Chapter LXXIX.

IMPEACHMENT PROCEEDINGS NOT RESULTING IN TRIAL.

2486. The inquiry into the conduct of Judge George Turner in 1796.

In 1796 the House discontinued impeachment proceedings against a Territorial judge on assurance that he would be prosecuted in the courts.

Opinion of Attorney-General Charles Lee as to impeachment of a Territorial judge holding office during good behavior.

Advice of Attorney-General Lee as to mode of instituting and continuing impeachment proceedings.

On receipt of a petition containing charges against a judge, the House, in 1796, instituted an investigation.

On April 25, 1796,[1] a petition was presented in the House from sundry inhabitants of the county of St. Clair, in the Territory northwest of the Ohio River, stating certain grievances and inconveniences to which they had been subjected by the unwarrantable conduct of George Turner, one of the judges of the said Territory, in the exercise of his official duties, and praying that such relief might be granted in the premises as should seem meet to the wisdom of Congress. This petition specified that the judge held a court "unknown to and contrary to the laws of the Territory" at a remote and inconvenient place; that he imposed heavy fines and forfeitures; that he denied the right reserved to the people by the constitution of the Territory, especially as regarded the descent and conveyance of property, and the use of the French language; and that he managed the affairs of interstate persons to the damage of the heirs and creditors.

The House referred the petition to a committee composed of Messrs. Theophilus Bradbury, of Massachusetts; Nicholas Gilman, of New Hampshire; Thomas Hartley, of Pennsylvania; John Heath, of Virginia, and Alexander D. Orr, of Kentucky.

On May 5,[2] the committee were discharged from further consideration of the petition and the same was referred to the Attorney-General for his opinion thereon.

On May 9,[3] Charles Lee, the Attorney-General, transmitted his opinion:

> That the charges exhibited in the petition against Judge Turner, and especially the first, second, and fifth, are of so serious a nature as to require that a regular and fair examination into the truth of them should be made, in some judicial course of proceeding; and if he be convicted thereof, a removal from office may and ought to be a part of the punishment. His official tenure is during good behavior; and, consequently, he can not be removed until he be lawfully convicted of some malversation in office. A judge may be prosecuted in three modes for official misdemeanors or crimes: by information, or by an indictment before an ordinary court, or by impeachment before the Senate of the United States. The last mode, being the most solemn, seems, in general cases, to be best suited to the trial of so high and important an officer; but, in the present instance, it will be found very inconvenient, if not entirely impracticable, on account of the immense distance of the residence of the witnesses from this city [Philadelphia]. In the prosecution of an impeachment, such rules must be observed as are essential to justice; and, if not exactly the same as those which are practiced in ordinary courts, they must be analogous, and as nearly similar to them as forms will permit. Thus, before an impeachment is sent to the Senate, witnesses must be examined, in solemn form, respecting the charges, before a committee of the House of Representatives, to be appointed for that purpose, as in a case of indictment witnesses are examined by a grand jury. Upon the trial the witnesses must give their testimony before the Senate, as in a case of indictment they do before the ordinary court and petit jury; so, also, perhaps, it would be proper that some responsible person or persons should undertake to answer the costs of trial to the accused, in the event of his acquittal. It ought to be remarked that, if the mode of impeachment be deemed preferable, the aforesaid petition, subscribed by forty-nine citizens, may be regarded as sufficient inducement to the House to appoint a committee of inquiry, with authority to examine witnesses and report the substance of their testimony respecting the charges therein set forth, at the present or next session; and, if the report of the testimony will warrant an impeachment, articles are to be directed to be drawn and presented to the Senate, who will appoint a time of trial, giving reasonable notice thereof to the accused and to the accusers, etc.
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> However, the Attorney-General is of opinion that it will be more advisable, on account of the expense, the delay, the certain difficulty, if not impossibility, of obtaining the attendance here of the witnesses who reside in the Territory northwest of the Ohio, about the distance of 1,500 miles, that the prosecution should not be carried on by impeachment, but by information on indictment

[1] First session Fourth Congress, Journal, p. 522; American State Papers (miscellaneous), Vol. I, p. 151.

[2] Journal, p. 539.

[3] American State Papers (miscellaneous), Vol. I, p. 151.

before the supreme court of that Territory, which is competent to the trial; and he prays leave to inform the House that, in consequence of affidavits stating complaints against Judge Turner, of oppressions and gross violations of private property, under color of his office, which have been lately transmitted to the President of the United States, the Secretary of State has been by him instructed to give orders to Governor St. Clair to take the necessary measures for bringing that officer to a fair trial, respecting those charges, before the court of that Territory, according to the laws of the land; which course is also recommended to be pursued relative to the matters charged in said petition.

Judge Turner was one of three supreme court judges, "any two of whom to form a court, who shall have a common-law jurisdiction, * * * and their commissions shall continue in force during good behavior." [1]

The report of the Attorney-General was, on May 10,[2] referred to a committee composed of the same members originally appointed to consider the petition, and they were directed to "examine the matter thereof, and report the same, with their opinion thereupon, to the House."

On February 16, 1797,[3] a memorial was presented from Judge Turner praying that the House enter upon an investigation of the allegations and charges brought against him in the petition. On February 22 [4] this memorial was referred to the same committee.

On February 27 [5] that committee reported that the case should come to a hearing before the court of the Territory, where the judge would have an opportunity of defending himself.

The report was laid on the table and not acted on further.[6]

2487. The inquiry into the conduct of Judge Peter B. Bruin, in 1808.

Instance of proceedings looking to the impeachment of a judge of a Territory.

The investigation of Judge Bruin's conduct was set in motion by charges preferred by a Territorial legislature.

The House in the Bruin case declined to impeach before it had made an investigation by its own committee.

Instance wherein a Delegate was made chairman of a committee to investigate the conduct of a judge.

On April 11, 1808,[7] the Speaker presented to the House sundry resolutions of the legislative council and house of representatives of the Mississippi Territory, preferring certain charges against Peter B. Bruin, presiding judge of the Territory, and instructing Mr. George Poindexter, Delegate in Congress from the said Territory, to impeach the said judge, and pledging themselves, "in behalf of the people of this Territory, to substantiate and make good" the said charges, which were specified as "neglect of duty and drunkenness on the bench."

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[1] Organic law of Northwest Territory, 1 Stat. L., pp. 51, 286.

[2] Journal, p. 548.

[3] Second session, Journal, p. 701.

[4] Journal, p. 714.

[5] Journal, p. 724; Annals, p. 2320. 8

[6] It appears that Jonathan Return Meigs was appointed Judge on February 12, 1798, but the records of the State Department do not show whose place he took. The appointment of Judge Meigs was made two years after the proceedings in the House against Judge Turner.

[7] First session Tenth Congress, Journal, p. 204; Annals, p. 2068; American State Papers (miscellaneous), Vol. I, pp. 921, 922.

Mr. Poindexter thereupon presented resolutions as follows:

Resolved, That a committee be appointed to prepare and report articles of impeachment against Peter B. Bruin, one of the judges, of the superior court of the Mississippi Territory; and that the said committee have power to send for persons, papers, and records.

In the debate it was objected by Mr. Timothy Pitkin, Jr., of Connecticut, that it would hardly be dignified for the Congress to proceed to an impeachment on the authority of a resolution of the legislature of a State or Territory. A committee should first be appointed to inquire into the propriety of impeaching. Mr. John Rhea, of Tennessee, drew a distinction between the legislature of a State and that of a Territory, and, furthermore, did not consider the resolutions of a legislature conclusive evidence of fact.

Thereupon Mr. Poindexter modified his resolution by striking out the words "prepare and report," and inserting the words "inquire into the expediency of preferring." He further stated that he had seen Judge Bruin on the bench in a state of intoxication.

On April 18[1] the House further amended the resolution, and agreed to it, as follows:

Resolved, That a committee be appointed to inquire into the conduct of Peter B. Bruin, a judge of the superior court of the Mississippi Territory, and report whether, in their opinion, he hath so acted, in his official capacity, as to require the interposition of the Constitutional powers of this House; and that the said committee have power to send for persons, papers, and records.

The committee were appointed as follows: Messrs. Poindexter, Samuel W. Dana, of Connecticut; Jesse Wharton, of Tennessee; Benjamin Howard, of Kentucky; Jeremiah Morrow, of Ohio; Joseph Calhoun, of South Carolina; and John Campbell, of Maryland.

On April 21[2] Mr. Morrow reported a resolution which, after amendment, was agreed to as follows:

Resolved, That George Poindexter, chairman of the said committee, be authorized to cause to be taken before a magistrate or other proper officer such depositions in relation to the official conduct of the said judge as, in his judgment, may be material to the inquiry, having first notified the said Bruin of the time and place, or places, of taking such depositions, so that he may give his attendance; and that the depositions so taken be laid before Congress at their next session.

On April 25 this session of Congress adjourned.

It does not appear that the matter was again taken up. On March 7, 1809, as the records of the State Department show, Francis Xavier Martin was appointed judge, indicating the death or resignation of Judge Bruin.

It appears that the judges of the court of Mississippi Territory, like the judges of the territory northwest of the Ohio, held office "during good behavior," such being the provision of the statutes.[3]

2488. The inquiry into the conduct of Judge Harry Toulmin, in 1811. Instance of proceedings looking to the impeachment of a judge of a Territory.

The inquiry as to Judge Toulmin was set in motion by action of a grand jury forwarded by a Territorial legislature.

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[1] Journal, p. 277; Annals, p. 2189.

[2] Journal, p. 286; Annals, p. 2251.

[3] 1 Stat. L., pp. 51, 550.

In Judge Toulmin's case the House, after investigating in a preliminary way, declined to order a formal investigation.

On December 16, 1811,[1] the Speaker laid before the House a letter from Cowles Mead, speaker of the house of representatives of the Mississippi Territory, inclosing the copy of a presentment against Harry Toulmin, judge of the superior court for the Washington district, in said Territory[2] made by the grand jury of Baldwin County, specifying charges against the said judge, which were read and ordered to lie on the table.

Mr. George Poindexter, Delegate from Mississippi Territory, also presented a copy of the same presentment; which was ordered to lie on the table.

On December 19[3] Mr. Poindexter submitted this resolution:

Resolved, That a committee be appointed to inquire into the conduct of Harry Toulmin, judge of the district of Washington, in the Mississippi Territory, and report whether, in their opinion, he hath so acted, in his official capacity, as to require the interposition of the constitutional powers of this House; and that said committee have power to send for persons and papers.

On December 21[4] Mr. Poindexter withdrew the resolution, and moved that the letter of Cowles Mead, with the accompanying papers, be referred to a select committee to consider and report thereon to the House.

The committee was appointed as follows: Messrs. Poindexter, John Rhea, of Tennessee, John C. Calhoun, of South Carolina; John Taliaferro, of Virginia; Abijah Bigelow, of Massachusetts, and Epaphroditus Champion, of Connecticut.

On January 14, 1812,[5] sundry documents in refutation of the charges were presented and referred to the committee. Also on February 1[6] other papers of a similar tenor were presented and referred. On March 19 and 25 also, similar papers were referred.

On March 11[7] a motion of Mr. Rhea that the committee be discharged from consideration of the subject was decided in the negative, and on April 13 a motion that the committee be directed to report was likewise decided in the negative.

On May 21[8] Mr. Poindexter, from the committee, reported—

That the charges contained in the presentment aforesaid have not been supported by evidence; and from the best information your committee have been enabled to obtain on the subject it appears that the official conduct of Judge Toulmin has been characterized by a vigilant attention to the duties of his station, and an inflexible zeal for the preservation of the public peace and tranquillity of the country over which his judicial authority extends. They therefore recommend the following resolution:

"Resolved, That it is unnecessary to take any further proceeding on the presentment of the grand jury of Baldwin County, in the Mississippi Territory, against Judge Toulmin."

This report was concurred in by the House.

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[1] First session Twelfth Congress, Journal, p. 67; Annals, p. 522; American State Papers, Vol. II (Miscellaneous), p. 162; Annals, p. 2162.

[2] The Mississippi judges were created by statute which made the tenure during good behavior. (1 Stat. L., pp. 51, 550; 2 Stat. L., pp. 301, 564.)

[3] Journal, p. 78; Annals, p. 559.

[4] Journal, p. 87; Annals, p. 567.

[5] Journal, p. 125.

[6] Journal, pp. 155, 255, 265.

[7] Journal, pp. 242, 288.

[8] Journal, p. 347; Annals, p. 1436.

2489. The inquiry into the conduct of Judges William F. Van Ness, Mathias B. Tallmadge, and William Stephens, in 1818.

Judge William Stephens having resigned his office, the House discontinued its inquiry into his conduct.

In 1818 the House inquired into the official conduct of Judges William P. Van Ness and Mathias B. Tallmadge, of the district courts of New York, and William Stephens of the district court of Georgia.[1] The committee found that Judge Van Ness had shown some remissness in not exercising constant vigilance over the money of the court, which had been purloined by the clerk, and in not vigorously enforcing the provisions of the law and rules of the court. There were also complaints against some decisions and orders of Judge Van Ness, "but the respect which this committee entertains for the constitutional rights of a judge, and for the laws which provide adequate remedies for any errors he may commit, forbids their questioning any judicial opinions." The committee say that they have discovered nothing which furnishes "any ground for the constitutional interposition of the House."[2] The inquiry into the conduct of Judge Van Ness was instituted by a resolution reported from the Judiciary Committee, who had been examining the conduct of the clerk of the court, and found some circumstances connected with the judge's conduct which justified investigation.[3] And the names of Judges Tallmadge and Stephens had been added by way of amendment to the resolution of inquiry.

On November 24, 1818,[4] on motion of Mr. John C. Spencer, of New York, it was

Ordered, That the committee appointed at the last session of Congress, to inquire into the official conduct of certain judges of the courts of the United States, be discharged from so much of their duty as relates to the conduct of William Stephens, who has resigned his office of judge of the court of the United States for the district of Georgia.

On February 17, 1819,[5] Mr. Spencer reported on the case of Judge Tallmadge, who was charged with having omitted to hold the terms of the district court for which he was appointed, according to law. The committee found that at certain times he had omitted sessions, but say:

It appears satisfactorily, from the testimony of several physicians, and of the Hon. Nathan Sanford, given on a former inquiry into the conduct of Judge Tallmadge, that in 1810 his health became extremely delicate, and that very great exertion of body, or any unusual agitation of mind, invariably produced severe sickness, so as to disqualify him for any official duties; and that his life was prolonged by visiting a more genial climate in the winter season.

On entering upon the duties of his office in 1805, Judge Tallmadge encountered a mass of business which had accumulated from the ill health and the death of his predecessor, and from the want of any judge in the court for the time immediately preceding his appointment. The sickness of Judge Patterson, who should have presided in the circuit court, materially increased the labors of the district judge.

The committee are of opinion that there is nothing established in the official conduct of Judge Tallmadge to justify the constitutional interposition of the House.

The report was laid on the table.

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[1] First session Fifteenth Congress, Journal, p. 447; Annals, p. 1715.

[2] Second session Fifteenth Congress, Report No. 136.

[3] Annals, p. 1715.

[4] Second session Fifteenth Congress, Journal, p. 35; Annals, p. 313.

[5] Journal, p. 279; Annals, p. 1222.

2490. The investigations into the conduct of Judge Joseph L. Smith, in 1825 and 1826.

The House decided to investigate the conduct of Judge Smith, on assurance of a Territorial Delegate that the person making the charges was reliable.

Instance wherein charges were presented against a judge in three Congresses.

On February 3, 1825,[1] Mr. Richard K. Call, Delegate from Florida Territory, presented this resolution:

Resolved, That the Committee on the Judiciary be instructed to inquire whether either of the judges of the district courts of Florida have received fees for their services not authorized by law; and, if any, what other malpractices have been committed by the said judges, or either of them; and that the said committee be authorized to compel the attendance of persons and the production of papers to promote this investigation.

In support of this resolution Mr. Call presented a letter addressed to himself by Edgar Macon, United States attorney for East Florida, in response to a request made by Mr. Call for information.

At the May term of the superior court of East Florida—

Says Mr. Macon's letter—

in 1824 Judge Smith established a number of rules for the government of the practice of his court, by which provision is made for the transacting and doing of much business in vacation, which previously had been done in term, viz, such as making orders for commissions to take foreign testimony, and hearing and deciding on motions for amending pleadings, etc., and other matters and questions generally aiding in the usual progress of a suit; for all which services, when performed, Judge Smith has charged fees. I have paid them, and I believe every attorney of his (Judge Smith's) court has done the game. It is proper to mention that in the United States and Territorial cases Judge Smith has never charged fees.

Mr. Call vouched for the reliability of Mr. Macon's word, and asked that the resolution be agreed to.

The House, without division, agreed to the resolution.

On February 28[2] Mr. William Plumer, jr., of New Hampshire, from the Committee on the Judiciary, submitted a report, saying that the committee were—

not able to perceive how any law of the Territory can authorize the judge to receive any compensation in the shape of fees for his official services in the place which he holds under the authority of the United States. The distance of the parties, however, from the seat of government, renders it wholly impracticable to make any investigation into the particular circumstances of the case during the present session of Congress. The committee therefore pray that they may be discharged from any further consideration of the resolution.

The report was read and laid on the table.

At the beginning of the next Congress on December 27, 1825,[3] Mr. Joseph M. White, Delegate from Florida, presented the petition of Joseph L. Smith, judge of the supreme court of said Territory, praying that his conduct as judge might be

[1] Second session Eighteenth Congress, Journal, pp. 197, 198; Debates, pp. 438, 439.

[2] Journal, p. 279; Report No. 87.

[3] First session Nineteenth Congress, Journal, p. 93.

inquired into, and that his character might be freed from the public imputation to which it had been subjected.

Mr. White also presented the petition of Edgar Macon charging Judge Smith with malfeasance and corruption in office, and praying that the charges might be investigated by Congress.

These papers were ordered referred to the Judiciary Committee.

On January 9[1] Mr. White presented a memorial of the legislative council of Florida soliciting an investigation of the charges preferred against Judge Smith.

This paper also was referred to the Judiciary Committee.

On February 7, 1826,[2] Mr. John C. Wright, of Ohio, from the Committee on the Judiciary, reported that the committee had examined the petition, memorial, and evidence offered, and asked that they be discharged from the further consideration of the subject.

This report was agreed to by the House.

