKS. If the admission is to all that is contained in the Exhibit, we are satisfied, and it may stand.

Mr. ARCTANDER. Then you had better put it in. If you have some clap-trap to put in, go ahead.

Mr. Manager COLLINS. Perhaps we will have some clap-trap; that will remain to be seen.

Mr. Manager HICKS. Go ahead; he withdraws his offer to admit it.

Mr. Manager COLLINS. We now offer the paper in evidence.

Mr. ARCTANDER. Let it be read then.

Mr. Manager COLLINS. The exhibit reads as follows:

EXHIBIT 3.

MAY 10, 1880, GENERAL TERM OF COURT.

C. H. and L. J. McCORMICK
vs.
J. J. KELLY.

Jury fees $3.00, paid by plaintiff.

The following named persons were called and sworn as jurors:

Tone O. Roon	P. C. by D.
Fred Frank	Accepted.
Andrew Hoffman	"
Charles Giber	"
Jacob Stofflet	"
Christian Ahlners	"
A. F. Knudson	"
Knuw O. Lee	"
Fred Heers	"
Eddie Armstrong	"
Engelbrat Brake	"
Fred Benham	P. C. by Plff.
W. Peterson	Accepted—Tailsman.
Joseph Schnider	Chg. by Deft.
John Weyhe	" "
John Raschka	" Plff.
Joseph R. Lankerl	Accepted.

John Lind, Esq., opened the case for plaintiffs, and produced a promissory note, and introduced it as evidence and plaintiff rests.

J. J. Kelly sworn for defendant.

Examined and cross-examined.

Court then adjourned till Tuesday morning, May 11th at 8:30 o'clock.

COURT CONVENED PURSUANT TO ADJOURNMENT.

C. H. and L. J. McCORMICK
vs.
J. J. KELLY.

EXAMINATION CONTINUED.

J. J. Kelly, re-called for defendant.
Peter Christensen, sworn for defendant.
Andrew Rinke, " " "
W. W. Kelly, " " "
W. Bonne, sworn for plaintiff.

DEFENDANT RESTS.

B. F. Webber then addressed the jury on behalf of the defendant.

Court then took a recess until half past one o'clock. P. M.

Court convened pursuant to adjournment. John Lind addressed the jury for plaintiffs. The court then charged the jury and they retired in charge of Jacob Nix, a sworn Bailiff, at 3 o'clock, P. M.

The jury came into court at 3 1-2 o'clock P. M. and were called by the clerk. All answered. They were duly asked by the clerk if they had agreed on a verdict. Their foreman answered yes, and handed the following written verdict to the court,

STATE OF MINNESOTA, COUNTY OF BROWN, DISTRICT COURT, NINTH JUDICIAL DISTRICT.

CYRUS H. McCORMICK and LEANDER J. McCORMICK
vs.
J. J. KELLY.

We the jury in the above entitled action find for the defendant and assess his damage at $120.00

J. R. LANKERT, Foreman.

The jury were then discharged from further attendance upon this case and of this term of court; whereupon the attorney for the defendant gave notice that the defendant would remit so much of the amount of the verdict as exceeds the amount demanded in the answer and moved the verdict be reduced to the sum of one hundred dollars, and the court thereupon ordered that the verdict be entered in favor of the defendant for the sum of one hundred dollars. Motion by plaintiff's counsel for a stay of proceedings for sixty days to prepare a case for a new trial granted.

Mr. Manager DUNN. We now offer in evidence certified copy of the clerk's minutes in the case against John Manderfeld, tried May 17th, 1881 at the general term of Brown county.

Mr. ARCTANDER. We interpose the same objection to this.

Mr. Manager COLLINS. This will be exhibit number four. I say that we introduce this as preliminary to something offered in the case, and of course we will have to introduce another witness for that. The exhibit is as follows:

EXHIBIT 4.

MAY 17TH, 1881. GENERAL MAY TERM OF COURT.

M. Howard,
vs.
John Manderfield.

Jury Fees $3.00, paid by plaintiff.

A jury was ordered in this case and the following persons were called and sworn as jurors:

Charles Brand,	Ch'd by Plffs.
J. Q. A. Current,	Excused by consent of parties.
John Law,	Accepted.
Charles Robertson,	"
Guttown Thordson	"
Gottleib Guggisberg,	"
Henry E. Engleberg,	"
Isaac Martine,	"
Andrew Hangatne,	"
M. Epple,	Excused by consent of parties.
John Newman,	Accepted.
Calvin Claggett,	"
Stephen Gilland,	"
Nic. Gulden,	"
Saren Peterson,	"

The jury were then sworn by the clerk. The jury were then cautioned by the court against speaking to any persons about the suit in which they had been sworn, the jury were then excused until half past one, P. M.

Half past one o'clock.
Court convened pursuant to adjournment.

M. HOWARD
vs.
JOHN MANDERFELD.

The jury in this case was called. All present.
M. Howard, called and sworn for plaintiff.
Plaintiff rests.
Examined and cross-examined.

Blake, sworn for defendant	Ex. &	X. Ex.
A. Blanchard, sworn for plaintiff	"	"
B. F. Webber, sworn for plaintiff	"	"
J. Manderfeld, sworn for plaintiff	"	"
M. Howard, recalled	"	"

Isaac Gallagher, sworn for plaintiff.
Charles Hutchings, sworn for plaintiff.
R. Jones then addressed the jury for the defendant, B. F. Webber addressed the jury for the plaintiff; and the court then charged the jury and the jury retired at 5 o'clock under the charge of Charles Hughes, a sworn bailiff; court then adjourned until one half past 8 o'clock Wednesday morning, May 18th.

M. HOWARD
vs.
JOHN MANDERFELD.

9 o'clock P. M., jury in this case came into court and were called by the clerk and asked if they had agreed upon a verdict, they answered yes. They were then asked by the court if they found for the defendant no cause of action; they answered, yes. They were then asked by the court "if each one agreed to the verdict." They all answered: We do.
The jury were then discharged from further attendance upon this case and until 9 o'clock to-morrow morning.

[May 18th, 1881.]

M. HOWARD
vs.
JOHN MANDERFELD.

This case is sent to Nicollet county at a special term held on the — day of July, 1881, to present a case. A stay of proceedings granted until such special term.

Mr. Manager COLLINS. We now desire to offer in evidence a certified copy of the calendar for the special term of August 7th, 1880.
The paper which was marked exhibit five, reads as follows:

EXHIBIT 5.

CASES ON CALENDAR, SPECIAL TERM, AUGUST 7, 1880. HON. ST. JULIEN COX, JUDGE.

The Board of County of the county of Redwood.
vs.
Amasa Tower.

Alfred Wallin,
Atty for Plaintiff.
Baldwin, Miller & Merrill,
Attys. for Defendent.

Rufus P. Kingman & Ellis Ames, Receivers, plaintiffs. vs. Frederick Howord and Jonathan White, Administrators, defts.	Geo H. Spry, Plaintiff's Atty.

Special term of court, August 7th, 1880.

Court opened at 10 o'clock, A. M. Present, Hon. E. St. Julien Cox, Judge.

Board of County Commissioners of the County of Redwood. vs. Amosa Tower, et al.	Motion for new trial.

Case called from calendar and submitted briefs.

Rufus P. Kingman and Ellis Ames, receivers of the North Bridge-Water Savings Bank, plaintiffs, against, Frederick Howard and Jonathan White, administrators of the estate of Edward Southwarth, deceased, defendants.
Motion for decree. Decree granted.

Mr. Manager COLLINS. I now desire, Mr. President, to offer in evidence a certified copy of the order of Judge Cox, fixing special terms of court, dated 28th of July, 1879, fixing the special terms of court at New Ulm on the first Saturday of each and every month. There is no limit to the time. The paper was marked exhibit six, and is as follows:

EXHIBIT 6.

DISTRICT COURT, NINTH JUDICIAL DISTRICT.	BROWN COUNTY.

Ordered that a special term of said court for hearing issues of law, motions, applications, &c., will be held at the court house, in the city of New Ulm, on the first Saturday of each and every month. Said court will be opened at the hour of 9 o'clock A. M., and the clerk is directed to enter this order upon the court journal of said county, and cause a copy hereof to be posted in his office for three successive weeks prior to the holding of said court.
Dated, this 28th day of July A. D. 1879.

E. ST. JULIEN COX,
Judge District Court, 9th Judicial District.

Q. Mr. Blanchard, this order requires you to post a copy of it in your office, was such copy posted.

A. It was.

Q. Now, Mr. Blanchard, I call your attention to the time of the trial of the Howard vs. Manderfeld case; will you state to the court the condition of Judge Cox during that trial, as to sobriety?

Mr. ARCTANDER. That is under specification seven, the same as the Wildt case?

Mr. Manager DUNN. This is the Howard against Manderfeldt case.

The WITNESS. Well, I considered him more or less intoxicated all through the court.

Mr. Manager DUNN. You considered him more or less intoxicated all during that term of court?

A. Yes, sir.

Mr. Manager DUNN. We now desire to offer in evidence, under article thirteen, a certified copy of the record concerning the special term of court, which should have been held on June 5th, 1880. It was adjourned until June 12th, 1880, and then again adjourned until June 30th, 1880.

The paper was marked No. 7.

Mr. ARCTANDER. We desire to have that read, as we wish to cross-examine.

Mr. Manager COLLINS. This is under article eighteen, which the court will bear in mind, charges Judge Cox with neglecting to attend a special term of court. This is a certified copy of the record.

EXHIBIT 7.

SPECIAL TERM, OF COURT, JUNE 5TH, 1880.

By order of Judge Cox this term was adjourned until June 12th, 1880.

By order of Hon. E. St. Julien Cox, Judge, this special term of court was adjourned until Wednesday, June 30th, 1880, at 10 o'clock, A. M.

Wednesday, June 30th, 1880, court opened at 10 o'clock, A, M.

Louis Walter and James Hamilton, came into court and asked to be admitted to full citizenship, the witnesses were present and it being proved satisfactory to the court that they were entitled to all the rights and benefits of citizens, it was ordered by the court that they be admitted, and they were admitted accordingly.

State of Minnesota,
Jonn Bellin and H. A. Subilia.
vs.
City Council, of New Ulm, Minn.

Motion for alternate writ of mandamus argued by Sumner Ladd for plaintiffs, by Geo. Kuhlman, for defendant taken up under advisement by the court.

Court adjourned until half past one o'clock, P. M.

Half past one o'clock P. M., court convened pursuant to adjournment.

Maria Schulz,
vs.
Frank Schulz.

A Blanchard was appointed referee to take testimony and report to the court.

Court then adjourned.

Q. Mr. Blanchard, I desire to ask you if Judge Cox was present in court on the 5th day of June 1880?

A. He was not.

Q. Was he in New Ulm?

A. Not that I was aware of.

Q. Court was begun on the 12th day of June and adjourned until the 30th day of June.

A. I can't state, only that it must have been adjourned by Judge Cox, either by letter or telegram to me.

Q. But he was not present?

A. He was not present that I know of.

By Mr. ARCTANDER.

Q. Do you remember of the fact whether or not, you adjourned this

special term on June 5th 1880; where was Judge Cox at that time he sent or telegram, or wherefrom did you get it?

A. I can't tell, but I have the impression that he was probably in New Ulm or Marshall or somewhere.

Q. Up attending to some court, was he not?

A. I think so; that was my impression.

Q. And either wrote to you or telegraphed to you at that time, to adjourn it to the twelfth?

A. Yes, sir.

Q. On the 12th did you not get a telegram from St. Peter to adjourn it over to the 30th?

A. I can't tell whether I got a telegram or letter, but I can swear that Judge Cox ordered it adjourned, because I never assumed the responsibilities of the Judge in that district.

Q. You never adjourned the court?

A. No, sir.

Q. And it was either on telegram or letter from St. Peter, you can't tell which?

A. Yes, it must have been.

Q. Your minutes here show that, on the 30th day of June, in the case of the State of Minnesota, John Bellin and H. A. Subilia, against city council of New Ulm, that a "motion for alternative writ of mandamus, argued by Summer Ladd, for plaintiff, George Kuhlman for defts. and taken under advisement by the court." Is that correct?

A. I think so;—I think that is the way I have it in my minutes.

Q. Was a peremptory writ of mandamus issued on that?

A. I can't tell.

Q. Isn't it true that the alternative writ had been issued two or three months before that?

A. There had been an application made.

Q. Hadn't an alternative writ been issued two or three months before this?

A. It seems to me there had.

Q. Then the record isn't correct as to that?

A. Well, the record is correct, just as the minutes were taken on the 30th day of June.

Q. Then you took the minutes, but you may have taken them wrong?

A. It may be possible that I got the wrong idea of the proceedings.

Q. I see that in this case of Howard against Manderfelt what you have made here is only an extract from the minutes, is it not? It does not purport to be the whole minutes of the court, nor of that day, nor of the proceeding?

A. Not of the court; just simply the proceedings in that case. That was all, and nothing else.

Q. This alternative writ of mandamus that I have been speaking about, and your attention called to it,—was it not issued the 21st day of May, over a month before this term of court?

A. I cannot tell.

Q. But you think it was issued sometime before?

A. I think it was, now, since you mention it.

Q. Was the peremptory writ, or any writ at all, allowed on that day by the court?

A. I don't recollect.

Mr. Manager COLLINS. I don't like to take time with these objections,

but what has it got to do with this as to when that writ was issued, or whether it was ever issued at all or not?

The PRESIDENT. That is something the chair cannot explain.

Mr. Manager COLLINS. It is something that no one can explain. It makes no difference whether that writ was ever issued at all. If there is any mistake about the dates it might be material, but what was transacted there cuts no figure.

Mr. ARCTANDER. I don't know whether the court wants any explanation from me. I have asked no question yet, and I don't see what the counsel is objecting to.

The PRESIDENT. I think it would be well for the court to understand what bearing the question has on the case.

Mr. ARCTANDER. I simply ask the questions to attack the correctness of the records.

Mr. Manager COLLINS. Do you attack the correctness of the minutes as to the dates?

Mr. ARCTANDER No, sir.

Mr. Manager COLLINS. Then it does not make any difference about the rest. We are only after dates, to show what term of court was held at that time.

Mr. ARCTANDER. I suppose that is all the counsel is after at this time, but I wish to show their incorrectness at that term so as to raise a presumption that they are incorrect at other terms.

Mr. Manager COLLINS. Well, then show their incorrectness.

Mr. ARCTANDER. Very well, I will do it, but I have my own way to do it.

Mr. Manager COLLINS. There is no presumption about it.

Q. Is this a transcript of your minutes in the Howard against Manderfeldt case?

A. It is.

Q. Verbatim?

A. I think so.

Q. Isn't it a fact that this entry was made under date of May 19th, and not under May 18th, in regard to the stay of proceedings?

A. Will you allow me to look at it?

Q. Yes, sir, (handing the paper to witness.)

A. May 19th, instead of May 18th?

Q. Yes, sir.

A. I think not, I think it is correct just the way it is; I think so, to the best of my recollection.

Q. Have you got the records with you here?

A. I have not.

Q. Whenever a jury comes into court, is it not the invariable habit of Judge Cox to ask them whether they have agreed upon a verdict?

A. I generally ask them.

Q. When you have asked them that do you say anything further.

A. I call them and then I ask them if they have agreed upon a verdict, and they answer yes, and they generally have brought in a written verdict and they hand it to me, and I hand it to the judge.

Q. When they have not any written verdict, do you, or does the judge, ask them how they found?

A. The judge generally asks them.

Q. He generally asks them whether they have found for the plaintiff or defendant, does he not?

A. Generally, yes.

Q. Isn't it a fact that it in fact has been the practice, that you would ask them nothing about it; that the first thing after the jury comes in the judge asks them, "Gentlemen of the jury have you agreed upon a verdict?" After you have called them, isn't it a fact?

A. It is not; I generally ask them—the Judge does sometimes, but generally I do.

Q. Can you state a single case in which you have done it?

A. Why, I don't know as I can name any case, but in the majority of the cases that have been tried.

Q. It is a matter of fact that you have never even sworn a witness in the court?

A. No, it is not a matter of fact.

Q. Since the respondent was Judge there?

A. He has almost always swore them and Judge Hanscombe, before Judge Cox; it has invariably been the practice for the Judge to swear the witness. Judge McDonald held court there and he swore the witness.

Q. Have you ever, at any time, heard Judge Cox in that court asking the jury or saying to them, "Gentlemen of the jury, do you find for the defendant, no cause of action," before they have stated anything?

A. Well, there is a mystery about that, as much to me as it is to you, that is dark. I don't think—I say there is just as much mystery about that, as much to me as to the counsel or to the court.

Q. Did the Judge ask that jury at that time?

A. That's the way I have it.

Q. Well, you wouldn't swear that he asked them that question in that way?

A. Things were not done very ship-shape that night when that verdict was taken.

Q. Very well; that is not answering my question, Mr. Blanchard.

A. I wouldn't swear that he did do it, not positively; but I think he did.

Q. Was that a written verdict, or a verbal verdict?

A. Well, it could not have been a written verdict; if it had been, I didn't get it down in my minutes. That is a fact.

Q. But might not there have been such a thing as a written verdict, and you not have got it down in your minutes?

A. It might have been.

Q. Have you ever known of any instances in that court since Judge Cox came upon the bench, in a civil case, in which a jury has ever been retired, unless he caused the attorneys to write up verdicts, and hand them to the jury.

A. I think he always has.

Q. Your recollection is, so far as it goes, that he did it in this case?

A. I have no reason to dispute it, none whatever.

Q. Now, then, if you have got in your minutes that Judge Cox asked the jury whether or not they found for the defendant no cause of action, and they answered yes, that was probably after they had brought in a written verdict, and he had read it, was it not? That he reiterated and asked them if that was their verdict?

A. It might have been.

Q. It is his habit to ask them, after the verdict has been read to them: "Gentlemen of the jury, is this your verdict; you find for the plaintiff no cause of action," or "so say you all?"

A. He does, if he does at all. He generally has me to record the verdict, and then read it to the jury; and then he asks them if they all agree upon it.

Q. But sometimes he does it the other way: "Gentlemen of the jury, is this your verdict" (reading it,) "and so say you all"?

A. I think sometimes he has read it to the jury, and asked them that; I think so.

Q. Now, we come to this Wildt business. Is it not a fact, Mr. Blanchard, that the court generally, when there is a lengthy order, or an order to be made on any important matter, draws up a written form for you?

A. He has drawn up written orders, and he has given them to me verbally.

Q. Is it not the case when there is any important order to be made that he hands you a written form to enter in your minutes?

A. He does very often; not always.

Q. Is it not a fact that in this Wild case he gave you a written order, and made the following order: First, that the order for John Wildt to show cause why he should not be committed or fined for contempt of this court is absolutely discharged, and, second, that the defendant, John Wildt pay $45.00 as temporary alimony within 20 days from the date of this order, etc; did he make that in writing, and give to you?

A. It is not a fact.

Q. You are positive of that?

A. He did make it in writing.

Q. He made no order in writing at all, during that proceeding?

A. Not that I know of. He gave that order to me.

Q. He dictated it to you?

A. He dictated it right along, just so, so, and after I got through, I read it to the Judge and asked him if he was satisfied with it, if it was correct, and he said it was.

Q. Did you read to him the preliminary order?

A. No, sir; I did not read it. I read the order that he dictated.

Q. He didn't dictate the preliminary orders about the $1,250.00 fine and all that.

A. No, sir.

Q. Now, Mr. Blanchard, you said, I believe, there was quite an amount of confusion and noise in the court room, until a man went down and got Mr. Randall up?

A. Yes, sir.

Q. This Dutchman here, Mr. Wildt, was quite excited?

A. Yes, sir. He doubled up his fist and walked the floor, and I didn't know but he would whip the court, the sheriff and the clerk.

Q. And the interpreter wasn't much better; he was a little wild too?

A. Well, he is a poor interpreter, but you could talk some with him.

Q. After Mr. Wild came into court the Judge first asked him whether he had any excuse to give?

A. He asked it through the interpreter.

Q. In short, all that talk of the Judge with Mr. Wildt in this matter was through the interpreter, was it not?

A. It was.

Q. And there was considerable confusion there in the court, and a trying to be heard through the interpreter?

A. Yes, sir.

Q. There was a good deal of noise and disturbance made, and it was mainly made by this man Wildt, in the direct testimony; he was the cause of it?

A. Yes; there was not a great deal said in it.

Q. After the Judge had asked him if he had any excuse for disobeying the order in not appearing in court, did he ask him if he had any excuse in not obeying the order of the court in not paying the alimony?

A. I can't tell you whether there was or not, there was a great deal of talk and he made a great many inquiries, through the interpreter.

Q. Well, as a matter of fact, you all got confused too, did you not?

A. Well we wern't all confused; there was some fun in it.

Q. This man gave no excuse?

A. He couldn't give any excuse, the interpreter couldn't. The man was a little like Guiteau, he wanted to talk as well as others; he wanted to do all the talking; he is a little crazy, and considered so, and after the interpreter told him what Judge Cox had done, fined him so much, he got terribly mad and walked the floor with his fist doubled up and wouldn't talk with him?

Q. Made a great deal of talk and disturbance there in the court, quite a rumpus?

A. Yes.

Q. Threatened the court?

A. I don't know that he did; he might have done it.

Q. Strike the table?

A. No, I don't know that he struck the table, but he doubled up his fist and walked the floor.

Q. Shook it at the Judge?

A. I don't know that he did; he was pretty noisy.

Q. The Judge told him through the interpreter that he would fine him $100? A. Yes, sir.

Q. That was the first thing? A. Yes.

Q. Then Mr. Wildt got mad and kicked up a rumpus?

A. Yes; he got mad. I don't know what he said, and can only tell what he did.

Q. Then Mr. Webber got up and said he didn't care about his being fined if he could only get the money?

A. He made the same motion that is there. I took it down.

Q. Mr. Webber moved that the defendant be relieved from the fine imposed by the court on condition that he comply with the order and pay his wife the sum of $30?

A. That was what I say.

Q. Was it? A. Yes, sir.

Q. Are you ever in the habit of putting down motions in that way in your minutes?

A. Very often. Sometimes, when the attorneys make motions, I ask them if they want to put it down, and if they do, I put it in writing, so they will be satisfied with it, and if they don't, I won't.

Q. You don't put it down unless the attorneys put it down?

A. Oh, yes.

Q. Now, in this case, did Mr. Webber put it down?

A. No, he didn't say a word; he made that motion and I put it down.

Q. Can you remember a single instance in which you have a motion entered in your minutes in that way?

A. Oh, yes; there are lots of cases, but I can't tell you now what they are.

Q. Motions made by attorneys?

A. Yes; motions made to dismiss on the ground of the insufficiency of the evidence, or anything of that kind. I always put them down.

Q. After Mr. Webber had made this motion there was considerable talk, before there was any talk about imposing a fine?

A. Yes, sir.

Q. And the man got wild and wilder, this Wildt man?

A. He was pretty wild.

Q. And the court then told the interpreter that he could fine him twelve hundred and fifty dollars?

A. I put it down as I understood it, and I understood him to say that he fined him $1250.

Q. You understood that he told that interpreter he fined him twelve hundred and fifty dollars?

A. Yes, sir.

Q. And it might have been made in the confusion and noise there, so that you misunderstood it, and thought he had said to the interpreter that he would fine him $1250.00.

A. It might have been possible, I say that I only put it down as I understood it it.

Q. Well, I've no doubt about it. Now, about this twelve hundred and fifty dollars. The court didn't address the clerk and tell him to enter that, but he spoke to the interpreter?

A. Yes, sir, he spoke to the interpreter.

Q. About the same in regard to this hundred dollars?

A. The same in regard to that.

Q. But when he came to put five hundred dollars at last, and discharged him from the contempt of the court, then he addressed himself to you, did he not?

A. He did. He said "Mr. Clerk, you will make the following orders."

Q. Now, as to the other fine of $1250.00, he didn't say "Mr. Clerk, make the following order—that this defendant is fined $1250.00?"

A. He did not.

Q. So that it is possible that you might have been mistaken in your understanding of it? You acted according to your best understanding, and you may possibly have been mistaken?

A. I don't claim to be perfect, I did it to the best of my understanding.

Examined by Mr. Manager COLLINS.

Q. You say that things were not in ship-shape that night. Will you say why?

Mr. ARCTANDER. What night?

Mr. Manager COLLINS. The night that the jury returned the verdict in Howard *vs.* Manderfeld.

Q. Will you state why?

A. Well, the court adjourned when the jury went out, but it was the understanding that if they came in early that the bailiff should notify the clerk, and he and they would go up and receive the verdict, and the bailiff came after me about nine o'clock, and I went up and found Judge Cox there, and Mr. Jones, and Mr. Webber, were all there, I think, every one of them.

Mr. ARCTANDER. And Mr. Brownell?

A. I don't know whether Mr. Brownell got up or not when they came up; I didn't notice.

Q. You say things wern't in ship-shape. What do you mean?

A. Well, I thought the Judge was pretty badly intoxicated; that is what I mean by it.

Q. This Mr. Wild you speak of, do you know whether Judge Cox had any previous acquaintance with him or not?

A. I don't know; he may have known him. He is an old settler there, and Judge Cox is very well acquainted.

Q. As I understand, after this fine had been imposed upon him, he grew very much excited, and then kicked up the nosie.

A. Yes, sir.

Mr. ARCTANDER. After that fine of $100? A. Yes.

Q. Was it on the fine of $100 or $1250?

A. On the first fine of $100.

Q. How did he take it when he was fined $1250?

A. I don't think he took it much harder; he kept on the same way. I don't think it would have affected him if it had been ten thousand dollars.

Mr. ARCTANDER. This Wild had been up before on just the same proceedings, had he not, for refusing to pay his wife, and obey the order of the court in another divorce suit brought by his wife?

A. I think not, but I wouldn't swear positively.

Q. You don't remember it?

A. No, I don't think he did. I think you have another case mixed; but I don't know.

Q. Don't you remember, as a matter of fact, that there was on your records, while you have been clerk, two divorce cases between Rosalia Wild and this defendant, about eighteen months before, Col. Baason being attorney for plaintiff?

A. I don't recollect it. I don't think there was any such thing; I don't know; they commence a great many suits, those people do. They commence with the attorneys and never file the papers with me. They go before Judge Cox and get alimony, and I never know any more about it, and it is dropped. I have known them to commence five different divorce suits in five years; they make them up every other day, and then commence again.

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

AFTERNOON SESSION.

Court convened at 2:30 P. M., pursuant to adjournment.

Senator HINDS took the chair to act as President *pro tem.*

A. BLANCHARD,

recalled as a witness, testified:

Examined by Mr. ARCTANDER.

Q. Is it not a fact, that as long as you have known Judge Cox on the bench, that you have never seen him in such a condition, on account of liquors, that he has not been able to dispatch and attend to his business?

A. Well, I have seen him when I thought he was intoxicated. He always rushed business faster then than he did before. He always wanted to do everything and receive the verdict of the jury. I have generally received it at other times.

Q. Isn't it a fact that you have never seen him so under the influence of liquor that he was not able to attend to his business?

A. I have never seen him but what he has been able to open court, adjourned it, discharge the jury, and do all these little minutæ that come into court. About his charging jurors I know nothing.

Q. Have you not stated to Mr. A. C. Forbes—you know him?

A. Yes, sir; Mr. Forbes of Marshall.

Q. Have you not stated to him since you came down here that you have never seen Judge Cox in such a condition for liquors that he was not able to attend to business.

A. I don't think I have ever said any such thing to Mr. Forbes.

SUMNER LADD

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

Examined by Mr. Manager COLLINS.

This testimony is addressed to article 7.

Q. Mr. Ladd, where do you reside? A. At St. Peter.

Q. How long have you lived there?

A. Over fifteen years.

Q. What is your occupation or profession?

A. I am an attorney at law.

Q. Are you acquainted with the respondent, Judge Cox?

A. I am.

Q. For how many years have you known him?

A. Ever since I have been in St. Peter.

Q. Have you practiced in his court ever since he became judge?

A. I have.

Q. I now desire to call your attention to a term of court held on or about December 10th, 1879, at St. Peter, and particularly to the road appeal case of Dingler vs. the County Commissioners; do you remember that case?

A. I was present in the evening during the trial of that case.

Q. Were you an attorney in that case?

A. I was not.

Q. Will you state the condition of Judge Cox as to sobriety on the evening you refer to?

A. He was intoxicated.

Examined by Mr. ARCTANDER,

Q. Do you give that as your opinion or as a matter of fact Mr. Ladd?

A. It was my opinion. I am so certain that I am correct that I state it as a matter of fact.

Q. Who were the attorneys in the case?

A. Mr. Lind was attorney for the appellant, Chas R. Davis, the county attorney, was the attorney for the county.

Q. They were both present there in court during all the evening?

A. I think they were; yes.

Q. Was you there during the whole of the evening?

A. I don't remember whether I was or not.

Q. What part of the proceedings is it that you recall to your mind?

A. What I recall is, I think the question came up upon a motion of Mr. Lind to have the report of the county commissioners reversed on some ground, I think that the town of Redstone, was an incorporated town, that the road went through that town.

Q. That motion was made upon the coming in of court in the evening wasn't it?

A. I don't say it was made upon the coming in of the court but when my attention was called to the Judge's condition was directly at that point.

Q. At that time the jurors were in their seats were they not?

A. I don't remember anything about a jury particularly; I have it in my mind however that there was a jury, but I might have gathered it since then from hearing talk about it. I don't remember anything about a jury. I understand it was a jury case.

Q. So far as you remember the jury were present.

A. I don't say that I remember anything about a jury at all. I understand it was a jury case.

Q. The proceeding in that case during the evening, was the argument upon the part of Mr. Lind, in favor of his motion, and Mr. Davis in opposition thereto, was it?

A. Yes, I think there was some talk; whether there was a set argument or not, by these attorneys, I wouldn't undertake to state, but my impression is that both of these attorneys made some remarks to the court, with reference to the motion, pro and con.

Q. Do you recollect as to how long a time you was in there?

A. Well, I think it was in the evening.

Q. Have you any recollection as to how long you were there?

A. I have not.

Q. You might have been there only for a few minutes and you might have been nearly an hour or two?

A. Well, my impression is I was there until court adjourned but I won't state that positively.

Q. Now what did the Judge do during that time?

A. All that I recollect is that that motion came up and—

Q. Did you see the Judge come into the court room that day?

A. I don't recollect.

Q. Did the Judge stand up or sit down during the argument?

A. I remember seeing him walk, and also seeing him upon the bench.

Q. He walked up on the bench did he?

A. He must have done so, yes; I don't say that I saw him walk up on the bench. I remember seeing him go across the floor.

Q. When he went on the bench. A. Yes, sir.

Q. Well could he walk straight. A. He did.

Q. Nothing out of the way in his walk?

A. It was when he walked across the floor that I first noticed his condition.

Q Did you notice that from his walk. A. Yes.

Q. He walked straight you say?

A. I should say he walked straight,—yes; but he was straining every nerve to walk straight.

Q. He was straining every nerve to walk straight?

A. That was the impression left on my mind.

Q. Do you state that as a fact, too?

A. I don't know; no. I would not state that as a fact that he was straining every nerve, but that was the impression that he left on my mind,—that he was aware of his condition himself.

Q. That was the first time you noticed anything of his condition?

A. Yes, sir; that was the first.

Q. He walked up and sat down on the bench, and listened to the arguments, did he?

A. I didn't say so.

Q. What did he do then?

A. I said I saw him walking across the floor. I didn't say I saw him walk up on the bench. I don't recollect where he was going to when he walked across the floor.

Q. Is it your impression that it was before the argument commenced or after?

A. It was before the argument commenced.

Q. The next recollection you have of him is upon the bench, sitting there, is it?

A. Yes, sir.

Q. Now, at that time was there anything in his appearance to indicate that he was intoxicated?

A. Yes.

Q. What was it?

A. Well an attempt upon his part, to appear sober, was very noticeable to me.

Q. Was that a part of his appearance?

A. That was a part of it.

Q. Where did it show itself most markedly?

A. In his confusion of mind when this motion was raised.

Q. How did his confusion of mind exhibit itself?

A. Well, by not knowing what to do with the motion; by not knowing how to decide it, and by the remarks he made on that occasion, which remarks I don't remember.

Q. Did the confusion of his mind seem to affect his body any?

A. I didn't notice that it affected his body, but there was a peculiarity about his eyes.

Q. What was that peculiarity?

A. Well, it was a peculiarity; I don't know as I can describe it further. His appearance was this: That he seemed to be so much under the influence of liquor, that he had but slight control of his mental faculties in relation to the matter coming before him.

Q. I didn't have reference to anything he did,—we will come to that in a moment,—what I am after now is what was his physical apperance.

A. I didn't notice anything about his physical appearance except a peculiarity about his eyes as I stated to you.

Q. Were they red or blood shot?

A. I couldn't say that they were.

Q. Did he shut his eyes?

A. There was a peculiar gleam in his eyes.

Q. This was lamp light was it?

A. It was.

Q. How were the lights arranged in the court house?

A. I can only state as to how the lights are ordinarily arranged there I can't recall how they were on that particular occasion.

Q. The Judge has generally two lamps one on each side of him on the bench?

A. I think so.

Q. And some behind?

A. It may be that there is a lamp on the wall; I don't recollect any. There is a chandelier perhaps ten feet in front of his desk I think however there were two chandeliers, one on each side.

Q. Have you ever seen him sit on that bench by lamp light without shading his eyes, haven't you noticed very often that the Judge don't seem to stand the lamp light?

A. Well I don't know as I ever did notice it. That may be, however.

Q. Have you ever seen him sit in that court room unless there were green shades over the lamps so that you couldn't see a man's face even sitting on the bench?

A. That is the only time I ever recollect seeing him there in the evening although I may have seen him at other times holding a term of court, perhaps several times. But this is the only time I recollect; and it may be that he shades his eyes with his hands I have no recollection of that, however.

Q. Do you remember whether or not there were shades over the lamps that night?

A. I don't remember.

Q. Now that is all you noticed of his appearance was his eyes,—his physical appearance,—now we come to the next; what was there about his actions or conduct?

A. Well he seemed to be very much confused.

Q. How did that exhibit itself,—That was when they raised the motion?

A. Yes, sir; in his conversation in relation to the motion.

Q. What was that conversation?

A. I can't state it; I could not give one word of it.

Q. Now, wasn't it this: he suggested to Mr. Lind that he had no doubt about the fact that a portion of the road that went through the incorporated town would be invalid, but that he had his doubt as to the other, and that he didn't know what he should do with the road under such circumstances?

A. Yes, sir; I think that something of that kind was said by the Judge. I know the fact that something of that kind was said by him.

Q. That is at the time you thought he was confused about the motion?

A. Yes; he was confused. The matter was before him for some time, and considerable was said by him, and I have no doubt that he made a remark of that description.

Q. That was more particularly what you meant by his confusion, that he seemed to be in quandry, what to do about that road?

A. Yes, he seemed to be in a quandry.

Q. Well, it was about what to do with the road under those peculiar circumstances, was it not?

A. Yes; that was it.

Q. You are a lawyer, and have practiced for several years, I believe?

A. Yes, sir.

Q. Now, if a matter of that kind had come up before you at the spur of the moment, as it did in this case, wouldn't you have felt somewhat in a quandary about it?

A. I might, very likely.
Q. Then it would not be necessary that he should have been drunk to have been confused or in a qundary, in a motion of that kind?
A. It would not be necessary for me to be drunk to be in a quandry about it; certainly not.
Q. Now, did you notice anything else during the evening, in his actions or conduct except that confusion he had with the road upon that motion?
A. No, sir; I don't recollect.
Q. Do you know whether or not the Judge made any order there that night?
A. My impression is that he did not make any formal order that night.
Q. Isn't it a fact that the Judge reserved his opinion upon the question?
A. I guess he did; I think he did.
Q. Then there was no decision made by the court that evening that he would knock off the middle of the road and let the two ends stand?
A. No; I think the Judge intimated what his decision would be or might be; and I think, upon the suggestion of one of the attorneys, he put off his final decision until morning. That is my impression now.
Q. Did that not come out in a remark of the attorney as to what he was clear upon and what he was not clear upon?
A. I don't exactly understand your question.
Q. I say did not the fact of the Judge's having made up his mind upon the matter that night, come out in a remark to one of the attorneys that he was clear in his mind as to part of the road but not as to the other?
A. I couldn't state that he made a remark of that description. I know that that doubt that was in the Judge's mind was as to whether a part of the road could be vacated, or the whole of it.
Q. And that was the decision he intimated, was it, his doubt as to that?
A. I think the decision he intimated was that he should reverse the action of the commissioners with reference to that part of the road that went through the incorporated town.
Q. He didn't decide or make it as an order. A. I think not, sir.
Q. Now, at this time, was his intoxication, as you claim, so apparent that it must have been apparent to everybody that was sitting in the court room observing him, do you think?
A. No, I don't say that it would be so apparent.
Q. In your opinion it was not so apparent?
A. There may have been parties there that didn't notice it at all.
Q. What you have given us is all you base your opinion upon as to his being intoxicated at the time?
A. I have given you his appearance and his conduct, but there is something far deeper than that which is evidence to any man as to whether one is intoxicated or not.
Q. Well, what is that deepness?
A. Well, we know; we cannot describe it.
Q. You felt that he was intoxicated? A. I *knew* he was.
Q. But you couldn't give any reason for it except those?
A. I have given you the indications that I have.

Q. If he had not been inotxicated, and you had been there you would feel that you would know just as certainly that he was notintoxicated?

A. I don't understand your question.

Q. If you had felt that he was not intoxicated at the time you would have been able to know it just as certainly, without being able to give any reason for it?

A. Yes; well, I could say if he was not intoxicated that he acted as he ordinarily does when he is sober.

Q. Now, have you given us any instance, have you given us any incident that happened there that would not have been just as likely to happen if he had been sober?

A. No, sir, if he had been sober he would not have talked in the manner he did with reference to that motion, and been in such an utterly confused state of mind. Still he appreciated the point that was made. He understood the point that was raised; that was evident enough.

Q. Now, you seem to take it for granted that there was a confusion in his mind, that was apparent at the time?

A. There was.

Q. And that that would not have been there if he had not been intoxicated?

A. Yes, sir.

Q. Do you mean to say that he could not have been confused upon that question or that he would not have shown it?

A. I mean to say that he was confused; his confusion was very apparent. He did know how to talk upon the subject; his talk upon what he said upon the matter was incoherent.

Q. Ah, ha! Now we have come to something. It was incoherent?

A. It was.

Q. Now, in what was it incoherent?

A. Well, I can't remember, as I said some time ago, I couldn't give a word the Judge said.

Q. Then you simply give it as an impression that you had at the time, that the Judge was incoherent?

A. Yes, sir. I said that what he said was incoherent—not as an impression.

Q. Now, if you can be certain that it was incoherent, could you not then remember what it was; would it not make such an impression on your mind that you could now tell us what it was, would it not make such an impression on your mind that you could tell us what it was?

A. Well, I don't think people ordinarily remember language that is incoherent as readily as they do language that is coherent.

Q. But if anything was incoherent, couldn't you at least remember the subject matter upon which he talked?

A. Well, it was the subject matter of this motion.

Q. And the language you have already testified to is that he did not know what to do with it,—whether he should set aside the whole road, or only that part of the road which was in an incorporated village. There was nothing incoherent in that, was there?

A. No; but he said considerable more upon the subject. I will say that that was the coherent part of his remarks. He did appreciate the point. Whether he made it plainly and coherently or not, I wouldn't say. I presume he did.

Q. Now, isn't it a fact that you have often heard Judge Cox when you knew he was perfectly sober, making abrupt remarks?

A. Yes, sir.

Q. Making a remark, for instance, and stopping probably right in the sentence. I mean that his mind runs off quickly?

A. Yes, sir; very quickly sometimes.

Q. It would then almost appear incoherent, wouldn't it, when his mind runs off with him in that way?

A. That was not the condition of his mind at that time; he didn't dodge off at this point and that point.

Q. That was not the question I asked you. Answer my question, please, whether or not, when he talked in that way,—when you know he is perfectly sober; whether he would not then appear to be incoherent in his language?

A. Well, I don't know; the language might be coherent enough with reference to the point he was running off from.

Q. At this time, did he run off from the point at all?

A. No, sir; I don't know that he did.

Q. Did he get away from the subject, and talk upon anything else?

A. I can't remember his language, but I know it was incoherent; he was very much confused, and made assurance doubly sure to my mind as to his condition.

Q. Now, do you mean to be understood that when Judge Cox sat there on the bench in such a condition that his language was incoherent, that this confusion was apparent, that parties that sat in the court-room and observed him would not have noticed it?

A. I think that all the attorneys in the court room did notice it.

Q. Well that is hardly answering my question?

A. I think that parties in the court room,——

Q. I will qualify the question; parties in the court room, who had known Judge Cox for a number of years, known him drunk, and known him sober,—whether they could have failed to observe it.

A. Well, I don't know; I presume that some persons might have been there who might have failed to have observed his condition. I know there was an evident attempt on his part to conceal it, and perhaps to some eyes might have been successful.

Q. You think it might depend then to a certain extent as to whether the eyes that looked at him were with approval or disapproval?

A. I don't mean that; I think, perhaps, honest men were there who might not have noticed his condition.

Q. Well, Mr. Ladd, you are a candidate for the Judge's shoes are you not?

A. No, sir, I don't consider myself a candidate at present.

Q. Is it not a fact that you have laid out the work of planning to get into that position if Judge Cox should eventually be impeached?

A. Very little indeed.

Q. Very little indeed, but some?

A. Yes, sir.

Q. It is a fact that you have written letters soliciting support is it not?

A. Very few. I admit that in case there is a vacancy I may be a candidate.

Q. As a matter of fact you have written to almost every member of the bar in the district excepting in St. Peter, have you not?

A. No, sir; not to one quarter of them; perhaps not to one fifth part of them.

Q. It is a fact that you were a candidate for the judgship of that district when Judge Cox was running was it not, or rather before the convention.

A. I was before the convention.

Q. Do you remember of introducing a resolution in the House in 1878 in behalf of Judge Cox at his request, to have a committee investigate his conduct.

A. I did; he came to me and requested me to introduce a resolution.

Q. And is it not a fact that right on or about the same time, you introdnced that resolution, you went to the Governor and asked the appointment in case Judge Cox should be deposed.

A. No, sir; I never approached the Governor upon the subject or anybody else.

Q. You got some of your friends to do it, did you not?

A. I did not sir.

Mr. Manager COLLINS. Mr. President, hasn't that gone about far enough? The Boardof Managers insist that whether he was a candidate or not, has nothing to do with this case. If he happened to be a candidate, it does not justify this judge in getting drunk.

The PRESIDENT *pro tem.* It has nothing to do with intoxieation, but may tend to characterize the testimony.

Mr. ARCTANDER. Well, I am through.

The WITNESS. Upon that occasion, Mr. Arctander, I wish to say, that I never said a word to the Governor, nor ever asked any of my friends to do so.

Examined by Mr. Manager COLLINS.

Q. You say you have no recollection of an order being made that night vacating the road or setting aside the road as far as the village of Red Stone was concerned. Are you certain that an order of that character was not made that night?

A. I am not certain; I was simply giving my impression.

Mr. Manager COLLINS. We now take up article eleven.

Q. I desire now to call your attention to a general term of court, held in St. Peter, in May, 1881; the case of John Peter Young against Charles R. Davis; do you remember that case.

A. Yes, sir; I remember it.

Q. Were you present in court at that time? A. Yes, sir.

Q. Were you not attorney in the case?

A. Yes; I was Mr. Davis' attorney. Attorney for the defendant.

Q. You may state the condition of Judge Cox as to sobriety upon the trial of that case?

A. During the trial of the case before the jury, Judge Cox was sober. The trial commenced the first day of the term. I think the second day of the term the jury rendered a verdict for the plaintiff. I made the usual motion for a new trial and the next day, in the afternoon, Mr. Lind came to me and said, that he would just as soon argue the motion for a new trial then as at any time and he and I proceeded to the court house. That was on the coming in of the court, in the afternoon at half past one or two the fifth day of the term, I think. We made the motion upon the court's suggestion upon the minutes of the court, I think, on

sidering the stenographer's report as the minutes of the court. And the court intimated that he would grant a new trial. It was not a regular argument, but still both Mr. Lind and myself, made one or two statements to the court. The Judge was intoxicated upon that occasion upon that motion for a new trial.

Examined by Mr. ARCTANDER.

Q. You say that Mr. Lind and yourself,—there was nothing noticeable during the trial of that case?

A. No, sir:

Q. The Judge was perfectly sober in your opinion during the whole of that trial?

A. The trial took place during Tuesday and part of Wednesday. He was sober,—I have no doubt but what he was sober during the whole of that time.

Examined by Mr. Manager COLLINS.

Q. I call your attention now to article thirteen,—on or about the 12th of June 1880; at which a special term of court should have been held at Brown county. State the circumstances connected with that matter?

A. I had a writ of mandamus returnable at the special term of court at Brown county at New Ulm, on the 5th day of June, the first Saturday in June 1880. I am quite confident that was the day the writ was returnable. During our term of court Mr. Kuhlman was on the opposite side, and he was at our term, and Judge Cox stated to us—whether he spoke to us about it or we to him, I don't recollect—but he stated to us that it was impossible for him to be there at that time, I think that he had to go to Mankato to hold a term there, and stated that he could be there the following Saturday, so we agreed with the court,—Mr. Kuhlman and myself,—that the matter should be heard before him on the twelfth of June at New Ulm.

Q. Won't you state right here what that case was?

A. That was the case of the State ex rel. Henry Subilia against the City Council of New Ulm.

Q. Now tell us what transpired on the 12th?

A. Well, on the eleventh, the day before, in the afternoon, I should say somewheres between 2 and 3 o'clock, I saw Judge Cox near my office in front of A. J. Lamberton's store. His condition at that time was such that I was apprehensive about being able to get him to New Ulm.

Q. State what his condition was at that time?

A. He was intoxicated.

Q. Go on.

A. I spoke to him and asked him if he was going up that evening; I don't think I requested him to go up that evening. He said he would go up.

Q. That he was going up that evening.

A. When the train time came I went up there to the depot. Judge Cox was not there. I am now satisfied that the train came along that evening, but was a little late, perhaps an hour late, the time it came there was about half-past four. I waited until the train came, and Judge Cox was not there and I came home. The regular train the next morning would have taken us to New Ulm in time to attend to the hearing of the motion. I don't recollect whether the time of the hearing was nine or ten o'clock, I presume it was ten

o'clock. It might possibly have been in the afternoon at one o'clock. I don't recollect about that. I think I did not see Judge Cox that evening. I went up to the train again next morning and was then told that he had taken the train.

Mr. ARCTANDER. We object to what you were told.

The WITNESS I think it enures to your side, what I was about to state, although you needn't take it on my say so. I now believe that there wasn't any train along that morning for New Ulm. Whether Judge Cox was there that evening for the purpose of taking the train for New Ulm or not I don't know, I presume he was, but went on the other train, as he ascertained, no doubt, that the train would not be along. I have ascertained that the train was suspended that morning. Well, as the train did not go, why, there was no way to get up to New Ulm, except to take a team, and it was thirty miles away, we could hardly reach there in time.

Q. What did you do when you found there was no train there?

A. I came down to my office, I think.

Q. Did you see Judge Cox?

A. Yes, on the way down I saw him.

Q. Whereabouts?

A. I saw him on a side street there, in front of the building,

Q. In front of what building?

A. Well, it was a saloon.

Q. What was he doing?

A. He was sitting or standing on the sidewalk. I don't know but what he was sitting on a bench; I think he was sitting on a bench, on the sidewalk in front of the saloon.

Q. Did you speak with him.

A. Yes, I either spoke to him or he spoke to me as I came along by.

Q. What was his condition at that time?

A. Well, he was drunk.

Q. What did he say to you concerning this business if anything?

A. Well, he didn's say much about it; I attempted to get him to fix upon some time when he would hear it, and I was depending upon the courtesy of the attorney upon the other side and wanted him to fix some time when he would hear the case, but he was in no condition to fix upon a time and in fact did not seem to care to talk very much about it, he was feeling very pleasant and jolly.

Q. What did he say when you spoke to him about the case?

A. Well, I don't recollect what he did say, I know he passed it off as a matter of indifference—which was natural to a man in his condition then. He did not seem to care anything about it.

Q. Did he say anything about making any order in the case.

A. No, he didn't say anything about making any order in that case,

Q. Did he in any case?

A. No, sir; not anything particular.

Q. What did he say about an order, if anything?

A. Well, I think I started to go along and he followed me and we walked along together to the main street; and he gave me to understand that he was willing to sign any orders for Ladd & Stone at any time we wished. I didn't pay any attention to what he said, and knew that he would not have made any such remark if he had been sober.

Q. by Mr. ARCTANDER. That he would sign any order for Ladd & Stone at any time?

A. Well, he made a general remark of that kind, yes, sir; that he was ready at any time, to sign any orders we might have.

Q. Just state what Judge Cox did at that time? You have now told us that he walked along then, with you, you have told what he said to you. Did he do anything else?

A. Well, either upon the seat or while we were walking along he attempted to put his arms around my neck, perhaps that is what you have reference to.

Q. In an affectionate sort of way?

A. Yes. I would not state where that happened, whether it was while we were walking along or sitting on the seat; we were sitting quite close together on the seat.

Mr. ARCTANDER. Mr. President, I would ask permission for five minutes recess before cross-examining this witness.

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

Mr. Manager HICKS. I desire to state to the Senate that the first intimation that the managers have had of the change in the testimony of Mr. Ladd was while it was given here upon the stand. Upon that evidence the managers desire to dismiss that article, so far as it is in their power to do so, and that the evidence just taken may apply to article eighteen, rather than article thirteen; and I desire to state that the managers will not introduce any evidence to either article six, thirteen, sixteen, or to specification six of article seventeen. We desire that the evidence under article thirteen just now taken, have its application to article eighteen. It is in justice to the witness, however, to state that he was requested to ascertain as to the running of the trains that morning, from Saint Peter to New Ulm; and he was under the impression that he had stated the fact to the managers.

Examined by Mr. ARCTANDER.

Q. You testified before the judiciary committee? A. I did.

Q. Did you not there testify that the train that evening was late, and it did not get along until that night sometime?

A. I presume I testified—I know I did, in fact—that I thought that the train that evening was late, and did not get along until quite late at night, and that the train next morning, going west, was on time; I think that was my testimony; I didn't state it positively, but I stated my impression.

Q. Did you not at that time, testify as follows:

The hearing was on Saturday, and the day before I saw him on the street drunk. I saw him upon the street, and he said he would go up that morning. I went up on the train, but he was not there.

A. No, sir; I did not state that.

Q. Did you not testify that before the committee?

A. I did not. I stated that I went to the depot. The writing machine report has left out the depot, do doubt. I went up to the train. I never stated that I went up to New Ulm upon that occasion, because the fact is I did not go up.

Q. Did you not ask Mr. Blanchard at New Ulm, about three weeks ago, if he could not remember that you had been up there and waited for the Judge, and that the Judge had not come?

A. Mr. Blanchard?

Q. Yes. A. I did not see Mr. Blanchard three weeks ago. I have not seen Mr. Blanchard for several months.

Q. Did you not write to him to that effect?

A. I have not written him a letter.

Q. Have you not written to Mr. Subilia about that, asking if he could not remember that you were there, and the Judge not coming?

A. Not a word; I had no occasion to write in that way, because I was not there.

Q. How did you come to give that testimony before the judiciary committeee, that the train was on time the next morning and went up, and that the Judge had neglected to go up there?

A. I stated that not as positive testimony, but that it was my impression.

Q. Did you qualify it that way before the committee?

A. I did sir—that it was my impression; the train the evening before was late, and did not come in until somewhat late in the evening; that the train the next morning was on time, and that was my impression at the time I testified. I only stated it as an impression, because I was not certain that that was a fact.

Q. Now, at the time you gave that testimony your idea was that the Judge had neglected his business, being drunk, and, therefore, had not gone to New Ulm; and that that was the cause of it?

A. It was.

Q. Well, now you admit that the trains were not in such a way that he could have gone up there unless he had gone up the evening before?

A. The impression on my mind came from this: that he had promised me to go up the evening before; I saw his condition and I was anxious to get him up there. I was afraid that if he went over another night that he would not go up.

Q. Now, as a matter of fact, it was not necessary for him to go up there before the next morning in order to reach there in time for the hearing of that motion, if the train had been in the usual way?

A. Only in the sense, that there was a freshet down east, and I think Winona was partially under water; and the time to go was whenever you could catch a train, and that was part of my anxiety, to get him up the evening before.

Q. Who has told you about that freshet, and how long a time since is it that you learned it?

A. Well, I stated before the committee about the freshet, whether they have it in my testimony or not, I don't know.

Q. Now, at this time, when you came back again from the train and found there was no train, as you testify now,—before the committee you testified you found Judge Cox had not gone up, that he had gone east and that you waited until afternoon and tried the afternoon train?

A. Yes, sir.

Q. And thought he might probably be up there on that?

A. Yes, sir.

Q. You now say you came down and found there was no train and then went down and found Judge Cox in front of a saloon?

A. If I stated it in that way, I misapprehended the question, I did go up again in the afternoon.

Q. Then it was in the afternoon that you found Judge Cox?

A. Yes I made a mistake if I stated anything that way. I went up again to the train in the afternoon. I don't recollect whether any

train went along then or not but at any rate the train either went along or I ascertained it was late and came down. My idea was to get up to New Ulm that evening, if possible; have the motion heard in the evening and get back on the train the next day or Monday.

Q. Now, was you going to go up there after Saturday afternoon after 5 o'clock, and get there in the night to hear a motion noticed at ten o'clock?

A. We would start at half past three, I think that was the train time and we would have arrived there at 5 o'clock.

Q. It would be after business hours, would it not?

A. Yes, but I didn't know but what I would find Judge Cox up there that evening.

Q. You thought Judge Cox might have got there by team or some othea way?

A. I was very anxious to get up there and have that motion heard.

Q. During all this time, from that forenoon when you saw him, up to the next afternoon, you did not see anything of Judge Cox?

A. I did not.

Q. You did not make any inquiries except what you made at the depot?

A. My idea was, that possibly he would come back on the evening train and go up to New Ulm, and that if he did I would go up too and have that hearing in the evening, and get back the next day.

Q. The next day was Sunday, was it not?

A, Yes; there were trains running though, I think. I don't know how the trains ran on Sunday.

Q. In the meantime, from one forenoon until the next day in the afternoon you had seen nothing of Judge Cox?

A. I had not.

Q. Made no inquiries for him and heard nothing about him, except just as you said here, that he had been at the depot to take the train?

A. I presume I made inquiries about him, but I don't recollect.

Q. Now, when you came down in the afternoon, you met him outside of Clark's saloon, did you?

A. Yes, sir.

Q. Was he sitting inside or outside? A. Outside.

Q. Didn't you in your testimony before the committee testify, that he had had a fight there in the saloon that day?

A. No, sir; I didn't testify to any such thing. I knew nothing about his having a fight. I never heard that he had had one there.

Q. Will you please state if the following question and answer was not put and answered by you before the committee, to-wit:

Q. What persons were at the saloon at the time he had the fight and witnessed the fight?
A. It is my impression that James Clark, the keeper of the saloon, was present. There might have been other persons there and passed out.
Q. Do you think he took the train east at the time you speak of?
A. I was told by some one at the depot that he did.

Q. Did you not so testify before the committee?

A. There was no question ever asked me as to any fight in the saloon. The committee rambled off about a fight that they had heard about in another saloon, on another occasion.

Q. Then this answer of yours was as to who was present when you came up and found Judge Cox that afternoon?

A. You are certainly mistaken about that, because I never heard about any fight in that saloon at all.

Q. Listen to this question: (reading.)

Q. What persons were at the saloon at the time he had the fight and witnessed it

A. It is my impression that James Clark, the keeper of the saloon, was present. There might have been other persons present there and passed out.

Q. Do you think he took the train east at the time you speak of?

A. I was told by some one at the depot that he did.

Mr. Manager HICKS (to Mr. Arctander:) You see here that the subject matter of the testimony changes, just before that. It is an entirely different matter.

Q. Well, this saloon you speak of, that you found him outside of, was James Clark's saloon? A. It was.

Q. And James Clark was present there according to your best recollection at the time when you saw him?

A. Yes; my recollection is that James Clark was in front, with Judge Cox, and perhaps one or two others; I think, no one else though; I don't recollect how many were. Possibly James Clark was not there.

Q. Did you see the Judge inside of the saloon there that day?

A. I did not. He did not go inside while I was there; I don't recollect that he went in, and he was not in when I came along. He was in front.

Q. And James Clark was there with him you say?

A. Well, my impression is that he was, I may be mistaken.

Q. Now you say that what you testified before the committee in regard to these trains was your impression; is it not a fact, that the other testimony you gave before the committee, as well as to-day, was in regard to your impressions?

A. When I have stated anything positively, I have made it positive; when I have given an impression, I have meant that and nothing else.

Q. This impression that you gave to-day is just as liable to be mistaken as those you gave before the committee, are they not?

A When I state what is an impression on my mind, I mean to say that I am not positive as to the facts about which it is stated, I may be mistaken about that. I will say if you will permit me, that so far as the running of the trains is concerned, I have what I deem accuarte information as to how those trains did run.

Q. You have got that of late?

A. Yes, and that is why I correct my statement.

Q. Have you heard a rumor that Judge Cox was going to show that when you testified he was drunk, there was no train running at all.

A. I don't know; I understood that he had stated that I had made a mistake or had stated what was not accurate, with reference to the running of the trains, and I am satisfied that the impressions I had as to the running of the trains were incorrect.

Q. Now was it in the morning or afternoon that your found Judge Cox, in Mr. Clark's saloon?

A. Not in it.

Q. Or outside of it?

A. It was in the afternoon. I would say perhaps in the neighborhood of four o'clock.

Q. You say Judge Cox attempted to lay his arm around you neck at either one or both of those places?

A. While I was sitting down on the bench or walking.

Q. Isn't it a matter of fact that you stated in your testimony *both* when you were walking, and when you sat down?

A. I think not. I have read the report of the testimony over, and it is not accurate at all. That is, I don't mean it is not accurate at all, but I mean that there are a great many errors in it, so far as my testimony is concerned.

Q. Now, this testimony of yours, in regard to his saying that he would grant any order that Ladd & Stone would present to him, wasn't that upon your talking to him about making an order fixing the time for the hearing of this, and did he not tell you that he would sign such an order at any time,—wasn't that what he told you.

A. No, sir. I did not ask him for any order fixing the time; Mr. Kuhlman I knew, would arrange the time of the hearing without any order or without any stipulation, even.

Q. Well, you asked him to fix the time, anyhow?

A. I think there in front of the saloon, yes,—if I could get him to say when he would have this hearing.

Q. "Get him to say," wasn't it your desire to get him to fix a time, not to *say* it, merely?

A. Yes.

Q. Now if he fixed a time for the hearing of that motion, it would be an order, whether it was a verbal or a written order, would it not?

A. Yes.

Q. Now, wasn't it in connection with that that his language was used that you could get any order that you wanted.

A. We walked along, as I say, to the main street, which is something over half a block from where the saloon is. When we got to the corner I passed over to the post-office and he took another direction, but before we parted he made that remark there at that point.

Q. Now, do you mean to infer by your testimony that Judge Cox offered to give you any order that you should want, of whatever nature or kind, whether you were entitled to it or not?

A. Well, I will leave you to infer what you choose. He said that Ladd & Stone could have any order they wanted.

Q. Wasn't that in reference to this matter you had been talking about, in regard to time for hearing that motion?

A. I did not so understand it.

Q. Had you been talking about any other orders or any other matters? A. We had not.

Q. That is the only matter you had been talking about—of his fixing a time, of his hearing this writ of mandamus?

A. I will tell you the impression that was on my mind.

Q. I don't ask as to your impressions. A. As to what I meant?

Q. I ask you for facts, not for impressions on your mind. You might construe it in one way and he in another.

A. You are trying to discover what he had reference to?

Q. Yes, sir; I am trying to discover whether he talked about anything else at the time. Did you and he have any talk about any other case or any other order except simply an order for the fixing of the time for the hearing?

A. I couldn't get him to take any interest whatever in this hearing. He wouldn't talk about fixing the time, or anything of the kind.

Q. Did he tell you at the time that he wouldn't say anything about it?

A. He passed it off lightly; he didn't seem to care anything about it. He talked silly. He led the conversation off on to other topics. I teased him very little about it. I mentioned it two or three times, and told him I would like to have the time fixed.

Q. Well, the Judge did not fix the time for you, did he?

A. He did not.

Q. Now, there had been no talk about any other cases or any other orders, or about any other subject-matter at all connected with court, except this about fixing the time for the hearing of this mandamus proceeding, at the time when he made this remark?

A. That is all that was said with reference to anything of that character. I told you I could not confine his attention to it a moment.

Q. In other words, you could not get him to fix any time there?

A. No.

Examined by Mr. Manager COLLINS.

Q. Mr. Ladd, to make this matter plain, I understand that when you met Judge Cox in the afternoon, you thought him intoxicated, and you asked him to go up to New Ulm that night, and he agreed to go, you went down to the train but he wasn't there?

A. Yes, sir.

Q. And the next morning you went to the train, and there was no train?

The PRESIDENT *pro tem.* Under the rules laid down it is not proper to go over that again.

Mr. Manager COLLINS. I don't care to go over it again, but it does not seem to me to be clear, because it was not discovered until the cross-examination commenced, that Mr. Ladd went to the train twice upon that Saturday.

The PRESIDENT *pro tem.* But your mode of examination was to go over it again in chief.

Mr. Manager COLLINS. Well, I don't care to do that. I want to show that Mr. Ladd went twice to the train on the 12th day of June.

Q. When you came back in the afternoon you found Judge Cox drunk?

Mr. ARCTANDER. I object to that. That has been testified to both in direct and cross-examination.

Q. Well, you may be mistaken about the train, but you are not mistaken about the fact that Jndge Cox was drunk?

Mr. ARCTANDER. This is objected to as incompetent and immaterial.

The PRESIDENT *pro tem.*. I don't think that is proper.

Q. Now, if Judge Cox had gone to New Ulm on that morning train in his condition would he have been competent to transact your business?

A. I don't know what his condition was that morning. I did not see him that morning; I only saw him the night before.

Q. Well, you saw him that afternoon?

A. In the afternoon; yes.

Q. Was he in condition that afternoon to transact business?

Mr. ARCTANDER. That is objected to as incompetent, irrelevant and immaterial.

The PRESIDENT *pro tem.* This is under article 18—the article of habitual drunkenness. The objection will be sustained.

F. L. MORRILL

Sworn on behalf of the State, testified:

Examined by Mr. Manager COLLINS.

Q. Where do you reside? A. I reside at present in Minneapolis.
Q. How long have you lived there? A. About three months.
Q. Before you went to Minneapolis to reside where did you reside?
A. I resided from April, 1879, until I went to Minneapolis, at Red Wood Falls, Minnesota.
Q. What was your business there?
A. I was a practicing attorney.
Q. Are you acquainted with the respondent, Judge Cox?
A. I have been acquainted with him since the spring of 1879.
Q. Since the spring you went to Red Wood Falls? A. Yes.
Q. Were you present at the term of court held in the county of Renville, in May, 1881, by Judge Cox?
A. I think I was present there the first day and a portion of the second day.
Q. Did you see Judge Cox there in court, presiding and acting as Judge?
A. I did during the time I was there.
Mr. Manager COLLINS. We supposed when we commenced with this witness that he was there later in the term that I have mentioned, and I don't care to examine him any further because I find that he was not. I will now take up specifications three and four, under article seventeen.
Q. Were you present at the June term, held in Redwood county in 1880?
A. I was; yes, sir.
Q. Did you see Judge Cox there, presiding and acting as judge of the court?
A. I did.
Q. Will you state his condition as to sobriety?
A. Well, the major part of that term I think that he was sober. A portion of that term he drank to a greater or less extent.
Q. State whether or not he was drunk during any part of that term?
A. Well, I should be obliged to say that he was considerably intoxicated, at least one time in the term, to my own knowledge.
Q. State, if you remember, during what trial it was, and all about it?
A. The time to which I heve reference now, was during the trial of the case of Mary Luscher against the Redwood county bank, or George W. Braley. I have forgotten which was defendant, I think the Redwood county bank; during an evening session.
Q. At that time you say he was considerably intoxicated?
A. He was.

