RESEARCH MEMORANDUM R-117-2563

Michael Burns[1] *October 7, 1988*

A PROCEDURE FOR IMPEACHING STATE OFFICERS

Because there have been no impeachments in Ohio since the early part of the 1800's,[2] the question has been raised, "How would the House and Senate proceed—nowadays—to impeach a state officer?"

In an effort at answering this question, this memorandum looks at three of the most famous impeachments from the early 1800's, that of Judge William Irvin by the Third General Assembly in 1805 and those of Judges Calvin Pease and George Tod by the Seventh General Assembly in 1808-09.[3] The procedures followed in these ancient impeachments—the Senate even adopted rules to govern itself in trying them—at least suggest a procedure that might be followed in a present day impeachment.

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[1] Two other members of the LSC staff assisted me in preparing this memorandum. Fred Puckett provided many helpful comments and insights, while Barbara Laughon located and compiled the historical information on which the memorandum is based.

[2] Aumann & Walker, The Government and Administration of Ohio p. 65 (1956).

[3] Other impeachments reviewed in preparing this memorandum include that of Judge John Thompson by the Tenth General Assembly in 1812, that of Judge James Ferguson by the Twelfth General Assembly in 1814, and those of Judges George Brown and William Smith by the Eighteenth General Assembly in 1820. The precedents provided by these impeachments do not appear remarkably different from precedents provided by the impeachments noted in the text accompanying this footnote.

Constitutional basis of the power of impeachment

Although Judges Irvin, Pease, and Tod were impeached and tried under the original Ohio Constitution of 1802, the impeachment provisions of that Constitution and the currently effective Constitution of 1851 are virtually identical.[4] The impeachment provisions of the current Ohio Constitution are quoted and discussed in the following paragraphs.

Section 24 of Article II, Ohio Constitution, provides that the "governor, judges, and all state officers may be impeached for any misdemeanor in office * * *."

With regard to impeachment proceedings, Section 23 of Article II, Ohio Constitution, provides:

> The house of representatives shall have the sole power of impeachment, but a majority of the members elected must concur therein. Impeachments shall be tried by the senate; and the senators, when sitting for that purpose, shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the senators.

If convicted upon impeachment, a state officer may, at most, be removed from office and disqualified from holding state office in the future. He cannot, if convicted upon impeachment, be subjected to a criminal penalty such as a fine or imprisonment—but, whether convicted or not upon impeachment, remains liable, under Section 24 of Article II, to "indictment, trial, and judgment" in an ordinary criminal proceeding.

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[4] Ohio Constitutional Revision Commission, Judiciary Committee, Research Study No. 32, "Judicial Removal in Ohio," p. 2.

A suggested procedure for a present day impeachment

The following outline is suggested as a procedure for impeaching a state officer in accordance with Section 23 of Article II, Ohio Constitution. It is based upon the precedents provided by the impeachment of Judge Irvin in 1805[5] and the impeachment of Judges Pease and Tod in 1808-09.[6] The procedure has two parts, reflecting the authority of the House of Representatives to bring impeachments and the duty of the Senate to try impeachments brought by the House.[7] Single-spaced annotations to some of the procedural steps provide additional information that elucidate the procedures.

By way of general introduction, however, it may be helpful to note that in considering an impeachment, the House functions much like a grand jury,[8] while in trying an impeachment, the Senate functions much like a court.

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[5] First, see 4 House Journal pp. 78, 80-81, 82-85, 86-87, and 92-93 for the impeachment proceedings in the House. Then, see "Journal of the Senate in [the] Case of the Impeachment of William Irvin" (appended at end of 4 Senate Journal) for the trial. Other pages from the House and Senate Journals at the time of the impeachment of Irvin may also be relevant.

[6] First, see 7 House Journal pp. 47, 58, 68, 72-76, and 79 for impeachment proceedings in the House with regard to Pease and 7 House Journal pp. 47, 63, 76, and 79-81 for impeachment proceedings with regard to Tod. Then, see "Journal of the Senate in Cases of Impeachments" (appended at end of 7 Senate Journal), pp. 5-47 for impeachment trial of Pease and pp. 49-100 for impeachment trial of Tod. Other pages from the House and Senate Journals at the time of the impeachment of Pease and Tod may also be relevant.

[7] "The Ohio Constitution places no affirmative duty of impeachment on the House of Representatives, regardless of how base or improper an official's acts may be. However, Section 23 does mandate action by the Senate after the House of Representatives passes articles of impeachment. The section states that the Senate 'shall' try the impeachment." Ohio Constitutional Revision Commission, Judiciary Committee, Research Study No. 32, supra.

[8] Under Section 10 of Article I, Ohio Constitution, impeachment is an exception to the requirement that "no person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury."

I would stress that the following is just an outline, and as such does not give as complete a picture of what might be entailed in an impeachment as may be had by reading the House and Senate Journals, cited in Footnotes 5 and 6, that report the impeachment and trial of Judges Irvin, Pease, and Tod.

I would also stress that each step in the procedure, although drawn from the precedents provided by the Irvin, Pease, and Tod impeachments, is merely offered as a suggestion for a present day impeachment. After reflecting upon a procedural step, a reader might well conclude that the step is not worth taking, or should be modified, in a present day impeachment.