On January 11, 1830,[3] Mr. White presented a memorial addressed to the President of the United States, and sundry documents signed by the citizens of East Florida, charging Judge Smith with tyrannical and oppressive conduct, and imploring his removal from the office of judge.

These papers were referred to the Judiciary Committee, but it does not appear that they were ever reported on.[4]

2491. The investigations into the conduct of Judge Buckner Thurston, in 1825 and 1837.

The investigations into the conduct of Judge Thurston were set in motion by memorials.

Form of memorial praying for the impeachment of Judge Thurston, in 1837.

The House sometimes refers for preliminary inquiry a memorial praying impeachment and sometimes orders investigation at once.

In 1825 the House preferred that charges against a judge should be investigated by a committee.

During the investigation of Judge Thurston with a view to impeachment he was present and cross-examined witnesses.

On February 21, 1825,[5] Mr. James Strong, of New York, presented a petition of John P. Van Ness complaining of the official conduct of Buckner Thurston, one of the associate judges of the Circuit Court of the United States for the District of Columbia, and praying that the subject of his complaint might be inquired into by Congress.

The petition was referred to the Committee on the District of Columbia, but on February 24 the reference was changed to the Judiciary Committee.

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[1] Journal, p. 129.

[2] Journal, p. 233.

[3] First session Twenty-first Congress, Journal, p. 146.

[4] The judge of the supreme court of Florida held his office by virtue of a statute, and for the term of four years. (3 Stat. L., p. 753; 4 Stat. L., p. 45.)

[5] Second session Eighteenth Congress, Journal, pp. 254, 267.

On February 28[1] Mr. William Plumer, Jr., of New Hampshire, from the Judiciary Committee, submitted a report that the committee—

Having investigated the matter of the memorial, they are unanimously of opinion that there is nothing in the conduct of Judge Thurston which requires the interposition or reprehension of this House. They therefore ask to be discharged from the further consideration of this memorial.

The report was laid on the table.

On January 30, 1837,[2] the Speaker presented a memorial of Richard S. Coxe and William L. Brent, of the District of Columbia, praying an investigation into the judicial conduct of Judge Thurston. The memorial in part was as follows:

Should this memorial be referred to the appropriate committee we pledge ourselves to prove to the satisfaction of Congress—

1. That Judge Thurston is grossly and avowedly ignorant and regardless of the law which it is his duty to administer.

2. That he is habitually inattentive and neglectful in the discharge of his official duties.

3. That his deportment on the bench is rude, insolent, and undignified, and calculated to bring the administration of the law into contempt.

4. That he is habitually rude and insolent toward his brethren on the bench, to their great annoyance and to the hindrance of justice.

5. That he is habitually rude, insolent, and quarrelsome toward the members of the bar; constantly in a state of irritation and excitement, applying to them, without cause or provocation, the most harsh and vulgar epithets in our vocabulary.

6. That, in these different modes, he incessantly interferes with the administration of justice, gratifies his own personal passions at the expense of truth and justice, involves the Government and the community in enormous expenses and vexatious delays, and employs his official power and station in outraging the feelings and illegally and unjustly injuring those who may accidentally become the objects of his infuriate resentment.

7. That on several occasions he has, from the bench, actually invited members of the bar to leave the court and enter into a personal encounter with him.

8. That he is, from want of professional information, from his neglect of his duties, from his furious and ungovernable temper, wholly unfit for the station he occupies.

These general heads of accusations, with all the necessary details of time, place, person, and circumstance, we tender ourselves ready and prepared to establish by the most plenary proof.[3]

On January 31[4] Mr. Francis Thomas, of Maryland, proposed this resolution, which was agreed to by the House:

Resolved, That the Committee on the Judiciary be authorized to send for persons and papers, and to inquire into the truth of the charges made in the memorial of William L. Brent and Richard S. Coxe, complaining of the official conduct of Buckner Thruston, one of the judges of the circuit court of the United States for the District of Columbia.

On March 3,[5] the last day of the Congress, Mr. Thomas reported from the committee, without recommendation of any kind, the testimony taken before the committee. The report was ordered to lie on the table and be printed.

The report shows that many witnesses were examined, and that Judge Thurston was permitted to cross-examine.

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[1] Journal, p. 279; Report, No. 85.

[2] Second session Twenty-fourth Congress, Journal, pp. 316, 317.

[3] The memorialists subscribed their names to the memorial, but the signatures were not attested.

[4] Journal, p. 332.

[5] Journal, p. 586; Report No. 327.

Judge W. Cranch, an associate of Judge Thurston, having been called upon to testify in this case, objected on behalf of himself and Judge Morsell to giving testimony, on account of their official relations to the respondent, but the committee overruled this objection.

It does not appear that any action was taken further than the printing of the report.

The records of the State Department indicate that Judge Thurston remained in office until he died, on August 30, 1845. On October 3, 1845, James Dunlop was appointed judge.

2492. The investigation into the conduct of Judge Alfred Conkling in 1829.

In the case of Judge Conkling the memorial preferring charges was referred to the Judiciary Committee for examination before an investigation was ordered.

Views of the minority of the Judiciary Committee, in 1830, as to offenses amounting to high misdemeanor.

On February 16, 1829,[1] Mr. Selah R. Hobbie, of New York, presented a memorial of Martha Bradstreet, of the State of New York, preferring charges against Alfred Conkling, judge of the district court of the United States for the northern district of New York, as grounds for an impeachment of the said judge.

This memorial was referred to the Committee on the Judiciary.

On February 23 the House ordered the committee discharged from consideration of the memorial and gave the memorialist leave to withdraw.

In the next Congress, on February 22, 1830,[2] on motion of Mr. Churchill C. Cambreleng, of New York, it was ordered that the memorial of Martha Bradstreet in relation to Judge Conkling be referred to the Committee on the Judiciary.

On March 22[3] Mr. Cambreleng presented a memorial of Martha Bradstreet, preferring additional charges and praying to be permitted to substantiate them. This memorial was referred to the Judiciary Committee.

On March 26[4] the Judiciary Committee were granted leave to sit during sessions of the House for the purpose of investigating the matters set forth in the memorial.

On April 3[5] Mr. Charles A. Wickliffe, of Kentucky, from the Committee on the Judiciary made an unfavorable report on the memorial, finding no cause for impeachment. This report was concurred in by all the members of the committee except Mr. Warren R. Davis, of South Carolina. Presumably those concurring were Messrs. James Buchanan, of Pennsylvania; Henry R. Storrs, of New York; Thomas T. Bouldin, of Virginia; William W. Ellsworth, of Connecticut, and Edward D. White, of Louisiana. Mr. Davis dissented, and on April 8[6] filed minority views. He states in his views that the memorialist presented thirty-three charges for misdemeanors in office. The majority had concluded that there was nothing in the

[1] Second session Twentieth Congress, Journal, pp. 291, 292, 324.

[2] First session Twenty-first Congress, Journal, 319.

[3] Journal, p. 447.

[4] Journal, p. 462.

[5] Journal, p. 494.

[6] Journal, p. 514; Report No. 342.

charges or in the testimony adduced to support them that required the constitutional interposition of the House. The minority believed that two charges were supported by adequate testimony, and if true amounted to a high misdemeanor:

(*a*) His causing the name of John L. Tillinghast to be struck from the rolls of the said court, for having expressed out of court his opinion of the said Judge Conkling.

(*b*) His having thereby illegally and unconstitutionally assumed to himself the power to act as judge in his own cause. And, in pursuit of his object, violated the immemorial course and practice of courts of justice, and disregarded even the form of law. And this for the mere gratification of his private revenge.

Mr. Davis argued at some length in support of his claim that the two specifications, as supported by the evidence, contained matter amounting to misdemeanor in office.

The report of the majority was laid on the table, and no further action appears.

2493. The investigation of the conduct of Benjamin Johnson, a judge of the superior court of the Territory of Arkansas, in 1833.

In 1833 the Judiciary Committee held that a Territorial judge was not a civil officer of the United States within the meaning of the Constitution.

On January 15, 1833,[1] the Speaker submitted to the House a letter from Egbert Harris, of the Territory of Arkansas, inclosing charges and specifications made by William Cummins against Benjamin Johnson, one of the judges of the superior court of the Territory of Arkansas.

Mr. Ambrose H. Sevier, Delegate from Arkansas, presented sundry documents exculpatory of Judge Johnson.

The letter of Mr. Harris and the other papers were referred to the Committee on the Judiciary.

On February 8[2] Mr. John Bell, of Tennessee, presented the report of the committee on the memorial. The committee included besides Mr. Bell, Messrs.William W. Ellsworth, of Connecticut; Henry Daniel, of Kentucky; Thomas F. Foster, of Georgia; Wm. F. Gordon, of Virginia; Samuel Beardsley, of New York, and Richard Coulter, of Pennsylvania.

The report first dealt with a preliminary question:

> A majority of the committee are strongly inclined to the opinion that such an officer is not a proper subject of trial by impeachment. Some of the reasons upon which that opinion may be supported will be stated.
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> The Constitution, in Article II, section 4, provides that "all civil officers of the United States shall be removed from office by impeachment." The institution by Congress of those political corporations, denominated, in the language of our legislation upon that subject, Territorial governments, is only authorized by a very liberal construction of the general power given by the Constitution to Congress over the public domain. But, admitting that exercise of power to be well enough founded, still, can a judge of such a government be said to be an officer of the United States within the meaning of the clause already quoted? Should the doubt thrown out by the committee upon this point appear to the House to be without reasonable foundation, they think they will be fully sustained in the opinion, that, whether liable to impeachment or not, the practice of impeaching subordinate officers, and especially such as hold their offices by a tenure not more firm and durable than the judge of a Territorial court, would

[1] Second session Twenty-second Congress, Journal, p. 179.

[2] Journal, p. 290; Report No. 88.

soon be found highly inconvenient and injurious to the public interest. The judge whose conduct in the present instance is alleged to be such as to call for the exercise of the impeaching power of the House, holds his office for a term of four years only, and may, by the express provision of the act of Congress establishing his office, be removed at any time within that term by the President. The trial by impeachment is the highest and most solemn in its nature known in the administration of public justice. It is established for high political purposes, and would seem to be proper only against judges who hold their offices during good behavior, and other high officers of the Government, for such crimes or misdemeanors as the public service and interest require to be punished by removal from office.

Proceeding to the merits of the case, the report says:

The general charges against him are favoritism or partiality to particular counsel in the trial of causes, irritability of temper and rudeness on the bench toward his brother judges and the bar; incapacity, manifested by a vacillating and inconsistent course of judicial decision, and habitual intemperance.

The committee did not find these charges well sustained, and furthermore they found decided and unequivocal testimony in favor of the judge.

The report was laid on the table.

2494. The investigation into the conduct of Judge F. K. Lawrence, in 1839.

The proceedings in the case of Judge Lawrence were set in motion by a memorial setting forth specific charges.

The memorial setting forth charges against Judge Lawrence was referred for examination before an investigation was ordered.

The House referred the charges made against Judge Lawrence, in 1839, to a select committee instead of to the Judiciary Committee.

A select committee recommended the impeachment of Judge P. K. Lawrence, in 1839.

The investigation into the conduct of Judge P. K. Lawrence, in 1839, was entirely ex parte.

On January 7, 1839,[1] Mr. Henry Johnson, of Louisiana, presented a memorial of Duncan N. Hennen, a citizen of the State of Louisiana, making charges of high crimes and misdemeanors against P. K. Lawrence, judge of the district court of the United States for the eastern district of Louisiana, and praying that the House of Representatives would inquire into the facts whether the said Judge Lawrence, in the exercise of the high trust and confidence reposed in him, had not been guilty of corrupt, malicious, and dangerous abuses of power.

The memorial set forth specifically that the memorialist had been appointed clerk of the said court in 1834, and had served until May 18, 1838, when Judge Lawrence sent him a letter of removal and informing him that John Winthrop had been appointed in his place; that the memorialist, being advised that Judge Lawrence had acted without power, refused to deliver the records of the court to the said Winthrop; that Judge Lawrence had issued a writ without authentication of the seal of the court, commanding the marshal to seize the records; that the memorialist, as clerk of the district court, became ex officio clerk of the circuit court for the ninth circuit; that on May 21, 1838, both the memorialist and the said

[1] Third session Twenty-fifth Congress, Journal p. 222; Globe, p. 404; Report, No. 272.

Winthrop presented themselves, each as clerk, before the circuit court, Judge John McKinley and the aforesaid Judge Lawrence, sitting; that the memorialist objected, when arguments were to be heard on the rival claims, to Judge Lawrence sitting in the matter, (*a*) because he professed to have formed and delivered an opinion on the question; (*b*) because, from expressions in the letter of removal, he had confessed partiality toward the said Winthrop; (*c*) because there was no need of the said Judge Lawrence passing on the case since memorialist was willing to acquiesce if Judge McKinley held the removal legal; (*d*) and because a difference of opinion between the judges would lead to adjournment of court until a final decision by the Supreme Court of the United States; that Judge Lawrence persisted in sitting, and there resulted a difference of opinion between him and his associates; that Judge McKinley held that the removal was illegal and that the memorialist was de jure and de facto clerk, to which Judge Lawrence dissented; that the circuit court adjourned without transaction of business; that the memorialist continued in possession of the seals and records of both courts, and that the records of the district court were not seized by the marshal under the writ until the next June; that in November 19, 1838, at the holding of the circuit court, in the absence of Judge McKinley, Judge Lawrence declined to allow the memorialist's deputy to perform the duties of clerk, but made a rule in a civil cause calling upon the deputy to produce the records, and on the succeeding day committed the deputy to prison for alleged contempt; that after release by habeas corpus the deputy was a second time committed for refusing to deliver the records; that the said proceedings were in violation of the act of April 29, 1802, providing "that imprisonment is not allowed, nor punishment in any case inflicted, where the judges of the said court are divided in opinion upon the question touching such imprisonment;" that the said proceedings of Judge Lawrence to take the records were made after the Supreme Court of the United States had granted a rule requiring Judge Lawrence to show cause why the memorialist should not be allowed to discharge the duties of the office; that Judge Lawrence had caused a new seal, not in form required by law, to be made; that Judge Lawrence, on November 26, 1838, had issued a writ authorizing the seizure of the records of the circuit court wheresoever found, thus illegally authorizing a seizure out of his district; that Judge Lawrence had refused to obey a mandate of the Supreme Court in a certain case, giving out that the Supreme Court had grossly mistaken the law; that he had illegally absented himself from his district; that he had for five years been notoriously and inveterately addicted to the intemperate use of ardent spirits, and that by his course in regard to the clerkship he had suspended the administration of justice for a judicial year.

This memorial was signed by the memorialist, but the signature was not attested.

Mr. Johnson asked that the memorial be referred to a select committee. Although it was suggested that the Judiciary Committee should consider it, Mr. Johnson's motion was agreed to, and the committee was composed of Mr. Johnson and Messrs. John Pope, of Kentucky; Thomas T. Whittlesey, of Connecticut; John Campbell, of South Carolina; George W. Owens, of Georgia; William B. Calhoun, of Massachusetts; and George C. Dromgoole, of Virginia.

On January 21,[1] on motion of Mr. Johnson, it was:

Resolved, That the select committee appointed to inquire into the charges of high crimes and misdemeanors against P. K. Lawrence, judge of the district court of the United States for the State of Louisiana, be authorized to send for persons and papers.

On February 11,[2] Mr. Johnson submitted the report of the committee. This report consisted largely of affidavits and records of testimony taken in Louisiana. It is all ex parte. The report concludes:

That, in consequence of the evidence * * * they are of the opinion that Philip K. Lawrence, judge of the district court of the United States for the eastern and western districts of Louisiana, be impeached for high misdemeanors in office.

It was ordered that the report be considered on February 21, but the Congress was nearing its close and no action by the House appears.

On September 3, 1841, as the records of the State Department show, Theodore H. McCaleb was appointed judge of this district.

2495. The investigations into the conduct of John C. Watrous, United States judge for the district of Texas.

The House, in 1852, on the strength of a memorial setting forth charges, investigated the conduct of Judge Watrous with a result favorable to him.

In the investigation of 1852 Judge Watrous, the accused, was permitted to appear before the committee with counsel. (Footnote.)

The conduct of Judge Watrous was the subject of reports, favorable and unfavorable, in four Congresses.

On February 13, 1852,[3] Mr. Abraham W. Venable, of North Carolina, from the committee on the Judiciary reported a resolution as follows:

Resolved, That the Committee on the Judiciary be authorized to send for persons and papers, with authority to examine witnesses,[4] under oath, in relation to the charges made against John C. Watrous, judge of the United States court for the district of Texas.

Mr. Venable explained that a memorial of William Alexander, a lawyer of Texas, had been presented to the House, charging Judge Watrous with practicing law and receiving fees in the State of Texas touching matters which had come before and been decided upon by himself, with adjudicating cases in which he was personally interested, and with certain violations of the laws of Texas militating against his judicial purity.

The resolution was agreed to by the House.

On August 27[5] the Speaker laid before the House a letter from Judge Watrous, wherein he stated that the pending inquiry was preventing the decision of important cases in his court, and asked for speedy action by the House. This communication

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[1] Journal, p. 332.

[2] Journal, p. 521; Report, No. 272.

[3] First session Thirty-second Congress, Journal, p. 348; Globe, p. 560.

[4] In his answer filed with the Judiciary Committee in 1858 (first session Thirty-fifth Congress, House Report No. 540, p. 18) Judge Watrous makes a statement which shows that during these proceedings in 1852 he was present with counsel before the committee. It also appears that witnesses were examined at that time (p. 437 of Report No. 540).

[5] Journal, p. 1087; Globe, p. 2382.

was referred to the Committee on the Judiciary, and then, on motion of Mr. Richardson Scurry, of Texas, it was

Ordered, That the Committee on the Judiciary have leave to report upon the case of the said Judge John C. Watrous at any time.

At the next session of Congress, on January 13, 1853,[1] Mr. William A. Howard, of Michigan, presented additional evidence in the case, which was referred to the Judiciary Committee.

On February 28,[2] Mr. Venable submitted the report of the committee, which was as follows:

That after an examination of much documentary evidence, as well as many witnesses, summoned from Texas, they do not recommend that articles of impeachment be directed by this House against the said John C. Watrous.

This report was laid on the table.