Examined by Mr. ARCTANDER.

Q. That was the only time, during the trial of that case, where you thought he was intoxicated was it?

A. It was the only time I thought he was intoxicated to any extent, so that it would be very noticeable—during the trial of that cause.

Q. What part of the trial was that—during the evening session?

A. I think the prosecution had closed and we were examining witnesses for the defense.

Q. The plaintiff had closed the case and you were examining witnesses for the defense?

A. Come to think of it, though, they had not; we were cross-examining the plaintiff herself in the case. I was cross-examining her myself, personally.

Q. Do you remember what day of the term that was? A. I do not.

Q. Was it in the beginning of the term or the latter part of the term?

A. I should judge it was near the middle part of the term, according to the best of my recollection at present.

Q. What parties were there in court besides the jury, and who was clerk at that time?

A. J. Wilson Faxon was clerk at that time.

Q. He has left the State has he? A. I believe that he has.

Q. Who was sheriff? A. Mr. Gale.

Q. Was he sheriff at that time? A. He was.

Q. Do you remember who were the bailiffs there at the court?

A. I think that one of them was named Baker, and the other I think was a Mr. Byron, from Walnut Grove.

Q. What is the first name of the last one?

A. I don't know.

Q. E. P., wasn't it? A. I don't know and cannot say.

Q. He resides at Walnut Grove? A. Yes, sir.

Q. What attorneys were there? A. Mr. Wallin.

Q. Who was he attorney for?

A. He was one of the attorneys for plaintiff. Mr. Faxon was also one of the attorneys for the plaintiff; and acted in the trial of the cause. Judge Baldwin was there and myself.

Q. Were there any other attorneys there?

A. There might have been, but I don't recollect who they were.

Q. Do you recollect whether Mr. Bowers was there?

A. I do not recollect; I think it quite possible that he was there.

Q. Do you remember whether Mr. Powell was there in court that evening?

A. I did not see him.

Q. How long a session did you have that evening?

A. Well, from the time I arrived at the court house I think the session was from twenty-five to thirty minutes long.

Q. They had been in session then for a while before you came, had they not?

A. They had done nothing, they were waiting for me to come.

Q. You was late? A. No, sir.

Q. They must have been early? A. They were by the clock.

Q. Do you remember where the Judge boarded at that time?

A. I couldn't state positively, but I think he was stopping at the Exchange. It may be possible that it was at the Commercial. I couldn't state positively.

Q. Was Mr. Seagrave Smith, of Minneapolis, there that evening?

A. My recollection is that he was not.

Q. He was in town there during that term, was he not?

A. I did not see him.
Q. Do you remember whether Dave Thorpe was there?
A. He was there during that term. I do not think he was present that evening. He might have been.
Q. That was a jury trial, was it?
A. That was a jury trial; yes, sir.
Q. Do you remember when that trial commenced?
A. It began sometime during that same day.
Q. During the afternoon or forenoon?
A. I think during the afternoon, but I could not state positively. My recollection is that it came on after dinner.
Q. Now, what was there in the Judge's appearance, actions, or conduct, during the trial of that cause in the afternoon, that made you believe that he was intoxicated?
A. I did not think he was very much intoxicated during the afternoon.
Q. Was he intoxicated at all during the afternoon?
A. It is rather a fine point to draw; I think he had been drinking.
Q. Well, as a matter of fact, you think he was not intoxicated at all during the afternoon, though he might have been drinking?
A. I think he was, to a certain extent, under the influence of liquor, I think that he had drank liquor so that it was perceptible.
Q. You didn't see him drinking? A. I did.
Q. How much did you see him drink?
A. I saw him drink once.
Q. Was that at the noon recess?
A. I think it was shortly before court opened.
Q. What was it he drank? A. I couldn't swear to it positively.
Q. Beer? A. No, sir; it was whisky that he called for.
Q. Where was it that he drank it?
A. At Michael O'Hara's saloon.
Q. You saw him drink no more after that afternoon recess, than that one glass of whisky?
A. That was all.
Q. Now, was there anything in his conduct, or appearance, or behavior, or language, in the afternoon, during the progress of that trial, that would lead you to believe that he was under the influence of liquor, excepting the fact that you had seen him drinb a glass of whisky?
A. Well, there was this, only, that I noticed, that he perspired quite profusely; more so than ordinarily. His face would be at times, after they had taken a recess—which they did once, during the afternoon—and he went down and came back, his face was flushed.
Q. How long a recess was taken?
A. I think it was about five or ten minutes.
Q. You don't know where he went to in town? A. I don't.
Q. You didn't go with him down town? A. I did not.
Q. Was it quite a distance from his hotel up to the place where the court house was?
A. Oh, perhaps two minutes walk.
Q. And you noticed that he was somewhat flushed in the face when he came in? A. I did.
Q. Did he look as though he had walked fast?
A. Yes, the way a person would look if walking fast on a warm day.
Q. Now, it was pretty hot that day? A. Pretty warm.

Q. All of you sweat more or less, that afternoon in the court room, did you not?

A I presume likely that those exercising would perspire some.

Q. Those that exercised their brains or their body? A. Both.

Q. The Judge was apparently exercising his brain during the trial, and his body too, taking down testimony?

A. No, sir, he took no testimony.

Q. There was a short hand reporter, Charlie Ware, was there, was he?

A. He was.

Q. He was there in the evening too? A. He was, yes, sir.

Q. But questions came up I suppose, during the progress of the trial, which called for rulings of the court, and so forth.

A. The only recollection that I have of that would be what would ordinarily occur in a jury trial.

Q. That is the only thing about the Judge,—his sweating profusely,—that made you believe that he was under the influence of liquor?

A. It is not.

Q. Well, what else?

A. There was something about his general appearance; he seemed to be very vivacious, and in very exceedingly good spirits, and more inclined to joke and be talkative than he seems to be ordinarily when I have seen him, when I know that he has not been drinking any.

Q. Isn't it a fact, that the Judge is always inclined to be jocular?

A. He is to a certain degree; a very pleasant man.

Q. But it was your idea at the time that he was a little more so than he was usually?

A. That was my judgment.

Q. Was there anything else about it but that?

A. During the afternoon?

Q. Yes.

A. Nothing except the fact of my seeing him drink at noon; of seeing him go down town during the recess with persons whom I knew did drink, and the fact of his appearance in the court room, as I have stated, after coming back.

Q. He went down with lawyers?

A. Yes, sir; *certain* lawyers, members of the bar.

Q. Now, that is all? A. During the afternoon; yes, sir.

Q. During the trial of this case was the only time that you remember, so that you are able to testify, that the Judge was intoxicated?

A. I did not so state.

Q. Well, now, we would like to have the other occasions.

Q. The other occasion was in the evening, when the bell-ringers gave an entertainment there.

Q. I will ask you to state whether there was ever more than one evening session of that case of yours, of Mary Luscher. Was it disposed of before the next day evening?

A. It was.

Q. Now, this other occasion was during an evening, you say, that the bell-ringers came there and gave an entertainment?

A. It was.

Q. Was it that same year. A. It was the same year, the same term.

Q. What day of the week, do you remember?

A. I do not; toward the latter part of the term.

Q. Where did they give the entertainment?

A. In the Methodist church, just across the street from the court-house.

Q. It was in the evening, I suppose, when you thought the Judge was intoxicated?

A. It was.

Q. What case was tried that evening?

A. Not any. Court convened for the purpose of entering upon the trial of causes that were pending, and adjourned without doing any business.

Q. Adjourned to go so the bell-ringers, did they? A. They did.

Q. Did no business at all? A. I think not.

Q. Now, at this time, did somebody make a motion to adjourn?

A. No, sir.

Q. Who was there in the evening?

A. I do not recollect all that were present that evening.

Q. Well, the clerk and sheriff were there?

A. I think they were. Mr. Miller and the attorney from Renville were present. I saw him there.

Q. Billy McGowan?

A. I couldn't say; I was in the room only about one minute.

Q. What were they doing when you came in?

A. Judge Cox was walking toward the window looking out toward the church.

Q. Did he say anything?

A. He did; I don't know that I can give his remark in words but I can in substance; it was that it was useless to undertake to do anything with so much noise, or so much racket going on, referring to the band that was playing there.

Q. That was all you heard him say?

A. That was all I heard him say except that he passed some further remarks giving them to understand that court was adjourned for the evening and that they would all go to the bell ringers.

Q. But nothing was done while you were there and you dont think there had been anything done before you came there?

A. I think not, I think the court had been convened under the order of the court for an evening session and that the parties were present.

Q. Now, you believed that the Judge was intoxicated at that time did you?

A. From his appearance I judged that he was?

Q. At any other times during that term?

A. Except following in the same evening I saw him in the church.

Q. Well, we are talking now about the term, during the discharge of business.

Q. There was one other time during the term when I considered him under the influence of liquor, it was during the trial of the case of Thorp vs. Brewster.

Q. Who tried that case?

A. I do not know that I can give you all the attorneys, D. M. Thorp I think tried his own case and Mort. Wilkinson I think handled the case on the other side.

Q. Was Mr. Coon there?

A. He was present, whether he took any part in the trial of the case I could not testify.

Q. Was Judge Baldwin there?

A. He was present.

Q. Do you remember whether Mr. Powell was present?

A. I do not recollect it.

Q. Now, what time in the day was it during this trial that you thought the Judge, was intoxicated?

A. It was during the afternoon of one of the days as it was being tried.

Q. Was it on trial more than one day?

A. My recollection is that it was, that it was a part of two days.

Q. Do you remember what was going on when you were there and thought he was intoxicated?

A. They were arguing objections to testimony.

Q. Do you remember who was on the stand?

A. I do not.

Q. Do you remember the nature of the objections?

A. I do not.

Q. Now, at that time you say you thought the Judge was intoxicated or under the influence of liquor?

A. I thought he was.

Q. You think he was intoxicated? A. I do.

Q. You judge that from what?

A. I judge from his appearance upon the bench and from the language he used to one of the counsel in the case.

Q. Now as to his appearance on the bench, was that just the same as it was with reference to the other occasions you testify to?

A. The same, only more so.

Q. He sweat more this time, didn't he?

A. I don't know that he sweat more profusely, but his actions as far as seeming to be intoxicated was concerned, he seemed to be under more excitement, seemed to have less control of his mind and his language, seemed to be more incoherent and his ideas more broken and less connected. He seemed to lose more of the natural dignity which he has upon the bench to a certain degree, when he is absolutely sober and to drop down more to the plane of a lawyer interested in the case.

Q. Now, you have been describing his appearance, have you?

A. I have to a certain extent.

Q. That is what he did at the time which made you think he was intoxicated?

A. That, as far as his appearance went.

Q. Now, what were his remarks?

A. I couldn't repeat them. But his remarks were very severe to one of the counsel.

Q. Did he tell him he was a fool? A. In substance.

Q. Isn't it a fact, that the remark he made was simply this: "Mr. Thorpe sit down; I don't want to hear anything more from you."

A. That was one of the remarks that he made.

Q. Were there any other remarks? A. There were.

Q. What were the other remarks?

A. I don't recollect them all; I couldn't give the remarks. I remember the scene and remember well the impression it left upon my mind.

Q. Now when the Judge told him to sit down, that he wouldn't hear him, just before that, hadn't Mr. Thorp jumped up and made a motion to the court and addressed him in this way: "Look here!"

A. I think he did.

Q. And you thought that was a deserved rebuke, did you not?

A. I should have considered it a deserved rebuke if it had not been for the treatment which the court had extended to Mr. Thorpe on former occasions by permitting him to treat him in that way on the bench.

Q. Whether drunk or sober?

A. Whether drunk or sober.

Q. You say you remember none of the other remarks he made that led you to believe he was drunk at the time?

A. I couldn't repeat them.

Q. Can you remember any one, excepting this one I have suggested to you?

A. I wouldn't undertake to give his language upon that occasion.

Q. Now, there was nothing in his rulings during the progress of the case that showed he was wrong, or that showed that he had not the control of his mind, so that he did not act, and could not act and discharge the duties of his office there?

A. It seemed to take considerable argument sometimes to get him to comprehend the points of the attorneys. Mr. Wilkinson, on several occasions, had to re-argue, and re-state, and reiterate his motions and his points in order to get the Judge to comprehend what he meant before he could get him to rule upon it.

Q. Was Mr. Wilkinson sober?

A. From the short acquaintance I had with Mr. Wilkinson, I couldn't say whether he was or not. I should judge he was not entirely sober at that time.

Q. Was he so that he knew what he was talking about?

A. He was. He argued very clearly and very forcibly.

Q. Mr. Thorp was perfectly sober, was he not?

A. I did not see anything to indicate to me that Mr. Thorp was not so.

Q. Mr. Baldwin and Mr. Coon, who were present there, were perfectly sober, were they not?

A. For aught I noticed.

Q. Mr. Baldwin don't drink at all, does he?

A. I have never known him to drink except for his "stomach's sake."

Q. Have you given all the times at this term at which you say the Judge was intoxicated in your opinion?

A. I have.

Q. On no other occasions did you see him but what he was sober,—I mean during that term of court?

A. Well, I would answer that question in this way, that I think there was a share of that term, perhaps one-third of the time, when I should say he was under the influence of liquor, to a greater or less degree, sometimes scarcely perceptible, and at other times it would culminate in being very near what we would call drunk, at least considerably intoxicated.

Q. Well now, sir, we shall have to get the balance of those times at which you noticed any signs of intoxication about the Judge?

A. I couldn't give you the dates.

Q. You can give us the cases?

A. I can give you this: That after the first day, beginning with the second day after Mr. Wilkinson appeared upon the scene there for several succeeding days, Judge Cox appeared to me to have been drinking more or less, during the whole of the time. In the morning he would walk on to the bench apparently pretty sober, but during the day as it drew to a close, he would show the effects of drinking, more and more towards night, each day more or less.

Q. Did that interfere with his going right along with the business and discharging the business of that term just as fast as usual?

A. I think that it did not except on these occasions: Upon the occasion of the evening session, while the case of Luscher vs. Braley was being tried, and during the evening that he adjourned the session of court, which had been appointed for that evening, for the purpose of going to the bell ringers, and during the trial of the case of Thorp vs. —I have forgotten the defendant's name now, the one in which Mr. Wilkinson was counsel.

Examined by Mr. Manager COLLINS.

Q. Now, Mr. Morrill, were you present at a special term of court held in July or August, 1880, at which time the Board of County Commissioners against Tower, was tried?

A. I was.

Q. Did you see the Judge there, presiding and acting as judge?

A. I saw him there in New Ulm that day, and I saw him in the Judge's chair, in the court house.

Q. You may state what his conduct was as to sobriety while he was presiding as Judge?

A. This was, I think, on August 7th, 1880. He was drunk that day.

Q. Was he drunk at the time this case was being tried?

Mr. ARCTANDER. Mr. President, I don't know what significance to place upon the ruling of the Senate the other day, when they overruled our objection to the specifications upon this article but for the purpose of finding that out, I object to the testimony for the reason that it appears that this testimony is offered under specification 4, of article seventeen, which alleges drunkenness on the bench on the first day of July, 1880, while the testimony here drawn out shows that it was the 7th day of August, 1880.

Now, I take it for granted that the Senate took a different view of the law of impeachment in regard to tne times alleged, from what I took, because they overruled our objections to these specifications. And I desire to know whether the Senate will hold, where the managers have furnished us with specifications of dates and places, that they must stand by them, and cannot prove any other under them.

Now, to test that question, as to whether or not that is the sense of the Senate—which I think it certainly ought to be.

I object to the introduction of this testimony for the reason that it appears not to have reference to the charge specified in the fourth specification to this article because I understand the witness to state that it was the 7th day of August, while this is charged to be the 1st day of July. I object to any farther testimony, and move to strike out the testimony already furnished under this specification for the reason that

it is not testimony to the occasion referred to in the specification.

The PRESIDENT *pro tem.* It was clearly the opinion of the members of the Senate who expressed an opinion upon the subject that the counsel for respondent was correct that time was immaterial and that a variance between the proof of the day from that set out in the article would not be fatal.

Mr. ARCTANDER. I thought the Senate had taken a different view since they overruled us.

Senator WILSON. I understood clearly that the Senate instructed me, as the presiding officer of that session, to notify the lawyers for the respondent, that the Senate overruled the objections as to the specifications under article seventeen, and struck out the specifications under article twenty. My recollection is that Mr. Arctander argued very strongly before this Senate that the time given in the specifications made no difference; that that was not material, and the Senate so regarded it in their ruling.

Mr. ARCTANDER. No, they disregarded that position entirely.

Senator WILSON. They did not strike out the specifications under article seventeen they sustained that.

Mr. ARCTANDER. But I moved to strike them out, Mr. President, on the ground that they were no specifications because they only gave times and places, (which were immaterial,) and the Senate overruled me in that position and I thought then, probably that they had made up their mind that I was wrong in my argument; since they held that they were sufficient specifications.

The PRESIDENT *pro tem.* The evidence will be received.

Senator CROOKS. I would call for a submission of the question to the Senate.

Senator CAMPBELL. Do I understand that the chair has ruled upon this question.

The PRESIDENT *pro tem.* The chair has ruled upon it, but it is subject to the consideration of the Senate at any time. The chair has already ruled that the evidence was proper. Specification 4 of article 17, charges that the intoxication was on July the first, the proof of this witness is that it was on August 7th. Upon that the counsel for the respondent objects to any further evidence upon that subject, and moves to strike out the evidence that has already been given. Those voting aye vote in favor of sustaining the objection and striking out the evidence, those that vote nay vote to overrule it.

Mr. Manager HICKS. Mr. President, one moment: May I call the attention of the senate to the objectionable feature of striking out the evidence for the reason that while the evidence might not apply to this article, it might apply to article eighteen, and we should certainly ask, if it is stricken out, that the witness be allowed to testify again to the same state of facts under article eighteen.

The PRESIDENT *pro tem.* The Clerk will call the roll.

The roll being called, there were yeas 8, and nays 16, as follows:

Those who voted in the affirmative were—

Messrs. Adams, Bonniwell, Crooks, Gilfillan C. D., Macdonald, Mealey, Rice and Simmons.

Those who voted in the negative were—

Messrs. Campbell, Case, Johnson A. M., Johnson F. I., Johnson R. B., McLaughlin, Morrison, Perkins, Powers, Shaller, Shalleen, Tiffany, Wheat, Wilkins and Wilson.

So the objection was overruled.

The question was here read to the witness by the reporter.

A. There was no case tried at that time, he was drunk on that day.

Q. What was the proceeding?

A. There was a special term of court being held there at that time.

Q. Was he acting as Judge?

A. He was.

Q. And drunk while he was acting as judge?

A. He was.

Examined by Mr. ARCTANDER.

Q. Was this at the time you say the motion for a new trial was being read in the case of Tower against Redwood county?

A. It was the time at which we were ordered over the written signature of Judge Cox to appear there and settle the case and argue a motion for a new trial in that case.

Q. How do I understand you by that?

A. It was an order extending the time for hearing.

Q. You were to settle the case?

A. We had already stipulated upon a case and we were there for him to certify the case as being correct and for us to argue the motion for a new trial in that case.

Q. You were not there to argue the motion?

A. We were.

Q. Did he certify to the case?

A. He did not.

Q. Did you present it to him?

A. We did not.

Q. Did you argue a motion for a new trial?

A. We did not.

Q. You did nothing at all before him?

A. We had a little conversation before him in the court room.

Q. You had no business brought up?

A. Yes, sir; this case was brought before him, this question of the motion.

Q. The case was brought up, you say, in the order.

A. We referred to it—that there was an order returnable there that day, or a motion returnable under an order, and stated to the court I think, Mr. Wollin, the counsel upon the opposite side, stated to the court, that we had agreed and stipulated between ourselves, as respective counsel in the case, not to take up that question before him that day, but to leave the papers with the clerk of the court, for him to send to him, at some future day, and we to submit the question on written briefs.

Q. You did so submit it on written briefs?

A. We did subsequently.

Q. And subsequently he made his decision, denying your motion for a new trial?

A. He did not. He subsequently made a decision granting a new trial. I was opposing the motion for a new trial.

Q. You afterwards appealed that motion for a new trial?

A. I did.

Q. From his decision granting the motion for a new trial, and the Supreme Court sustained his ruling, did they not?

A. They sustained his ruling, yes, sir.

Q. Did you see any other business done before him that morning?

A. I also had another question before him. I wanted him to issue a new order in the case of C. H. and L. J. McCormick, against a man by the name of Whitman, as garnishee. There had been an order made by Judge Cox, discharging the granishee in that case, and by inadvertence the title of the cause had been wrongly inserted, and it had got an erroneous title. I desired him to issue a new order, under the right title.

Q. You got your order?

A. I did not. I drew the order, and requested him to sign it.

Q. He wouldn't grant it?

A. No, he wouldn't grant it. There were some very strange remarks, and some very curious ruling in regard to it.

Q. Was there any other business before him?

A. I don't recollect of any other business being transacted. There were several attorneys present, but there were none of them who attempted to do any business after ascertaining his condition.

Q. Who were the attorneys that were there?

A. Mr. Webber I think was there. There was an attorney from Minneapolis, but at present I can't recall his name.

By Mr. Manager HICKS.

Q. Was it Mr. Spry?

A. I think it was Mr. Spry. I think it was stated to me there that he had been a former partner of Mr. Bebee.

Q. Was the clerk of the court, Mr. Blanchard, present? A. He was.

Examined by Mr. Manager COLLINS.

Q. You say there were some strange remarks and rulings; what were they?

A. I do not know that I could recollect all of them. He ruled on my application for issuance of a new order, that he could not issue another order for the reason that he had already issued one, and if it was erroneously entitled he could not help it; that the only thing I could do would be to make a motion upon notice to the opposite parties for an amended order, or for an order to amend the original order.

Q. What were these remarks you speak of?

A. I cannot recall all that was said there that day.

Q. Let me call your attention to one remark that was made, as you went up to the court house, about your case?

Mr. ARCTANDER. That is objected to as not proper re-direct.

Mr. Manager COLLINS. You brought out the fact that there were remarkable rulings and remarks made there?

Mr. ARCTANDER. I object to it as not proper re-direct examination.

The PRESIDENT *pro tem.* The objection will be sustained.

Q. Now, will you state why you did no business there, or why you did not settle that case and argue your motion for a new trial?

Mr. ARCTANDER. That is objected to as not proper redirect.

The PRESIDENT *pro tem.* You may answer the question.

A. We did no business before him in regard to that case, for the reason that prior to going to the court house Mr. Webber, Mr. Wollin and myself met Judge Cox upon the street and found him to be very much

intoxicated, in a condition unfit to do any business or to consider any question; and Mr. Wollin and myself, as the respective counsel in this case, had agreed verbally among ourselves before going to the court-house, and also talking about it on our way up, that unless Judge Cox was in a better condition by far than when we saw him on the street half an hour previous, that it would not be safe for either of us to submit any question to him; and we went up there and ascertained that he was in worse condition, if anything, than when we saw him on the street, and consequently we arranged between ourselves to leave our papers with the clerk of the court and have him send them to Judge Cox at some future time, when we should think he was sober, not daring to give the papers to Judge Cox himself at that time for fear he might lose them. That was the reason we left them with the clerk to be sent to him at a future day, and to submit the questions upon written briefs.

Mr. Managor COLLINS. The testimony of the witness is now directed to article 18.

Q. Have you seen Judge Cox drunk at any other time than those you have mentioned?

A. Not during terms of court.

Q. Outside of the terms of that court? A. I did once.

Q. Where and when?

A. It was about the middle of the month of February, 1881, at New Ulm, during the snow blockade.

Q. Where was he; on the street?

A. He was not; he was at the Union Hotel.

Q. You may state the degree of intoxication.

A. It was very excessive.

Q. He was very drunk, was he? A. He was.

Q. At any other times?

A. I do not recollect that I ever saw him drunk, what you would term drunk at other times.

Q. Have you seen him under the influence of liquor—intoxicated?

Mr. ARCTANDER. That is objected to. I suppose that is not the question.

Q. Can you state whether at the time you speak of in February, he was drunk for any length of time, and what the length of time of that drunk was?

A. To my knowledge it was only during the evening, from dark until he went to bed. He went to bed early that night. He sobered up during the evening so that he was in pretty fair condition by that time.

Examined by Mr. ARCTANDER.

For all you know this may have been the same drunk that Mr. Casey testified to?

A. I do not know as to what Mr. Casey testified.

Q. For all you know, I say?

A. For all I know, it may be.

Q. For all you know, it may have been the same occasion testified to by Mr. Lind?

A. It might be; I know nothing about their testimony.

The PRESIDENT *pro tem.* The court stands adjourned until 10 o'clock, to-morrow morning.

EIGHTEENTH DAY.

ST. PAUL, MINN., Jan. 21st, 1882.

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

The roll being called, the following Senators answered to their names: Messrs. Adams, Case, Gilfillan C. D., Hinds, Miller, Morrison, Perkins, Shalleen, Tiffany, Wheat and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, judge of the ninth judicial district, upon articles of impeachment exhibited against him by the House of Representatives.

The Sergeant-at-Arms having made proclamation,

The managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. James Smith, Jr., Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J, Ives, entered the Senate chamber and took the seats assigned them.

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

The PRESIDENT *pro tem.* There does not appear to be a quorum present, and from what I know of the number of gentlemen who went away last night, I think there will not be one, so that we can do nothing more than to adjourn. I think that all who have failed to answer to their names have gone home.

Senator ADAMS. I move, Mr. President, that we now adjourn.

Senator C. D. GILLIFLAN. Does that mean until half past 2 o'clock this afternoon?

The PRESIDENT *pro tem.* That would be to take a recess. The motion will be to adjourn until Monday at 10 o'clock A. M., and that will be taken to be the sense of the Senate, unless there is objection.

NINETEENTH DAY.

ST. PAUL, MINN., Jan. 23, 1882.

The Senate met at 10 o'clock A. M.;

The Senate, sitting for the trial of E. St. Julien Cox, Judge of the ninth judicial district, upon articles of impeachment exhibited against him by the House of Representatives.

The CLERK. The hour for assembling has arrived, and the President of the Senate is not here. It will be in order for Senators to make nominations for a President *pro tem.*

Senator WHEAT. I nominate Senator C. D. Gilfillan.

The CLERK. Those in favor of Senator Gilfillan acting as President *pro tem.*, will say aye; the contrary no.

The ayes have it.

Senator C. D. Gilfillan took the chair as President *pro tem.*

The PRESIDENT *pro tem.* The Sergeant-at-arms will make proclamation.

In the absence of the Sergeant-at-arms, the Secretary made proclamation.

The PRESIDENT, *pro tem.* The Clerk will call the roll.

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

Messrs. Clement, Crooks, Gilfillan C. D., Langdon, Powers, Shalleen, Wheat and Wilkins.

The PRESIDENT *pro tem.* There is not a quorum present. What is your pleasure, gentlemen.

Senator POWERS. Mr. President, I move that the Senate adjourn.

The PRESIDENT *pro tem.* Does that motion meet with a second.

Senator WHEAT. I second the motion.

The PRESIDENT *pro tem.* It is moved and seconded that the Senate do now adjourn. Those in favor of that motion will say aye, the contrary no.

The ayes have it, and the Senate stands adjourned until to-morrow at 10 o'clock.

TWENTIETH DAY.

ST. PAUL, MINNESOTA, January 24, 1882.

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

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

Messrs. Aaker, Adams, Buck C. F., Buck D., Campbell, Case, Hinds, Howard, Johnson A. M., Langdon, McCormick. McCrea, McLaughlin, Morrison, Officer, Perkins, Peterson, Powers, Rice, Shalleen, Tiffany, Wheat, White, Wilkins and Wilson.

The Senate sitting for the trial of E. St. Julien Cox, Judge of the Ninth Judicial District, upon articles of impeachment exhibited against him by the House of Representatives.

The Sergeant-at-Arms having made proclamation,

The Managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. James Smith, Jr., Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives, entered the Senate Chamber and took the seats assigned them.

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

Senator Wilson took the chair to act as President *pro tem.*

The PRESIDENT *pro tem.* Are there any motions or resolutions to be offered before proceeding to the regular order of business?

Are the honorable managers ready to proceed.

F. L. MORRILL,

Recalled and testified.

Mr. Manager DUNN. Mr. Morrill has been sworn and has testified in this matter relative to specifications three and four of article number seventeen. Mr. Morrill desires to correct his evidence in one particular, and is called at his own request this morning in a matter of which he will speak.

The WITNESS. I think I testified that in the case of the County Commissioners vs. Amasa Tower and others—

Senator HINDS. Speak louder, please, Mr. Witness.

The WITNESS. In the case of the Board of County Commissioners of Redwood County against Amasa Tower and others, I think I testified that Mr. Wallen and myself had stipulated upon a case to be settled, as a basis for a motion for a new trial in that action. I had confounded that with another case. We had not stipulated and agreed upon a settled case, but the status of the matter was that Mr. Wallen had served upon me a proposed case; I had served upon him proposed amendments to the same case, and we were there before the Judge at New Ulm,

under an order to appear there at 10 o'clock that day, for the purpose of arguing the question of the allowance of the proposed amendments to that case, and to have the case certified to and allowed by the court; and ascertaining the condition of the Judge upon the street, before going to the court-house, we did not dare to submit to him, and did not for the reason of his condition, submit to him that question that day. We had stipulated that we would argue the question as to the settlement of the case, and for a new trial at the same time, but neither was argued.

Also, in regard to the matter which was before him, a request for a new order in the Schoregge case, I think I testified that he made a ruling in that matter that day, but he did not. It was at a subsequent special term of court at Beaver Falls that he made that ruling. I could not get him to understand what I wanted at New Ulm in regard to that matter that day, and he made no ruling for the reason that he could not seem to understand what I wanted, and I could not get him to.

Q. That is all you wish to explain?

A. That is all.

Mr. Manager DUNN. Is there any cross-examination in this matter Mr. Arctander?

Examined by Mr. ARCTANDER.

Q. Were you attorney in the case of McCormick vs. Schoregge?

A. I was.

Q. That is the case you have been speaking of?

A. Yes.

Q. For whom?

A. For Schoregge, the defendant.

Q. For Schoregge, the defendant?

A. Yes, and also for——

Q. And also for whom?

A. Well, at that time, I was attorney for him only; I afterwards represented the garnishee, but not at that time.

Q. Was there more than one defendant in that case?

A. There was another; William Schoregge was afterwards joined by the court.

Q. For which Schoregge were you attorney?

A. It was for the Doctor, the old gentleman; I don't recollect his initials.

Q. Were you employed by the Doctor? A. I was.

Q. What date was it that you appeared before the Judge at New Ulm, in that case?

A. I think it was the 7th day of August,—this same date?

Q. Of what year? A. 1880.

Q. Isn't it a fact, Mr. Morrill, that at this time that you speak of, when you made that motion in the Shoregge case, or rather ex parte application to the Judge, that the Judge refused to have anything to do with the case, for the reason that he had been of counsel in it?

A. No, sir.

Q. It is not a fact?

A. No, sir; it is not a fact; no such reasons were given?

Q. Isn't it a fact that the Judge had been counsel in it?

A. It was not; that is to my knowledge. I know this, that he did act in the case subsequently, but there was no statement ever made in my presence that he had ever been counsel in that case, or no such claim, that I recollect of.

Q. That is all?

A. I would like to say in regard to that before I leave the stand, if there is no objection to it, that this was simply an application to him to remodel the order already made———

Q. I don't care to have you explain it. You may change it again.

Mr. Manager DUNN. Please state, Mr. Morrell; I want to you to state for me, if there are anything you wish to correct.

A. That is all. The question was asked, whether he had refused on the ground that he was an attorney in the case. He had already made an order in the case, discharging the garnishee, but it was wrongly entitled, and this application was simply for him to correct the title in the order which he had made discharging the granishee.

C. C. GOODENOW.

Was called, sworn and testified:

Mr. ARCTANDER. Upon what article is this?

Mr. Manager DUNN. Upon article three.

By Mr. Manager DUNN.

Q. Mr. Goodenow, where do you reside?

A. I live in Pipestone, Minnesota.

Q. Did you formerly live at New Ulm?

A. Yes, sir.

Q. Do you know the respondent, Judge Cox.

A. I do.

Q. While you resided at New Ulm, were you ever called upon to act as a clerk or an amanuenis, in a proceeding before Judge Cox, in court?

A. I was.

Q. Do do recollect the title of the case?

A. It was Wells vs. Gezike, if I remember right.

Senator HINDS. Upon which article is this testimony?

Mr. Manager DUNN. Upon article three.

Q. This was in June, 1879, was it?

A. I had no way of fixing the date.

Q. It was the case of Wells vs. Gezike. Do you know who the attorneys were, that were interested in the case?

A. I remember a number that were there; I couldn't say what part of the case they represented.

Q. Well; that were interested in some part of the case; please state who they were, if you recollect them.

A. Well, I remember that Mr. Severance was there; General Cole, Mr. Webber, Mr. Lind, Mr. Kuhlman; there were several others there. I don't know that I can recall who they were,

Q. Who applied to you, Mr. Goodenow, to go and do that writing?

A. Mr. Lind.

Q. Well, in what condition, if you know, was the Judge at that time, as to sobriety,—at the time you were taking that testimony?

A. He was intoxicated.

Q. The Judge took no part in taking down the testimony; you took it down?

A. No, sir.

By Mr. ARCTANDER.

Q. You are the same Mr. Goodenow are you not, that appeared as prosecutor against Judge Cox in 1878, before the House committee to investigate his conduct in Martin county?

A. No, sir; I never appeared in any such capacity.

Q. Weren't you there? A. I was there; yes, sir.

Q. Weren't you counseling and advising with Mr. West, who examined the witnesses there?

A. Mr.—who?

Q. Mr. West?

A. From Faribault county?

Q. Who examined the witnesses for the prosecution?

A. Do you mean West of Faribault county?

Q. Yes, sir.

A. I remember conversing with Mr. West at that time; I was not counseling in the case.

Q. No, you are not an attorney, are you? A. No, sir.

Q. While, you were right there at the time of the investigation and suggested questions to Mr. West to put to these witnesses?

A. I suggested a number of questions that were not put.

Q. You snggested a number of questions that they would not put?

A. Yes; I don't think that I suggested any that were put, however.

Q. You were at this time that you speak of receiver of the land office at New Ulm?

A. Yes, sir.

Q. The same land office that Mr. Tyler, who has been a prosecutor in this case, one of them, was register in?

Mr. Manager DUNN. We object to that question; Mr. Tyler is not a prosecutor, and we don't want counsel to assume any such thing.

Mr. ARCTANDER. I suppose it has already been shown that Mr. Tyler and Mr. Rogers were the great impeachors?

Mr. Manager HICKS. They were the complainants.

Mr. ARCTANDER. Yes, the prosecuting witnesses.

Q. Mr. Tyler, one of the two complainants in this matter—in this prosecution—

Mr .Manager DUNN. We object to that; there are no complainants in this prosecution, except the House of Representatives.

The PRESIDENT, *pro tem.* The objection is sustained.

Mr. ARCTANDER. I suppose the managers won't go back on their statements?

Mr. Manager DUNN. Well, you can't bring in any matter of that kind here; that is pettifogging of the first water.

Q. Mr. Goodenow, in what position did you sit there, when you were taking that testimony?

A. What is the question?

Q. Where did you sit when you took that testimony?

A. I sat in just about the position that Mr. Jennison occupies here; if the Judge sat *here*, I sat *there*.

Q. Your back was towards the Judge during the whole of that investigation, was it not?

A. It was, except four or five times during the day, perhaps a minute at a time.

Q. At this time you say that it was only for a minute or two at a time, that you would turn your face to the Judge?

A. I think perhaps some five or six times during the day.
Q. Five or six times during the day?
A. I think as many times as that.
Q. Now, at that time, the Judge was so intoxicated that it was apparent to everybody, was it not?
A. It was to me at least.
Q. Well, it exhibited itself in such a way, that observers in the court room could not have failed to see it?
A. I think so.
Q. As a matter of fact he was exceedingly drunk.
A. Well, I didn't say he was exceedingly drunk.
Q. You didn't say that he was exceedingly drunk?
A. No, I said that he was intoxicated.
Q. In your opinion he was not exceedingly intoxicated?
A. I didn't say he was not intoxicated.
Q. Well, I would like to know then what you do say?
A. Well, if you will ask me a question I will answer it.
Q. Well, was he or was he not, exceedingly intoxicated at that time?
A. I think he was.
Q. Did you see him during any of this time talk with the clerk of the court, Mr. Blanchard?
A. I don't recollect that I did.
Q. Did you see him at this time go off from the bench and sit down on the side there at any time?
A. I remember of his doing that but once.
Q. How long was he away from the bench?
A. I don't know that I have any recollection of that.
Q. Well, do you know whether it was the larger portion of the time or only a short time that he was sitting down?
A. My impression would be that it was only a short time.
Q. He stood in there during the session of the court, did he not, or during your performance there rather, taking down that testimony?
A. I don't remember of having seen him go out of the court room.
Q. Do you remember how many witnesses were sworn?
A. No, sir; I do not.
Q. Was it more than one?
A. I don't think I have any recollection upon that point, but a very small number.
Q. A very small number sworn. The Judge took no part, I believe you said, in taking the testimony. He took no part in taking the testimony?
A. In taking down the testimony?
Q. Yes, sir?
A. No, sir. Why, he may have jotted it down himself; I couldn't say as to that. My back was turned towards him most of the day, and whether he took a memorandum or not I cannot say. I know that the minutes that I took were taken down all by myself.
Q. What is that?
A. I don't know whether he took any minutes himself or not. The memorandum that I took was complete in my own handwriting.
Q. I will ask you whether or not it is not a fact that, prior to and during the investigation into Judge Cox's conduct by the House committee, in 1878, you did not call or get A. Fancher, William Burt and Mr. Blaisdell into your room at the Merchants, and then and there endeavor and persuade them to testify against Judge Cox?

A. No, sir. I can tell you just what happened there if you want to know.

Q. I will ask you whether or not you had any such conversation with them, either in your room or in any of their rooms, at the Merchants Hotel, in this city?

A. Won't you please repeat that question again?

Mr. ARCTADER. We will have the reporter read it from his minutes. Mr. Reporter, read the first and second questions.

The reporter read the last question but one to the witness.

The WITNESS. They were in my room at the Merchants Hotel, but I did not try to persuade them to testify against Judge Cox.

Q. Is it not a fact that in consequence of that conversation you had an altercation with William Burt, the sheriff of Martin county, in the hall of the House of Representatives, in which he called you a liar?

A. No, sir; he never called me a liar.

President Gilman here took the chair.

C. E. PATTERSON

was recalled.

Mr. Manager DUNN. The testimony of this witness is directed to article fifteen, general term of court in Lyon county, town of Marshall.

By Mr. Manager DUNN.

Q. You testified the other day in this case, I believe, that you were the clerk of court in Lyon county?

A. I didn't testify.

Q. You simply were sworn?

A. Yes, sir.

Q. Are you the district clerk of Lyon county?

A. I am.

Q. How long have you been clerk?

A. Since January 1879.

Q. Do you know Judge Cox?

A. I do.

Q. How long have you known him?

A. Personally since about that time.

Q. Were you present at a general term of court held in Lyon county in the month of June last?

A. I was.

Q. Will you state the condition of Judge Cox when he arrived in Marshall, if you saw him, as to sobriety. Did you see him when he arrived?

A. I don't remember to have seen him until in the court room, I may have seen him before, but I am not certain.

Q. State the condition of the Judge as to sobriety when he opened court on that day the first day of the term?

A. In my judgement he was intoxicated.

Q. Was he intoxicated when he chargeed the grand jury?

A. I think he was.

Q. And on through the day?

A. Yes, sir.

Q. What was his condition on the second day?

A. Very much the same.

Q. On the third day?
A. Well perhaps the latter part of the day, I could notice a change for the better.
Q. On the ninth day?
A. I should say under the influence of liquor to some extent, but not, perhaps noticeable to people generally.
Q. During the remainder of the term of court; what was his condition?
A. I hardly think that he could be called intoxicated.—

Mr. ARCTANDER. What is that?
Q. I hardly think he could be called intoxicated, I could hardly consider him intoxicated during the balance of the term.
Mr. manager DUNN. Well during the first, second and a part of the third day you would consider him intoxicated and after that he was better?
A. To the best of my opinion.
Q. Was there any action taken by the grand jury upon this point of of his intoxication?
A. I have no knowledge to that effect.
Q. Were there any papers presented by the grand jury that did not reach you as clerk of the court, that term?
Mr. ARCTANDER. We object to that as immaterial and irrelevant. It has already been ruled upon by the Senate. I understand, Mr. President, that the matter came up last Friday, when the question was put to the witness Sullivan, whether the grand jury passed any resolution affecting the Judge. It was objected to. and the chair sustained the objection, and held that it was not proper evidence; I object to it now as incompetent, immaterial and irrelevant.
Mr. Manager DUNN. The question is not now what their action was, but whether there were any papers presented by the grand jury to the court, which did not reach him as clerk of the court. The law provides that all papers shall go to the clerk.
Mr. ARCTANDER. We object to it as immaterial and irrelevant.
Mr. Manager DUNN. I do not wish to discuss it.
The PRESIDENT. I prefer to submit that question to the Senate. The reporter will please read the question. There may have been a ruling made by the Senate which the chair will abide by.
The reporter read the last question.
The PRESIDENT. The question to the witness is whether there were any papers presented by the grand jury that term which did not reach the witness as clerk. The counsel for the respondent objects, and the chair submits the question to the Senate, it having been alleged that there was some ruling made by the Senate.
Senator HINDS. I should like to ask the managers what they propose to follow this by. This question itself does not amount to much, but I should like to know what they propose to follow it by, if this question is answered.
Mr. Manager DUNN. We propose, if allowed, to follow this up by showing that there was certain action taken by the grand jury censuring the Judge for his intoxication, and that that paper never reached the clerk of the court, and is not a part of the record; that it was pocketed by the Judge, and never put on file, and therefore the files are bar-

ren on that point. Then, if we are allowed, we propose to show, by a duplicate or copy of it, jus t what that paper was, We propose to show it for this purpose, not to show that the Judge was intoxicated, but that whatever his condition was, it was open, notorious and public.

Mr. ARCTANDER. Mr. President, I ask leave to state upon this objection, that the ultimate object which the honorable manager, as he now states, seeks to reach by propounding this question to the witness, is one which the Senate has already ruled to be not proper, because the witness, Sullivan, was upon the stand, and was asked if the grand jury at that term took certain action in regard to Judge Cox. And it was then stated by the managers that they intended to follow it up and show by the witness, (who, as clerk of the grand jury, hadkept a copy of it) what the nature and contents of that resolution was.

The Chairman or President *pro tem*, (I think it was Senator Hinds, at that time) held, after full argument, that it was incompetent, for the reason that the action of the grand jury would not prove the intoxication of the Judge. Now, I claim that this would be merely hear say. It would not be a fact that would go to show anything; it would, therefore, not be competent, and it was so held by the Senate at that time. As to the claim that it showed his alleged intoxication to be open and notorious. I have only to say that if you oould show it in that way you could show it by common report. But it must be shown by witnesses that can come before you and testify that the condition of the Judge was open and notorious. You must have witnesses under oath, and not the assertion of persons who, to your knowledge, know no more about it than persons who were not there. I take it that we are to be convicted, if we are to be convicted at all, upon nothing but sworn testimony, and that you cannot bring in repute, either in the form of the actions of a grand jury, or in the form of talk upon the streets, for they would equally be the same thing.

Mr. Manager DUNN. Mr. Arctander, I will state that it has been suggested by one of my colleagues, that the witness, Mr. Sullivan, has gone home. I did not know that, and I withdraw my question, for I do not suppose we can reach him in time. I will withdraw the question for the present, unless I can reach Mr. Sullivan.

Mr. Manager DUNN. You may take the witness upon this article.

Mr. ARCTANDER. Mr. Peterson, you say that when the Judge opened court at the general term, I do not know that you have testified what time it was?

A. I did not, no, sir.

Q. What time was this that you are testifing to?

A. Well, it was not far from noon; I am unable to tell the time without reference to the record.

Q. No, I mean the day of the month or the year?

A. I think the 21st day of June, 1881.

Q. It was about noon when the Judge opened court there was it?

A. That is my recollection, something after noon.

Q. Right immediately after the coming in of the train?

A. I think so.

Q. What was there in his appearance or actions, at that time, that made you believe that the Judge was intoxicated?

A. My best explanation would be that it was not Judge Cox sober.

Q. That it was not what?

A. That it was not Judge Cox sober.

Q. Now, how did you come to that conclusion?
A. Well, in the first place in his swaggering way.
Q. Swaggering way? A. Yes, sir.
Q. Walking?
A. Walking and on the bench.
Q. Now, you mean to say that when he came there that he was staggering?
A. I did not say staggering, I said *swaggering*, and I consider there is a differance. When sitting on the bench he was reeling in other words.
Q. What?
A. Reeling around, not sitting erect, as he usually does upon the bench.
Q. Reeling around, not setting right? A. Erect.
Q. Did that exhibit itself in his walk at that time?
A. I can't say that I saw him walk at that time; I don't recollect of seeing him walk. The first I saw of him was on the bench when he came into court. I presume I saw him coming into the court room, but I cannot recall the circumstances to a certainty.
Q. Anything else but that swaggering?
A. Perhaps not at that time.
Q. You noticed nothing particular in his appearance outside of that?
A. Nothing definite, no sir; nothing that I could explain.
Q. Anything in his actions?
A. Not at the time court was opened; no sir.
Q. Not at the time court was opened?
A No, sir.
Q. Was there afterwards in the forenoon? A. Yes, sir.
Q. What was it?
A. An apparent confusion of ideas.
Q. An apparent confusion of ideas? A. Yes, sir.
Q. How did that exhibit itself?
A. The first that I recollect was in the issuing of second citizen papers.
Q. Well, what was it there?
A. In the first case, I think he called my attention to the fact that the applicant for second papers hadn't signed the record.
Q. Signed what? A. The record.
Q. Well, he hadn't, had he? A. He had.
Q. Had he signed it in the right place? A. He had.
Q. The Judge hadn't seen it?
A. The Judge was looking in the wrong place,, that is what I considered confusion.
Q. He was looking in the wrong place? A. Yes, sir.
Q. Where was he looking?
A. He was looking under the oath of witnesses, where the applicant's name appeared in the blank, where it is written by myself, and he was looking there. I had omitted to put his nam e there, but he had signed the blank.
Q. So that you hadn't filled out the name on the blank?
A. I had not.
Q. Wasn't it that, that the Judge called your attention to?
A. It was not, no, sir.
Q. It was a matter of fact, that there was some confusion in your way of filling up the papers, at that time; you worked at them in a hurry, some of them?

A. No, the papers were all made out.
Q. But it appears there was something left out there?
A. That was omitted.
Q. Now, you have got three or four—how many are there to sign in that record?
A. But one applicant, and two witnesses.
Q. On each leaf, you mean? A. On each page.
Q. Is the oath of the person making application, and the oath of the witnesses on the same page?
A. It is, I think; that of the witnesses coming first.
Q. The oath of the witnesses coming first? A. Yes, sir.
Q. And he looked at the place where the witnesses should have signed their names?
A. Just below that.
Q. They hadn't signed, I understand? A. They had.
Q. They had signed? A. Yes, sir.
Q. Now, he looked at the place where the applicant should have signed his name?
A. No, I didn't say that; excuse me. I say that he looked at the place where I should have filled in the applicant's name, and did not do it.
Q. And that is where he called your attention to the fact that you did not do it?
A. He called my attention to the fact that the applicant had not signed his name. He said: "This man has not signed his name;" that is his language, to the best of my recollection.
Q. You wouldn't say that this applicant's name had not been written in?
A. I have sworn to that positively, and do not retract. I say that he said that the applicant had not signed his name; that is my recollection.
Q. But you are positive he did not say the applicant's name was wrong; you are positive of that?
A. I am positive of that.
Q. But, as a matter of fact, the applicant's name was not written anywhere?
A. The applicant's name was where he had written it himself, and not in this place.
Q. But not introduced in the blank? A. Yes, sir.
Q. Anything else? A. Yes, sir.
Q. What was it?
A. A short time afterwards Judge Cox turned to me and said: "Now, boy, I have got you," after he administered the oath to some of the witnesses and applicants, and in this instance he made the remark to this effect, although I don't pretend to quote his language. The effect of the remark was that but one applicant was allowed on a page, or something to that effect; and then he called my attention to the fact that two had signed, and was pointing instead of the place for the signature of the applicant to this for the witnesses.
Q. He thought you had made a mistake there?
A. He thought there had been a mistake made there; that two applicants had signed, instead of one, on a page.
Q. You don't know whether, as a matter of fact, in the records of the other counties in his district, the name of the applicant, and the affidavit of the applicant come first, and the name of the witnesses afterward?

A. I do not.
Q. He administered the oaths to these men, you say?
A. Yes, sir.
Q. You didn't administer it? A. I did not.
Q. He administered that all right, did he not?
A. I noticed nothing different from the way he had administered it before,—nothing very particular; only that it was more hurried, as there was a necessity, of course, there being a good deal—
Q. There was a necessity for hurrying? A. Yes.
Q. Isn't it a fact that the Judge never administered oaths to witnesses or to applicants in your county, but that he simply addressed a question to them, as to whether they had known the applicant for five years, satisfied himself, and that you then administered the oath afterward?
A. I always understood that it was the oath; he would say you have known this party—
Q. I don't care—well, he would ask them in that way—you have known this party—wouldn't he?
A. Yes, sir.
Q. And for five years last past? A. Yes, sir.
Q. And one year last past in the State of Minnesota? A. Yes, sir.
Q. Now, did he ever say another word in that regard?
A. That was the substance in that regard.
Q. Now, then, he never swore anybody—asked them to hold up their hands and swore them at all, did he?
A. I wish, in justice to myself, to ask for a chance to explain in reference to that.
Q. Well, I think you can answer the question?
A. Well; I want to explain.
Q. Well, all right, explain.
A. I had no knowledge of this business until I was elected to office. When it came to administer—to giving second papers in this case, the first case I ever had—all these questions had been asked; I was busy at the time, and I turned to Judge Cox and asked if that was all that was necessary. He said that it was, that that was sufficient. I took it for granted that it was sufficient, that he had administered the oath, and, as the same form was practiced afterward. that was followed right there, I supposed that he administered all the oaths.
Q. Do you mean to say you aever swore those witnesses?
A. I mean to say it.
Q. That you never swore those witnesses at any of those times during this term of court?
A. I do, at any of the terms that Judge Cox presided.
Q. Now, was there anything else. We have got this naturalization business. I suppose you did something else there that afternoon?
A. I think there was something else that didn't seem to me just right.
Q. Before we get away from this, isn't there attached to every one of these naturalization records a jurat before the clerk?
A. There is.
Q. You signed all those, didn't you? A. I did.
Q. And never swore the witnesses? A. I did.

By Mr. Manager HICKS.
Q. You say you never did except at certain times?

A. While Judge Cox has presided, I have reference to. I have at other times.

By Mr. ARCTANDER.

Q. You certified to that—that you had sworn them? A. I did.

Q. Now, what else was there that afternoon?

A. There was some remark that Judge Cox made during the afternoon, or during some time of this proceeding.

Q. Well, what was it?

A. I remember he made a remark of one name particularly, that was quite a difficult name to pronounce, saying—my recollection of it is—calling me by my given name, he said: "The devil can't read this name; see if you can."

Q. That was in this naturalization business, was it? A. It was.

Q. He said that low to you, did he? A. Not very low; no, sir.

Q. Well, it was not so that it could be heard—not in such a voice as to be heard all over the court room?

A. In my opinion it was heard by some of the witnesses.

Q. The witnesses were near by, were they?

A. Well, they were perhaps twelve or fifteen feet from us.

Q. That was up at your desk, was it?

A. It was in the Judge's desk.

Q. He was sitting up on the stage, was he? A. Yes, sir.

Q. You were up there with him? A. Yes, sir.

Q. And the witnesses stood in front of him?

A. Yes, in front of him, as they would naturally stand.

Q. And you stood by his side? A. Yes, sir.

Q. And he turned around to you and said, "Charley, the devil himself couldn't read this name?

A. Yes, sir.

Q. Do you remember this man's name? A. No, sir; I do not.

Q. It was a jaw-breaking name, wasn't it?

A. Yes, sir; that is what I say.

Q. Judge Cox would often make jocose remarks to you, wouldn't he?

A. It is the only time I recollect, in court, making such remarks as that.

Q. Well, it was a side remark to you. It was a big hall where the court was?

A. Yes, sir.

Q. You think that possibly some of the witnesses might have heard the remark, but it could not have been heard beyond that?

A. I am quite certain that there was quite a good many heard it, or some, at least.

Q. But it was a remark addressed to you personally?

A. It was.

Q. Was it not a fact, Mr. Patterson, that Judge Cox has often made joking or jocose remarks to you, and that he is in the habit of doing it?

A. I don't know that I ever heard him use profane language or bad language while he was on the bench, except that day.

Q. Now, that is all that you remember out of the way in his language, actions, conduct, or behavior, during that afternoon.

A. Well, no, sir; I mean to say he said something else, that I considered somewhat out of place.

Q. Well, what was that,—in the same private affair,—about this

naturalization business, or anything that anybody else could have heard?

A. Well, it was during the affair, after; it was not said to me directly.

Q. Well, what was it?

A. I cannot recall the whole of the remark. I just remember of his saying something; I supposed in alluding to the foreigners.

Q. Cannot we get away from this naturalization? That didn't take up all the afternoon, did it?

A. Well, you asked me with reference to some particular time.

Q. Well I asked you with reference to the whole afternoon.

A. You said with reference to the whole affair; that is the way I understand the question.

Q. I wanted to find out anything in his actions that afternoon, from the time when he commenced court until he quit that evening ——?

Mr. Manager DUNN. Well, the witness is trying to tell it.

A. I understood you to say during this particular affair? Of course if you didn't ask the question, I don't want to answer it.

Q. Well if you don't recollect it——

Mr. Manager DUNN. Well, he says that he does recollect it.

Mr. ARCTANDER. He said he didn't.

Mr. Manager DUNN. No, he said he recollected it, and wanted to tell it, and you wouldn't have it.

Q. Well, tell it.

A. I don't want to tell anything except what is called for.

Q. Well, was there anything in his behavior, or his actions in anyway, shape or manner, that afternoon, that indicated that he was intoxicated, besides what you have been telling?

A. I don't remember anything outside of these remarks, and one other that was made during the issuing of these naturalzation papers.

Q. Now, let us have just what the other was, that you have been speaking about as something so horrid, as you remember?

A. He said, as I was about to say, as I supposed with reference to—

Q. Give us his language as near as you can; don't recite your understanding of it.

A. Well, I was getting at that, sir.

Q. Well, all right.

A. His language was,—as far as I can remember, he said something about a drove of cattle.

Q. That is all he said?

A. No, it is not all he said; that is all I remember. I remember there was something else, but that is all I remember; I remember catching that remark.

Q. That is all you can remember of what remarks he made, was just this expression "drove of cattle?"

A. Yes, sir.

Q. That was this afternoon, was it? A. Yes.

Q. During the naturalization business? A. Yes, sir.

Q. Was it that these folks acted like a drove of cattle, was that what he said?

A. It may have been.

Q. That they didn't know either, in or out?

A. What is that last question?

Q. That they didn't know in or out or how to proceed?

A. That may have been the substance of his remark.

Q. As a matter of fact they were crowding up, a dozen at a time, one after another, were they not?

A. No, sir; they were not. They were standing there all in a body, and came up as their names were called.

Q. Now, we have got that fearful thing. Was there anything else that afternoon from the time he opened court till he closed court that evening?

A. Nothing that I can fix particularly.

Q. He held a session that night?

A. I can't say positively. My recollection is that he did not that evening.

Q. Tried a case that afternoon?

A. I think the case was tried that afternoon.

Q. That was the case of Bradford against Bedbury, was it?

A. That is my recollection.

Q. Isn't it a fact that that afternoon, about thirty-eight citizens were naturalized by him?

A. I presume there were. I couldn't tell the number, but I presume there were that many.

Q. That would naturally bring about a double number of witnesses, besides that?

A. Pretty near, although some acted as witnesses for more than one.

Q. Now, isn't it a fact, when I refresh your recollection, that at the time when this naturalization was going on, that they crowded up on that side in great numbers?

A. They may have crowded up to that side, I presume they did; but they couldn't get up onto it, for it has an elevation of three feet.

Q. Isn't it a fact that every one clamored to get his particular case acted on first?

A. I don't remember that there was any particular clamor. They stood there, and came up as their names were called.

Q. And your books were interleaved with the first papers, in each and all of these cases?

A. They were.

Q. The grand jury were charged that same afternoon, was it not?

A. I think it was.

Q. You remember nothing particular in the charge of the grand jury?

A. Nothing very particular; I was busy at the time.

Q. You were busy at the time working? A. Yes. sir.

Q. Is it not a fact, that eight cases were disposed of, beside that jury case that was tried that evening?

A. I can't tell anything about it. I have no recollection of the number of cases that were disposed of.

Q. Don't you remember that a great number of cases were disposed of, continued, certified to other counties?

A. I don't remember about that. I remember that there were a great many cases certified to during the term, disposed of one way or another.

Q. I was talking particularly about the first day?

A. I have answered that to the best of my ability. I have not kept that in my mind at all; it is a matter of record.

Q. Now, during the trial of that Bradbury vs. Bradbury case,—who were attorneys in that case?

A. I think Forbes and Seward for the plaintiff; Matthews and An-

drews, or M. E. Matthews, for the defendant. I don't know whether Andrews appeared or not; I think he does appear as of record.

Q. That case was about the piano, replevin for a piano?

A. Yes, sir?

Q. Now, in this case of Bradford against Bedbury the Judge non-suited the plaintiff, did he not?

A. I think he did, yes, sir.

Q. At the time he non-suited the plaintiff or immediately before, do remember the Judge asking the attorney for the plaintiff, whether or not he had any more testimony, and his stating that he had not?

A. I remember of that question being put; whether it was in that case or not, I couldn't say. I think very likely it was in that case.

Q. Isn't it a fact, that that case came up again the 12th of August, when you were present, for settlement of the case?

A. Yes, sir, it is.

Q. Isn't it a fact that when that came up at that time, for settlement of the case that that portion was not put into the case, and that the Judge, at that time, called the attention of the attorney for the plaintiff to the fact that it was not inserted, and that the Judge stated the exact language?

A. It is.

Q. And referred to you to confirm him in the matter that he had so said?

A. Yes, sir.

Q. But you say, nevertheless, that you believe that at this first afternoon, in your judgment, Judge Cox was intoxicated?

A. I do.

Q. Have you always had that opinion?

A. To a certain extent I have; yes, sir.

Q. Isn't it a fact that you stated to Mr. M. E. Matthews, on the 12th of August, 1881, soon after this occurrence had taken place, in your office, in Mr. Wilcox's store, as follows: "I thought Judge Cox was drunk that last term, but now I am ready to swear that he was not, for no man could try that case in a drunken condition and remember like he, what he remembered as he has to-day;" or words to that effect?

A. I don't remember to have said anything of the kind to Mr. Matthews; that is, I can't say that I did.

Q. Will you say you did not? A. I will not.

Q. Did you not at that time, on that same day, tell Judge Cox so?

A. I did not. I can tell just what I did say to Judge Cox, if you would like it.

Q. I want to ask you now whether you did not tell Judge Cox, the day afterwards, that you went home that evening and spoke to your wife about it, and said that you might have been mistaken about thinking that he was intoxicated at that time, and that you were now convinced that he was not?

A. I presume I might have said something of that kind to Judge Cox. I did not, however, say that I considered that he wassober.

Q. Now, what you have stated here is all that you can state of the appearance, conduct, manner or language of Judge Cox, indicating in any way, intoxication that first day?

A. That is all that I can recall, yes, sir.

Q. As a matter of fact, for the last three or four weeks you have

talked this matter over and thought it over constantly and considered it, have you not, in regard to the public intoxication or sobriety of Judge Cox, at that term?

A. I have given it some thought, yes, sir, and talked with some people about it up at Marshall.

Q. And have exchanged ideas with other parties in regard to it and with witnesses down here?

A. Perhaps so, yes, sir.

Q. Now, this second day of the term of court do you remember anything there in Judge Cox's appearance that indicated that he was intoxicated?

A. I remember no particular time, no particular thing that occurred during that term only his general appearance, which I cannot describe.

Q. Was that appearance one of fatigue and weariness?

A. It might be the same, yes, sir.

Q. That is, he might have appeared as though he were fatigued and weary?

A. That is the appearance might, to a certain extent, yes, sir.

Q. Now, then the second day was there any difference in his condition as between the forenoon and afternoon.

A. Not that I can tell particularly.

Q. Nor was there any difference from the first day?

A. Nothing noticable, that I remember of.

Q. Was there anything about his eyes or hair that second day or the first day which was peculiar?

A. Judge Cox's eyes present a puffed up appearance when he is under the influence of liquor.

Q. I didn't ask you what they present when he is under the influence of liquor, I asked if you remembered anything of that appearance that day,—the first or the second day?

A. I don't know that I could tell particularly that day, no, sir.

Q. You don't remember anything particular about his face except an expression upon it that might be caused by fatigue or weariness and might have been caused by drinking.

A. It was certainly caused by drinking in my opinion.

Q Did you not state, a moment ago, that it might have been caused by fatigue and weariness?

A. I did not; I said he might have had the same appearance if he had been fatigued to a certain extent.

Q. Can you give us any item in which it would have been different if he had been drinking or if he had been fatigued or weary?

A. I can't remember; but when he would come in from recesses I would notice that his face would be flushed and puffed up.

Q. His face was puffed up after coming in at recesses?

A. His face was puffed up, and when he would come in, after recess, it was flushed and he would be nervous and excited.

Q. You remember that particularly as of the first and second days of the term, do you?

A. I remember it of the days he was there when I considered he was under the influence of liquor.

Q. Well, was it during the whole of the term?

A. Perhaps not the whole of the term.

Q. Now, isn't it a fact, that it was very warm up there at that time when he was holding court? A. It was very warm, yes; sir.

A. It was uncomfortably warm.

Q. And the room was uncomfortable, the windows gave a great glare, did they not? A. Yes, sir.

Q. There were quite a number of windows through which the sun was shining right into the room?

A. No, the sun did not shine into the windows, but it was light; the windows were right in front of us, I should think there were six large windows; the sun would shine in there only a short time in the morning.

Q. When you sat upon the stage wasn't the glare from the opposite side almost blinding, so that you had to move and disarrange the whole thing there? A. It was, yes, sir.

Q. You moved on the second or third day, did you?

A. I think it was on the afternoon of the second day; it may have been the third day; I know there was a change made.

Q. Was there anything peculiar in the Judge's conduct on the second day that you can remember?

A. Nothing that I can fix particularly, no, sir.

Q. Isn't it a fact that Judge Cox, both the first and second day, went on with the business in the usual manner, and in a very expeditious way? A. It is not a fact, no, sir.