Procedure in the House of Representatives

1. Prepare and adopt a House resolution assigning an existing committee, or appointing a select committee, to inquire and report with regard to the official conduct of the officer as concerns allegations of misdemeanors in office warranting his impeachment.

> There is considerable doubt over just what constitutes an impeachable "misdemeanor in office." The term is not constitutionally defined.
>
> Significantly though, Section 23 of Article II, Ohio Constitution, requires the Senate, in trying an impeachment, to "do justice according to law and evidence." Conceivably, this language limits impeachable misdemeanors in office to crimes defined by preexisting statutes—just as is true in ordinary criminal cases.
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> There is an alternative view, however, arguing that while the "law" constituting an impeachable misdemeanor includes crimes defined by preexisting statutes, the notion of an impeachable misdemeanor also extends further and

includes other sorts of misbehavior in office. As put by Justice Story in his extensive commentary on the impeachment provisions of the United States Constitution:

> The offences to which the power of impeachment has been and is ordinarily applied as a remedy are of a political character. Not but that crimes of a strictly legal character fall within the scope of the [impeachment] power * * *; but that it has a more enlarged operation, and reaches what are aptly termed political offences, growing out of personal misconduct or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office.[9]

What Justice Story intends, in other words, is "law" in the sense of the "common law"—i.e., the body of judge-made law that is present, on the one hand, as precedent, but that also develops as it is applied in cases.[10]

Historically, at least in federal cases, these two different views have been argued in almost every impeachment—with, as perhaps might be expected, the proponents of impeachment arguing for Justice Story's "enlarged" notion of impeachable misdemeanors, and the defense arguing for the narrower view of an impeachable misdemeanor as being violations of preexisting law.[11]

Indeed, each of the eight impeachments we reviewed in the course of preparing this memorandum was arguably based on the enlarged view—for each judge was impeached for what Story might call "political offenses" of perceived mis- or malfeasance in office: Irvin for being absent without leave, Pease and Tod for holding statutes unconstitutional and

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[9] 1 Story, Commentaries on the Constitution of the United States § 764 (5th ed. 1891).

[10] Id. §§ 797-799.

[11] See The Constitution of the United States: Analysis and Interpretation pp. 556-558 (1964 ed.).

> unenforceable,[12] Thompson for judicial arrogance, Ferguson for judicial arrogance and incompetence, and Brown and Smith for judicial incompetence.
>
> It is significant, though, that historically the narrower view seems to have prevailed—for all of the judges, except Irvin, were acquitted, although sometimes by very narrow margins.

2. The committee would report back to the House whether or not it finds that the officer has committed misdemeanors in office warranting impeachment. If the committee reports that he has not, and its report is accepted, the contemplated impeachment would end there. If, however, the committee reports that he has, its report would include Articles of Impeachment.

> Although unfamiliar among present day legislative forms like bills, resolutions, and amendments, Articles of Impeachment are themselves a legislative form—and, as presented in the impeachments reviewed in preparing this memorandum, consist of a title, one or more numbered articles that set forth grounds for the impeachment, and a savings clause reserving the right to bring additional articles of impeachment should additional grounds for impeachment be discovered.
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> Justice Story, in his commentary on the impeachment provisions of the United States Constitution, suggests that each article of impeachment should be drafted much as are the counts of an indictment and should at least be sufficient to enable the impeached officer to frame a defense.[13]

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[12] Proponents of the Pease and Tod impeachments apparently believed impeaching the judges for this reason would promote a perception that Ohio government was "more democratic" than the government of Eastern states.

[13] 1 Story, supra § 808.

3. After accepting a report consisting of Articles of Impeachment, the House would proceed to vote on the Articles, one by one. Under Section 23 of Article II, Ohio Constitution, a majority of the members elected to the House would be needed to pass an Article.

4. If the House votes to adopt one or more of the Articles of Impeachment, it would then appoint several of its members to serve as "Managers." The Managers would be responsible for prosecuting the impeachment in the Senate. One of the Managers would be designated Chief Prosecutor.

5. The Speaker would direct the Managers, when the Senate informs the House of its readiness to receive them, to proceed to the Senate and there present the Articles of Impeachment and demand that the Senate summon the impeached officer to appear and answer.

6. The House would then send two messages to the Senate. One message would inform the Senate that the House has adopted Articles of Impeachment against an officer and appointed Managers to prosecute the impeachment in the Senate. The other message would state that the Speaker has instructed the Managers to proceed to the Senate and there present the Articles of Impeachment and demand that the Senate summon the impeached officer to appear and answer.

Procedure in the Senate

1. Upon receiving the messages from the House, as described in House Step 6, the Senate would send a message to the House, informing it of the time at which it will receive the Managers and the Articles of Impeachment.

2. At the designated time, the Managers would appear before the Senate and the Chief Prosecutor would present the Articles.

> It appears customary, both in the ancient Ohio impeachments, as well as in modern day impeachments before Congress, for the Managers to actually read the Articles of Impeachment, aloud and in full, to the Senate.

3. The Senate would issue a summons to the impeached officer (together with a copy of the Articles of Impeachment). The summons would direct the impeached officer to appear before the Senate at a specified time to answer the Articles. The Sergeant-at-Arms would be instructed to serve the summons on the impeached officer and return to the Senate with a certificate stating that he has done so.