2496. The Watrous investigation continued.

In the investigation of 1856 the Judiciary Committee made a report favoring impeachment on the strength of memorials and without the power to compel testimony being given by the House.

The memorials submitting the charges against Judge Watrous, in 1856, were accompanied by a large amount of documentary evidence.

The investigation of the conduct of Judge Watrous, in 1856, was conducted entirely ex parte, but the evidence was documentary and voluminous.

In the Watrous investigation of 1856 the Judiciary Committee, following precedents, reported the evidence but made no specific charges.

The Watrous report of 1856 led to a debate as to the propriety of ex parte investigations and to a citation of English and American precedents.

It appears that a report impeaching a civil officer was not considered, in 1856, privileged to be made at any time. (Footnote.)

On July 30, 1856,[3] Mr. Miles Taylor, of Louisiana, presented the memorial of Jacob Mussina, a citizen of Louisiana, praying for an investigation into the conduct of Judge Watrous; and on August 6, Mr. Peter H. Bell, of Texas, presented a memorial of Eliphas Spencer, of Texas, asking for the impeachment of Judge Watrous. These papers were referred to the Judiciary Committee.

The memorial of Jacob Mussina, who was a party to a chancery suit litigated in Judge Watrous's court in Galveston, set forth in detail charges of conduct oppressive and partial and in entire disregard of the well-established rules of law and evidence and the rights of litigants. The memorial of Eliphas Spencer, who was interested in a tract of land in Texas, charged Judge Watrous with entering into a conspiracy for the purpose of fraudulently and corruptly adjudicating and determining the validity of a certain grant, by means of which the said judge himself secured the title of a portion of the land, or the proceeds of the sale of it.

The two memorials were accompanied by a mass of records and documents,

[1] Second session Thirty-second Congress, Journal, p. 125.

[2] Journal, p. 350; Globe, p. 927; Report No. 7.

[3] Second session Thirty-fourth Congress, Journal, pp. 1326, 1376; Globe, p. 1818.

among which was a joint resolution of the legislature of Texas, approved March 20, 1848, charging Judge Watrous with improper conduct, and suggesting corrupt acts, and requesting him to resign his office.

It is not wholly certain from the report of the Judiciary Committee whether or not they sought evidence beyond the documents furnished with the memorials. If they did, it was purely documentary. It does not appear that they asked the House for authority to take testimony, and they did not take any, unless documentary.

On February 2, 1857,[1] Mr. Lucian Barbour, of Indiana, asked a suspension of the rules to enable him to report from the Committee on the Judiciary,[2] and on February 9, by a vote of yeas 156, nays, 32, the rules were suspended and the report was made, accompanied by this resolution:

Resolved, That John C. Watrous, United States district judge for the district of Texas, be impeached of high crimes and misdemeanors.

In their report, which was unanimous with the exception of one dissenting member, two members being absent, the committee say:

Upon referring to the proceedings in cases of former impeachments, the committee find that specific charges of impeachment have not been preferred in the report of the committee to the House; but in most cases they have simply reported the testimony, with a resolution that the accused be impeached of high crimes and misdemeanors. Specific charges have been preferred afterwards, when the Senate has signified its readiness to proceed with the trial The committee would, however, state very briefly the substance of the charges in the petitions and the grounds upon which they have resolved to report the resolution.

After reviewing the charges, the report concludes:

The committee have examined numerous records, consisting of pleadings, orders of court, affidavits, and depositions, and after a patient and laborious research they have reluctantly come to the conclusion that the conduct of Judge Watrous in the cases above referred to can not be explained without supposing that he was actuated by other than upright and just motives; that in his disregard of the well-established rules of law and evidence he has put in jeopardy and sacrificed the rights of litigants, and in acquiring a title to property in litigation, or held by adverse possession, he has given just cause of alarm to the citizens of Texas for the safety of private rights and property, and of their public domain, and has debarred them from the rights of an impartial trial in the Federal courts of their own district.

The report having been read, two questions at once arose. Mr. Howell Cobb, of Georgia, asked if the testimony had been printed and declared that he should be unwilling to act on the resolution presented by the committee until he had been enabled to read the testimony.

Mr. Humphrey Marshall, of Kentucky, desired, as a member of the Judiciary Committee, to state that he had had nothing to do with the proceedings resulting in the report, since he had come to the conclusion that the investigation ought not to proceed without notice to the party. Mr. John A. Quitman, of Mississippi, said he was unwilling to assist in bringing on the expense and trouble of an impeachment trial without the strongest probable cause, and he was not willing to take as probable cause the strongest ex parte testimony where the opposite party had not been heard. Mr. John S. Caskie, of Virginia, cited the precedents in the cases of Judge Peck and Warren Hastings, and while not claiming that it was absolutely

[1] Third session Thirty-fourth Congress, Journal pp. 347, 381, 507; Globe, pp. 542, 627–630, 797, 798; Report No. 175.

[2] At that time such a report does not seem to have been held privileged.

incumbent for a committee charged with the consideration of a memorial praying an impeachment to give notice to the person against whom the charges were made and allow him to cross-examine witnesses before them, yet such was evidently the fair and judicious course.

Mr. George A. Simmons, of New York, speaking for the committee, said:

I am perfectly aware that in many such cases, in perhaps the majority of cases of impeachment, the party accused has been before the committee just as both parties are sometimes examined before magistrates. But there have been one or two cases in the House where the party accused has not been before the committee. It seems to me to be the opinion of the House—and probably well-founded on the Constitution—that a judge can not be displaced incidentally by remodeling his jurisdiction, or anything of that sort, although it was once done by Mr. Jefferson on a very large scale, to the satisfaction of the Democratic party. Notwithstanding that, the committee have come to the conclusion that it is the sense of the House, as it is undoubtedly the opinion of commentators, such as Judge Story, that there is no way to get rid of a judge, however unpopular he may be, however destitute he may be of the confidence of the people, unless by impeachment. The committee think that an impeachment ought to lie in all cues where there is a want of good behavior. It is not necessary to prove him guilty of high treason, or of highway robbery, or of some indelicate crime. It is enough that he has not fulfilled his duty as a judge in all respects so as to entitle himself to the confidence of the people. * * * It does not always follow that a man must be present when he is indicted by a grand jury. Neither does it always follow that because he is indicted he must be convicted. There undoubtedly should be prima facie evidence sufficient before the grand jury to satisfy them that the man whom they indict is guilty of the crime, just as there should be sufficient prima facie evidence in cases of impeachment—which are analogous—to show that the judge has failed in good official behavior.

Mr. Abram Wakeman, of New York, said:

The evidence is almost entirely of a documentary character, and if there is no other reason that alone would absolve the committee from the necessity of calling Judge Watrous before them. They are also of opinion that it was not within their province or their duty, in reference to the charge placed in their hands, to compel or require the attendance of Judge Watrous at this stage of the proceeding. They were called upon to inquire whether there was a prima facie case of corruption against him. If there was, they considered it their duty to present him before the Senate of the United States, where his case could be properly heard and tried. If * * * we were under an obligation to investigate and pronounce a decision upon this case, Judge Watrous would have two trials—first, before the Committee on the Judiciary, where he would be under the necessity of calling witnesses and counter witnesses, and the committee would stand in the capacity of judges, in the first instance, to try the guilt or innocence of Judge Watrous. * * * In one case of impeachment alone, where a judge was charged with high crimes or misdemeanors, was he summoned before the committee prior to the presentation of his case to the House.

Mr. Wakeman later stated this case specifically—that of Judge Pickering.

The House, without division, decided that the testimony should be printed, and that the consideration of the resolution should be postponed to Saturday, February 21.

On that day it was announced that a delay had occurred at the printing office and the testimony had not yet been printed. Mr. Caskie urged that the matter should be allowed to go over to the next Congress. A few days only remained of this Congress, and if they should agree to the resolution of impeachment new men would have to carry on the trial, as very few of this House were elected to the next, and not a single member of the Judiciary Committee had been returned.

Mr. Barbour, however, moved that the matter be postponed to Saturday, February 28, and this motion was agreed to.

But on February 28 only three legislative days remained to the Congress, and the resolution was not considered.

2497. The Watrous investigation continued.

In 1857 memorials before the House in a preceding Congress were reintroduced as a basis for investigation of the conduct of Judge Watrous.

The Watrous investigation of 1857 was limited in its scope by the withdrawal from the Judiciary Committee of a memorial containing certain charges.

In the Watrous investigation of 1857, the committee being equally divided, reported the evidence and two propositions, each supported by minority views.

In the investigation of 1857 the committee formally permitted Judge Watrous to file a written explanation and cross-examine witnesses in person or by counsel.

The committee investigating Judge Watrous, in 1857, appears to have informally permitted the accused to adduce testimony.

Discussion of the proper mode of examination in an investigation with a view to impeachment.

In the Watrous investigation of 1857 the written explanation of the accused was printed as part of the report.

An argument that judges may be impeached for any breach of good behavior.

After the report on his conduct by a committee, Judge Watrous presented to the House a memorial embodying his defense, and it was ordered printed and laid on the table.

At the beginning of the next Congress, on December 17, 1857,[1] Mr. Guy M. Bryan, of Texas, presented the memorial of Eliphas Spencer, praying for the impeachment of Judge Watrous; and on the next day[2] Mr. Miles Taylor, of Louisiana, reintroduced the memorial of Jacob Mussina, which had been presented in the preceding Congress.

On January 15, 1858,[3] Mr. George S. Houston, of Alabama, from the Committee on the Judiciary, presented this resolution, which was agreed to:

Resolved, That the Committee on the Judiciary be authorized to send for persons and papers and examine witnesses on oath in relation to the charges made against John C. Watrous, judge of the United States court for the western district of the State of Texas.

On February 18[4] Mr. Bryan presented resolutions of the legislature of Texas, which were referred to the Judiciary Committee; and on February 23[5] Mr. John H. Reagan, of Texas, presented the memorial of William Alexander on the same subject, and it was referred to the same committee.

On May 15[6] Mr. Horace F. Clark, of New York, from the Committee on the Judiciary, moved that that committee be discharged from the further consideration of the memorial of William Alexander. He said that in investigating the charges

[1] First session Thirty-fifth Congress, Journal, p. 81.

[2] Journal, p. 85.

[3] Journal, p. 175; Globe, p. 304.

[4] Journal, p. 404; Globe, p. 782.

[5] Journal, p. 412.

[6] Journal, pp. 826, 835, 836; Globe, pp. 2167–2169, 2195.

made in the memorials of Jacob Mussina and Eliphas Spencer the committee had taken up the matter de novo, as they were not satisfied with the methods of the committee in the preceding Congress. But they found that the allegations in the memorial of Alexander had been investigated by the committee in the Thirty-second Congress, and the committee had reported against impeachment proceedings. Therefore, with the great amount of labor involved in hearing the other charges, the committee did not wish to pursue the Alexander charges. It was urged also that the committee in the preceding Congress had taken no notice of the Alexander charges. Mr. John H. Reagan urged that the Alexander charges should be investigated, especially in the view that articles of impeachment might be prepared.

The House, on May 17, agreed to the motion of Mr. Clark that the committee be discharged.

On June [1] Mr. Houston presented the report of the committee, which was simply to the effect that they were equally divided, one portion recommending a resolution that Judge Watrous be impeached and the other portion a resolution that the testimony did not afford sufficient grounds for impeachment.

On June 7 [2] both portions of the committee, by permission of the House, presented minority views, which gave the respective opinions of the two portions.

The regular report, although giving no opinions, was accompanied by the record of the evidence and also by record of certain proceedings. It appears that on January 8 [3] Mr. Houston, chairman of the committee, addressed a letter to Judge Watrous informing him of the reference of the memorials, and notifying him that the subject-matter would be taken up on February 2, next. To this Judge Watrous replied:

> I most respectfully ask to be informed whether, at the approaching investigation by the committee, * * * I may be permitted to be present, together with my counsel. And I also desire to be informed whether the investigation will be confined to the testimony against me, or will be extended to all sources of information which are necessary to a proper understanding of the case. * * * Should a full and fair investigation of both sides of the case be determined on, I should take great pleasure (if permitted to do so) in furnishing a list of witnesses, whose testimony will put the whole case before the committee.

To this the committee replied by this resolution:

> *Resolved,* That Hon. John C. Watrous be informed that the Committee on the Judiciary will, on Tuesday, the 2d day of February, 1858, take up for investigation and action the memorials of Jacob Mussina and Eliphas Spencer, and that the committee will receive from the said John C. Watrous at any time previous to the said 2d day of February any explanation in writing relative to the charges contained in said memorials, and that after having made such communication in answer to said charges, the said John C. Watrous will be permitted by himself or counsel to cross-examine witnesses who may be examined before said committee.

Mr. Horace F. Clark, of New York, one of the four members of the committee who found against impeachment, while concurring with his three associates on the question of fact, filed supplemental views, in which he said: [4]

> I am not satisfied to vote an impeachment upon the ascertainment of what is commonly termed probable causes; nor do I regard the principles of common law relative to proceedings before grand juries applicable to cases of impeachment under the Constitution of the United States. The House of

[1] Journal, p. 1004; Globe, p. 2659; House Report No. 540.

[2] Journal, p. 1045; Globe, p. 2774; House Report No. 548.

[3] Report No. 540, p. 14.

[4] House Report No. 548, p. 30.

Representatives ought, in my judgment, to look beyond a prima facie case, and failing to discover in the evidence disclosed any fact inconsistent with judicial integrity on the part of Judge Watrous, and finding satisfactory explanations of the circumstances from which suspicions of such integrity may have arisen, should decline subjecting the accused to the expense and hazard of an impeachment.

Although the committee did not give in express terms permission for Judge Watrous to call witnesses on his own behalf, yet he did so. One witness, Robert Hughes, was called and examined in chief by Judge Watrous, and afterwards cross-examined by the committee.[1] And also Robert Hughes, apparently the same person, was on March 2[2] given leave by the committee to appear as counsel for Judge Watrous. With him as counsel was associated Mr. Caleb Cushing.[3]

In the course of a later debate, Mr. Mason W. Tappan, of New Hampshire, a member of the committee, said:[4]

Testimony was taken on both sides. A long and tedious examination was had. Judge Watrous was permitted to come in and defend his cause and to produce witnesses.

And Mr. Horace F. Clark, of New York, another member of the committee, said further:[5]

The committee determined that it was their province * * * to look into the facts of the case beyond the point necessary to ascertain whether there did or did not exist that technical probable cause which, under the well-settled principles of the common law, justifies a magistrate in holding a person for trial, or may, perhaps, justify a grand jury in finding a bill of indictment. * * * The committee applied, in its broadest sense, that generous maxim, audi alteram partem. * * * They determined to break down all the barriers which, it is admitted by professional men, the rigid rules of the common law sometimes throw in the way of the search after truth.

Judge Watrous's explanation, which treated only questions of fact, was printed as part of the report.

The minority views signed by the four members favoring impeachment, Messrs. Henry Chapman, of Pennsylvania; Charles Billinghurst, of Wisconsin; Miles Taylor, of Louisiana, and George S. Houston, of Alabama, found from the evidence[6]——

That while holding the office of district judge of the United States he engaged with other persons in speculating in immense tracts of land situated within his judicial district, the titles to which he knew were in dispute, and where litigation was inevitable.

That he allowed his court to be used as an agent to aid himself and partners in speculation in land and to secure an advantage over other persons with whom litigation was apprehended. That he sat as judge on the trial of cases where he was personally interested in questions involved, to which may be added a participation in the improper procurement of testimony to advance his own and partner's interests.

Also they concluded as to another charge urged against him:

Every irregular and wrongful decision of the judge [in the Cavazos case dealt with in the Mussina memorial] was in favor of the complainants and against the defendant, Mussina, and those occupying a similar position, and was to their particular injury. By maintaining the proceeding as one rightfully brought on the chancery side of the court, these defendants were illegally deprived of their right to a trial by jury, and were compelled to submit to an adjudication upon their rights to the property in such a manner that the decision would be final and conclusive as to the title of the property, instead of one upon the right of possession, which would at once have been pronounced, on the law side of the court, in an action of ejectment. By maintaining jurisdiction over the case, when a portion of the defendants

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[1] Report No. 540, pp. 38–76.

[2] Page 77 of Report.

[3] Pages 185, 230 of Report.

[4] Globe, second session Thirty-fifth Congress, p. 17.

[5] Globe, p. 39.

[6] Report No. 548, pp. 14, 23, 24.

as well as plaintiffs were aliens, these defendants were deprived of their rights to have the questions involved in it decided by the courts of Texas, to whose jurisdiction they were rightfully amenable, and whose laws were to govern in that decision. By admitting incompetent witnesses to testify, their rights were affected by evidence given by persons who had an interest in the litigation adverse to theirs. And, finally, they are prevented from having the decision against them reviewed in the appellate court by the failure of the judge to perform his full duty to them in facilitating the exercise of the right of appeal, given to them by law, from motives of public policy, for their own private advantage, and that, too, when there is some reason to believe that the decree by the court is not in conformity with the principles of law as recognized in Texas. Such a course of action continued through the whole progress of a cause, in favor of some of the parties and against others, is, to our minds conclusive evidence of the existence of a purpose on the part of the judge to favor one party or set of parties at the expense and to the injury of others, which is inconsistent with an upright, honest, and impartial discharge of the judicial functions. And this, we believe, constitutes a breach of the "good behavior" upon which, by the Constitution, the tenure of the judicial office is made to depend.

The Constitution of the United States declares that "the judges, both of the Supreme and inferior courts shall hold their offices during good behavior." Does not this necessarily imply that their offices are to determine, and they are to be removed when they are guilty of a breach of "good behavior?" Clearly so. But how are they to be removed? No power of removal is vested in the Executive, nor is there any provision in the Constitution of the United States like that to be found in many if not all the State constitutions, by which the Executive is authorized to remove on the address of two-thirds of the members of the two houses of the legislature. The only mode of removal of judges known to the Constitution is by impeachment, and it therefore necessarily follows that whenever a judge has, in the course of his official conduct, been guilty of actions which are inconsistent with an impartial discharge of the high duties intrusted to him, then it is both the right and duty of this House to proceed in the only way known to the Constitution to effect the removal of the magistrate who misuses or abuses the trust reposed in him for the public good.