Q. Then the fact is otherwise, is it?

A. The fact is otherwise.

Q. The fact is he did not expedite business in the usual manner?

A. He did not.

Q. Now, can you tell me in what he did not?

A. The recesses were most too frequent; that was the main trouble, I think.

Q. Now, isn't it a fact, that there are always recesses in Judge Cox's court, always a recess in the forenoon and one in the afternoon?

A. That is a fact, yes, sir.

Q. Were there any more recesses this time than usual?

A. There were.

Q. When were they, and who caused them?

A. Well, they were during the first three days of the term.

Q. Now, the first and second day how many recesses were taken?

A. I am unable to state definitely.

Q. Well, about how many?

A. I should think, perhaps, from six to twelve recesses.

Q. Those recesses appear in your minutes do they not?

A. They do not.

Q. They do not?

A. No, sir.

Q. You put down some recesses and did not put down others?

A. I did.

Q. What was the reason of that?

A. It was to screen Judge Cox.

Q. To what?

A. To screen Judge Cox.

Q. Is it not a fact, Mr. Patterson, that almost everbody that was in there during that term of court and especially during the three days,—the heat being so excessive, that the jurors and attorney's and everbody else, got sleepy.—that those recesses were taken for the purpose of giving them a little fresh air?

A. I don't know what the recesses were taken for. I have said it was very hot and uncomfortable there.

Q. Now on this first day when was the first recess taken?
A. I am unable to state, sir.
Q. When was the second recess taken.
A. I am unable to state that.
Q. When was the third?
A. I can't tell you.
Q. You can't tell us when the fourth, fifth, sixth, 7th, 8th, 9th, 10th, 11th and 12th, or any other was taken?
A. I can't tell you the time of any of the recesses except those that appear of record.
Q. Isn't it a fact that the first recess was after the Judge opened court?
A. You refresh my recollection, I think it was.
Q. Before charging the grand jury?
A. Yes, sir.
Q. What for?
A. He said to get his dinner.
Q. As a matter of fact he had come right up there from the train and opened court, and then he adjourned for half an hour to get his dinner?
A. I presume that he did.
Q. Now, isn't it a fact that the noon recess was not before 3:35 o'clock P. M., that day?
A. It may appear so from the record; I am unable to state.
Q. Isn't it a fact that recess was taken for the very purpose of naturalizing thirty eight citizens?
A. My recollection is that those citizens were naturlized at that time I preume they may have been naturlized at that time.
Q. Isn't it a fact that as soon as that was done the case of Bradford *vs.* Bedbury was called?
A. Perhaps, so.
Q. After a jury first having been empanneled and sworn before the recess?
A. I am unable to state about that.
Q. Now isn't it a fact that there was no other recess that day until 5 o'clock P. M., when a recess was taken until 7:30 A. M., the next morning?
A. I will say this: To the best of my recollection there were not two hours without a recess of some kind.
Q. Well, that was the two hours from 4:30 to 5 o'clock that could not have been more than two honrs?
A. No.
Q. After that Bradford-Bedbury case was disposed of, and when this recess was taken from 5 o'clock until the next morning state whether or not it was not because the attorneys interested in the case, were not ready to take it up?
A. I am unable to state in reference to that.
Q. Don't you remember the fact, that that case was disposed of quicker than it was expected?
A. I presume it was; yes, sir.
Q. Now, having refreshed your recollection as to that, don't you remember as a fact, that that was the reason the recess was taken at an unusually early hour, because the parties were not ready with their witnesses?
A. I don't recollect.

Q. The next morning the court met at 7:30, did it not?
A. I am not able to state without reference to the record.
Q. Well, isn't that your impression?
A. I presume it was about that time.
Q. Now, that being your impression, doesn't that strengthen your recollection in regard to why the adjournment was taken so early the afternoon before?
A. I think I didn't say it was my impression; I say it was not my recollection.
Q. 7:30 would be rather an early hour for court to meet, would it not?
A. Yes, sir; it would be an early hour.
Q. Now, isn't it a fact, that the next day the only recess that was taken, was from 9:15 until 10 o'clock?
A. I presume that is the only recess that appears in the record.
Q. Do you remember as a matter of fact of any other recess?
A. I remember that recesses were very frequent.
Q. I didn't ask you that; I asked you whether you remember as a matter of fact of any other recesses?
A. I don't, with reference to that particular hour, no, sir.
Q. Now, isn't it a fact that this recess was taken for the purpose of naturalizing some citizens again?
A. I am unable to state.
Q. You say you have got your records here with you?
A. They are at the Windsor hotel.
Q. If you had those you could state how many cases were disposed of, tried, etc., in each of those three first days, could you not?
A. I presume I can.
Q. I wish you would bring them here after dinner.
Mr. Manager HICKS. We will send a messenger for them now, and have them brought right over.
Q. Now, do you remember whether or not it was not a fact that in the case of Main as administrator, against the Winona and St. Peter Railroad Company a jury was empaneled before the noon recess?
A. I do not remember when it was empaneled. I remember that there was a jury empaneled, but I don't remember the time.
Q. Was there any delay of proceedings during those two days?
A. Only that caused by recesses; that is, I don't remember of there being any other.
Q. Don't you remember that, during those two or three days, it was a very frequent thing for attorneys to ask for five minutes' time to go to their office for books or papers, or someting of that kind?
A. I don't remember; that may have been done.
Q. Was the short-hand reporter there the first day?
A. I think not.
Q. When did he arrive?
A. Well, I can't say. He might have come the second day; perhaps not until the third; but I think he was there on the second day.
Q. C. A. Ware is his name, is it not? A. C. O. Ware.
Q. He remained there during the balance of the term?
A. I think he did; yes, sir.
Q. Now, don't you remember that in the ferenoon of the first day there was a jury case taken up and a jury empaneled and the case tried, or rather two of them?

A. I do not remember the cases that were tried, or any of them, or their order. I can remember the titles of cases, perhaps, but not the time they were tried.

Q. Now, do you remember any recesses except the usual recess in the afternoon?

A. Not that I can fix the time definitely.

Q. You don't remember how many cases were disposed of, or how many were tried, the second day?

A. I do not.

Q. Now, was there an evening session the second day?

A. I think not; there may have been.

Q. Now, on the third day, was there anything in the Judge's appearance, manner, or conduct which was peculiar?

A. Nothing different from what I have stated.

Q. You can give no instances where he seemed to be unable to go on with the business, or to conduct the business as usual?

A. I can give no particular instances where anything was different from usual.

Q. Was there this same swaggering in his condition the second and third day, too?

A. Yes, sir, it was.

Q. Was it so the balance of the term?

A. A portion of the term.

Q. During the greater portion of the term; wasn't it?

A. Well, yes, sir; I think so; the greater portion of the term.

Q. Isn't it a fact that after the third day, the Judge seemed to be more restrained?

A. Yes, sir.

Q. And constrained in matters? A. Yes, sir.

Q. And thoughtful? A. Yes, sir.

Q. Seemed more worried than he did before?

A. I don't know, I am sure about that, I don't know how he felt.

Q. Wasn't that the only difference?

A. The only thing that I noticed was that he appeared very differently. That is the best I can express it. I can't explain myself any more fully than I have done. He appeared more like Judge Cox.

Q. Isn't it a fact that during the latter part of that term, he appeared more dignified and restrained in his conduct in everything that he did, and more strict?

A. When I had seen him on the bench, at general terms before that, he had been dignified to a certain extent, during the trial of cases.

Q. Well, you didn't answer my question, whether or not he did not appear more dignified and restrained during the last part of the term, and after the third day?

A. I said that he did, yes, sir.

Q. You remember nothing extraordinary during the whole term of court do you?

A. No, sir; not that I can recall to mind now.

Q. Do you remember the fact of the irritation of the Judge at discovering that certain indictments had been stolen from your possession?

A. Yes, sir.

Q. That had been found by the grand jury? A. Yes, sir.

Q. You never saw such a scene in court before as you saw then, did you?

Q. Didn't the Judge rebuke you very severely?
A. No, sir; there was nothing very remarkable about the scene.
Q. Did he not animadvert very severely upon that whole transaction, in regard to the disposition of those indictments?
A. He remarked quite severely about it, but he said nothing direct to me until the next intermission or recess.
Q. Was that during the first or latter part of the term?
A. Well, it was during the fore part of the term.
Q. It was during the first week of the term?
A. I think perhaps the third or fourth day, that is my recollection of it.
Q. You had neglected to record them in the book of indictments—
A. I had no book of indictments to record them in at that time.
Q. Isn't it a fact that you had taken out a record book of indictments from the express office the day before?
A. It is not; no, sir.
Q. Now, at this time Judge Cox was sober, was he not?
A. I think he was.
Q. As a consequence of that it became necessary to summon a special venire of grand jurors, did it not?
A. Judge Cox did so; yes, sir.
Mr. ARCTANDER. We reserve our right to further cross-examine this witness, when the clerk's record shall arrive.
Examined by Mr. Manager DUNN. Was there anything in the Judge's charge, or anything in any of the remarks he made to you concerning it, which would indicate anything to your mind as to his intoxication?
A. Nothing during the charge, I think.
Q. Was there anything said by him to you during the charge or after it?
A. There was a remark made after the charge; yes, sir.
Q. Well, what was it?
A. The Judge asked me if it wasn't "a daisy of a charge," or something like that.
Q. Well, what was his manner of doing it?
A. I don't remember particularly, only that he leaned to one side. I was sitting at his right; he put his hand to his face, and my recollection is that he took this position (witness indicates), and said: "Ain't that a daisy of a charge!"
Q. Was it as soon as the charge was concluded, that he said that?
A. Very soon after; yes, sir.
Q. Was that an indication to you that he was sober or intoxicated.
A. I don't think Judge Cox would have done it if he had been sober.
Q. Do you remember the concluding sentence of Judge Cox's charge to that grand jury?
A. I do not remember any of the charge.
Q. Well, did this statement that he made to you, putting his hand up to his face in that way, follow immediately upon his concluding the charge?
A. It was very soon after,—I should think directly after. I am unable to state about that. It was very soon after.
Q. Do you recollect what you told him, as to whether it was, or was not?
A. I think I made no reply.

Q. Did Judge Cox ever address such a remark to you before, about his charge to the grand jury?

A. He did not; no, sir.

Q. Now, you stated in answer to questions on the cross-examination, that the Judge took frequent recesses; you stated that you did not record them, and you stated that you did not do so because you desired to screen Judge Cox. Now, what were you screening Judge Cox from?

A. Well, I thought that it would not appear very well of record if recesses were taken as often as they were without any apparent cause.

Q. Do you know where Judge Cox went; did he go out of the room during those recesses?

A. A portion of the time; I am unable to state whether he did all the time or not; I did not keep watch of him.

Q. How near was this court room to any saloon?

Mr. ARCTANDER. That is objected to as immaterial and irrelevant.

The PRESIDENT. The chair is of the opinion that the question is immaterial, unless it is shown that the respondent was visiting those saloons.

Mr. Manager DUNN. Well, I propose to show it.

Mr. ARCTANDER. I suppose, then, it would not be material how far it was.

Mr. Manager DUNN. It would be material to show whether he could get there during the time of the recess.

The PRESIDENT. If counsel proposes to show that he did visit the saloon, I am inclined to think the question is not objectionable. The witness may answer the question.

Q. How far was this court room from any saloon—a mile or half a mile?

A. Oh, it wes less than that. I am unable to state the distance; it was a short distance.

Q. A block, or two blocks?

A. I think there was one saloon in the same block and another one a block or a block and a half away, perhaps.

Q. Now, during that term of court did you see him in any saloon?

A. I can't say that I did.

Q. Or going in?

A. No, sir; I can't say that I did.

The PRESIDENT. Was there anything particularly noticeable about Judge Cox's charge to the grand jury, and if so, what was it?

A. There was nothing that I noticed particularly; I paid very little, if any attention to it.

Q. Did you pay any attention to his charge?

A. I did not; I did not pay any attention to the charge.

The clerk's record was here produced and handed to witness.

Examined by Mr. ARCTANDER.

Q. When was it that you so suddenly discovered or remembered about that "daisy of a charge?" You didn't remember that when I was asking you if there was anything in his language or conduct to make you think he was intoxicated?

A. It didn't come to my mind just at that time; no, sir.

Q. Who have yon talked with about that before?

A. I don't know that I have told any one outside of my family.

Q. You hadn't told any of the managers about it?
A. I had not.
Q. Is it not a fact that at this term of court there were about ten criminal cases and sixty-one civil cases on the calendar?
A. There was a very large calendar. I am unable to give the number of cases without reference to the calendar. I presume there were sixty or sixty-five, maybe seventy cases in all.
Q. As a matter of fact, all of those cases were disposed of except the usual number which is generally continued, etc., because parties were not ready for trial, etc.?
A. Yes, sir.
Q. Were there not during that term of court?
A. Yes, sir. Some of them had been settled before the term began.
Q. But the great majority of them were tried or disposed of in one way or in another?
A. They were disposed of by trial or continuance; yes, sir;
Q. How long did the term last—how many working days?
A. I think there were fourteen days of actual session.
Q. There was no adjournment over, except for the 4th of July, was there?
A. No, sir; there were two Sundays and the 4th of July. I think there were—
Mr. Manager DUNN. Look at your books and see.
The WITNESS. (After looking at his record.) "2 o'clock P. M., June 21st, the court was opened,"—which was on Tuesday. The next Saturday there was a recess taken until Monday, at 1:30 P. M.; the next Saturday a recess was taken until Tuesday, the 4th of July coming upon Monday, or at least the celebration being on that day.
Q. Judge Cox went off to make an oration that day, did he not?
A. I heard so.
Q. And when did court finally adjourn?
A. July eighth, at 9:40A. M.
Q. Now, turn to the first day. It appears from your minutes that court opened at 2 o'clock P. M.?
A. Yes, sir.
Q. The Judge then ordered you to call the grand jury, did he not?
A. He did; yes, sir.
Q. Now, at 2:15, he took a recess for thirty minutes for dinner, did he not?
A. It doesn't say for dinner; it was a recess.
Q. I ask you not from your book, but from your recollection; when he said he wanted to go and take dinner?
A. I know he made that remark; I think very probably at that time.
Q. As a matter of fact, the train came in there at shortly before two o'clock, did it not?
A. I think the train was due at that time, at 1:20.
Q. Now, at 2:45 P. M. the court convened again, did it not?
A. Yes, sir.
Q. And the Judge charged the grand jury, and they retired at 3:15?
A. Yes, sir.
Q. The next thing that was done was to call the petit jury, was it not?

A. Yes, sir.
Q, The list ot the petit jury I mean? A. Yes.
Q. State, whether or not, immediately after that the county attorney did not bring up the case of the State against David Bell, and move the forfeiture of the recognizance?
A. Yes, sir.
Q. That matter was considered and decided, was it not?
A. I suppose so; yes, sir.
Mr. Manager DUNN. Well do you know that from the books?
A. It shows so from the books.
Q. Now, during the hearing of that motion you noticed nothing peculiar or out of the way with Judge Cox, did you?
A. Nothing further than I have stated; no, sir.
Q, Now, the next ease called up was the case of Horton against Gitts on the civil calendar, was it not?
A. Yes, sir,
Q. That case was dismissed, was it not?
A. Dismissed without costs.
Q. The next case called up was number 2 on the civil calendar, was it not?
A. Yes, sir.
Q. The case of Bradford against Bedbury? A. Yes, sir.
Q. At that time a jury were called and sworn? A. Yes, sir.
Q. Then it appears from your book that at the hour of 3:35 P. M. there was a recess of ten minutes taken, does it not?
A. Yes, sir.
Q. Now, immediately after that entry about the recess, it appears from your book that thirty-eight citizens were naturalized.
A. There is quite a list of them here. I presume there were that many, yes, sir.
Q. You may count them over and see.
A. I make it thirty-eight.
Q. Now, the next entry in your book after that is, "4:30 P. M. Jury called in number two," is it not?
A. Yes, sir.
Q. Court convened at 4:30 again? A. Yes, sir.
Q. Now as a matter of fact, all this conversation you testified to, was during the recess,—the naturalizations took place during the recess?
A. Yes, sir.
A. And this conversation you testified to, when I cross-examined you before, took place all of it during the recess?
A. I did.
Q. Do you remember, whether or not, any more time was spent in anything else except in naturalizing those thirty-eight citizens between 3:35 and 4:30 P. M.
A. I wouldn't state.
Q. That is a reasonably short time for getting through that number of naturalizations, is it not?
A. I presume so; yes, sir.
Q. The Judge looked the proofs all over, I suppose?
A. He looked over their first papers, etc.
Q. To see if they were all right and correct?
A. Not so carefully as he had done sometimes.
Q. I am asking you if he did not do that?

A. I don't think that he did all of them.

Q. I didn't ask you how carefully he did it. You don't think he did it at all, do you?

A. I think he did some of them.

Q. You wouldn't swear that he didn't all of them?

A. I swear to the best of my recollection that he did not.

Q. Some would come on first papers and some on soldier's discharge, would they not?

A. I presume so. The most of these, however, I think, were on first papers. I should judge by glancing at this list that nearly all of them were on first papers.

Q. Now, at 4:30 P. M., when this jury case was called, the plaintiff opened his case and introduced his testimony, did he not?

A. Yes, sir, I think he did. I think so because it is a matter of record in one of the files, though it does not appear so here.

Q. It is your recollection that the plaintiff opened his case and introduced his testimony, and rested?

A. I have no recollection about it. The entry here in the book is as I understood it at the time.

Q. That entry is your minute, as you understood it at the time?

A. It may be so.

Q. You have got it there that it was a judgment on the pleadings instead of a nonsuit of the plaintiff?

A. That is the way I understood it at the time. Yes, sir.

Q. During the trial of that case there was nothing you noticed particular in the Judge's behavior, conduct or language that would show that he was intoxicated, was there?

A. I think there was one thing.

Q. Well, let's get it.

A. Mr. Mathews was not ready for trial. He claimed there had been no preliminary call of the calendar, and he objected to going to trial at that time. Judge Cox insisted on going to trial at once. The other attorneys were willing, and consequently a jury was called, really without the consent of Mr. Mathews. He was attorney for defendant. He claimed all the while that there had been no preliminary call of the calendar made, and that he was, consequently, not ready for the trial of the case.

Q. Didn't the Judge tell him he was not going to make any preliminary call of the calendar?

A. I don't think he did. That is the only thing I remember which, in my opinion, was out of the way; but I don't swear positively that was this case, although it is my impression it was.

Q. The Judge told him he had to go on with it anyhow?

A. Something to that effect; yes. He turned to me and told me to call the jury at once.

Q. Now, is it not a fact the Judge proceeded that day with the call of the calendar from the top down, in this way: Number One; that one was settled; and then he called Number Two. and both parties announced themselves ready for trial, and then he turned to you and said, "Mr. Clerk call the Jury?"

A. I presume he did.

Mr. Manager DUNN. I object to any further cross-examination upon court records. I can't see any legitimate bearing it has upon our direct examination. He is now making him his own witness upon the records of the court.

The WITNESS. I would as leave explain.

Mr. ARCTANDER. The witness has stated that Judge Cox was intoxicated during the first three days. I think we have a right to call up these different matters that were before the court there at that time in order to show what business was transacted, and what was done, and it is for the Senate to judge whether or not the business was transacted in a proper manner. Another thing, I think we have a right to show wherein the Judge showed himself intoxicated, and we have a right to go through every case that was up during these three days in order to show that the witness knows nothing about this intoxication. He has stated that he remembers no particular case. We have now the right to call his attention to every case that was up, and find out if there was anything particular out of the way with the Judge at any time. We have the right in the first instance to show by this witness that the Judge was not intoxicated and that there was no actions upon his part to call for any such conclusions on the part of the witness. We offer it secondarily for the purpose of laying the foundation to show by other witnesses that what this witness claims took place during the trial of any of these cases, was proper and correct. I think it is proper cross-examination upon his statement as to the Judge being intoxicated during the whole of those three days. For instance in the Mathews case, We claim that we are prepared to prove there was no such remark made by the Judge or Mr. Mathews as this witness gives.

The PRESIDENT. He does not testify positively as to that. He stated he would not swear it was in connection with that case.

Mr. ARCTANDER. I know that, but whether he testified positively or not, it goes out here as an inference and we have a right to contradict it if we see fit. This witness has given his opinion as to the condition of Judge Cox for three days in a manner that does not go into detail at all, but simply creating a general impression that the Judge was intoxicated during those three days. Now, I claim we have the right to call the attention of the witness to every matter of business that was up before the Judge on those days, in order to see whether he can show any particular acts, facts or circumstances going to show that the Judge was intoxicated at that time. One purpose is to test the knowledge of the witness; another is to lay a foundation to show that what the witness bases his opinion on is false.

Mr. Manager DUNN. I make no question, may it please the court, upon the propriety of the cross-examination, to test the recollection of the witness as to the matter that he has testified concerning wherein he gives his general opinion; but it strikes me, that they have gone over that whole ground and have examined him generally (as general as was the examination-in-chief upon these matters,) that there ought to be some limit by the court, beyond which they should not be permitted to go. I make this suggestion for the purpose of economizing time. Counsel may take that book and examine this witness for four hours, and ask him about every particular case, as he has been doing at that term of court, and consume a half a day upon a matter which ought to be gotten rid of in ten minutes. I am making this suggestion in the interest of the economy of time not only in the interest of the Senate, but also of the whole State.

Mr. ARCTANDER. Another ground upon which it would be proper to introduce this testimony is because the witness has sworn almost in wholesale, as you might say, as to these recesses; he claims that he has

not even entered them in his book—for the purpose of "screening" Judge Cox. Now I claim it is proper for us to show what was done. If we can show from these records why the recesses were taken, it is proper for us to do so; so that we may call witnesses and have them testify whether or not it is true, as this witness says that he, to screen Judge Cox, has not put the recesses down.

Mr. Manager DUNN. But the evidence of these recesses was not adduced by the examination in chief, it was a matter which was adduced as a part of the cross-examination. He is cross-examining this witness upon his own cross--examination.

The PRESIDENT. The chair is of the same view as that taken by Mr. Manager Dunn. The witness has, in the opinion of the chair, made himself sufficiently clear for the comprehension of the court on all those points regarding which he testifies; and the chair is of the opinion that an unreasonable length of time is being consumed upon comparatively unimportant matters; at the same time it is not the desire of the chair, nor perhaps its right, to cut off the counsel for the defense from making his cross-examination. If it is the pleasure of the court to listen to an extended examination upon all these minute details, the chair is also willing to listen to it. It does however seem to the chair, to be going to some unreasonable length.

Mr. ARCTANDER. I think we shall show the President and the court, when we come to our defense, that these matters are of great importance and very material.

Mr. Manager DUNN. It is a matter of defense and not a matter of cross-examination.

Mr. ARCTANDER. I will state to the court, that I do not intend to take up certainly over an hour in the whole of this.

The PRESIDENT. The chair is not ruling as to any particular question that has been asked, but giving its view in a general way as to an extended examination.

Senator D. BUCK. Mr. President, the remark which the President made might mislead some. I desire to call the attention of the court to the fact, that it is laid down in the authorities that the court may limit the cross-examination.

Mr. ARCTANDER. I don't suppose anybody disputes that, when it appears that it is a cross-examination merely for the purpose of killing time.

Mr. Manager DUNN. That is just what this cross-examination seems to be for; for the purpose of killing time.

The PRESIDENT. The counsel will proceed and will endeavor to keep himself within the reasonable limits of cross-examination.

Q. Will you please state whether or not it is a fact, after the disposition of that case, that eight cases were taken up and disposed of in some manner or other, without a jury trial.

Mr. Manager DUNN. I would suggest, Mr. President, in order to shut off this cross-examination, that the clerk be ordered to make a copy of those minutes at the expense of the State. It can be done for two or three dollars, and it will save this Senate an hour's examination here, at an expense to the Ssate of fifty dollars at least.

The PRESIDENT. What was the last question asked?

Mr. ARCTANDER. I asked the witness whether or not it was not a fact, that after that jury case was disposed of that afternoon, eight cases were taken up and disposed of without calling a jury?

The PRESIDENT. You may answer that question.

The WITNESS. It is a fact; yes, sir.

Q. Isn't it a fact that there was an adjournment at 5 o'clock, until 7:30 A. M., the next day?

A. It is.

Q. In the morning at 7:30 the case of Rascher vs. Williams was taken up and a jury empaneled?

A. Yes, sir.

Q. Two cases were disposed of without calling a jury, were there not, in the morning session?

A. Yes, sir.

Q. Then case No 4, on the civil calendar Wakefield against Edwards, —was taken up, and a jury empaneled?

A. Yes, sir.

Q. Then two more cases were disposed of without a jury upon argument were there not?

A. Yes, sir.

Q. Now, then, the first recess that appears in your book, that day, is at 9:15, is it not,—a recess until 10 o'clock?

A. Yes, sir; it is.

Q. And during that recess it appears that eight citizens were naturalized does it not?

A. It does.

Q. During the two trials of Wakefield against Edward's and Racher against Williams did you notice anything particular about the conduct of the Judge that you can recollect?

A. Nothing that I can recollect particularly, no sir.

Q. After the recess at 10 o'clock there was one case taken up and disposed of without a jury, was there not?

A. Yes sir.

Q. And then the case of Main vs. The Winona & St. Peter Railroad Company was taken up and a jury empaneled?

A. Yes, sir.

Q. The noon recess appears right after the empaneling and swearing of that jury at 10:55 does it not?

A. It does.

Q. That recess was until 1 30 P. M., was it not? A. Yes, sir.

Q. Do you remember why that recess was taken? A. I do not.

Q. Isn't it a fact the witnesses were not present at the time?

A. I am unable to state.

Mr. Manager COLLINS. Now, Mr. President, it seems to me it is taking too much time for this matter.

Mr. ARCTANDER. I will be through in the time it would take you to get through.

Mr. Manager COLLINS. Well, I propose to interpose my objection at this time, whether you are through or not. The counsel is taking up a great deal of time unnecessarily.

Q. At the afternoon session that Main case was taken up, and evidence introduced and tried, was it not?

A. It was; yes, sir.

Q. After that case had been disposed of, there were six cases disposed of without a jury, were there not?

A. There were three indictments presented at that time, and the criminals were arraigned, and two civil cases disposed of without a jury.

Q. Your first recess that afternoon, as appears by your record, was at 4.25, was it not?

A. I think it is; yes, sir.

Q. Before that recess a jury was called and empaneled in the case of the State against Farrington?

A. There was.

Q. That recess was taken, and the jury excused until 7:30 that evening, was it not?

A. Yes, sir.

Mr. Manager DUNN. Why not let him read the record right through, and let the reporter take it down?

Q. At 7:25 the case was tried; and submitted to the jury before you quit that evening?

A. Yes, sir; it was.

Q. And a recess was taken until eight o'clock in the forenoon of the next day?

A. A recess was taken until 8 o'clock, and at 8:15 the jury came in with a verdict.

Q. The court convened the next day at the hour to which it had been adjourned.

A. It appears so; yes, sir.

Q. And three cases were disposed of without a jury upon argument &c.?

A. Three cases were disposed of, yes, sir.

Q. Now, at 9 o'clock the jury was empaneled in the case of Lindsley against the Winona & St. Peter Railroad Company, was it not?

A. It was

Q. The grand jury came in and were discharged at that time, or immediately thereafter?

A. Yes, sir.

Q. And immediately thereafter is the first recess you have got in your minutes that day, is it not?

A. Well, here is a recess; I don't remember with reference to that.

Q. It was at 9 o'clock that the grand jury were discharged?

A. The hour is not given.

Q. Now, that recess was taken for the court to issus court scrip to the grand jury?

A. Yes, sir.

Q. Immediately after that recess, the trial of the case of Lindsley against the Railroad Company was resumed, was it not?

A. Yes, sir.

Q. And does there appear any recess before 11:45 that forenoon?

A. No, sir; I think not.

Q. That recess was taken until 1:30 wasn't it?

A. It was until 1:30.

The PRESIDENT. The chair would inquire what is the object of these questions; the witness has testified that in adition to the recesses noted on the record, there were several others of which he made no note.

Mr. ARCTANDER. That is just the raeson; no recesses were noted on the record, and I am prepared to show that there were no recesses there.

Mr. Manager DUNN. Well, why don't you put in the record with his evidence

Mr. ARCTANDER. Well, I don't care to put in the record. I shall soon be through.

Q. During the rest of the trial of the case of Lindsley against the Railroad Company, there was no act or conduct on the part of the Judge, to indicate that he was intoxicated, was there?

A. Nothing special.

Q. In the afternoon at 1:20, when the court convened, there were four cases disposed of without a jury, were there not?

A. Well, hardly disposed of. In the first one, there was an affidavit for a change of venue.

Q. And then argued and denied? A Yes, sir.

Q. And pleas interposed? A. Yes, sir.

Q. And the case of Linsley against the Railroad Company was further proceeded with, and evidence introduced, was it not?

A. Yes, sir.

Q. Now, the only recess you have got noted that afternoon, is at 3:45, is it not?

A. 3:45 until 7 P. M.

Q. At 7 o'clock P. M., that Lindsley case was further proceeded with, and witnesses examined, was it not?

A. Yes, sir: it was.

Q. And when adjournment came, there was a recess until 7:30 the next morning?

A. Yes, sir; 7:45.

Q. These proceedings to which I have called your attention, were on the first three days of the term?

A. Yes, sir.

Q. Mr. Patterson, is it not a fact that it is a very difficult matter to draw the line between when Judge Cox is sober and when he is intoxicated, on account of his excentricities, etc.?

A. I think it is; yes, sir.

Q. It is a fact, is it not, that you testified before the House committee, upon being asked as to what his condition was, that it was a very hard matter to draw the line when he is sober and when he is under the influence of liquor?

A. I presume I did; I don't remember particularly.

Q. You are of the same opinion still, are you not?

A. I am; yes, sir. That remark was made, I think, with reference to those not acquainted with him more particularly.

Q. You did not so state, did you, at that time?

A. I don't remember. That is what I had in view, if I said anything of the kind.

Examined by Mr. Manager DUNN.

Q. Have you had any difficulty, with your knowledge of Judge Cox, to draw the line between his sobriety and intoxication?

A. I have no difficulty in drawing the line of sobriety, and being under the influence of liquor, I think.

Q. Well, what do you mean by intoxication?

A. Well, to such an extent that it would be noticeable to any person whether acquainted with him or not. That is what I mean more particularly by intoxication.

Q. Well, do you wish to have the inference conveyed to this Senate that you find it difficult to tell whether he was intoxicated or sober on account of that fineness of the line on those three days?

A. I do not; no sir.

Q. Mr. Patterson, were you present in Marshall at about the 30th of September?—

Mr. ARCTANDER. What charge is this under?

Mr. Manager DUNN. Specification 5, of article 17.

Q. September 30, 1880, at the time when Judge Cox was present; was there a special term there about that time?

A. I think not.

Q. Look at your record. (Witness examined his record.)

A. Yes, sir.

Q. There was a special term of court there, was there?

A. There was.

Q. Can you tell the condition of the Judge during that special term, or any portion of the time?

A. I don't remember with reference to the particular day. I remember that on that day he was under the influence of liquor to some extent.

Q. On the 30th day of September?

A. Yes, sir, on the 30th of September. I remember it now that I have refreshed my memory.

Examined by Mr. ARCTANDER.

Q. Was that while he was in court?

A. He was in the court room but very little that day.

Q. You wouldn't swear that the Judge was under the influence of liquor when he was transacting business in court there that day?

A. I think he must have been; yes, sir.

Q. Will you swear that he was?

A. I cannot swear that he was, because, as I say, I don't have any recollection particularly as to the time in court.

Q. Have you got your minutes of that court here with you?

A. Yes, sir.

Q. The calendar, I mean? A. Yes, sir.

Q. Let me see that calendar. (The record was shown to Mr. Arctander.) Where was the court held that day?

A. My recollection is that it was held in J. W. Blake's office,—a justice of the peace; I only remember from the cases; I am not certain about that.

Q. There was nothing done there except the argument of two motions, was there?

A. That was all that was done in the court room that I remember.

Q. The case that came up that day was McCormick and others against Reuben Peasely?

A. That is one of the cases.

Q. And the other was French against Minick?

A. I presume so.

Q. Now I will ask you if you remember what attorneys appeared in the first case?

A. I presume that Forbes & Seward appeared for plaintiffs. My recollection that M. B. Drew appeared for defendant.

Q. Do you remember whether Mr. Forbes or Mr. Seward was there, or both?

A. I do not.

Q. Have you any recollection at all, of anything going on at that term?

A. I just remember of a recess being taken that day.
Q. To go to the republican convention?
A. That is all that I remember definitely about that.
Q. Court was adjourned for that purpose?
A. Yes, sir.
Q. To allow you to go to the republican convention?
A. To allow those that wanted to go.
Q. You don't remember what the proceedings were in McCormick against Peasely, do you?
A. I do not.
Q. Nor you can't say whether or not Judge Cox was intoxicated during the hearing of that motion?
A. I can't say positively that he was.
Q. Do you remember what time of the day it was that that term was held?
A. I do not.
Q. Do you remember anything about the case of French against Minick?
A. I do not.
Q. Do you remember what attorneys were present?
A. I don't remember that.
Q. But you are certain that this time was the same time when the court was adjourned at the request of the attorneys for the purpose of allowing some of them to attend the republican convention?
A. That is my recollection; I am not certain of it.
Q. And your statement we are to take only for this, then; that you remember that sometime during that day the Judge was under the influence of liquor, but you can't tell whether it was before or after or during the term of court?
A. I can't tell whether it was before or after; I have an impression that it was during the recess, but it is only an impression. I can't state positively.
Q. The court was not resumed again that day, was it?
A. I am unable to state sir. I should presume that the business was really settled.
Q. There was no recsss except an adjournment of the court?
A. I think it terminated in an adjournment; I think I was in there at the time; I understood it was to be a recess, and I am of the opinion that the court was not called again.
Q. As far as you know, all the business was transacted and done with at that time?
A. Yes, sir.
Q. Do you remember whether Mr. Matthews was present there?
A. I do not.
Q. His office is right by that of Mr. Blake, is it not?
A. It was not.
Q. Wasn't it then? A. No, sir; it is at present.

Examined by Mr. Manager DUNN.
Q. Do you remember whether one Mr. Pierson was naturalized at that term of the court?
A. No, sir; I don't. He was before Judge Cox.
Q. Was there any difficulty between him and Judge Cox?
Mr. ARCTANDER. We object to that as not proper re-direct examination.

Mr. Manager DUNN. I withdraw the question.

Senator CAMPBELL. I suggest that it is time for a recess.

The PRESIDENT. The time for recess has arrived and the court will therefore take a recess until half past two this afternoon.

AFTERNOON SESSION.

Senator RICE in the chair as President *pro tem.*

W. G. HUNTER,

Sworn and testified.

Mr. Manager COLLINS. We will examine Mr. Hunter upon specification one, of article seventeen.

Q. Mr. Hunter, where do you reside?

A. Marshall, Lyon county.

Q. How many years have you lived there?

A. I have had my residence there since 1872.

Q. In 1878 did you hold any office there, and if so, what?

A. I held the office of deputy sheriff.

Q. Are you acquainted with Judge Cox? A. I am.

Q. Did you know him in 1878? A. I did.

Q. I now desire to call your attention to November 7th, 1878: did you see Judge Cox at Marshall on that day?

A. I am not positive as to the exact day, but I saw him about that time; I think it was the 7th of November.

Q. Can you tell us the proceedings, if any were had, at that time?

A. There was a supplemental proceeding against Robinson and Maas by the Cleveland Co-operative Stove Company.

Q. The Cleveland Co-operative Stove Company against Robinson and Maas, supplemental proceedings?

A. Yes, sir.

Q. Judge Cox held court there? A. Yes, sir.

Q. Who was presiding during the hearing of these proceedings?

A. He was.

Q. Whereabouts in the village of Marshall were these proceedings held?

A. They were held in the lumber office of Horton & Hamilton, and William Todd held his office of Justice of the Peace in the same building.

Q. These proceedings were had in that office? A. Yes, sir.

Q. Did you see Judge Cox that time? A. I did.

Q. You may state his condition, while engaged in these proceedings, as to sobriety?

A. I think that he was slightly under the influence of liquor, or he was under the influence of liquor shortly after the court opened, after the noon recess, and I think the longer he sat there, the more he showed the influence of the liquor.

Q. Can you tell us about what time in the afternoon the court adjourned and took a recess?

A. It was about 3 o'clock that the court took a recess until six.

Q. What was his condition at that time, at three o'clock?

A. I should judge he was considerably under the influence of liquor.

Q. And the court took a recess till 6 o'clock? A. Yes, sir.

Q. Now, did you see the Judge at six or about six?
A. I saw the Judge at about ten minutes before six o'clock.,
Q. Whereabouts.
A. It was on the end of the bridge, near where the proceedings were being held.
Q. Did you have any conversation with him at that time?
A. I did.
Q. You may state what was said,—what you said, what he said?
Mr. ARCTANDER. That is objected to as immaterial, incompetent and irrelevant.
Mr. Manager COLLINS. That has already been ruled upon by the Senate.
Mr. ARCTANDER. I think not.
Mr. Manager COLLINS. Most certainly it has, in a case in which a sheriff was being examined as to what was said at New Ulm.
The PRESIDENT *pro tem.* You may proceed.
Q. State the conversation?
A. I met Judge Cox on the end of the bridge, and the first word he said to me was, he says, "God damn you, why didn't you open that door?"
Q. How far were you from the office at that time?
A. I was about as far as from here to the opposite side of the room. He repeated that and said: "Open that door or I will smash it in."
Q. To what door did he refer?
A. He pointed towards the door of the office.
Q. Was this in daylight or in dark?
A. It was daylight—it was not dark.
Q. How many times did he tell you to open that door or he would break it in.
A Well, I should judge he repeated it three times.
Q. What did you say?
A. I told him that I had not the key, but Will. Todd had the key; he had gone to supper and would be back.
Q. What did he say to that?
A. I think that he repeated what he said before—for me to open the door or he would smash it in. After I had told him that Will. Todd had the key—
Q. I believe you gave his language once; repeat that—repeat his words as near as you can.
Mr. ARCTANDER. That is objected to. It has already been given, and it doesn't make it stronger to say it over again.
Q. Did he use the same language each time?
A. I think he did; that is, he didn't tell me when he first spoke to me—he didn't tell me that he would smash the door in unles I opened it, but he told me to open the door, and I think it was after I told him that Will Todd had the key, that he told me to open the door, or he would smash it it.
Q. Using any profane language? A. He did.
Q. As you have stated? A. Yes.
Q. Now, Mr. Hunter, won't you state his condition as to sobriety at that time?
A. I should think the Judge was very drunk. I would state that he was, to the best of my knowledge.
Mr. Manager COLLINS. Take the witness on that.

By Mr. ARCTANDER.
Q. Was this the day that Judge Cox came up there.
A. I couldn't say.
Q. You don't know what day he came there?
A. I do not.
Q. Or what time the day he came?
A. I do not, for the reason that I had nothing to do with the court, until about 11 o'clock, after my brother had gone to Tracy, the sheriff.
Q. About 11 o'clock?
A. I think it was about 11 o'clock; I am not positive.
Q. Had the Judge got there at 11 o'clock?
A. I couldn't say; I say I am not positive whether it was at 11, or whether I had anything to do with the proceedings until after the noon recess.
Q. Had there been any noon recess at all?
A. It is my impression that there had.
Q. Isn't it a fact that Judge Cox didn't get there until 2 o'clock, and then went into court at three?
A. I don't know.
Q. Do you know of there having been any proceeding before that time?
A. No, sir; I am not positive.
Q. Before 3 o'clock when you came into court, or into this office, rather?
A. Shortly after noon there was.
Q. Was this the time when you say that there was a recess taken at three o'clock?
A. Yes, sir.
Q. Was this the first time that you came into the office?
A. Shortly after noon was the time that I had been in there, that I remember of.
Q. Did you find the Judge there? A. He was there.
Q. Were they doing anything? A. Yes, sir.
Q. What were they doing?
A. Well, they were carrying on this proceeding.
Q. Well, what did the Judge do?
A. He sat there in the chair.
Q. What did the others do?
A. They were talking. I am not much of an attorney, and I cannot remember the words they used; only I know that this was the proceeding.
Q. Were they examining any witnesses?
A. I don't remember of a witness being examined.
Q. Were they making any arguments? A. They were.
Q. They were making arguments? A. They were.
Q. And this was at 12 o'clock, was it, or at eleven o'clock?
A. It was after noon.
Q. It was after noon?
A. Yes, sir.
Q. It was about the time—it was about 3 o'clock when you first came in there, was it?
A. No, sir; it was not.
Q. What time was it?
A. It was between 12 and o'clock 2 sometime.

Q. Between twelve and two when you came in there? A. Yes, sir.
Q. How long a time did you stay there?
A. I stayed there until 3 o'clock.
Q. What did you do after that?
A. I went over to the house, and went to work.
Q. What business had you there at that time?
A. I was attending, sitting there in the court room, so that if there was anything needed I would be there for that purpose.
Q. Was that the court room?
A. I considered it the court room, at that time.
Q. Had the Judge ordered you to stay there? A. No, sir.
Q. Had the clerk ordered you to stay?
A. Not that I remember of.
Q. There was no term of court, general or special, was there?
A. It was not a general term.
Q. It was not a special term, either?
A. I understood it to be a special term; that is, a special proceeding.
Q. A special proceeding? A. Yes.
Q. You didn't understand it to be a special term of court?
A. That is what I should term it, being ignorant of what it should be called; it may have been a term of court, but that is what I should term it.
Q. Do you know that the Judge came up there simply to hear this supplemental proceedings?
A. That is what I understood.
Q. That is all you understood he came up there for? A. Yes.
Q. That is all he did, as far as you know?
A. That is all he did, as far as I know.
Q. You know of no notice being posted of any special term?
Mr. Manager HICKS. We do not say that it was a special term.
Mr. ARCTANDER. I want to test the knowledge of this witness as to what he is swearing about,
Mr. Manager HICKS. He does not say it was a special term.
Q. Do you know what was the cause of that recess from 3 to 6?
A. Yes, there was some mistake made in the sheriff's return and that return had to be amended, or as I understand it—
Q. In other words they had to send for the sheriff, and get him there to come and amend his return.
A. Yes, sir, to amend his return.
Q. Now, sir, that was discovered immediately on the first proceeding, before there were any proceedings had?
A. I heard nothing of it until a few moments before three o'clock.
Q. Well, they had been doing nothing at all before that time?
A. They had?
Q. What had they been doing?
A. Been arguing.
Q. What had they been arguing?
A. They had beeen arguing this question; I can't remember the points.
Q. This question about the sufficiency of the return, or the insufficiency of the return?
A. I think they argued that a while before the adjournment.
Q. Had they been doing anything before that?
A. I think they had.

Q. You are not sure of that, are you?
A. Yes, sir; I am sure of it.
Q. You are positive this was the first day that they commenced to do anything, ain't you, in the case.
A. I am not positive.
Q. You are not positive about that?
A. No, sir.
Q. You went there in the evening?
A. No, sir; I was not there after 6 o'clock, when we went to Minneota on the train.
Q. You were not there in the room, where they were proceeding?
A. No, sir.
Q. The last you saw of the Judge was when he wanted to get in that door?
A. What is that?
Q. The last you saw of the Judge, that day, was when he wanted to get in the door, and wanted you to open it?
A. That was the last I saw of Judge Cox, that day.
Q. Were you there the second day; the following day?
A. No, sir. I don't understand your question.
Q. Were you there the following day?
A. No, sir.
Q. Were you in Marshall the day before?
A. I couldn't tell you whether I was or not.
Q. You don't know?
A. No, sir; I am not positive.
Q. Do you know whether or not any witnesses had been sworn in that proceeding, or anything been had, except this argument, at the time you came into court?
A. It is my impression there had not been.
Q. That was the beginning of the case that afternoon?
A. It is my impression that there were no witnesses sworn at the time that I was in the office.
Q. So that it is your impression that that was the beginning of the proceeding, at that time?
A. No, sir; it is not my impression.
Q. Is it your impression that they had any session in the forenoon?
A. It is my impression that there was something done in the forenoon, but what that was I am not capable of saying.
Q. But you weren't there, anyhow? A. I was not.
Q. This was what month, you say? A. November.
Q. And it was ten minutes before six that you saw the Judge there on the street, near the bridge?
A. Yes, it was about that time. I know that it was a short time before six.
Q. Was anybody else around there?
A. There was another person about the center of the bridge, but who that person was I cannot say.
Q. The office was locked, was it not? A. Yes.
Q. Did you go there and try to open it? A. Yes, sir.
Q. After the Judge told you to do so?
A. No, sir; as I came along.
Q. Before you met the Judge? A. Before I met the Judge.
Q. Had you seen the Judge before this time?

A. I had seen him during the day.
Q. That was the first time you had seen Judge Cox, wasn't it, that day?
A. No, sir. At 6 o'clock, do you mean?
Q. No; I mean that day was the first day you had seen Judge Cox?
A. No, sir.
Q. How many times had you seen him before?
A. I can't state. I have seen him there in Marshall prior to that, but how many times I am unable to tell.
Q. Had there been any terms of court before, there in Marshall, that he had held? This, mind you, was in November, 1878.
A. It is my impression that there had been, but I cannot state.
Q. Do you remember any particular times in which you had seen Judge Cox before this time?
A. I can't remember any particular time.
Q. You are not certain that you had been made acquainted with him, and introduced to him, before that time?
A. Yes, sir; I had—I can't remember; that is, I don't say that I had been before that day.
Q. That is what I wanted to know. Or, even if you had seen him once or twice on the street before this day, you weren't acquainted with him?
A. Not intimately acquainted with him.
Q. You say that it is your impression that he had held a term of court up there before. When was that, prior to this time?
A. I can't tell the time, but remember a time when I had seen Judge Cox prior to this.
Q. You had? A. Yes.
Q. Well, what time was that?
A. It was at a time there was a case brought up there, in which George Wilmouth was the defendant, and a lady of the place was the plaintiff.
Q. Was he an attorney in that case A. I think he was.
Q. That was before he was Judge?
A. That was before he was Judge.
Q. That was three years before that time, was it not?
A. I don't remember.
Q. Now, within a year of this proceeding yon wouldn't say that you had seen Judge Cox at all, in Marshall?
A. I wouldn't swear to it, but it is my impression that I had seen him. I had seen him a year before that, if not longer.
Q. Your impression is that you had seen him a year before?
A. It may be more than a year.
Q. Then it is twice that you now remember to have seen him, before this November, 1878?
A. Yes, sir.
Q. At the time when you were in there, in Will Todd's office, when he was listening to the arguments, was he deciding anything, or giving any decision?
A. I think he was.
Q. Or did he say anything? Now, was there anything in what he said, or the way in which he conducted himself, that was out of the way in any way?
A. I think his general appearance was different from what it would have been if he had been sober.

Q. How do you know how it would have been if he had been sober? You had only seen him once or twice before.

A. I think I do. He acted differently from what he did when he first went on the bench, when he first went on at noon.

Q. Did you see him when he first went on at noon? A. Yes.

Q. And you say that at 3 o'clock he acted differently?

A. I think he did.

Q. Now, from noon to three o'clock, he was sitting there and listening to the argument and proceedings there?

A. He was.

Q. He didn't go out at all? A. Not that I saw.

Q. Did he go to dinner?

A. Not afternoon.

Q. Not after you first saw him take a seat on the bench?

A. No, sir.

Q. But towards 3 o'clock he acted a good deal differently from what he did at 12 o'clock or 1 o'clock, or whenever it was when you came into the room, and saw him take his seat—he acted differently, did he?

A. It is my impression that he did.

Q, Before dinner you were not there at all, as I understand you?

A. I don't think I was there.

Q. In the evening was there anything in his conduct, except his language there to you, "God damn you, open that door or I will break it in"—was there anything else in his conduct to indicate that he was intoxicated? A. There was.

Q. What was it?

A. This gentleman that I spoke of, standing near the center of the bridge, came up to him, or they met, and he threw his arms around this man's neck.

Q. They met; you don't know whether this was a friend of Cox's or not?

A. I do not; I presume he was, from the way they embraced each other.

Q. They both embraced, did they?

A. Why, he embraced the one that he met.

Q. They both embraced?

A. I can't say whether the other one threw his arms around the Judge or not.

Q. You don't know whether he did or not?

A. I don't think he did.

Q. Well, you wouldn't swear that he did not?

A. No, sir.

Q. That was one thing, is there anything else? A. That was all.

Q. What else made you think he was intoxicated; anything in his appearance?

A. His actions, and the manner of speech; the way he spoke.

Q. How did he speak?

A. Well, he didn't speak as I considered a sober man would.

Q. Well, how was it?

A. In using the language that he did; he didn't speak as sharp, as quick, as he would if he was sober.

Q. He spoke that in a dull, drowsy way, "God damn you, open that door for me, or I will break it in," did he? A. Yes, sir.

Q. Did you see his face? A. I did.
Q. How did that look?
A. It looked flushed, his eyes were—
Q. Bloodshot, I suppose, weren't they?
A. His eyes were colored, I think; they didn't look natural.
Q. You mean that they were red, or was it some other color?
A. Well, they were glaring; that is about the only way I can describe it.
Senator CROOKS. Did you say glaring? A. Yes, sir.
Q. And when you say they were colored you mean that they were glaring, is that it?
A. I don't know as I said they were colored.
Q. I thought you said so a minute ago.
Mr. Manager COLLINS. I guess not.
Mr. ARCTANDER. I asked whether they were bloodshot, and he said they were colored.
Q. Did you notice anything else there, at that time?
A. I did not.
Q. Was it moonlight? A. No, sir.
Q. Daylight, was it? A. It was.
Q. At ten minutesbe fore 6 o'clock, on the 7th of November?
A. I think it was about ten minutes before six; it was very close to that time.
Q. Do you know if lamps were lit around town by that time?
A. I don't think they were.
Q. This was the 7th of November—in the month of November, anyhow?
A. It was in the month of November; I think it was the 7th.
Q. You are sure of that; that it was not moonlight?
A. It was not moonlight,but it may have been daylight; it may have been between; I think the sun may have gone down; I don't say that it was sunlight.
Q. But it was so light that you could see that his face was flushed, and his eyes were glaring?
A. I could.
Mr. Manager COLLINS. And you could see that he was drunk?
A. Yes.

JOHN A. HUNTER,

Called, sworn and testified.
Mr. Manager COLLINS. This witness is also examined on specification one, of article seventeen.
Q. Where do you reside?
A. Marshall, Lyon county.
Q. How long have you lived there?
A. Ten years, the 12th day of next June.
Q. What office do you hold there, if any?
A. I hold the office of sheriff.
Q. Did you hold that office in the year 1878? A. I did.
Q. I desire now, to call your attention to a case in which there were supplemental proceedings, in the month of November, 1878—the Cleveland Co-operative Stove Company against Mary Robinson and John E. Maas, partners; do you remember the case?

A. I do.
Q. Can you tell us when these supplemental prceedings were heard?
A. They were heard on or about the 7th of November, 1878.
Q. What time of the day did you—you are acquainted with Judge Cox, the respondent?
A. Yes.
Q. How long have you known him?
A. I think my first acquaintance was in the fall of 1877.
Q. And did you see him at Marshall on that day? A. I did.
Q. What was he doing?
A. As to any part of the day, prior to about 6 o'clock, if I saw him at all, I don't remember.
Q. You weren't in town until about six o'clock?
A. I left town just before dinner, I think, with my team for Tracy.
Q. And you don't remember seeing the Judge there before you left?
A. I do not.
Q. And you returned at what time?
A. It was between five and six o'clock.
Q. What was then being done in this case, if anything?
A. There was a recess.
Q. Well, after recess, what was done?
A. I had made a return—my return on the service of the affidavit and the order (it had been my first), and in making my return, I failed to state, "And exhibited the name of the Judge thereon," as is required. I was telegraphed to at Tracy, and came home. I amended my return the first thing, I think, I did after I came into the room. I went to my house—I drove up in front of the office, where the proceedings were being held.
Q. Whose office was that?
A. Horton & Hamilton, and W. M. Todd was the agent.
Q. Was it his office also? A. It was.
Q. You drove up there?
A. I drove up there, and found the room closed, and went home to supper. The first thing I did when I came back, was to amend my return.
Q. What time was that?
A. That was between six and seven; as to the time, I couldn't be positive.
Q. Whereabouts did you amend it,—in what building?
A. I amended it in the office, where the proceedings were being heard.
Q. Was the Judge present? A. He was.
Q. Now, tell what was done with that case afterwards?
A. It was heard.
Q. That evening?
A. A portion of it that evening, and, I think, finished up the next morning.
Q. Before him, or before whom were the proceedings heard?
A. The presiding judge, you mean?
Q. Yes, sir.
A. Judge Cox.
Q. You may state his condition as to sobriety that evening while he was hearing these proceedings.
A. From my acquaintance—what little acquaintance I had with

Judge Cox before, and what I have had since,—I should say that Judge Cox was very much under the influence of liquor.

Q. You don't know whether these proceedings were finished that night, or not?

A. They were not, I think.

Q. And during the proceedings he was very much under the influence of liquor?

A. That night in particular.

Q. State whether he was drunk or sober?

A. He was drunk.

Cross-examined by Mr. ARCTANDER.

Q. How long did these proceedings keep on, that night?

A. I think until about nine or a little after nine.

Q. Witnesses examined?

A. I think they were, but I wouldn't swear positively, as to witnesses being examined that night.

Q. If they kept on until nine, they had to do something, hadn't they?

A. Yes.

Q. They were at work there, all the time; after you fixed your return, they went right to work?

A. Yes.

Q. The Judge went right along with the business?

A. No, sir; he did not.

Q. Didn't he go along with the business?

A. There was but very little business done, that night.

Q. He did what they offered him, didn't he?

A. The attorneys a number times during the night, on both sides, asked for recess until morning.

Q. And he didn't want to grant it to them?

A. He didn't.

Q. And finally he adjourned?

A. And finally he adjourned.

Q. At nine o'clock? A. Yes.

Q. Do you remember what was done, if anything—was done?

A. I wouldn't be positive as to the witness, I wouldn't be positive whether there were any witnesses sworn that night, or not.

Q. There may have been?

A. There may have been.

Q. As a matter of fact, you didn't pay much attention to it, wasn't interested in the matter at all?

A. I wasn't personally interested in the matter, at all.

Q. Before that time, you had only seen Judge Cox once I understand you?

A. I had seen him quite a number of times.

Q. When had you seen him?

A. I saw him I think—the introduction I had to him was in a hardware store belonging to James Williams.

Q. When was it?

A. That was in the campaign,—his campaign.

Q. In 1877? A. I think so.

Q. That was the first time you saw him?

A. I believe that was the first time I saw him, to know him.

Q. During that year, what times, and where, had you seen him, to know him, before this time?

A. Before this time?
Q. Yes, before 1878.
A. I had never seen him to have an introduction to him, before that.
Q. Before then? A. Before the year 1877.
Q. Before the year 1877. But now, since that time, and up to November, 1878, how many times, and where have you seen him?
A. I couldn't say the number of times; I have seen him every term of court held in Lyon county.
Q. Was there any term of court held in Lyon county, since you were first introduced to him, and before the 7th day of November, 1878?
A. No, sir; I think not.
Q. Then you had not seen him many times between those times?
A. Not many times, I had not.
Q. As a matter of fact, you didn't see him once from that time, when you were introduced to him, up to the time, in November, that we have been talking about?
A. I wouldn't be positive that I did.

Mr. Manager COLLINS. I will now examine the witness under article fifteen. [After consultation with Mr. Manager HICKS.] We will not examine this witness under article fifteen. We have nearly exhausted our quota of witnesses to prove that article; we will examine him under article eighteen.

By Mr. Manager COLLINS.
Q. Mr. Hunter, you may state if you have seen Judge Cox drunk at any other time since the 30th day of March, 1878?
A. I have.
Q. When was it?
A. It was on or about the 12th day of May, 1881.
Q. At what place?
A. Marshall, Lyon County, Minnesota, and also the 21st and 22d and 23rd of June, in the same year—1881.
Q. At the same place? A. At the same place.
Q. Have you seen him drunk at any other times, since the 30th of March, 1878?
A. Not that I can recollect.
Q. The 21st of May and then the 21st of June?
A. I wouldn't be positive as to the date in May.
Q. But it *was* May, 1881? A. Yes.

Cross-examined by Mr. ARCTANDER.
Q. This 12th day of May that you said it was—
A. On or about the 12th day of May.
Q. It was the date of the special term that has been testified to here?
A. Yes.
Q. That was the time of the special term? A. Yes.
Q. The 21st, 22d and 24th of June, that you testified to, was the time that Mr. Patterson testified to?
A. I didn't say the 24th.
Q. Oh, the 21st, 22nd and 23rd. Very well, that was the same occasion that Mr. Patterson testified to, wasn't it?

A. Yes.

Q. In court, the transactions that he testified to here, this morning?

A. The same day.

Q. You said it was the same day. It was the same occurrence that he testified to, wasn't it?

A. Yes, sir.

Q. That is to say, you mean to be understood, that you saw Judge Cox drunk there, in court, during this day?

A. I didn't see him in court, in the special term, in May.

Q. No, I mean in June, the 21st, 22nd and 23rd of June?

A. In June, but on or about the 12th of May at the time of the special term—

Q. You saw him there?

A. I was not in the room—.

Q. But you saw him that same day, in the evening, intoxicated?

Mr. Manager DUNN. Let him tell it.

Mr. ARCTANDER. I am cross-examining this witness, not examining him.

Mr. Manager DUNN. Well, he commenced to tell it, and you interrupt him, and keep talking all the time.

Mr. ARCTANDER. I move now to strike out the last testimony of this witness.

Mr. Manager COLLINS. Upon what ground?

Mr. ARCTANDER. For the reason that, if it should come in at all, it should come in under the articles under which it is alleged. I understand the managers to say that they have exhausted their number of witnesses,—

Mr. Manager HICKS. I didn't say anything of the kind.

Mr. ARCTANDER. They have refused to bring in any proof,—

Mr. Manager COLLINS. When did you understand us to say that?

Mr. ARCTANDER. I understood the learned manager, who is examining this witness, to say, that he wouldn't examine him upon article fifteen, which is the general term of court in Lyon county, last June, for the reason that he had nearly exhausted the number of witnesses they had upon that.

Mr. Manager COLLINS. That is what I said.

Mr. ARCTANDER. And that, therefore, they have introduced it under article 18, to which the Senate has given them the right to introduce as many witnesses as they please. Now, if it is the rule that witnesses can be introduced under one specific charge, and yet not be introduced under it, it is an infringement of the rule laid down by the Senate. Under article 18 they are authorized to introduce any proof at all, and their proof should certainly be limited to acts outside of those specified in the article here; if not, there is nothing in the rule. For, if the managers can scare up witnesses they can say we don't care to introduce them under that, we want them under article 18, and, in that way, they can introduce proof under article 18 which should come in only under article 15. Now, I say that is not the true rule. We have article 18, which charges us with acts of drunkenness not specified in the other articles, and they cannot bring in here as testimony, under article 18, proof of acts of drunkenness which has been testified to by other witnesses under other articles. It is not right for them to do so, or, if it is right for them, it is right for us, and we can introduce as many witnesses as we wish under article 18.

Mr. Manager HICKS. Mr. President, I desire to say that in regard to this occurence in May, it is not testimony to the same state of facts testified to by Mr. Patterson, this morning. It is simply testimony to the fact of the Judge being drunk out of court. It may have a bearing upon the question before the Senate. If, after five men have sworn that Judge Cox was drunk in court, on a certain day, other men recount his various acts of drunkenness on and off the bench on the same day,—they may possibly have seen him drunk out of court,—it may corroborate the other, but it is not testimony of the same identical state of facts. It is simply evidence going to show his general habit of drunkenness. It happens by chance, that while, in this one case, it does not occur to the same state of facts, that this man has seen him, about the same time, in court, drunk; but we have not examined him upon this point. We have simply asked the question, did you, at any other times and places, than the times named by you, during the last four years, see the respondent drunk or intoxicated? And he has enumerated the various instances in which he has so seen him. By chance, one of these instances happens to be at a time already testified to, but that does not make the evidence inadmissible under article eighteen. It is upon article eighteen that we are now examining, although it may have this effect upon all the other articles.

As every witness who comes in here and testifies to article eighteen must necessarily see,—this man, unless he has the sagacity of the wisest man in the world, drunk all through the ninth judicial district, must sometimes slop over and get drunk on the bench; and if, perchance, this witness has chanced to see him, at one time, his evidence ought not to be stricken out for that reason. It only goes to corroborate all the facts set forth, that this man has been drunk on and off the bench, that he has exercised no discretion about getting drunk; that he has got drunk in the day time, and in the night time; drunk at two o'clock in the morning, drunk at mid-day, and drunk at six o'clock in the evening. But, because, forsooth, this witness has happened to see him at one of these times testified to, his evidence, when he testifies under article nineteen, certainly ought not to be stricken out. It is corroborative evidence, and it showed the good judgment and good sense of this Senate when they said that they would hear the corroborative evidence we might bring in under article eighteen. Why, the very idea, that only five men may come in here and testify that this man has been drunk on the bench. Five men might be mistaken, Mr. President, but when we bring you in sixty good men and true from within the boundaries of the ninth judicial district, to tell you that they have seen the respondent drunk, drunk in the day, drunk at night, drunk in court, and drunk out of court, this Senate have shown their good sense by allowing us to corroborate those charges upon which they allow us to bring only five witnesses. Certainly, they will not go back upon the forward steps they have taken in allowing us to bring in a reasonable number of witnesses under article eighteen, and in permitting these witnesses to testify. We have brought here, in our discretion, five witnesses to these various articles, but it so happens, Mr. President, that these men happen to know of acts of drunkenness, besides the particular ones upon which they have been called upon to testify. They are here; it takes but a moment to hear the testimony. We took but about three minutes in the direct examination under article eighteen, and if the counsel for the respondent will confine himself within reasonable limits in his cross-examination

it will take but a very few minutes to hear what these witnesses have to say. They are here; they have been here several days. If the Senate desire to have the testimony I think it right and proper that they should do so now.

Mr. ALLIS. It seems to me that the principle involved here is of some importance. Here are a certain number of articles under which evidence has been introduced. Five witnesses are allowed to each of these articles. They have exhausted, we will suppose, their witnesses under these articles. Now, this is a proposition, as I understand it, to go on, and under the pretense of offering evidence under article eighteen, to continue to prove the same acts of intoxication as to the first, second, third, fourth, and fifth articles, etc.,—to prove the same acts of intoxication that other witnesses have testified to, in this case, and in regard to which they have exhausted their evidence and to go right on and introduce an unlimited number of witnesses to the same state of intoxication,—under the pretense of offering them under article eighteen. Now, certainly, it seems to me, that the Senators can see here, and everybody can see, that this is a practical violation of the principles which they have laid down. I do not pretend to say, but, under this general article, that other instances of intoxication can be show, for the purpose, and they may argue, if they please, that the cause of intoxication which is already shown, by means of their five witnesses, may be used in argument under article eighteen. That possibly may be so. It is another question entirely, and we will see when we come to it. But it seems to me perfectly clear, that they cannot go on and exhaust their witnesses one, two, three, etc., to the end of them,——

Senator CROOKS. What is the article?

Mr. ARCTANDER. The eighteenth.

Mr. ALLIS. And then, after they have exhausted all their witnesses, not to prove additional cases of intoxication, but to go on with new witnesses, beyond the five, to show the same cases of intoxication that they have already exhausted their witnesses upon. It seems to me this only needs to be stated in order that this court can see that it is improper.

The PRESIDENT *pro tem.* The chair will submit the question to the Senate whether the testimony of the witness should be stricken out.

Senator CROOKS. I call for the ayes and noes.