4. After serving the summons, the Sergeant-at-Arms would report back to the Senate, submit his certificate, and swear under oath as to its truth.

5. The Senate would then send a message to the House stating that it is ready to proceed with trial of the impeachment.

6. At this point, the impeached officer, now called the "respondent," might enter a "demurrer"—i.e., a statement asserting that the Articles of Impeachment are legally insufficient to warrant his impeachment.

> 1. By challenging the legal sufficiency of the Articles of Impeachment, a demurrer would raise the question of whether the impeached officer's conduct constitutes an impeachable misdemeanor in office—as discussed in the annotation under House Step 1.
>
> 2. If a demurrer is presented, matters would proceed as follows:

--The Senate would hand a copy of the demurrer to the Managers, who would take it back to the House.

--The House would prepare and adopt an answer (called a "replication") to the demurrer and serve a copy on the respondent. The Managers would present the replication to the Senate.

--The Senate would then hear the demurrer by giving the respondent (or his counsel) time to argue for, and the Managers time to argue against, the demurrer.

--At the conclusion of the arguments, the Senate would vote on the demurrer. If a majority of the members elected to the Senate vote in favor of the demurrer, the impeachment would end there—and the respondent would be entitled to a judgment of acquittal. On the other hand, if a majority vote against the demurrer, the impeachment would proceed where it left off.

7. Before the day set for the impeached officer to appear and answer the Articles of Impeachment, each Senator would take the following oath as required by Section 23 of Article II, Ohio Constitution: "You solemnly swear [or affirm] that in all things pertaining to the impeachment of * * * you will do justice according to law and evidence."

8. On the day set for the respondent to appear, he would be called by the Clerk and permitted to present his answer to the Articles of Impeachment. The Managers would take the respondent's answer back to the House, which would prepare and adopt a response, also called a "replication." The Managers would then present the replication to the Senate.

9. The Senate would then proceed to the taking of evidence, which would be presented much as it is in a courtroom trial. The Managers would go first, presenting

evidence in support of the impeachment, which the respondent (or his counsel) would be permitted to cross-examine or otherwise question. Then, when the Managers have completed their case, the respondent would be permitted to offer his evidence in defense, which the Managers would be permitted to cross-examine or otherwise question.

> In the Pease impeachment, the Senate determined, in response to an objection by Pease's attorney, that the Senate would decide procedural questions and questions on the admissibility of evidence by simple majority vote—and not by a two-thirds vote as Pease's attorney argued was constitutionally required in all votes taken in an impeachment trial.

10. When both sides have presented their evidence, the Senate would hear closing arguments, the respondent giving his first and the Managers theirs last.

> Apparently, the closing arguments presented by the Managers, unlike the replications, are not prepared and adopted by the House. Instead, the Managers are solely responsible for preparing and presenting the closing arguments—probably because they have seen and heard, and will consequently be best able to respond to, the evidence presented by the respondent.

11. The Senators would then proceed to vote, by public roll call, on each Article of Impeachment, the question being put to each Senator, "What say you, is the respondent, * * *, guilty or not guilty of a misdemeanor in office, as charged in the [first] [second] Article of Impeachment?"

12. As soon as the vote has been taken on each Article, the President of the Senate would declare the result. If, on any Article, two-thirds of the Senators have not voted "guilty," the respondent would be declared acquitted on that Article. If, however, on any

Article, two-thirds of the Senators have voted "guilty," the respondent would be declared convicted on that Article.

> Section 23 of Article II, Ohio Constitution, states that "No person shall be convicted without the concurrence of two-thirds of the Senators." Perhaps oddly, it does not require concurrence of "two-thirds of the members elected to the Senate." The Senate seems to have assumed, however, as demonstrated in the Pease and Tod impeachments, that conviction requires a two-thirds vote of the members elected to the Senate. It is not clear, however, that this is necessarily the intention of Section 23 of Article II—particularly when the required vote in the Senate is compared with the language prescribing the required vote in the House ("a majority of members elected"). On the other hand, given the uncertainty that might arise over the validity of a conviction, were it to result from a vote of only two-thirds of the Senators present, the safer course of action would be to assume, as the Senate did in the Pease and Tod impeachments, that conviction requires concurrence of two-thirds of the members elected. Today, a minimum of twenty-two "guilty" votes would thus be required.

13. If the respondent is convicted upon any Article of Impeachment, the Senate would then proceed to determine the judgment. Section 24 of Article II, Ohio Constitution, provides that judgment in impeachments "shall not extend further than removal from office, and disqualification to hold any office under the authority of this state."

> 1. In commenting upon a similar provision in the United States Constitution, Justice Story states that while conviction upon an Article of Impeachment automatically entails removal from office, the Senate has discretion whether to also disqualify the person impeached from holding any other office.[14] Accordingly, the following question would be

[14] 1 Story, supra § 803.

put to each Senator, "* * *, having been convicted and removed from office, shall * * * also be disqualified from holding any office under the authority of this state?" If (presumably two-thirds of) the Senators vote "yes," the impeached officer would not only be removed from office, but also prohibited from ever again holding state office.