The other minority views, concurred in by Messrs. Charles Ready, of Tennessee; Mason W. Tappan, of New Hampshire; Burton Craige, of North Carolina, and Horace F. Clark, of New York, concluded from an examination of the testimony that many of the charges were "utterly frivolous," that some of them were not proven or attempted to be proven, and "that none of them establish, import, or imply, upon the evidence, the commission of any act of malfeasance in office, nor any high crime or misdemeanor." The four members saw nothing in the case but the "resentfulness of two disappointed litigants."

One minority had recommended this resolution:

Resolved, That John C. Watrous, United States district judge for the district of Texas, be impeached of high crimes and misdemeanors.

The other minority recommended:

Resolved, That the testimony taken before the Committee on the Judiciary in the case of the Hon. John C. Watrous, judge of the district court of the United States for the eastern district of Texas, is insufficient to justify the preferment of articles of impeachment against him for high crimes and misdemeanors in office.

On June 10,[1] at the suggestion of the Judiciary Committee, the House postponed further consideration of the subject to the next session of Congress.

At the same time a memorial from Judge Watrous, which had already been placed on the desks of Members and appears to have embodied a defense of his conduct, was ordered to be laid on the table and printed.

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[1] Journal, pp. 1075, 1076; Globe, pp. 2908–2910.

2498. The Watrous investigation continued.

In the Watrous case the House discussed whether or not ascertainment of probable cause justified proceeding in impeachment.

As to what are impeachable offenses was a subject of argument in the Watrous case.

After the investigation of 1857 the House decided that the evidence did not justify the impeachment of Judge Watrous.

At the next session the subject was debated at length from December 9 to 15.[1] The principal portion of the debate was on the strength of the evidence to sustain the facts alleged; but two other questions were touched on at some length:

1. Whether the ascertainment of probable cause was sufficient ground for the House to proceed in an impeachment.

Messrs. Chapman and Houston argued[2] at some length in opposition to the views advanced by Mr. Clark. Mr. Clark[3] had argued that the case could not be sent to the Senate on proof short of what would be sufficient to convict. Mr. Houston combated that view, referring to the argument of Mr. Wirt in the Peck trial as conclusive on the point that the action of the House was similar to that of a grand jury; that while the investigation of the House was not necessarily ex parte, the office of the House was not to ascertain whether the party was guilty or innocent of the charges preferred against him, but whether the proof was sufficient to make the case worthy of a further trial. Mr. Chapman called attention to the fact that the trial of the case belonged to the Senate under the Constitution and to the Senate alone. If the House advanced one step beyond the ascertainment of probable cause it was plunged into the trial. The House, in the exercise of its discretion, might examine witnesses on both sides, but there must be a boundary line marking the powers of the House and Senate, and there was no line to be observed, except the ascertainment of probable cause. "Such I understand to have been the views," he said, "entertained in the case of Judge Peck and the case of Judge Chase, of Macclesfield in 1705, in the case of Warren Hastings in 1778, and of Lord Melville in 1805. Probable cause is such a state of facts and circumstances as would induce a cautious man to believe that the party charged is guilty of the offense.[4]

2. As to what are impeachable offenses.

The point was argued at considerable length. In his memorial to the House Judge Watrous had made the point that impeachable acts were only such as were also punishable by the ordinary laws of the land. This view was sustained in argument by Messrs. James A. Stewart, of Maryland,[5] Clark B. Cochrane, of New York,[6] and Alexander H. Stephens, of Georgia .[7]

On the other hand, Messrs. John Cochrane, of New York,[8] Miles Taylor, of

[1] Second session Thirty-fifth Congress, Journal, pp. 56, 69; Globe, pp. 12, 21, 31, 56, 78, 95–102.

[2] Globe, pp. 16, 99.

[3] Mr. Clark's view was upheld by Mr. James A. Stewart, of Maryland, Globe, p. 38.

[4] Mr. Clement L. Vallandigham, of Ohio, held this view also, Globe, p. 85.

[5] Globe, pp. 37, 38.

[6] Globe, p. 84.

[7] Globe, pp. 95, 96.

[8] Globe, p. 56.

Louisiana,[1] Clement L. Vallandigham, of Ohio,[2] and John A. Bingham, of Ohio,[3] argued that the power of impeachment was broader, and went to an ascertainment of whether or not he had offended against the dignity of the people of the United States, transgressed the grave obligations of his office, or soiled the purity of the ermine. Mr. Bingham discussed especially the precedent of the Peck trial in this particular.

On December 15[4] a motion was made to strike out all after the word "resolved" in the resolution for impeachment, and insert the text of the second minority resolution, declaring the testimony insufficient to justify impeachment. This amendment was agreed to, yeas 111, nays 91. Then the resolution as amended was agreed to, yeas 112, nays 87.

So the House decided that the evidence did not justify impeachment proceedings.

2499. The Watrous investigation continued.

Memorials which had been before preceding Congresses were reintroduced as a basis of the Watrous investigation of 1860.

A minority of the Judiciary Committee were authorized to take testimony in the Watrous case.

In the Watrous investigation of 1860 the Judiciary Committee proceeded ex parte.

In the Watrous investigation of 1860 the Judiciary Committee, without special leave, considered the evidence and reports in preceding Congresses relating to this case.

The Judiciary Committee reported, in 1860, in favor of the impeachment of Judge Watrous.

On March 8, 1860,[5] during the next Congress, the memorial of Jacob Mussina was again introduced by Mr. Miles Taylor, of Louisiana, and that of Eliphas Spencer was presented by Mr. Andrew J. Hamilton, of Texas; and on March 12[6] the memorial of William Alexander, first presented in 1851, was again presented by Mr. Hamilton. All these papers were referred to the Committee on the Judiciary.

On March 28[7] the House gave the Judiciary Committee authority to send for persons and papers and to examine witnesses on oath or affirmation.

On May 18[8] Mr. John Hickman, of Pennsylvania, stated that the committee found itself obliged to sit during sessions of the House, and therefore it was very difficult to keep a quorum. Hence he proposed this resolution, which was agreed to by the House without objection:

Resolved, That a minority of the Committee on the Judiciary be, and are hereby, authorized to take the testimony of all witnesses in the matter of the petitions heretofore referred to said committee praying the impeachment of Hon. John C. Watrous, a judge of the United States for the eastern district of Texas.

On May 21[9] the House empowered the committee to print the memorial and testimony taken and to be taken in the case.

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[1] Globe, pp. 60, 61.

[2] Globe, p. 85.

[3] Globe, p. 90.

[4] Journal, pp. 69–71; Globe, p. 102.

[5] First session Thirty-sixth Congress, Journal, p. 476.

[6] Journal, p. 493.

[7] Journal, p. 607.

[8] Journal, p. 856; Globe, p. 2171.

[9] Journal, p. 877; Globe, p. 2215.

On December 17, 1860,[1] at the second session of the Congress, Mr. John H. Reynolds, of New York, asked unanimous consent to submit the report of the committee.[2] Mr. Horace Maynard, of Tennessee, reviewed the former proceedings in this case, intimated that the Committee on the Judiciary had been organized to further this impeachment, and declared that the time of the session was required for "the gravest and most important questions, going to the very existence and perpetuity of our Union." Therefore he objected.

On December 20[3] Mr. Reynolds submitted the report, which concluded:

Resolved, That John C. Watrous, United States district judge for the eastern district of Texas, be impeached for high crimes and misdemeanors.

The committee say in their report:

That in view of the previous proceedings touching the matters committed to them, they entered upon the investigation at the first session of the present Congress in the belief that it was of the highest importance to the public interest, as well as to the accused, that some definite result should be reached, and some action taken which should be regarded as final. In the Thirty-fifth Congress much time was expended by the Judiciary Committee in the investigation of the charges preferred, upon which Judge Watrous was heard by person and by counsel before the committee, a large amount of testimony was taken, and the committee were equally divided on the question of impeachment. The House, upon a consideration of the case, refused to adopt the resolution for an impeachment. Upon the present investigation the committee came to the conclusion to proceed ex parte, and they have accordingly taken additional evidence only in support of the charges against the accused. They have also considered the evidence before them taken during the Thirty-fifth Congress and the reports made to the House thereon, * * * and their proceedings are more properly to be regarded as a continuation of the former investigation than as an entirely original one. The additional evidence taken by the committee during the present Congress in respect to the charges upon which four members of the Judiciary Committee of the Thirty-fifth Congress recommended the adoption of a resolution of impeachment does not materially change the facts as they then appeared. But considerable evidence has been produced showing the connection of Judge Watrous with transactions of a character unfitting a judicial officer or an honest man, and which may not only present an independent ground of misbehavior deserving impeachment, but tends also to shed light upon the nature of his associations and private interests.

The committee adopt the conclusions of the four members who favored impeachment in the preceding Congress as to the charges in the Mussina and Spencer memorials, and then proceed to discuss the charges of the Alexander memorial, which they consider established and as justifying impeachment.

The report was postponed to December 27 but was not taken up on that day, and thereafter successive attempts to take it up on January 16, January 21, and January 28, 1861, failed,[4] through the objections of individual Members.

The Congress expired on March 3 and the report was not considered.

Amos Morrell was appointed judge on February 5, 1872, for the eastern district of Texas, and the records of the State Department show that this was the first appointment after the investigation of Judge Watrous.

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[1] Second session Thirty-sixth Congress, Globe, p. 105.

[2] In the later practice such reports are privileged.

[3] Journal, p. 106; Globe, p. 159; Report No. 2.

[4] Globe, pp. 411, 499, 599, 600.

2500. The investigation of the conduct of Judge Thomas Irwin in 1859.

Judge Irwin having resigned before the report of an investigation, the House discontinued proceedings.

On January 13, 1859,[1] the House authorized the Judiciary Committee to investigate charges made against Judge Thomas Irwin, of the United States district court of the western district of Pennsylvania. On January 28[2] Mr. George S. Houston, of Alabama, reported from that committee that pending the investigation, "they had satisfactory evidence before them that the said judge had this day resigned his said office, and that the committee now ask the further direction of the House."

There was some discussion as to the publication of the testimony already taken; but as it had been taken only on one side it was thought best not to print it. Then, on motion of Mr. John S. Phelps, of Missouri, it was—

Ordered, That the said committee be discharged from the further consideration of the subject, and that the same be laid on the table.

2501. The investigation into the conduct of Henry A. Smythe, collector of the port of New York.

The House declined to institute impeachment proceedings before a committee had examined specially whether or not there was ground for impeachment.

A question as to the expediency of impeaching an officer removable by the Executive.

It is for the House to say whether or not a person whose conduct is being investigated shall be allowed to appear before the committee by counsel.

The House declined to ask of the Executive the removal of an officer whom a committee had found delinquent.

On March 15, 1867,[3] the House had directed the Committee on Public Expenditures to inquire into the conduct of Henry A. Smythe, collector of the port of New York, and to report thereon to the House if in their opinion the said Smythe had been guilty of bribery or other crimes and misdemeanors.

On March 25, 1867,[4] the Speaker, by unanimous consent, laid before the House a letter from Mr. Smythe, requesting that he might be permitted to appear with counsel to produce and examine witnesses before the committee.

Thereupon, Mr. Samuel J. Randall, of Pennsylvania, proposed the following:

Resolved, That the request of Henry A. Smythe, now collector of the port of New York, asking the privilege and permission to appear by counsel before the Committee on Public Expenditures, in defense of his conduct as collector, now being examined into by said committee, be granted.

Considerable discussion was occasioned by this proposition. It was urged that it was not the custom of the House to allow persons implicated by investiga-

[1] Second session Thirty-fifth Congress, Journal, p. 178; Globe, p. 360.

[2] Journal, p. 278; Globe, p. 656.

[3] First session Fortieth Congress, Journal, pp. 51, 111; Globe, pp. 334–336.

[4] Journal, pp. 111, 112; Globe, pp. 334–336.

tions before a committee to appear, especially by counsel, and Mr. Hulburd, while saying that his committee had allowed any person to come before them and produce witnesses under such circumstances, yet they had not allowed counsel, and should not do so without the consent of the House. Mr. John Covode, speaking from experience as chairman of an important investigating committee, said that he never allowed parties to appear by counsel except in one case, when Judge Black, a member of Mr. Buchanan's cabinet, was allowed counsel in a case where he was indirectly interested. On the other hand, it was recalled that in the Thirty-ninth Congress both Mr. Conkling and General Fry had appeared before the investigating committee by counsel; that in the investigation of the infringement of the privileges of the House by General Houston, he was allowed to appear with counsel; in the Thirty-seventh Congress a Member against whom charges had been made was allowed to appear by counsel; in the Thirty-fifth Congress Judge Watrous had also appeared with counsel, and also in a former Congress Judge Irwin had done the same. Mr. John A. Bingham, of Ohio, argued that the House ought always to judge of the propriety of allowing the official under investigation to appear; but in this case, of a subordinate officer of the Government, incapable in the nature of things of influencing the House or its committee, he should be allowed to appear by counsel.

The House, by a vote of 80 yeas to 35 nays, voted to suspend the rules for the consideration of the resolution, and then agreed to it.

On March 21, 1867,[1] Mr. Calvin T. Hulburd, of New York, from the Committee on Public Expenditures, had reported this resolution:

Resolved, That it is the sense of this House that Henry A. Smythe should be immediately removed from the office of collector of the port of New York, and that the Clerk of the House cause a certified copy of this resolution to be laid before the President of the United States.

Objection was made by Mr. Benjamin F. Butler, of Massachusetts, that the House should not request from the Executive the removal of any officer, but should proceed by impeachment. On March 22[2] Mr. Thaddeus Stevens, of Pennsylvania, moved to amend by striking out all after the word "Resolved," and inserting—

That it is the sense of this House that Henry A. Smythe, collector of the port of New York, ought to be impeached; and that the Committee on Public Expenditures proceed forthwith to prepare articles of impeachment.

Objection was made to this amendment, especially by Mr. Samuel Shellabarger, of Ohio, that there was no precedent in the history of the Government for proceeding to an impeachment without investigation by a committee charged with finding whether or not there was ground for articles of impeachment. A question was also raised by Mr. Fernando Wood, of New York, as to whether the House ought to proceed to impeach an officer whom the President (or the President and Senate as provided under the tenure of office act) could remove. The right of the House to impeach such an officer was not disputed, but the expediency was questioned.

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[1] Journal, p. 80; Globe, pp. 255, 256.

[2] Globe, pp. 282–285.

In accordance with the suggestions made, Mr. Stevens modified his amendment to read as follows:

That the testimony taken by the Committee on Public Expenditures relating to the conduct of Henry A. Smythe, collector of the port of New York, be referred to the said committee, with a view to ascertain whether or not said Smythe has been guilty of high crimes and misdemeanors sufficient to justify his impeachment; and if said committee find from that and other evidence that he has been thus guilty, then to proceed and prepare articles of impeachment, and report the same to this House; and that they have leave to send for persons and papers.

On March 22 and 23 [1] this amendment was considered and agreed to. The resolution as amended was then agreed to also.

On February 20, 1868,[2] on motion of Mr. Hulburd, the House agreed to a resolution empowering the committee to inquire into the receipts of Mr. Smythe in his official capacity, with authority to send for persons and papers.

It does not appear that the committee reported.

2502. The proposition to inquire into the conduct of William B. West, consul at Dublin.

The House declined to order an investigation of Consul West on evidence presented by a Member and referred the subject to a committee.

Mr. Speaker Colfax held that in order to be received as privileged a resolution must positively propose impeachment.

On December 2, 1867,[3] Mr. William E. Robinson, of New York, proposed as a question of privilege this resolution:

Resolved, That the Committee on Foreign Affairs be instructed to inquire into the conduct of William B. West, American consul at Dublin, in Ireland, regarding American prisoners in that city, and to report thereon forthwith, to the end that if he has been guilty of conduct which would be liable to impeachment this House may take measures to have articles of impeachment presented to the Senate.

Mr. John F. Farnsworth, of Illinois, raised the question of order that no question of privilege was involved.

The Speaker [4] held that as the resolution did not positively propose impeachment, it did not present a question of privilege.

Thereupon Mr. Robinson modified the resolution to read as follows:

Resolved, That William B. West, consul of the United States at Dublin, Ireland, be impeached before the Senate.

Mr. Robinson presented copies of correspondence between Mr. West and one Patrick J. Condon, who had been held as a political prisoner in Ireland, and other documents, which he considered as showing that Mr. West had not been sufficiently aggressive in maintaining the rights of American citizens abroad.

After debate on the general question of the rights of citizenship, the resolution was, on motion of Mr. Nathaniel P. Banks, of Massachusetts, referred to the Committee on Foreign Affairs.

It does not appear that further action was taken.

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[1] Journal, pp. 89, 95; Globe, pp. 294, 289, 290.

[2] Second session Fortieth Congress, Journal, pp. 371, 372.

[3] Second session Fortieth Congress, Journal, p. 9; Globe, pp. 3–9.

[4] Schuyler Colfax, of Indiana, Speaker.

2503. The House, on the strength of a newspaper statement, ordered an investigation looking toward the impeachment of a justice of the Supreme Court.—On January 30, 1868,[1] Mr. Glenni W. Scofield, of Pennsylvania, by unanimous consent, presented the following:

Whereas it is editorially stated in the Evening Express, a newspaper published in this city, on the afternoon of Wednesday, January 29, as follows:

"At a private gathering of gentlemen of both political parties, one of the justices of the Supreme Court spoke very freely concerning the reconstruction measures of Congress, and declared in the most positive terms that all these laws were unconstitutional, and that the court would be sure to pronounce them so. Some of his friends near him suggested that it was quite indiscreet to speak so positively, when he at once repeated the views in a more emphatic manner."

And whereas several cases under said reconstruction measures are now pending in the Supreme Court: Therefore,

Resolved, That the Committee on the Judiciary be directed to inquire into the truth of the declarations therein contained, and to report whether the facts as ascertained constitute such a misdemeanor in office as to require this House to present to the Senate articles of impeachment against said "justice of the Supreme Court," and the committee may have power to send for persons and papers, and have leave to report at any time.

Objection was made that a newspaper charge was insufficient ground for action by the House. Mr. Scofield disclaimed any knowledge himself. The House agreed to the preamble and resolution, yeas 97, nays 57.

On June 18[2] Mr. George S. Boutwell, of Massachusetts, by instructions of the committee, moved that it be discharged from further consideration of the resolution, and that the same be laid on the table. This motion was agreed to without division or debate.