The PRESIDENT *pro tem.* Those in favor of striking out the last part of the testimony offered under article eighteen will say "aye"; those opposed "no."

Senator CROOKS. I called, Mr. President, for the ayes and noes.

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

Those who voted in the affirmative were—

Messrs. Adams, Crooks, Johnson A. M., Perkins and Peterson.

Those who voted in the negative were—

Messrs. Aaker, Buck C. F., Buck D., Case, Gilfillan C. D., Howard, Johnson F. I., Langdon, McCormick, McLaughlin, Morrison, Powers, Rice, Tiffany, Wheat, White and Wilkins.

The PRESIDENT *pro tem.* The objection is overruled.

Mr. Manager COLLINS. You can take the witness.

Mr. ARCTANDER. We do not wish to examine him further.

J. HUNT,

Called, sworn and testified.

By Mr. Manager COLLINS.

Q. Where do you reside?

A. In Marshall, Lyon county, Minnesota.

Q. How long have you lived there? A. Four years.

Q. What is your occupation? A. Engaged in the hotel business.

Q. Have you been all the time? A. No, sir.

Q. How long have you been engaged in the hotel business?

A. A little over two years.

Q. Are you acquainted with the respondent, Judge Cox?

A. I am.

Q. How long have you known him?

A. Between three and four years.

Q. I want to call your attention, Mr. Hunt, to a period of time commencing with the—

Senator CROOKS. What is the article?

Mr. Manager DUNN. Article fifteen.

Q. I want to call your attention to a period of time, commencing March, 1878, and ending with the time these articles were filed; and to ask you, Mr. Hunt, whether you have seen Judge Cox drunk during that period of time?

A. Between the time of—

Q. Commencing 30th of March, 1878, and ending the 15th of October, 1881.

A. I have.

Q. State when and where?

A. Well, I saw him in the month of May.

Q. What year? A. 1881.

Q. Where? In Marshall.

Q. At your hotel? A. Yes, sir, and about town.

Q. At any other time? A. In the month of June.

Q. 1881? A. Yes, 1881.

Q. At your hotel? A. Yes, sir.

Q. Can you give us the precise days?

A. Well, it was during the term—special term of May, and the June term of court.

Q. It was during the special term of court in May, and the general June term, you mean? A. Yes.

Q. You may state the circumstances connected with any of these drunks, that you have seen the Judge upon, down there?

A. Well, the Judge came there in May, and sometime after the train came—I think the train was due at that time, at 1:I5.

Q. In the day time?

A. Yes, sir, in the afternoon; and he stopped at the hotel, and wanted to know if he could have a room. And he was in and out of the hotel, and the saloon, during the day and evening, frequently.

Q. Do you keep a saloon there? A. Yes.

Q. With the hotel?

A. Yes. The Judge at that time, was under the influence of liquor and drank a good many times.

Senator CROOKS. We cannot hear in this part of the house.

Q. Won't you repeat that, so that the Senate can hear it?

A. I say that he was in the saloon, and in the office,—in and out,—and on the street, during the afternoon, quite a number of times, and frequently drank there during the afternoon of that day, and during the evening; and after I closed the house in the evening about 11 o'clock, I went to bed, and soon after I heard some one at the door, and I got up and went te the window and looked out, and I saw that it was Judge Cox. I considered him pretty drunk.

Mr. ARCTANDER. Never mind what you considered him.

A. He was pretty drunk, and I made up my mind to let him air, (laughter) and I went back to bed. He sat down in a chair under the porch, and I got up again—I heard him again, or heard some one, and I got up and looked out, and he was still there. That was about two o'clock, and I let him in and went and showed him to a bed. That was about 2 o'clock in the morning.

Q. What was his condition, then, as to sobriety?

A. Well, he was pretty drunk at that time.

Q. How long did he stay there, Mr. Hunt?

A. I think he went away, the next day on the train; 11:30, or 12:30 or thereabouts.

Q. What was his condition the next day?

A. Well, he was pretty full; he filled up the next morning in pretty good season, and was pretty full during the time he was there.

Q. State what you mean by "filling up," and "pretty full." Those are technical terms.

A. Well, he drank a good many times during the morning,—in the forenoon.

Q. Was he drunk or sober, Mr. Hunt?

A. Well, he was what I call drunk.

Q. Mr. Hunt, I will ask you if, at that time, Judge Cox incurred a whisky bill at your bar?

A. I don't think he did.

Q. You don't think he did at that time?

A. No, sir; that was in May you speak of?

Q. Yes, sir.

A. No, sir; he did not.

Q. State the next time you saw him drunk?

A. The next time was the June term, the 21st of June, I think.

Q. By the way, Mr. Hunt, do you know where Judge Cox went after he left your house, that night? Did you see him any time?

Mr. ARCTANDER. We object to it, unless he knows it of his own knowledge.

Mr. Manager COLLINS. Of course; we don't suppose he is going to guess at it; it must be his own knowledge. Of course, it must be his own knowledge.

Q. Do you know where he went?

A. I didn't see him at any place; I only know by some conversation, which took place there, in the evening, previous to his going out; but I know nothing outside of that,

Q. Some conversation to which he was a party?

A. Yes, sir.

Q. Did he state where he was going?

A. He did.

Mr. ARCTANDER. We object to that as immaterial and irrelevant. That has been decided by the Senate.

Mr. Manager COLLINS. That has been up, as the counsel has said, two or three, times and on one occassion, it has been admitted, and shortly after the Senate, (with all due deference) I think, somewhat overruled itself. I have not the slightest idea of what this statement my be; and I have not the slightest idea myself as to what was said there; but, it seems to me, as I have said once before, in an argument upon this question, that we have perfect right to get all of this statement, everything this man stated, for the simple purpose of showing his condition. Now, I apprehend that a man never got drunk in his life, without using language that he would be ashamed to use, and would not use, if he were sober. That is a characteristic of a drunken state.

The PRESIDNT *pro teu.* The chair would hold that you can ask him what the conversation was; but, as to where he went that night I don't think that is competent.

Mr. Manager COLLINS. That was not my purpose, Mr. President. I was about to ask the witness what the Judge said.

The PRESIDENT *pro tem.* What conversation transpired is admissible.

Mr. Manager COLLINS. But I understood that the Senate, the other day, allowed part of the statement to go in; but when we approached a certain point an objection was made, and the objection was sustained, simply because, as was stated by Senator Powers, we were attempting to prove indirectly what had been stricken out. Now, I simply want to get from this witness—

Senator CROOKS. I want to ask counsel if he is trying to do the same thing over again?

Mr. Manager COLLINS. I will state to the Senator—

Senator CROOKS. State to the Senate, in answer to that question. Are you trying to do that again?

Mr. Manager COLLINS. I will state to the Senate, that I have not the slightest idea of what this witness will testify to.

Senator CROOKS. It is very strange, if you have not; you have had him under oath.

Mr. Manager Collins. I will state to the Senator that I have not examined this witness.

Senator CROOKS. Well, you ought to know what he will testify to.

Mr. Manager HICKS. We want to show the circumstances and facts for which the other side have called so loudly.

The PRESIDENT *pro tem.* The chair would hold, unless the Senate otherwise orders, that the managers can ask what conversation took place there.

Mr. ALLIS. We object to it, and ask that it be put to the Senate, as immaterial, and also as manifestly an attempt to introduce evidence which was ruled out.

The PRESIDENT *pro tem.* The question will be submitted to the Senate.

Senator CROOKS. I would suggest that the question be asked, but before answering, that the sense of the Senate be taken, as to the allowance of the question.

The PRESIDENT *pro tem.* That is it.

Senator D. BUCK. He is asked what was said.

Senator CROOKS. Yes; before he answers I move that the sense of the Senate be taken, as to whether it shall be allowed, or not.

The PRESIDENT *pro tem.* The question now is this: The managers wish to ask this witness what conversation took place. The respondent

objects. It is now for the Senate to say whether the objection shall be sustained or not.

Senator WILSON. I move that the roll be called.

The PRESIDENT *pro tem.* The roll will be called, and those who vote "aye" will sustain the objection; and those who vote "no," will vote to overrule the objection.

Senator LANGDON. I think the question should be put first. Before we go further let the question be put by the counsel.

Senator D. BUCK. That is, in substance, the question. He asked him to state what the conversation was, so as to characterize the transaction, and show whether the respondent was drunk, or sober: just as much as if he was walking, or standing; you can not ask the question in any other way, only to ask for the conversation. That is asking the question.

Senator C. F. BUCK. Is the object of the question to ascertain that he was drunk?

Senator D. BUCK. I suppose so.

Senator CROOKS. Well, we want to know whether or not that is the scope of the question.

Senator D. BUCK. I so understand it.

Senator CROOKS. If they are trenching upon the twentieth article, we won't have it here.

The PRESIDENT *pro tem.* Under the rules, no argument can be had. We simply want to call the roll.

Senator POWERS. Will you state the question again, Mr. President? It is so very difficult to hear, unless everything is perfectly quiet.

The PRESIDENT *pro tem.* The managers were about to ask what conversation took place. The respondent objects to that. Now, the question will be for the Senate, to sustain or overrule that objection. Those that vote "aye," will vote to sustain the objection; those that vote "no," will vote to overrule it.

Senator CROOKS. Now, Mr. President, I would ask that counsel for respondent to state his objections, and the reasons for his objections once more.

The PRESIDENT *pro tem.* That will be allowed.

Mr. ALLIS. The objection is, Mr. President, that it is wholly immaterial what was said; the witness has already stated that he was intoxicated, and it is immaterial what the conversation was; that is the first objection. The second objection is, that it, manifestly, is an attempt—that it is apparent that it is an attempt—to introduce evidence under the twentieth article, not to be too nice about stating it, as you will see. Two objections; first, that it is incompetent, immaterial and irrelevant, any way, to show what this conversation was. It doesn't strengthen—it doesn't tend to strengthen—it doesn't tend to show whether he was intoxicated. He has given all the testimony he can, upon this subject. It does not tend to strengthen that. And the second objection is, that it is an overt attempt to introduce testimony under article twenty.

Senator CROOKS. Call the roll.

Mr. Manager COLLINS. If the Senate will permit me, it is very clear to me, that the gentleman is over nice in his objections here; and I call this court to bear me witness, that every witness, that has been upon this stand, has been cross-examined as to what Judge Cox said when he was drunk, did he stagger, were his eyes glaring, and all that sort of thing. Now, if it is competent that that sort of thing should come in on

cross-examination, it is perfectly competent that it should come in here; and if we put this witness upon the stand, and ask him this question for the purpose of showing that this man was drunk, it is perfectly proper for us to do so. It seems to me it does not make any difference what answer he may give; and, although the answer may tend to show that he has committed some crime that may be classed as under the twentieth article, that it is a perfectly proper answer. And that was the position I took the other day. It is not proof, for instance, that he has committed the acts, which we have charged here, under the twentieth article; but it is proof that he was drunk, simply because the language is such as no sober man would use; that is the idea exactly.

Senator CROOKS. Call the roll.

There were yeas 3, and nays 21, as follows:

Those who voted in the affirmative were—

Messrs. Adams, Buck C. F., and Crooks.

Those who voted in the negative were—

Messrs. Aaker, Buck D., Case, Gilfillan C. D., Howard, Johnson A. M., Johnson F. I., Langdon, McCormick, McCrea, McLaughlin, Morrison, Perkins, Peterson, Powers, Rice, Tiffany, Wheat, White, Wilkins and Wilson.

The PRESIDENT *pro tem.* The objection is overruled.

Q. You may state what Judge Cox said in that conversation, or, rather, state the conversation.

The witness having testified at some length in response to the last and following questions, Senator D. BUCK moved that certain portions of the evidence be stricken from the record.

Senator ADAMS moved as an amendment, that the evidence of the witness, given in response to the last question, be stricken from the record, upon which motion the roll was called with the following result:

The roll being called, there were yeas 13, and nays 9, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Adams, Buck C. F., Crooks, Gilfillan C. D., Johnson A. M., Johnson F. I., Langdon. McCormick, Peterson, Powers, Rice, White and Wilkins.

Those who voted in the negative were—

Messrs. Buck D., Case, Howard, McCrea, McLaughlin, Perkins, Tiffany, Wheat and Wilson.

And so the evidence was stricken out;

By Mr. Manager COLLINS.

Q. Mr. Hunt, I believe you have testified as to the May term,—as to the month of May.

A. Yes.

Q. Now, you may state the next time that you saw Judge Cox drunk.

A. That was the June term.

Q. Was he at your hotel at that term? A. He was.

Q. About your saloon?

A. Yes. He came from the depot up to our hotel, and into the office. I think it was the 21st of June.

Q. Was he drunk or sober at that time?

A. Well, he was intoxicated at that time.

Q. And for how many days did he remain intoxicated?

A. I think he was there about two weeks at that time, in town, but not all the while at my house.

Q. How many days did he remain at your house? A. Two days.
Q. Two days? A. That is, the day that he came and the next day.
Q. State what his condition was during the two days.
A. Well, I should say the two first days that he was drunk most of the time. I didn't see the time he was not.
Q. How was it at night?
A. Well, he was in the same condition at night.
Q. How late did he freqnent your saloon at night?
A. Between the hours of ten and eleven.
Q. Did he stay there until you closed up?
A. In the evening, about closing time; I couldn't say that he was there just at the time they closed.
Q. And then did he go to bed?
A. No, sir; he went to the other house.
Q. Do you know what time he went to bed? A. I do not.
Q. Did he incur a whisky bill at your house during that time?
A. He did.
Mr. ARCTANDER. We object.
Mr. Manager COLLINS. Upon what grounds?
Mr. ARCTANDNR. Oh, never mind; let it go.
Q. State how much it was.
A. I think it was $17.70, or something.
Q. For how long a time?
A. During this period that he was there, or a portion of it. I think he paid this within—my impression is he paid it within ten days from the time he first came there, from the time he made any bill.
Q. I know, but what length of time was he in incurring this bill; how many days?
A. Well, I should judge about ten days; I think so.
Q. And you say the bill was paid? A. Yes, sir.
Senator POWERS. Where was that?
A. That was at Marshall.
By Mr. ARCTANDER.
Q. Now, do you know of any other cases of drunkenness on the part of the Judge, within the time I have mentioned?
A. Well, have you reference to before 1880?
Q. Yes; after the 30th of March, 1878?
A. Well, I can't tell whether it was the winter of 1879 or the spring of 1880—January, 1880. I rather think that it was December, 1879, or January, 1880, that I saw the Judge there.
Q. Was he drunk or sober?
A. Well, he was drunk. The time that I saw him, that I speak of, I think was the time that he delivered the temperance lecture there, over in the church. [Laughter.]
Q. He was drunk at that time, was he?
A. He was what we call "pretty full." (Laughter.)
Q. How many days was he there drunk, at that time?
A. I can't say positively but I think three or four days; perhaps five.
Q. Now, Mr. Hunt, can you state how often Judge Cox drank at your bar during each of those days,—the four or five days you are talking of?
A. I don't remember so particularly in regard to that period as I do those dates more recent. I remember more particularly the May and June term than I do—

Q. Well, state at that time, how many times he drank at your bar each day.

A. Well, it would be impossible to tell; a good many times.

Q. Can't you tell about how many times?

A. I could not tell; I think the Judge was in, the first day of the court, in the afternoon; I should say to the best of my knowledge and belief he was in there as often as once an hour, and took a drink.

Q. The first day of the June term?

A. Yes, sir; that is, the afternoon of the first day of the June term.

Senator WILSON. Was that the day he delivered the temperance address?

Mr. Manager HICKS. No; the temperance address was a year earlier.

Q. Now, the second day of the term, how many times do you think he was in there?

A. Just about the same ratio, I should think; the first and second day about the same.

Q. About once an hour?

A. I should think it would average that.

Q. How far was it from your bar-room to the court-room?

A. I should think the distance was about five rods.

Q. Now, what did he drink at this time—what was his beverage?

A. Sometimes whiskey; sometimes gin; I don't know but occasionally brandy.

Q. Are there any other times that you can tell us about, that you have seen him drunk?

A. I can't give any dates of any other times. I boarded at this hotel; I was there the most of the time, for over three years. The first acquaintance I got with the Judge I was boarding there; and I have seen the Judge quite frequently there but I can't remember the dates.

Q. Since he has become Judge?

A. Yes, sir; I don't remember of meeting the Judge there but once when I thought he was perfectly sober, and that was a term of court after the June term; that was the special session after the June term.

Q. That was in the year 1881? A. Yes, sir.

Q. And that is the only time you have met him there when you thought he was sober?

A. Yes, sir.

Q. Now, I desire to call your attention to the 7th of August, 1880, do you remember that day?

A. I remember something of it, I know he was there, and I remember of seeing him; but I could not say whether it was the 7th of August or whether it was September.

Q. About that time? A. About that time.

Q. Was he drunk at that time? A. Yes, sir.

Q. Now, how many times has he been there since he has been Judge of the court that you have seen him?

A. I don't know; perhaps five or six times and may be more; I can't remember.

Q. Five or six times and may be more, and you have seen him sober but once?

A. Once.

Mr. ARCTANDER.

I will ask the indulgence of the Senate for a recess of ten minutes, if it is possible, before cross-examining this witness.

The PRESIDENT *pro tem.* If there is no objection, the Senate will take a recess for ten minutes.

Cross-examination by Mr. ARCTANDER.

Q. Mr. Hunt, during this time, in May, 1881, you say you closed the house at eleven o'clock at night?

A. Just about eleven o'clock, I think, as near as I can remember.

Q. After you had gone to bed, you heard some one rap at the door?

A. Yes, sir.

Q. You didn't go out, nor open the door?

A. I didn't open the door,—not at that time.

Q. You stood in the window? A. Yes, sir.

Q. How was that window relative to the door?

A. The window is close to the door. There is a window on each side of the door.

Q. Is there a stoop built over the door?

A. The stoop runs right over the door on both sides of the office.

Q. Well, this was the office door, was it?

A. Yes, sir; this was the hall-door coming in. The hall-door is under the stoop. There is a veranda over head; the platform runs around.

Q. Is there any hall out there to the door?

A. The door goes in from the north east side of the street.

Q. Well, now this door leads into the office, does it?

A. This door leads into the hall that comes into the saloon, the office, and dining room. You go to one side to the office; to the other side to the saloon, and then the hall goes through into the dining-room. Yes, sir.

Q. Now, it was at the outside door that Judge Cox was knocking, was it?

A. Yes, sir.

Q. Where were you when you saw him; were you in the office, or in the saloon?

A. Neither one; I was in the hall.

Q. Are there glass windows in the door?

A. There is glass windows in the doors on each side of the doors?

Q. What did Judge Cox do there when you got up, when he knocked?

A. He stood there a little while; I looked through this window at the side of the door. I saw it was him and I saw that his position and indication showed that he was pretty drunk. And I stayed and watched him a little while; and he finally sat down in a chair close by the window.

Q. What was his position?

A. Well, his position when he sat down in the chair——

Q. I mean when he stood,—when you noticed his position standing?

A. Well, his position—he stood—stooping like this [indicates] when I saw him.

Q. Then after standing that way a while he walked over and sat down in the chair.

A. The chair was right close by him. It was on the veranda. He probably didn't have to move farther than about five or six feet to sit down in the chair.

Q. Did he walk straight?

A. Well, there was not much walking to do. He reached his hand out like that, and took hold of the chair and sat down in it.
Q. Like any other man would?
A. Well, like the most of men would, in his condition.
Q. Was there anything peculiar in the way he sat down in that chair?
A. Nothing only he was full; that's the only thing.
Q. Well, how did it exhibit itself?
A. Well, from the manner in which he stood, and the manner in which he sat down.
Q. Well, what was his manner of sitting down?
A. Well, if Judge Cox had been sober—
Q. Well, I didn't ask you that; I asked you what he did, what his manner was at that time.
A. Well, his manner was loose and swaggy.
Q. Did you see his arms swing?
A. He had a kind of loose, swaggy way, as though he was pretty well intoxicated—pretty drunk.
Q. Now, you had no talk with him at that time, you didn't speak to him at that time?
A. I did not; no.
Q. Now, when you came out at 2 o'clock, what made you go out then?
A. I saw him at the door again and I went out.
Q. How long a time did you stand there and watch him?
A. Oh, only two or three minutes, or three or four, or may be five.
Q. You could not tell whether he staid there up to 2 o'clock or whether he had gone away and come back again?
A. I don't know positively that he went away and I don't know that he did not go away; but during that time I heard some one there occasionally, and about 2 o'clock I heard a noise again at the door, and I got up and went to the door and I see he was there and I let him in.
Q. He was full then, was he? A. Yes, sir.
Q. Couldn't stand?
A. Do you say he couldn't stand?
Q. Yes; couldn't he stand?
A. I didn't say he couldn't stand. I asked you if you said he couldn't stand.
Q. I asked *you* if he could stand.
A. Well, he did stand; he walked up stairs.
Q. But he was very full, at the time, all the same?
A. Yes, sir.
Q. Hadn't sobered up any?
A. Well, perhaps he had, somewhat.
Q. Now, isn't it a fact, that you testified before the House Committee upon that question, "that he got pretty well sobered up, and went to bed all right at that time. I think he was sober at the time he went to bed." Didn't you testify to that?
A. I don't know just the language I used in testifying before.
Q. Well, if you used that language, wasn't it true?
A. I know, he went to bed without any noise or fuss.
Q. I want to know whether you did not testify before the House Committee, "he got pretty well sobered up, and went to bed all right at that time."

A. Perhaps I did; I don't remember the language I used.
Q. Now if you testified to that at the time, that was the fact, was it not?
A. I think he was soberer at the time he went to bed, than he was when he first sat down by the door.
Q. I ask you if you testified to that before the House Committee, was it true?
A. It was if I testified to it; which I presume I did; I know he was soberer at the time he went to bed than at the time he first came up.
Q. Did you have any conversation with him at that time?
A. Nothing particularly, only to light him to bed.
Q. No talk about how long he had been sitting there?
A. No, sir.
Q. He said not a word to you about that?
A. I don't think he did.
Q. You testified before the House Committee that this was at the time he was up there at that special term in May, didn't you?
A. Yes, sir.
Q. That is the fact? A. That is the fact.
Q. Did you see him in court during that special term?
A. I did not.
Q. Did you see him adjourn court and go into a saloon and "take a good many drinks" during that special term?
A. He was in our saloon during that special term.
Q. During the day, you mean? A. Yes, sir.
Q. You wasn't in court at all, and don't know whether he was in court or not, do you?
A. I don't know anything about his court; I wasn't in his court?
Q. Now, I ask you if you did not testify before the judiciary committee upon this occasion, as follows:

Q. Did you see him in the court room during this term, [referring to the special term in May,] while he was holding court?
A. Yes, sir.

A. No, sir; I didn't see him in May; in June I was in his court.
Q. Did you testify as follows:

Q. Was he in the same condition while he was holding the court at this special term in May?
A. Yes, sir; every once in a while he would adjourn court and go into saloons and take a good many drinks.

Did you give any such testimony?
A. I did not give testimony that I visited his court during the May term.
Q. Was this not your testimony before the judiciary committee:

Q. Was he in the same condition while he was holding the court at this special term in May?
A. Yes, sir; every once in a while he would adjourn court and go into saloons and take a good many drinks.

Q. Did you testify to that?
A. I did, sir; that was the fact.
Q. Did you answer the next question, as follows:

Q. How many times a day, etc.?
A. Oh, I don't know. I presume I have seen him drink twenty or thirty times a day.

A. Yes, sir.
Q. Did you answer the next question as follows:

Q. During the time, from the commencement of the court in the morning until he adjourned court at night, how many times did he adjourn the court, or did he go out from the court to drink, to your knowledge, at that special term?
A. Quite a number of times. Sometimes he would go into our place and sometimes into Mahoney's; that was a place next to where the court was held.

Did you testify to that? A. I testified that he was in there.
Q. Well, did you testify as I have read?
A. I don't know that I testified I went into court, because I don't know anything about the court in the May term.
Q. Now, you say you don't know anything about it. My question is, didn't you testify so before the House committee last December?
A. I didn't intend to testify that I was in his court in May.
Q. I didn't ask you what you meant to testify. Didn't you so testify?
A. I didn't, to the best of my knowledge and belief, sir.
Q. Did you testify as follows before the judiciary committee:

Q. Do you think more than twice during that time?
A. Oh, yes, quite a good many times.
Q. Half a dozen times? A. I should think more than that.

Did you testify to that, in regard to that special term, before the judiciary committee?
A. Yes, sir.
Q. Was that true or was it false? A. That was true.
Q. What did you know about his adjourning court during that special term, sir?
A. I told you I didn't know about his adjourning. I know during the time he was there, he was in there a great many times and took drinks during the time, just as I testified there.
Q. Did you know that he had adjourned court a single time that day to take a drink?
A. I didn't go into his court.
Q. Did you know that he had adjourned court at all that day?
A. I say I don't know anything about the—I was not in his court-room during that day.
Q. Do you know that he held court at all, or that he was there over five minutes in court that day, or that he was in court at all?
A. I say I don't know anything at all about his court that day. It was a special term as I understood it; that is all I know about it. I did not go into the court.
Q. What you testified then before the judiciary committee is not true, is it?
A. I had reference to the June term of court.
Q. You swore to it as the May term, didn't you?
A. I didn't understand it so, because I wasn't in the court during the May term,—that is, at the special term in May.
Q. Well, that would not prevent your swearing to it, would it?

A. Well, I wouldn't swear to it if I wasn't in there, that is all the difference it would make.

Q. Now, at the June term, the Judge came to your house to dinner when the train came up, did he not?

A. Well, he came there but he did not eat any dinner.

Q. Well, he went to court, didn't he?

A. Well, he went in and took a drink before he went to court.

Q. He went in with Mr. Forbes, did he?

A. I don't know that Mr. Forbes went into the saloon with him.

Q. Were you there?

A. Yes, sir; I was in the office when he came in; he left his valise there, and then went through into the saloon, and my bar tender came in, a little while after, and wanted to know of me if it was all right.

Q. Never mind what your bar tender said; do you say you saw Judge Cox drink?

A. I did see him take a drink, soon after he came off the cars.

Q. Before he went into court? A. Yes, sir.

Q. You saw that? A. I saw that, yes.

Q. Now, sir, how many times did you see him drink that day?

A. Well, I can't tell you how many times, but quite frequently.

Q. Were you there, in the bar room?

A. I was in and out of the bar room.

Q. You happened to be there every time Judge Cox was there?

A. Oh, no, not every time he was there.

Q. Well, how many times did you see him drink there that afternoon?

A. Well, I can't tell you, but from that time until supper time, I should say perhaps I saw him drink five or six times, anyway.

Q. You swear you saw him drink five or six times?

A. To the best of my knowledge and belief, yes.

Q. Did he drink more than once every time you saw him there?

A. I don't know that I saw him; I don't know but I did see him drink more than once at a time, but I won't be quite certain about that.

Q. Now, the Judge left your house the second day, did he not, and went to another house?

A. The second day, in the evening.

Q. He left and went to another house there in town? A. Yes.

Q. When was that whisky bill you speak of paid?

A. It was paid before he went away, at that term of court.

Q. When did he pay his board bill?

A. His board bill was paid by another man. I think his board bill amounted to two meals while he was there at our house.

Q. Well, when was it paid?

A. It was paid sometime during the term of court. It was paid by a young man by the name of Whitney, I think.

Q. Isn't it a fact, that that bill was paid before nine o'clock the next morning, the second day he was there?

A. I don't know but that it was, I can't tell just when it was paid; I know it was paid.

Q. He did not come back and stay in the house after that board bill was paid, did he?

A. Do you mean did Judge Cox come back?

Q. Yes; and stay in the house?

A. I don't remember of his staying either night at the house after that. He was there at the house frequently.

Q. He has never stopped at your house since, has he?
A. Yes, sir.
Q. When?
A. This time I speak of, that this special term of court was held in our house.
Q. When was that?
A. That was since the June term. I can't tell you whether it was September, or when it was, but it was during this last fall.
Q. Now, after that time how much of the time did you see him, after those two days during that term of court?
A. Well, I saw him quite frequently. I used to see him mornings, noons, and evenings; and occasionally during the day.
Q. Every day?
A. You mean after the second day?
Q. Yes, after the second day.
A. Yes, I used to see him every day, I think, until he went to Minneota. During the time he was up there I didn't see him.
Q. Where did you see him? A. He was in our house.
Q. Did you see him in the court room during that term?
A. I did.
Q. After those two days? A. Yes, sir.
Q. And you also saw him in your house?
A. The second and third day, I think, I was in the court.
Q. Was you there any time afterwards?
A. I don't remember being there after the third day.
Q. But you saw him every day after that time?
A. I think I did with the exception of the time that he went up to Minneota.
Q. That was the 4th of July? A. That was the 4th of July.
Q. Now, during the whole of the time that the Judge was there, he was full, was he?
A. Well, the Judge was not as full after the third day as he was before.
Q. Didn't you testify before the judiciary committee, speaking of this term of court, "yes, sir, the Judge was full all the time?"
A. Well, he was under the influence of liquor all the time.
Q. I didn't ask you whether he was tight or not, but didn't you testify before the judiciary committee of the House as to this term of court, "that the Judge was full all the time?"
A. I testified he was under the iufluence of liquor.
Q. Didn't you testify "that he was full?"
A. I don't know that I used just that word. I can't say that I used just that word.
Q. You won't deny it?
A. Well, I say that I don't know that I used that word; I can't tell what word I used to express it. I don't think he drank to that extent after the third day that he did before.
Q. You won't testify now "that he was full all the time," will you?
A. I know he was under the influence of liquor.
Q. I ask you, will you testify now, "that he was full all the time" at that term of court?
A. Well, there was room, probably, for one or two more drinks if he should choose to take them.

Q. Well, will you answer my question whether or not you will testify now that he was full during all the time of that term of court. Can't you answer yes or no?

A. Well, I call him full, but not to the extent that he was the first three days.

Q. Would you say that he was full during the time he was there?

A. Yes, sir; under the influence of liquor all the time he was there.

Q. Now, about this whisky bill. Isn't it a fact that when you presented this bill to Judge Cox, you claimed that that bill had been incurred in May, when he was there?

A. No, sir.

Q. Isn't it a fact that he disputed that bill with you?

A. No, sir, he did not.

Q. Were you there and sold him this liquor, all of it?

A. No, sir; only part of it.

Q. Now, sir, did Judge Cox step up to that bar, and drink a glass of whisky or a glass of beer alone, or would he get a crowd with him and treat those that were with him?

A. I think generally there was from one to two or three men with the Judge when he came in.

Q. And when he stepped up there to drink, he would invite those that were present to drink with him, wouldn't he?

A. There were generally, I think, from one to two or three men with him.

Q. There might have been a good many more sometimes?

A. I don't remember seeing more than two or three at any time.

Q. Those are the only times that you remember? You don't know how many drank with him; that is, not when somebody else sold to him, of course.

A. I don't know.

Q. Where was it that he drank this?

A. At the bar.

Q. At the open bar there at the saloon? A. Yes, sir.

Q. All the time you saw him he drank there, did he?

A. I saw him drink at Mahoney's.

Q. I mean as to your place,—this whisky bill of yours?

A. I don't remember of his drinking anywhere else only there in the saloon.

Q. I understood that you have not seen him drink anywhere else except at the open bar in the saloon?

A. Not in our house.

Q. How large a portion of the time were your in court during those first two or three days?

A. Well, I was in only a short time on the second day.

Q. The fact is that you were only in there once during that term?

A. I think I was in the second day and the third day.

Q. You were in there a few moments at a time?

A. That is all, I was there only a short time,

Q. Now, this time you speak of that you saw Judge Cox drunk in either December 1879 or January 1880, was that at a term of court?

A. That, I think, was just after he closed his term of court; I think it was in December, after he closed the court.

Q. In December, after he closed the court;—was it after he closed the court you saw him drunk?

A. Yes, sir.

Q. Or was it during the court?

A. After the court.

Q. But he staid there four or five days after the term of court?

A. I think he was there a day or two, anyway, after the court; I don't remember how long.

Q. Well, now you swear you saw him drunk four or five days that time?

A. Well, he was under the influence of liquor during court but after the court he got very drunk.

Q. Now didn't you testify in answer to the question of Mr. Collins, a few minutes ago that you saw him drunk at that term,—not under the influence of liquor,—but *drunk* at that term, for four or five days?

A. In December? Q. Yes:

A. I think he was, he was drunk in December, a number of days there, I can't tell you how long; he came to court and I saw him drunk frequently but I think his biggest drunk was after court had closed.

Q. Was it after the court closed that he gave that temperance lecture?

A. I can't say, but I think it was either the last part of the court or after court had closed.

Q. And you meant to be understood that at the time when he delivered that temperance lecture in the church, he was pretty full?

A. I didn't say he was full at the time he delivered the lecture.

Q. You did not? A. I did not.

Q. Well, what did you say?

A. I said that the time I had reference to, was at the time he was there and delivered a temperance lecture.

Q. So you don't want to be understood that he was drunk at the time he delivered that temperance lecture?

A. I don't know how drunk he was at that time; I can't tell you.

Q. Do you know whether he was drunk at all?

A. I don't know that he was drunk; I know that the next day after he delivered this lecture he was very drunk.

Q. Now, wasn't it on Sunday that he delivered that temperance lecture?

A. I think so.

Q. Isn't it a fact that the court was in full blast the next forenoon?

A. Well, I don't remember; I can't tell you.

Q. Well, now, if it was, he wasn't drunk, was he?

A. He was drunk the next day after he delivered the temperance lecture; he was very drunk.

Q. Where did you see him?

A. I saw him right there in my house.

Q. He stayed with you at that time, did he? A. He did.

Q. At that term of court, he stopped with you?

A. Only a part of the time; the latter part of the term he was there at my house.

Q. He was there at your house when he delivered that temperance lecture?

A. I can't tell whether he was there that Sunday, but he was there Monday, and I think Monday noon or Monday evening, to supper—he and William Todd were there to supper.

Q. Did they sleep there at that time?

A. I don't remember that time whether he staid there nights or not, but he was there quite often, and took several meals there.

Q. But you would not swear that he slept with you during that time, would you,—during that term of court?

A. My impression is that at the last part of the term, he did, but I wouldn't swear positively.

Q. At this time when you say he was drunk, William Todd was there with him?

A. Yes, sir.

Q. Now, can you mention any other day upon which he was drunk there on that occasion, during that term of court, or during his stay there, except that day after he delivered that temperance lecture?

A. Well, as I said before, I think he was under the influence of liquor during the term of court, and the next day after the lecture he was very drunk; I remember that very distinctly.

Q. Do you remember distinctly that he was drunk at any other time, except that day?

A. Since then you mean?

Q. No, at that time; at that occassion, during that term of court,—except that day?

(No answer.)

Q. Can you specify any other day except that day after the temperance lecture on which he was drunk?

A. Well, I don't remember so particularly, I don't remember as well as I do that day. I remember that particular day I speak of.

Q. Now, you don't desire to stand by that statement, that he was drunk there for four or five days,—that he was full,—you mean that he was under the influence of liquor, for some days, and that on that day he was drunk?

A. Yes, he was the drunkest that day that I saw him.

Q. Well, was he drunk the other days?

A. Well, I think he was pretty full.

Q. You think he was pretty full during that whole term of court?

A. Yes, sir.

Q. What?

A. Yes, sir; he was so full at that time that one of the waiters would not wait on him, on account of the smutty language he used.

Q. That was at the time Bill Todd was with him?

A. Yes, sir.

Q, The day after the temperance lecture? A. Yes, sir.

Q. Now, in regard to the term in December, 1879, did you not testify as follows, before the House Committee. "It was at the term of court held in the fore part of winter; I never charged my mind with it and I can't remember; he was stopping at our house then. He was pretty full all the the time that he was there."

A. I don't think I testified that I was positive in regard to the time

Q. No, No; this is what you say: "I think it was in December of 1879; it was at the term of court that was held in the fore part of winter; I never charged my mind with it, and I can't remember; he was staying at our house then, He was pretty full all the time he was there."

A. Well, he was stopping there a part of the time; I don't think he staid there all the time.

Q. But you testify then that "he was stopping at our house during that term of court," don't you?

A. Well, I don't remember about that. I know he was there a part of the time, but whether he was there all the time or not I can't tell you.

Q. What time did the passenger train leave going east in 1879?

A. Well, my opinion is that it was 12:30 but I don't remember; there have been several changes made on the tables there, and up to this last fall the trains have gone east from about 11:30 to 12:30.

Q. It was at least about dinner time or before dinner time that the train left, going east.

A. No, the trains always took dinner with us, until this last fall.

Q. Now, this Monday after the temperance meeting it was at noon and at evening that you saw Judge Cox so very much intoxicated, was it?

A. I can't state whether it was at dinner, or whether it was at supper. I won't be sure about that.

Q. Did you see him at all, at either dinner or supper, that day?

A. I think I am pretty positive as to the time. I think it was on Monday.

Q. Well, you are sure it was the day after the temperance lecture, aren't you?

A. I think so; yes, sir.

Q. Did he stay there that Monday night? A. I couldn't tell you.

Q. Did you see him there Tuesday? A. I couldn't tell you that.

Q. Did you see him any other day that week there?

A. I don't remember.

Q. Now, your testimony sums itself down to this: You saw him drunk down there sometime during that Monday, but you can't tell whether it was the evening, at dinner, or what time it was?

A. I can't; I don't remember whether it was at dinner or supper.

Q. Do you remember whether he came early or late to dinner?

A. I can't tell you that.

Q. Now, Mr. Hunt—

The WITNESS (interrupting). I will tell you what gives me my recollection, if you will allow me. There was a man there selling apples and cider,—we called him Apple-sass and Cider,—and he was there at that time; he went and heard the Judge lecture, and it was the next day that they were talking. It was the next day that Mr. Todd and he were there together, and I can't tell you whether it was—

Q. Now, would you swear positively that he was at your house at all on that day—Monday?

A. I say, that to the best of my knowledge and belief he was there on Monday,—the next day after the lecture.

Q. Now, if he was not there, you didn't see him drunk at all, did you?

A. Well, I did see him drunk there at that time.

Q. You did see him drunk at that time? A. I did; yes, sir.

Q. Isn't it a fact that the Judge left on the Monday forenoon train?

A. Well, I don't know; if he did, he was there until after dinner. All trains took dinner there going east at that time.

Q. Well, you stated that he had remained there several days after court had adjourned, did you not?

A. No, I don't know that he did.

Q. Oh, you don't know now that he did?

A. I don't think I have sworn that he did. My impression is that he was there a day or two after court, but I cannot tell. I don't remember about it positively.

Q. What year was this occasion of August 7th, that you mentioned. Where did you see the Judge at that time?
A. I saw him at our place there.
Q. At this time, on August 7th?
A. I couldn't tell you whether it was August 7th or 11th, or September.
Q. Didn't the manager ask you if you remembered having seen him drink there on August 7th, and you stated you did, but you couldn't tell whether it was August 7th or September.
A. Did I say so?
Q. I so understood you.
A. Well, you are very much mistaken. I told you I didn't know whether it was August 7th, or in September. I don't know anything about the date; I can't tell you what the date was.
Q. Well, what is it?
A. I can't tell you.
Q. Why did you answer that you saw him at that time then?
A. Well, because I saw him drunk some time about that time.
Q. Do you know what year it was?
A. I know the time he was there, but whether it was in August or September I cannot tell you.
Q. Do you know what year it was?
A. In the year 1880.
Q. Where did you see him at that time?
A. He was there at our house.
Q. He was drunk in your house?
A. I saw him in Johnny Lautenschlaeger's and Mahoney's.
Q. He was drunk in your house, was he?
A. He was about the same in either place. I saw him drink once or twice at Mahoney's, and I saw him drink once at Johnny Laughtenschlaeger's.
Q. Saw him drink how many times at those places?
A. I can't tell you how many times.
Q. Did you see him drink at all of those places?
A. Yes, sir, quite a good many times.
Q. Now, who was there at that time, besides the Judge?
A. I don't know that I can call to mind now who was there at that time.
Q. Well, what is it that makes you remember that you saw him then at the occasion to which they called your attention?
A. I don't know as I can tell you that; I don't know as there is any particular circumstance that makes me remember.
Q. As a matter of fact you don't remember at that time?
A. I know he was there in the fall somewhere about that time.
Q. How long a time was he there?
A. I can't tell you that; I guess he was there a day or two.
Q. How many times did you see him drink there?
A. I don't know, but he came in one day and went out the next; I don't remember about that.
Q. Do you remember who was with him?
A. No, sir; I don't.
Q. As a matter of fact you know very little about that anyhow?
A. I don't remember anything more than I have stated.
Q. Simply that he was drunk; that is all you remember isn't it?

A. I remember that he was there, and drank.
Q. And *drank*—you don't remember that he was drunk, do you?
A. Yes, I remember he was drunk.
Q. You remember he was drunk, too? A. Yes.
Q. Was it in the day time or night time?
A. Well, he stayed over night.
Q. Was it in the night that he was drunk?
A. In the evening, in the afternoon, and in the forenoon of the next day.
Q. All of those three days he was drunk?
A. I didn't say three days.
Q. All of those three times he was drunk, was he?
A. During the afternoon and evening, and the forenoon of the next day.
Q. You remember no particular incident by which you can place that?
A. I don't know particularly now, no.
Q. When did you come to Marshall?
A. Four years ago this month.
Q. Where did you come from?
A. I came from Mt. Carroll, Illinois.
Q. How long had you lived there?
A. I hadn't live there at all.
Q. Well?
A. I boarded there; I stopped and boarded there for about two or three months.
Q. Where did you come from when you went to that place?
A. I came from Monroe, Wisconsin.
Q. How long did you live there?
A. I didn't live there?
Q. Well, how long had you stopped there?
A. I had stopped there about three or four months.
Q. Where did you come from to Monroe?
A. I came from New York State. I stayed the winter before in Ithica, New York, and I went direct from Ithica, New York, to Fort Atkinson, Wisconsin, and from Fort Atkinson, Wisconsin, I went to Monroe, Wisconsin, and from Monroe, Wisconsin, I went to Mt. Carroll, Illinois. I was at Fort Atkinson about two weeks, and at Monroe about three or four months, I think.
Q. What was your business?
A. Well, I was handling horses and in the patent-right business.
Q. What was that place in Illinois, you mention?
A. Mount Carroll.
Q. How far is that from the Iowa border? A. I don't know.
Q. Is it near to the Mississippi? A. Yes, sir.
Q. On the Mississippi, is it?
A. Only a little ways from the Mississippi; about 16 or 18 miles, I guess. I took a lot of horses from Mount Carroll, Illinois, and went to Decorah, Iowa; from Decorah, Iowa, I shipped them to Marshall.
Q. Before you went to Ithica you lived in Binghampton, New York, did you?
A. I lived at Binghampton a while.
Q. In Broome county? A. Yes, sir.
Q. What was your business there?

A. Well sir, I was interested in manufacturing an egg-carrier.

Q. A patent-right business; is that what you were engaged in?

A. Well you may call it a patent-right business if you want to. It was the manufacture of an egg-carrier. We manufactured and sold.

Q. Mr. Hunt, were you arrested in New York for forgery before you left there?

A. Never.

Q. You were not? A. I never was, sir.

Q. Do you swear you were not arrested for forgery of a note in Broome county, New York?

A. Yes, sir.

Q. In 1876?

A. And I don't think you ever heard I was, either. I never was arrested, nor heard any talk of any arrest for forgery. Neither was I ever arrested in Binghamton.

Q. Were you ever arrested in New York?

A. No, sir; not that I remember of.

Q. Is it not a fact, Mr. Hunt, that you were arrested in Iowa for horse stealing, and gave bail of one thousand dollars, and skipped your bail and came to Marshall?

A. No, sir; there's not a word of truth in it, directly or indirectly.

Q. Isn't it a fact that your bondsman on your bail came after you at Marshall, and that you made up the thousand dollars that he had had to pay for you?

A. No, sir. It is false from beginning to end, and not a word of truth in it, directly or indirectly, in any way, shape, name, or nature.

Examined by Mr. Manager COLLINS.

Q. I understand that upon this first day of the June term of 1881 Judge Cox came to your house?

A. Yes, sir.

Q. And you say that he did not take dinner there?

A. No, sir; he called for a room. He said that he wanted a large room, and said he would have more or less company, and I told the Judge that I couldn't give it to him; that I would have to give him a small room, a room on the rear end of the house, and that the two would have to room together; that I had no such room as he wanted that I could give him. And, when he left my house he said that they had given him the parlor down there and a bed-room, I understood him to say, that opened from the parlor, so that he had more room, and he wanted to go down there on that account.

Q. Well, he didn't take dinner at your house that day?

A. No, sir; he told me he had been on a drunk, and didn't feel like eating; and he didn't take any dinner and didn't take any supper, but he did take breakfast.

Q. He had his breakfast the next day, I suppose? A. Yes, sir.

Q. He took a drink, however, before he went up to the court room?

A. Well, I should say so.

Examined by Mr. ARCTANDER.

Q. Do you know whether Judge Cox took dinner anywhere else that day?

A. No, sir; I do not; I know he said he didn't want any dinner.

Q. He might have taken 10 dinners and you not know anything about it; you didn't follow him, did you?

A. Well, I don't think I did, no,—not if I know myself.

The PRESIDENT. Senator Daniel Buck offers the following order, which the Clerk will read.

The CLERK. (Reading.) Ordered, that hereafter no witness called to prove article eighteen, be allowed to testify to any act charged in any other specific article.

The PRESIDENT. The question is on the adoption of the order.

Senator CROOKS. I would like to hear that order read again.

The Clerk then read the order again.

Mr. ARCTANDER. May I ask, Mr. President, whether that is intended to shut out the defense?

Senator D. BUCK. It applies to the prosecution.

Mr. ARCTANDER. It ought to state so, then.

The PRESIDENT. The question is upon the adoption of the order.

Mr. Manager HICKS. Mr. President, may I be allowed just one word? I understand that, then, the position of the State will be this: That in case one witness had testified to a certain act of drunkenness and another witness was called under article eighteen, that the *new* witness would not be allowed to testify to an act of drunkenness to which only the one witness had testified, but that the defense would be allowed to come in and bring a half dozen witnesses, perhaps to testify that the man was not drunk at the time to which the one witness had testified. In other words, leaving the particular act to which one or two witnesses may have testified without any corroboration, and leaving the defense with the privilege of coming in and overpowering us, if possible, by a preponderance of testimony, showing that the Judge had not been drunk at that time! That is the situation it would leave us in, as I understand it. If the Senate desires to leave us in that position, we have simply to say that we think it is not for the best interests of the State, but we shall have to submit.

Senator WILSON. I would like to have Senator Buck explain the object of that order.

Senator D. BUCK. The object is that when a witness is called to testify as to article eighteen,—the article of habitual drunkenness,—that he shall testify upon that subject only, and not cumulate the testimony upon these different articles. If we do not adopt some such order, we shall find that the rule we have adopted here of having but five witnesses to each specific article, will be violated, and there will be from five to forty; and when the defense come in they will ask the same privilege, and will produce the same number. The object of this is simply to confine the witnesses that are called to prove article eighteen, to that article and not have them go off and under color of proving article eighteen prove all these specific acts. I think, that when the Senate come to listen to the evidence for the defense, they will want to adopt the same rule. It is the only way I can see that we can sustain ourselves under the rule we have already adopted.

Mr. Manager HICKS. May I ask the Senator just this question, (perhaps we understand each other:) In this instance we have proved here by two or three witnesses, that Judge Cox was intoxicated on the bench at the last June term in Marshall. Do I understand this rule to go to the extent that we are not allowed to prove him drunk off the bench, at night by another witness?

Mr. ALLIS. It is the same instance.

Mr. Manager HICKS. No, but this habitual drunkenness may be shown by acts occurring at another time. Judge Cox may perhaps have restrained a little during the day; and if we are to have an opportunity to show that he was gloriously drunk at night, we would like that privilege by another witness.

Senator D. BUCK. I would ask the counsel if they could not prove all of those acts at one time, under that specific article?

Mr. Manager HICKS. Aye, but the fact is that we bring perhaps the clerk of the court to show that the Judge was drunk in court; now, the clerk of the court may be an honest man who goes home at night, and knows nothing about what is done in the saloons. Then we come in under article eighteen, and bring the man that has been in the saloon with him at night,—the man who has been in his company,—to show that he has been drinking, to show that this intoxication was brought about by drink and not by opium or some other cause.

Senator D. BUCK. In other words, when we have adopted a rule that we shall have but five witnesses on any article, it is proposed, by that method, to bring in perhaps forty.

Mr. Manager HICKS. No; I think not. We have only about a dozen witnesses here now,—

Senator D. BUCK. That is the practical effect of it. Do you not, by that method, introduce a large number more witnesses than we have endeavored to limit you to?

Mr. Manager HICKS. It may be corroborative but still this one article is the charge of drunkenness in court; one item of the proof is showing that he gets drunk out of court.

Senater D. BUCK. My idea, under the rule, would be, that you would be allowed to prove it in the way suggested. I don't know what the Senate might think of it.

Mr. Manager HICKS. We have no objection to that order with that understanding of the rule.

Senator D. BUCK. I think we ought to have a limit to this matter somewhere, and I offer this order for the purpose of getting at that result.

The PRESIDENT. The question is upon the adoption of the order. Is the Senate ready for the question?

The yeas and nays were called for.

Mr. Manager HICKS. I desire to state to the Senate that there is one witness in particular here that I desire to testify upon this matter.

Senator D. BUCK. Perhaps there should be a modification of the order, as suggested. If he is one of the five witnesses I do not intend to bar him from testifying.

Senator POWERS. That was the point I was going to ask the Senator about, whether after having testified on article eighteen, or fifteen or sixteen, or some other article, ought it not to appear that he is one of the five witnesses allowed by the court?

Senator D. BUCK. I will add then, if there is no objection, "unless he is one of the five witnesses allowed by the court."

Senator WILSON. That is all right.

Mr. Manager DUNN. How would it read then?

The CLERK (reading) Ordered, that hereafter no witness called to prove article eighteen be allowed to testify to any act charged in any other specific article, unless he is one of the five witnesses allowed by the court.

The PRESIDENT. The clerk will call the roll upon the adoption of the order.

The clerk then proceeded to call the roll. When the name of Senator Powers was called he arose and said:

Senator POWERS. Mr. President, I suppose that means with reference to the qualifying clause in the rule already adopted, unless by permission of the Senate.

Senator D. BUCK. Oh, I suppose we can change it at any time we may see fit.

The PRESIDENT. The question being upon the adoption of the order, there were yeas twenty, and nays one, as follows, so the order is adopted.

Those voting in the affirmative were—

Messrs. Aaker, Adams, Buck C. F., Buck D., Case, Crooks, Gilfillan C. D., Howard, Johnson A. M., Johnson, F. I., Langdon, McCormick, McCrea, McLaughlin, Morrison, Perkins, Peterson, Powers, Rice, Tiffany, White, Wilkins and Wilson.

Those voting in the negative were—

Mr. Wheat.

On motion of Senator C. F. BUCK, the court adjourned.

TWENTY-FIRST DAY.

ST. PAUL, MINNESOTA, January 25 1882.

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

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

Messrs. Aaker, Adams, Buck C. F., Buck D., Campbell, Case, Castle, Howard, Johnson A. M., Johnson F. I., Langdon, McDonald, McCormick, McLaughlin, Mealey, Morrison, Officer, Perkins, Peterson, Powers, Tiffany, Wheat, White, Wilkins and Wilson.

The Senate sitting for the trial of E. St. Julien Cox, Judge of the Ninth Judicial District, upon articles of impeachment exhibited against him by the House of Representatives.

The Sergeant-at-Arms having made proclamation,

The Managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. James Smith, Jr., Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam, and Hon. W. J. Ives, entered the Senate Chamber and took the seats assigned them.

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

The PRESIDENT. Is there any business for the consideration of the Senate, previous to proceeding with the testimony? If not the counsel will proceed.

Mr. ARCTANDER. I would ask at this time, Mr. President, to have introduced the certified copy of the writ of mandamus, that was agreed to be submitted by counsel, when we were able to obtain the copy, as part of the cross-examination of S. W. Long.

Mr. Manager HICKS. It does not contain a copy of the original signature by this respondent.

Mr. ARCTANDER. This is the copy I got from the clerk.

Mr. Manager HICKS. It is the writ, but it is not the whole paper.

The PRESIDENT. Is there any objection to the paper by the managers?

Mr. Manager HICKS. Yes, sir. It is not a copy of the original.

The PRESIDENT. What is the objection?

Mr. Manager HICKS. The objection is that it is not a certified copy, as it purports to be. There is on the original a return by the respondent of the writ of mandamus, and it is not on that.

Mr. ARCTANDER. No such objection can be received here, for here is a certificate by the clerk of the supreme court that this is a true and correct copy of the writ of mandamus in the above entitled cause.

Mr. Manager DUNN. Our objection is that it is incompetent and immaterial.

Mr. Manager HICKS. We object also, Mr. President, for the reason that it is not certified in accordance with the statutes of this State.

Mr. ARCTANDER. Very well; that objection is good, I will take it and get another certificate.

Mr. Manager DUNN. Get the whole paper the next time.

Mr. Manager HICKS. The certificate is not correct in the first instance, when you come to look at it.

Mr. ARCTANDER. I know it is not.

Mr. PRESIDENT. Are the counsel ready to proceed with the examination of witnesses?

Mr. Manager HICKS. Yes, sir, Mr. Wallin will be called.

ALFRED WALLIN,

Sworn and testified.

Mr. Manager DUNN. Mr. Wallin is called to specification four of article seventeen.

By Mr. Manager DUNN.

Q. Where do you reside? A. Redwood Falls, Minnesota.

Q. How long have you lived there? A. Over seven years.

Q. What is your business, or profession? A. Attorney at law.

Q. Are you acquainted with the respondent, Judge Cox?

A. I am.

Q. Have you ever had occasion to appear before him while he has been acting as Judge of the ninth judicial district?

A. I have.

Q. In your professional capacity? A. Yes.

Q. State whether you were before him in the month of July, 1880, in New Ulm?

A. I was.

Q. I don't know whether I have the month or not, in August, 1880; I think it is charged in July, but the proof shows it to be August.

A. I was before him in August.

Q. Do you know what date?

A. I think it was the seventh.

Q. What was the matter upon which you were engaged before him at that time—what was the title of the suit?

A. The title of the suit was The Board of County Commissioners of Redwood county, against Amasa Tower, and others.

Q. What was the nature of the business you had pending before him at that time?

A. I was there for the purpose of having that case settled. It had been tried, and we were proceeding to have a case settled, for the purpose of making a motion for a new trial. on that day, and also after the settlement of the case.

Q. Who represented the other side of the case?

A. Frank L. Morrill, who testified here.

Q. You were attorney for the Board of County Commissioners?

A. I was.

Q. And Mr. Morrill was attorney for defendant, Tower?

A. He was.

The PRESIDENT. Upon which specification is this?

Mr. Manager DUNN. Specification four, of article seventeen.

Q. Were you there upon an order to show cause, or how were you there?

A. We were there on the order of the court.

Q. Louder. I don't think the court can hear you.

A. I say we were there on the order of the court. The order specified that we should appear there on that day, and settle the case, and hear the motion for a new trial upon the case, after settlement.

Q. That is, the order was, that you should appear at New Ulm, at a special term, was it?

A. I received the order from the court, and served a copy of it upon the opposite counsel, and he appeared there on that order.

Q. The day was set by the Judge, was it? A. It was.

Q. Did you see the Judge there when you arrived? A Yes.

Q. What was his condition as to sobriety when you found him there?

A. We saw him in the morning, somewhere between seven and nine o'clock, on the street, on the sidewalk, and he was intoxicated at that time.

Q. Well, did you proceed with your business before him; state what was done, fully?

A. Well, we had a short conversation on the street, and separated with the understanding that we would go before him when court convened. I don't remember the hour, nine or ten o'clock; that was the understanding when we separated. Counsel on the other side and myself were there at the time. The Judge didn't get in until an hour, or two, after the time set. He came in there, and took his seat upon the bench. Court opened.—

Q. What was his condition, at that time?

A. He was very much intoxicated.

Q. What proceedings were had, if any,

A. Counsel and myself had agreed, after seeing him in the morning, that he was then in no condition.—

Mr. ARCTANDER. Well, we object as to what the counsel agreed upon.

Mr. Manager DUNN. That is simply preliminary as to what was done, —explanatory.

The PRESIDENT. You can state what you did, and then it can be shown afterwards, why you did it.

The WITNESS. We did not submit our papers, or our case, for the consideration of the court at all, on that occasion.

Q. Why did you not do it?

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

Q. Where there amendments proposed in the case, Mr. Wallin?

A. I had served a proposed case, and counsel upon the opposite side had served proposed amendments to the case, and we were wide apart as to what should be embodied in the case, and were anxious, of course, to settle the case. That was the principal thing; although a motion was to be made for a new trial, yet the result of that motion was a foregone conclusion. The judge announced in the interial, in the morning, that he should grant me a new trial, and subsequently did so; but, of course I wanted no order for a new trial, until I had settled the case on which the order was to be based.

Q. Why not? Explain that to the Senate, they are not all lawyers here; why wouldn't you be content with an order without a settled case?

A. An order for a new trial, in order to be available, should be based upon something,—must be based upon something. It must be based, either upon the minutes of court—we make a motion on the minutes of the court, sometimes, in the first instance, but when that isn't done it is necessary to settle a case so as to have a foundation for the order.

Q. It may be done upon a bill of exceptions, too?

A. It may be done, but then the bill of exceptions must be settled.

Q. They must settle either a case or a bill of exceptions? A. Yes.

Q. And it was for the purpose of settling that case that you met there?

A. Also to make a motion for a new trial after the settlement of it.

Q. Well, the result was that, on account of the condition of the Judge, the case was not settled, and the motion was not made. Was that it?

A. The motion was not made and the business was not submitted to the court, except as I was about to explain before when the counsel objected.

Q. How was it finally settled, if at all, at that term?

A. The business was not done at that term or at that time. The motion for a new trial was not made until the following November, and the case was not settled until a considerable lapse of time after the adjournment of the court. It was done by correspondence.

Q. You never met again before the Judge?

A. Not for the purpose of settling that case.

Q. Did you meet again for the purpose of making a motion for a new trial?

A. In November of the same year, in another county.

Q. You made your motion for a new trial and it was granted, was it?

A. Yes, sir.

Q. How far is Redwood Falls from New Ulm, where you met the Judge?

A. About forty miles.

Q. You went there on purpose, did you, to do that business?

A. We did.

Mr. Manager DUNN. Take the witness upon that specification.

CROSS-EXAMINATION.

By Mr. ARCTANDER.

Q. That morning, when, you say, the Judge was intoxicated at New Ulm, was not the first time that you and Mr. Morrill had intimation from the Judge that he would grant a new trial in that case, was it?

A. I have a distinct recollection that I was satisfied, in my own mind, that I would get a new trial.

Q. Let me ask you, Mr. Wallin, if it is not a fact that, upon the coming in of the verdict in that case, the Judge notified both you gentlemen that he was satisfied that he had done wrong in giving a misdirection to the jury, and that for that reason, on account of his own error, he would give them a new trial, upon a settled case, at any time?

A. I remember no such statement by the Judge to me personally.

Q. In court, I mean?

A. But I have no doubt that he made such a statement, frequently. I was fully satisfied that I should get a new trial when I went to New Ulm.

Q. Well, you were fully satisfied the Judge was satisfied at the time, or immediately after, that he had made a mistake at Redwood Falls, at the time the case was tried, when he charged the jury?

A. Without telling me so personally, I was satisfied that he knew that he had made a mistake, and would grant a new trial. I had no doubt on that question, at all, that I would get a new trial.

Q. At the time the jury came in, that was your impression, from the remark made by the Judge?

A. I don't remember that he made the remark at the time the verdict came in, to me, or in open court, I don't remember that he made it. It was in the night.

Q. Didn't he, at that time, tell you, that if you would make a motion upon the minutes then and there, that he would grant you a new trial, by reason of the misdirection to the jury?

A. I have no recollection of the statement.

Q. Didn't he ask the attorneys at that time not to make up a case at all; that it was not necessary?

A. I never heard such a request, or statement, or direction.

Q. The misdirection that we have been speaking about, that you had in your mind at the time, was in submitting a certain question to the jury, that the Judge thought ought not to be submitted to it?

A. Well, there were several objections from my standpoint, to the charge.

Q. That was one, that he afterwards decided to grant a new trial upon?

A. I think there were several grounds for a new trial.

Q. The Judge gave every charge but one, that you asked for, at that trial?

A. I wouldn't say, definitely; there is some record in the supreme court here that will tell exactly what he did give.

Q. He was sustained by the supreme court in granting a new trial?

A. He was.

Q. Now, at this time, the proposed case and the proposed amendments were submitted to the court, were they not; you didn't appear at any time afterwards and argue them.

A. They were not submitted to the court at that time.

Q. Were they sent to him afterwards? A. Yes, sir.

Q. No argument upon it? A. No, sir.

Q. Nor brief? A. Not at that time.

Q. Who sent them?

A. They were sent to the clerk of the court, by arrangement at that time between counsel, myself, and the clerk.

Q. At that hearing? A. No hearing.
Q. Well, at the time you appeared there for it?
A. At the time we appeared.
Q. That case was finally settled, and signed by the Judge, September 6, was it not?
A. I don't remember the date of the settlement or allowance.
Q. Mr. Wallin, you were the gentleman who was nominated by the republicans four years ago, for district judge in that district?
A. I am.
Q. And you were defeated by the respondent here? A. I was.
Q. You are now a candidate for that position, are you not?
The PRESIDENT. Wait.
Mr. Manager DUNN. I object to that kind of evidence. I cannot see any relevancy that it has here; it is ridiculous to me.
The PRESIDENT. What is the purpose of it?
Mr. ARCTANDER. I think it is laid down in the authorities, almost without qualification, that you may show, if you can, any interest upon the part of the witness in the outcome of the proceedings, to affect his testimony. The interest may be slight; it may be great. We have been allowed to show it heretofore, and I think we have a right to show it now. If the gentleman, now upon the witness-stand, is at the present time a candidate for that position—for the Judge's shoes—certainly he has an interest in the result of these proceedings. He has an interest in seeing this respondent ousted. He has an interest in seeing it, for the purpose of furthering his own interests, even if his chances be small. I think that is a question for the Senate to decide, whether or not that influences his testimony. It is a question of fact for them to decide; but, as a matter of law, we are allowed to show anything that shows that the witness has an interest in the result of the proceedings which might influence his evidence one way or the other; which might color it one way or the other; make it stronger or weaker. I did not expect that that position would be controverted at all. I think it was objected to before—
Mr. Manager DUNN. It was never objected to.
Mr. ARCTANDER. I think it was objected to, in the case of Sumner Ladd.
Mr. Manager DUNN. No, it was not.
Mr. ARCTANDER. And Senator Hinds, who was then in the chair, Mr. President, ruled upon it, and there was no argument upon it, and there is no necessity for argument, for I can certainly bring a wheel-barrow load of authorities upon that point, that it is proper and right.
Mr. Manager DUNN. I don't understand the rule to be as broad as the counsel alleges it to be, that they can show *any* interest. I understand that if the party has any legal interest in the outcome of the suit, such as a share in the verdict, that it is proper to show it, to go to the jury as effecting his creidbility. But in a case of this kind, where no one can be said to have any interest in the outcome of the suit, one attorney more than another, where simply a desire, or a willingness to serve a constituency or a people in any capacity is just as liable to animate the mind of one lawyer as another, the fact that one man may be talked of prominently, certainly gives him no interest in the suit, which is a legitimate subject of inquiry on the stand. I don't agree with the gentleman on that point.
Mr. BRISBIN. It seems to me, Mr. President, that discussion is un-

necessary after this court has ruled upon the matter. The same objection was made when Senator Hinds was in the chair, when the testimony of Mr. Ladd was sought to be introduced; and it was ruled that the testimony was admissible upon the ground that he had sufficient interest; that was the ruling of the President, and was acquiesced in by the Senate. This constant see-sawing, by way of argument, in relation to questions which have been substantially decided by the Senate,—important questions,—is objectionable, and if continued we will never get through.