2. In the Irvin impeachment trial, the only impeachment to result in a conviction, the Senate initially considered just reprimanding Irvin, suspending him from office for a period of time, and warning him to behave himself when he returned to the bench. The Senate had apparently seized upon the literal wording of Section 24 of Article II—which, after all, provides that judgment in cases of impeachment "shall not <u>extend further than</u> removal from office, and disqualification to hold any office under authority of this state." Upon consideration, however, the Senate decided to go ahead and remove Irvin from office.

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1-R-117-2563 footnote 5

JOURNAL

OF THE

House of Representatives

OF THE GENERAL ASSEMBLY

OF THE

STATE OF OHIO;

BEING THE

FOURTH SESSION

HELD UNDER THE

CONSTITUTION OF THE SAID STATE,

BEGUN AND HELD AT THE TOWN OF CHILLICOTHE

IN THE COUNTY OF ROSS,

ON MONDAY

THE 2D DAY OF DECEMBER,

IN THE YEAR OF OUR LORD,

1805.

VOL. IV.

PUBLISHED BY AUTHORITY.

CHILLICOTHE:

Printed by N. WILLIS & T. G. BRADFORD.

1805.

On motion,

Ordered, That the ſaid communication and the accompanying documents, be refered to a ſelect committee of three members, to report by bill or otherwiſe, and that Mr. Corwin, Mr. Kingſberry and Mr. Cloud be the ſaid committee.

The houſe, according to the order of the day, reſolved itſelf into a committee of the whole houſe, on the amendment propoſed by the ſenate, to the "Reſolution on the ſubject of appointing commiſſioners, to eſtabliſh the ſeat of juſtice in the county of Highland," Mr. Hatch in the chair, and after ſome time ſpent therein, Mr. Speaker reſumed the chair and Mr. Hatch reported, that the committee had, according to order, had the ſaid amendment under conſideration, and had agreed to the ſame, with an amendment which he handed in at the clerk's table, and the ſame being read, was agreed to by the houſe.

Ordered, That Mr. Langham acquaint the ſenate therewith.

The houſe, according to the order of the day, reſolved itſelf into a committee of the whole houſe, on the bill declaring the ſales made by the collector of the Virginia army lands, in the month of March laſt illegal, Mr. Corwin in the chair, and after ſome time ſpent therein, Mr. Speaker reſumed the chair and Mr. Corwin reported progreſs and aſked leave to ſit again, which was granted.

A meſſage from the ſenate, by Mr. Bigger.

Mr. Speaker,

The ſenate have paſſed the bill, entitled, "An act, to encourage the breed of horſes," with an amendment, in which they deſire the concurrence of this houſe.

The houſe proceeded to conſider the ſaid amendment, and the ſame being read, was agreed to by the houſe.

Ordered, That Mr. Price acquaint the ſenate therewith.

A meſſage from the ſenate, by Mr. Scott, their clerk.

Mr. Speaker,

I am directed to inform this houſe, that the ſenate is ready to proceed further upon the impeachment of William Irwin, one of the aſſociate judges of the court of common pleas, for the county of Fairfield, in the repreſentatives' chamber, agreeably to the joint reſolution of both houſes.

The ſenate purſuant to the foregoing meſſage came into the repreſentatives' chamber, and being ſeated in the capacity of a high court of impeachment: Whereupon,

On motion,

The houſe, according to order, again reſolved itſelf into a committee of the whole houſe, in proſecuting the articles of impeachment exhibited by this houſe againſt William Irwin, aſſociate judge of the court of common pleas, for the county of Fairfield, Mr. Sterett in the chair, and after ſome time ſpent therein, Mr. Speaker reſumed the chair and Mr. Sterett reported progreſs and aſked leave to ſit again, which was granted: [The high court of impeachment having previouſly retired to the ſenate chamber.]

Mr. Langham preſented a petition from Rebeccah Hamtramack widow, and William H. Harriſon, adminiſtrators, of the late eſtate of col. John Francis Hamtramack, late deceaſed, and alſo guardians of his children, which was read at the clerk's table, praying for reaſons therein ſpecified, that an act may be paſſed authoriſing them, or ſuch other perſons as the legiſlature in their wiſdom may deem proper, to diſpoſe of certain lands laying in this ſtate, the property of ſaid John Francis Hamtramack, deceaſed.

On motion,

Ordered, That the ſaid petition be refered to the committee appointed to prepare and bring in a bill to amend the act, entitled, "An act, defining the duties of adminiſtrators on wills and inteſtate eſtates, and providing for the appointment of guardians."

The houſe proceeded to conſider the report of the joint committee appointed to aſcertain, as near as in their power, the quantity of land belonging to non-reſidents, that is ſubject to taxation in each county, which lays in or extends into the Virginia military diſtrict, and the amount of tax each county is entitled to: Whereupon,

On a motion made and ſeconded, that the houſe agree to the ſaid report,

It was reſolved in the affirmative.

On motion,

Ordered, That a committee of three members be appointed to prepare and bring in a bill, purſuant to the ſaid report, and that Mr. M'Clure, Mr. Collier and Mr. Clark be the ſaid committee.

Ordered, That Mr. Cloud acquaint the ſenate therewith.

The order of the day was poſtponed, and then the houſe adjourned until to-morrow morning, three quarters paſt nine o'clock.

TUESDAY, January 7th, 1806.

On motion,

Ordered, That Mr. Kingſberry be added to the committee of propoſitions and grievances.