2504. The impeachment of Mark H. Delahay, United States district judge for Kansas.

The House voted to investigate the conduct of Judge Delahay after the Judiciary Committee had examined the charges in a memorial.

The Judiciary Committee was empowered in the Delahay ease to take testimony in Kansas through a subcommittee.

In the investigation into the conduct of Judge Delahay he was permitted to present testimony.

On March 19, 1872,[3] Mr. Benjamin F. Butler, of Massachusetts, from the Committee on the Judiciary, proposed a resolution, which was agreed to without debate:

Resolved, That the Committee on the Judiciary be, and they are hereby, authorized to send for persons and papers, to administer oaths, and to take testimony in the matter of the memorial and charges against Mark H. Delahay, district judge of the United States district for the State of Kansas.

On May 28[4] Mr. John A. Bingham, of Ohio, from the Judiciary Committee, reported the following resolution, which was agreed to:

Resolved, That the Committee on the Judiciary be directed to further investigate the charges against the character and official conduct of M. H. Delahay, United States district judge for the district of Kansas, and for that purpose a subcommittee shall be authorized to sit during the recess of Congress,

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[1] Second session Fortieth Congress, Journal, p. 274; Globe, p. 862.

[2] Journal, pp. 881, 882; Globe, p. 3266.

[3] Second session Forty-second Congress, Journal, p. 538; Globe, p. 1808.

[4] Journal, pp. 989, 990; Globe, p. 3926.

and may proceed to Kansas, subpoena witnesses, send for persons and papers, administer oaths, take testimony, and employ a clerk and reporter, the expense of which shall be paid from the contingent fund of the House on the order of the chairman.

In another case, relating to Judge Charles T. Sherman, Mr. Butler, citing the case of Judge Delahay, said that this subcommittee heard in Kansas such witnesses as Judge Delahay chose to have summoned.[1]

2505. Delahay's impeachment continued.

The House, without division, voted to impeach Judge Delahay for improper personal habits.

The House voted the impeachment of Judge Delahay at the end of one Congress, intending to present articles in the next.

Forms and ceremonies for carrying of the impeachment of Judge Delahay to the Senate.

The Speaker gave the minority party representation on the committee to carry the impeachment of Judge Delahay to the Senate.

The impeachment of Judge Delahay was carried to the Senate by a committee of three.

On February 28, 1873,[2] Mr. Butler reported this resolution from the Judiciary Committee:

Resolved, That a committee of three be appointed to go to the Senate, and at the bar thereof, in the name of the House of Representatives, and of all the people of the United States, to impeach Mark H. Delahay, judge of the United States district court for the district of Kansas, of high crimes and misdemeanors in office, and acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him and make good the same, and that the committee do demand that the Senate take order for the appearance of said Mark H. Delahay to answer to said impeachment.

Two questions arose from this report:

1. Mr. Henry L. Dawes, of Massachusetts, asked if the Judiciary Committee, in view of the fact that the Congress was about to expire, had settled the question whether or not the next House of Representatives could present the articles of impeachment, of which this House might notify them. Mr. Butler said:

The Committee on the Judiciary do not expect to prepare articles of impeachment against Judge Delahay and present them for trial at this session. In the earliest case of impeachment of a judge in this country, in 1803, the case of Judge Pickering, which was in all respects like this, this exact question arose and was settled. One House presented articles of impeachment to the Senate and another House at the next session prosecuted those articles, as will be done in this case. We do not expect any other action except the formal presentation of the articles of impeachment to the Senate. The Senate is a perpetual court of impeachment, and in presenting these articles we act only as a grand jury.

2. As to the offense for which the impeachment was to be the remedy, Mr. Butler stated that—

The most grievous charge, and that which is beyond all question, was that his personal habits unfitted him for the judicial office; that he was intoxicated off the bench as well as on the bench. This question has also been decided by precedent. That was the exact charge against Judge Pickering, of New Hampshire, who, with one exception, is the only judge who has been impeached.

Mr. Butler then had read testimony showing that the judge had sentenced prisoners when intoxicated, to the great detriment of judicial dignity.

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[1] Third session Forty-second Congress, Globe, p. 2123.

[2] Third session Forty-second Congress, Journal, p. 512; Globe, pp. 1899, 1900.

There was also a question as to certain alleged corrupt transactions, but Mr. Daniel W. Voorhees, of Indiana, said it was not proven to the satisfaction of several members of the committee that there was any malfeasance. Mr. Butler said:

The committee agree that there is enough in his personal habits to found a charge upon, and that is all there is in this resolution.

The resolution of impeachment was then agreed to without division.

On March 3 [1] the Speaker announced the appointment of Mr. Butler, Mr. John A. Peters, of Maine, and Mr. Clarkson N. Potter, of New York, members of the committee. Two of these were members of the majority party in the House, and the third represented the minority.

On the same day [2] the committee appeared at the bar of the Senate and, having been announced, advanced toward the area in front of the Secretary's desk, and Mr. Butler said:

Mr. President, in obedience to the order of the House of Representatives, this committee of the House appear at the bar of the Senate of the United States, and do impeach Mark H. Delahay, district judge of the United States district court for the district of Kansas, in the name of the House of Representatives and all the people of the United States, for high crimes and misdemeanors in office. And we do further acquaint the Senate, by the order of the House, that the House will in due time furnish particular articles against said Delahay and make good the same. And this committee is further charged by the House to demand of the Senate that they will take order for the appearance of Mark H. Delahay, as such judge, to answer the same.

The Presiding Officer [3] said:

The Senate will take order in the premises, of which due notice shall be given to the House of Representatives.

Later, on the same day, on motion of Mr. George F. Edmunds, of Vermont, it was

Ordered, That the Secretary inform the House of Representatives that the Senate will receive articles of impeachment against Mark H. Delahay, judge of the district court of the United States for the district of Kansas, this day impeached by the House of Representatives before it of high crimes and misdemeanors, whenever the House of Representatives shall be ready to receive the same.

Meanwhile the committee had returned to the House of Representatives, where Mr. Butler, the chairman, submitted the following written report: [4]

That, in obedience to the order of the House, the committee have been to the Senate, and, in the name of the House of Representatives and of all the people of the United States, have impeached Mark, H. Delahay, district judge of the United States for the district of Kansas, of high crimes and misdemeanors; and have acquainted the Senate that the House of Representatives will, in due time, exhibit particular articles against him, and make good the same. And further, that the committee have demanded that the Senate take order for the appearance of the said Mark H. Delahay to answer to the said impeachment.

A message was also received [5] in the House from the Senate in these terms:

The Senate is ready to receive articles of impeachment against Mark H. Delahay, judge of the United States district court for the State of Kansas.

No further proceedings took place. On March 10, 1874, as shown by the records of the State Department, Cassius G. Foster was appointed judge to fill a vacancy in this district.

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[1] Journal, p. 551.

[2] Senate Journal, pp. 542, 543; Globe, pp. 2153, 2165.

[3] Henry A. Anthony, of Rhode Island, presiding officer.

[4] House Report No. 92.

[5] House Journal, p. 560.

2506. The investigation of the conduct of Edward H. Durell, United States district judge for Louisiana.

Instance wherein the House ordered an investigation of the conduct of a judge without a statement of charges, but in a case wherein common fame had made the facts known.

Instances wherein the House gave authority to prepare articles of impeachment at the time the investigation was ordered.

On January 13, 1873,[1] Mr. William D. Kelley, of Pennsylvania, moved that the rules be suspended so as to enable him to submit and the House to consider and agree to this resolution:

Resolved, That the Judiciary Committee be instructed to inquire into the conduct of Edward H. Durell, judge of the United States district court for the district of Louisiana, and ascertain and report whether, in the opinion of the committee, he has, for the purpose of overthrowing or controlling the government of the State of Louisiana, usurped jurisdiction not vested in the said district court by the Constitution or laws of the United States; and to report articles proposing the impeachment of the said Edward H. Durell if, in the judgment of the committee, he has abused his judicial functions by such usurpation of jurisdiction and unlawful interference with the constitutional privileges and rights of the people of said State; and that the committee have power to send for persons and papers.

The question being put, the rules were suspended, and the resolution was presented. And thereupon it was agreed to, without debate or division.

On January 21[2] Mr. Jeremiah M. Wilson, of Indiana, from the Committee on the Judiciary, stated that there was some uncertainty in the resolution first adopted, and asked for the adoption of the following:

Resolved, That in addition to the inquiries heretofore directed by the House to be made into the official conduct of Judge E. H. Durell, the Judiciary Committee be instructed further to inquire whether said Durell should be impeached for high crimes and misdemeanors in office, and that said committee have leave to report at any time.

The resolution was agreed to by the House without division.

2507. The Durell investigation continued.

Instance wherein a House committee charged with an investigation examined testimony taken before a Senate committee.

The Durell investigation was postponed in the Forty-second Congress because there was no time to permit Judge Durell to present testimony.

On March 3,[3] the last day of the Congress, Mr. John A. Bingham, of Ohio, submitted the report of the committee:

That they have examined to some extent the voluminous testimony taken before the Committee on Privileges and Elections of the Senate of the United States, and the bills, petitions, processes, and orders pending before said district court, and the action of said E. H. Durell thereon; and upon the legality and propriety of that action the most serious questions arise, and if the time at which this matter was brought before your committee by testimony permitted that proper investigation which ought to be had in a subject of so grave importance, your committee would proceed thereto.

It has been the practice of the Committee on the Judiciary to hear the accused in matters of impeachment whenever thereto requested, by witnesses or by counsel, or by both, as in their discretion would seem proper. Judge Durell has appeared before your committee and asked to be heard. At

[1] Third session Forty-second Congress, Journal, p. 164; Globe, p. 541.

[2] Journal, p. 225; Globe, p. 761.

[3] Journal, p. 583; Globe, p. 2133; House Report No. 96.

that hour in the session there was no time in which he could be heard, and for this reason only no further action has been taken by your committee.

We therefore report back the resolution with the recommendation that it be referred to the next House of Representatives for consideration, and that your committee be discharged from the further consideration thereof.

The report was laid on the table and ordered printed by the House.

2508. The Durell investigation continued.

A subcommittee, with power to send for persons and papers, was sent to Louisiana to investigate the conduct of Judge Durell.

A majority of the Judiciary Committee reported in favor of impeaching Judge Durell, principally for usurpation of power.

At the beginning of the next Congress, on December 17, 1873,[1] Mr. Jeremiah M. Wilson, of Indiana, submitted this resolution, which was agreed to:

Resolved, That the Committee on the Judiciary be, and is hereby, authorized and directed to inquire and report to the House whether Judge E. H. Durell, judge of the district court of the United States for the southern district of Louisiana, shall be impeached for high crimes and misdemeanors; and that said committee shall have power to send for persons and papers.

On December 19[2] Mr. Benjamin F. Butler, of Massachusetts, from the Judiciary Committee, reported the following resolution, which was agreed to by the House:

Resolved, That the Committee on the Judiciary be, and is hereby, authorized to send a subcommittee of two members of said committee to New Orleans for the purpose of taking testimony in the matter of the impeachment of Judge E. H. Durell, heretofore referred to said committee, and that said subcommittee have power to send for persons and papers and to employ a stenographer.

Mr. Butler explained that the charges against Judge Durell related to bankruptcy proceedings, and that unless the committee, should be sent it might be necessary to have the bankruptcy records brought to Washington, or have copies of them made. Such a task would be long and expensive.

On June 17, 1874,[3] very near the end of the session, Mr. Wilson submitted the report of the majority of the committee, consisting of Messrs. Benjamin F. Butler, of Massachusetts; Jeremiah M. Wilson, of Indiana; Alexander White, of Alabama; Charles A. Eldredge, of Wisconsin; Clarkson N. Potter, of New York, and Hugh J. Jewett, of Ohio. The report begins:

Among the charges brought to the notice of your committee were those of drunkenness and the improper procurement of money by means of his judicial office. These charges are not sustained by the testimony, in the opinion of your committee, and therefore will not be further noticed.

The report finds more serious certain charges relating to the bankruptcy business of the court. Judge Durell had appointed E. E. Norton "official assignee in bankruptcy," and the latter had taken possession of the assets and estates of bankrupts in about 1,300 cases. "His charges were outrageously extortionate and seem to have been generally framed to absorb the estate," says the report; and it further cites an order by Judge Durell which prevented scrutiny into such charges. Norton also was found to have collusion with the auctioneers who made sales of bankrupt property, receiving more than $20,000 therefrom. The committee could not trace

[1] First session Forty-third Congress, Journal, p. 141; Record, p. 266.

[2] Journal, p. 165; Record, p. 337.

[3] Journal, p. 1218; Record, pp. 5124, 5125; House Report No. 732.

these facts directly to the knowledge of Judge Durell, although some testimony tended to show such knowledge. After citing evidence the report continues:

The manner in which Norton was managing these affairs and the extortionate charges he was making were the subject of severe criticism in the newspapers of the city of New Orleans.

The most intimate social relations existed between Judge Durell and Norton during all of this time. Judge Durell spent much of his time at Norton's house in the city of New Orleans. They traveled North together in the summer and spent much of their time together while North, returning South again together when the summer was over.

These facts so notorious in regard to the management of so important trusts as those of the bankrupt estates, when taken in connection with the order hereinbefore referred to, lead to the inevitable conclusion by your committee that Judge Durell must have been cognizant of them, and therefore a corrupt party thereto, or that he was grossly negligent in the discharge of his official duties, so that, quacumque via data, he comes under a like condemnation.

And, finally, the report discusses a charge growing out of the Louisiana election of November 4, 1872. William P. Kellogg, Republican candidate for governor at that election, filed a bill in the United States circuit court against the then Governor Warmouth, McEnery, the Democratic candidate for governor, and certain others, alleging frauds for the purpose of disfranchising colored voters, and such an illegal purging of the State registration board as would enable the destruction of the evidence of the frauds; and therefore Mr. Kellogg prayed that a writ of injunction should issue, enjoining Warmouth from canvassing the returns except in the presence of the unpurged returning board, called the Lynch board. Warmouth filed answer denying the allegations. The motion for an injunction was heard and submitted on December 4, and on December 6 Judge Durell granted the injunction restraining Warmouth as prayed for in the bill. The report, after setting forth these preliminary facts, continues:

In his opinion the judge speaks of Kellogg's bill as a bill "to preserve evidence." Assuming that this court had the power, by virtue of the acts of Congress, to preserve the evidence relating to the election of State officers, that end would have been answered and that power exercised by the injunction which prevented the destruction of the ballots, certificates, and evidences in question; and that was, as the Senate Committee on Privileges and Elections have said in their report of January, 1873, "the utmost that the court had authority upon this bill to do." The Constitution and acts of Congress gave no color of authority to a Federal court to determine what were the proper officers of the State or to restrain those who claimed to be so from action in respect of State matters.

On the 20th of November Warmouth signed an act passed by the last legislature which until that time he had delayed signing, which act appointed Wiltz, Deferiet, and others a returning board, and subsequently he submitted to them the votes and returns, which were compiled by that board, and they returned certifying the McEnery ticket as elected, and Warmouth, as governor, on the 4th of December, made proclamation thereof accordingly.

About these facts there is no dispute whatever.

The legislature thus declared to have been elected were about to assemble in the State house on the 6th of December. About 9 o'clock on the evening of the 5th of December Judge Durell sent for S. B. Packard, the United States marshal for the district. Packard went to his room. The judge told him to send for Mr. Billings and Mr. Beckwith, Kellogg's solicitors; that he proposed issuing an order for the occupation of the State house. The solicitors were sent for; they came, and the judge told them the same thing, and after some consultation the preparation of the order was set about. Judge Durell dictated it to Mr. Billings, who wrote it down, and the marshal's deputy, De Klyne, made a clean copy of the order thus dictated. The judge then signed it and delivered it to Packard, who thereupon set about executing it, which he did by calling on General Emory for a detachment of Federal troops, which occupied the State house that same night. This occupation resulted in securing the State gov-

ernment to Kellogg. This order declared that, whereas Warmouth had, in violation of the restraining order herein, issued the following proclamation and returns of certain persons claiming to be a board of returning officers, all in violation and contempt of the said restraining order, as follows, to wit [setting out the proclamation and returns], and proceeded:

Now, therefore, in order to prevent the further obstruction of the proceedings in this cause, and further to prevent a violation of the orders of this court, to the imminent danger of disturbing the public peace, it is hereby ordered that the marshal of the United States for the district of Louisiana shall forthwith take possession of the building known as the Mechanics' Institute, and occupied as the State house for the assembling of the legislature therein, in the city of New Orleans, and hold the same subject to the further order of this court; and meanwhile to prevent all unlawful assemblage therein under the guise or pretext of authority claimed by virtue of pretended canvass and returns made by said pretended returning officers, in contempt and violation of said restraining order; but the marshal is directed to allow the ingress and egress to and from the public offices in said building of persons entitled to the same.

E. H. DURELL, *Judge.*

NEW ORLEANS, LA., *December 5, 1872.*

And it contained no other pretenses, recitals, or reasons for its issue.

It will be observed that none of the persons who composed the Wiltz and Deferiet board were members of the Lynch board, or named or mentioned in Kellogg's bill or Judge Durell's injunction. The act under which the Wiltz board was appointed seems to have been wholly overlooked, and no effort was made to restrain or prevent action under it; and although the judge declared that his midnight order was intended to prevent the obstruction of the proceedings in the Kellogg suit, and the violation of the orders of the court, the fact was these orders had not been violated nor the proceedings obstructed, nor was it possible that the canvass and return by the Deferiet board could obstruct or defeat the proceedings in that case, unless the object of that case was not, as pretended, to preserve evidences of right, but really to determine the validity of State elections. But the law had conferred and could confer no such power on a Federal court, and any proceedings to that end were necessarily coram non judice and void.

The report discusses at length the alleged usurpation practiced by Judge Durell, concluding:

Such action, from whatever motive, is at variance with every principle of good government, is calculated to confound and subvert the distinctions between the State and Federal governments, and to overthrow the Constitution itself, without which neither Judge Durell nor any other judge has any rightful authority whatever.

Therefore the committee reported these resolutions:

Resolved, That Edward H. Durell, judge of the district court of the United States for the district of Louisiana, be impeached of high crimes and misdemeanors in office.