Mr. Manager DUNN. We take issue upon the fact that it has been decided. We do not remember it.

The PRESIDENT. The Chair will accept that version of it, unless some Senator wishes it to be submitted.

Senator LANGDON. I move, Mr. President, that the question be submitted to the Senate.

The PRESIDENT. The question will be upon sustaining the decision of the chair.

Senator F. I. JOHNSON. State the question again, if you please.

The PRESIDENT. The reporter will read the question.

The reporter read the question.

Senator D. BUCK. Mr. President, I ask that it be read again. I could not hear it, when it was first asked of the witness, nor when it was last read by the reporter.

The reporter again read the question.

The PRESIDENT. The question is now, whether he is a candidate for the position, and the matter will be submitted.

Senator CASTLE. Mr. President, the question should put upon the objection, whether the objection shall be sustained or not sustained.

Senator CAMPBELL. That is the way we have been doing it.

The PRESIDENT. It can be done that way.

Senator CASTLE. And those voting "aye" will vote to sustain the objection and that the question should not be put; those voting "no" would vote to allow the question to be put.

The PRESIDENT. That amounts to the same thing, and will be taken as sustaining the objection. At the suggestion of Senator Castle the question will be put in that way, upon sustaining the objection raised by the counsel for the State. Those voting aye, will vote that the question should not be put.

The clerk proceeded to call the roll.

When the name of Senator Powers was reached on the roll, he arose and said:

Senator BOWERS. Mr. President, I could not hear distinctly the way the question was put.

The PRESIDENT. The chair will state it. The question is asked the witness, whether he is a candidate for the position which has been held by Judge Cox. Objection is raised to the competency of the question. The Senate is now voting upon the question of sustaining the objection, whether the objection shall be sustained. If they vote "aye," sustaining the objection, the question is not to be put. If they vote "no," the question is to be put.

Senator POWERS. I vote no.

The roll being called, there were yeas 5, and nays 22, as follows;

Those who voted in the affirmative were—

Messrs. Aaker, Langdon, Peterson, White and Wilkins.

Those who voted in the negative were—

Messrs. Adams, Buck C. F., Buck D., Campbell, Case, Castle, Gilfillan C. D., Howard, Johnson A. M., Johnson F. I., Macdonald, McCormick, McCrea, McLaughlin, Mealey, Morrison, Perkins, Powers, Simmons, Tiffany, Wheat and Wilson.

The PRESIDENT. The question being as to whether the objection should be sustained, there were yeas five, and nays twenty-two; so the objection to the question is not sustained. The witness may answer the question.

The WITNESS. What is the question?

By Mr. ARCTANDER. The question was, whether or not you were a candidate for the Judge's position?

A. In the happening of a certain contingency, I am.

Q. And that happening of a certain contingency, is his being ousted, is it not?

A. That is the precise contingency.

By Mr. Managet DUNN.

Q. Does the fact of your candidacy for the position of Judge of the ninth judicial district, in case there should be a vacancy, have any influence upon your testimony, so as to make you testify falsely.

Mr. ARCTANDER. That is objected to as incompetent, immaterial and irrelevant; that is for the Senate to say.

Mr. Manager DUNN. No, it is not. It is for him to say. They can not impugn, inferentially, the intentions or honesty or purity of a witness and then shut his mouth up from saying whether that has any influence upon his testimony or not.

Mr. ALLIS. That is for the Senate.

Mr. Manager DUNN. He has a right to be heard upon that point.

The PRESIDENT. The chair is of the opinion that the witness should answer the question.

The WITNESS. Is there a vote to be taken on it?

Mr. Manager DUNN.

Q, No, You may answer the question.

A. I am very certain that it does not.

Q. Please repeat that, and in a louder voice.

A. I am certain that it does not influence me to the extent of coloring my testimony.

Q. You are simply testifying to facts, as you understand them, with regard to a removal from office, or to a candidacy for office?

Mr. ARCTANDER. That is objected to as leading.

Q. Is that what you understand?

A. Have that question put again.

The reporter read the question.

The PRESIDENT. The question, as objected to, is certainly a leading question. Considerable latitude has been allowed here, in the matter of putting leading questions, owing to the character of the witnesses, who are of such a class as might well be supposed could not be influenced by them. This is decidedly a leading question, and it would be preferable that the attorney should put it in some other form.

Mr. Manager DUNN. It is certainly leading. If he objects to it on that ground, I am inclined to think it *is* leading. I will withdraw the question, and let it stand right there on his other answer, if they are afraid of it.

This witness will now be asked in regard to specification three of article seventeen.

Q. Mr. Wallin, were you engaged in your professional capacity before the district court, held by Judge Cox, in Redwood Falls, of 1880?

A. I was.

Q. You were at that term of court? A. I was.

Q. You may state, if, during that term of court, or any part of it—state what the condition of the Judge was as to inebriety or intoxication, during any part of that term of court?

Mr. ARCTANDER. This is June, 1880, is it not?

Mr. Manager DUNN. I believe that is the date. We get the dates mixed up. It is specification three of article seventeen. [To the witness.] Please state, Mr. Wallin.

Mr. ARCTANDER. We object to this question as too general. I base my objection upon the fact that one witness has already been called upon to testify as to this term, and he has given certain instances of intoxication upon the part of the Judge. I raise the point, that in this specification, there is only one day charged. It does not, as some of the other articles, go all over the term. There is only one day charged. The witness that they first called, was asked the general question as to whether he had been intoxicated, at all, that term. He stated he was, and upon cross-examination he was pinned down, and he fixed three instances upon which he was intoxicated. I claim that the State must elect as to one of those instances. It was three different dates. The State must elect one of those instances, and cannot prove any other instances at least, than those brought out by the other witnesses, because they have charged only one day, as the President and Senators will see by referring to specification three: "At Redwood Falls, in the county of Redwood, in said State, on the 15th day of June, 1880." Now, I admit that under the ruling of the Senate, as well as the law generally, they might be allowed to show as to any time, except the 15th day of June. They might show it at any other day, but if they have shown it one day, they cannot go to work and show it on other days. That it is improper to show more than one day under that charge, because their charge is only one day, and I apprehend, as has been charged here, that every occasion on which the Judge appeared upon the bench in a state of intoxication, is an independent offense. They have charged that only once. They have not charged it as they have in the other articles, some of them, during the whole term, between such and such dates; but they have charged only one day, and they must abide by the election they have made, by calling the witness Morrill upon the stand, and what he testified to they must now stand by, and they cannot go outside of these occasions. That is the point I make; and I think it would be good in criminal law, and it would be good in civil law. I don't say which one; he gave three instances in that term. I don't say which one of them they are bound to stand by. I think they can take either one they choose, and now say to the Senate, which one they elect; but I say they cannot go outside of those, and ask a question like this, which is general, was he at any time during that term, but call the attention of the witness particularly to any of the occasions testified to by Mr. Morrill.

When they have done that, and the Senators have ruled upon this, I shall ask the Senate to determine that the managers shall be required to determine which one of these three occasions testified to by Mr. Morrill is the charge which they rely upon here. I think that is commonly

done in court, both in civil and criminal practice, where there is a double pleading. That a party is bound, in the discretion of the court, to select which one he relies upon. I make no statement as to the law that I do not believe is perfectly good, nor do I make any statement here as to the law which I would not be willing to submit to any court of justice. But I submit it is good doctrine and principle, in criminal law, that you cannot charge a man with one offense and then turn around and prove four or five upon him. My objection is that it is too general, because it does not limit it to any of the charges preferred by the witness, Morrill; and by calling him upon the stand and drawing out these facts they have elected that those are the charges they will stand upon.

The PRESIDENT. Will the reporter please read the question?

The reporter read the question.

Mr. Manager DUNN. It is merely a preliminary question, and the gentleman has expended all his wind so far for nothing. It is a preliminary question, leading up to what we propose to prove by the witness.

The PRESIDENT. The chair will overrule the objection. We do not think the objection is good.

Mr. ALLIS. You only expect that to be answered by yes or no?

Mr. Manager DUNN. I asked him to state whether he was intoxicated or not. That is the theory of the question.

Mr. ALLIS. It is a preliminary question to be answered by yes or no.

Mr. ARCTANDER. I understood the question to be what was the condition of the Judge as to inebriety during that term.

The PRESIDENT. The answer, as given by Mr. Morrill under this specification, cannot determine as to what this witness shall testify to. He simply testifies under this specification, without regard to what some other witness has testified to.

Mr. Manager DUNN. You may answer the question, Mr. Wallin.

The WITNESS. Please read the question.

The reporter read the question.

Senator CASTLE. Do I understand—there has been so much confusion here, that I cannot hear the Reporter read the question, or hear the counsel ask it—but I understand that this witness has already testified with reference to one occasion, under one specification, and that this is an attempt to show another occasion, under the same specification.

The PRESIDENT. The Chair does not so understand it. The previous testimony has been under another specification. As was said before, it is upon specification three that he is now questioning.

Mr. ARCTANDER. I beg leave to state to the Senate, that the point of the objection is this: that another witness has been called upon this specification, charging only one day, and he has testified to certain portions of that term; certain occasions during that term. Our objection is that this question is too general, because they must limit themselves to the times that they have shown by another witness, under this specification; that is the point.

The PRESIDENT. The chair overrules the objection.

Q. State, Mr. Wallin.

A. Is it a general question now, as to his condition?

Q. Yes.

A. My recollection of his condition is that during—

Senator CASTLE. I think under the circumstances that question should be put to the Senate, and perhaps I might say this:—I do it for this simple reason, and in justice to the chair and to myself, it is proper

that in asking that it be submitted to the Senate, I should state my reason. If there be any purpose in requiring a specification, it would be to specify an occasion. As Senator Buck said, at the time this matter was considered in secret session, that under specifications, such as were given of article seventeen, but one time or occasion could be taken into consideration. Now, if witnesses have testified under that one specification, upon one single occasion, certainly, under the rule laid down (and I think properly so,) by the Senator from Blue Earth, at that time, and to which we all agreed, the prosecution should not be permitted to give testimony as to any other specification, for the reason that, if so, the specification would be utterly valueless. Under specification of one time, you could show a dozen different times, or at least five. You could show by one witness, one particular occasion, by another, another, and under a single specification you would have five different charges.

Mr. ALLIS. Mr. President—

Senator CASTLE. And just one thing further, and that is this: Now, if the prosecution are permitted to do that, the defense should be permitted to put in their testimony with reference to each of these particular occasions, and under our rule they would have five witnesses to each of these particular occasions.

Senator POWERS. I think the Senator is right, but I think he is out of order.

Senator CASTLE. I am out of order, I can see that; but in justice to the chair, the court, and myself, I desired to say that.

The PRESIDENT. The question will be submitted for the decision of the Senate.

Mr. ALLIS. Are you about to submit the question, Mr. President?

The PRESIDENT. Yes, sir.

Mr. ALLIS. I would like to make a single remark—

Senator CASTLE. I think, Mr. President, that it would not be proper to hear argument after the matter is submitted.

Mr. ALLIS. I didn't know that it had been submitted. I thought it was about to be submitted.

Senator MACDONALD. The Senator from Washington has got through with his argument now.

Senator CASTLE. Yes, I want to do all the talking.

The PRESIDENT. The question will be submitted.

Senator WILSON. I didn't understand, Mr. President, that that rule applies to the question.

Mr. Manager DUNN. I will go on with the witness until this matter is disposed of. It can be done at any other time.

The PRESIDENT. No; the roll can be called by the clerk.

Senator C. F. BUCK. I want to understand this question, Mr. President. As I understand it, one witness has sworn under this specification, that Judge Cox was drunk at a particular time. Is that a fact?

Mr. ARCTANDER. That is it.

Senator C. F. BUCK. Now they ask the witness, under the same specification, a general question, whether he has been drunk upon any occasion.

Senator CASTLE. During the same term.

Senator C. F. BUCK. During the term?

The PRESIDENT. That is the case.

Mr. ALLIS. It is quite evident that our objection is not entirely understood. The point is this: That here is a specification of one particular instance. It is alleged to be on the fifteenth. It is immaterial whether it is proved on the fifteenth, or some other day. That is a fact, it and has been acknowledged. But it is one instance or case of drunkenness. Now, other witnesses have been introduced here, and have fixed this occasion upon a particular day. The point of our objection is, that you cannot go on with other witnesses and prove another occasion, on another day. It was not necessary for them in the first instance, to prove this particular instance of drunkenness or intoxication to have been on the fifteenth as alleged. It may have been on the tenth or the fourteenth. They have gone on and introduced testimony before, in regard to the instances, and fixed it upon another date. That is all right. Now, it is not admissible by this witness, to prove another and different instance, as has been stated. That is the point of the objection.

The PRESIDENT. The remark having been made, the chair will state the ground of the ruling. The specification is that the drunkenness or intoxication occurred on a certain day, but it is admitted by the counsel for respondent, that it is competent to prove here, that the case of intoxication was upon some other day; it might have been on the fourteenth, or might have been on the sixteenth. The exception taken is for the reason that a previous witness under this specification has testified to certain times when the intoxication did take place, and that the witness must be limited to those periods mentioned by the previous witness, as the chair understands it. On that version of the case, the chair ruled that the objection is not good, and that this witness's testimony should be introduced without regard to that given by some other witness.

Senator POWERS. If I understand it correctly, Mr. President, if the objection is sustained, it will still be competent to enquire whether the witness knows of his having been intoxicated on the fifteenth.

The PRESIDENT. Yes, or on either of the times testified to by the previous witness, Mr. Morrill.

Mr. Manager DUNN. Mr. President—

Senator D. BUCK. I think the way it stands now may lead to difficulty; a the difficulty which the Senator from Washington and myself did not exactly comprehend. It is this: It is the occasion which was to be testified to; not whether it is the fifteenth, particularly, but whether it is the same occasion.

Mr. ARCTANDER. That is it.

Senator D. BUCK. That is what we want to get at. In other words, that there will not be but one offense proved; but whether that was the fifteenth, sixteenth or seventeenth, my opinion would be to let the State prove it. A witness may testify to certain facts and circumstances going to show drunkenness; and he may think it was the fifteenth. This witness may testify to the same state of facts, the same circumstances, which would show that it was the same occasion, or only one act of drunkenness. And yet he might think that it was on the seventeenth. That is why I desired that the question might be put, so there will be no misapprehension. The occasion is what we want.

Mr. Manager DUNN. The occasion, I would say,—

Senator D. BUCK. In other words, so far as I am concerned, I should not favor proving a distinct offense on the fifteenth by one witness, and

another distinct offense on the eighteenth by another; but there may be facts and circumstances showing that it was all one occasion; whether one witness stated it one day, and another witness on the other, if the facts and circumstances show it to be but one.

The PRESIDENT. In discussing this question, the rules seem to have been broken to about an equal extent on both sides of the question, and the chair will now have the question put.

Senator D. BUCK. I do not wish to discuss it, Mr. President, except so far as may be necessary to have it understood.

Senator CASTLE. I will make a motion, Mr. President, which will make it definite. I move that this witness be confined to the particular occasion testified to by the former witness.

Senator D. BUCK. I second that motion.

Mr. ARCTANDER. May I correct the Senator? The former witness testified to three different occasions. Would not the Senator limit his motion to one of the three occasions?

Senator CASTLE. To *an* occasion; I will put it in that way; to one occasion testified to by the former witness.

Mr. Manager DUNN. I presume the rule of the Senate, regarding debate on that question, does not apply to the counsel for the respondent, or to the managers. I presume we have a right, as attorneys, to argue these questions, and therefore I want to say a word or two before the matter is settled. The seventeenth article charges the respondent that on divers days, not enumerated in the foregoing articles, with having presided in court, while he was then and there intoxicated, etc. We were compelled to serve notice upon the respondent of the times and occasions, days and dates, when and where, this took place. We have certified by our specification, that at Redwood Falls, on the 15th day of June, 1880,—one of the times as to which we would attempt to give evidence upon this point. Now, are we to be narrowed down here to a single day in the month of June, or are we not to be allowed the same latitude that we have been upon all the other articles of this impeachment? In giving evidence of the occurrence,—that it occurred at a district court, held at Redwood Falls, by this respondent, commencing on, or about, the fifteenth day of June, and perhaps running through the whole term, are we, because one witness testified as to the occurrence, that it occurred at Redwood Falls, and that upon three particular occasions, he particularly noticed intoxication upon the part of the respondent, to be confined to one, two or three—the whole of them—or to a single one of those occasions? It seems to me that that is narrowing down this issue to a degree of fineness, which ought not to be done. We ought not to be narrowed down in this way. We ought to have the privilege of showing the respondent's intoxication during the term that was held, by the respondent at Redwood Falls, on the 15th day of June. That has been the course in all the other articles, and I am surprised at these technical objections, that come from the counsel for the respondent on this occasion. I don't recollect particularly, what the witness Morrell testified to, I was not conducting the examination at that time, and it has slipped my memory, but the intention on the part of the managers, with this witness, is to show that this respondent, during that term of court, in Redwood Falls, was there in a state of intoxication, during some portion of that term. And I beg of this Senate, in voting upon this question, not to manacle the hands of the managers in this way, not to reduce the great case, which we are now trying here, to the simple level of as-

certaining whether some person has stolen a ham on some day or other, and because we fix it upon a certain day, not to allow proof as to another day. It is getting this great State trial down to too fine a point, according to my judgment. The respondent will lose no right, nothing is jeopardized, and the State ought to be allowed to prove its case here in the manner in which the managers desire.

Mr. ARCTANDER. Mr. President, I beg—

Mr. Manager DUNN. We have the closing of this.

Mr. ARCTANDER. No, sir; I think not. We made the objection, and we have the closing.

The PRESIDENT. Mr. Arctander may proceed.

Mr. ARCTANDER. I want to call the attention of the Senate to the fact, that in all of these articles, where the State has been allowed to go over a range of days during the whole term—look at the first article, and you will see, "on the 22d day of January, 1878, and on divers days between that date and the 5th day of February, 1878." Go to the second article and you will see the same thing. "On the 24th day of March, 1879, and on divers days between that day and the 7th day of April, 1879." Go the the third article and you will see, what?—"on the 12th day of June, 1879, and on divers days between that day and the 25th day of said June. The eighth article, "on the first day of May, 1880, and on divers days between that day and the 20th day of September," etc., all the way through. As to these articles, in which they have only alleged a certain day, they have not, heretofore, attempted to prove more than a certain day; they prove it on one certain day. Now, our objection is not that they have shown this to be the fifteenth or seventeenth They cannot show it on another day, for they have not shown any date at all. Mr. Morrill did not specify a single date. It is not a date that we are picking at, but we only claim that they cannot show it on another day. Mr. Morrill testified to three occasions; one when the case of Luscher against Brailey was up one day; another occasion, when the bell ringers were there, another case when the case of Davey Thorpe against Brewster was up, and on those three occasions, he said that the Judge was particularly intoxicated. We claim that was not proper; that the State must select which one of those they will rely upon, because they have only charged one act of drunkenness on one day, not a continuing drunkenness, during that term, and as was remarked, as appears in the journal, by the Senator from Blue Earth, in secret session, that when they had given a specification, they could prove it at any other time, but they couldn't prove more than one; they couldn't prove more than one drunk.

Mr. Manager DUNN. That is all we want here, but it may run over three or four days.

Mr. ARCTANDER. I think,as to the remark of counsel, in that regard, if the Judge was drunk on the bench one day, in the evening during the trial of that case, the Luscher case, then that was one offense, or crime; and, if he was drunk two or three days after that, or even the next day, and at the time the bell ringers, were there, that evening, then that is a separate offense again, and they will be allowed then to charge us with five—with three—and let this witness bring in other offenses again, that they have not charged against us. They have only charged us with a single offense. They have not charged us with a continuing offense. The honorable managers say that it may be the same drunk. They have not charged us with a continuing drunk. They have charged us

with being drunk on a certain day, and they can prove that occasion, whatever day it may be, but they can prove no other occasion, and that is the reason why we object, Now, look at the position it will put us in, may it please the court. Here are two witnesses. One witness swears to three occasions upon which we were drunk. This witness may swear upon this same charge of one day, to three occasions upon which we were drunk. Then we shall be allowed—what? Only five witnesses on this charge. We may probably have witnesses that were present only on one of these occasions and not on any two, or more of them. Now, we should have only one witness allowed us upon this specification, because it so happens, perchance that these two witnesses were present and swore that at six different times during that term he was drunk. We can have only one on each drunk, under the rules that you have laid down. It is not fair, and we have not been warned by the managers that we had to meet three or six drunks at that term. We have been warned only that we had to meet one drunk. Then under that theory, we should be limited by you to five witnesses to disprove six drunks.

The PRESIDENT. The question is upon the motion of Senator Castle, which will be read by the clerk.

The CLERK, (Reading). That the witness be confined in his testimony to some occasion testified to by a former witness.

The PRESIDENT. The question is upon the—

Senator CAMPBELL. I raise the question now, should not the objection be disposed of first.

Mr. ARCTANDER. We are willing to withdraw the objection, so far, for the purpose of this motion.

The PRESIDENT. A motion from a member of the court will supercede any proposition coming from counsel, unless it has reference to the subject matter. The question is upon the motion of Senator Castle.

Senator CROOKS. I call for the ayes and noes.

Senator CAMPBELL. The question, if I understand it rightly, leaves us in the same difficulty that we are in now. What does one occasion mean? Does it mean, as counsel has just argued, a drunk in the evening, or does it include the drunk of the next morning or the next afternoon. It leaves us just where we were, as I understand it.

Senator D. BUCK. A continuing drunk.

The PRESIDENT. It is a matter to be determined, afterwards, by the court, as to the occasion, and that would be so, in either case.

Senator CAMPBELL. I don't think there is any difference of opinion among us, that it should be confined to the occasion; wbut hat is embodied in the occasion?

Senator CASTLE. There is all the difference in the world, Senator; one occasion has a definite meaning in the law.

Senator ADAMS. I call the attention of the Senator to rule twenty-six.

The PRESIDENT. The clerk will call the roll upon the motion of Senator Castle.

The roll being called there were yeas 18, and nays 8, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Adams, Buck C. F., Buck D., Case, Castle, Crooks, Gilfillan C. D., Howard, Johnson F. I., Macdonald, Mealey, Officer, Perkins, Peterson, Powers, Simmons and Wilkins.

Those who voted in the negative were—

Messrs. Campbell, Langdon, McCrea, McLaughlin, Tiffany, Wheat, White and Wilson.

So the motion prevailed.

Mr. ARCTANDER. Mr. President, I now make application on behalf of the respondent, that an order be made by the Senate that the managers now elect upon which of the three occasions testified to by the witness Morrill they will rely in this case.

The PRESIDENT. Please put that request in writing.

Senator D. BUCK. They can confine themselves to one occasion, and if they go beyond that, the counsel for the respondent can object.

Mr. ARCTANDER. I have no objection to that.

Mr. Manager DUNN. I will state Mr. President, that I shall interpret that word *occasion*, to mean at Redwood Falls, until the Senate otherwise orders. I do not think the word occasion means on any one day, for I look upon this matter of drunkenness as a thing that commences and continues right along, and that a man may be drunk a week on the same occasion, that is the way I shall interpret the word for the present. (To the witness)

Q. Mr. Wallin, you were at the term of court, you say, at Redwood Fall ?

A. I was.

Q. You may state whether Judge Cox was intoxicated during that term of court ?

Mr. ARCTANDER. That is objected to, under the ruling of the Senate.

Mr. Manager DUNN. There has been no ruling of the Senate disallowing such a question as that, unless the Senate wants to shut out that specification.

The PRESIDENT. The chair would hold that the question is not proper under the motion of Senate or Castle.

Mr. Manager DUNN. The question is whether he was intoxicated during that term of court.

Senator CAMPBELL. Mr. President I move that the Senate go into secret session with closed doors, to determine this question.

Which motion prevailed.

The court in secret session adopted the following order.

Ordered, that the term "occasion" shall be construed to mean a on day and each specification.

The Senate than resumed business in open session.

The PRESIDENT. The honorable managers and counsel for the respondent are notified that the court in secret session adopted the following order, to-wit :

Ordered, that the term " occasion" shall be construed to mean one day under each specification.

The witness, Mr. Wallin, was then recalled on behalf of the State.

The PRESIDENT. The chair would inform the counsel that under these specifications and under the order, just adopted, it devolves upon them to elect upon which occasion testified to by the former witness they will adduce further testimony. This last order which has been adopted in secret session limits that one occasion to one day.

Mr. Manager DUNN. Are we to understand that the managers are concluded by evidence that has been introduced before ? Suppose, for instance, that the managers conclude to prove some other day by another witness, and elect to stand upon that day rather than the one that has been proved before ? The other evidence went in without any objection

to it. It may be possible that, in the conduct of this case, we may be compelled to elect some other day. For instance, this witness may be able to testify to some other day during that term of court upon which the managers would elect to rely.

The PRESIDENT. The chair understands that matter is fully settled, as far as the specification is concerned, by the orders which have been adopted. The counsel must present testimony as to the fact of drunkenness upon some one of the occasions already testified to by the previous witness, and that testimony must be limited to the performances of some one day. It is not a matter for further discussion.

Mr. Manager DUNN. Mr. President, the managers, under this specification, desire to offer proof upon a day that was not testified to by the witness Morrill, and they desire to rely upon another day than either of the three days he testified to. That is the position we take here and the position on which the Senate ought to agree; that is, inasmuch as that testimony went in without any objection, or suggestion of election, we supposing that we were trying this case upon these specifications, as we had been doing upon the others all the way through the trial, it seems to me that we ought not to be so limited; that we ought, if we desire (and I say we do desire) to be allowed to give evidence of a day other than that to which Mr. Morrill testified.

Mr. ALLIS. We object to that.

The PRESIDENT. The chair understands that the orders adopted would bar such a proceeding.

Senator CAMPBELL. Mr. President, I do not understand that the action of the Senate was that they should elect upon what day.

The PRESIDENT. The last order was to that effect; but a previous order, (the one introduced by Senator Castle,) as the chair understands it, limited the introduction of testimony to some one of the occasions previously testified to.

Senator CAMPBELL. I do not understand it. I suppose the managers could rely upon any one of those, or upon any other day, as they might desire to elect.

The PRESIDENT. The Senate can overrule, by a subsequent order, any prior order which it may have adopted. The Senate can hold, in its discretion, that the adoption of this last order in secret session supercedes all previous orders upon the same matter. That is a question for the court to determine.

Senator CAMPBELL. I would like to have Senator Castle's resolution read.

The PRESIDENT. The recollection of the chair is that it was to the effect that the managers should be restricted in the further introduction of testimony under specification number three, to one of the occasions testified to by the previous witness, Mr. Morrill.

Senator CAMPBELL. I move, Mr. President, that the managers be allowed to rely upon any of the days named by the witness Morrill, or any other day, but that they must elect upon which day they will rely to prove this charge,

The PRESIDENT. The Senator will please put his motion in writing.

Senator CROOKS. I move that the Senate do now take a recess till half-past two.

The PRESIDENT. It is moved and seconded that the Senate take a recess until half-past two o'clock.

The vote was taken, upon the motion of Senator Crooks, and the motion was lost.

Senator CAMPBELL then offered the following order:

Ordered,—That the honorable manager be required to elect a day upon which they will rely to prove specification three, of article 17, and they may elect a day other than one of the days already testified to by the witnsss Morrill.

Senator CASTLE. Mr. President, I raise the point of order; that is in direct conflict with the rules already established.

Senator CAMPBELL. I ask for the reading of the rules.

Senator CASTLE. It is in conflict with the two rules already adopted. It will be necessary to rescind those rules if this order is adopted.

The PRESIDENT. The effect of the adoption of this order would be to modify the rules which have been previously adopted for the purpose of taking the testimony under this particular specification, and would extend no farther. Is the Senate ready for the question. The question is upon the motion of Senator Campbell.

Senator CASTLE. How do I understand the chair to hold upon this point of order?

The PRESIDENT. The chair holds the point to be well taken; that is, the chair holds it is in conflict with the order which has been adopted, but that order may be modified by a majority of the Senate at any time; that is simply a temporary order or rule for a special occasion.

Senator CASTLE. I beg the pardon of the chair, that is not the point I make; the point I make is that an order having been adopted, the vote by which it was adopted must be reconsidered before this resolution will be in order.

The PRESIDENT. In effect the Senator is correct. This would be in effect a reconsideration; it would simply be taking another course to reach it. The better way, however, would be, to reconsider the order. The adoption of this resolution would bring two orders into conflict. The point of order having been raised by Senator Castle the chair would suggest to Senator Campbell that the motion to reconsider would be the proper one to make.

Senator CAMPBELL. Mr. President, I did not desire, and I do not now, to open up this whole question again; but I do not understand that the resolution offered by the Senator from Washington (Senator Castle) precluded the honorable managers from electing as to any particular day, whether testified to by Mr. Morrill or any other witness. I did not so understand the rule at the time it was adopted.

The PRESIDENT. The chair is of the opinion that if this motion is adopted it would create conflict with the previous rules.

Senator CAMPBELL. Then I will move the reconsideration of the order of Senator Castle.

The yeas and nays were called for.

Senator CAMBBELL. I cannot move a reconsideration of the resolution; I believe I voted against it.

Senator C. F. BUCK. The evidence of one witness is already before the court; suppose the managers go on and examine this witness, and are not satisfied with that, and then go on to prove another case upon which to rely.

Senator CAMPBELL. They now propose to elect.

Senator C. F. BUCK. Perhaps we had better go on with the rules we have already adopted and see how they operate.

Senator AAKER. I move a reconsideration of the vote by which the order of Senator Castle was adopted.

Senator MACDONALD. I move that that motion lie upon the table.

Which motion was seconded.

The PRESIDENT. The motion to lie on the table takes precedence and is not desirable. The chair will explain that if this motion is adopted, the motion of Senator Aaker is laid upon the table; and that virtually suspends, for the time being, the motion for reconsideration.

The motion being taken to lay or the table, and the roll being called, there were yeas 11, and nays 15, as follows:

Those who voted in the affirmative were—

Messrs. Adams, Buck C. F., Case, Castle, Crooks, Macdonald, Mealey, Morrison, Officer, Peterson and Simmons.

Those who voted in the negative were—

Messrs. Aaker, Buck D., Campbell, Hinds, Howard, Johnson F. I., Langdon, McCrea, Perkins, Powers, Tiffany, Wheat, White, Wilkins and Wilson.

So the motion to lay on the table was lost.

The PRESIDENT. The question is now upon the motion of Senator Aaker that the vote be reconsidered by which the order of Senator Castle was adopted.

Senator Case moved that the Senate take a recess until half past two, P. M., which motion did not prevail.

The vote being taken upon the reconsideration of Senator Castle's order, and

The roll being called, there were yeas 15, and nays 11, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Buck D., Campbell, Hinds, Howard, Johnson F. I., Langdon, McCrea, Perkins, Powers, Tiffany, Wheat, White, Wilkins and Wilson.

Those who voted in the negative were—

Messrs. Adams, Buck C. F., Case, Castle, Crooks, Macdonald, Mealey, Morrison, Officer, Peterson and Simmons.

So the motion prevailed.

AFTERNOON SESSION.

The PRESIDENT. The Senate will please come to order.

Senator CAMPBELL. I move, Mr. President, the adoption of the resolution, which was pending before recess.

The PRESIDENT. The Senator from Meeker moves the adoption of the resolution which was pending before recess. The Clerk will read it for the information of the Senate.

The CLERK read the following:

Ordered, that the honorable managers be required to elect a day upon which they will rely to prove specification three of article seventeen, and they may elect a day, other than one of the days testified to by the witness Morrill.

Senator CASTLE. I would ask the Senator from Meeker, whether he is serious in offering that resolution?

Senator CAMPBELL. I most certainly am; and I desire to say to the Senator——

Senator CASTLE. I would ask the Senator if he desires the same discussion upon every article.

Senator CAMPBELL. I wish to say to the Senator that I desire as lit-

tle discussion as any gentleman on this floor; and I shall never trifle with the Senate by offering any resolution in regard to which I am not serious. I assure the Senator of that. Neither do I care to take up the time of the Senate now, to discuss this question. I simply offer the amendment and desire the sense of the Senate upon it. The honorable managers were not aware, as I understand it, until the action had by the Senate in secret session, that the one occasion mentioned in that specification, would be limited to the transactions of that day. I presume they did not understand it, as I am informed they did not.

Senator CASTLE. The Senator entirely misunderstood the question I asked him. The original resolution, as asked, effected all specifications. The Senator's resolution is confined to a single specification.

Senator CAMPBELL. I understand, sir, and I am explaining why I offered it, so as to convince the Senator that I am serious.

Senator CASTLE. That is all the explanation I care for.

Senator CAMPBELL. The managers, as I understand, understood that all the transactions of that term of court would be considered one occasion. We now inform them that we hold otherwise; that the word occasion is now defined to mean but one day; and I now propose, by this motion, to allow them to select the day upon which they will rely, outside of the days mentioned by the witness, Morrill.

As we have, in fact, restricted them to one day, my motion is that they be allowed to elect now, that they know that they are obliged to rely upon one day.

Senator POWERS. Without disturbing the evidence already submitted?

Senator CAMPBELL. I have nothing to do with evidence that has been already submitted. I presume, if it is not applicable, it will be stricken out on moion; that would be proper. I do not propose to interfere with the trial of this case.

Senator CASTLE. It took twenty-four hours to put it in.

Senator CAMPBELL. I don't know that it took twenty-four hours, but if it did take twenty-four hours, and it is immaterial, we ought to strike it out.

Senator CROOKS. I call for the ayes and noes.

The PRESIDENT. The ayes and noes are called for on the adoption of the amendment. which is in the nature of a substitute to the resolution of Senator Castle, upon which reconsideration has been voted.

The PRESIDENT. The Clerk will call the roll.

The Clerk proceeded to call the roll.

Senator MCCREA. I don't understand the motion, Mr. President. I have just come in and would like to have it stated.

Senator CAMPBELL. It was my motion, Senator, that was pending before dinner.

The PRESIDENT. The vote by which was passed the order introduced by Senator Castle, in the forenoon, prior to the secret session, was reconsidered, and is now before the Senate, and Senator Campbell has offered an amendment, in the nature of a substitute to that order, the purport of which the chair is unable to state precisely. The Clerk will read it for the information of the Senator.

The Clerk read the resolution of Senator Campbell.

Senator MCCREA. I vote aye.

The call of the roll having been concluded,

The PRESIDENT. There appears to be no quorum present and voting, and therefore the vote will not be announced.

Senator CAMPBELL. I move a call of the Senate.

Senator CASTLE. I suppose the point probably will be that there was no motion made.

The PRESIDENT. And no vote had.

Senator D. BUCK. I think there is a quorum present, Mr. President.

Senator CAMPBELL. I would ask for the calling of the absentees.

The PRESIDENT. The names of those not voting will be called by the Clerk.

The names of the absentees were called by the Clerk.

The roll being called, there were yeas 14, and nays 7, as follows:

Those who voted in the affirmative were—

Messrs. Buck D., Campbell, Case, Hinds, Howard, Langdon, McCrea, McLaughlin, Perkins, Powers, Tiffany, Wheat, Wilkins and Wilson.

Those who voted in the negative were—

Messrs. Adams, Castle, Johnson A. M., Macdonald, Morrison, Simmons and White.

The PRESIDENT. The question being upon the adoption of the amendwent offered by Senator Campbell, there were yeas 14, nays 7, and so the motion prevails, and the amendmeot is adopted.

Is the counsel ready to proceed with the examination of witnesses?

Mr. Manager DUNN. Mr. Wallin, will again take the stand.

ALFRED WALLIN,

(Examination continued.)

By Mr. Manager DUNN.

Q. I would call your attention to the general term of Redwood Falls.

Senator CASTLE. I would suggest, Mr. President, that the Senator would like to have the motion adopted.

Senator CAMPBELL. Yes, but the last vote practically is an adoption.

The PRESIDENT. The chair is of the impression that it was so completely and entirely different from the original motion that is ignored and done away with it entirely; that is the effect of it. As a matter of form however,—

Senator CAMPBELL. I call for the question as amended, if there is any question about it.

The PRESIDENT. It is substantially so; there seems to be no similarity.

Senator MACDONALD. I would like to hear the original order read and the amendment as adopted.

The PRESIDENT. The original order has been furnished for the information of the Senate and it agrees with the recollection of the chair.

The Clerk read the order offered by Senator Castle, and the order offered by Senator Campbell.

The PRESIDENT. As a matter of formality the matter of the adoption of the amendment will be put to the Senate, although it hasn't any connection with the original. The Secretary will call the roll upon the adoption of the motion as amended.

Senator HINDS. Does it purport to be an amendment?

The PRESIDENT. It does purport to be an amendment, although it is entirely dissimilar.

Senator CAMPBELL. Is a roll call necessary, Mr. President?

The PRESIDENT. Not necessarily.

The ayes and noes were called for.

The Clerk called the roll, as follows:

The roll being called, there were yeas 20, and nays 2, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Adams, Buck D., Campbell, Case, Hinds, Howard, Johnson A. M., Langdon, McCrea, McLaughlin, Morrison, Perkins, Powers, Simmons, Tiffany, Wheat, White, Wilkins and Wilson.

Those who voted in the negative were—

Messrs. Castle and Macdonald.

The PRESIDENT. The question being on the adoption of the amendment, there were yeas twenty, and nays two, so the amendment was adopted.

Mr. ALLIS. I would like to hear read, as it is now, the amendment by Senator Campbell.

The PRESIDENT. It will be read again by the Clerk.

The Clerk again read the amendment offered by Senator Campbell.

Senator ADAMS. Mr. President, as that changes entirely the order of procedure upon the part of the prosecution, I move that the testimony of the witness Morrell be stricken from the record. The honorable managers announced to the Senate, before the recess for dinner, that they did not propose to select the articles upon which the witness Morrill had been examined, as I understood the honorable manager, Mr. Dunn. That being the case, I move the testimony of the witness Morrill be stricken out.

Mr. Manager DUNN. I would say, Mr. President, in reference to that, that I think I was misunderstood if it is thought I said that we did not intend to rely upon one of these dates. The fact is, Mr. Morrill testified to two or three occasions during that term of court. His testimony was not taken down by any of the managers, and whether he referred to the particular day that we propose to prove by Mr. Wallin or not, I do not know; I hardly think the Senate knows, and none of us know, because the reporter's notes are in the hands of the printer. He testified to several occasions; what days they were, I am not prepared to say, neither are any of the Board of Managers. It may be possible that the occasion that we shall call the attention of the witness Wallin to, is one of the very days that the witness Morrill testified to. That is what I wished then to be understood, and wish now to be understood as saying.

The PRESIDENT. The chair would call the attention of the Senate to the fact that the order of Senator Castle restricting the managers, in adducing proof under these specifications, to some one occasion testified to by a particular witness, has been reconsidered and set aside, entirely superceded by the order which is adopted, so that is no longer an order of the court. The order of Senator Castle, which has been rescinded, substantially, is this, that the witness be confined in his testimony to some occasion testified to by a former witness. Now, the vote by which that order was adopted, has been rescinded, and this has been set aside by the adoption of another order in its stead, so that this is not now a rule. There is now, as the chair recollects, no rule restricting the court or the managers to one particular occasion as to which they shall introduce testimony.

Senator CASTLE. I understand, Mr. President, that the resolution which was adopted in secret session, however—

The PRESIDENT. That has not been interfered with at all; that re-

mains; that interprets an occasion to mean the occurrences of one day.

Senator ADAMS. That was based upon the order offered by Senator Castle, and consequently, that order is nugatory. As the basis upon which it is founded has been rescinded by the Senate, that cannot, of course, stand alone and independent, unless the order which called it out could stand. The repeal of that virtually repeals all there was in the second one.

Mr. Manager HICKS. Mr. President, I don't desire to take the time of the Senate in talking, but I desire to state to the Senate, and to the Senator who made the motion, that the motion would certainly be unfair to the Senate.

Senator ADAMS. I will withdraw the motion for the present, until you can make your election.

Senator HINDS. It seems to me that the chair is a little in error in the construction, that it places upon these three several orders. It seems to me that all three stand and necessarily stand. Neither is superseded, only so far as they disagree with each other. The first order, as it appears, was adopted, restricting the managers to proof, under these specifications, of one occasion, and requiring them to select an occasion to which testimony has already been given. The second order merely defines the word occasion to mean one day, the third and last order, modifies the first one, partially.

The PRESIDENT. The chair would remind the Senator, that prior to the adoption of the last order, the vote by which the first was adopted, was reconsidered.

Senator HINDS. So it is no longer an order in fact.

The PRESIDENT. It is no longer an order.

Senator MACDONALD. I would ask, Mr. President, whether in putting the motion upon the adoption of the amendment of Senator Campbell, it was not put to be adopted as amended?

The PRESIDENT. I so understood it.

Senator MACDONALD. That has adopted the original order.

The PRESIDENT. It supercedes the other.

Senator MACDONALD. That is the question which Senator Hinds seems to take issue with ihe chair upon.

Senator HINDS. If the last vote is a vote adopting the first resolution, as amended by the last one, they both stand.

The PRESIDENT. The last entirely superceded the first.

Senator HINDS. Then the last vote was unnecessary.

The PRESIDENT. It was a question, if it was not necessary.

Senator HINDS. But assuming that it was necessary, and it adopted the first, why they both stand so far as they do not differ.

The PRESIDENT. Yes, but the last was introduced as an amendment, in the nature of a substitute, and takes the place of the first, and sets aside the first entirely. It was designated by the party introducing it as a substitute. The chair used the word "amendment," rather than the word "substitute," which is frequently used by the members of the Senate.

Senator HINDS. It would not necessarily follow then that it is a substitute for both the preceding orders. The second one uses the word occasion, and there is no mention of the word occasion in the other order.

The PRESIDENT. Not neccessarily it simply alluded to the order introduced by Senator Castle.

Senator HINDS. That is the only order that contains the word occasion.

The PRESIDENT. That is the order that contains the word occasion, but still it may be that the occasion which is referred to still exists. If the former witness, Mr. Morrill testified to several occasions, upon which the respondent is intoxicated, those occasions still exist just as much as if they had not been mentioned in any order, that is just as the chair understands it.

Senator CAMPBELL. I would like to call the attention of the Senate, and the President, to the fact that there is no dispute as to the occasion, we all agreed that they can offer testimony to show that he was drunk on one occasion, and the only question was what was meant by the word "occasion," and the Senate has said that it means one day. I am sorry that I did not understand the remarks of the learned manager, Mr. Dunn, I understood him to say that he did not expect to rely upon the occasions testified to by Mr. Wallin. I am sorry for it, for I had understood him just so much time might have been saved.

Mr. Manager DUNN. I still say so, I do not wish to be compelled to; but still the day upon which this witness testifies may be one of those very days.

Senator CAMPBELL. My motion was to relieve the managers, if they were to be bound by that, so that they might select a day other than the one testified to by the witness Morrill; I don't think we are in any trouble.

The PRESIDENT. The counsel may proceed.

Mr. Manager DUNN.

Q. I will call your attention, Mr. Wallin, to the June term, 1880, in Redwood Falls, when the case of County Commissioners against Amasa Tower and others was tried.

The PRESIDENT. The chair understands that you are restricted to one day.

Mr. Manager DUNN. Yes, the day that case was tried.

Q. You were present, were you?

A. I was present.

Q. Were you one of the attorneys?

A. I was.

Q. Who was present on the other side, what attorney?

A. The firm of Baldwin, Miller and Morrill, represented the defendant.

Q. Will you state the condition of the Judge upon the trial of that case?—I will withdraw that. Was that case more than one day on trial?

A. I cannot trust my recollection as to that whether it extended over more than one day.

Q. We will speak of the last day, the day that verdict was received, you may state the condition of the Judge that day, as to sobriety?

A. My recollection is that the verdict was received in the night, after midnight. I recollect his condition on the day preceding, if that recollection of mine is correct. I recollect his condition the day the case was submitted to the jury.

Q. Well, what was that condition, the day that the case was submitted to the jury?

A. He was under the influence of intoxicating liquors.

Q. To what extent? A. To a perceptible extent.

Q. Was that at the time of the trial or when the verdict was received, or at both times?

A. My impression is that the verdict was received at night, after midnight, and my present impression is that I was not in the court room when it was received. The day preceding that I was there, of course, as I tried the case.

Q. Well, you speak of the day preceding. If this verdict was received a little before midnight it was the same day, was it not? Or, if a little after midnight, you would call it the next day?

A. That is my recollection.

Q. And that day, during the trial, he was under the influence of liquor?

A. Yes.

Q. Would you say he was intoxicated, or otherwise?

A. I would say that he was partially intoxicated.

Q. Did you see him—know anything about his visiting saloons, or drinking, during that time?

A. Neither the one nor the other.

Examined by Mr. ARCTANDER.

Q. Mr. Wallin, you said this time, when the Judge was partially intoxicated, was the day that the case was submitted to the jury?

A. Yes.

Q. Do you remember what time it was submitted to the jury?

A. My recollection is that it was submitted after supper.

Q. What do you mean by submitted?

A. Submitted to the jury by the court.

Q. Do you mean the Judge charged the jury?

A. My present recollection, although I do not speak positively—

Q. Well, that is what you mean by submitting to the jury—the judge charging them?

A. The Judge charged the jury, and the jury retired in charge of an officer.

Q. Was that all that was done there after supper that day?

A. I do not remember.

Q. Was there anything else done in that case, except the Judge charging the jury, after supper?

A. The next step in the case was the receiving of the verdict.

Q. I mean before the jury went out. Was there anything else done after supper, and before the jury went out, excepting the charging of the jury by the Judge?

A. I don't remember any other business that was before the court. I haven't charged my mind with those details.

Q. Well, do you remember whether you argued the case to the jury after supper, or before supper?

A. My recollection is that it was before supper.

Q. Your recollection is that you argued the case after supper?

A. Yes, sir.

Q. Do you recollect whether or not, you introduced any testimony after supper?

A. I don't recollect.

Q. What is your impression upon that point?

A. I havn't any impression.

Q. Isn't it a fact that the arguments in the case took some little time?

A. Yes, it was argued at length.

Q. Was it not argued at least an hour, or thereabouts on each side?

A. I wouldn't attempt to state the time; I have no recollection about it.

A. It was argued by Mr. Morrill upon the part of the defendants, and argued by myself upon the part of the prosecution.

Q. Were any law questions, or requests, submitted by either party and argued?

A. There were.

Q. Arguments made upon the law requests, too?

A. There was a presentation of authorities and discussion of legal questions, by myself.

Q. Was that done in the evening, after supper?

A. It was done immediately preceding my argument to the jury, and my impression is that my argument was after supper; I have only given you my impression, as to the hour of addressing the court and jury.

Q. Now at what period of the day and during what portion of the case, was it that you imagined that the Judge was under the influence of liquor, partially intoxicated, as you say?

A. During that time.

Q. During what time, Mr. Wallin?

A. During the time of the argument, and my impression is that it covers several hours, down to and including the charge of the court to the jury.

Q. Well, the time of the day then, when your impression is that he was partially intoxicated, was after coming there after supper, and during that whole session?

A. I have not so stated.

Q. Well, I wish you would state?

A. Well, I have already given my recollection, that during several hours preceding submitting the case to the jury, the judge was partially intoxicated.

Q. Well, how many hours were there that night after supper? We will probably find it out that way.

A. The number of hours I cannot give, at night.

Q. You came there at seven o'clock, about?

A. I couldn't fix the hour.

Q. Well, isn't that the usual hour that you go there when you have evening sessions,—seven, or half-past seven?

A. I don't recollect any usual hour.

Q. Now, Mr. Wallin, you must know whether it was six o'clock or nine o'clock that you came there; you can give us an estimate, at least, as to what time it was?

A. I do not see that I must know.

Q. You don't know, then? A. I don't remember.

Q. Do you remember anything about the Judge's state, while evidence was introduced, during that day?

A. My recollection is that he was under the influence of liquor.

Q. The whole day?

A. More especially the few hours preceding the charge.

Q. Well, you say,—I wish to understand you. You mean to be understood, that the Judge was, in your opinion, under the influence of liquor all that day, more especially a couple of hours before he charged the jury; is that it?

A. I wouldn't limit it to two hours.
Q. Well, more especially two hours before he charged the jury?
A. That is my impression.
Q. Now, then, was this condition of his in which he was more especially under the influence of liquor, before or after supper, or both?
A. I noticed it more particularly about the time of presenting my views of the law to the court, whenever that was, which would also include the charge of the court to the jury.
Q. Isn't it a fact, Mr. Wallen, that at the time you took only one exception to the charge of the court to the jury?
A. There was a dispute about that between counsel, but the court allowed all the exceptions that I asked.
Q. I will ask you whether, at that time, you asked more than one exception?
A. At that time, I asked the court that I might have the benefit of an exception to all of this charge, and there was a general understanding that the exceptions should be settled, as I had requested.
Q. It was not settled then and there, was it, before the jury went out?
A. Except in a general way, that I should have the benefit of such exceptions as I saw fit to take.
Q. Was the Judge's charge in writing?
A. The Judge's charge was in writing.
Q. Isn't it a fact that then and there, and before the jury went out, the Judge handed you the charge in writing, and you noted your exception, which was the only one?
A. Then and there, I think the charge was filed with the clerk right there, and I noted myself the exceptions on the margin.
Q. Did you note more than one there at the time?
A. That is my recollection.
Q. That you noted only one?
A. I don't remember the number.
Q. You swear that you noted more than one?
A. I would prefer not to swear to a record. There is a record here in the city, and I don't remember the number of exceptions that I took on that occasion.
Q. Well, that record wouldn't show what exceptions you took at that time, Mr. Wallin, and that is what we are inquiring about now.
A. I am very clear that I had it understood, then and there, with the court, that I should have the benefit of such exceptions as I saw fit to take to the Judge's charge.
Q. Now, I don't care about that understanding, you have already told us, I think, in answer to my question, that it was true that the Judge's charge was in writing, and that he had handed you the charge, and that you minuted your exceptions then and there; in other words, settled your exceptions.
A. No; no settlement or exceptions.
Q. Well, what we call noting exceptions before the jury goes out, if they are in writing on the charge, they are thereby settled?
A. In addition to the exceptions to the Judge's charge, there were exceptions on my part, to his failure to charge certain requests.
Q. Well, that is not what I asked you about; it is as to the exceptions to his charge, and it is easy enough for you to tell, it seems to me,

Mr. Wallin, whether you remember to have noted more than one exception, at the time, to this charge.

A. My recollection is not distinct as to what particular penciling I did on the margin of the charge, but my recollection is distinct as to the understanding with the court.

The PRESIDENT. It is a matter that takes considerable time, and I would like to enquire what bearing it has on the case?

Mr ARCTANDER. To show the condition of the respondent, that he was sober, and knew what he was doing, if, as a matter of fact, he gave a charge in a case of that kind, and there was only one exception taken to it.

Q. You say that this intoxication of the Judge was clearly perceptible?

A. I said it was perceptible.

Q. To what extent, Mr. Wallin?

A. Do you refer to the intoxication or to the perception?

Q. Well, I want to know how perceptible it was?

A. I answer, generally, that he was partially intoxicated, and that the intoxication was perceptible.

Q. Well, you mean that it could be noticed by persons in the court room, that observed the Judge?

A. It was noticed by myself.

Q. You don't know whether it was so as to be noticed by others observing him?

A. I certainly think that it was noticeable on the part of counsel. I had special reason, however, for paying attention to the condition of the Judge's mind, as I was interested in taking control of his mind in a certain particular.

Q. You were interested in taking control of his mind in a certain particular?

A. To the extent of inducing him to give, in his charge to the jury a legal proposition.

Q. You were trying to make him give a certain charge to the jury; that is what you mean?

A. Yes.

Q. Did he give it?

A. He did not.

Q. You didn't succeed, then, in swaying his mind in the direction that you wanted to?

A. I did not.

Q. Didn't get control over his mind?

A. I did not in that particular that I refer to.

Q. I suppose you were sober at the time?

A. Myself?

Q. Yes, sir.

A. Yes, sir; that is my recollection.

Q. Do you remember when that case was tried, during what time of the term?

A. Very near the last day of the term, if not on the last day.

Q. Very near the last day, if not on the last day. Do you remember of any other case being tried afterwards?

A. I do not; my impression is that that was the last case.

Q. Were there any other cases up at this time, on this day, I mean, but this case?

A. My recollection is not distinct upon that.

Q. Now, I will ask you: Was this the evening,—do you remember the evening when the bell ringers were there, at Redwood?

A. Yes; I recollect that.

Q. During that term of court? A. Yes.

Q. This was not the evening, was it?

A. My impression is that it was not; I don't recall it.

Q. Well, as a matter of fact, court did not adjourn this evening. It did not adjourn without doing anything this evening. You were in session there, until you were through, and sent the jury out?

A. That is my recollection.

Q. Isn't it a fact, Mr. Wallin, that this was Saturday, and that the jury came in just a few minutes before twelve o'clock at night?

A. My impression is that I was not in the court-room when the jury came in in that case.

Q. Was it Saturday night, you think? A. I think it was not.

Q. You can't tell what day of the month it was?

A. I can give an impression; I think the court convened that year on the fifteenth of June, and I think the adjournment took place on the twenty-fourth.

By Mr. ALLIS.

Q. When would it make this trial?

A. That would make it the ninth day.

Q. The 23rd or 24th?

A. Of course I am not swearing positively to these dates, but I am giving my best recollection.

Q. That would make this trial on the 23rd or 24th. You adjourned on the 24th. Was that the day following the trial?

A. What is the question?

Q. I was asking you whether that would make the day of the trial on the 23rd or 24th, according to your calculation. You say they adjourned on the 24th?

A. My recollection is that it was the last case tried at the term.

By Mr. ARCTANDER.

Q. Now, Mr. Wallin, how is it in regard to this case of Luscher against Brayley; was it tried that same day?

Mr. Manager DUNN. We object.

The PRESIDENT. Upon what ground?

Mr. Manager DUNN. Upon the ground that we are restricted to one day, and have simply examined as to that day.

Mr. ARCTANDER. That is why I ask it, Mr. President; because I want to show that one of these occasions was on the same day as this.

Mr. ALLIS. We are cross-examining as to the time.

Mr. Manager DUNN. Very well, I withdraw the objection, if you do not inquire into the condition.

Mr. ARCTANDER. No, we do not intend to inquire into the condition.

The WITNESS. What is the question?

Q. I asked you whether on that same day the case of Luscher against Brayley was tried or on some other day?

A. I tried the case on one side, but the precise day on which it was tried I don't recollect.

Q. Don't you know, Mr. Wallin, whether or not there was more than one case taken up, on the day you tried the Tower case?

A. I have already testified I don't recollect.
Q. You don't recollect whether it took up two days or half a day?
A. You asked me whether there was any other case up that day?
Q. Do you know whether or not that case didn't consume at least a whole day?
A. The Tower case?
A. Yes.
A. My impression is that it did.
Q. Then your impression is that that Luscher against Braley case was at some other day, was it not?
A. Certainly, but it may have lapped over and been completed perhaps the day that the Tower case commenced. I didn't testify as to that case, because I have no recollections on the point.
Q. Well, we don't care so much about that, whether it lapped over, because the testimony we have got is that it was in the evening. Now, this case of Dave Thorpe against Brewster, do you remember that?
A. I remember such a case.
Q. Do you remember whether that was on this same day?
A. My impression is that it was not.
Mr. Manager DUNN. You may state to the court whether, upon any other occasion than these two that you have specified, you have seen Judge Cox in a state of intoxication, since the 30th of March, 1878, and, if so, when and where?
Senator HINDS. Upon what article is this?
Mr. Manager DUNN. Upon article eighteen.
The WITNESS. In the month of January, 1881, during the trial of the case of the State aginst Hawk, at Redwood Falls.
Q. Well, go right along as quick as you can.
A. I remember after the jury had retired for deliberation, that the Judge and a number of others, including myself, were in the court room waiting for the coming in of the jury, and the Judge on that occasion, was partially intoxicated.
Q. Please explain what you mean by "partially intoxicated?"
A. I use it because I regard intoxication as something that is progressive. I use it to distinguish it from the climax, intoxication. When a man is speechless and unable to move, and senseless, I call him totally intoxicated, or in the last stages of inebriety.

By Senator WILSON.
Q. That is what we generally mean when we say a man is "dead drunk," is it?
A. Commonly called dead drunk.
Senotor WILSON. Well, I didn't know what you meant.

By Mr. Manager DUNN.
Q. Any other time?
A. I recollect that about the first day of June, 1881, at Beaver Falls, I saw the Judge exceedingly drunk.
Mr. Manager DUNN. He was drunker then than he was the other time, when you said he was partially intoxicated?
A. Decidedly.
Q. Is that all, or is there any other time?
A. I saw him about the 18th day of May, 1881, at New Ulm.
Q. Was that the term of court there that has been testified to here?

—well, we won't ask you about that; I suppose that would come within the rule of the Senate. Any other time?

Mr. ARCTANDER. That evidence goes out, you say?

Mr. Manager DUNN. We withdraw that as to the 18th day of Nov. 1881, because he states that is a time testified to here, under one of these charges, and the rule of the Senate prohibits it. The other two instances do not come under any of the specifications, or specific charges. You can take the witness, Mr. Arctander.

By Mr. ARCTANDER.

Q. This time that you testified to, in that Hawk trial that night, when you were in the court room; was that the time when the jury sent for the Judge to come and give them further instructions, or read part of his charge?

A. I understand it so, but I don't know anything personally, about them sending for him.

Q. This was pretty late in the evening?

A. Quite late; at eleven o'clock at night.

Q. Court had been adjourned some time?

A. Yes.

Q. And this was about eleven o'clock at night when the Judge came into the court room?

A. About eleven.

Q. You were there when he came in? A. Yes.

Q. The jury was brought in, was it? A. Yes.

Q. And he read that portion of the charge that they wanted?

A. He did.

Q. And they retired, and in a few minutes came in with a verdict, in a short time?

A. My recollection is that they then retired, but not that they came in, and brought a verdict in in a few minutes.

Q. Well, you waited for them then to come in and bring their verdict?

A. No, sir.

Q. Didn't the Judge?

A. Not to my knowledge.

Q. You went away any how?

A. I went away.

Q. Were you there when the verdict was delivered—you were county attorney there at that time, wern't you?

A. Yes, sir; I think I was in court when the verdict was delivered.

Q. Do you remember whether that was that same night?

A. It was not, I think.

Q. And that was the occasion then,—the occasion testified to by Mr. Webber, was the same occasion that you now intend to testify to as to the Judge being partially drunk. You heard Mr. Webbers testimony?

A. I did not hear it upon that point, but I have so understood.

Q. At June first, at Beaver Falls; on or about June 1st, 1881, at Beaver Falls, where was it that you saw the Judge?

A. I saw him at Beaver Falls.

Q. Was it during the term of court there?

A. I didn't hear the question.

Q. Was it during the term of court there?

A. After the adjournment of the May term for Renville county.

Q. It was after the adjournment of the May term?
A. Yes.
Q. Was it several days after the adjournment?
A. I think not more than one day.
Q. You think not more than one day after the adjournment; did you come over there that day?
A. I did. I would like to make an explanation. Counsel asked me whether or not, on a certain occasion, I was sober myself. I desire to say I was entirely sober. I have not drank any liquor for over eight years, consequently I was sober.

E. KUHLMAN,

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

Mr. Manager DUNN. This is under specification two, of article seventeen.

By Mr. Manager DUNN.
Q. Where do you reside?
A. At present in Minneapolis.
Q. Did you formerly reside in New Ulm? A. I did, sir.
Q. Were you residing there in August, 1879?
A. I was, sir.
Q. Do you know E. St. Julien Cox, the judge of that district?
A. I do, sir.
Q. Do you know George Kuhlman?
A. George Kuhlman is my father.
Q. He was an attorney there at that time? A. Yes, sir.
Q. Were you assisting him in his office at that time?
A. I was, sir.
Q. In August 1879? A. I was.
Q. I refer you to a matter which was pending before the court in a divorce case,—the case of Coster against Coster. Do you remember such a case?
A. I do.
Q. Was your father one of the attorneys in that matter?
A. He was.
Q. Do you remember a proceeding that was had before Judge Cox, relative to a disobedience of an order to pay alimony, or suit money?
A. Yes, sir.
Q. You may state to the court where that proceeding took place and the circumstances connected with it so far as you can recollect them.
A. In the afternoon I went down to the Dakota House to get Judge Cox to come up to the court-house to hear this order. I was told that he was up stairs. I went up stairs to his room and rapped on the door. I did not hear much noise at first, but he finally woke up and said that he would not go up to the court house; thereupon I started up to the court house to tell them he wouldn't go up; and I met Joseph Eckstein, and we went down together to the Dakota House. We finally roused him up and we started towards the court house. Judge Cox was swearing on the way up that he wasn't going to walk up; after we had got about a block he stooped for a minute or two and swore that he would not go up; my recollections are that he hailed a swill-cart, or a cart used by a butch-

er to haul offal in,—Mr. Steibe I believe the butcher's name is,—to carry him up there; and got into that cart, and went up to the court house. Thereupon he stated that it was too hot in the conrt-room, he stated that he wouldn't go up, that they would hold court on the outside. He said that he was dry, and told Coster that he ought to treat.

Q. Coster was the defendant in the proceeding?

A. Coster was the defendant, yes. sir. He told him he ought to treat; Coster said he had no money. And then, I do not recollect of Judge Cox giving him money, but Coster went down town after beer and came up with some beer. Then Judge Cox quarelled with him over the change; I remember that. Judge Cox said that he had not bought that amount of beer, or if he had, he had drank it. After the beer was drank they had some other proceedings.

Q. Well, did they drink the beer; was the beer drank there?

A. The beer was drank there.

Q. Did Coster drink some of the beer? A. No, sir.

Q. Did the Judge drink some of it? A. Yes, sir.

Q. He didn't give the defendant any of it?

A. Yes, sir; he gave Mr. Coster some of it.

Q. I asked you if Mr. Coster drank some of it and you said he didn't.

A. Yes, sir; he did drink some of it.

Q. Who else drank?

A. I couldn't say who else drank.

Q. Well, go on.

A. After spending a little time there, nearly the whole party went down town. After that, my father and I went to the office. And I looked down on the street and I saw the Judge on the street very drunk. I went down stairs and coaxed him up into the office. He abused my father some and upon his beginning to abuse my father my father went home to supper and I coaxed the Judge to lie down. He finally laid down on the lounge. He laid there five or six minutes and then rolled off upon the floor. That was half past six or seven. I left the office, and about nine o'clock returned, and I found the Judge still on the floor. I then left him there on the floor and went home.

Q. Do you know whether there was any decision made at that time in the case of Coster against Coster?

A. I do not.

Q. You didn't pay any attention to what the decision was?

A. No, sir;—well, I heard him tell Coster that he would have to lock him up.

Q. When was that occasion?

A. That was about the first day of August, 1879.

Q. Was Mr. Webber there at that time?

A. Mr. Webber was there and my father and Mr. Eckstein, and the Judge and Coster.

Q. Was anyone else present?

A. Mr. Manderfeld, Jr., was there.

Q. Do you think of anyone else? A. I do not.

Examined by Mr. ARCTANDER.