Mr. Langham preſented a petition from John P. Neal, which was read at the clerk's table, praying (for reaſons therein ſtated) that certain monies paid to the collector of the Virginia army lands in the month of April laſt, may be returned to him.

The bill regulating the navigation of the Muſkingum and other rivers, was read the ſecond time, and committed to a committee of the whole houſe, and made the order of the day for this day.

The bill for leaſing ſection number twenty-nine, granted for religious purpoſes, was read the ſecond time, and committed to a committee of the whole houſe, and made the order of the day for to-morrow.

On motion,

Ordered, That a committee of three members be appointed to take into conſideration the law directing, that when taxes on lands have been improperly charged, or taxes twice paid on any tract of land

in this ſtate, ſuch monies ſhall be refunded, and report their opinion to this houſe, by bill or otherwiſe, and that Mr. Langham, Mr. Price and Mr. Beecher be the ſaid committee.

A meſſage from the ſenate, by Mr. Buell.

Mr. Speaker,

The ſenate concur in the amendment of this houſe, to the amendment of the ſenate, to the "Reſolution on the ſubject of appointing commiſſioners to eſtabliſh the ſeat of juſtice in the county of Highland."

Mr. Hine from the committee appointed to enquire how far the different contracts for opening roads in this ſtate, have been complied with, and what further appropriation of the three per cent. due and to be come due to this ſtate, ought to be made the preſent ſeſſion, made a report, which was read at the clerk's table: Whereupon,

On motion,

Ordered, That the ſaid report be committed to committee of the whole houſe, and made the order of day, to-morrow.

Mr. Hine on behalf of the managers of the impeachment of William Irwin aſſociate judge of the court of common pleas, for the county of Fairfield, moved that the houſe agree to the following joinder to the demurrer, filed yeſterday on the records of the court, by the defendant's counſel, in this impeachment.

State of Ohio,
vs.
William Irwin. } The houſe of repreſentatives of the ſtate of Ohio,

Have conſidered the demurrer of William Irwin, one of the aſſociate judges of the court of common pleas, for Fairfield county, to the articles of impeachment by them exhibited againſt him, in the name of themſelves and all the people of this ſtate, and reply, that the proceedings upon the ſaid impeachment thus far, have been every way regular and legal, whatever may be ſtated in the ſaid demurrer, to the contrary notwithſtanding: That the demurrer ought not to be ſuſtained, but the reſpondent ought to be ruled to anſwer the articles of impeachment exhibited againſt him.

And on the queſtion that the houſe agree thereto,

It was reſolved in the affirmative.

A meſſage from the ſenate, by Mr. Scott, their clerk.

Mr. Speaker,

I am directed to inform this houſe, that the ſenate is ready to proceed further upon the impeachment of William Irwin, one of the aſſociate judges of the court of common pleas, for the county of Fairfield, in the repreſentatives' chamber, agreeably to the joint reſolution of both houſes.

The ſenate purſuant to the foregoing meſſage came into the repreſentatives' chamber, and being ſeated, in the capacity of a high court of impeachment: Whereupon,

On motion,

The houſe, according to order, again reſolved itſelf into a committee of the whole houſe in proſecuting the articles of impeachment exhibited by this houſe, againſt William Irwin, aſſociate judge of the court of common pleas, for the county of Fairfield, Mr. Sterett in the chair, and after ſome time ſpent therein, Mr. Speaker reſumed the chair and Mr. Sterett reported progreſs and aſked leave to ſit again, which was granted. [The high court of impeachment having previouſly retired to the ſenate chamber.]

The houſe, according to the order of the day, reſolved itſelf into a committee of the whole houſe, on the bill ſent from the ſenate, entitled, "An act, for opening and regulating roads and highways," Mr. Williams in the chair, and after ſome time ſpent therein, Mr. Speaker reſumed the chair and Mr. Williams reported progreſs and aſked leave to ſit again, which was granted.

The orders of the day were poſtponed, and then the houſe adjourned until to-morrow morning, nine o'clock.

WEDNESDAY, January 8th, 1806.

The houſe, according to the order of the day, reſolved itſelf into a committee of the whole houſe, on the bill ſent from the ſenate, entitled, "An act, ſupplementary to the act, entitled, "An act, to amend an act, entitled, "An act, eſtabliſhing an univerſity in the town of Athens," Mr. M'Connell in the chair, and after ſome time ſpent therein, Mr. Speaker reſumed the chair and Mr. M'Connell reported, that the committee had, according to order, had the ſaid bill under conſideration and had agreed to the ſame without amendment, which he handed in at the clerk's table.

And on the queſtion that the houſe agree with the committee of the whole houſe in their agreement to the ſaid bill,

It was reſolved in the affirmative.

On motion,

Ordered, That the ſaid bill be read a third time, on to-morrow.

The houſe, according to order, again reſolved itſelf into a committee of the whole houſe, on the bill ſent from the ſenate, entitled, "An act, for opening and regulating roads and highways," Mr. Corwin in the chair, and after ſome time ſpent therein, Mr. Speaker reſumed the chair and Mr. Corwin reported progreſs and aſked leave to ſit again, which was granted.

A meſſage from the ſenate, by Mr. Scott, their clerk.

Mr. Speaker,

I am directed to inform this houſe, that the ſenate is ready to proceed further upon the trial of William Irwin, one of the aſſociate judges of the court of common pleas, for the county of Fairfield, in the repreſentatives' chamber, agreeable to the joint reſolution of both houſes.