Resolved, That a committee of two be appointed to go to the Senate, and, at the bar thereof, in the name of the House of Representatives and of all the people of the United States, to impeach Edward R. Durell, judge of the district court of the United States for the district of Louisiana, of high crimes and misdemeanors in office, and acquaint the Senate that the House of Representatives will in due time exhibit particular articles of impeachment and make good the same; and that the committee do demand that the Senate take order for the appearance of said Edward H. Durell to answer to said impeachment.

Resolved, That a committee of seven be appointed to prepare and report articles of impeachment against Edward H. Durell, judge of the district court of the United States for the district of Louisiana, with power to send for persons, papers, and records, and to take testimony under oath.

Mr. Lyman Tremain, of New York, submitted minority views, which were concurred in by Messrs. William P. Frye, of Maine; John Cessna, of Pennsylvania, and Jasper D. Ward, of Illinois, dissenting, from the majority report and recommending the discontinuance of all proceedings.

Mr. Luke P. Poland, of Vermont, filed individual views, saying:

First. In relation to the midnight order, although he believes the judge had no proper legal jurisdiction to make it, still he is not able to find that the judge acted corruptly or with any belief that he was going beyond his jurisdiction in making it. The law under which he acted was new and no rules or precedents had been established under it. The whole people were excited, the times were violent and turbulent, and judicial calmness or correctness could hardly be expected.

Second. The evidence seems to establish that some of the officers of Judge Durell's court were guilty of very corrupt practices, and that he was not watchful to scrutinize their conduct, but there is no claim that he ever shared in any of the proceeds of their gains and no direct evidence that he knowingly sanctioned or approved their action.

Third. Where the evidence obtained by substantially an ex parte examination only secures a bare majority of the committee, it does not appear to me that the public interest will be furthered by presenting articles of impeachment to the Senate for trial.

A few days after this report was submitted this session of Congress adjourned without further action on it.

2509. The Durell investigation continued.

Judge Durell having resigned, the House discontinued impeachment proceedings.

Discussion of the effect of resignation of the officer upon impeachment proceedings.

Discussion of usurpation of power as a ground for impeachment.

At the next session, on January 7, 1875,[1] the resolutions came before the House, and it was then announced that Judge Durell had resigned his office, and that his resignation had been accepted.

A discussion arose as to two points:

1. As to the sentiments of the committee on the charges against Judge Durell.

Mr. Benjamin F. Butler said that he had favored impeachment solely because of the midnight order. He did not consider the other charges proven. As to the midnight order, he said:

That seemed to me not within the enforcement act. There was no bill under the enforcement act to put that order in action, but simply a proceeding to perpetuate testimony. It seemed to me so gross an exercise of power that if the judge did not know he was exceeding his powers he ought to have known it. And, in either case, if he did know, of course he was wrong; and if he did not know, he ought to have known, and therefore he did not conduct himself well in office. And upon that ground I voted as I did. * * * He acted upon his own motion, without any motion or argument before him, and that is what makes the gravamen of the offense charged against him; for without motion of the counsel for the complainant on this bill of equity, he, upon his own consideration and judgment, acted, and without any moving cause except in his own mind. * * * Now, while I will not hold a judge to be impeachable where he simply makes a mistake, yet if a judge, clearly outside of all possible jurisdiction, interferes with the liberty of a single citizen, I will hold him impeachable.

Mr. Lyman Tremain, of New York, who at the previous session had been one of the minority dissenting from impeachment, said that he had studied the case during the recess and had come to the conclusion that if the resolutions came to a vote he should vote for them, because of the midnight order. After reviewing the history of that order, Mr. Tremain said:

Instead of being a judicial order, it seems to me to be a military order, an order which it seems was afterwards upheld and supported by the troops of the United States, and which it may therefore be fairly assumed was contemplated and intended to be so used. I find also that the marshal testifies that

[1] Second session Forty-third Congress, Journal, p. 139; Record, pp. 319–324.

the judge gave him discretionary power by an oral direction to determine what persons should be admitted to the State-house and what persons should be excluded; thus deputing, not in writing, this vast discretionary power, and clothing the marshal with it. I can not believe that such an order as that can be justified by any consideration of charity.

Messrs. Storm and Poland, who had been of the dissenting minority, stated their belief that the order was wrong, but they did not consider that a wrongful intent was established. "Because this judge made an order he had no legal jurisdiction to make," said Mr. Poland, "it by no means follows he is amenable to impeachment, unless it can be established that that order was made corruptly or made with a knowledge on his part—with a belief that he was exceeding his legal jurisdiction."

Mr. Jeremiah M. Wilson stated that he believed the general opinion of those concurring in the majority report, was that Judge Durell was also impeachable for the irregularities in the bankruptcy proceedings.

2. As to the power to impeach a person who has resigned.

Mr. Butler stated that he had no doubt, as the Constitution imposed the punishment of disability for holding office thereafter, that the impeachment might proceed. But Judge Durell was an old man and there would be no practical benefit in going on with this case. Mr. Luke P. Poland stated that, while he had not examined the matter carefully, he had a very strong impression that the resignation would not avail as a legal obstacle to prevent the House from continuing the proceedings. It was a matter for the discretion of the House, according to the circumstances of the case.

Mr. Tremain said he had examined the question with considerable care, and he had very serious doubt "whether the House has any Constitutional power whatever to proceed by impeachment after the officer has resigned, his resignation has been accepted, and his successor has been appointed. The power to impeach rests entirely upon the Constitution of the United States. The whole system of English parliamentary impeachment, with the tremendous powers possessed by Parliament, has been superseded by our Constitution." Mr. Tremain said that the whole subject had been discussed by Judge Story, whose Commentaries he quoted in support of his view.

The question was taken on laying the resolutions on the table, and the motion was agreed to, yeas 129, nays 69. So the proceedings were discontinued.

2510. The inquiry as to the conduct of Schuyler Colfax, Vice-President of the United States.

In the Colfax case the majority of the Judiciary Committee concluded that the power of impeachment was rather remedial than punitive.

Discussion as to whether or not a civil officer may be impeached for an offense committed prior to his term of office.

A proposition to investigate the conduct of an officer and prepare articles of impeachment was held to be privileged.

On February 20, 1873,[1] Mr. Fernando Wood, of New York, proposed as a question of privilege, the following:

Resolved, That the testimony reported to this House by the special committee appointed under the resolution of the House of Representatives of December 2, 1872, for the investigation of charges of

[1] Third session Forty-second Congress, Journal, pp. 451, 452; Globe, pp. 1544, 1545.

bribery in influencing Members of the House of Representatives, be referred to the Committee on the Judiciary, with instructions to report articles of impeachment against Schuyler Colfax, Vice-President of the United States, if in its judgment there is evidence implicating that officer and warranting impeachment.

Mr. Horace Maynard, of Tennessee, asked if a question of privilege was presented.

The Speaker [1] stated that such a question had been presented.

Mr. James N. Tyner having raised the question of consideration, the House, by a vote of yeas 105, nays 109, voted not to consider it.

Thereupon Mr. Tyner presented this resolution, which was agreed to without debate or division:

Resolved, That the testimony taken by the Committee of this House, of which Mr. Poland, of Vermont, is chairman, be referred to the Committee on the Judiciary, with instructions to inquire whether anything in such testimony warrants articles of impeachment of any officer of the United States not a Member of this House, or makes it proper that further investigation should be ordered in this case.

This resolution was offered as involving a question of privilege, and its status as such was not questioned.

On February 24 Mr. Benjamin F. Butler, of Massachusetts, submitted the report [2] of the committee. This report, so far as it related to the subject of impeachment, was concurred in by Messrs. John A. Bingham, of Ohio, Benjamin F. Butler, of Massachusetts, Charles A. Eldredge, of Wisconsin, John A. Peters, of Maine, Lazarus D. Shoemaker, of Pennsylvania, Daniel W. Voorhees, of Indiana, and Jeremiah M. Wilson, of Indiana. Mr. Clarkson N. Potter, of New York, dissented.

For the purpose of applying the principles and precedents, the committee assumed all that could be inferred from the testimony in regard to the Vice-President, Schuyler Colfax, who was the official referred to. They assumed that in the winter of 1867–68 he purchased of Oakes Ames stock of the Credit Mobilier at par when it was known to be worth much more than par; and that, from 1867 to 1869, while holding such stock, and while the House was considering subjects affecting the value of that stock, he presided over the House as Speaker. They found it undisputed that Mr. Colfax became interested in the Credit Mobilier before he became Vice-President, and that the motives which impelled the transaction were expected to operate upon him only as a Member of the House. Continuing, the committee say:

But we are to consider, taking the harshest construction of the evidence, whether the receipt of a bribe by a person who afterwards becomes a civil officer of the United States, even while holding another official position, is an act upon which an impeachment can be grounded to subject him to removal from an office which he afterwards holds. To elucidate this we first turn to the precedents.

Your committee find that in all cases of impeachment or attempted impeachment under our Constitution there is no instance where the accusation was not in regard to an act done or omitted to be done while the officer was in office. In every case it has been heretofore considered material that the articles of impeachment should allege in substance that, being such officer, and while in the exercise of the duties of his office, the accused committed the acts of alleged inculpation.

The committee then cite briefly the impeachments of Judges Pickering, Chase, Peck, and Humphries, and President Johnson, in each of which the offense charged occurred during the term of office. Of impeachments under the State constitutions

[1] James G. Blaine, of Maine, Speaker.

[2] House Report No. 81, third session Forty-second Congress; Globe, p. 1651.

the rule seemed to be the same, unless the recent cases of Judges Barnard and McCunn, in New York, might present some exceptional features. In the Parliament of England, also, the committee found the same rule prevailing in all years since the rights of the subject and the principles of law and justice have become established.

From this so nearly "invariable current of precedent and authority" the committee turn to inquire:

What is the nature and what the objects of impeachments under our Constitution? Are they punitive or remedial? Or, in other words, is impeachment a constitutional remedy for removing obnoxious persons from office and preventing their again filling office, or a power given for punishing an officer, while he is an officer, for some crime alleged to have been committed by him before he was such officer?

The report answers these questions as follows:

Your committee are very strongly inclined to the opinion that impeachment was intended by the framers of the Constitution to be wholly remedial and not punitive, except as an incident to the judgment, because we find that the Constitution limits the judgment in impeachment by strongly restrictive words: "Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States."

If such judgment is a punishment for an alleged high crime and misdemeanor, then why does the same article provide for the punishment of the accused a second time for the same offense? Because the words we have quoted are followed by the provision: "But the party convicted shall, nevertheless, be subject to indictment, trial, judgment, and punishment according to law."

This, therefore, would leave the party who had been removed from office and disqualified from holding office by the judgment of impeachment, if that is a punishment for his crime, to be the second time punished for the same offense, which is contrary to natural justice, against Magna Charta, and is most positively forbidden by the fifth article of amendment to the Constitution.

This article also throws some further light on this subject, because in its nervous language it enacts that "No person shall be held to answer for a capital or otherwise infamous crime, unless upon presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger."

Nor does it appear that this view is affected by the exception in section 2, Article III, of the Constitution, that the trial of all crimes, except in cases of impeachment, shall be by jury; this exception being necessary only to make the instrument consistent in all its parts with itself, as it had already provided that the impeached could be tried by jury for his crime.

Again, we find impeachment to be remedial in this, that it only provides, as a further consequence, disqualification for office, by which the evil is cured; that thereafter the Government may not have an officer who has so far forgotten his obligations to his official oath and to his duty as a citizen as to have been removed from office for high crimes and misdemeanors; again, by vote of the electors or appointment by the Executive, put in place of honor or trust.

We are also inclined to believe that proceedings of impeachment were intended to be remedial and not punitive, because we have already seen that if punitive at all an entirely inadequate punishment has been provided by the judgment; because the very highest offenses are triable by impeachment, such as treason and bribery, and the sentence may be only removal from an office whose term extends for a few days only, as in the case under consideration.

Again, we are brought to the conclusion that proceedings of impeachment are remedial and not punitive, because, in the case of Judge Pickering, before referred to, impeached for habitual intoxication, the officer was condemned because he became incapacitated for the performance of the duties of his office, and we find that impeachment is the only means known to our Constitution by which a civil officer of the United States, elected by the people, or a judge appointed by the Executive, can be removed from office. And certainly habitual intoxication, while it may not be a crime at common law or by statute, in a private person, may readily enough seem to be a very high crime and misdemeanor in a high civil officer, wholly incapacitating him from performing all his duties; so much so as to be made by the Articles of War a ground for removing an officer from the military service.

Again, your committee are inclined to believe that impeachment is not punitive, because, although an officer may have been tried and convicted of a high crime, yet he may be impeached for that very crime as a remedy for public mischief, and thus, in the converse of the proposition above stated, be twice punished for the same offense.

If the conclusions to which your committee have arrived in this regard are correct, it will readily be seen that the remedial proceedings of impeachment should only be applied to high crimes and misdemeanors committed while in office, and which alone affect the officer in discharge of his duties as such, whatever may have been their effect upon him as a man, for impeachment touches the office only and qualifications for the office, and not the man himself.

The report was made in the House, February 24, and was briefly debated, after which it was postponed to February 26. But it was not considered that day, and does not appear to have been taken up thereafter.[1]

2511. The investigation into the conduct of Charles T. Sherman, district judge of the United States for the northern district of Ohio.

The House declined to vote the impeachment of a judge who had not been heard before the investigating committee.

Discussion of precedents in relation to ex parte investigations with a view to impeachment, including the case of President Johnson.

On February 22, 1873,[2] Mr. Ellis H. Roberts, of New York, presented as a question of privilege, and at the request of the Committee on Ways and Means, this resolution:

Resolved, That the evidence taken by the Committee on Ways and Means, under their authority to send for persons and papers in matters under examination pending before said committee, arising out of business referred to them by the House, be referred to the Committee on the Judiciary, with instructions to examine so much thereof as relates to Charles T. Sherman, judge of the district court of the United States for the northern district of Ohio, and determine whether further investigation of the conduct of said Sherman should not be had with a view of presenting articles of impeachment, if such investigation should, in their judgment, justify such action.

Without any question as to whether or not the resolution was privileged, and without division, the House agreed to it.

On March 3,[3] the last day of the Congress, Mr. Benjamin F. Butler, of Massachusetts, from the Committee on the Judiciary, reported that the testimony had come to the committee on the preceding day. There was therefore no time for the accused or his counsel to be heard, and as it had become the established practice of the Judiciary Committee to give such hearings in cases of impeachment, they reported the testimony back, to be placed on file for the consideration of the next House. Therefore Mr. Butler proposed this resolution:

Resolved, That the testimony be placed on file for the consideration of the next House of Representatives, and that the committee be discharged from the further consideration of the same.

Mr. Clarkson N. Potter, of New York, proposed the following as a substitute:

Whereas it appears by the letters of Charles T. Sherman, a judge of the district court of the United States for the northern district of Ohio, that he proposed to corruptly control legislation for money, to be paid to him by the stock exchange of New York, and subsequently insisted on such payment on the ground of such control, and threatened adverse legislation if the same was not paid; and whereas it

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[1] Globe, pp. 1655, 1656; Journal, pp. 472, 473.

[2] Third session Forty-second Congress, Journal, p. 461; Globe, p. 1628.

[3] Journal, pp. 571, 572; Globe, pp. 2122–2127.

further appears by the testimony of said Sherman before the Committee on Ways and Means of this House that his said pretenses of power to control legislation and his said assertions of services he had rendered in this respect were false: Therefore,

Resolved, That a committee of three Members of this House be appointed by the Speaker to go to the Senate and at the bar thereof, in the name of the House of Representatives and of all the people of the United States, to impeach Charles T. Sherman, judge of the district court of the United States for the northern district of Ohio, of high misdemeanors in office, and acquaint the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same; and that said committee do demand that the Senate take further order for the appearance of the said Charles T. Sherman to answer to said impeachment.[1]

The presentation of this proposed substitute caused an issue to be joined as to whether or not an officer ought to be impeached without an opportunity to be heard. It was explained that Judge Sherman had appeared before the Ways and Means Committee only as a witness, to answer such questions as were asked, and without power to explain or adduce evidence in his own behalf.

Those who favored delay to permit Judge Sherman to be heard seemed generally to consider that his conduct merited impeachment, Mr. Henry L. Dawes, of Massachusetts, saying that he did not see how he could make a satisfactory explanation, yet he believed that the opportunity should be given him.

Mr. Butler said that in the cases of Judges Pickering and Chase the opportunity to be heard was not given, but it had been conceded in "the case of Judge Watrous, in the case of Judge Peck, in the case even of Andrew Johnson." There was dissent at this statement as to President Johnson, and Mr. Butler qualified it by saying:

He was notified of what was going on, but never asked to appear.[2]

Mr. Butler went on to say that in the case of Judge Delahay they did not hear counsel, but sent a subcommittee to Kansas to hear such witnesses as Judge Delahay might choose to summon. Judge Busteed was heard by himself and by counsel. In this case Judge Sherman had made application to be heard, but the committee had no time to hear him.

Mr. Potter read letters of Judge Sherman which appeared to support the allegations of the preamble, and urged the adoption of the substitute.

After further debate the preamble and substitute were disagreed to by a vote of 32 ayes and noes not counted.

Then the resolution proposed by Mr. Butler was agreed to without division.

The records of the State Department show that Martin Walker was appointed judge of this district on November 25, 1873, and the vacancy was occasioned by the resignation and death of Judge Sherman.[3]

2512. The investigation into the conduct of Richard Busteed, United States district judge for Alabama.

The majority of the Judiciary Committee recommended the impeachment of Judge Busteed, principally for nonresidence.

A question as to the authority of Congress to make nonresidence of a judge an impeachable offense.

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[1] At this stage the simple resolution to impeach is usually presented. The above form is used after impeachment has been voted, to provide for taking the charge to the Senate.

[2] Globe, p. 2123.

[3] John Sherman's Recollections, Vol. II, p. 726.

Judge Busteed having resigned, the House discontinued impeachment proceedings.

On December 15, 1873,[1] Mr. E. Rockwood Hoar, of Massachusetts, by unanimous consent, submitted the following resolution, which was agreed to:

Resolved, That the Committee on the Judiciary be directed to inquire and report whether the action of this House is requisite concerning the official conduct of the judge of the United States district court for the district of Alabama; and especially whether said judge has held terms of his court required by law; whether he has continuously and persistently absented himself from the said State; and whether his acts and omissions in his office of judge have been such as in any degree to deprive the people of that State of the benefit of a district court therein, and amount to a denial of justice.