Q. Now, you are not mistaken about this being the first day of August, are you?

A. No, sir, I am not. It was my birth-day and I remember it.

Q. Who was this Manderfeld, Jr.?
A. He was the son of the sheriff.
Q. What is his first name? A. I don't know his first name.
Q. Was the sheriff there?
A. Not that I am aware of. I think he was absent; Mr. Eckstein was performing his duties in his stead.
Q. Was the clerk there? A. I don't know.
Q. You don't know whether Mr. Blanchard was there or not?
A. I don't, sir.
Q. Who did you say was there:—you and Mr. Webber, Coster, Eckstein, Manderfeld and the Judge?
A. Yes, sir,
Q. That was up there at the court house? A. Yes, sir.

Examined by Mr. Manager DUNN.
Q. Have you ever seen the Judge intoxicated at any other time since he has been judge, since the 30th day of March, 1878?
Mr. ARCTANDER. This is under article eighteen, is it not?
Mr. Manager DUNN. Yes, sir.
The WITNESS. Yes, sir; that was in Minneapolis, in October, 1881—last October.
Q. Where was it?
A. It was at the corner of First avenue south and Washington avenue.
Q. How much intoxicated was he?
A. Well, he wasn't so much intoxicated as I have seen him; he was badly intoxicated though.
Q. He was not as much intoxicated as you have seen him at other times?
A. No, sir.
Q. At what other times have you seen him intoxicated?
A. Well, I remember that instance in 1879.
Q. You refer to that time? A. Yes, sir.
Q. He was not as much intoxicated when you saw him at Minneapolis as he was there?
A. No, sir.

Examined by Mr. ARCTANDER.
Q. Can you fix the date of that? A. I cannot sir.
Q. Was it in the middle of October?
A. I think it was,—along in the middle of October.
Q. Was there anybody with the Judge?
A. Two other parties.
Q. Mr. Seagrave Smith? A. I don't know the gentleman.
Q. Was Judge Cooley one of them?
A, I didn't know either of them.
Q. What kind of looking men were they?
A. I couldn't tell you, sir.
Q. Did they stand there and talk with him?
A. The three of them were standing there talking.
Q. Did you speak to Judge Cox?
A. Yes, sir.
Q. What did you say to him?
A. I passed the compliments of the day.

Q. What did he say?
A. I couldn't tell you, sir, what he did say.
Q. Well, he passed the compliments back, didn't he?
A. Well, in a style.
Q. Was the Judge doing anything there, except standing and talking?
A. Well, he was trying to stand, that was about all.
Q. He was trying to stand?
A. Yes, sir.
Q. Well, he stood, didn't he?
A. He kept on his feet.
Q. Did he stagger?
A. Yes, sir, he moved around.
Q. What do you say?
A. I say that he staggered.
Q. Did he move around at all, while you saw him?
A. Not very much; he kept his feet going all the time, but he didn't move over much ground.
Q. He just kept his feet going but didn't move much.
A. Yes, sir.
Q. Did he scrape them along the walk, or kick them up in the air, or anything of that kind?
A. Well, I don't know as I can describe how he did use his feet. I was in a hurry and after noticing his condition, I walked on.
Q. You were in a hurry—you only stopped for a minute?
A. Yes, sir.
Q. How long did you see him there, do you think, altogether?
A. Why, I probably watched him as I was going along for half a block.
Q. Did you turn around to watch him?
A. No, sir.
Q. You went by him, didn't you?
A. Yes, sir.
Q. Then you watched him for half a block.
A. Before I got to him.
Q. But it was when you got up there to him and shook hands with him, that you noticed his condition?
A. I noticed his condition then and before.
Q. Didn't you testify a while ago, that you where in a hurry anyhow, and when you passed the time of day, you noticed his condition and walked off?
A. I believe I did, sir.
Q. Did you have any talk with him, excepting simply passing the compliments of the day?
A. That is all, sir.
Q. Did you hear him talk to the others?
A. I did not hear what he said. I heard him say something to them.
Q. You didn't know what they were talking about?
A. No, sir, I didn't.
Q. What time of day was it?
A. I think it was in the forenoon. As to the time of the day I am not positive.

Q. You don't know whether it was in the forenoon or in the evening?
A. I think it was in the forenoon.
Q. Now, you say that this was in the forenoon, to the best of your recollection?
A. Yes, sir.
Q. Do you remember what time of day it was in the forenoon?
A. If it was in the forenoon, I think it was between eight and nine in the morning. It was either between 8 and 9 o'clock in the morning, or between 1 and 2 o'clock in the afternoon.
Q. Well, which one was it?
A. That's what I don't know.

Examined by Mr. Manager DUNN.
Q. Why do you fix it at either one of those two times?
A. My business called me at South Minneapolis, and that was about the time I went down there.
Q. And those two times during the day would be the time you would pass that spot on the street?
A. Yes, sir.
Q. You went on that street every day, did you?
A. I did for a short time at that time.
Q. Between 8 and 9 o'clock in the morning, and between 1 and 2 o'clock in the afternoon?
A. Yes, sir.

JOSEPH A. ECKSTEIN,

Sworn as a witness on behalf of the State, testified.
Mr. Manager DUNN. This testimony is addressed to specification two, of article seventeen.
Q. Where do you reside?
A. I reside at New Ulm.
Q. Were you residing there in the month of August, 1879?
A. Yes, sir.
Q. What was your business in that month?
A. I was teaching in the public schools there, besides I was deputy sheriff.
Q. Do you know Judge Cox? A. Yes, sir.
Q. Judge of the ninth district? A. Yes, sir.
Q. Were you in his presence at the time a certain case—the case of Coster vs. Coster, was before him, upon an order to show cause why the defendant should not be punished for not paying over suit money or alimony?
A. Yes, sir, I was present.
Q. Will you state where you found the Judge and his condition. Just give a statement of it without questions?
A. Well, the sheriff went out that afternoon; it was in the afternoon of the 1st of August, 1879—the sheriff went out of town and told me to go up there in case somebody was needed—that somebody should be there. When I came up there I found Mr. Webber and Mr. Kuhlman there, and John B. Coster, the defendant in the case, and the judge had not made his appearance. They requested me to go down town to see if I could find him. I went down to the Dakota House and found him there.

Q. Was anybody with you?

A. I don't know whether there was anybody with me going down, but I met Mr. E. Kuhlman down town, or while going down town, I am not certain which, but I remember he was there at the Dakota House with me. That I remember well. I spoke to the Judge and told him that the attorneys were waiting to have the hearing of a certain case there, and asked him whether he was going up. He said he was, and went out on the sidewalk, and said he couldn't walk; that we would have to get him a team. I told him I couldn't get him a team. While he was talking that way a butcher, named Steibe, came along; he had an old wagon that he hauls off the offal of the meat market, and he stopped him and had him take him up to the court house. That was about three o'clock.

Q. Did he have a seat in the wagon?

A. There was only one seat.

Q. Did the Judge sit down on that seat? A. Yes, sir.

Q. Went up to the court house in the wagou? A. Yes, sir.

Q. What was his condition at that time as to sobriety; was he sober or intoxicated?

A. I think he was intoxicated.

Q. Well, is that any more than a thought?

A. Well, from his appearance—the language he used and the way he stopped the man—

Q. What language did he use?

A. Well, I do not remember exactly the words, but it was quite loud and at the time I thought it was very unbecoming; and the way he got up on the wagon—

Q. Well, how was that?

A. Well, there was no steadiness in his movements.

Q. His manner of getting up? A. Yes, sir.

Q. Kind of unsteady? A. Yes, sir.

Q. What happened when he got there?

A. When he got there, as he ascended the steps of the court house, if I am right, he said: "It is too hot up there, let's take it down here, right on the steps in front of the court house," and he sat down there, and the attorneys, (I don't know who was the first one,) tried to read an affidavit or something of the kind, and the Judge stopped him before he got very far, and told the other attorney to go on. And he stopped *him*. Then he said to John B. Coster, "I'm sorry, John, but I'll have to put you in;" that means put him in jail; but he said; "You ought to furnish the beer for this." Mr. Coster got up and said: "Your honor, if you will furnish the money I will get the beer." And the Judge gave him fifty cents, and Coster went down and got some beer.

Q. He came back, and they all had a drink?

A. I don't know how many did drink, but I know that Judge Cox drank, and Coster, and some of the others. Then after they had the beer, he still said: "I am sorry for you, John, but I'll have to put you in;" and he ordered me to put him in jail. He ordered me several times, but I didn't do it. I didn't refuse, nor did I do it. I can't say how many times he did order me, but then he threatened to put us both in, if I wouldn't put him in. Then I stepped up to the county attorney and asked him whether I should obey the order, and he told me I shouldn't do it, unless I had a written committment from him. So I didn't obey the order; I didn't do it. I didn't say I wouldn't do it, nor

that I would do it. And after a good deal of talk, the Judge got up and went down town without saying any more about it; and we followed after a while.

Q. And that was the end of it? A. Yes, sir.

Examined by Mr. ARCTANDER.

Q. When he was talking to you and Mr. Coster there, about this jail bnsiness, he was talking in a kind of a loose and joking way?

A. Well, it was.

Q. There wasn't any command?

A. Well, he said directly to me: "Put him in; put him in, Joe."

Q. He said to you: "Joe, put him in?" A. Yes, sir.

Q. That was the way he spoke it, wasn't it? A. Yes, sir.

Q. He told him that he was sorry, but that he would have to put him in?

A. Yes, sir.

Q. Then he turned around to you, and said: "Joe, you'll have to put him in?"

A. Yes. "Joe, put him in."

Q. He didn't say: "Put him in jail," or anything of that kind?

A. Yes, sir; he said: "Put him in." But he told Coster: "I'm sorry, but I'll have to put you in jail."

Q. And then, after a while, he said he thought he would have to put both of you in jail?

A. Yes, sir.

Q. That was in kind of a joking way, was it not?

A. Well, I didn't know whether it was a joke or not, but I didn't feel like doing it, because I thought the Judge was drunk.

Q. But you didn't know whether he said it in a joke, or whether he said it in earnest?

A. No, sir.

The PRESIDENT. Do you mean you did not feel like putting Coster in or feel like going in yourself?

A. Well, I don't think I felt like going in myself.

Q. Now, isn't it a fact that at the time you considered it a joke on the part of the Judge?

A. No, sir.

Q. Did you consider it as a formal order, ordering you to put him in jail, to incarcerate him?

A. Well, I considered it an order, a command.

Q. Had you been around court before? A. Yes, sir.

Q. Had you ever seen anybody ordered to jail that way before?

A. No, sir; I had never heard any order given in that way.

Q. You had never been present and heard any one sentenced to jail in any such language as the Judge used to you?

A. Well, I don't know whether I ever heard such language used, but I have heard orders given, or rather decisions made that they should be committed.

Q. Well, then the Judge would say, "the prisoner is committed to jail," would he not?

A. I have heard that in some cases.

Q. You never heard an order to have a man committed in any such language as addressing the sheriff by his first name and saying, "put him in jail" or, "put him in?"

A. I never heard any like that.
Q. You say that the drinking of that beer or sending of Mr. Coster after the beer, was after they had been trying to bring up the business?
A. Yes, sir; that was while it was going on.
Q. Well, it was going on? A. Yes, sir.
Q. Isn't it a fact that it was before any business was transacted at all?
A. No, sir.
Q. Did they do anything at all during the time of drinking the beer?
A. No,—there was all kinds of talk going on.
Q. Talking back and forward? A. Yes, sir.
Q. They were not talking about the case while they were drinking the beer, were they?
A. Not while they were drinking, but right after it.
Q. They had a little recess at the time they were taking the beer?
A. No, I never heard anything about a recess.
Q. They didn't open any court there on the steps, did they? I mean you didn't get up, by order of the court, or otherwise, to open court, and say "Hear ye! hear ye!" etc.?
A. No, sir.
Q. Now, at this time, when the Judge interrupted the attorney that was reading—that was Mr. Kuhlman that was reading, wasn't it?
A. I think Mr. Webber was reading first.
Q. Ain't you mistaken about that?
A. To the best of my recollection I think Mr. Webber was reading first.
Q. Was Mr. Kuhlman reading anything, after he was through?
A. Well, he interrupted Mr. Webber—the Judge did,—and told Mr. Kuhlman, "Let's hear what you have to say."
Q. Wasn't that while they were reading the affidavits?
A. Yes, sir; I think so.
Q. Wasn't that when Mr. Webber got up and was reading from a book some authority upon the subject, and trying to argue to the Judge?
A. No, sir; that arguing was afterwards.
Q. That arguing was afterwards?
A. Yes, sir; *tried* to argue.
Q. Now, you say at the time Mr. Webber was reading his affidavit the Judge interrupted him and said: "Mr. Webber, I don't want to hear anything more from you; I wan't to hear Mr. Kuhlman?"
A. Yes, sir, such was the language, but perhaps not those exact words.
Q. You are certain that that was not while they were arguing, but while affidavits were being read by Mr. Webber?
A. Yes, sir.
Q. Was Mr. Blanchard, the clerk of the court, there? A. No, sir.
Q. The clerk of the court wasn't there? A. No, sir.
Q. You said this was on August 1st? A. Yes, sir.
Q. 1880? A. 1879.

GEORGE KUHLMAN,

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

Examined by Mr. Manager DUNN.

Q. Mr. Kuhlman, where do you reside?
A. I reside in Minneapolis.
Mr. Manager DUNN. This is under specification 2 of article 17.
Q. Did you formerly reside in New Ulm? A. Yes, sir.
Q. Were you residing there in August, 1879?
A. Yes, sir.
Q. Do you know Judge Cox? A. Yes, sir.
Q. What was your business there?
A. I was practicing law there.
Q. You were practicing law at that time at New Ulm?
A. Yes, sir.
Q. Were you one of the attorneys in the matter of Coster vs. Coster, a divorce proceeding?
A. I was.
Q. Were you present on or about the first day of August, 1879, at a hearing before the Judge; at a time when the defendant was before the court upon a preceeding to show cause why he should not be punished for contempt in not paying alimony or suit money, as the case may be?
A. I was present at the commencement of that *show*, whatever you might call it, or that proceeding.
Q. Was that upon an order to show cause?
A. Yes, sir.
Q. Who procured the order? A. I did.
Q. Served it on the defendant; returnable on that day?
A. Yes, sir.
Q. Was the court there? A. Yes, he was there.
Q. You may state the circumstances connected with it, from the beginning of your going there to the court house until it wound up. You call it a show?
A. Well, perhaps I shouldn't call it that. I think I came there before the Judge came there, and waited there. I didn't remain until they got through. I was there when the Judge came there; was present when he sent for the beer, and was also present at the time as testified to, that he said he would have to commit Coster.
Q. Well, will you please state what took place while you was there?
A. Well, after he came up, and the defendant came, we endeavored, or rather urged him to go up into the court room to attend to business, but the Judge thought it was too hot, or had some other excuse; he thought we could do the business at the steps of the court house, and he refused to go into the court room. He stated that the business could be done on the steps. I don't remember everything,—my health is not very good, and I have tried hard to get everything out of my mind, so I don't remember very strictly what took place, but we eneavored to read some affidavits. The judge, I think, refused to hear them partially; apparently he had made up his mind as to what he was going to do; at last he told Coster that he would put him in jail, or something to that effect, unless he paid the money. Coster made some excuse, refused to pay the money, or stated that he couldn't; I don't remember now. The Judge kept urging him, that he must either pay the money or go to jail. About that time the Judge apparently got a little thirsty, and he asked the defendant to go and get some beer. The defendant went and got the beer. As to whether or not I was present when the beer was drank I don't now remember. I got somewhat disgusted and left. I went to the clerk's office, which is a few rods distant from the court

house, and there commenced to write out an order for the Judge to sign at some time when he should be in a condition to sign it. I remained there a little while and then went down town to my office. That is about all I saw of the Judge until he came down town and came into my office. I don't know what farther took place then and there at that hearing at all.

Q. Now, dnring all this proceeding on the court house steps, from that time until the time you left, what was the condition of the Judge as to sobriety?

A. Well, he was very much intoxicated I thought.

Q. When he came down to your office was his condition any improved?

A. No, sir; it got worse; he finally got dead drunk.

Q. Well, how do you state that?

A. Well, he came up into my office and sat down on the lounge and commenced talking very wildly, such as calling me hard names without cause; and when he got through with that he laid down on the lounge and fell asleep. I know he laid on the floor afterwards, but I don't know whether he rolled off the lounge or not. I know that he laid by the side of the lounge on the floor a little while after that, perfectly oblivious to everything and anything that was going on about him.

Q. Did he use bad language to you when he came into the office?

A. Yes; he called me a damned thief and a liar, and so on.

Q. Had you ever had any difficulty with the Judge?

A. Oh, no; we were the best friends in the world; we had had no trouble; he did not mean what he said.

Q. You attributed it to intoxication?

A. Yes; we have always been good friends.

Examined by Mr. ARCTANDER.

Q. You say when he laid there he was perfectly oblivious to everything that was going on around him; you mean that he was in the arms of Morpheus, don't you?

A. Well, perhaps he was.

Mr. Manager DUNN. He was in the arms of Bacchus, too.

The WITNESS. I have had a little experience, and I know we do get into the arms of Morpheus when we are teetotally full.

Q. I suppose that is what you mean,—that he went to sleep there?

A. Yes.

Q. That was a very hot day, was it not?

A. I don't remember now; it is possible that it was.

Q. Were there any affidavits read there by any of you, if so, by whom?

A. Well, I don't now remember; I don't believe that the affidavits were wholly read by either of them, but they may have been, I don't know.

Q. You don't remember the Judge interrupting you, and refusing to hear the affidavits?

A. I don't distinctly remember; no.

Q. Isn't a fact that Mr. Webber presented his affidavit—a little short one—about inability to perform?

A. I think so; I didn't regard the affidavit as amounting to anything; that is my best recollection.

Q. This affidavit didn't amount to anything in the case?

A. Yes, but I don't want to positively say that is the case, although that is my recollection now.

Q. As a matter of fact it did not set out facts sufficient to make an excuse for not obeying the order?

A. No, sir.

Q. Did you hear him produce any law upon it?

A. No, I think not. There was no law produced whatever.

Q. The papers were handed to the Judge, were they not?

A. I don't remember of it.

Q. You left your papers with him, did you not?

A. I don't believe I did.

Q. You say you went up into the court-house to draw that order?

A. No, I went over to the clerk's office.

Q. To draw the order? A. Yes, sir.

Q. The order that was made in the case was finally made by Judge Cox himself, a few days afterwards, was it not?

A. The order he signed was made by me.

Q. It was?

A. Yes, sir; I am positive of that, because I looked at it on the 1st or 2d day of Janury last.

Q. And that order the Judge took with him, and sent it up a few days afterward, did he not?

A. No, the Judge didn't take it down with him. I sent it down a few days afterwards. This hearing was on the 1st of August; the final order, I think, was dated on the 9th of August. I examined that matter on the 2d of January, and I think I am not mistaken about it.

Q. The order was to commit him to jail for contempt, was it not?

A. Yes, sir.

Q. There was nothing improper in that order, under the showing?

A. Well, I endeavored to write an order that was correct and proper, yes.

Q. Well, there was nothing improper in the order sending him to jail, under the showing that was made there, was there?

A. I think the order was perfectly correct and proper.

Q. His addressing himself to Coster in your presence—he made no formal order—all he said was that he should have to send him to jail?

A. Yes, that is my recollection; that he simply had a little friendly talk with John Coster, they being old friends.

Q. There was no order made to send him to jail, or to take him to jail?

A. No;—at least I didn't understand it so.

Q. Just a friendly talk between them?

A. Well, that was the way I took it, the way I understood it.

Q. The fact is, that he told him he would have to send him to jail if he did not pay that money?

A. Yes.

Q. Wanted him to pay that money?

A. Yes, that was it.

Q. Didn't he then and there try very hard to get Coster into paying the money so as not to have to send him to jail?

A. I think he did; I think he tried hard to have him pay the money.

Examined by Mr. Manager DUNN.

Q. This friendly talk you speak of was right in the midst of the proceedings, was it not?

A. Yes, if you call it a proceeding.
Q. Well it was all the proceeding there was, it was an order to show cause and Coster was there to show cause?
A. Yes.
Q. An order was made to the Sheriff was there not to lock him up?
A. Well, I think that was made after I left; I didn't hear that.
Q. Well it is a fact isn't it, that you didn't hear all that was done and said there, you were in the office a part of the time trying to write an order?
A. I got disgusted and left before the thing was over.

A. G. CHAPMAN,

Sworn as a witness on behalf of the state, testified.
Mr. Manager DUNN. This testimony is directed to article fourteen.
Q. Mr. Chapman where do you reside?
A. Lake Benton, Lincoln county.
Q. What is your profession?
A. An attorney at law.
Q. How long have you resided at Lake Benton?
A. About a year and eight months.
Q. Do you know the respondent in this matter, E. St. Julien Cox?
A. I do.
Q. You may state if you were present at a term of court held in your county in the month of June last?
A. I was most of the time.
Q. Where was that court commenced to be held?
A. At Marshfield.
Q. Was that the county seat, or supposed county seat of your county at that time?
A. Yes, sir, it *was* the county seat at that time.
Q. Was the court convened at Marshfield?
A. Yes sir.
Q. Were you present when the Judge arrived there?
A. I was.
Q. Did you observe his condition as to sobriety?
A. I did.
Q. What was that condition when he arrived at Marshfield?
A. Drunk as a lord.
Q. How long did the court remain at Marshfield?
A. Twenty minutes, I should judge, something of that kind.
Q. Where did the court adjourn to, if any place?
A. Tyler.
Q. What was the reason of the adjournment given, if any?
A. There were more suitable rooms at Tyler, I think was the reason.
Q. Did the court open the same day at Tyler, or the next day?
A. It opened the next day.
Q. Were you present in court the next day, when it was opened?
A. I was not.
Q. Were you present during any of the term of court at Tyler?
A. I was; I was present half an hour, or an hour, I presume after court was called.
Q. The first day it was called at Tyler?

A. At Tyler, yes.
Q. What was the condition of the Judge then as to sobriety?
A. The Judge was drunk at Tyler, when I was down there.
Q. Do you know of his drinking liquor?
A. I saw him drink in a saloon once or twice, I think.
Q. Did you see him drink at any other place than in the saloon?
A. I did.
Q. Where was that?
A. That was at Mr. Hodgman's parlor at Tyler, at the hotel where he stopped.
Q. How much of that term was the Judge under the influence of liquor; all the term or only a portion of it?
A. He was under the influence of liquor during the entire term. He took the cars under the influence of liquor; when he left town he was under the influence of liquor.
Q. You were there during the whole term, were you?
A. Well, I mean all the time I saw him. I was not there every day perhaps.
Q. You mean the days that you saw him?
A. Yes.
Q. How many times did you see him drink in the parlor of the hotel; more than once?
A. Yes, they passed the hat there several times.
Q. Passed the hat,—did they drink out of a hat?
A. Well, the bottle was in the hat.
Q. The bottle was in the hat; how's that?
A. Well, I don't know how it was; I didn't taste of it, but the bottle was put in a hat, and the hat was passed around to the boys. There was a general charavari going on; the room was full, and there was dancing, singing, music, drinking and smoking.
Q. The Judge was one of them?
A. He was one of the "boys" that night.

Examined by Mr. ARCTANDER.
Q. Did you see the Judge when he arrived at Marshfield?
A. I did.
Q. Where were you?
A. He was on the south side of the building where court was called.
Q. Were you at Tyler when he arrived there?
A. I was not at Tyler when he arrived there.
Q. How far is it from Marshfield to Tyler?
A. Three or four miles.
Q. You were there you say and saw him arrive at Marshfield?
A. Yes, sir.
Q. How did he come there?
A. He came there in a carriage.
Q. Who did he come with?
A. Mr. Hodgman and other parties and I think Mr. Bingham.
Q. Who is Mr. Bingham?
A. Well, Mr. Bingham is an officer, a constable I presume.
Q. A deputy sheriff?
A. He was constable at that time.
Q. Who else was along? A. I don't remember.
Q. Do you remember who drove the team.

A. I guess Mr Hodgman.
Q. Was Col. McPhail there with him?
A. Perhaps he was, I don't remember that.
Q. Was Mr. Andrews along? A. That I don't remember.
Q. Mr. Matthews? A. What Matthews?
Q. Mr. M. E. Matthews?
A. I don't remember any more than three with the Judge,—two or three.
Q. What is the name of the sheriff of the county?
A. David H. Henderson.
Q. Was he sheriff at that time? A. No, sir.
Q. Mr. Ramsey was sheriff at that time, was he not? A. He was.
Q. Wasn't he along? A. I don't remember.
Q. What did the Judge do as soon as he came there?
A. In the room up stairs, do you mean?
Q. Well, when he arrived at Marshfield?
A. Why, he was helped out of the wagon and came up stairs.
Q. He was carried out was he?
A. No, sir, he was steered out.
Q. How was he helped out?
A. Oh, gently lowered, some way.
Q. Gently lowered? A. Yes.
Q. Somebody took hold of him and took him out there, did they?
A. No, helped him out.
Q. Do you mean to say that they gave him a hand to jump down, or do you mean the Senate to infer that he was in such a helpless state of intoxication that he had to be helped out of that wagon?
A. Well I don't know, he was pretty well intoxicated.
Q. Well, how was he helped?
A. By taking hold of his arm and shoulder.
Q. And lifting him out? A. No, sir.
Q. Did he jump out?
A. No, he didn't jump out.
Q. Who helped him out?
A. I believe it was Mr. Hodgman; I won't state certainly.
Q. Well, after he was helped out of that buggy, in that way, what did he do next?
A. He came up stairs.
Q. He came up stairs where your court room was?
A. Yes.
Q. What did he do when he came up there?
A. He took a seat upon the bench.
Q. Did he walk at the time?
A. Yes, he walked.
Q. Well, he finally staggered into his seat didn't he?
A. Yes, sir.
Q. He staggered, did he? A. Yes, sir.
Q. Very badly? A. Yes, pretty badly.
Q. Stagger? A. Yes.
Q. After he had staggered into his seat, what did he do then?
A. He turned to the clerk and asked him if there was any business or "what's the business," or something to that effect? His voice was very thick, I think he called two or three times to the clerk before the clerk made any response.

Q. And he asked him if there was any business there, did he?
A. No, sir.
Q. What was it he asked him?
A. "What's the business, Mr. Clerk?" That's as near as I could understand.
Q. What was the next thing that he did?
A. Well, the clerk got up and wanted to know what he said, or the deputy clerk rather,—it was the deputy clerk, and the Judge looked over the records a moment and told the sheriff to call the court; and then he came down off the bench; came to me and stated that it was a bad place to hold a court;—a rough place or something of that kind; that he couldn't hold court there; talked it over with Col. McPhail and Mr. Ramsey; we all stood there together, and then he went back on the bench and asked Mr. Mathews what the provisions were for holding court—what places there were for the jury. Mr Mathews told him there were places for a jury, a building for the grand jury, I think—either a place in that building or some other place.
Q. What was the next he said?
A. Well, Mr. Mathews told him there was a place for one jury in the bar room of the hotel. He said that was no place, and that the court was adjourned to Tyler, after asking what town was the nearest. The clerk or the deputy clerk told him that Lake Benton was seven or eight miles away and that Tyler was some four miles distant: and he stated then that the court would adjourn to Tyler.
Q. He ordered the clerk to enter it in his minutes, didn't he?
A. I don't remember if he told the clerk to enter it in his minutes or not, I think he did.
Q. Isn't it a fact that he made an order there, ordering the clerk to enter it, to take all the books and papers and bring them over to Tyler and have them there at the opening of court the next morning at nine o'clock.
A. I presume that part was all right. The records will show, or ought to show at least; I can't state?
Q. Did the Judge go off then? A. Yes, he went back—
Q. Did anybody help him up in the wagon again?
A. I didn't look at him then.
Q. You wern't there to view that sight?
A. I was in the room further back; I was not looking out at the window, at least.
Q. Charles Marsh was the clerk of the court there, was he not?
A. He was.
Q. He was present in the court room when this order was made, was he not?
A. I think Charley Marsh was not present in the court room up stairs at all while there was anything being done; I believe not.
Q. Would you swear positively he was not there?
A. No, sir.
Q. Perhaps I can refresh your memory on that point. Is it not a fact, that immediately after the court had ordered an adjournment to Tyler, you stepped up to Charlie Marsh, the clerk, and directed and advised him not to obey the direction of the court, and not to move the books and the records, or any of them, but to keep them, at all events, at Marshfield?
A. I think I never stated anything of the kind to Mr. Marsh.

Q. Will you swear that you did not do that at the time?
A. I wouldn't swear I—
Mr. Manager DNNN. We object to that. The objection is that it is immaterial what he said to Mr. Marsh.
The PRESIDENT. The chair thinks the question is pertinent and will overrule the objection.
Q. I ask you whether or not you did not immediately after the order of adjournment, step up to Charlie Marsh, the clerk of the court, and direct and advise him not to obey the order and direction of the court to remove said books or records, nor any of them, but to keep the same, at all events, at Marshfield, or words to that effect?
A. I don't think I said anything of the kind.
Q. You wouldn't swear you didn't?
A. I wouldn't swear I didn't; I was somewhat angry at the time.
Q. You were mad because the Judge wanted to remove the court to Tyler?
A. I was mad because the Judge came there drunk?
Q. You live at Lake Benton? A. I do.
Q. There has been quite a fight and disturbance between the people of Lake Benton and Tyler on account of the couuty seat business, has there not?
A. Perhaps; not so much between Lake Benton and Tyler, as between Lake Benton and other points in the county.
Q. Isn't it a fact that at that time there was quite a feeling upon the county seat question?
A. Certainly there was.
Q. And Lake Benton wanted to get it? A. Yes, sir.
Q. Now, when you came over to Tyler, the next day, the Judge was drunk, you say?
A. Yes, sir.
Q. He was sitting on the bench, was he? A. Yes, sir.
Q. Was he very drunk?
A. Not as drunk as he was the day before.
Q. Not so drunk as the day before?
A. No, sir.
O. But he was pretty drunk?
A. He had, I should judge, considerable on hand, from appearances.
Q. Was there anything in his actions or conduct during that day that you noticed?
A. Yes.
Q. Well, what was it?
A. His general appearance indicated his—
Q. His appearances indicated what?
A. That he was under the influence of liquor.
Q. Well, how were his appearances?
A. Well, as his appearance generally is when he is under the influence of liquor.
Q. I did not ask you that.
A. His eyes were somewhat red, his face had a ruddy look, and a devil-may-care deal all around with the boys. He would say things and do things off-hand that he would not do when he is sober.
Q. How many times had you seen him in court before this time?
A. I had seen him in December; I had seen him at a special term in Lincoln county the year before.

Q. How long did that last?
A. Two or three days; two days, I believe. Do you want to know about it?
Q. No, sir; if you answer my questions that will be enough. Had you seen him at any other terms?
A. I have seen him in Lincoln county in attendance there.
Q. Now, at this time you say that his eyes were red, that his face was red, and that he had a devil-may-care appearance generally when he was sitting on the bench there that day?
A. Offhand appearance; yes.
Q. Now was there anything that he did,—anything in his actions, conduct, or language, that indicated that he was intoxicated?
A. His general appearance and general language indicated that.
Q. His general language? A. Yes.
Q. Well, what was his general language?
A. Oh, vulgar expressions and jokes.
Q. In court? A. No, sir.
Q. Oh! we are talking about court, ain't we? A. In court?
Q. Yes.
A. Well, I didn't have much conversation with him. I made a motion there that morning, and there were remarks back on that.
Q. What case was that in which you made the motion that morning?
A. It was a little matter to have the court adjourn back to Marshfield. I requested it in writing.
Q. What remarks did he make to that.
A. Said he: "You can't come that, by a damned sight."
Q. He said that in court, did he? A. Yes.
Q. Any body present there in court at that time?
A. Yes, several present.
Q. Was Mr. Matthews there? A. Clerk Matthews?
Q. No; M. E. Matthews, the attorney. A. I don't remember, sir.
Q. Do you remember if Charlie Andrews was there?
A. Yes, Charlie Andrews was there, I think; and I think Mr. Matthews was there, and Mr. Butts. Mr. Coleman, I think, was there.
Q. Mr. Cass?
A. Mr. Cass was there.
Q. Had the grand jury been sent out at that time?
A. I can't state whether it had or not.
Q. Was Mr. McPhail there?
A. I think Mr. McPhail was there.
Q. Was Cnarlie Marsh there?
A. No; I think not.
Q. Was William Dean there?
A. I don't remember.
Q. Was Judge Weymouth there?
A. Yes, I think Judge Weymouth was there, but I won't state about him.
Q. Was Mr. Scripture there?
A. I don't remember of seeing him in the room that morning.
Q. Do you remember whether Mr. Strong was there that morning?
A. I don't remember seeing Mr. Strong that morning in the room.
Q. Was Mr. Frank Apfeldt, the deputy sheriff, there?
A. No; I think he was over tending his saloon.
Q. Do you remember whether Mr. Hodgman was there?
A. No, sir.

Q. Was Sheriff Ramsey there? A. I think not.
Q. Did you notice whether Mr. Ramsey's son was in there?
A. I think he was; I won't state for certain.
Q. The present sheriff, Mr. Atchinson, was he there?
A. I can't remember.
Q. Was Mr. Pompella, the foreman of the grand jury, there?
A. I can't remember, sir,
P. Now that was all that he said was it,—"that you couldn't come that on him by a damned sight?"
A. That is all that I remember that was peculiar.
Q. Now, do you remember anything else peculiar in his actions or language that day in court?
(No answer.)
Q. Did you stay in court at all that day?
A. Yes, sir; I was there.
Q. Did you try a case there that day?
A. I don't remember whether I did or not.
Q. You don't remember whether, after you made that motion, you walked out or stayed in court during the balance of the day?
A. Oh, I was there occasionally.
Q. Do you remember if any cases were tried that day?
A. I do not.
Q. Do you remember of anything peculiar happening during that day except what you have stated already?
A. Nothing peculiar.
Q. Anything peculiar in his actions or manners?
A. Nothing more than that he was off-hand, and had a peculiar way that anyone who is acquainted with the Judge would know what was the trouble.
Q. Anyone who was acquainted with him and knew him, and saw him there in the court room that day, could see that he was drunk?
A. He wasn't drunk that day. He was under the influence of liquor, sir.
Q. He wasn't drunk?
A. No, sir; not as much as he was the day before, at Marshfield.
Q. You noticed nothing during that time that was peculiar in his rulings, or anything that you considered out of the way?
A. I don't remember that there was anything out of the way that day.
Q. Now, the next day was Thursday, I believe. Did you have any cases there in court that day?
A. I do not remember the days that my cases came on.
Q. How many cases did you try that term?
A. One criminal case and four civil cases, I believe, were submitted. Well, one of them was ended at Marshfield.
Q. Was that a jury case you tried?
A. The criminal case was a jury case.
Q. You tried that, did you? A. Yes, sir.
Q. What case was that?
A. State of Minnesota against James Gelronan.
Q. Do you remember what day that was tried? A. I do not.
Q. What other jury cases did you try? A. No other jury cases.
Q. You tried no other jury cases?
A. No other. I submitted two cases on stipulation, with M. E. Matthews.
Q. Stipulated to the facts, do you mean? A. Yes.

Q. And submitted to the court to find judgment? A. Yes, sir.
Q. Did you have any cases to try? A. I did.
Q. What were they?
A. I had an appeal from justice court—two appeals.
Q. Appeals upon questions of law alone?
A. Well, one was appealed on no questions. I was on the defense. The plaintiff appealed. I moved to dismiss the appeal.
Q. You argued that motion?
A. There wasn't much argument; the court dismissed it.
Q. Correctly so, I suppose?
A. Yes, sir. The appellant did not state upon what grounds he appealed; just simply appealed.
Q. Now, what was the other appeal case you tried?
A. There was another case that was not an appeal case, the case against Hosely, the hotel keeper.
Q. Was that tried?
A. Well, it was argued and judgment was rendered.
Q. It was upon a law question, was it?
A. Yes, sir; a promissory note and settlement of an account.
Q. That was all you had there at the time?
A. No, there was another case.
Q. Well, what was the other case?
A. It was an appeal case, the case of Brown & Morse against Frank Poppin, and the Chicago & Northwestern Railway Company as garnishee.
Q. Well, that was tried there, was it?
A. It was argued.
Q. That was a law question, too? A. Yes.
Q. Now, this second day at Tyler, how much of the time were you in the court room?
A. I can't remember.
Q. Were you in there at all?
A. I might not have been. There was one day that I was away from there. I was there on Friday night.
Q. Then Thursday and Friday, you were away, and until Friday night, were you not?
A. No, I was there on Friday; on Thursday I can't state whether I was there in court.
Q. You remember nothing in regard to the Judge's condition on Thursday, do you?
A. I can not remember about his condition on Thursday.
Q. Nothing out of the way?
A. I don't remember anything about Thursday.
Q. Now, when did you come into court on Friday?
A. I got there during the forenoon, I think. I might have stayed in Tyler over night, but I think not. I think I left Benton to go down to Tyler on Friday morning. I will not state this positively.
Q. Well, you got there into court in the afternoon. Do you remember what was going on then?
A. I think the Gelronan case was tried on that day.
Q. Well, during the trial of that Gelronan case, on Friday,—
A. It might not have been Friday, but I think it was.
Q. Was there anything out of the way with the Judge there then?
A. Yes, on Friday there was a pretty good time all around.
Q. A pretty good time all around? A. Yes, sir.
Q. Well, what was out of the way with the Judge?

A. Well, on Friday there were frequent adjournments of the court, and a grand drunk at night.

Q. You mean as far as the Judge was concerned?

A. I mean as far as the Judge and a part of the lawyers were concerned; a good time all round.

Q. Well, the Judge was drunk anyhow? A. Yes.

Q. He was as drunk as a lord again, I suppose?

A. He was as drunk as a *fool* this time; he was drunker than he was the other time; he got farther along this time.

Q. Was he drunk in court?

A. He was pretty drunk in court, and it ended up in a carnival at night. He went to bed with his boots on that night.

Q. It ended up in what?

A. It ended up in a game of poker, up stairs. The Judge got so drunk that he couldn't "hold a hand," and then they rolled him up and put him on the bed, and continued the game.

Q. Who was there?

A. Mr. Cole, Mr. Butts, a young man by the name of Whitney, Burt Newport, of Pipe Stone, (I got him out of there into my bed that night)—

Q. Anybody else?

A. Yes; there were several went in. The doors were open at first, along.

Q. Were you there when they rolled him onto the bed?

A. I looked through a window and saw him; I was in the ell at Mr. Hodgman's hotel. The Judge and his associates had two rooms, right across in the main part on the south-west corner of the building, or the south end of the building, and the window is such——

Q. And you laid in the ell and looked through the window?

A. Yes; as I came up stairs, before I went into my room; the door was open.

Q. You say they rolled him onto the bed?

A. I say they helped the Judge up onto the bed, or pushed him up or got him up some way.

Q. They got him up there?

A. Yes,—with his boots on.

Q. Was that his room? A. No; I think that was Mr. Butt's room.

Q. Did you see Judge Cox lay there during that night?

A. I saw him as late as 3 o'clock, and saw him again perhaps at 6 or 7 o'clock.

Q. You were in there again at 3 o'clock, were you?

A. I went in and got Mr. Newport out about 3 o'clock.

Q. What were you doing when you got back there about 6 o'clock?

A. When I got up the Judge was there in sight.

Q. What were you doing there when you went in at 6 o'clock.

A. I was getting up.

Q. Mr. Hodgman was up there was he? A. Up where.

Q. Up in that room? A. I didn't see him.

Q. The hotel keeper? A. I didn't see Mr. Hodgman up there.

Q. He might have been there?

A. He might have been there before I saw him, when I wasn't looking. He wasn't there any length of time I don't think.

Q. During that day previous to the carnival in the evening, you say you came into court in the forenoon,—now do you remember what case was up there, was it this criminal case you have been speaking of?

A. I wouldn't state it was *that* criminal case; I couldn't place the cases exactly.

Q. Well, do you remember anything out of the way with the Judge that day, I mean in court?

A. Well, his general looks and his general behavior—his movements were such that *any* one that knew the Judge would know that he was under the influence of liquor.

Q. Well, now I want to know what those general looks were, again.

A. Well, his eyes were somewhat squinty; he couldn't look right straight at you, he was somewhat cock-eyed.

Q. Were they red that day?

A. Yes, pretty red.

Q. Anything else about his general looks?

A. Yes, he looked pretty tough. His hair didn't look very smooth; it looked as though it stood the wrong way.

Q. Well anything else?

A. Oh, his talk and his general actions.

Q. There is nothing more about his general looks you can specify.

A. Well, the Judge any one can tell; he stands very peculiar. His body is very dignified at such times. His body is very straight at certain times during the time when he is about so much under the influence of liquor; he stands pretty straight,—a full front.

Q. He stood pretty straight that day, did he?

A. He stood pretty well along toward night.

Q. Was there anything in his actions that was peculiar?

A. Yes, I think he and I had a talk outside.

Q. I was asking you what the Judge said to you in court?

A. Well, I don't remember anything more, perhaps in court. I had other reasons for thinking he was drunk.

Q. What is that?

A. I had other reasons for thinking that the Judge was under the influence of liquor besides that.

Q. Well, what were those reasons?

A. Oh, we had a chat outside.

Q. Well, what was that chat?

A. Well, he wanted to know if I was going to mention these facts in the paper which you have there before you. Whether I was going to mention any statement of anything that was going on there.

Q. He wanted to know whether you would mention any slander in your paper?

A. Not slander, but the matter.

Q. Was that what he said—the slander?

A. No, he didn't sya slander; he asked me if I was going to publish the doings, the proceedings.

Q. He asked you if you was going to publish the proceedings of the district court?

A. No, not exactly that.

Q. Well, what was it, sir?

A. Well, his spree, sir; his spree.

Q. Was that the language he used?

A. I don't remember the exact language about that, but he wanted to know if I was going to publish the trouble.

Q. The trouble?

A. Yes, sir; the trouble and the general doings. That might not have been his words.

Q. The doings of the district court?

A. Yes, of the Judge.

Q. That was his language?

A. No, not perhaps the exact words.

Q. That was the reason you had, then, outside of his appearance, for thinking he was drunk that day?

A. Why, he said he should thrash me if I printed it. Said he, "G—d d—n you, I will pound you if you print that; I'll thrash you."

Q. Anything more than that?

A. Yes, he told me if I did publish it, not to send it to his wife.

Q. Anything more?

A. I don't remember anything more particularly.

Q. Was anybody present at this conversation?

A. Between him and I?

Q. Yes? A. No, sir. It was out of doors.

Q. Now, in regard to these recesses were they any more frequent on Thursday than they were on Wednesday?

A. What day sir?

Q. On Thursday than they were on Wednesday; you mentioned that recesses were so frequent, on Thursday?

A. No, sir; I didn't mention any such thing.

Q. I mean on Friday, than they were on Wednesday?

A. I haven't said anything about recesses.

Q. Didn't you state a little while ago that the court very often took a recess during that day?

A. No, sir.

Q. They didn't do that, did they?

A. The court took some recesses. This was at a recess when he and I had the talk.

Q. Well, he took the usual recesses in his court didn't he; one forenoon recess and one afternoon recess?

A. Oh, I think his recesses were a little oftener than that.

Q. Well, will you swear they were? A. I would.

Q. How often?

A. Oh, perhaps two or three times in the forenoon, and the same in the afternoon.

Q. Were they the same on Wednesday when you were there—the first day at Tyler?

A. Yes. There was not an unusual number of recesses taken at Tyler on any day.

Q. Not on any day? A. No; not that I noticed.

Q. Now, on Saturday, do you remember whether you was in court then, or did you go home?

A. I don't remember; no. I didn't go home. I think I was there Saturday. I think I was there all day Saturday.

Q. Do you remember anything particularly on Saturday out of the way in any form, shape, or manner, in his conduct, language, manner, or appearance?

A. Why, I remember of the Judge going over to the saloon on Saturday morning. I did not see him drink this Saturday morning. The night before I saw him and others drink.

Q. Was it this night before that this "carnival" was there; was that at the time they passed the hat around with the liquor in it?

A. Yes; that was the night before,—Friday night.

Q. Was that the room in which the carnival was going on—the poker party, etc.?

A. No, sir.

Q. That was prior to the poker party, was it?

A. Yes; there was a time down stairs that lasted till midnight or a little past.

Q. And then the poker party continued or adjourned up stairs?

A. They didn't adjourn up stairs as I know of.

Q. Well they went up stairs; I understand you this poker party was up stairs after this scene down stairs which lasted until about 12 o'clock?

A. Yes, sir.

Q. Now was you in the parlor during the whole of the evening?

A. I was there not all the evening, but very nearly all the evening.

Q. And you saw this thing passed around from one to the other?

A. I did.

Q. Now Saturday morning when Judge Cox came into court, was there anything out of the way with him then?

A. He looked tired.

Q. He looked tired?

A. Yes; his general appearance was haggard.

Q. But you would not say that he was under the influence of liquor then?

A. I should say he was.

Q. You should say he was? A. Yes.

Q. Now was there anything about those eyes of his again that day?

A. Yes, he looked bad.

Q. His eyes red again? A. Yes.

Q. And his hair standing the wrong way?

A. I don't remember; his general looks were haggard, and he looked bad.

Q. Was there anything in his actions or conduct that you remember that was out of the way?

A. I don't remember in the court. He went over to the saloon; I don't know what he did there. He went over there again during the forenoon; I saw him go over there twice I think during the forenoon.

Q. You don't knonw whether he went in there to get a smoke or to get a drink?

A. No, sir.

Q. But there was nothing that you noticed out of the way there that forenoon or afternoon, of Saturday?

A. I could not tell without I knew the cases that were tried on Saturday.

Q. Now, Monday was the last day of the term of court?

A. Yes, sir.

Q. Was you there on Monday?

A. I think I was there a part of the time.
Q. What part of Monday was you there?
A. I was there in the morning until perhaps 10 o'clock.
Q. In the morning until 10 o'clock?
A. I was there Sunday also, at Tyler.
Q. Well, I didn't ask you about Sunday; Monday you was there until about 10 o'clock in court?
A. I think I was.
Q. When did court commence in the morning?
A. That I don't remember.
Q. The court quit on Monday?
A. Judge Cox is generally on time to a minute, sir.
Q. Well, you wasn't there when the court closed on Monday night?
A. I think not.
Q. You left there in the forenoon about 10 o'clock?
A. I left on Monday during the forenoon, I think.
Q. Now, during the forenoon there, did you notice anything out of the way?
A. I think the Judge was soberer on Monday than I had seen him at all during the term.
Q. He was apparently sober that Monday morning?
A. No, sir; I wouldn't hardly state that; he was apparently sober. He was somewhat soberer than he had been at all before.
Q. Now, I ask you whether there was anything in his languge, conduct, manner, or actions, that morning, to indicate that he was under the influence of liquor, or intoxicated?
A. Monday morning? I should state there was a pretty big drunk on Sunday, and there was a little cooling off on Monday. The Judge was soberer than I had seen him, on Monday.
Q. Well, you don't remember anything out of the way at all?
A. I don't remember on Monday, anything in particular, out of the way.
Q. You said that that Friday night the Judge played poker until he couldn't hold the cards any longer; Mr. Chapman, did the Judge play cards at all that night there?
A. I didn't state that he played cards until he couldn't hold the cards any longer; or words to that effect, I think.
Q. Did he play any cards at all?
A. I didn't say that he played cards; he sat there at the table with the boys in the room for a few minutes. That is, he sat there amongst the boys at the table; I didn't see him playing.
Q. You saw him sit there for a few minutes? A. Yes, sir.
Q. And afterwards the next you saw of him he was in bed?
A. He didn't go to bed that night. The boys helped him up on, or lifted him up on, or got him on in some way.
Q. Now, do you know which one was Judge Cox's room there?
A. I think the room that the Judge held was a small room opening to the east; that is where I met him; I supposed that was his room.
Q. That was his room, not the room in which they were playing?
A. The rooms open together. In order to get into one you have to go through the other.
A. Well, you went through the room in which they were playing to get into the Judge's room?

A. Yes, if that was the Judge's room; I only inferred that was his room because he was in there when I went to see him in the small room. I wasn't acquainted with which was his room only from the one he was in when I went to see him in there.

Q. Have you given us all that were present at this card party up there?

A. All that I saw up stairs in the room, yes. All that I remember of seeing.

Q. Who was it that put the Judge on to the bed?

A. I think it was, if I remember rightly, Mr. Coleman and Mr. Whitney that helped the Judge.

Q. You are sure that it was Judge Cox that they put on the bed?

A. Yes, sir.

Q. Was it light in that room? A. Yes, sir.

Q. No curtains?

A. There were no curtains; if there were the curtains were up,—it was all light.

Q. It was not because you saw Judge Cox in it afterwards, but you could see it was him when they put him there, from your room?

A. Yes, sir.

Q. Do you remember who was present down stairs in the parlor?

A. Yes, sir; a considerable number of them.

Q. Who were they?

A. Mr. Charles Marsh, Henry Griffith, commissioner of the county, Mr. Manchester, S. D. Pompella, Mr. Whitney; I think Mr. Coleman was present,—

Q. Was Mr. M. E. Mathews of Marshall there? A. Yes.

Q. Mr. Andrews?

A. Mr. Andrews was there a part of the time anyway.

Q. Judge Weymouth?

A. I think not; I don't remember Judge Weymoth. Col. McPhail was there that night.

Q. Was Mr. Seward there?

A. No; I think not.

Q. Was Dave Thorp there?

A. I don't remember Mr. Thorp being there.

Q. Was Mr. Hodgman in there?

A. He might have come in; he didn't stay any length of time that I remember. And I don't remember that he came in at all.

Q. Was Charles Butts there?

A. He was, I think.

Q. Mr. Cass? A. I don't remember Mr. Cass being there.

Q. Was Mr. Snyder there? A. I think not.

Q. Mr. William Ross? A. I think not.

Q. Mr. Atchison, the sheriff? A. I think he was not there.

Q. Was Mr. S. G. Jones, of Lake Benton, there?

A. No, I believe not.

Q. Well, that is all that you can remember that was there?

A. Mr. Griffith's wife's sister was there.

Q. In the parlor?

A. She was there for awhile during the first of the evening—when it first started I think.

Q. When the bottle went around in the hat?
A. Not as late as that.
Q. Well, these men you have mentioned were there during the whole performance?
A. Oh, they were in there more or less during the evening.
Q. And most of them went up stairs afterward?
A. Oh, no; no, sir, there was a good many people there that didn't go up stairs, , a good many. Mr. Griffith didn't go up; that is, did not go up to the room up stairs, and Mr. Morrill, I think, didn't go, and Mr. Pompella did not go as I remember. There were only a few that went in.
Q. Mr. Pompella was the foreman of the grand jury there?
A. I think he was.
Q. The grand jury was in session about as long as the court was, was it not?
A. Well, they were in session quite a number of days.
Q. Isn't it a fact that the grand jury was out the last night, and that the court had to wait for them to come in before it could adjourn.
A. It might have been; the grand jury had considerable many matters of business; it might have been, I think that was the fact, Mr. Arctander; I think the grand jury were—
Q. Do you know Mr. Pompella's signature when you see it?
A. Yes; I think I could tell it, yes.
[Handing paper to witness]
Q. Is that his signature?
A. Yes, sir; that is his signature, I should judge.

Mr. ARCTANDER. I simply desire to have this marked for identification, Mr. President. It will be safe to mark it exhibit eleven. I don't remember how many have been introduced.

Mr. Manager DUNN. The President can mark his initials upon it, but it is not an exhibit until it is introduced.

Mr. ARCTANDER. Well, we can identify it.
Mr. Manager DUNN. If the President will put his initials on it, it will be sufficient.
The PRESIDENT *pro tem.* We will mark it exhibit "A."
Mr. ARCTANDER. The paper marked exhibit "A," is shown to witness and identified by him.
The PRESIDENT *pro tem.* Are you through Mr. Arctander?
Mr. ARCTANDER. Yes, sir.

By Mr. Manager DUNN.
Q. You spoke about his saying to you that if you published certain matters—were you publishing a paper at that time?
A. I was; that is, I had an interest in a paper.
Q. Where was the paper published?
A. At Lake Benton, Lincoln county.
Q. What was it? A. The Lake Benton News.
Q. That is the publication that was referred to?
A. There is a copy lying on the table.
Q. Now, Mr. Chapman, under article 18. I call your attention to

article eighteen, the habitual drunkenness charge, and ask you whether, at any other time, you have seen Judge Cox in a state of intoxication, subsequent to March 30th, 1878, during the time he has been judge?

A. On the bench or off the bench?

Q. Either or both?

A. I have.

Q. State when and where?

A. In March; the last of March, or the first of April, 1879, while holding court at Waseca.

The PRESIDENT *pro tem.* I suppose the witness understands that he is to confine himself to the times not mentioned in the other articles.

Mr. Manager DUNN. No, sir; the witness was not here, and doesn't understand the rulings of the court.

Q. You have read these articles of impeachment?

A. Some days ago I did; not lately I haven't.

Q. I don't care about your referring to any time that we have charged the Judge with being intoxicated, but at any other times.

Mr. ARCTANDER. That last answer has been withdrawn, I understand, so that it will not appear on the record.

Mr. Manager DUNN. Yes, sir.

The WITNESS. Now, you can state the question.

Q. At any other time than when he was holding court at Waseca,—I suppose the time you refer to in Waseca was the time when he was holding court?

A. Yes, when he came to hold court for Judge Lord.

Q. Well, don't mention that; the Senate has ruled it out.

A. The September special term in Lincoln county.

Q. In what year?

A. 1880; a year ago.

Q. At what point was that term held.

A. At Lake Benton.

Q. Was the Judge intoxicated there at that time?

A. The last few hours of the term the Judge was intoxicated.

Q. You are speaking of the time in court?

A. In court and out of court he was intoxicated. In the night I was in his room, perhaps at 11 o'clock, Mr. James Kimball and I, and he drank, perhaps, a pint and a half of whisky. He was pretty boozy at the start; that waked him up, and he drank a bottle—what was in it, and Mr. Kimball went out and bought it for him, or went out and returned with it for him, and he drank while he was there.

Q. That was in his room?

A. That was in his room.

Q. Now, on the street or elsewhere, was he intoxicated?

A. Yes; he was intoxicated in the saloon; Mr. Warren's saloon.

Q. On the street, you say?

A. Yes, sir.

Q. Well, go right along, without questioning, if you know he was so intoxicated?

A. Well, in court he was so intoxicated that he could hardly sit in the chair while he was holding court, so much so that he could hardly sit in the chair. He was reeling as he went down from the court house, and at night after he went down to go to bed, he was pretty much under

the influence of liquor, and drank a bottle and sent out by Mr. Kimball for some liquor.

Q. Well, you have testified to that?

A. That is all; he was drunk in the street, some, and noisy.

Q. Well, at any other times than these?

A. Not that I remember.

By Mr. ARCTANDER.

Q. This was the same night—in the court, and in the street, and in his room, and the saloon?

A. Yes, sir.

Q. It is all the same transaction, the same afternoon and evening?

A. Yes, sir.

THOMAS GEORGE,

Sworn and testified:

Mr. Manager DUNN. I call this witness as to article 18. He wants to get away, and we desire to accommodate him.

Q. Mr. George, where do you reside?

A. At Lake Benton, Lincoln county.

Q. Do you know the respondent, E. St. Julien Cox?

A. Yes, sir.

Q. How long have you known him?

A. Oh, about twenty years, or more; I think since 1858.

Q. Have you ever seen the Judge since March. 30th, 1878, in a state of intoxication?

A. Yes, sir.

Q. Now, since that time, when was the first time you saw him intoxicated?

A. I saw him at Lake Benton, at that special term of court.

Q. When was it?

A. In September, 1880.

Q. You saw him in September, 1880?

A. Yes, sir.

Q. Were you about the court? A. Yes, sir.

Q. What were you doing there?

A. I was on the grand jury.

Q. Were you foreman of the grand jury?

A. Yes, sir.

Q. Did the Judge become intoxicated after he got there, or was he intoxicated when he got there?

A. I don't remember of seeing him when he first got there.

Q. When did you first notice that he was intoxicated?

A. Well, sir, after we were empanelled, and while we were out deliberating.

Mr. ARCTANDER. When you were out deliberating?

The WITNESS. Yes, sir.

Q. Now, how did you discover that he was intoxicated, when you were out deliberating; where were you that you saw him?

A. No; but we wanted to make our final report to the court. He

was not there, and the sheriff came over. We went into the hall where we supposed he was, and the sheriff came over and told us we must all go out again, that,—I don't know whether it was the custom or not, but the Judge wanted to be on the bench when the grand jury came in, and so we got out of the place,—it was the Odd Fellows Hall where the court was held,—and then the Judge brought him out, and led him across—

Q. Who brought him out? A. The sheriff; Mr. Ramsey, I mean.

Q. And led him across the street?

A. Yes, and brought him up to the building; and up the stairs.

Q. Did he go up himself alone, or have the help of the sheriff?

A. I was back of the stairs, but I know that he hung on to the railings good and stout; I noticed that.

Q. Then you noticed that he was intoxicated?

A. Yes, he was completely intoxicated, I would say.

Q. Any other time than that?

A. The term of court at Marshfield.

Q. Well, you needn't say anything about that; we havn't called you to that. At any other time than at Marshfield?

A. Yes, sir.

Q. When? A. I saw him in St. Peter.

Q. When? A. The first week of last February.

Q. Well, what was it? I don't want to ask you questions.

A. Well, I got caught in a snow storm, and stayed at the Nicollet House for four or five days. I got there Friday, and left on Tuesday; and I occupied a large room where there were two beds, and a man by the name of Mr. Russell occupied the opposite bed. Some time in the night, I was waked up by a noise and looked around, and Mr. Russell was helping Judge Cox into his bed. He laid there and annoyed me the balance of the night, by groaning and talking, and sort of strangling, —I thought he was almost in a fit once of twice; and finally, about the dawn of day, he got up. I was awake, however, and slipped out. He lay in his clothes there all night.

Q. He didn't undress, but went to bed?

A. Yes, sir.

Q. He just laid on the bed?

A. Well, Mr. Russell had about all he could do to get him there.

Q. Any other time?

A. I saw him again at New Ulm.

Q. What month?

A. The same month, the month of February.

Q. Go on and state what you saw there?

A. Well, I returned from St. Peter, and came back to St. Paul on business, and when I went back again he was at New Ulm, and I was only in his company there for a minute. I saw him at the Merchant's Hotel then, and he was very much intoxicated, but was only in his company a few minutes.

Q. At any other times?

A. Well, I couldn't positively locate it; I have seen him around Lake Benton on what the boys call a little spree, but not very bad.

CROSS-EXAMINED

By Mr. ARCTANDER.

Q. Mr. George, this time you saw him in St. Peter,—first, that time in Lake Benton; that was the same time Mr. Chapman was testifying to this special term in September, 1880?

A. Yes, sir.

Q. The same occasion? A. Yes, sir.

Q. This time when you saw him in St. Peter; now I want to call your attention to it. Did you hear Mr. Lamberton's testimony here?

A. I think I did.

Q. And you can't tell whether or not this time that you saw him there was one of the same times that Mr. Lamberton testified to that he had seen him intoxicated?

A. No, sir; I don't know anything about that.

Q. And in New Ulm, when you saw him there, you can't tell but what this may have been one of the same time that either Mr. Webber, Mr. Morrill or the sheriff there have testified to?

A. I think not.

Mr. Manager DUNN. I don't know that he knows what they testified to; that is assuming a good deal; he give us the time.

Q. At this time in February, at St. Peter,—wasn't Senator Patterson, from New Ulm, there at the same time?

A. He was in the same building, but not in the same room.

Q. Mr. George, is not a fact that when you went to bed that night in the Nicollet House you were pretty well filled up yourself, so that you didn't know whether you were in the Nicollet House, or any where else?

A. Never, in my life.

Q. Never full at all?

A. Never, sir, in my life.

Q. Well, you are very sure that you were not full that night?

A. Not with liquor; didn't drink a drop of liquor that day.

Q. Didn't drink a drop of liquor that day?

A. Never drank a drop of liquor in St. Peter, in my life.

Q. What Russell was this?

A. John B. Russell of Lake Benton; I think those are his initials.

Q. You state that you never get drunk?

A. I do, sir. There are men who know me for twentyfive years, right beside me, and they never knew me drunk.

Q. Do you remember being with Judge Cox at the Odd Fellow's lodge, in Marshall?

A. Never, sir.

Q. Isn't it a fact that on that evening when you claim that Mr. Russell helped Judge Cox into bed, that in the early part of that evening Sam Patterson and Mr. Russell were together with Judge Cox in his office?

A. I don't know whether they were; I wasn't there.

Q. You were not there? A. No, sir.

Q. Isn't it a fact that you went to that office in the evening to make a proposition to Judge Cox, to get him to help Lake Benton in this county seat fight?

A. No, sir; I was not there. If you want to know the circumstances I can tell you in plain English.

Q. Yes. Didn't you ask Judge Cox to draw up a bill to that effect, there that night?

A. Well, if you want to know the circumstances I will tell you.

Q. You may state his condition as to sobriety?

A. For the first two days of the term I considered him in a state of intoxication.

Q. Was he drunk or sober?

A. Drunk, I should say.

Q. You may go on and state all the particulars of that affair?

A. I first saw Judge Cox as he was approaching the Merchants' Exchange hotel, and I noticed that he was intoxicated, and when he came along to the door—

A. Was he on foot?

A. He was, yes; when he came along to the door of the office I spoke to him. He did not notice me until I spoke to him, and when I spoke to him he turned and says "How are you, Yankee Doodle?" and I said no more to him. He passed into the office. He had his grip-sack with him, and I think it was taken by the landlord, and I went to my office. I saw no more of him until I saw him come into court.

Q. How long after you first saw him before he came into court?

A. Well, I shouldn't think it exceeded half an hour: that would be my impression in regard to the time. And when he came in he passed along very well until he came to go up on to the stage. The stage is nearly twice as high as this.

Q. About three feet?

A. Well, yes, I should think it was quite that, and I should think there are four or five steps. The stairs was so situated that there was nothing he could take hold of except the bare wall on the right hand side until he stepped up one or two stairs; then he could reach the door-casing. Well, I thought when he went up, that he would go over backwards; but he rallied and went on up through, and passed around the front of the stage and took his seat, and then he ordered the sheriff to open court. After the court was opened he ordered the clerk to call the names of the grand jury and they were called and sworn; and he called for the statutes, and I thought he was going to charge the grand jury at that time. There was some delay by one of the grand jurymen being absent; he was not punctual and there was a delay for a few minutes. And he called for the statutes and I thought for a moment, that he was going to charge the grand jury, and he opened the statutes and seemed to be looking for the law; he seemed to turn the leaves back and forward and look through the statutes promiscuously as though he was searching for something but didn't know where to look for it; and I thought he was going to break down entirely; that he was going to be unable to proceed in any wise, but he then, in a moment, dismissed the grand jury for a time, notified them that there would be a recess until three or four o'clock; I don't remember whether it was three, or four, or half past three; it was certainly as late as three o'clock, that the recess was taken to, and then he re-appeared in a worse state of intoxication than when he first came in to the court room. He had the same difficulty to get up through the door. The platform goes the whole width of the building, and there is an opening in the middle which occupies one third or more, so that in passing up on to the stage he passed through a partition fronting the hall and came around; and then he proceeded; he seemed to undertake to read from a manuscript. He had a manuscript that I think he usually has, that he charges the grand jury from, in part, and he would turn it over, back and too, and didn't seem to find what he wanted; and I don't think he read anything from

Q. So you don't know whether it is not a fact that the light was dazzling and glaring while he sat there?

A. I don't know, I never heard any complaint.

Q. Don't you know, as a matter of fact, that Judge Cox had to move around the second or third day to another part of the hall so as not to have that light glaring in his eyes?