The ſenate, purſuant to the foregoing meſſage came into the repreſentatives' chamber, and being ſeated in the capacity of a high court of impeachment: Whereupon,

On motion,

The house, according to order, again resolved itself into a committee of the whole house, in prosecuting the articles of impeachment exhibited by this house, against William Irwin, associate judge of the court of common pleas, for the county of Fairfield, Mr. Sterett in the chair, and after some time spent therein, Mr. Speaker resumed the chair and Mr. Sterett reported progress and asked leave to sit again, which was granted.

On motion,

The house again resolved itself into a committee of the whole house, on the bill sent from the senate, entitled, "An act, for opening and regulating roads and highways," Mr. Williams in the chair, and after some time spent therein, Mr. Speaker resumed the chair and Mr. Williams reported progress and asked leave to sit again, which was granted.

A message from the senate, by Mr. M'Arthur.

Mr. Speaker,

I am directed to inform this house, that the following bills have this day, been reported to the senate, to wit: "A bill to amend an act, entitled, "An act, defining the duties of justices of the peace, and constables in criminal and civil cases." "A bill creating the office and defining the duties of circuit attornies;" and "A bill authorising the commissioners of the county of Washington, to set off township number three, in the county aforesaid, as a separate township.

And then the house adjourned, until three o'clock this afternoon.

The house met, pursuant to adjournment.

On motion,

The house, according to order, again resolved itself into a committee of the whole house, on the bill sent from the senate, entitled, "An act, for opening and regulating roads and highways," Mr. Williams in the chair, and after some time spent therein, Mr. Speaker resumed the chair and Mr. Williams reported progess and asked leave to sit again, which was granted.

A message from the senate, by Mr. Scott, their clerk.

Mr. Speaker,

I am directed to communicate to this house, a copy of the answer of William Irwin, one of the associate judges of the court of common pleas, for the county of Fairfield, filed yesterday on the records of the court, to the articles of impeachment exhibited to the senate against him, by this house.

The answer is as follows, to wit:

State of Ohio,
vs. } Impeachment.
William Irwin.

The answer and plea of William Irwin, one of the associate judges of the court of common pleas for the county of Fairfield, on articles of impeachment exhibited against him, by the honorable house of representatives of the State of Ohio, in support of their

impeachment against him, for a high misdemeanor and neglect of official duty, alledged to have been by him committed.

This respondent by his attornies, Elijah B. Merwin and Jesup N. Couch, comes into court and protesting, that there is no high misdemeanor or neglect of official duty, particularly alledged in said articles of impeachment, to which he is or can be by law bound to answer, and saving to himself now, and at all times hereafter, all benefit of exceptions to the insufficiency of said articles of impeachment, and to the defects therein appearing, in point of law or otherwise, and protesting also, that he ought not to be injured in any manner, by any insufficiency or want of form in this his answer; he submits the following observations by way of answer to the said articles.

The first article, too vague and uncertain for reply, is rendered more definite by two specific charges.

The first relates to his supposed misconduct in absenting himself from court, on the second day of the term of the court of common pleas, held at Lancaster, within and for the county of Fairfield, in the month of November, in the year of our Lord, one thousand eight hundred and four, without intimating any intention of the kind to any member of the court, notwithstanding a quorum of the court could not be formed without him. To which said specific charge this respondent saith, that altho' necessity compelled his absence from said court on the second day of the term aforesaid; yet, as such absence was not through corrupt or wicked motives, and as he was not bound by the constitution or any known law, to an absolute and indispensible attendance on court—such absence did not amount to a high misdemeanor in office.

The second specific charge of the first article relates to his supposed misconduct, in declaring publicly and openly at Lancaster aforesaid, on the first day of the term aforesaid, that he conceived the compensation allowed to the associate judges very inadequate, and that he would hold himself at liberty to neglect the duties of his office when ever they interfered with his private concerns. To which specific charge, the respondent for answer saith, that although he has no recollection of ever uttering the exprssions aforesaid, and tho' he might incautiously express his private opinion, that the compensation allowed by law, was not adequate to the service rendered by an associate judge. Yet, having no corrupt motives and not being answerable for his opinion, however, incorrect, when unaccompanied with an overt act, and the said conversation being in no manner relative to the actual exercise of his official duty, was not a high misdemeanor or neglect thereof. And the said respondent for plea to the said first article of impeachment saith, that he has been guilty of no high misdemeanor or neglect of official duty.

And to the second article of impeachment, the respondent saith, that as it contains no specific criminal charge whatever, he is not by law bound to answer thereto; that altho' true it is, that all

business pending before the said court of common pleas, held at Lancaster on the day and year aforesaid, was postponed until the next ensuing term ; yet, he saith, on the first day of the said term, the grand jurors for the county aforesaid, not being legally empannelled, were dismissed by said court, that no petit jury, having been summoned agreeable to law, no cause whatever could have been at issue and tried that term, neither was the absence of this your respondent, from the court aforesaid, in any manner subversive of the due administration of justice or contrary to the sacred obligation imposed on him by the duties of his office, and although the importance and urgency of business, which caused the absence of this respondent from the court aforesaid, might prevent a quorum of the court from being formed. Yet, he saith, as the court of common pleas for the state of Ohio, is composed of three associate judges and one president, any three of whom constitute a quorum ; his said absence was not the only or immediate cause of the adjournment of said court. And the said respondent for answer to the said second article of impeachment saith, that he hath been guilty of no high misdemeanor or neglect of official duties therein alledged against him.