On December 17,[2] Mr. Jeremiah M. Wilson, of Indiana, submitted the following resolution, which was agreed to:

Resolved, That the Committee on the Judiciary, to whom has been referred[3] the resolution requiring said committee to inquire into the conduct of the judge of the district court of the United States of the district of Alabama, shall have power to send for persons and papers.

On June 20, 1874,[4] Mr. Wilson presented the report of the committee for printing and recommitment.

The official referred to in these proceedings was Judge Richard Busteed.

It appears incidentally from the report that at least one witness was called at Judge Busteed's request, and was examined by "Mr. Busteed," which would suggest that the respondent acted in person or was represented by some attorney of the same name. Some of the testimony elicited shows pretty conclusively that Judge Busteed examined the witness personally.

Three charges appear in this case:

1. That Judge Busteed did not reside in the district as required by the acts of September 24, 1789, and December 18, 1812, the latter of which provided that "any person offending against the injunction or prohibition of this act shall be deemed guilty of a high misdemeanor."

The majority of the committee determined that the residence required by these laws was an actual residence. They say that Judge Busteed was appointed in 1865, being then a resident and large property owner in New York. Soon after his appointment he leased for three years a residence in Mobile, Ala., and removed his family there to reside. The report assumes that this removal was with the intent of becoming a permanent resident of the State. About two years afterwards, the house becoming untenantable, he abandoned his lease, his family came North, and have not since returned to Alabama. For the past seven years his family had not been in Alabama. The testimony showed that Judge Busteed had in New York real estate and personal property to a total value of about $300,000, including a house, but that he had no real estate in Alabama, and that his personal effects consisted of "a carpet, a music box, and a double-barreled gun." He lived with a relative in the New York house much of the year, going to Alabama in the fall to hold court,

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[1] First session Forty-third Congress, Journal, p. 127, Record, p. 209.

[2] Journal, p. 141; Record, p. 266.

[3] This is hardly accurate. The House agreed to the resolution, thereby instructing the committee.

[4] Journal, p. 1262; Record, p. 5316; House Report No. 773.

and returning in June, as soon as the courts were over. From this testimony the majority of the committee concluded that Judge Busteed was no resident of Alabama, "but only a sojourner from time to time for the purpose of holding terms of court."

2. The evidence showed much irregularity in holding courts—that in each division of the district he had frequently failed to hold the courts at the terms created by law. In one of them he had held no court since the spring of 1872, and in none of them had he held any court since the spring of 1873. Besides this, before those dates he held his courts irregularly, sometimes omitting altogether to hold them, being absent from the State. The committee concluded that the plea of ill health was not a sufficient excuse for these numerous and continued absences from duty.

3. It was also charged that Judge Busteed had used improperly the money of the United States and his official position to promote his personal interests. The committee found this charge sustained in respect to the remission of a fine by the judge in his court in order to relieve himself of a libel suit in the State courts.

Therefore the majority of the committee, Messrs. Benjamin F. Butler, of Massachusetts; Jeremiah M. Wilson, of Indiana; Luke P. Poland, of Vermont; Alexander White, of Alabama; Charles A. Eldredge, of Wisconsin; Clarkson N. Potter, of New York, and Hugh J. Jewett, of Ohio, concurred in recommending this resolution:

Resolved, That Richard Busteed, judge of the district court of the United States for the southern, middle, and northern districts of Alabama, be impeached for misdemeanors in office.[1]

Messrs. John Cessna, of Pennsylvania; William P. Frye, of Maine; Jasper D. Ward, of Illinois, and Lyman Tremain, of New York, dissented from the conclusion of the majority of the committee.

Soon after this report was printed the session of Congress ended.

At the next session, on January 7, 1875[2] the report was taken up. In the meantime Judge Busteed had resigned his office and the resignation had been accepted.

Mr. Tremain expressed a doubt as to whether or not nonresidence was an impeachable offense. "High crimes and misdemeanors" must be taken to mean such offenses as were high crimes and misdemeanors when the Constitution was framed. It might be doubted whether a subsequent law proposing to make a specific offense a high crime or high misdemeanor would be constitutional.

This report being taken up immediately after the disposition of the Durell case, Messrs. Butler and Wilson took occasion to emphasize their opposition to the theory that an officer might escape impeachment by resignation.

The question being taken on discharging the Committee on the Judiciary from the consideration of the subject and laying it on the table, the motion was agreed to without division. So the proceedings were discontinued.

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[1] Two other resolutions providing for carrying the impeachment to the Senate and for a committee to prepare articles accompanied this resolution. They were similar to the resolutions in the Durell Case

[2] Second session Forty-third Congress, Journal, pp. 140, 141; Record, pp. 324–326.

2513. The investigation into the conduct of William Story, United States judge for the western district of Arkansas.

Memorials containing charges against Judge Story were referred to the Judiciary Committee for examination before the House voted a formal investigation.

On February 26, 1874,[1] Mr. James G. Blaine, of Maine, presented to the House memorials of James S. Robinson, of Fort Smith, Ark., and of Ben. T. Du Vol, James S. Gage, and others, practicing attorneys of Fort Smith, containing charges and specifications against William Story, judge of the United States district court for the western district of Arkansas. These memorials were presented at the Clerk's desk under the rule, and under the rule were referred to the Committee on the Judiciary.

On April 28[2] Mr. Jeremiah M. Wilson, of Indiana, from the Committee on the Judiciary, stated that the memorials presented contained nineteen specifications. The committee had been examining the case for some time, but now needed further authority, and he proposed this resolution, which was agreed to by the House without division:

Resolved, That the Committee on the Judiciary be, and is hereby, instructed to inquire whether Judge William F. Story, judge of the district court of the United States for the western district of Arkansas, shall be impeached for high crimes and misdemeanors, and that said committee have power to send for persons and papers.

On June 20, 1874,[3] Mr. John Cessna, of Pennsylvania, from the Committee on the Judiciary, presented a resolution providing that the evidence taken in this matter by the Judiciary Committee be furnished by the Clerk of the House to the Attorney-General, Secretary of the Treasury, and Third Auditor and First Comptroller of the Treasury, "for their information and guidance, with the recommendation that such action be taken by the said Departments as will restore to the Treasury of the United States any moneys wrongfully paid to any of the officers of said court, and to prevent any such wrongful payments hereafter." This resolution was agreed to with an amendment including also a copy of testimony taken before the Committee on Expenditures in the Department of Justice.

2514. The investigation into the conduct of George F. Seward, late consul-general at Shanghai.

The Seward investigation was set in motion by a memorial.

In the Seward investigation the respondent was represented by counsel and in person before the committee.

An opinion of the Judiciary Committee that a person under investigation with a view to impeachment may not be compelled to testify.

An instance wherein a committee charged with the investigation reported articles with the resolution of impeachment.

On January 23, 1878,[4] the Speaker laid before the House a communication from John C. Myers, late consul-general at Shanghai, China, asking that an inves-

[1] First session Forty-third Congress, Journal, p. 511; Record, p. 1825.

[2] Journal, p. 869; Record, p. 3438.

[3] Journal, p. 1262; Record, p. 5316.

[4] Second session Forty-fifth Congress, Journal, pp. 268, 269, 273.

tigation might be had concerning the administration of the consulate-general at Shanghai, during the terms in office of Hon. George F. Seward, present minister to China; O.B. Bradford, vice-consul-general and consular clerk; and himself as consul-general.

The memorial was first referred to the Committee on Foreign Affairs, but later the reference was changed to the Committee on Expenditures in the State Department.

The Committee on Expenditures in the State Department, by a resolution of January 11, 1878,[1] had been empowered generally to investigate the affairs of the State Department, and under this authority they proceeded to take testimony on the subject of the memorial.

It appears[2] that counsel was permitted to represent Mr. Seward before the committee, and later the investigation was suspended in order that Mr. Seward might leave his post and appear before the committee to assist in cross-examination of witnesses. The committee, however, made the condition of this concession, that Mr. Seward should produce papers in his possession relating to the consul-generalship at Shanghai during his incumbency of the office. Mr. Seward did not produce the papers, did not obey a subpoena duces tecum, and declined the oath as a witness, urging that the fifth amendment to the Constitution provided that "no person shall be compelled, in any criminal case, to be a witness against himself."

The issue thus raised was referred to the Committee on the Judiciary, who reported on March 3, 1879,[3] Mr. Benjamin F. Butler, of Massachusetts, making the report. The general question of the production of papers was discussed,[4] and also the report said on the question of testimony:

> Investigations looking to the impeachment of public officers have always been finally examined before the Judiciary Committee of the House, so far as we are instructed; and it is believed that the case can not be found as a precedent where the party charged has ever been called upon and compelled to give evidence in such case. We distinguish this case from the case of an ordinary investigation for legislative purposes, where all parties are called upon to give such evidence (oral or written) as may tend to throw light upon the subject of investigation; but even in those cases it was early held that a person called as a witness, and not a party charged before the committee, was not bound to criminate himself; and a statute familiar to the House, for the protection of witnesses under such circumstances, from having the evidence given used against them, was passed.
>
> In making an investigation of the facts charged against an officer of the United States looking to impeachment, the House acts as the grand inquest of the nation to present that officer for trial before the highest court known to our Constitution—the Senate of the United States—for such punishment as may be constitutionally imposed upon him, which is very severe in its penalties, and even then does not exonerate the party from further prosecution before the proper courts for offenses against the laws.

On March 1, 1879,[5] before the report of the Judiciary Committee had been submitted to the House, Mr. Springer presented the report of the majority of the Committee on Expenditures in the State Department.[6] The report consisted of seventeen articles of impeachment, charging that as judge of the consular court, while

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[1] Journal, pp. 158, 159.

[2] House Report No. 117, third session Forty-fifth Congress.

[3] Third session Forty-fifth Congress, Report No. 141.

[4] See sections 1699, 1700 of this volume for general aspects of the subject.

[5] Journal, pp. 621, 624, 625, 642, 649, 659, 664; Record, pp. 2374, 2378, 2384, 2778.

[6] For this report in full, see Journal, pp. 624–633.

consul-general, he had corruptly received money in the settlement of estates and in other judicial matters; that be had converted to his own use certain funds intrusted to him as consul-general; that he had used his official influence to promote the construction of a railway in violation of law and treaty; that he had converted to his own use fees belonging by law to the marshal of the consulate, by virtue of an unlawful agreement with the said marshal; that he had, by means of falsified accounts, converted to his own use certain premiums of exchange; that he unlawfully took the salary of his office as consul-general after he had become minister of the United States to China, and while receiving the salary of the latter office; that as minister to China he unlawfully suspended John C. Myers, then being consul-general at Shanghai, and procured the appointment of one Oliver B. Bradford to the place, for the purpose "to secrete and conceal the crimes committed as aforesaid;" and that he had neglected willfully to render true and just quarterly accounts of his office, and embezzled the public moneys of the United States; that as minister to China he unlawfully endeavored to procure and did procure the release of Oliver B. Bradford from the consular jail, whither he had been committed for embezzlement, and permitted him to go at liberty; and that he unlawfully took from the consulate-general at Shanghai certain account books, the property of the United States, and carried them away "with intent to conceal, destroy, or steal the same, and ever since has and still does conceal the same, and refuses to deliver the same up as required by law."

The committee therefore recommended this resolution:

Resolved, That George F. Seward, late consul-general of the United States of America at Shanghai, China, and now envoy extraordinary and minister plenipotentiary of the United States of America to China, be impeached of high crimes and misdemeanors while in office.

Two other resolutions accompanied, providing for presentation of the impeachment in the Senate and for the appointment of a committee to frame articles of impeachment.

Mr. Solomon Bundy, of New York, presented views of the minority, with this resolution:

Whereas, in view of the great importance of the subject and matters embraced in the report of the majority of the committee in the matter of the proposed impeachment of George F. Seward for alleged high crimes and misdemeanors, and the complicated questions of law involved therein: Therefore

Resolved, That the matters embraced in such report, together with the evidence in the case, be referred to the Committee on the Judiciary.

On March 3,[1] the last day of the Congress, the House, by a vote of yeas 132, nays 109, voted to consider the report; but thereafter dilatory proceedings prevented action on it.

2515. The investigation into the conduct of Oliver B. Bradford, late vice-consul-general at Shanghai.

A question as to whether a vice-consul-general is such an officer as is liable to impeachment.

The Bradford investigation was set in motion by a memorial in which charges were preferred.

[1] Journal, pp. 621, 622.

On March 22, 1878,[1] Mr. William M. Springer, of Illinois, from the Committee on Expenditures in the State Department, to whom had been referred a memorial of John C. Myers relating to the affairs of the consulate-general at Shanghai, China, reported a recommendation that Oliver B. Bradford, late vice-consul-general at Shanghai, China, and now holding the office of postal agent of the United States at Shanghai, and also the office of consular clerk of the United States assigned at Shanghai, be impeached at the bar of the Senate of high crimes and misdemeanors in office. The committee transmitted with their report the testimony taken, and also as part of their report, ten articles of impeachment, setting forth the charges against the said Bradford: (1) That in abuse of his official position he became interested in the construction of a railroad in China, violating treaties between the United States and China, and in violation of acts of Congress; (2) that in the construction of the said railroad he used his official position to further a fraudulent scheme; (3) that in five specified cases he has used his office to exercise oppressive, extortionate, and corrupt activity against American citizens; (4) that he embezzled a letter from the post-office at Shanghai; (5) that he unlawfully took from the post-office and opened another letter; (6) that he transmitted a false salary voucher to the United States Treasury to cover the withholding of a portion of the salary of an employee; (7) that as disbursing officer he defrauded the United States Government; (8) that he again was guilty of fraud as disbursing officer; (9) that he embezzled a sum of money belonging to the United States; (10) and that he unlawfully deposited to his own account a sum of money belonging to the United States.

In view of these specifications the committee recommended this resolution:

Resolved, That Oliver B. Bradford, now consular clerk of the United States, assigned to Shanghai, China, and postal agent of the United States at Shanghai, China, and late vice-consul-general of the United States at Shanghai, China, and late clerk of the consular court of the United States at Shanghai, China, be impeached by the House of Representatives at the bar of the Senate, for high crimes and misdemeanors while in office.

Mr. Springer announced in the report that two members of the committee, Messrs. Mark H. Dunnell, of Minnesota, and Solomon Bundy, of New York, entertained grave doubts whether Mr. Bradford was such an officer as was liable under the Constitution to impeachment. All of the committee agreed that the evidence sustained the charges. In view of the constitutional question involved, Mr. Springer moved that the whole subject be referred to the Judiciary Committee. This motion was agreed to without division.

2516. The investigation of the conduct of Henry W. Blodgett, United States judge for the northern district of Illinois.

In the case of Judge Blodgett the House ordered an investigation upon the presentation of a memorial specifying charges.

In the investigation of Judge Blodgett both the complainants and the respondent were represented by counsel and produced testimony before the committee.

The most liberal latitude was allowed in the examination of witnesses before the committee which investigated the conduct of Judge Blodgett.

[1] Second session Forty-fifth Congress, Journal, p. 1127; Record, p. 3667; House Report No. 818.

The committee and the House acted adversely on a proposition to impeach Judge Blodgett for an act in excess of his jurisdiction, bad faith not being shown.

On January 7, 1879,[1] Mr. Carter H. Harrison, of Illinois, presented the memorials of certain citizens of Chicago asking for the appointment of a special committee to visit that city and investigate certain charges, therein set forth, against Henry W. Blodgett, district judge of the northern district of Illinois. Mr. Harrison also presented a preamble and resolution, which, after amendment, was agreed to by the House, giving the Judiciary Committee authority to investigate the charges.

On March 3,[2] Mr. J. Proctor Knott, of Kentucky, presented the report of the committee.

As to the method of investigation the report says:

> That during the taking of the testimony herewith submitted, Judge Blodgett and Messrs. Cooper, Knickerbocker, and Sheldon, upon whose memorial the resolution recited above was introduced and adopted, were present in person and with counsel. Both parties were permitted to introduce evidence, and the most liberal latitude was allowed to each in the examination of witnesses to the end that every fact bearing directly or remotely upon the subject under consideration might be clearly ascertained. In order to facilitate the investigation as much as possible, however, and to enable the committee to confine the testimony within reasonable limits, and present it to the House in something like a systematic form, the memorialists were requested to present their charges and specifications in writing, which was accordingly done, and copies thereof delivered to Judge Blodgett with the request that he would file written answers thereto, if such answers should be deemed by him necessary or desirable.

The report then discusses the charges, which were:

1. That Judge Blodgett had entered into a dishonest conspiracy to defraud, by aid of his acts as judge, the creditors of a certain corporation.

2. That he had improperly attempted to prevent the grand jury from finding an indictment against one Homer N. Hibbard, for perjury.

3. That while holding the office of judge he had knowingly borrowed and converted to his own personal use money belonging to or deposited in the registry of his court.

4. That as judge he had willfully employed the power and authority of the court to perpetrate acts of gross judicial oppression upon the rights of a private citizen, and sanction and direct the commission of a flagrant trespass which constituted a criminal offense under the laws of the State of Illinois, punishable by fine and imprisonment.

5. That in administering the bankrupt law he had willfully violated the letter and spirit of the law by making an unlawful use of his power as judge to enrich his friends and favorites, to the reproach and scandal of the court.

6. That he had corruptly used his official position to aid a conspiracy to defraud the stockholders of a certain insurance company, by enabling certain persons to buy up the stock at a discount.

The committee found in general that the charges were not sustained by the evidence; but in discussing the fourth charge they say:

> It maybe conceded that Judge Blodgett acted in this instance in excess of his jurisdiction. * * * However justly, therefore, Judge Blodgett may be amenable to criticism or censure on account of his

[1] Third session Forty-fifth Congress, Journal, p. 138.

[2] Journal, p. 671; Record, pp. 2388, 2390–2395; House Report No. 142.

action in this matter * * * it is impossible to see how he can be held liable to impeachment therefor, unless it can be shown that he did not act in good faith for the best interests of those concerned, as he understood them, but with such malice and corruption as to render his act in the premises an official misdemeanor.

In view of all the evidence the committee, without dissent, recommended this resolution:

Resolved, That the charges against Henry W. Blodgett, United States district judge for the northern district of Illinois, be laid on the table, and the House take no further action thereon.

This resolution was agreed to by the House without division.