A. I think about the third day the Judge said that it was terrible hot up there, and that he thought he could get some other place in the hall, and he moved, the same as though it would be into that corner of this hall. He moved down from the stage on a level.

Q. Now was that done for the purpose of avoiding the heat?

A. Well, that is what he said.

Q. Didn't he say he had to move away from there on account of the light?

A. No, he didn't say that, because I remember distinctly about it, and took hold and helped to move the chairs and tables around. I assisted the clerk.

Q. That was the morning of the second day, as a matter of fact, was it not?

A. I should think not although it might have been. In regard to the time I wouldn't be certain.

Q. After that again, he moved the court over to the other end of the room with his back towards those windows did he not?

A. I think he did that after the fourth of July.

Q. Now, was that on account of the heat, too?

A. I don't know, I am sure. I think now on reflection, that there was a good deal of difficulty in his hearing when he was on the stage. He complained of not hearing very well and he thought he could hear better to be down; I think that was taken into consideration too.

Q. When he came back there you said that he took this manuscript of his and cuffed it back and forth.

A. Turned it over; it was fastened I think at one end as he ordinarily fastens papers and when he was going to turn over a leaf, when he was going to find anything as likely as anything he would turn the whole over.

Q. Did you see him turn the whole over when he went to turn a leaf;

A. I think I did.

Q. You observed him very closely?

A. I did, yes.

Q. You were not county attorney?

A. No, I was not.

Q. Was it a paper like that? (Showing witness a manuscript.)

A. Very similar; it might have been longer, my impression is it was, but as far as that is concerned I am not positive.

Q. Wasn't this what you have reference to: that he would take one paper away from the other and lay it down and that the difficulty you speak of was that one or two of the papers, got disarranged so that he had difficulty to find the right page?

A. No, I think that I remember distinctly about that.

Q. Was that paper written or printed?

A. I think it was written.

Q. All of it written?

A. I wouldn't say all of it, I think there was some writing on it, as it came over I could see.

Q. Now, you said he didn't read from that paper at all when he charged the grand jury, this was all before he charged them, was it?

A. I think that that paper,—whether he produced that paper the first time on the stage or not, I am not so positive; but my impression is that he did.

Q. The first time he was there?

A. He might not until the second time, that I am not clear about.

Q. Now, did he read from that paper, or did he not?

A. I think he did not, still he might; that part I don' tremenber distinctly.

Q. Did he read any from the statute?

A. My impression is he did finally.

Q. Now, have you ever heard him deliver charges to the grand jury before?

A. I have.

Q. How many times? A. Just once.

Q. Was there any perceptible difference between his charges those two times?

A. Well, yes there was. I was looking for one thing that I didn't hear. Judge Cox delivers a temperance lecture generally (it is called Judge Cox's temperance lecture) every time he charges the grand jury; and I was looking for that temperance lecture that day, but I didn't hear it.

Q. You didn't hear that temperance lecture that day?

A. No, I did not.

Q. Didn't you hear him charge the grand jury in regard to the violation of the liquor law?

A. Yes, I think so, but he didn't go into it as fully as usual. He can deliver a good temperance lecture when he charges a grand jury, when he is all right.

Q. Is there a paper in that town called the *Marshall Messenger* or the *Marshall News*?

A. Yes;—no, there is the *Marshall Messenger* and the *Lyon County News*.

Q. Isn't it a fact that one of those papers at that time, and subsequent to that term, printed that part of the Judge's charge that you call his temperance lecture, as having been given at that time?

A. Well, I don't remember; sometimes I read the papers and sometimes I don't.

Q. Well, may you not have been mistaken in that matter, that the Judge did give his usual temperance lecture to the grand jury?

A. No, I think he did not; I say that he failed, because I wanted to see how he would get along with it in his condition.

Q. Now you heard him charge the grand jury upon selling liquor without license, didn't you?

A. I don't remember what his charge was other than that. I was looking for that particular thing.

Q. You had never heard it more than once? A. No.

Q. You have never heard him at other times so as to be able to know whether he always charges the same thing upon this point?

A. No.

Q. Do you remember whether he did not charge the grand jury very strenuously about selling to minors?

A. Well, it got to be an old story, after the first day. The curiosity wore off, and we thought no more about it.

Q. You did't notice anything peculiar in his conduct, language or rulings or anything of that kind, to draw your attention to the fact?

A. Well, either the first or the second day, he made some ruling or some suggestion, and Mr. Gale, from Winona, was there and the Judge cried out to Mr. Gale, and wanted to know if he ever heard of such a thing as that. It was either that or it was something that one of the attorneys had proposed, and he says "Mr. Gale, did you ever hear of such a thing as that?"

Q. It was something that one of the attorneys on the other side proposed?

A. Yes, but what it was, I can't remember.

Q. Was it a case that Mr. Gale was interested in?

A. No, not at all.

Q. Well, was it in open court he said it?

A. Oh, yes; it was during the progress of the trial of the case.

Q. He turned to Mr. Gale and said "Mr. Gale did you ever hear of such a thing before?"

A. Yes, and at another time he came to Mr. Gale and talked with him about some of his rulings and wanted to know if he was right; I sat right beside Mr. Gale.

Q. That was an indication to you that the Judge was intoxicated was it?

A. Well, that occurred either the first or second day.

Q. Well, I ask you if you name that as an indication to you that he was intoxicated?

A. He wouldn't have done it, if he had been sober.

Q. Well, that is your judgment, isn't it?

A. Well, knowing the man as well as I do—I know he stands on his own feet when he is all right.

Q. How well do you know him, sir?

A. I know he is a man that has considerable confidence in himself.

Q. Well, sir, have you ever associated with the Judge, for two hours all together?

A. I have never been with the Judge very much, excepting in somo little matters in court.

Q. As a matter of fact, he has not associated with you outside of court?

A. No, I have not been one of his associates, not what you may call one of his associates.

Q. You were only admitted in the fall of 1879, at the December term, were you?

A. I was admitted at the December term, 1878, to practice in this state.

Q. You had never seen the Judge before that time?

A. No, I came to this state just a little while before that.

Q. And since that time you had only been before him at four times, had you; you had only seen him at one general term before that time?

A. That is my impression,—just about four times.

Q. And you have been before him on motions at special terms, two or three times more, have you not?

A. For a short time; I have had some special term business.

A. Oh, the first day I have stated fully in regard to, but I remember distinctly about the first day and I don't rememember so distinctly about what occurred on the second day.

Q. As to the second day, you don't remember anything distinctly about his appearance, nor about the occurrences there?

A. Not so distinctly.

Q. The third day were you in court?

A. I was.

Q. Then he was, in your opinion, all right, was he?

A. Yes, he was in very good shape indeed.

Q. Had his appearance changed any?

A. Very much.

Q. In what?

A. Oh, he was quiet, and his nerves seemed to have quieted down over night, and he was in a great deal better shape.

Q. Right from the start in the morning he was better, was he?

A. Yes; he was.

Q. That was the day the grand jury came in, was it?

A. I think that was the second day.

Q. Now, was there anything different in the appearance of his eyes, his hair, and his face generally, the third day, from what there had been the first and second day?

A. Oh, yes.

Q. Well, what was it?

A. Oh, he looked better generally; he had straightened up some.

Q. That is as near as you can come to it?

A. Before that there was very little expression to his eyes.

Q. They were not glaring before that?

A. No; he was not in that condition of drunkenness that I have seen him sometimes, when they would glare; but, at that time they were dull and inexpressive.

Q. And as to the balance of that term you don't except to his conduct, I understand?

A. Well, I don't think anyone could find any particular fault with the Judge after that.

Q. I understood you to say, Mr. Drew, that you are not positive about the high hat; that is your impression, is it, that he wore a high hat?

A. It is my impression he wore a high hat, and it is my impression he wore a silk hat, but, on second thought, I might be mistaken.

Q. But you are not positive about it. Now, I want to ask you about that hall.

A. The next time I saw him he certainly wore a silk hat, and I should think it was that hat; he came down on the 29th of September following the general term, and he had on a tall hat then, and I might have confounded the two.

A. I want to inquire about the hall; was that on the ground floor of the building?

A. No, it was not.

Q. On the second floor?

A. It was.

Q. How large was that hall?

A. It was not large.

Q. Give us the dimensions.

A. Oh, I should think it was half or two-thirds as large as this.

A. It was.
Q. Anybody else present there?
A. Charley Patterson the clerk.
Q. Was Major Blake there?
A. I don't recollect him; I think Aleck Gamble was there; he was there a little while; he was not there all the while.
Q. How long did that session last?
A. It was short; not a great while.
Q. Well, how long? A. It might be an hour.
Q. And the Judge was drunk?
A. Yes, I considered him drunk.

Mr. Manager DUNN. We will now examine on article eighteen, the general charge of habitual drunkenness.

Q. Mr. Drew, will you state, not to go prior to March 30th, 1878, whether you have seen Judge Cox drunk upon other occasions than these mentioned?
A. I have.
Q. State when, in the first instance?
A. Well, the first time I ever saw him he was considerably drunk.
Q. Where was that? A. In St. Peter.
Q. When? A. November 3d, 1879.
Q. Was he on the street at that time? A. Yes.
Q. Upon the street?
A. Yes, I met him on the street.
Q. You say he was considerably drunk at that time? A. Yes, sir.
Q. Now, the next time?
A. The next time was the last of December, after the close of the December term of court, in Lyon county.
Q. State his condition then?
A. Well, he was very drunk that day.
Q. State what he did and said, if you can.
A. Oh, I met him in the hotel office Monday morning. I don't remember what day the court closed, but I think it was Friday or Saturday, and this was Monday morning, and he was terribly drunk that day.
Q. You may state what was said? Anything said about any other matters?
A. Yes, he was having considerable running conversation about the same time with a man from Wisconsin, a cider man. We all took breakfast at the one table; I was boarding in the hotel at the time. He was very wild and abusive to this man at the table, and he went on and pitched into politics and told what he was going to say in congress in 1882.
Q. You may state whether he was loud and noisy at that time?
A. Yes, he was; he could be heard all over the dining room in what he said; he was very boisterous.
Q. Now, at any other time, Mr. Drew?
A. Yes, I saw him on about the 6th of August, 1880; I think he was very drunk then; I think he was in the worst condition I had ever seen him.
Q. Where was that?
A. At Mr. Mathews' and Mr. Andrews' office.
Q. At what place? A. Marshall.
Q. You say he was very drunk there?

Q. Mr. Stites, you may state, whether or not, you have seen Judge Cox drunk at other times than the one you have mentioned.
A. I have, once.
Q. You may state when and where?
A. It was at a special term in September, 1880, at Lake Benton.
Q. What he calls a special-general term. It was a term held for jury trials?
A. Yes, sir.
Q. But specially appointed?
A. I understand it so.
Q. You say he was drunk at that time? A. Yes, sir.

CROSS-EXAMINED.

By Mr. ARCTANDER.
Q. Do you mean he was drunk during the term?
A. He was drunk in the court room.
Q. All that term?
A. I do not know whether he was all that term or not, as I was not in the court room all the time.
Q. You were in the court room about the last hour, when the jury came in?
A. Yes, sir.
Q. That was the time?
A. That was the time I was in the court room.
Q. That was the time he was drunk? A. Yes, sir.
Q. That is the time Mr. George testified to?
A. I do not know.
Q. Didn't you hear all of Mr. George's testimony?
A. Not all of it.
Q. That is the only term he has held up at Lake Benton, is it not?
A. Yes, sir.
Q. Now, were you present at that dinner party given to the Judge just before the grand jury came in?
A. No, sir.
Q. You weren't there, and know nothing about that?
A. I know nothing of it.
Q. You say these were the only times that you have seen the Judge intoxicated?
A. As far as I know; yes sir.
Q. But you were at Tyler, at the general term of court, were you not?
A. I was.
Q. This last June term at Tyler, Lincoln county?
A. Yes, sir.

By Mr. Manager COLLINS.
Q. How long were you in Tyler?
A. I was there but a very short time. I was in Tyler part of one day, and in the court room only a part of that time.
Q. How many minutes?
A. I couldn't tell possibly; only a few minutes at a time, five minutes at one time, and ten minutes at another, but only a few minutes at at a time.

Q. For how long a time have you been deputy clerk?
A. I think the latter part of May.
Q. What year? A. 1881.
Q. Were you present at a term of court held in June 1881, at Marshfield?
A. Yes, sir.
Q. In what capacity, if any, were you acting at that term?
A. I acted as clerk of court.
Q. You did the business at that time? A. Yes, sir.
Q. You were deputy? A. Yes.
Q. Did you see Judge Cox there at that time? A. Yes.
Q. At Marshfield? A. I saw him.
Q. Were you there when court adjourned to Tyler?
A. Yes, sir.
Q. You may state the condition of Judge Cox as to sobriety at that time?
A. Well, I considered the Judge very much under the influence of liquor.
Q. Drunk, or sober?
A. Drunk, I would call it.
Q. Now, as I understand, the court was adjourned from Marshfield to Tyler, and met at Tyler the next day.
A. Yes.
Q. Were you there then? A. Yes.
Q. You may state the condition of Judge Cox, as to sobriety that first day at Tyler?
A. We were ordered to take the books and papers to Tyler by nine o'clock the next morning. Well, we had some difficulty in getting a team to take the records and things down to Tyler, a distance of four miles, and it was ten or fifteen minutes, or it might have been more, but I think it was a very little after,—not exceeding twenty minutes after nine o'clock, when we arrived at Tyler, with the books and papers. Judge Cox was then sitting on the bench. All hands were present that were at Tyler, and when we went there,—the clerk went with me,—I and the clerk took the books to Tyler. We went in. He was sitting on the bench at the time. They were ready to open court, and had opened, and somebody claimed that it was late, that they had been there waiting on us several minutes. I had no time-piece and didn't notice the time. Judge Cox, at that time, was straight and all right, so far as I could see, and looked clean and nice and perfectly bright in the morning.
Q. Go right on and detail the affair. Give us the details of that day.
A. Well, there were no particular details that day, except that the grand jury was charged in the morning and the business proceeded, and there was several adjournments or recesses taken.
Q. Several recesses?
A. Yes; there was some little business done.
Q. Do you know the purpose of those recesses?
A. I did not, except that they appeared not to be ready for business, or something of that kind. Judge Cox would ask if there was any further business of the attorneys, and if the attorneys weren't ready, or something of that kind, he would take a recess of half an hour or fifteen minutes.
Q. Do you know where he went?
A. I do not.

Examined by Mr. ARCTANDER.

Q. That was the only special term that he held at Lake Benton that you ever knew that he was there on term business?

A. I reside there; yes, sir.

Q. I say it is the only time you know that he was there on court business, at Lake Benton?

A. Yes; on court business.

Q. In September, 1880?

A. Yes, sir; September, 1880.

Q. Now, these recesses you spoke of were taken on account of the attorneys, were they not; on account of their not being ready?

A. Well, in some cases, perhaps in the most of the cases, the Judge would ask if there was any further business or something of that kind, and take a recess. There were two or three recesses taken subject to the call of the grand jury.

Q. To wait for the grand jury.

A. Yes, sir; subject to the call of the grand jury.

Q. That is to say there was no business for the court, but they had to wait for the grand jury to come in and report?

A. Well, it appears so.

Q. During the day, were there any cases taken up and tried? I mean the first day, at Tyler.

A. Yes, sir; there was a case taken up the first day.

Q. What case was that?

A. That was Otto Laabs vs. Ralsey Hodson.

Q. That case was tried, was it?

A. Yes, sir; with a jury.

Q. The first day? A. I think it was the first day.

Q. Was it finished?

A. Well, my impression is that it was. If you will allow me to look at my papers a few minutes, I can tell exactly.

Q. These times, during these recesses, you say that the Judge left the court room?

A. Yes, sir.

Q. You don't know whether he just went outside of the door, or where he went?

A. I don't know anything about where he went. I wish to state here that I am not positive about the case of Laabs vs. Hodson being tried the first day; if I could look at the papers a minute, I could tell exactly.

Q. Well, I am not particular about that case. Now, this rape case was taken up on Monday morning, was it not—this Chapman case?

A. I think it was.

Q. The trial was commenced Monday morning?

A. I think so.

Q. At that time the Judge was perfectly sober, was he not?

A. The Judge was usually sober and in good condition, I considered him, in the morning, when he would come on the bench.

Q. Well, he was that morning, too?

A. I think he was that morning; I think there was no exception; I think every morning he came into court bright, and in good shape.

Q. That Monday mornidg, so far as you can recollect?

A. I think so.

Q. The trial lasted how long during Monday?

Q. Now, then, it was after the Judge had fined him that they gave notice of a motion in arrest of judgment?

A. Yes, sir.

Q. After the judgment was rendered?

A. The first thing that was done, was to call the attention of the Judge to the fact that the prisoner had not plead, and the Judge said—

Q. Was that before the Judge sentenced him, or afterwards?

A. Afterwards.

Q. After he had sentenced him?

A. After he had pronounced that sentence that is on that piece of paper, then they called his attention to that, and then he said "they wouldn't get him that way; that he would try the case over again."

Q. The verdict came in and the Judge called Mr. Chapman up to him and told him: "I fine you ten dollars;" did he?

A. Yes, he passed sentence.

Q. After he had passed sentence upon him, Mr. Matthews jumped up and gave notice of a motion in arrest of judgment, for the reason that he had not plead?

A. Yes, sir.

Q. And then the Judge did what?

A. He turned to me and asked if that was so, and I told him that that was so, that the prisoner hadn't plead. He said that "they wouldn't get him that way, that he would try the prisoner over again."

Q. He told them he would try him over again after dinner, did he?

A. Yes.

Q. And ordered the case to stand adjourned?

A. I don't know that he said he would try him over again after dinner, but said he would try him over again. It was just about dinner time and after some parley court was adjourned until after dinner.

Q. When he came in after dinner, then Mr. Matthews stepped up and did what?

A. Well, the prisoner was called up to plead.

Q. What did he plead?

A. There was considerable talk and parley with the attorneys, in one shape and another, and Judge Cox motioned to Mr. Chapman to come up to the desk, and he went up there.

Q. Was that before or after he had plead?

A. He hadn't plead yet.

Q. There was talk between the attorneys as to what he should plead, was there; whether he should plead or whether he should go on to trial?

A. Well, their talk was private among themselves, the attorney and the prisoner. I didn't hear what they said; they whispered and were off at one side.

Q. The county attorney, the prisoner's attorney and the prisoner?

A. I don't think the county attorney was there; I don't know whether he was in the room or not, but there was considerable talk and confusion over the matter in one shape and another.

Q. Now, then, it was while they were talking that the Judge called Mr. Chapman up and said this publicly, did he,—asked him how he was fixed?

A. That was not said publicly; he motioned him to come up close to the desk, and Mr. Chapman went up close to him.

Q. Well, you heard it?

Q. Before the Judge sentenced him after the jury came in he asked him if he had anything to say why sentence should not be pronounced against him, did he not?

A. I don't recollect whether he did or not, there was considerable confusion and excitement.

Q. At this time during the whole forenoon Mr. Matthews and Mr. Andrews were present?

A. Yes.

Q. As well as in the afternoon?

A. They were present whenever there was any business that they had before the court, the same as any other lawyers; out and in and around.

Q. Well, as a matter of fact, that matter was called up early in the morning?

A. Yes.

Q. And it proceeded all the way until the jury went out?

A. Yes.

Q. And in the afternoon they were there at the time the case was up, were they not?

A. Yes.

Q. And Mr. McPhail, the county attorney was there, too.

A. Yes, sir.

Q. Was Charles Butts there during Monday?

A. Well, he was in town and around court during the whole term, every day, I believe.

Q. Mr. Cass, too?

A. I don't think Mr. Cass was there all the time, but Mr. Cass was there more or less and had a case there, a motion or two or something before the court.

Q. Now, the condition of the Judge in the afternoon of every day and towards evening while in court was clearly apparent and noticeable to everybody in the court room was it not? He showed it very much?

A. Yes, sir; he showed the effects of liquor.

Q. As a matter of fact you would say that he was intoxicated during this afternoon?

A. Yes, sir; I think there was not a single day but what he was more or less intoxicated; noon, afternoon, and in some cases, before noon; because if they would have a recess a day, at all hardly why he always got worse and worse,—every time.

Q. And his condition was so clear that there could be no mistake about it?

A. No, there couldn't be any mistake about his being intoxicated.

Q. You stated that that fine was never paid to your knowledge; it may have been paid and you not know anything of it?

A. Yes, sir.

Q. You had nothing to do with it after you got through?

A. I never had anything to do with it except what I commenced to explain here awhile ago.

Q. You were only there during the term of court, and you had nothing to do with any of the proceedings afterwards in the clerk's office?

A. The books and papers did not come into my hands for weeks and months after that. They were in Charley Marsh's hands, at Marshfield. Those books and papers were not turned over to me until about ninety days ago.

Q. The man was arrested afterwards, was he not for not paying the fine?

A. Yes.

Q. And a writ of *habeas corpus* taken out becauoe the commitment wasn't good for anything?

A. I think in every case the commitment held.

Q. You think the commitment held? A. Yes, sir.

Q. Who was it that tried the writ of *habeas corpus*; it was the court commissioner up there, wasn't it?

A. That I don't know; that was done at Marshall. They took him and started to jail with him. All I know about that is what I heard. It was not in our county.

Mr. Manager COLLINS. We would ask, Mr. President, that this witness be instructed to furnish a copy of that part of the record which has been introduced here.

Mr. ARCTANDER. We would ask, Mr. President, that this origineal be kept here until this trial is terminated, and then to be returned by the Secretary. We desire to use the original, I suppose we have the right to have it. It is under the control of this court, I suppose, and will be returned as soon as this court is through, by the Secretary.

Mr. Manager COLLINS. We don't like to do that on account of the clerk; we think a copy would serve all parties; we don't see why the original should be kept here.

Mr. ARCTANDER. The court will understand that we could have proven this was a copy, if we had desired to do so. I will say that the respondent in this case desires to use the original to show interlineations and erasures; to show the way that record was fixed up, all the way through. I think we shall be able to show hereafter how that paper came to be pasted on there, too.

The PRESIDENT, *pro tem.* It is the opinion of the chair that the original should be retained in the possession of the Secretary. There being no objection, this will be the order.

THOMAS DOWNS,

Sworn on behalf of the State, testified.

Mr. Manager COLLINS. We examine this witness upon article seven.

Examined by Mr. Manager COLLINS.

Q. Where do you reside?

A. St. Peter.

Q. How long have you lived there?

A. About twenty-five years.

Q. Are you acquainted with the respondent, Judge Cox?

A. I am.

Q. For how many years have you known him?

A. Twenty-five.

Q. What office do you hold in that county, if any?

A. Well, I am deputy sheriff. I was formerly sheriff of that county.

Q. What time did your term of office expire?

A. The first of this month.

Q. Then you were sheriff in that county in December, 1879?

A. I was.

Q. I wish to call your attention to a case, or to a proceeding there—the case of Dingler vs. The County Commissioners, on the 10th day of December, 1879. Do you remember it?

The WITNESS. The receipt was for $65.00, and signed by the treasurer.

Q. From whom?

A. From the county treasurer, as having received sixty-five dollars.

Q. For license money?

A. I couldn't say.

Q. Have you ever seen that receipt?

A. I have never seen it. I couldn't state that it was for license money.

Q. But it was a receipt from the county treasurer to this man that was convicted, for having received from him $65.00, into the county treasury?

A. It didn't say into the county treasury.

Q. Well, having received it from him?

A. Yes, sir.

Q. It was a receipt that was dated prior to this trial?

A. Yes, sir; yes, sir.

Mr. Manager COLLINS.

Q. It was not a receipt for this fine?

A. No, sir; no, sir; it had no connection with that whatever,

S. R. MILLER

Sworn on behalf of the state, testified:

Mr. Manager COLLINS. This is under article twelve.

Examined by Mr. Manager COLLINS.

Q. Mr. Miller, where do you reside?

A. Beaver Falls, Renville county, Minnesota.

Q. How long have you lived there?

A. Since the month of October 1874.

Q. What is your profession?

A. I am an attorney at law,

Q. Are you acquainted with Judge Cox? If so, for how many years have you know him?

A. I have know Judge Cox since the fall of 1874.

Q. Were you at a term of court held at Beaver Falls, in the county of Renville in the month of May, 1881.

A. I was.

Q. Who presided at that term of court?

A. The respondent, Judge Cox.

Q. You may state his condition as to sobriety during that term.

A. Well, from the opening of the term of court on the 24th until Friday morning, or at least until after the close of the session on Thursday the court seemed to be conducted in a regular manner and not subject to adverse criticism. On Friday morning, however at the opening of court I was impressed with the fact then, and am now that the Ju lge was laboring under the influence of intoxicating liquors.

Q. Was he drunk or sober?

Mr. ARCTANDER. We object to that question, Mr. President. It seems to me it is giving the witness very narrow limits. I notice that one witness stated "if I am limited to these two terms, I should say drunk." Now, it seems to me that is not fair to us. It is leading, for one thing, and

for another reason, it does not give the witness a fair show. It seems to me that the witness should testify to the fact and not to inferences, put in his mouth by the managers. It is cartainly a question that is as leading as it can be. It can only be answered in that way,—either drunk or sober.

Mr Manager COLLINS. The fact is, Mr. President, that witnesses have different ways of expressing this happy condition in which they seemed to have found this respondent at different times. For instance, one witness says he is full; another witness says that he had all he could carry; and another witness says that he is laboring under the influence of intoxicating liquors. Well now, I suppose that if a man is dead drunk, he is laboring under the influence of intoxicating liquors, and yet I apprehend that a witness might use that language.

The PRESIDENT. I think it would be better for the witness to state his convictions.

Q. Well, you may state, Mr. Miller.

A. Judge Cox appeared to me on that morning in the condition of one who had been drinking heavily at no great period of time before, and was suffering from the effects of it. My impression was that he had been on a spree or had been drinking the night before. He seemed to be nervous and very irritable. That was the impression which I drew immediately upon his opening court.

Q. Now, you may tell what followed during the day?

A. Well, the case of Andrew Anderson was tried that forenoon.

Q. That was the case that has been talked about just now?

A. Yes, sir; the one referred to by the clerk of court.

Q. You were then county attorney, I believe?

A. I was.

Q. And are county attorney now?

A. I am.

Q. That was tried?

A. That was tried that forenoon, and I believe that after that case was disposed of—that is, after the verdict was rendered—there were one or two parties under indictment brought into court and arraigned; although I am not sure as to that, whether they were arraigned at that time, or brought in to plead.

Q. Well, you may state Judge Cox's condition that afternoon or evening?

A. Well, it appeared to me as though Judge Cox had been indulging in drinking during the course of the day. After the disposition of this case, however, I will say, that this being the last case on the calendar as presented at the opening of the court—that there was then some talk about going to the trial of the new indictments found at this term of court; and that occupied some considerable part of the day.

Q. What was his condition that night as to sobriety?

A. I considered him intoxicated during the whole day.

Q. How was it the next day?

A. He was in the same condition—only I thought a little more intoxicated.

Q. What day of the week was that?

A. That was on Saturday.

Q. Was that the day that this fine was remitted?

A. No, sir.

Q. Now, upon the following day?

you are discharged on your own recognizance." The defendant after being addressed by the court in this way, hesitated a moment, stood in the aisle or passage way, and the court added words to this effect: "You can leave the court room," or "you can go now." I don't say that those are the precise words, but they were words to that effect.

Q. Was any formal recognizance entered into?
A. No, sir; not that I am aware of.
Q. That was all there was to it?
A. That was all.

Examined by Mr. ARCTANDER.

Q. Mr. Miller, you do not claim that the Judge had not or any Judge had not a right at the same term of court, for any good reason, to vacate or set aside a judgment and remit a fine?

Mr. Manager COLLINS. I object to that.

Mr. ARCTANDER. I thought so.

Mr. Manager COLLINS. If there is any law that authorizes the Judge to enter into the pardoning business I would like to have it produced. It may be true with reference to the district in which the counsel practices.

Mr. ARCTANDER. I don't ask this as a question of law, but this witness says that he objected that there was no such pardoning power in the Judge; we don't claim it is a pardoning power. I suppose that the chair and the Senate are well aware of the statute which provides that the court can at the same term of court, or at any time thereafter within a certain time, modify, vacate or set aside any judgment. And it is the first time I have ever met with the proposition that the court cannot remit the fine; I have seen it done myself in every court I have been in, and I suppose that the counsel has.

Mr. Manager COLLINS. I don't know, Mr. President, but the court has the power to vacate, set aside, and modify its judgment in criminal cases. I don't know but the court has the right after a man has been convicted and fined, to tell him to walk out of the court-room; and I don't know but it is a practice in the gentleman's court, if a man is convicted of murder, for the Judge to allow him to go unhung or unpunished; but I must say that I never heard of it before. If there is any law that authorizes any such thing, it is for them to produce it in defence or use it in argument; and this question would be really calling for the opinion of the witness, an opinion which he really has given, because he objected at the time to the Judge entering that order.

The PRESIDENT. The chair would sustain the objection.

Mr. ARCTANDER (to Witness).

Q. Have not instances of that kind happened in your experience in that court before?

Mr. Manager COLLINS. I object to that.

Mr. ARCTANDER. We want to show that it is no evidence of the Judge being intoxicated, that he did it. And I hold that we have a right to do so. We are not charged here with unlawfully setting aside a judgment; we are not charged with any corrupt conduct in that thing. We are charged with being drunk. They offer this for the purpose, as they claim, of showing that he was drunk. Now, it is apparent that it is offered for the purpose of getting something upon which they can hang this respondent for not acting as he ought to have done, as judge.

taken his receipt; had filed a bond, I think, in proper shape and in due form of law, but had not yet taken out his license.

Q. Hadn't got his license allowed by the board?

A. No, sir; and it was a misapprehension of the fact on my part, or rather on the part of the grand jury, that caused his indictment; and in the other case it was at the instance of the sale of liquor by a druggist to a person claiming to want to use it for medicinal purposes. He had also made an application to a member of the board of county commissioners asking for a license to retail liquor, and the commissioner told him it was not necessary. There was but one sale, and there was no pretense made on the part of any one that he ever sold other than this time.

Q. That first case you *nolle prossed* on your own motion, and asked leave of the court—stated the facts to the court—to *nolle pros* it, did you not,—in that case where the man had paid in his money?

A. No, sir; there was some conversation between myself, Mr. Lind and Judge Cox, in regard to the matter, and I consented to move to dismiss the action.

Q. At Mr. Lind's request?

A. No, sir; not at Mr. Lind's request, particularly; I believe that Judge Cox was the first one that spoke to me about it.

Q. And he then spoke of the injustice of the matter, did he?

A. He called me up to his desk, and the matter was talked over there informally between us, and I consented to *nolle pros* the case.

By Mr. Manager DUNN.

(To witness.) Neither one of those cases had been called to trial?

A. No, sir.

Q. Is it not a fact that these indictments that you speak of that the Judge was talking about, Peter Berndigen being one of them—those had been found that same term, had they not?

A. Yes, sir.

Q. You had your witnesses there before the grand jury?

A. I did; that is, I had a witness there.

Q. And when you got through with the grand jury, you discharged the witnesses and sent them home?

A. I did not.

Q. Didn't you send them home? A. No, sir.

Q. Didn't you allow them to go home?

A. I didn't interfere with it.

Q. You didn't see to it that they were there?

A. Well, perhaps I could give you an answer—

Q. Well, I just simply ask you whether you requested them to stay?

A. No, sir; I did not. But I wish to state in this connection, that on Thursday, I met Judge Cox on the street, and he asked me whether the grand jury were through their business, or if there was any likelyhood of their getting through in a short time. I told him that there was not much appearance of it. They seemed to be whittling away at business all the time, that they had considerable business before them.

Q. Well, I don't care anything about that.

A. Well, I do. I want to make an explanation.

Q. Well, I have not asked you anything about the grand jury and all that.

WITNESS (continuing.) And Judge Cox stated to me that unless that grand jury came in by Thursday evening, or by Friday morning, that

county, that was since 1874,—where the court had proceeded with the trial of indictments that had been found at the same term of court.

Q. Isn't it a fact, that whenever the defendant has been ready, and demanded a trial, that it has always been proceeded with at the same term of court?

A. I can't state that it was.

Q. Don't you know, as a matter of fact, that whenever it has been done, the court has never refused the party the right to trial?

A. I know, as a matter of fact, that they have never tried an indictment at the same term of court it was found.

Q. When they have not been tried, it has been because the defendant has not demanded an immediate trial, but has demanded time, has it not?

A. I am unable to state what was the reason. I know they were not tried.

Q. Well, I ask you to state, if any case has ever happened in your experience in Renville county, in which the defendant has demanded an immediate trial, in which the court has refused it to him.

A. No, sir; not that I recollect of. They did not demand it in this case until they ascertained the fact that I was not willing to go ahead.

Q. Now, at this time, when he demanded the trial, the Judge told you that he could not refuse them to go to trial there; that they had the constitutional right to be tried at that term, did he not; and ordered you to send for your witnesses right off?

A. I believe he stated that they were entitled to a speedy trial under the constitution.

Q. He told you to send for your witnesses immediately, and have them in readiness as soon as possible, did he not?

A. Well, no. In the case of the State of Minnesota against Peter Berndigen the court asked me if I authorized the witness to go away. I think it was in that case, I am not positive; I am almost positive that it was in that case. I told the court that I did not, but explained to him as I have done here to-day on the witness stand, that I told him in all probability the court would adjourn, but that he would have to take his own chances on going away. The court then requested me to draw up an affidavit to that effect and he would sign a bench warrant and have him arrested. I refused to draw the affidavit and the court I believe, ordered a bench warrant to issue and afterwards rescinded the order and then proceeded to discharge the defendant on his own recognizance.

Q. Did he not send an officer after that witness.

A. No, sir.

Q. Was he not brought back there? A. No, sir.

Q. On what case was it that an officer was sent over and a party brought back?

A. I think that was in the case of the State of Minnesota against O'Connell.

Q. That is another case in which your witness had been allowed to go home.

A. Yes, sir.

Q. Didn't that come up before the Berndigen case?

A. No, sir, it did not.

Q. Now, this time when he told Mr. Berndigen that he could give his own recogeizance was after it had been agreed between you to let the matter go over, was it not?

taken his receipt; had filed a bond, I think, in proper shape and in due form of law, but had not yet taken out his license.

Q. Hadn't got his license allowed by the board?

A. No, sir; and it was a misapprehension of the fact on my part, or rather on the part of the grand jury, that caused his indictment; and in the other case it was at the instance of the sale of liquor by a druggist to a person claiming to want to use it for medicinal purposes. He had also made an application to a member of the board of county commissioners asking for a license to retail liquor, and the commissioner told him it was not necessary. There was but one sale, and there was no pretense made on the part of any one that he ever sold other than this time.

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Q. Well, I have not asked you anything about the grand jury and all that.

WITNESS (continuing.) And Judge Cox stated to me that unless that grand jury came in by Thursday evening, or by Friday morning, that

A. Well, I wish you would direct my answer to what you want.

Q. The counsel asked you if it had ever happened before; referring to the exercise of this power of remitting fines. I think you said it had?

A. Well, I explained that—not after trial.

Q. You never knew of such a case after trial?

A. No, sir.

Q. But you have known of it before trial?

A. I know simply that there were two of those actions that were *nolle prossed* by myself.

Q. But you never heard of its being done in any other case, except a whisky case?

A, No, sir.

Mr. Manager COLLINS. We will now ask the witness some questions on article eighteen.

Q. Have you seen Judge Cox drunk, except at the times stated.

A. I have.

Q. State when and where?

A. I am not able to state the date of the first instance. It was during the June term of court in the county of Redwood.

Mr. Manager Collins. That has already been testified to under one of the articles, and we withdraw, and ask that that testimony be stricken out.

Q. At any other time?

A. Yes sir, also at the January term at Redwood Falls, in the year 1881.

Q. At any other times?

A. No, sir, not that I now recollect of.

Q. Do you remember the term of court at Beaver Falls, last June?

A. Yes.

Q. Did you see the Judge after the term closed there?

A. I may have seen him on the afternoon of Monday after the court had adjourned.

Q. Do you remember positively whether you did or not?

A. I am positive that I saw him within an hour afterward down at the hotel. My recollection is now that I left the village that afternoon and went out into the country, and also on the next day.

Examined by Mr. ARCTANDER.

Q. This January term, 1881, when you saw the Judge drunk, what occasion was that?

A. It was an occasion that has been testified to here by other witnesses.

Q. By Mr. Webber, and Mr. Wallin,—that evening of the Hawk trial?

A. Yes, sir.

Q. Where was it you saw him there?

A. Well I saw him at several places during that evening, I was present at the Exchange Hotel, at the time that they were in the room, as testified to by Mr. Webber, myself, and the clerk of court of Renville county went in there; saw that some of them were engaged in playing cards and heard some liquor ordered, or some movement made to circulate the bottle, and, at the suggestion of Mr. McGowan we left the room.

Senator CROOKS. Won't the witness please speak a little louder.

The WITNESS. I stated that on the evening testified to by Mr. Webber, at the Exchange Hotel in Redwood Falls, myself and Mr. McGowan went in and found the respondent and two or three others in the room;

A. I was.

The PRESIDENT *pro tem.* If there is no objection the chair will now declare court adjourned.

Senator HINDS. Mr. President, it would seem to me that we had better prolong the session half an hour, because there may be delay in getting a quorum here at 9 o'clock in the morning.

Mr. Manager DUNN. There is no quorum here now.

Senator MACDONALD. The Senate is so very light I think it would not be well to continue in session, and I move that we adjourn.

Mr. Manager DUNN. I would state, Mr. President, there is no question but what we can get through to-morrow in good season. We have, I think, but three more witnesses to examine; that is, three more that are here. We have one witness, but it is doubtful if he will be here. He has been subpœnaed but he is not here; and we may have to take some other measure to secure his attendance. I think there will be no trouble in closing up this case on the part of the State, to-morrow, in very good season.

The PRESIDENT *pro tem.* The court stands adjourned until to-morrow morning at 9 o'clock.

TWENTY-THIRD DAY.

ST. PAUL, MINN., Jan. 27th, 1882.

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

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

Messrs. Aaker, Buck C. F., Buck D., Case, Clement, Hinds, Howard, Johnson A. M., Macdonald, McCrea, McLaughlin, Mealey, Miller, Perkins, Powers, Rice, Shalleen, Tiffany, White, Wilkins and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, judge of the ninth judicial district, upon articles of impeachment exhibited against him by the House of Representatives.

The Sergeant-at-Arms having made proclamation,

The managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. James Smith, Jr., Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives, entered the Senate chamber and took the seats assigned them.

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

The PRESIDENT. Is there any business for the consideration of the court before proceeding with the examination of witnesses?

Senator D. BUCK. It might be well for us at this time to fix the time for adjournment. I understand from the attorneys that they will probably get through, on the part of the State, to-day, and if it is satisfactory to all, I now move that when we adjourn we adjourn to meet on Tuesday, the 7th day of February, 1882,)a week from next Tuesday,) at 12 o'clock. M.

er it was actual or voluntary. I know McGowen took excellent care of him, and took him up to his own house at Beaver.

Q. You testified before the judicial committee that Mr. McGowen met him there, at the station, and took care of him?

A. At the station?

Q. Yes.

A. Oh, I don't know whether I used the word station or not.

Q. At the depot ground?

A. I don't know whether I used that language.

Q. Well, do you remember whether that is so or not?

A. I just said I can't remember distinctly whether he met him at the depot or not; I have a kind of impression that he did, but I am not sure of it; I don't pretend to remember details.

Q. Did you state that you stopped with the Judge, at Beaver Falls, the same place with him?

A. We took dinner; I took dinner with Mr. McGowan, where he did.

Q. The Judge stopped with McGowan, and you stopped at the hotel?

A. Yes.

Q. But you were over there and took dinner?

A. Yes. It was very much crowded there, and McGowan invited me to stop with him so far as taking dinner is concerned, and I think I did twice.

Q. So far as you were there, the Judge was perfectly sober?

A. Well, I wasn't there, only two days; while I was there he was sober.

Senator C. F. BUCK here took the chair, to act as President *pro tem.*

CARL HOLTZ,

Called, sworn, and testified.

Mr. Manager DUNN. We will examine this witness as to article twelve.

Q. Where do you live, Mr. Holtz?

A. Beaver Falls, Renville County.

Q. How long have you lived there?

A. I have lived there six years next spring.

Q. Were you at Beaver Falls when the court was held there?

A. Yes.

Q. Who was the judge there at that time? A. Judge Cox.

Q. What is your business there? A. I keep a small hotel.

Q. Did you have a saloon in connection with it?

A. Yes, sir.

Q. Where you sell liquors? A. Yes.

Q. Was Judge Cox there any of the time during that term of court?

A. Yes, most every day.

Q. He was there most every day? A. Yes.

Q. He didn't board with you regularly, did he?

A. Not the first two or three days.

Q. Did he have a room there at your house at any of the time?

A. Well, yes; he had a bed some nights.

Q. He had a bed some nights, and he took some meals there?

A. Yes, sir; he took a meal once in a while.

Q. And he had a bed there some nights?

A. Yes, sir; after the first three days.

Q. You may state if Judge Cox drank any intoxicating liquors at your house, then, at that term of court?

A. Yes, sir; he did some.

Q. He drank some? A. He drank some every day.

Q. Did he become intoxicated, Mr. Holtz?

A. Not the first two or three days. Gradually he got to drinking more.

Q. He gradually got to drinking more; did he finally get to drinking so that he became intoxicated?

A. Yes, the third day, in the evening, that we had court.

Q. The third day in the evening that you had court, he got intoxicated. Would he drink in the morning?

A. Yes.

Q. And would he drink at noon? A. Yes.

Q. And at night? A. Yes.

Q. Can you tell how much he drank there, that is, in value, if you know anything about that?

A. No, I can't tell you that, because he always drank—had somebody to drink with him; he never drank alone; most generally called somebody up.

Q. How many would he call up?

A. Sometimes two, three, four, six.

Q. Drank with other persons? A. Yes.

Q. Who did he drink with?

Mr. ARCTANDER. We object to that as immaterial.

Q. Whether he drank with the lawyers and the prisoners?

The PRESIDENT *pro tem.* Wait a minute, objection is made.

Mr. ARCTANDER. We object to that as irrelevant and immaterial.

A. It was with the lawyers—

The PRESIDENT *pro tem.* What is the object of the question?

Mr. Manager DUNN. The object is to show that the Judge was drinking there promiscuously with lawyers, suitors, litigants. I will say to the court, that this witness has been sick, and has just arrived this morning, and I must be pardoned for not knowing what he will say; I have not conversed a word with him.

The PRESIDENT *pro tem.* The object is to show that he was intoxicated there, at that time?

Mr. Manager DUNN. Yes.

The PRESIDENT *pro tem.* Well, perhaps it would not be material to show who he drank with.

Mr. Manager DUNN. Perhaps not; the objection may be well taken.

The WITNESS. He drank with—

Q. Never mind, you needn't state whom he drank with. Do you know whether he drank in any other saloons besides yours?

A. Only by hearsay, by what others tell me.

Q. Is there one Peter Bernegen keeping a saloon there?

A. Yes.

Q. Did you see him drink in that place?

A. No, I always had to stay at home all the time.

Q. Were you in court any of the time?

A. No, I had to stay at home; there was a big crowd there, and I had to stay at home; I never was out.

Q. How was he on the Sunday that he was there, was he intoxicated that day?

Mr. ARCTANDER. That is objected to as immaterial and irrelevant under this article.

Mr. Manager DUNN. We had a ruling upon that by our President. Sunday is a part of the term of court, and the Judge must keep sober on that day as well as on Monday; that was admitted yesterday under the rulings of the Senate; that was ruled upon yesterday directly.

The PRESIDENT *pro tem.* I do not feel like overruling the decision of the Senate.

Q. State how he was on Sunday, Mr. Holtz?

A. He drank some on Sunday.

Q. Was he intoxicated on Sunday?

A. I think there was not a day after the third day of court without the Judge was intoxicated some.

Q. There was not a day after the third day of court, but what the Judge was intoxicated some?

A. Yes.

Mr. Manager DUNN. Take the witness, Mr. Arctander.

Mr. ARCTANDER. We have no questions to put to this witness.

HENRY KINCAID

was called as a witness on behalf of the state, sworn and permitted to testify under article 19.

After the examination and cross-examination of this witness, the Senate, by subsequent proceedings in secret session, directed the testimony of the witness, the argument on objections to the same, and the proceedings of the court relative thereto, to be expunged from the record.

ROBERT W. COLEMAN,

Sworn on behalf of the state, testified:

Mr. Manager COLLINS: We will examine this witness on article twelve, first.

Q. Where do you reside?

A. Moorehead, Clay county, Minnesota.

Q. How long have you lived there?

A. About two months.

Q. Prior to that time where did you reside?

A. Beaver Falls, Renville county, Minnesota.

Q. For how long?

A. A little over two years, two and a half years.

Q. What is your occupation or profession?

A. Legal profession, lawyer.

Q. Practising law?

A. Yes.

Q. Are you acquainted with the respondent, Judge Cox, and if so, for how long have you know him?

A. I have known Judge Cox since May, 1879.

Q. I call your attention now Mr. Coleman, to a term of court held in Renville county, in May, 1881.

A. I will state here that I first saw Judge Cox, in April I think it was, at Waseca. I was just casually introduced to him there, that is all, and I afterwards made his acquaintance in June, 1879, at Redwood Falls.

Q. In May, 1881, did you attend a term of court held in Renville county?

A. Yes.
Q. What Judge presided at that term of court?
A. Judge E. St. Julien Cox.
Q. You may state his condition during that term of court, as to sobriety?
A. Judge Cox, Tuesday, when he opened court, was sober. Wednesday he was sober, and the first intimation that I had that he was otherwise was Thursday morning; Thursday afternoon it was very perceptible; Thursday evening, it was more so. In fact, he was very much intoxicated Thursday evening. Friday and Saturday the same, and Sunday.
Q. He was intoxicated while upon the bench?
A. Yes, sir.
Q. Mr. Coleman, was the Judge drunk or sober—
Mr. ARCTANDER. That has been ruled upon, Mr. Collins.
Mr. Manager COLLINS. I know it has, and the question has been allowed right straight along.
Mr. ARCTANDER. It was disallowed last night; it was ruled upon.
The PRESIDENT. What is the question?
Mr. Manager COLLINS. State whether he was drunk or sober.
Mr. ARCTANDER. It is objected to as leading, and it was ruled last night that it was not a proper question. The witness should state the facts.
The PRESIDENT. Perhaps you had better ask him his condition.
Mr. Manager COLLINS. I have asked him his condition, and he has said he was intoxicated.
Mr. BRISBIN. Then it is cross-examination, isn't it?
Mr. Manager COLLINS. I think not. I think it is proper for the reasons I stated yesterday.
The PRESIDENT. That question was asked and allowed here.
Mr. ARCTANDER. It was not objected to until yesterday, and then it was objected to, and the court sustained the objection.
Mr. Manager COLLINS. I understand that the chair ruled the other way.
Mr. ARCLANDER. Well, you were here.
Mr. Manager COLLINS. I was here, and Senator Macdonald was in the chair at the time.
Senator MACDONALD. I will state, Mr. President, that I sustained the objection.
Mr. Manager COLLINS. I did not so understand it. I understood the witness to say yesterday, that he was drunk, and that is what I wanted to get out.
Q. Well, Mr. Coleman, you may state his condition?
A. Well, Thursday night he was in the primary stages of drunkenness; Friday,—he was not so you would call him exactly drunk, in the general acceptation of the term; but he was very close to it.
Mr. BRISBIN. Please repeat that; those are technical words, and we want to get them down.
A. Drunk, not exactly in the general acceptation of the term, but very close to it; Friday he remained in the same condition; that is, close to being drunk; Saturday the same, and Sunday he was drunk.
Mr. Manager COLLINS. You may take the witness.

CROSS EXAMINATION.

By Mr. ARCTANDER.

Q. When was it that you left Beaver Falls?

A. Sunday night.

Q. Is it not a faet, that it was Friday forenoon that you left?

A. No, it is not a fact.

Q. You swear that you were in court Friday and Saturday.

A. Yes.

Q. Had you any business there in court Friday and Saturday?

A. I forget whether I had or not; I think I had some business there in regard to appeals; it is my impression, but I wouldn't say certainly; but I was in court every day of that term up to Sunday, up up to Saturday night, more or less.

Q. You swear that you were in court more or less every day to Sunday?

A. Tuesday, Wednesday, Thursday, Friday and Saturday.

Q. You spent the major portion of your time in court during the session of court?

A. I was not there Monday at all; you understand I was in St. Paul Monday.

Q. No; I mean during the first week?

A. Yes, sir.

Q. Did you go to St. Paul you say?

A. Yes, sir; I certainly did.

Q. Didn't you go to Huron, Dakota Territory?

A. At that time?

Q. Yes.

A. No, sir; not until afterwards. In fact, I never was at Huron but I understand the motive of the question very well; I was at Lake Benton, and not at Huron.

Q. Was it there you met Mr. Mathews, of Marshall?

A. No, sir; I met him at Marshfield.

Q. Isn't it a fact, that you met Mr. Mathews at Tracy, the Saturday of this May term of court?

A. No, sir; it is not a fact at all. Never knew him in the world until I met him at Marshfield; he introduced himself, by the way. He was defending a case in which I was counsel for the plaintiff.

Q. So you did not see him that Saturday, at Tracy?

A. Certainly not; I was not at Tracy that Saturday.

Q. Do you remember what night that concert was?

A. My impression is that it was Wednesday night; I am not sure on that point.

Q. Wasn't it Thursday night?

A. I think not; I haven't charged my mind with any of these specific dates as to concerts, or anything else, in regard to the matter.

Q. You went to that concert, didn't you?

A. I did not; no sir

Q. Isn't it a fact,—you say you didn't go to that concert?

A. I did not; no, sir.

Q. Isn't it a fact, that you were pretty well under the weather, Mr. Coleman, that night,—the night of the concert?

A. Under the weather, in what respect?

Q. Drunk; weren't you blind drunk?
A. Oh, no; I beg your pardon, never got that way in my life.
Q. You weren't at that time?
A. No, I wasn't at the concert, neither is it a fact that I was drunk.
Q. Isn't it a fact that the next morning after the concert, you went off, and didn't show yourself any more?
A. Went off?
Q. Yes, went off, and didn't show yourself any more.
A. Oh, I beg your pardon; I was in court every day up to Saturday, including Saturday.
Q. Now, when you say that Thursday night, the Judge was in the primary stages of intoxication, that was after the court had adjourned?
A. I say Thursday he was very much intoxicated, and Thursday night—it is my impression that it was Thursday night, you understand—he was in the primary stages of intoxication, drunk, the primary condition of drunkenness,
Q. That was after court had adjourned?
A. Yes.
Q. You say that he was close to being drunk; he was not drunk in court?
A. No, I don't think he was drunk in court; that is, under the general acceptation of the term "drunk." That is my judgment.
Q. In what did he show any difference, Mr. Coleman, during Friday and Saturday, say Thursday, Friday or Saturday, or any of those days, if you please, with the two first days, when you say he was perfectly sober?
A. Well, sir; I will tell you.
Q. I mean in court.
A. Well, I will give it to you. When Judge Cox came over Tuesday, knowing the Judge when he was sober, and knowing the Judge when he was intoxicated, or rather working under the influence of liquor, I knew that Judge Cox was sober. His face,—that is to say, his complexion was about as clear as it is now.
Q. That was the two first days?
A. His hair was combed, and his general appearance was quite slick, with the one exception, his eye looked very weary.
Q. When he came to the term of court?
A. Yes, when he came to the term of court, and he remained more or less in my company Tuesday and Wednesday, and during that time, while he was in my company, I never saw him take a drink, and I have his word for it that he didn't drink.
Q. I didn't ask you what he drank or didn't drink, but I ask you the difference in his appearance on—
A. Now, on Thursday he commenced to put his pantaloons in his boots, commenced to keep his coat and vest loose, his hat on one side, and he had a general appearance of carelessness in regard to his dress that don't occur when he is sober, and his face was red—
Q. Just tell us the fact; you don't need to comment on them.
A. I am not commenting on them; I'm just giving you the facts. If I go outside of it, call my attention to it, please. His eyes were red—
Q. His face was flushed, and his eyes were red,—bloodshot, you mean.

A. Quite bloodshot; not so much so as I have seen them, you understand, but quite bloodshot; and there are other things in regard to it.

Q. Well, this is the difference in his appearance now, of the man all the way through, from his boots up?

A. Yes, sir; now just—

Q. Now—

A. Now, just wait a minute—

Q. As to his conduct?

A. I was about to follow that up, as to his conduct; when Judge Cox is sober—

Q. Well, I don't want any dissertation about it.

A. I am not giving you any dissertation.

Q. I want you simply to explain his conduct on the first two days, as it differs from his conduct on the last two days.

A. Well, I am doing that.

Q. I didn't ask you when he is sober, and when he is drunk.

A. Well, that is just the difference between the first two days and the last two days.

Q. Well—

A. I say, the first two days he was sober, and I have given you the distinction as to the days when he was drunk.

Q. Well, now, give us his conduct the first two days, and then the change that occurred.

A. All right, sir. He was a perfect gentleman in every sense of the word; his conversation was in an average tone of voice, and he was at the same time very retishent [reticent]; didn't put himself forward any way, even in a conversation, or in the presence of company,—more in the back ground, and in company with other attorneys at my office, in telling stories, at that time, he was altogether backward, and he generally told the last story; whereas on the third day, in the company, he was the first—

Q. Now, mind you, Mr. Coleman, I havn't asked you any questions about his conduct outside of court; this is his conduct in court.

A. This is court time.

Q. I want his conduct in court.

A. Oh, now, you refer to the court house?

Q. Yes, sir.

A. That is another thing. You asked me three questions at once.

Q. No, I didn't.

A. You ask me during the term, and now you ask me at the court house, and not at the office.

Q. Let us have his conduct in court, and what was the difference. Some of this will apply in court, and I don't want to go outside of that?

A. All right, sir. In the court during the first two days, he sat on the bench with a great deal of dignity, and retishence; that is to say, compared with his conduct subsequently.

Q. What is that word *retishenec*; what is that?

A. Webster defines it.

Q. Excuse me; I am a foreigner, and don't know all the English words.

A. I beg your pardon; I will use plainer language. Some call it reticence, and some "retishence." reticence if you desire it.

Q. Oh, reticence; I understand that. Now, did you notice any change when you commenced on the last three days?

A. Oh, yes; very perceptible.
Q. What was the date?
A. Well, he was different with the counsel in his conversation, interrupting the proceedings very often, and careless in his position as he sat on the bench as Judge, presiding officer; and he would do a great many things that were very foolish and rediculous, even to an extreme.
Q. He would do what?
A. He would do a great many foolish and ridiculous things.
Q. Let us get at these interruptions. What interruptions were they that you remember of during those days?
A. I have not charged my mind with the specific interruptions, one of which, I think, occured Friday, my impression two or three days before I left there, between the county attorney and the Judge, in the trial of a liquor case.
Q. Well, what was the interruption?
A. I believe partially as to the admission of evidence; there was something of the kind, and he would insist,—it is my impression and understanding, now, that he would insist on the county attorney asking certain questions, and not others, and without objection made by the other counsel, offer his own.
Q. But without the counsel on the other side objecting, he would object to the qestion himself?
A. Well, like this, he would say, "hold on," and he would turn around and ask the witness a question, and then turn to the county attorney and tell him to ask a question, following that way.
Q. Helping the county attorney along?
A. No, not altogether, it didn't appear so. There was several times there, I forgot what the questions are now, but, at that time, I was aware of the fact that there were some questions asked by the court himself that weren't pertinent to the case at all, or assisting the prosecution at all.
Q. What case was that?
A. Well, now—
Q. Was that the case of the State vs. Anderson?
A. My impression is there were three cases.
Q. Who was attorney for the defendant when that happened.
A. I think George Maguire, of Bird Island, was attorney for all three.
Q. He was the attorney who was trying the case at the time of the interruption?
A. Yes.
Q. Do you remember which one of the cases it was that was being tried at the time?
A. No, sir; I do not.
Q. Was there more than one case tried at all, sir?
A. My impression is that there were three cases tried; that was my impression.
Q. All liquor cases?
A. Yes.
Q. Three were tried at that term?
A. Yes, that is my impression.
Q. All three tried that Friday?
A. No, sir; I think there were three from this fact, that it is my impression that there were two acquittals and one conviction.

Q. Was the Judge very hilarious on the bench during the last three days?

A. He was not loud or boisterous, if that is your interpretation of it.

Q. He was not loud or boisterous?

A. No. sir; I couldn't say that he was; not altogether so; he was lively.

Q. You mean that he was lively and hilarious, but not loud and boisterous, in court, at all, during any of these last three days?

A. Nothing, with the exception of when he would laugh. He would sometimes laugh very loud and boisterously at his own jokes.

Q. You were a witness before the judiciary oommittee?

A. Yes.

Q. Did you there testify as follows, in this Beaver Falls matter, in response to the question:

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

A. I did, sir; and allow me to say that that was taken in conjunction with the fact of his being on the bench and off the bench. That was his general conduct on and off the bench.

Q. Then you correct that now, and say that he was not very loud and boisterous in court?

A. Not under that statement; no, sir.

Q. He was not, was he?

A. No. sir; he was not.

Q. Didn't that come out under a question right preceding it?

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

And did not this question come in:

Q. What evidence did he give of being in that state?

And then your answer is:

A. Loud and boisterous.

A. You have united two questions in one, but allow me to say that I have perused that and found a great many inaccuracies.

Q. But it is a fact that you swore to that state of facts here. You wouldn't claim that that was an inaccuracy, that you swore that he was very loud and boisterous?

A. "During the term," as I gave it. Now, whether they have got "court" on there, as I understood the question at the time, "during the term;" not on the bench.

Q. Did you not at the same time swear to this, "that about the last three or four days of court he was in an extreme state of intoxication."

A. Yes, I think I did: and that was the fact.

Q. Now, you say he was not quite drunk; he was close to being drunk.

A. Yes.

Q. How was it about the Judge's mental condition at this term of court, Mr. Coleman?

A. In court?

Q. Yes.

A. Well, judging from his appearance on the bench at times, it appeared that his mental faculties were somewhat clouded.

Q. You say now that his mental faculties seemed to be clouded?

A. At times, sir, judging from his appearance and actions.

Q. Now, would you judge from a man's appearance as to the clearness or cloudiness of his mental faculties?

A. In some instances, I would; yes, sir.

Q. Well, now, I ask you from what was done there?

A. Well, he sat there on the bench in a sort of dreamy condition. A question would be asked, or something would be going on there, and he would grab hold of his seat, or clinch his fists, grit his teeth, and then sit up straight; acting as though it required an over amount of exertion on his part to control his faculties, before he could either perceive the point or force of the question, sufficiently to answer it or rule upon it.

Q. So that as a matter of fact, his mental faculties were clouded to quite an extent.

A. Judging from his appearance, and those actions; that is all I know about it.

Q. Well, judging from the way he ruled and acted when he was called upon to exercise his mental faculties, how was he?

A. During those times I had nothing before me from which I could judge as to the force and effect of the ruling, so that I could impress my mind with it.

Q. So, that you don't know anything about it, except so far as his appearance is concerned?

A. That is all, sir, I speak from.

Q. Now, before this same judiciary committee, did you not testify, Mr. Coleman, as to the same term, in answer to the question: "What was his mental condition at the time" (namely at the term, that term, those last days), did you not answer, "Well, at that time, I think, his mental condition was quite clear; that his mind appeared to be quite clear on subjects?"

A. That is, a part of the term, yes. Now, you must understand even after he—

Q. Did you not testify to that in regard to that term, when you said he was in a state of intoxication?

A. In a general way, I answered it in that way, I believe.

Q. You testified just in those words, did you not?

A. I am not sure I did not. I wouldn't say whether I testified in those words, or not; I have kept no memorandum of my evidence.

Q. Wasn't that question followed up by another question by the judiciary committee, "you mean during this state of intoxication, during this term of court?" and did you not answer that, "I do?"

A. During that term of court; yes, in a general way.

Q. Was not the question to you, "during this state of intoxication, during this term of court," and did you not say "yes."

Mr. Manager COLLINS. Well, he said so.

Mr. ARCTANDER. No, he says in a general way.

The WITNESS. I understand that to be the same question you asked before.

Q. Let me call your attention to the whole examination there, Mr. Coleman. In response to the question, "What was his mental condition at that time," you answered, did you not, as you have said before, "Well, at that time, I think, his mental condition was quite clear; that is his mind appeared to be quite clear on subjects;" that you answered. Now, the next question put was this, was it not, "You mean during this state of intoxication, during this term of court? A. I do."

A. I don't know whether that was the next question, or not; I couldn't tell now, it is so long ago.

Q. Will you swear that it was not?

A. I wouldn't swear whether it was the first, second, or third.

Q. Well, if you answered that way, "I do?"

A. Do you say that was the second question?

Q. I do.

A. Then I will take your word for it. I said it; yes, sir.

Q. Was not this the next:

Q. Well, I mean during the time that you thought you had evidence of his being intoxicated?

A. Well, he was not, at any time there, in what we call a maudlin state; he was not in a state of maudlin intoxication at that time; he appeared to be fully possessed of all his mental faculties, and seemed to be fully cognizant of what he was doing and performing, but he seemed to possess no restraint over himself; that is, did not possess that dignity which a man should possess, who is a judge, while off the bench. In court, he maintained as much dignity as possible under the condition.

Was not that your testimony? A. Yes, sir; I say it yet.

Q. Then you say, at this time he appeared to be fully possessed of all his mental faculties, in court, during this time?

A. I say so. If you will allow me to qualify it, the way I intended to give it,—I don't know how they got it down. Under my interpretation of the question, and their interpretation of the answer, they have got things mixed. Sometimes two of the members of the judiciary committee would propound a question to me, and I had to draw my own conclusions, and answer accordingly in a general way.

Q. Do you mean you spoke of that generally, and not with reference to that period of this intoxication, at the general term of court,—Beaver Falls term?

A. No; I spoke of the Beaver Falls term.

Q. Now, was it not limited to the period in Beaver Falls term, when you saw indications of intoxication on him?

A. Now you understand—oh, yes.

Q. That is all I wanted. This condition of the Judge on Friday and Saturday and the last part of Thursday, was perceptible and apparent,—generally apparent, was it not?

A. Generally apparent; do you mean to me?

Q. I mean that persons in the court room, and observing him, would have noticed it.

A. Why, quite a number spoke to me.

Q. It was so apparent that they couldn't help noticing it?

A. Several persons spoke to me.

Q. Well, I don't ask you who spoke to you, you know that is not proper testimony; I ask you if his conduct and appearance was so out of the way, and so apparent, that a party who was in there, and observing him, couldn't help noticing it?

A. Well, I don't see how they could have helped noticing it.

Q. So as actually to attract attention?

A. That is what I think, sir. Of course, I can't tell what other folks think.

Senator GILFILLAN J. B. Mr. President, if the honorable manager will bear with me a moment, I desire to say, I did not quite understand when this term of court was held nor did I understand whether or not the condition of the Judge was such as to prevent his going on with the term during the regular hours of court. There was another point upon which if there is no objection I would like to hear the testimony of the witness and that is whether or not his condition, his appearance, his language and conduct were such during the holding of court as to become a subject of comment and discussion among the by-standers, without going into anything that was said.

Mr. Manager COLLINS. I would suggest that the Senator put the questions to the witness himself.

Senator GILFILLAN J. B. I don't care to interrupt the order of the examination.

Mr. ARCTANDER. I will ask the witness those questions as a part of my cross-examination.