To all and singular, of which said charges and articles of impeachment, the said William herein saith, he is not guilty ; this he prays may be enquired of by this honorable court, in such manner as law and justice shall seem most reasonably to require.

WILLIAM IRWIN, by his attornies,
ELIJAH B. MARWIN and
JESUP N. COUCH.

A true copy:

Attest,

THOMAS SCOTT, Clerk of the Senate.

Mr. Hine on behalf of the impeachment against said William Irwin, moved that the house agree to the following, as a replication to the aforesaid answer in this impeachment.

State of Ohio
vs.
William Irwin.
} The house of representatives of the state of Ohio,

Have considered the answer of William Irwin, one of the associate judges of the court of common pleas, for Fairfield county, to the articles of impeachment against him by them exhibited, in the name of themselves and all the people of this state, and observe,

That the said William Irwin, not venturing to deny the high misdemeanor and neglect of official duty laid to his charge, hath endeavored to palliate the same, by crafty and evasive insinuations that the facts alledged against him, do not amount to any high misdemeanor—and the house of representatives trusting to the validity of their charges and in full confidence that the senate will take every measure necessary to secure the rights and privileges of the people of this state, do aver their charges against the said William Irwin to be true, and that the said William Irwin is guilty in such manner as he stands impeached—and the house of representatives are prepared to substantiate their charges against him, at such time and place as shall be directed by the high court of impeachment.

And on the question thereupon,

It was resolved in the affirmative.

A message from the senate, by Mr. Buell.

Mr. Speaker,

The senate have passed a bill, entitled, " An act, authorising David Putnam, to sell certain lands of the heirs of Doctor Jedediah Ensworth, late of Connecticut, deceased," in which they desire the concurrence of this house.

Mr. Taylor presented a petition from sundry inhabitants, living in that part of the county of Clermont called Obannion's settlement, which was read at the clerk's table, praying for reasons therein stated, that they may be annexed to the county of Warren.

On motion,

Ordered, That the said petition be refered to the committee of propositions and grievances.

The house, according to order, again resolved itself into a committee of the whole house, on the bill sent from the senate, entitled, " An act, for opening and regulating roads and highways," Mr. Williams in the chair, and after some time spent therein, Mr. Speaker resumed the chair and Mr. Williams reported, that the committee had, according to order, had the said bill under consideration and made several amendments thereto, which he handed in at the clerk's table.

The orders of the day were further postponed, and then the house adjourned until to-morrow morning, half past nine o'clock.

THURSDAY, January 9th, 1806.

Mr. Hegeman presented a memorial from Cornelius R. Sedam, late adjutant-general of the militia, appointed pursuant to the act, entitled, " An act, establishing and regulating the militia," passed at Cincinnati, the 13th day of December, 1799, which was read at the clerk's table, praying that fifty dollars may be allowed him, being the amount due for his last year's service yet unpaid.

On motion,

Ordered, That the said memorial be refered to the committee of claims.

Mr. Hegeman presented also, another memorial from the said Cornelius R. Sedma, guardian to the person and estate of Belinda Bradford, a minor daughter of the late captain James Bradford, deceased, which was read at the clerk's table, praying, for reasons therein stated, that a law may be passed the present session, authorising him, or such other person or persons as may be deemed proper, to sell and convey a certain house and lot, or part of lot number eighty-five, situate in the town of Cincinnati, the property of said Belinda Bradford.

On motion,

The ſaid memorial was refered to the committee appointed to prepare and bring in a bill, to amend the act, entitled, "An act, defining the duties of adminiſtrators on wills and inteſtate eſtates, and providing for the appointment of guardians."

The bill ſent from the ſenate, entitled, "An act, authoriſing David Putnam to ſell certain lands of the heirs of doctor Jedediah Enſworth, late of Connecticut, deceaſed, was read the firſt time.

The bill ſent from the ſenate, entitled, "An act, ſupplementary to the act, entitled, "An act, to amend an act, entitled, "An act, eſtabliſhing an univerſity in the town of Athens," was read the third time.

And on the queſtion that the ſaid bill do paſs,

It was reſolved in the affirmative.

Ordered, That Mr. Shelby acquaint the ſenate therewith.

Mr. Corwin from the committee to whom was refered the communication and accompanying documents from his excellency the governor of this ſtate, laid before this houſe on Monday laſt, made a report, which was read at the clerk's table, in the words following, to wit:

The committee to whom was refered the communication of the governor, accompanied with a requeſt from the governor of the Indiana territory, that a law be paſſed to prevent ſpirituous liquors being ſold to the Indians,—

Report, That it is the opinion of your committee, that a compliance with the above requeſt, would be injurious to the citizens of the ſtate of Ohio, and would by no means prevent the ſale of liquors among the Indian tribes.

On motion,

The houſe proceeded to conſider the amendments reported from the committee of the whole houſe, to the bill ſent from the ſenate, entitled, "An act, for opening and regulating roads and highways," and being read in part, were agreed to.