2517. The investigation into the conduct of Aleck Boarman, United States judge for the western district of Louisiana.

A Member of the House presented specific charges against Judge Boarman to the Judiciary Committee, which had been empowered to investigate the judiciary generally.

A subcommittee visited Louisiana and took testimony against and for Judge Boarman.

The Member who lodged charges against Judge Boarman conducted the case against him before the subcommittee.

Judge Boarman made a sworn statement or answer to the committee investigating his conduct in 1890, but did not testify.

The inquiry of 1890 into the conduct of Judge Boarman was conducted according to the established rules of evidence.

In 1890 the Judiciary Committee concluded that Judge Boarman should be impeached for an act in violation of the statute.

On March 1, 1890,[1] Mr. William C. Oates, of Alabama, from the Committee on the Judiciary, to whom had been referred, on February 18, 1890, a resolution providing for an investigation of "the practice of certain United States district courts and other officers in criminal cases," reported the resolution with an amendment in the nature of a substitute. To show the desirability of such investigation the report cites a letter from the Attorney-General to the chairman of the committee and letters from the Commissioner of Internal Revenue and one of the Auditors of the Treasury. In addition to these letters numerous complaints had been made by persons seeming to be well informed and reputable; and also there had been complaints in the newspapers. Therefore an investigation seemed to the committee desirable, and they recommended a substitute amendment providing for a general investigation, including "maladministration or corrupt official conduct of any of the officers connected with the judicial department of the Government."

On April 1[2] the House agreed to the resolution with the proposed amendment; and on September 16[3] the committee was given authority to continue its investigation through the recess of Congress.

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[1] First session Fifty-fifth Congress, Journal, p. 296; House Report No. 566.

[2] Journal, p. 416; Record, p. 2877.

[3] Journal, p. 1046.

On February 17, 1891,[1] Mr. Albert C. Thompson, of Ohio, submitted the report of the committee. This report dealt generally with the subject referred to the committee, and also presented an ascertainment of fact in relation to Aleck Boarman, district judge for the western district of Louisiana. The report states that while the committee were investigating the general subject a letter was, in May, 1890, addressed to the chairman of the committee by Mr. C. J. Boatner, Member of the House from the Fifth District of Louisiana, preferring seven specific charges against Judge Boarman, and asking that a date be fixed when the charges might be substantiated by witnesses. Thereupon a subcommittee of the Committee on the Judiciary visited Shreveport and New Orleans and took testimony relating to the charges. Both Judge Boarman and Mr. Boatner were present at Shreveport, but neither attended at New Orleans. Mr. Boatner conducted the examination of witnesses called to sustain the charges, and Mr. Albert H. Leonard appeared as counsel for Judge Boarman. The report further says:

> The subcommittee before whom the testimony was taken aimed to admit nothing inadmissible under the well established rules of evidence, but, notwithstanding the care exercised, much is found in the record that is not legal evidence. In reaching the conclusions, however, hereinafter stated, the committee endeavor to eliminate from their consideration those matters that are plainly hearsay and neighborhood gossip, and base their judgment, it is believed, upon substantial and trustworthy evidence.
>
> Judge Boarman did not testify before the subcommittee, nor did he introduce any oral testimony whatever, except that of Mr. Albert H. Leonard and a "statement" made by Mr. M. C. Elstner, the latter being entirely personal to Mr. Elstner himself and having no bearing upon any of the issues raised. The answer of Judge Boarman, hereinbefore referred to, is given its full legal effect, as an answer, and is taken to be true except in those particulars wherein its averments axe overcome by countervailing legal testimony.

The answer of Judge Boarman, filed at the first meeting of the committee, is printed in the report, and begins as follows:

> In the matter of certain charges and complaints made by C. J. Boatner against Aleck Boarman, judge, western district of Louisiana, to the subjudiciary committee of the House of Representatives, sitting at Shreveport, La., the Hon. A. C. Thompson, chairman.
>
> Respondent, in answer to said charges, respectfully makes the following answer and statements under oath:
>
> He denies each and every allegation made against him, except what is hereinafter admitted.
>
> First charge. Respondent denies, etc.
>
> * * * * * * *
>
> Respondent submits this answer to said charges, and respectfully asks now, as he has, to the knowledge of the committee, heretofore done, that such a thorough investigation Shall be made as will best subserve the public interest.
>
> ALECK BOARMAN.
>
> Sworn to and subscribed before me this November 17, 1890.
>
> [SEAL.]
>
> J. B. BEATTLE, *Clerk.*

Upon the filing of the answer Mr. Boatner asked and was granted leave to amend the charges against Judge Boarman by the addition of another specification.

The committee concluded as to all the charges except the fourth that while there was much in the testimony warranting severe criticism of his acts yet he

[1] Second session Fifty-first Congress, Journal, pp. 254, 270; Record, pp. 2797, 2937; House Report No. 3823.

should be acquitted; but on the fourth charge the committee were unanimous that he should be impeached. This charge was that he had "used for his own purposes the funds paid into the registry of his court, and has unlawfully and corruptly failed and refused to decide causes in which the funds in dispute were or should have been in the registry of his court, and also (additional charge) that the respondent repeatedly borrowed money from the marshal of this court, contrary to law." The report quotes sections 995, 996, and 5505 of the Revised Statutes, and rule 42 governing district courts in admiralty cases, and says:

> The committee profoundly regret that from the evidence taken and fully appearing in the record there appears to have been no attempt on the part of Judge Boarman to comply with the statute and the rules of court as to moneys paid to the clerk. His practice in this regard, if not criminal, is reprehensible in the extreme.

Therefore the committee, without dissent, reported this resolution:

> *Resolved,* That Aleck Boarman, judge of the United States district court for the western district of Louisiana, be impeached of high crimes and misdemeanors.

The House considered the resolution on February 28,[1] which was next to the last legislative day of the Congress, but the debate, which was entirely in favor of impeachment, was not concluded, and the resolution failed to be acted on.

2518. The Boarman investigation continued.

In 1892 the House referred to the Judiciary Committee the evidence taken in the Boarman investigation of 1890 as material in a new investigation.

At the investigation of 1892 Judge Boarman testified and was cross-examined before the committee.

The second investigation of Judge Boarman having revealed an absence of bad intent in his censurable acts, the committee and the House decided against impeachment.

A Member who had preferred charges against Judge Boarman declined, as a member of the Judiciary Committee, to vote on his case.

In the first session of the next Congress, on January 13, 1892,[2] Mr. Boatner submitted a resolution directing an investigation of the charges against Judge Boarman and it was referred to the Committee on the Judiciary.

On January 30[3] Mr. Oates reported from the committee, in lieu of that resolution, a preamble reciting the proceedings in the former Congress, especially citing the fact that the evidence taken was not ex parte, and that the respondent had been present in person or by counsel when it was taken, and a resolution referring the report made in the last Congress, the charges and the evidence, to the Committee on the Judiciary, with instructions to investigate the same thoroughly, and further providing: "And for the purpose of making the investigation hereby ordered the said Committee on the Judiciary may adopt and use as legal evidence the testimony taken as aforesaid," and "may take and consider any additional and explanatory evidence of a legal character which may be offered either for or against said judge."

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[1] Journal, p. 330; Record, pp. 3595–3597.

[2] First session Fifty-second Congress, Journal, p. 26.

[3] Journal, p. 49; Record, p. 689.

This resolution was agreed to, and the committee made the investigation

On June 1,[1] Mr. Oates submitted the report of the committee.

As to the manner of investigation the report shows that it was conducted by a subcommittee, and says:

> Your committee found it unnecessary to take any additional testimony after having adopted that taken by its predecessor in the Fifty-first Congress. Upon due inquiry it was found that there were no other witnesses to be examined in behalf of the Government touching the said charges, and therefore the said judge was notified that if he had any exculpatory or explanatory evidence which he wished to offer that he should have the opportunity of doing so. He then came to Washington, appeared before said special subcommittee, and gave his testimony.

A reference to the printed testimony[2] shows that Judge Boarman testified at length and was then cross-examined by members of the committee. He explained his conduct as to the various charges.

The committee investigated the seven former charges and one new one. The committee found in favor of the judge as to the new charge; and also found in his favor as to the old charges, including that numbered four, on which the committee had found against him in the preceding Congress. As to the fourth charge the report says:

> It will be seen in this testimony that the judge claims to have been entirely ignorant of the existence of this statute. (Sec. 5505 relating to receiving from the clerk money belonging to the registry.) He says that it looks like a humiliating confession for a judge to make, and the committee agree with him in that statement. Ignorantia legis non excusat is a maxim of the law, applicable alike to the ignorant and the learned. It can not, therefore, be taken as any excuse whatever for his conduct in this case. He is, by his own confession, technically guilty of embezzlement. There are, however, extenuating circumstances. Wheaton, the clerk, was upon his death bed when he gave the judge the orders * * * for this money. He told the judge that he was going to die, and that this money belonged in the registry of the court, and he did not wish it to go into his succession or estate. The judge swears that his motive in receiving the money was to preserve it unincumbered for the suitors who would be entitled to it when the distribution was decreed; and while he admits that he may have converted a part of it to his own use, if he did he replaced it with the new clerk, and thus those who were entitled to it received their money. While, therefore, the taking of the money by the judge was a statutory embezzlement, it can not be said from the evidence that he took it lucri causa, or with dishonest intent.

The committee find the second branch of the fourth charge—relating to corrupt failure to decide cases—not sustained.

The committee found that judge Boarman's conduct had not been such as to absolve him from censure, but they failed to find that he "had been influenced by corrupt or dishonest motives." Therefore they asked to be discharged from further consideration of the case.

The report also says:

> Hon. C. J. Boatner, now a member of this committee, having preferred the charges against Judge Boarman in the Fifty-first Congress, declined to vote on any of the propositions embraced in the foregoing report.

The report of the committee was concurred in by the House without division.

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[1] Journal, p. 207; Record, p. 4908; House Report, No. 1536.

[2] See pp. 57–72 of Report No. 1536.

2519. The inquiry into the conduct of J. G. Jenkins, United States circuit judge for the seventh circuit.

The investigation of the conduct of Judge Jenkins was suggested by a resolution offered by a Member and referred to the Judiciary Committee.

Form of resolution authorizing the investigation into the conduct of Judge Jenkins.

Instance wherein a majority of the Judiciary Committee reported a resolution censuring a judge for acts not shown to be with corrupt intent.

On February 5, 1894,[1] Mr. Lawrence E. McGann, of Illinois, proposed a resolution to investigate and report whether or not the Hon. J. G. Jenkins, judge of the United States circuit court for the seventh circuit, has abused the powers and process of said court or oppressively exercised the same to oppress the employees of the Northern Pacific Railroad Company. This resolution was referred to the Committee on the Judiciary.

On March 6, 1894,[2] Mr. Charles J. Boatner, of Louisiana, from the Committee on the Judiciary, reported the following resolution, which was agreed to:

Resolved, That the Committee on the Judiciary of the House be, and is hereby, authorized to speedily investigate and inquire into all the circumstances connected with the issuance of writs of injunction in the case of the Farmers' Loan and Trust Company, complainant, against the Northern Pacific Railroad Company, defendant, in the United States circuit court for the eastern district of Wisconsin, and the several matters and things referred to in the resolution introduced on the 5th day of February, instant, charging illegalities and abuse of the process of said court therein and report to this House whether in any of said matters or things the Hon. J. G. Jenkins, judge of said court, has exceeded his jurisdiction in granting said writs, abused the powers or process of said court, or oppressively exercised the same, or has used his office as judge to intimidate or wrongfully restrain the employees of the Northern Pacific Railway Company, or the officers of the labor organizations with which said employees or any of them were affiliated, in the exercise of their rights and privileges under the laws of the United States; and if so, what action should be taken by this House or by Congress.

On June 8[3] Mr. Boatner submitted the report of the committee. This report relates the history of the appointment of receivers for the Northern Pacific Railroad Company by Judge Jenkins, in conjunction with other judges in whose territory the property lay; of the successive reductions of the wages of employees made by the receivers; of great dissatisfaction which finally arose among the employees affected; and finally the issuance of a writ of injunction by Judge Jenkins, on application of the receivers, restraining the employees "from combining and conspiring to quit, with or without notice, the service of the said receivers, with the object and intent of crippling the property in their custody or embarrassing the operation of the said railroad, and from so quitting the service of the said receivers with or without notice as to cripple the property or prevent or hinder the operation of the said railroad." This writ was followed by a second writ prohibiting the representatives of labor organizations from "ordering, recommending, approving, or advising others to quit the service of the receivers."

Although witnesses and the judge himself in an opinion denied that there was an intention to coerce the services of the employees, yet the majority of the committee find this explanation inconsistent with the words used, and hold that

[1] Second session Fifty-third Congress, Journal, p. 137.

[2] Journal, p. 229; Record, pp. 2629, 2661.

[3] House Report No. 1049.

Judge Jenkins's writs were "not sustained either by reason or authority," were "in violation of a constitutional provision, an abuse of judicial power, and without authority of law." The report of the majority continues:

> The testimony adduced before us fails to show any corrupt intent on the part of the judge.

The majority, in conclusion, recommend the adoption of this resolution—

> *Resolved,* That the action of Judge James G. Jenkins in issuing said order of December 19, 1893, being an order and writ of injunction, at the instance of the receivers of the Northern Pacific Railroad Company, directed against the employees of said railroad company, and in effect forbidding the employees of said Northern Pacific Railroad Company from quitting its service under the limitations therein stated, and in issuing a similar order of December 22, 1893, in effect forbidding the officers of labor organizations with which said employees were affiliated from exercising the lawful functions of their office and position, was an oppressive exercise of the process of this court, an abuse of judicial power, and a wrongful restraint upon said employees and the officers of said labor organizations; and that said orders have no sanction in legal precedent, were an invasion of the rights of American citizens, and contrary to the genius and freedom of American institutions, and therefore deserving of the condemnation of the American people.

The minority views, signed by Messrs. William A. Stone, of Pennsylvania; George W. Ray, of New York; H. Henry Powers, of Vermont, and Thomas Updegraff, of Iowa, hold that if Judge Jenkins acted corruptly he should be impeached, while if he erred honestly the wrong would be righted by an appellate tribunal, and conclude:

> To propose that a judge, who, as the majority declare, had no "corrupt intent" and "who sincerely believes" in his conclusions, shall, without impeachment, be censured by the legislative branch of the Government, is to confound all distinctions between the legislative and judicial powers and create a side tribunal of appeal where justice would be for sale to the suitor who could poll the largest vote.

It does not appear that the resolution was acted on by the House.

2520. The investigation into the conduct of Augustus J. Ricks, United States judge for the northern district of Ohio.

The House ordered an investigation of the conduct of Judge Ricks on the strength of charges preferred in a memorial.

In the investigation of Judge Ricks the respondent made a statement before the committee and offered testimony in his behalf.

The majority of the Judiciary Committee reported a resolution censuring Judge Ricks.

On January 7, 1895,[1] Mr. Tom L. Johnson, of Ohio, presented the memorial of Samuel J. Ritchie, praying for the impeachment of Augustus J. Ricks, United States district judge for the northern district of Ohio. This memorial was referred under the rule.

On the same day Mr. Johnson, by unanimous consent, offered the following resolution, which was agreed to without debate and without the reading of the memorial or any statement of its contents beyond the mere announcement by Mr. Johnson that it was "the memorial of Samuel J. Ritchie, praying for the impeachment of Augustus J. Ricks," etc.:

> *Resolved.* That the Committee on the Judiciary be, and they are hereby, instructed to investigate the charges against the Hon. Augustus J. Ricks, United States district judge for the northern district of Ohio, contained in the memorial of Samuel J. Ritchie, presented to the House this day, and report what action in their judgment should be taken thereon.

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[1] Third session Fifty-third Congress, Journal, pp. 50, 51; Record, p. 709.

On January 25 [1] Mr. George P. Harrison, of Alabama, from the majority of the Committee on the Judiciary, submitted a report, accompanied by this resolution:

Resolved, That while the committee is not satisfied that Judge Augustus J. Ricks has been guilty of any wrong committed while judge that will justify it in reporting a resolution of impeachment, yet the committee can not too strongly censure the practice under which Judge Ricks made up his accounts.

Minority views were presented by Mr. Joseph W. Bailey, of Texas, accompanied by these resolutions:

Resolved, That Augustus J. Ricks, judge of the United States court of the northern district of Ohio, be impeached for high crimes and misdemeanors.

Resolved, That the Committee on the Judiciary is hereby instructed to prepare without unnecessary delay and report to this House suitable articles of impeachment against the said Augustus J. Ricks, judge of the United States court for the northern district of Ohio.

It appeared from the report and the minority views that at first the committee, by a vote of seven to six, had agreed to recommend impeachment, one member being present and not voting and three being absent. But before a report was made in accordance with this vote an order was agreed to inviting Judge Ricks to appear before the committee, and also providing for the testimony of such other witnesses as might be called. It was "after hearing the statement of Judge Ricks on his own behalf, and the testimony of Martin W. Sanders," that the committee, by a vote of nine to seven. one member being absent, agreed to the resolution reported by the majority.

It appears further from the report that the committee took testimony at Cleveland, Ohio, through a subcommittee, and in Washington before the whole committee. This testimony was such as was offered both against and in behalf of Judge Ricks.

The minority views were concurred in by Messrs. Joseph W. Bailey, of Texas; Edward Lane, of Illinois; Thomas R. Stockdale, of Mississippi; David A. De Armond, of Missouri; D. B. Culberson, of Texas; Thomas Updegraff, of Iowa, and C. J. Boatner, of Louisiana. The charges which they discussed were:

First. That as judge the said Augustus J. Ricks had defrauded the United States out of certain moneys, which he appropriated to his own use.

Second. That he corruptly persuaded Martin W. Sanders, his successor in the clerk's office, to omit from his emolument report fees which ought to have been included in it.

Third. That he approved the emolument report of said Martin W. Sanders, knowing it to be incorrect.

The minority found that the third charge was not reasonable, and that the second in the form made was not sustained by the evidence, although he had evidently taken fees to which he was not entitled. But on the first charge they concluded that the evidence sustained the guilt of the judge. The minority discuss at some length the evidence which led them to their conclusion.

The report was made near the close of the Congress, and it does not appear that any action was taken on it.

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[1] Journal, p. 84; Record, p. 1360; House Report No. 1670.