Q. You don't know of your knowledge how long the court lasted after you left Saturday night?

A. No, sir; I left on Sunday.

Q. Had the term then closed?

A. The term had not closed, no sir.

Q. Was the Judge's condition so during those three days that it impeded business from going on in the usual way.

A. Well, I couldn't say absolutely that it did; no, sir.

Q. Was there anything out of the way in any of the language, conduct or actions of the Judge while in court that was improper in any way; attracting general attention?

A. Yes, there were actions.

Q. What were those actions?

A. Well, he would throw himself back in the chair, and throw his feet back that way (indicating), and I have given you a little instance of his actions,—he would put his finger up this way (indicating), as though he were catching something, and then slap his hands together this way, and say, "I've got you, you little cuss." He would probably do that off and on in the morning and afternoon of Friday and Saturday quite a number of times, and then lay back and laugh in a very silly manner.

Q. Do you know whether or not it was not a matter of fact that after that rain on Thursday night there were quite a lot of mosquitos in the building?

A. I don't recollect, sir, either the mosquitos or the rain.

Q. Now, was there anything in the Judge's language while in court that was improper and attracted attention or comment?

A. I think there were several times there that he made some statements that created considerable merriment and comment.

Q. Any more than usual.

A. Oh, yes, sir.

Q. Don't you know, as a matter of fact, that it is Judge Cox's habit, very often, to make joking remarks?

A. I do, sir.

A. Creating some merriment?
A. Yes, sir; I know that very well, indeed.
Q. And that is so, just as well when he is perfectly sober as at any other time?
A. Qualifiedly, yes, sir.

Examined by Mr. Manager COLLINS.
Q. What do you mean by "Qualifiedly, yes?"
A. The manner in which he says these things, and the number of times which he repeats them, and the manner in which he would laugh after getting the jokes off himself.
Q. Now, you say that the Judge would put his hand up here, and then come this on it (indicating), and then crack it on his finger, and say: "Now I have got you, you little cuss?"
A. Yes.
Q. It was pretty early in the season for mosquitos down in that country, was it not?
A. I don't recollect of any mosquitos at that time.
Q. It was in May?
A. Yes, sir.
Q. Did he do this repeatedly, this sort of performance?
A. Well, it was done quite often; that is Friday and Saturday I remember distinctly.
Q. You indicated the mnnaer in which he put his feet out, what was that?
A. He would stretch himself back like this, [indicating,] that sort of a performance.
Mr. Manager COLLINS. We now take up article fourteen. [To the witness.]
Q. Shortly after this term of court in Renville county you met Judge Cox again?
A. Yes, sir.
Q. In the month of June?
A. I believe it was, yes, sir.
Q. I call your attention to a term of court held in June, in Lincoln county, were you present at that term at Marshfield at the opening of court?
A. Yes, sir.
Q. You may state Judge Cox's condition at the opening of court at Marshfield?
A. The Judge was very drunk.
Q. At the time of the opening of court?
A. Yes, sir.
Q. Did you go there with him?
A. No, sir; I did not.
Q. You were there when he came?
A. Yes, sir.
Q. What was done after the opening of court that day?
A. Well, there was very little done there except to ask one of the officers, I forgot whether it was the sheriff or the clerk of the court, or his deputy, in regard to the conveniences there for witnesses for the attorneys and the jurors.
Q. Court was adjourned, was it?
A. Yes, sir.

Q. To Tyler? A. To Tyler.
Q. What was the alleged reason?
A. The alleged reason was that there was not sufficient conveniences there to hold court for the attorneys, for the court, for the jurors and the witnesses.
Q. You went to Tyler, didn't you?
A I did, yes, sir.
Q. Now, what were the conveniences as compared to those at Tyler?
A. Well, I couldn't tell exactly, I couldn't state the facts, what the conveniences were.
Q. You may state the conveniences at Marshfield?
A. There was a party there who had got up very good convenience for the witnesses as far as that is concerned; as far as all parties were concerned, had fixed up an old hotel in pretty good shape, and made arrangements for all the conveniences; and the sheriff—of course this is hearsay.
Mr. ARCTANDER. We object to that.
The WITNESS. My own knowledge, as far as I know, is in relation to the hotel and what the sheriff stated to the court.
Q. You say there were hotel conveniences, what were the conveniencies for the court at Marshfield?
A. Well, they had a room, my impression is the school house.
Q. Up stairs, or down stairs?
A. Up stairs.
Q. How large a room?
A. Probably the room wvs 18x24 I think that was about the size of the room.
Q. Now, what were the conveniences in the way of jury rooms, witness rooms, and so forth
A. Well, I have no knowledge myself in regard to that.
Q. How large a place is Marshfield?
A. My impression is that there are five or six buildings there.
Q. Any saloon there at that time?
A. I don't know of any, no, sir.
Q. Now how large a place is Tyler?
A. Tyler is considerably larger, I think there must be twenty or twenty-five buildings in Tyler.
Q. How about the conveniences there?
A. Well, they occnpied a store building for the court room.
Q. How large a room?
A. Oh, I couldn't say, I presume the room was probably thirty feet long and twenty feet wide.
Q. Do you know what the conveniences were for the jurors there?
A. Well, the grand jury were up stairs over the store and the petit jury I think once occupied the court room itself.
Q. Well, the court adjourned and met the next day as I understand it, at Tyler?
A. Yes, sir.
Q. Now, you may state the condition of Judge Cox at Tyler the first day?
A. I went from Marshfield to Lake Benton, and from Lake Benton to Tyler the next day, returned to Lake Benton from Marshfield and I got there on the train sometime about noon I think. And at that time the Judge was somewhat under the influence of liquor, very perceptibly.
Q. Had court opened?

A. I believe it had, yes, sir. They were doing something but at the same time it is my impression they were waiting for the books to get there, or bothered because the books had not got there.

Q. Well, you may go right on now and give us the history of that term of court.

A. In regard to what?

Q. In regard to the sobriety of the Judge,—more particularly with reference to that.

A. During that entire term at Tyler the Judge was perceptibly under the influence of liquor.

Q. Was there any difference in the degree of intoxication?

A. Well, there certainly was a vast difference in the degree of intoxication from the time he came to Marshfield and the rest of the time there.

Q. He was not so drunk at Tyler as he was at Marshfield?

A. No, sir; but then, of course, it would change during the term, during the day. In the morning he would be—I saw him one morning quite early, very sober indeed, and at noon the effect of liquor upon him was very perceptible, and at night it was intensely perceptible.

Q. Well, do you know whether sessions of court were held in the evening or not?

A. I don't recollect now as to whether there was a session in the evening or not. My impression is at one time the court held open on account of a jury being out.

Q. Now, did you see Judge Cox in the evenings of the days you speak of, at Tyler?

A. Yes, sir.

Q. Now, where did you see him, and what was he doing, and what was his condition?

A. Well, he was very much intoxicated; in fact, at times he was drunk.

Q. Well, where was he?

A. Sometimes he was in his bedroom, and again in the parlor of the hotel; sometimes on the street; sometimes over in the saloon.

Q. Did you see him drink?

A. Yes, sir.

Q. Frequently, or otherwise?

A. Well, quite frequently.

Q. Can you tell us how many times a day, on an average, you saw him drink there?

A. No, I couldn't very well average it. I kept no track of it myself. I paid very little attention as to the number of drinks he took. It was quite often.

Q. Now, you say you saw him in his room and in the parlor of the hotel. What was he doing there?

A. Well, in the parlor of the hotel he would join some attorneys or some visitors or jurors, or whatever they were, in singing, in having music there (there was an organ in the parlor, and somebody would play on that,) and they would sing. Mr. Whitney, the gentleman that traveled with the Judge, was the main party that played on the organ. The Judge would have us congregate in there and sing; and then there would be some drinking in there.

Q. What did you drink?

A. Well, I don't know what they drank; they called it whisky. I didn't drink it myself.

Q. Now, what did you see the Judge do in his bedroom?
A. Well, he sat and talked, and laughed, and chatted, and drank, and played cards.
Q. What games were they playing at cards?
A. I think it was chiefly poker.
Q. State whether or not for money.
A. Yes, sir; they did play for money?
Q. Did you see the Judge play for money?
A. Yes, sir; I did.
Q. With whom?
A. Mr. Whitney, Charles Butts, a stranger and myself.
Q. Did you see the Judge go to bed at any of those sessions?
A. Yes, sir.
Q. Now, just state the details about that?
A. Well, I remember distinctly one evening, the Judge was playing there, and the liquor that they drank there—the effect of what he had in him—so overcame him that he was apparently stupified and we laid him on the bed?
Q. Who laid him on the bed?
A. There was another party beside myself.
Q. They laid him on the bed?
A. Yes, sir; I forget who the other party is.
Q. Did you undress him?
A. No, sir.
Q. Put him to bed with his boots on, did you?
A. Well, just laid him across the bed.
Q. What did he do after you put him on the bed?
A. He went to sleep.
Q. How long did you stay after that?
A. My room was right off from the Judge's there. I was able to go right in there at any time and lay down and go to sleep.
Q. Now, after he was laid out in that way what did you do; did you keep up this game.
A. Well, I will state to you how I got into that game. I played in the game for just a few moments before the Judge came up, and then he stepped in and wanted to play, and I think I played one hand and stepped out of the game, and he played right along. That was my first game of poker at that time.
Q. Do you know anything about their playing cards across the body of the Judge there at that time?
Mr. ARCTANDER. We object to that as immaterial and irrelevant.
Mr. Manager COLLINS. I think it is perfectly proper.
The PRESIDENT *pro tem* To show that he was intoxicated?
Mr. Manager COLLINS. Yes, sir; that is the object of it. I would like to have the Senate pass upon this question. It seems to me that if we can show by this, or any other witness, that the Judge was in such a condition that the lawyers, the jurors and the witnesses indulged in a game of poker over his prostrate body upon that bed, that we ought to be permitted to show it. It seems to me to be the strongest evidence of intoxication on the part of the court, that we could get. I am not very particular about it, but it does seem to me that we ought to be allowed to prove it if we can.
The PRESIDENT *pro tem*. I will submit the question to the Senate. Has the gentleman on the other side anything to say?

Mr. ARCTANDER. No, nothing, Mr. President, but this: It seems to me that it would be entirely immaterial. If it is stated as it is here that the Judge went to sleep, anything that was done while he was asleep, while it might tend to throw approbrium upon him, yet certainly it cannot have anything to do with the case, because it cannot tend to show whether he was drunk or sober because he was asleep at that time. I don't suppose a man is responsible for anything which somebody else does, either with him or anybody else while he himself is asleep. And I don't suppose it would go to show the intoxication of the Judge. Of course I can very well understand the view in which this witness is called upon to testify in regard to this, but I think it is an improper view. I don't think the Senate want insinuations or innuendoes farther than have already been displayed here.

The PRESIDENT *pro tem.* I will submit the question to the Senate; you have heard the question and the objection, what will the Senate do?

Mr. Manager COLLINS. I am asking the witness if he knows of the party playing cards across the body of the Judge; that is using his body as a table, upon which to play a game of poker while he was asleep.

Mr. ARCTANDER. We objected to it as immaterial and irrelevant, because it does not tend to show that he was intoxicated.

The PRESIDENT *pro tem.* You have heard the question and the objection; shall the witness be permitted to answer? You that are in favor of sustaining the objection of the respondents counsel, will say aye, the contrary nay.

The chair is unable to decide.

The Clerk will call the roll.

The Clerk then proceeded to call the roll.

When the name of Senator J. B. Gilfillan was called, he arose and said:

Senator J. B. GILFILLAN. Mr. President, as I understand this question it simply tends to draw out a little farther a history of the same transaction that has been testified to for the last half hour, for the purpose of permitting a full description of what the witness is testifying to. I am willing to vote no on this question, so as to let the whole description come in.

When the name of Senator Powers was called, he arose and said:

Senator POWERS. Mr. President, I don't think the question, if answered in the affirmative, necessarially proves intoxication. I shall vote aye.

The question being upon sustaining the objection, and the roll being called, there were yeas 20, and nays 4, as follows:

Those who voted in the affirmative were—

Messrs. Adams, Buck C. F., Buck D., Castle, Clement, Crooks, Gilfillan C. D., Hinds, Howard, Johnson A. M., Langdon, Mealey, Miller, Morrison, Perkins, Peterson, Powers, Shalleen, Tiffany and Wilkins.

Those who voted in the negative were—

Messrs. Aaker, Gilfillan J. B., Macdonald and Wilson.

So the objection was sustained.

Mr. Manager COLLINS. [To the witness.] Now, Mr. Coleman, you may go on and state what else took place there, if anything.

Mr. ARCTANDER. I object.

Mr. Manager COLLINS. With the permission of the Senate, I want a full statement of what took place there. If we are entitled to any of it, we are entitled to all of it; and it is for the Senate to judge, after we get

all of the circumstances there, whether or not it tends to prove intoxication. It may not prove intoxication, hut I say it moy tend to prove it, and that is why I am endeavoring to get at all that took place there.

Senator HINDS. Do we understand that the managers propose now to prove what took place while the respondent was asleep?

Mr. Manager COLLINS. All that took place in the room.

Senator HINDS. While the respondent was asleep?

Mr. Manager COLLINS. I presume so; I presume while the respondent was asleep.

Mr. ARCTANDER. We object to that.

The PRESIDENT *pro tem.* That would hardly be allowable.

Mr. Manager COLLINS. I, of course, accept the decision of the Senate. (To the witness) Will you state all that took place while Judge Cox was awake there, if there is anything in addition to what you have stated.

A. At that night?

Q. Yes, sir.

A. There was nothing special there, excepting playing cards and general boisterousness, hilarity and whisky drinking.

Q. What time at night was it when you put him to bed?

A. I don't know, sir; it was quite late.

Q Can you tell us about what time?

A. I should judge about eleven or twelve o'clock.

Q. And it was in his bedroom, was it?

A. Yes, sir.

Q. Now, the next day what was the condition of the Judge in court?

A. Well, I have stated before, that all through that term the Judge was very much intoxicated.

Q. Now, the next night do you know what was done?

A. That was Sunday night, I believe. No, I don't know as I could state exactly what occurred on Sunday night, no more than in a general way.

Q. Well, in a general way what was the Judge doing?

A. In his bed-room?

Q. Yes.

A. My impression is that he was playing poker.

Q. On Sunday night? A. Yes, sir.

Q. How late? A. I couldn't tell you.

Q. Do you know of his going to bed that night?

A. Yes, my impression is that he went to bed every night.

Q. Well, did he undress and go to bed?

A. I don't recollet seeing the Judge undress to go to bed but once during the whole term.

Q. Do you remember seeing him on the bed more than once.

A. Yes, sir.

Q. In what condition as to sobriety?

A. Well, I have seen him, just before he went to bed, quite often—pretty nearly every night,—not every night, very nearly so, and just before he would go to bed, he would be, you might say, drnnk.

Q. In what condition was his clothing when he went to bed; was it off or on?

A. It was on hiui, I think every night excepting one.

Q. Now, on the Monday following that state his condition.

A. I think it was about the same as it was the rest of the time.

Q. And all during the term of court? A. Yes.

Examined by Mr. ARCTANDER.

Q. That is you say in the mornings he was sober?

A. Yes, quite sober; I don't recollect of but one morning he was otherwise than quite sober. He got up sober.

Q. What morning was that?

A. I could not tell you what morning it was; it was one of the mornings I was there; I met the Judge, and from all appearances he was sober.

Q Was it only one morning that you say he was sober?

A. No; I say this: That every morning, with the exception of one (I don't mean to say quite sober or quite full,) every morning with the, exception of one, I remember the Judge being quite sober; that one morning I thought he was quite full.

Q. Do you remember what morning it was? A. No, sir; I do not.

Q. This Sunday he was at Tyler there in the room?

A. I think not all day; no, sir.

Q. What portion of the day was he there?

A. It is my impression that in the afternoon a party of them hired a buggy, and went to Lake Benton, and came back in the evening wet. I think there was a rain storm that night.

Q. He went to bed?

A. Well, they went to bed that night, I believe.

Q. Did they go to bed when they came home?

A. Not immediately; I believe not.

Q. Did they go to playing draw-poker?

A. I think during the evening there was a game of poker played there in the room; yes, sir.

Q. Did the Judge play?

A. It is my impression that the Judge played.

Q. Didn't the Judge go to church that evening?

A. I don't know but what he did, I think the poker game commenced about nine or ten o'clock, sometimes it continued until two and three o'clock in the morning.

Q. Well, don't you remember, as a matter of fact, that the Judge was at church that evening?

A. No, sir; I don't.

Q. Don't you remember of he and some of the attorneys coming in there after church, and making jokes about the sermon?

A. I believe they came in the parlor, and stated that they had been to church, and about somebody passing the hat around. I don't know what it was. I wasn't at church myself.

Q. How many were there that stayed in these rooms that opened into each other in this way, up there where the poker party was going on?

A. Well, when I got there, I was put into this room off from the Judge's room.

Q. You were put into the room where the poker playing was going on?

A. No, sir; right off from the poker room is a bed room, and it was afterwards occupied by Col. McPhail, Charles Butts, and myself. There were three of us in that room.

Q. How many were there in the other room?

A. I think Mr. Whitney and the Judge occupied the other, and of course Col. McPhail changed around. Sometimes he would sleep on that bed crossways or lengthways; there was only one bed in each room.

Q. And the rooms had only a door between them?

A. Well, there was a door and part of the wall.

Q. Did you say you saw the Judge drink freely during that term of court?

A. Yes, sir.

Q. Where did you see him drink?

A. Well, I saw him drinking in the saloon?

Q. What saloon?

A. One a little way across from the hotel.

Q. That was Mr. Apfeldt, the deputy sheriff.

A. I don't know his name. I don't know whether he was deputy sheriff or not,

Q. There is only one saloon there, is there?

A. That is all I saw.

Q. Now, at what time did you see him drink in the saloon there; was it before Saturday night?

A. Oh, yes.

Q. During the day, was it?

A. Yes, sir.

Q. Did he drink alone?

A. I never say the Judge take a drink alone, no, sir; not that I remember of.

Q. Who did he drink with in the saloon?

A. Well, sometimes he would drink with me and different other parties.

Q. Well, did you drink with him?

A. I did; yes, sir.

Q. You never missed a chance to take a drink?

A. Well, it is rare—I took lemonade though—

Q. I see?

A. At that time of the year.

Q. Did the Judge drink lemonade?

A. I believe he did on one or two occasions while I was present.

A. Now, in the hotel parlor you saw him drink, you say?

A. Well, I told you I saw him drinking, yes, they would pass a hat around, and some would throw in a ten cent piece, and some a quarter, and raise a little fund and go out and get a bottle of whisky, and then they would bring the bottle back, that is they claimed it was whisky. I don't know whether it was or not, and pass it around in the same hat, and then take up the bottle and say: "Here's to you," and then down it went.

Q. So as a matter of fact, you couldn't say whether the Judge was drinking at those instances?

A. I couldn't except from seeing him handle the bottle, that's all.

Q. Were you there Monday morning in court?

A. I was there all through the term with the exception of a few hours at the opening of court in Tyler.

Q. Monday morning the last day, you were there in court were you?

A. Well, I was in Tyler.

Q. Well, was the Judge sober that morning?

A. Yes, sir; when he was at Tyler he was sober,—that is, that morning.

Q. Well, Monday morning was the last day of the term.
A Yes, sir.
Q. He left Tuesday morning, did he?
A. Well, whatever morning it was, I wouldn't say whether it was Monday or Tuesday. Anyhow I will tell you the day he left; at the very day he opened court at Marshall.
Q. And the Judge was sober when he left, was he?
A. He was quite sober; yes, sir.
Q. The last day of the term was Monday?
A. That is my impression.
Q. He was sober on the morning of that day, was he not?
A. That is my impression; that is at the last day of the term, when the Judge was settling up his bills; I remember distinctly of walking with him.
Q. It was Tuesday that he settled up his bills, wasn't it?
A. I couldn't say; that was the morning he was sober.
Q. That was the day after the last day of the term?
A. Well, I couldn't say; it was the day he went away.
Q. Well, now, I am after the morning before he went away, which was Monday morning. You know the term commenced at Marshall on Tuesday and that was the morning he left. Now on Monday morning before,—the last day of the term,—was he sober then?
A. Well, it is like this; there was one morning that I saw the Judge very much intoxicated, all the other morning's he was sober. What morning it is, I can't state positively.
Q. But you say at no time during the court at Tyler was he as drunk as he was when he opened court in Marshfield?
A. I don't recollect of any time in Tyler that he was as drunk as he was in Marshfield.
Q. He was very boisterous during the term there, was he?
A. I don't recollect distinctly of any boisterousness in court.
Q. Out of the court at times? A. Yes, sir.
Q. Now you testified before the judiciary committee, did you not, that it was easily discernible during the entire term of court in Lyon county, that the Judge was intoxicated?
A. Yes, sir.
Q. You also testified: "You could tell it from his actions, his boisterous talk, conversation, and his general appearance every way." You testified to that?
A. Yes, sir, yes, sir; that is the fact.
Q. Now, is it a fact, or is it not, that he was boisterous in court?
A. You didn't ask me in court, you asked me during the term. I had reference to outside, as well as in court.
Q. Had you reference to in court, too?
A. Not specifically, no, sir; I don't think I did.
Q. Well, was he boisterous in court?
A. I don't at present recollect any instance that calls that fact to my mind that he was boisterous in court. I remember of his being quite jovial in court.
Q. You stated before the judiciary committee, I believe, that in the cases where he charged the grand jury, his charge was intelligent and all right, and that you noticed no discrepancy in them, and no weakening of his mind.
A. I don't know whether I testified to that fact or not.

Q. Well is it a fact independent of whether you testified to it or not?

A. At the present moment I don't recollect of any difficulty meeting the Judge, from appearances, while charging the jury in any of the cases.

Q. Nor upon his rulings upon law questions?

A. I don't at present recollect any.

Q. Well, if there had been anything that had been done out of the way on account of his intoxication, showing that he didn't have his mind about him, you would have remembered it wouldn't you?

A. Well, not being directly interested I possibly would not remember everything, no sir.

Q. At least you don't recollect anything out of the way so far as his mental capacity was concerned.

A. Not at Tyler so much, no, sir.

Q. Did he convene court promptly?

A. While I was in the court room there were two or three instances where he was very prompt, yes sir.

Q. He was ready as soon as the attorneys were, was he not?

A. He appeared to be; yes, sir.

Q. There was a good deal of waiting there on account of attorneys not being ready in their cases, was there not?

A. A great deal of dilatoriness going on there for some cause or other, possibly from the attorneys, I couldn't say.

Q. As a matter of fact, the Judge was always ready to take up any business that came before him?

A. Yes; he was willing to open court at day light almost. Early in the morning he was willing to go to work so far as he was concerned; I heard him state that fact. He said he was ready any time the rest were, to go to court, and hurry up and get through the business. I remember that distinctly.

Q. But nevertheless his intoxication during the afternoons, and also this morning that you remember, he was intoxicated in court, was noticeable and apparent to anybody that knew him, and observed him?

A. Why, yes, sir; it was generally commented on, sir.

Q. I didn't ask you whether it was commented on; I asked you whether it was so pronounced, his condition, his behavior and appearance that it was apparent to everybody?

A. In the court or out of the court?

Q. In the court.

A. Well, I wouldn't state as to how it was in the court,—as to whether it was apparent to everybody,—it was apparent to myself. I don't recollect any comments made distinctly on that.

Q. Can you tell whether or not the difference in his appearance and conduct in managing the court was so pronounced, that you should judge it would be noticeable to every observer?

A. Why, yes; judging from my own observation.

Q. I mean there couldn't be any question or any mistake about it,—it was not so on the line that you might make a mistake both ways?

A. Well, it wouldn't, unless the Judge was a perfect comedian.

Q. How many days were you in court there?

A. I was in court every day I think, not all day though, during the entire term, after I arrived at Tyler.

Q. During how great a portion of the time were you in court?

A. Oh, I would probably be in there an hour or an hour and a half, in the morning, and probably the same length of time in the afternoon. I couldn't state now.

Q. Do you remember what cases, if any, were taken up the second day?

A. That I don't distinctly recollect; I think I recollect of four jury cases being tried that term.

Q. Do you remember on any of those days what cases, if any, were taken up?

A. No; not the specific dates at present. I remember that there was a chattel mortgage case, and a question of fact raised on a promissory note there, which was tried by jury; then there was this case of an assault with intent to commit rape, and the case where a party was arrested for cruelty to his child; those were the cases.

Q. You don't remember at what dates or times they were taken up?

A. No, I have not charged my mind; I was not interested in them directly at that time.

By Mr. Manager COLLINS.

Q. You say there was nothing particularly noticeable in the condition of the Judge. I ask you if there was anything particularly noticeable in the condition of the Judge at the time of the trial of this man Chapman as to his rulings and behavior.

A. I did not wish to be understood that there was nothing particularly noticeable. About the same features occurred with him at Tyler as existed at Beaver Falls; he was not so free though at Tyler with every body as at Beaver Falls.

Q. You remember that case do you?

A. Yes, I have a recollection of the case.

Q. Well, was there any instance in that case that indicated this inebriety or intoxication on the part of the Judge?

Mr. ARCTANDER. That is objected to as not proper re-direct examination.

Mr. Manager COLLINS. The counsel has attempted to draw out that there was nothing in his rulings to indicate that he was under the influence of liquor.

Mr. ARCTANDER. I asked him if he remembered particularly anything in his rulings or charges that was out of the way. Now I apprehend that this is not proper re-direct under the ruling of the court heretofore. They should have shown in the first instance about that Chapman affair.

The PRESIDENT *pro tem.* Do you desire to show, from his general conduct?

Mr. Manager COLLINS. Not at all. I asked the witness whether anything occurred during the trial of this Chapman case, that led him to consider the Judge in a state of inebriety; that is, any ruling or any proceeding that attracted his attention. It don't go to the general conduct of the respondent, but to a special instance.

The PRESIDENT *pro tem.* I should think that that would be allowable. I will submit the question to the Senate.

Mr. ARCTANDER. I don't care about taking up any farther time with this matter.

Mr. Manager COLLINS. (To the witness.) Is there anything Mr. Coleman, in that case?

A. Well, there was an incident that occurred, a matter that occurred there, when the party was tried.

Mr. ARCTANDER. We object unless it is limited to the rulings of the Court.

Mr. Manager COLLINS. Well, that would not be a rnling, exactly, but it would be a proceeding in court. We will take the ruling of the court on it as to whether we shall be allowed to show what occurred there.

The PRESIDENT *pro tem.* I would submit the question to the Senate.

Mr. ARCTANDER. I suppose that would take up more time than it would be worth in the matter. I withdraw the objection. I simply made the objection under a ruling that we have had by the chair. Of course I must cross-examine upon this.

Mr. Manager COLLINS. It is no new matter at all. (To the witness.) You may state.

The WITNESS. There was a party there by the name of Chapman. He was tried, and, I believe, convicted. After his conviction it was discovered that he had not been arraigned. He was afterwards fined on a plea of guilty to an assault.

Q. We now pass to article 15. Mr. Coleman where did you next see Judge Cox?

A. Well, we all went down, I think, on the train together from Tyler to Tracy, and from Tracy to Marshall, Lyon county.

Q. The county seat of Lyon county?

A. I presume so; I don't know.

Q. Now, was there a term of court there at Lyon county.

A. Yes, there was a term there following the other.

Q. Who presided?

A. E. St. Julien Cox.

Q. You may state his condition as to sobriety during that term of court.

A. I was not there all the term, sir.

Q. Well, during the part of the term you were there?

A. The day the court opened he was very much intoxicated; in fact, drunk. The next day he was very perceptibly intoxicated, *almost* drunk. The next day he was sober—straight.

Q. Were you present at the time the grand jury brought in certain resolutions there?

A. I was; yes, sir.

Q. What was his condition at that time?

A. Sober.

Q. How long had he been sober?

A. Well, from the evening previous, I should judge. I left him at the back of the house, I think, about 9 or 10 o'clock that evening, and when I left him there he was sober. I saw him the next morning, quite early, and he was sober then, and he was sober up to the time the resolutions came in, so far as my observation went.

Q. Can you tell whether or not he had knowledge that these resolutions were to be presented?

Mr. ARCTANDER. That is objected to as immaterial and irrelevant.

Mr. Manager COLLINS. Its relevancy is just here; that if Judge Cox had notice that these resolutions were to be presented, and it is shown to this court that he sobered up, this, at least. would have a bearing on the question as to whether he was intoxicated.

The PRESIDENT *pro tem.* I should not think that would be admissible; I will, however, submit the question to the Senate if the gentlemen desire it.

Mr. Manager COLLINS. Well, we will submit the question to the Senate.

Mr. ALLIS. It will be understood that these resolutions themselves have been ruled out.

Mr. Manager COLLINS. My opinion of that is this: the fact that certain resolutions were presented there by the grand jury is already in evidence; we have attempted to get in a copy of those resolutions, the Senate ruled that the copy of these resolutions should not be received as evidence, I t hink under a mistaken idea of their object. Now the object of that was not to show that Judge Cox was drunk, because it would not show it, it would show merely the opinion of the grand jury, but the object of it is to show that certain resolutions of censure were passed, and to show what those resolutions were, and if the witness testifies that prior to the bringing in of those resolutions Judge Cox was drunk, and that subsequent to their being brought in, or subsequent to his knowledge that they were to be brought in, he was sober, it certainly seems to me it would be evidence of what effect those resolutions had upon him, and would, to a certain extent, corroborate the testimony of the witnesses. I am not very strenuous upon the point. It wouldn't show that he was intoxicated any more than an indictment against a man would show that he was guilty of the crime alleged against him in the indictment.

Mr. ALLIS. As I understand the gentleman's argument—it amounts to just this: He maintains that Judge Cox, having got drunk, and having got sober, that the getting sober was evidence that he had been drunk. I can't see anything else. He offers this to show that because Judge Cox was drunk and heard something about some resolutions he immediately sobered up. That doesn't prove that he was drunk, any more than the fact that he was drunk; besides it is utterly improper in every aspect.

This Senate after some discussion has ruled upon the question of the admissibility of the proceedings of the grand jury, and has decided that the opinion of the grand jury as to the condition of Judge Cox, the respondent, was not evidence of anything for this Senate; and that was the very question that came before this Senate. Now this interrogatory is an interrogatory as to whether Judge Cox was acquainted with the nature of those resolutions.

Mr. Manager COLLINS. No, sir,—as to whether he had knowledge that they would be presented.

Mr. ALLIS. Had knowledge that they would be presented,—that is what I mean. Now, what possible bearing can it have upon the question before this Senate whether the resonpdent knew or did not know that these resolutions were to be presented, when the Senate has already ruled that they cannot be introduced in evidence and cannot come before the Senate in any shape.

The PRESIDENT *pro tem.* I will submit the question to the Senate You have heard the question, gentlemen, and you have heard the objections—

Mr. Manager COLLINS. Mr. President, we will withdraw the question.

Q. Did you have any conversation with Judge Cox the night before these resolutions were presented?

A. Yes, sir.

Q. State what it was.

Mr. ARCTANDER. That is objected to.

Mr. Manager COLLINS. For what reason?

Mr. ARCTANDER. As immaterial and irrelevant. I suppose the object is just the same as it was before.

Mr. Manager COLLINS. I have changed the question and now ask him if he had any conversation with Judge Cox about his drinking, the night before the resolutions were presented. That is certainly proper.

The PRESIDENT *pro tem.* [To Mr. Arctander]. Is that objected to?

Mr. ARCTANDER. No, I will waive my objection to that.

The PRESIDENT *pro tem.* The witness will answer the question.

Mr. ARCTANDER. I object to it if it has any reference to these resolutions; but if it has reference simply to his having drank, I don't object to it.

The WITNESS. I will try to frame my answer so as to say nothing in regard to these resolutions.

Mr. ARCTANDER. Then I shall have no objection.

The WITNESS. I forget the exact language of the Judge, but it was to the effect that he had ceased drinking or was not going to drink any more; that he had "slipped his foot for the last time."

Q. That was all the conversation, was it?

A. That was all I recollect as to that.

Q. Did you go to Tracy?

A. Yes, sir.

Q. Did you go to Tracy with Judge Cox?

A. It is my impression that he was on the same train with me.

Q. Did you go into the court house with him at Marshall?

A. I did; yes, sir.

Q. Did you go to Marshall with him on the train?

A. I went to Marshall with him; yes, sir,

Q. You went to the court house with him?

A. Yes, I went from the hotel to the court house with him.

Q. When he first went to court?

A. Yes, sir.

Q. You may state if you stopped at any saloons on your way to the court house from the train?

A. There was quite a lapse of time between the arrival of the train and the time we went up to the court house. I went around in the omnibus from the depot, and it is my impression that the Judge went around the other way,—took a short cut on foot,—and we both arrived at the hotel at about the same time.

Q. About what time in the day?

A. It must have been, I think, after eleven o'clock sometime. I noticed the Judge in the office very shortly after I got there.

Q. State what you did.

A. Well, we went into the bar-room and got something at the bar there.

Q. What did he take?

A. Well, I think, at one time, he called for gin or brandy; I think it was gin.

Q. What did he drink at the other time?

A. Well, I think, the gin was a little in the majority about that time.

Q. Then after taking those drinks where did you go?

A. We went out on the front platform and I left the Judge there, and walked up street. I inquired where the court house was, and they told me. I returned in five or six minutes, perhaps, and when I came back the Judge was talking with a United States Marshal from Wisconsin; and then we went into the saloon part of the Exchange Hotel and got something more there, two or three times.

Q. What did the Judge drink at that time?

A. I don't distinctly recollect what he took at any time, except it is my impression that during that time he took mostly gin.

Q. He drank spirituous liquors of some kind?

A. He called for that; yes, sir.

Q. You say you took two or three drinks?

A. I didn't say I took two or three drinks.

Q. You said he did; what did you do then?

A. Then I called his attention to the fact that court was going to sit that afternoon, and, said I, what time does it sit? Said he, "two o'clock." I took out my watch, and said, "It is a quarter past two, now;" and he took out his watch and looked at it, and said, "By G—d it is," and he took hold of my arm and we went up to the court house.

Q. How long a time had elapsed from the time you arrived at the hotel until you took him by the arm or locked arms and started for the court house?

A. I should judge, possibly, twenty-five or thirty minutes.

Q. Now, you went to the court house, and what was done there?

A. Well, as near as I can recollect, the Judge went up on the platform, talked to the clerk and the sheriff a few minutes, and had the table, which was fixed for him up there, moved down in front of the platform or the stage so he could sit there; and in the meantime he had come around and got down off the stage in front, himself. I think while he was up there, though, the sheriff was ordered to call court; and while he was sitting there he had discovered that that didn't suit him very well, and had the table taken below and came down. Then I think the grand jury was called; and they waited some time there, and then, I think there was some naturalization of citizens going on. Then court adjourned until four o'clock, I think; it reconvened at four o'clock—

Q. Now, wait a moment. You say the court adjourned,—will you state the condition of the Judge when he first went into court as to sobriety?

A. Judge Cox at that time appeared very drunk.

Q. Now, you say court adjourned; do you know where the Judge went during that adjournment?

A. Well, we both went down stairs together, and went into a saloon; I don't know the man's name, it was very close there,—and we each of us took something to drink?

Q. What did the Judge take?

A. I have forgotten what it was.

Q. Spirituous liquor of some kind?

A. I think so, the first time; the second time he took a cigar.

Q. Well, then what did he do?

A. I believe we walked down to the hotel; then he walked across the street from the hotel.

Q. Were you with him?

A. No, sir; I don't recollect that I was. Then I think he went into a law office over there.

Q. Do you know where he went when he went across the street,—into what place, if any?

A. Well, it is my impression that there was a saloon there; he went from that, I think, up to Forbes & Seward's office. I am not sure, but that is my impression.

Q. Now, when did you next see him?
A. I saw him just after we went up into court after dinner.
Q. What was his condition then as to sobriety?
A. Well, Judge Cox was extremely intoxicated.
Q. Do you know anything about his taking dinner that day?
A. I do not; no, sir.
Q. After he went up into this law office did you see him until he got up into court again?
A. Oh, yes, I saw him before he went up into the court.
Q. Where was that?
A. It was right on the main street there in Marshall.
Q. Now, from the time court adjourned until court met, what length of time was he away from you, and out of your sight?
A. Well, during the recess I think he was out of my sight a majority of the time.
Q. Was he out of your sight except when he was in this law office?
A. I don't know when he came out of the law office.

Mr. ARCTANDER. I will ask the President whether it would make any difference to the Senate if we now adjourn till after dinner, so as to give us an opportunity for the cross-examination of this witness. It is now twelve minutes of the usual time.

Senator MACDONALD. I move that we take a recess until half past 2 o'clock this afternoon.

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

There being no objection, the Senate took a recess till 2:30 P. M.

AFTERNOON SESSION.

ROBERT W. COLEMAN,

recalled as a witness, testified:

CROSS-EXAMINATION.

By Mr. ARCTANDER.

Mr. Coleman, are you acquainted with a lawyer residing at Walnut Grove by the name of Dave Thorp?
A. Yes, sir.
Q. Did you not, sometime in the month of July last, state to Dave Thorp, and in his presence in front of Hall's hotel, in Beaver Falls, as follows, or words to this effect: "I consider it an outrage the way the Marshall people have been acting in relation to Judge Cox's term of court. I was there when court opened and I did not consider that Cox was under the influence of liquor at all?"
A. I never said any such a thing, sir.

By Mr. Manager COLLINS.

Q. Mr. Coleman, you have read the articles of impeachment, have you not?
A. Yes, at one time; as I got them through the *Pioneer Press;* that was all.
Q. I now direct your attention to article eighteen. Will you state if at any other time than those you have mentioned, or at times other than those mentioned in these articles of impeachment, you have seen Judge Cox drunk?

A. Well, I don't know as I could intelligently answer the question. I saw him at one time besides what I have testified to, at Redwood Falls, when he was considerably under the influence of liquor. What time it was I cannot state.

Q. Can you state the month?

A. My impression is that it was June, 1880.

Mr. Manager COLLINS. We will not insist upon this testimony, and will consider it stricken out.

Q. At any other term of court?

A. Not that I remember, sir.

CHARLES WEBRER

was sworn, examined and testified as a witness on behalf of the State under article nineteen, but his testimony was by subsequent action of the Senate in secret session, directed to be expunged from the record.

HENRY KINCAID

was re-called and cross-examined by Mr. Arctander, but the testimony of this witness being under article nineteen, was directed to be expunged from the record

Mr. Manager HICKS. I would state, Mr. President, that the managers understand that they have submitted all the evidence they have to offer but they may desire to make a motion in the course of a few minutes. We desire a few moments for consultation.

The PRESIDENT. The counsel for prosecution desire a few moments for consultation.

Senator HINDS. Do I understand that they rest?

Mr' Manager HICKS. Not yet, but we believe that we have presented all the evidence. We desire to consult for a short time and would like a recess for five minutes for that purpose.

Senrtor POWERS. I move that we take a recess for five minutes.

The PRESIDENT. It will be taken as the sense of the Senate that a recess be had for five minutes.

After recess the Senate was called to order, and Senator Gilfillan, J. B., took the chair to act as President *pro tem.*

Mr. Manager HICKS. Mr. President, there will be one more witness offered on behalf of the prosecution, and his testimony will be very brief. The Managers desire to ask of the Senate leave to abandon specification three of article seventeen, as we have heretofore asked leave to abandon specification six of the same article, and also article six.

Senator CASTLE. I beg your pardon; I did not hear you.

Mr. Manager HICKS. Specification three of article seventeen—

Senator CROOKS. Let that be read.

Mr. Manager HICKS. And that the testimony adduced upon that specification be submitted as to article eighteen.

Senator CROOKS. You mean *substituted.*

Mr. Manager HICKS. Well, yes.

Senator CROOKS. Transferred?

Mr. Manager HICKS. If there is any occasion for transferring. The Managers, I would announce, understand the true state of the evidence to be this: that the evidence which has been adduced may apply to any article to which it would be relevant, although it may have been offered under article fourteen, eighteen, or any other article.

The PRESIDENT *pro tem.* The honorable Managers now ask leave of the court to abandon specification three of article seventeen.

Senator CROOKS. I call for the reading.

The PRESIDENT *pro tem.* The specification will be read for the information of the court. The Managers also ask that the evidence which has been introduced under the specification—

Senator CROOKS. I would ask the President to let us have this read first—to divide the question.

The PRESIDENT *pro tem.* The question will be divided, but I desire to state the whole question first. The request of the honorable Managers is to abandon specification three of article seventeen, and *then* that the evidence which has been introduced under this, be allowed to stand under article eighteen. (To the Managers.) Am I correct?

Mr. Manager COLLINS. Yes, sir.

The PRESIDENT *pro tem.* Specification three will be read for the information of the Senate.

The CLERK (reading). "At Redwood Falls in the county of Redwood, in said State, on the 15th day of June A. D. 1880."

Mr. Manager COLLINS. Mr. President, I was about to say that we do not desi[illegible] this question divided. We ask leave to abandon that specification, and ask leave at the same time, as a part of the same request,—to be considered with it,—to apply the testimony to article eighteen. We do not desire to be left here in the position of abandoning that specification, and then having the testimony thrown out entirely.

Mr. ARCTANDER. Mr. President, I desire to state on the part of the respondent, that he would most strenuously object to this specification being abandoned, if the testimony is to be stricken out. If the testimony is to be transposed to article eighteen, so that he can introduce proof to countervail it, he does not object to its going out; but he desires an opportunity to meet before this Senate the testimony of every witness that has been brought before you; he wants a chance to refute every charge which has been made against him; and I therefore ask the Senate that they accommodate the Managers, that the specification be stricken out, and that the testimony be not ruled out but transferred, so that we can have an opportunity of meeting it.

The PRESIDENT *pro tem.* The counsel for the respondent then consent to the application of the Managers. I do not understand, then, that there is any difference between the counsel and the Managers. What order then, will the court take in the matter?

Senator HINDS. I move that the application be granted.

The motion was seconded.

The PRESIDENT *pro tem.* It is moved that the application of the Managers be granted. Are you ready for the question? Those in favor of the motion will vote "aye;" opposed "nay." The "ayes" have it, and specification three of article seventeen will be stricken out, the testimony to stand under article eighteen.

O. P. WHITCOMB,

Was here sworn as a witness on behalf of the State.

Mr. Manager HICKS. I would state, Mr. President, that no formal action has been taken upon the request of the managers made the other day with regard to articles 6, 13, and 16 and specification 6 of article 17.

Mr. ARCTANDER. We shall move to be discharged on those articles as soon as the State rests.

Mr. Manager HICKS. As it may come in properly at this time, we will renew our application as to articles 6, 13, 16, and specification 6 of article 17.

Mr. ARCTANDER. I understood that question came up the other day when the managers stated that they would introduce no testimony under those articles. They have not introduced any testimony under those articles and I suppose the proper thing for us to do would be to move that the respondent be discharged from the charges contained in them; and we make that motion. Also as to specification 8 of article 17, for the reason that no evidence has been adduced by the managers in support of it.

The PRESIDENT *pro tem.* The court well be obliged to take action upon these different motions as they are made. The board of managers now move to strike out certain articles and specifications.

Senator HINDS. I have prepared an order in relation to this matter and I shall move its adoption.

The PRESIDENT *pro tem.* Perhaps the honorable managers would like to hear the order read in order to ascertain if it meets their approval. The Senator from Scott will please read the order which he submits upon the application of the board of managers.

Senator HINDS. I think it will be better to wait until the prosecution rests.

The PRESIDENT *pro tem.* Is there any objection to that course upon the part of the managers?

Mr. Manager HICKS. No objection.

The PRESIDENT *pro tem.* Then the examination of the witness may proceed unless there are some other motions to be made preliminarily.

Mr. Manager DUNN. (To witness,) Mr. Whitcomb, you are a resident of the State of Minnesota?

A. Yes, sir.

Mr. ARCTANDER. This is under article 18?

Mr. Manager DUNN. Under article 18; yes, sir.

Q. You are acquainted with the respondent, Judge Cox?

A. I am.

Q. You may state if you were upon a railroad train going from Sleepy Eye to Redwood Falls in company with Mr. S. L. Pierce, an attorney of this city, upon which train Judge Cox was a passenger?

A. I was a passenger on a train sometime last spring or early in the summer; I could not be positive as to the date. I was a passenger upon the same train with Judge Cox from Sleepy Eye to Redwood Falls.

Q. Was Mr. S. L. Pierce, an attorney of this city, a passenger on the train?

A. He was.

Q. You may state the condition of the Judge as to sobriety upon that trip,—whether he was sober or whether he was intoxicated?

A. I think he was intoxicated.

Q. Did you have any doubt about it or was it a mere thought?

A. I had no doubt about it at the time and I have no doubt now.

Mr. Manager DUNN, (To Mr. Arctander.) You may cross-examine the witness.

Mr. ARCTANDER. We have no questions.

The PRESIDENT *pro tem.* Is that all the testimony on behalf of the prosecution?

Mr. Manager HICKS. The prosecution now rests, and will at this time renew the application already referred to.

The PRESIDENT *pro tem.* The Senator from Scott, (Senator Hinds) may read the order he has to present.

Senator HINDS. I present the following order, and move that it be adopted.

Senator CROOKS. I move that the order be read by the clerk.

The clerk then read the order offered by Senator Hinds as follows:

The managers having produced no evidence in support of the charges contained in articles six, nine, thirteen, sixteen, and twenty, and specifications three, six and eight of article seventeen,

Therefore, it is ordered that articles six, nine, thirteen, sixteen and twenty, and specifications three, six and eight of article seventeen be and the same are dismissed, and that the respondent be and he is relieved and exonerated from the charges therein contained.

Mr. ALLIS. Will the clerk please repeat that?

The clerk then re-read the order proposed by Senator Hinds.

The PRESIDENT *pro tem.* I would suggest, Mr. Clerk, that you pass the order over to the counsel that they may examine it to see if it is satisfactory.

Mr. ARCTANDER. Mr. President, I desire to call the attention of the Senator from Scott, (Mr. Hinds,) to the fact that evidence was introduced affecting article nine; if not directly offered under it, yet it was testimony going to sustain that article. I refer to the testimony given by Judge Severance.

The PRESIDENT *pro tem.* The honorable managers will examine the proposed order to see whether it will be satisfactory.

Senator ADAMS. Mr. President, I desire to call the attention of the Senator from Scott to the fact that article twenty, by action of the court, has been already stricken out, and the respondent relieved from offering testimony upon that article.

Senator HINDS. It was not formally stricken out, and this order dismisses the prosecution as against certain articles and specifications. I understand that there was no witness sworn as to the charge contained in article nine; that the testimony came in under article eighteen and not under article nine.

Mr. Manager HICKS. I desire to state, Mr. President, that the counsel for the respondent has just informed me of the fact, (which I was not aware of,) that the testimony of Mr. Severance went in under article eighteen, as he thinks, by mistake; and certainly it did go in by mistake if it went in under that article,—that is, his testimony as to the mandamus case in Mankato. That testimony was intended to have been offered under article nine, and if offered under any other article there was a misapprehension; and we therefore request the Senator from Scott to strike out article nine from the order which he has submitted.

I desire also to state that the managers have offered no evidence under article twenty, because they were prohibited from so doing, not because they were not willing so to do.

Senator HINDS. The object of this order is to reach those matters which are not at all controverted. Now, if it is claimed that evidence

was given or intended to be given under article nine, I do not wish to include it in this order.

The PRESIDENT *pro tem.* The Senator can modify the proposed draft in accordance with that suggestion of the learned manager. It is now stated by the honorable managers that certain evidence of Judge Severance was intended to be introduced under article nine, and that they now desire to have it so stan l. Are the honorable managers satisfied with the order in other repects?

Mr. Manager HICKS. Yes, sir,—in connection with the statement that we were willing to offer evidence under article twenty; but of course we have offered none.

Senator CROOKS. I would ask now, in order to make this matter complete, are the counsel for the respondent satisfied with this?

Mr. ARCHANDER. Yes, there being no evidence under those articles, of course we do not object.

The PRESIDENT *pro tem.* I was about to suggest that the order as amended be now read, in order to see if both sides are satisfied.

Mr. Manager HICKS. I will state that the board of managers find, on examination, that the testimony of Judge Severance was introduced under article eighteen; we are therefore, willing to accept the order as originally offered by the Senator from Scott, including article nine.

Senator WILSON. I move, then, that the order be adopted.

Senator CROOKS. I move that it be read.

The PRESIDENT *pro tem.* It will first be read for the information of the court.

The CLERK then read the order, as follows:

The managers having produced no evidence in support of the charges contained in articles six, nine, thirteen, sixteen and twenty, and specifications three, six and eight of article seventeen,

Therefore, it is ordered that articles six, nine, thirteen, sixteen and twenty, and specifications three, six and eight of article seventeen be and the same are dismissed; and that the respondent be and he is relieved and exonerated from the charges therein contained.

The PRESIDENT *pro tem.* Is the order satisfactory to the honorable managers?

Mr. Manager COLLINS. Mr. President, the board of managers are not satisfied with this order in relation to article twenty. They have been prohibited by the Senate from introducing testimony under that article; and do not like now, to have it stated that we have failed to introduce testimony under that article. Again, Mr. President, I don't know what effect that might have in case of a further prosecution; I don't know but it would be a bar, and we do not like to be placed in a position of that kind. I do not like the idea of the Senate exonerating the respondent from the charges contained in that article when they have refused to permit us to introduce any testimony under it. How they can exonerate him from the charges contained in that article after having refused to allow any testimony to be given, is beyond my comprehension,

Mr. ALLIS, (to Mr. Manager Collins:) Will you find us guilty on that?

Senator CROOKS. Does the gentleman mean to make an objection now to the action of the Senate in regard to the twentieth article?

The PRESIDENT *pro tem.* The objection is in regard to the recital in the first part of the order and not to the order in its effect.

Senator CROOKS. It reflects on the action of the Senate, does it not?
Senator AAKER. Oh, no.
Senator CROOKS. Why don't it?

The PRESIDENT *pro tem.* The first part of the order recites that the managers have produced no testimony under certain articles; the manager states that they did offer testimony under article twenty but that it was excluded by the court.

Mr. ARCTANDER. No evidence was offered under it at all.

Mr. Manager DUNN. We were not allowed to offer any.

Senator LANGDON. I think the Senate have already acted on article twenty.

The PRESIDENT *pro tem.* Suppose, then, that article twenty be omitted from the order and that separate action be taken in regard to it if it is desired.

Mr. Manager COLLINS. Mr. President, I desire to state in response to the remark of Senator Crooks that I have no reflection to make upon the Senate. If I have said anything that is a reflection upon the Senate I desire to apologize, it was wholly unintentional. I of course make no reflection upon the Senate for any course they have taken; but I did not want any result here that would reflect upon the managers.

Senator CROOKS. I did not so understand it; I think the Senate are perfectly willing to assume the responsibility of their act in regard to that matter absolutely and not charge it upon the managers; that was not my intention.

Mr. Manager DUNN. That is all we desire, Senator.

The PRESIDENT *pro tem.* I would say, for the information of the court, that article twenty is stricken out from this proposed order, and the Secretary will again read it as it now stands, and the honorable managers and counsel for the respondent will see if it is satisfactory.

The Clerk then read the order offered by Senator Hinds as amended, as follows:

The managers having produced no evidence in support of the charges contained in articles six, nine, thirteen and sixteen, and specifications three, six and eight of article seventeen,

Therefore it is ordered: That articles six, nine, thirteen and sixteen, and specifications three, six and eight of article seventeen, be and the same are dismissed, and that the respondent be and he is relieved and exonorated from the charges therein contained.

Senator WILSON. Mr. President, I renew my motion.

The PRESIDENT *pro tem.* The honorable managers move action of the court as embodied in the proposed order; it is moved that the application be granted and that the order be entered as read by the clerk. Are you ready for the question?

Senator LANGDON. I call for the yeas and nays.

The PRESIDENT *pro tem.* Those in favor of granting the application of the honorable managers and that the order be entered, will vote aye as their names are called; opposed nay.

The Clerk then called the roll and announced no quorum present.

Senator CROOKS. Mr. President, I would ask that we take a recess for five minutes.

Senator HINDS. A recess is not necessary.

Senator CROOKS. I believe the Senators are in the building.

Senator POWERS. I move a call of the Senate.

The PRESIDENT. A call of the Senate is moved. Those in favor of the motion will vote aye; those opposed, no. The ayes have it.

The Sergeant-at-Arms will see that no one passes out. The Secretary will furnish a list of the absentees, and the Sergeant-at-Arms will call them in.

The clerk called the roll. On tho call the following Senators answered to their names:

Messrs. Aaker, Adams, Case, Castle, Crooks, Gilfillan C. D., Hinds, Howard, Johnson A. M., Langdon, Macdonald, Mealey, Morrison, Powers, Rice, Shalleen, Tiffany, White, Wilson.

The Sergeant-at-Arms having brought in some of the absentees.

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

The motion having been put, further proceedings under the call were dispensed with.

Senator HINDS. Mr. President, upon consultation with the managers and counsel for the respondent, I ask leave to withdraw the pending order, and to offer the following as a substitute.

The PRESIDENT *pro tem.* The Senator who offered the pending order asks leave to withdraw the same, and substitute therefor the one which will be read. If there is no objection the pending order will be considered withdrawn, and the one proposed will be read for the information of the Senate.

The clerk read as follows:

The managers having signified their intention to withdraw certain articles and charges, to-wit: articles six, nine, thirteen, sixteen, and specifications three, six, and eight; therefore, it is

Ordered, That articles six, nine, thirteen and sixteen, and specifications three, six and eight of article seventeen, be, and the same are, hereby dismissed,—and that the respondent be, and he is, relieved and exonerated from the charges therein contained.

And, further, the Senate, having by its roll heretofore adopted, refused to receive any evidence under the specifications of the managers to article twenty,

Ordered, That said article twenty be, and the same is, hereby dismissed, and the respondent discharged and exonerated therefrom.

Senator CROOKS. I move the adoption of the order.

The PRESIDENT. Senator Hinds submits the order which has been read, and moves its adoption.

Senator CROOKS. I second the motion.

The PRESIDENT *pro tem.* Is the Senate ready for the question? Those in favor of adopting the order will say aye.

Senator LANGDON. I call for the ayes and noes.

The PRESIDENT. The ayes and noes being called for, the secretary will call the roll. As many as are in favor of this motion will say aye; those opposed will say no.

The roll being called, there were yeas 20, and nays none, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Adams, Case, Castle, Crooks, Gilfillan C. D., Gilfillan J. B., Hinds, Howard, Johnson A. M., Langdon, Macdonald, Mealey, Morrison, Powers, Rice, Shalleen, Tiffany, White and Wilson.

The PRESIDENT. The question being upon the motion of Senator Hinds there were yeas twenty-two and nays none; so the motion prevails, and the order will be entered accordingly.

Senator POWERS. Mr. President, I now withdraw the resolution on your desk with reference to article twenty.

The PRESIDENT *pro tem.* Not having been presented, it will be considered as withdrawn. Senator Johnson also submits the following order, which will be read for the information of the Senate.

The CLERK. Senator A. M. Johnson offers the following resolution:

Ordered, that the respondent be, and he is hereby discharged from article 19.

Senator CROOKS. I second that motion.

Senator C. D. GILFILLAN. I move the Senate go into secret session.

Senator MACDONALD. I second the motion.

The PRESIDENT *pro tem.* It is moved that the Senate go into secret session.

Mr. ARCTANDER. Would it be allowable for counsel to be heard upon the proposed resolution before the Senate goes into secret session?

The PRESIDENT *pro tem.* Upon the motion submitted by Senator Johnson?

Mr. ARCTANDER. Yes, sir.

The PRESIDENT *pro tem.* The counsel for the respondent desire to be heard upon this question before the Senate go into secret session.

Senator CASTLE. I move that the respective counsel, representing the State and the respondent, should they desire to do so, be heard upon the resolution.

The PRESIDENT *pro tem.* Will the Senator from Ramsey, then, withdraw his motion for a moment?

Senator C. D. GILFILLAN. I withdraw my motion.

The PRESIDENT *pro tem.* The resolution, then, offered by Senator Johnson will be considered by the Senate. If the honorable managers, or the counsel for the respondent, desire to be heard they will now have the opportunity.

Mr. ARCTANDER. Do the managers desire to be heard?

Mr. Manager DUNN. We do not. We are willing to submit it.

Mr. ARCTANDER. The Managers not desiring to be heard, I simply ask leave to state to the Senate, that the respondent asks that this order be not adopted. Although respondent and his counsel are fully convinced that the proof has totally failed upon that charge, yet, at the same time, the respondent thinks that the charge having been found against him, and evidence having been adduced (even admitting that it does not come up to the mark, or prove any guilt at all, under that article), there is evidence there, that has a tendency to throw a slur upon his character morally, and he thinks that he ought to have a right to be vindicated upon that charge; to bring evidence forward, and show that the charge is false and malicious in its entirety, and show that the evidence that has been brought forward is not true. Now, the respondent desires, for his own personal benefit, that he should have an opportunity to vindicate himself upon it, maintaining, at the same time, that the order would be perfectly proper so far as the State is concerned, and

so far as the rights of any person accused are concerned, because we admit and maintain, and shall hereafter maintain, that the evidence adduced by the State does not tend to establish the charge, either beyond a reasonable doubt, or at all. Of course, we know that we are at the mercy of the Senate in this matter, as in any other, and that the Senate can do as it sees fit; but we simply desire to state the position of the respondent upon this point,—that he feels that it is due to him, if he can—as I know he can,—to refute that charge and the testimony that has been produced, and that he should have an opportunity so to do.

Mr. Manager HICKS. The managers would second the wishes of the counsel for the respondent in this matter, for the reason that if these charges can be disproved, it would be not only for the credit of the respondent, but for the credit of the State, and the credit of the civilization of the State. They ought to be disproved if it is possible to do so, and no one would rejoice more to see them disproved than the board of managers.

Senator POWERS. I hope under the circumstances that the Senator who opposed the resolution will withdraw it, and that will save a secret session.

The PRESIDENT *pro tem.* Do the counsel desire to be heard further?

Mr. Manager HICKS. No further.

Senator C. D. GILFILLAN. I now renew my motion that we go into secret session.

Senator CROOKS. I second that motion.

The PRESIDENT *pro tem.* It is moved and seconded that the Senate now go into secret session.

Senator WILSON. I would ask if it would not supercede the necessity for a secret session, if the motion is withdrawn?

Senator A. M. JOHNSON. Then I withdraw the motion, Mr. President.

Senator CROOKS. Do not do it, because I shall renew it.

The PRESIDENT *pro tem.* It is moved and seconded that the Senate now go into secret session. Are you ready for the question? Those in favor of it will say aye, those opposed no.

The ayes have it; the motion prevails.

The court here went into secret session.

When the doors were opened:

The PRESIDENT. The following is the result of the secret session. The clerk will read the resolution.

The clerk read the resolution, as follows:

Resolved, that in the judgment of this court the testimony introduced under article nineteen of the articles of impeachment does not sustain the charge contained therein, therefore,

Ordered, that the respondent be and hereby is discharged and exonerated from the said charge, and that the evidence with reference thereto be expunged from the record.

Mr. ARCTANDER. I suppose it is unnecessary for me to make application to the Senate; I desire to get one hundred blank subpœnaes issued.

The PRESIDENT. The clerk will issue them.

The CLERK. I have them here.

Mr. BRISBIN: Has there been any definite order with reference to the time for which an adjournment is to be made?

The PRESIDENT. That has been already fixed upon,—a week from next Tuesday.

Mr. BRISBIN. I beg pardon; I was not aware of the fact.

Mr. PRESIDENT. A week from next Tuesday at half past two.

Senator C. F. BUCK. I move that the Senate do now adjourn.

Mr. ARCTANDER. Will you allow me one question. Has any order been taken in secret session in regard to what number of witness it is deemed adviscable for the defence to produce each day or as to subpœnaing witness for Saturday or Monday.

The PRESIDENT. That is the only order.

Senator HINDS. It was mentioned in the Senate, Mr. President, that the respondent's counsel had suggested that they would try to have in attendance about ten witnesses each day, and there was no dissent, that I heard in regard to that theory; not to have all here at once, but a stated number for each suceeding day, commencing on Wednesday, I think.

Mr. ARCTANDER. We would like to know whether the Senate desires to subpœna any witness for Saturdays or Mondays, understanding as we do, that there have been no sessions on those days most of the time, so far. I don't know whether it would be desirable for us to provide for the attendance of witnesses on those days.

The PRESIDENT. That is a matter in regard to which nothing can be done.

Senator HINDS. I offer this as an order in regard to that matter.

The PRESIDENT. Does Senator Buck withdraw his motion to adjourn?

Senator C. F. BUCK. I do.

The PRESIDENT. The clerk will read the resolution.

The clerk read as follows :

Ordered. That the subpœnas issued for respondent's witnesses be made returnable at 2:30 o'clock P. M., as follows:

Eight witnesses for Wednesday, February 8th.
Eight witnesses for Thursday, February 9th.
Four witnesses for Friday, February 10th.
Ten witnesses for Monday, February 13th.
Ten witnesses for Tuesday, February 14th.
Ten witnesses for Wednesday, February 15th.
Ten witnesses for Thursday, February 16th.
Five witnesses for Friday, February 17th.

The PRESIDENT. The question being upon the adoption of the resolution offered by Senator Hinds, the Secretary will proceed to call the roll.

The clerk called the roll.

The roll being called, there were yeas 23, and nays none, as follows :

Messrs. Aaker, Adams, Case, Castle, Clement, Crooks, Gilfillan, C. D., Gilfillan, J. B., Johnson, A. M., Langdon, Macdonald, McLaughlin, Mealey, Morrison, Powers, Rice, Shalleen, Tiffany, White, Wilkins, Wilson.

The PRESIDENT. The chair would suggest that some might be subpœnaed for attendance on Tuesday.

Senator HINDS. Tuesday and Wednesday will be taken up by the opening arguments, and hence the examination of witnesses would be impossible.

Senator CROOKS. I would ask, Mr. President, for how many weeks that order provides?

Senator HINDS. It only provides for a two weeks' session; after that, if it be necessary, a further order can be made.

The PRESILENT. The chair would state to the counsel that there was considerable discussion with regard to this matter of witnesses, but no formal action was taken, but some conclusion was reached as to what the respondent is entitled to, and that information can be had from the Senators informally.

It is moved and seconded——

Senator HINDS. I would like to explain in regard to there being so few on Friday. The idea is that the first witnesses will be examined on Wednesday afternoon. Tuesday afternoon and Wednesday forenoon, the counsel suggested, would be taken up by the opening arguments, and perhaps other motions, and so forth. The first witnesses will be here on Wednesday afternoon, giving them an opportunity to come down on the morning train, instead of coming down the day before. That would be the time they would be wanted. Then the first eight witnesses would take up from Wednesday noon until Thursday noon; the next eight from Thursday noon to Friday noon, leaving only a small time Friday afternoon for the other four witnesses; taking it for granted, knowing what our experience has been in the past, that the court would not remain in session nor have a quorum on Saturday nor Mondry forenoon; so there is no provision made for Saturday afternoons or Monday forenoons for these two weeks.

The PRESIDENT. The question is on the adoption of the order.

Senator POWERS. I would like to ask the counsel for the respondent how that seems to satisfy them?

Mr. BRISBIN. It is agreeable, I believe.

The PRESIDENT. As many as are of the opinion the motion should prevail, will say aye; those of the contrary opinion, no. The ayes have it, the motion prevails.

Senator D. BUCK. I now move that the Senate adjourn.

The PRESIDENT. It is now moved and seconded that the Senate do adjourn. As many as are in favor of the motion will say aye; those opposed, nay. The ayes have it. The Senate now stands adjourned.