On motion,

Ordered, That the further conſideration thereof, be poſtponed until to-morrow.

A meſſage from the ſenate, by Mr. Scott, their clerk.

Mr. Speaker,

I am directed to inform this houſe, that the ſenate are ready to proceed further upon the impeachment of William Irwin, one of the aſſociate judges of the court of common pleas for the county of Fairfield, in the repreſentatives' chamber, agreeable to the joint reſolution of both houſes.

The ſenate, purſuant to the foregoing meſſage, came into the repreſentatives' chamber, and being ſeated in the capacity of the high court of impeachment: Whereupon,

On motion,

The houſe, according to order, again reſolved itſelf into a committee of the whole houſe, in proſecuting the articles of impeachment exhibited by this houſe againſt William Irwin, aſſociate judge of the court of common pleas for the county of Fairfield, Mr. Sterett in the chair, and after ſome time ſpent therein, Mr. Speaker reſumed the chair and Mr. Sterett reported progreſs and aſked leave to ſit again, which was granted. [The high court of impeachment having previouſly retired to the ſenate chamber.]

And then the houſe adjourned until three o'clock, this afternoon.

The houſe met, purſuant to adjournment; when

The ſenate came into the repreſentatives' chamber, and being ſeated: Whereupon,

On motion,

The houſe, again reſolved itſelf into a committee of the whole houſe, in proſecuting the articles of impeachment exhibited by this houſe againſt William Irwin, aſſociate judge of the court of common pleas for the county of Fairfield, Mr. Sterett in the chair, and after ſome time ſpent therein, Mr. Speaker reſumed the chair and Mr. Sterett reported progreſs and aſked leave to ſit again, which was granted: [The high court of impeachment having previouſly retired to the ſenate chamber.]

Mr. Langham, one of the managers appointed to proſecute the articles of impeachment exhibited by this houſe againſt William Irwin, an aſſociate judge of the court of common pleas for the county of Fairfield, having reſigned that appointment: Whereupon,

On motion,

The houſe proceeded to elect by ballot, a manager in the place of Mr. Langham, (juſt reſigned) and upon examining the ballots, Mr. Beecher was found to be duly elected.

Ordered, That Mr. Williams acquaint the ſenate therewith.

And then the houſe adjourned until to-morrow morning, nine o'clock.

FRIDAY, January 10th, 1806.

On a motion made and ſeconded, that the houſe do come to the following reſolution:

Whereas Elias Langham was duly appointed a manager to proſecute (in behalf of the houſe of repreſentatives) the impeachment againſt William Irwin, an aſſociate judge of Fairfield county, and whereas the ſaid Elias Langham did, on the ſaid trial betray that truſt and confidence which was repoſed in him, in advocating the cauſe of the reſpondent, contrary to the poſitive inſtructions and dignity of the houſe and his duties, which he was required to advocate,

Reſolved, Therefore, that Elias Langham be expelled his ſeat as a member of this houſe of repreſentatives.

And on the queſtion thereupon,

It paſſed in the negative.—Yeas 7—Nays 16.

The yeas and nays being demanded,

Hegeman,	Sterett,
Hine,	Stuart,
Jones,	Richardson,
Langham,	Robinson,
M'Clure,	Williams and
M'Connell,	Mr. Speaker.

The bill was then further amended at the clerk's table, and together with the amendments, ordered to be read a third time on Monday next.

The house proceeded to consider the amendment proposed by the senate, to the "resolution on the subject of adjourning without day," and the same being read,

A motion was made and seconded, that this house disagree to the said amendment,

And on the question thereupon,

It was resolved in the affirmative.

Ordered, That Mr. Lewis acquaint the senate therewith.

The house, according to the order of the day, resolved itself into a committee of the whole house, on the bill regulating the navigation of the Muskingum and other rivers, Mr. Stuart in the chair, and after some time spent therein, Mr. Speaker resumed the chair and Mr. Stuart reported, that the committee had, according to order, had the said bill under consideration and made several amendments thereto, which he handed in at the clerk's table, and the same being severally read, were agreed to, and the bill, with the amendments, ordered to be engrossed and read a third time, on Monday next.

The house, according to the order of the day, resolved itself into a committee of the whole house, on the bill for leasing section number twenty-nine, granted for religious purposes, Mr. Richardson in the chair, and after some time spent therein, Mr. Speaker resumed the chair and Mr. Richardson reported progress and asked leave to sit again, which was granted.

A message from the senate, by Mr. Scott, their clerk.

Mr. Speaker,

I am directed to inform this house, that the senate are ready to pronounce judgment on William Irwin, one of the associate judges of the court of common pleas for the county of Fairfield, on the articles of impeachment exhibited against him by this house, in the representatives' chamber, agreeably to the joint resolution of both houses.

The senate in pursuance of the foregoing message, came into the representatives' chamber, and being seated in the capacity of a high court of impeachment: Whereupon,

On motion,

The house, according to order, again resolved itself into a committee of the whole house, in prosecuting the articles of impeachment exhibited by this house against William Irwin, an associate judge of the court of common pleas for the county of Fairfield, Mr. Sterett in the chair, and after some time spent therein, Mr. Speaker resumed the chair and Mr. Sterett reported, that the committee had, according to order, again attended the trial of the said impeachment, and that the court having on yesterday found the said William Irwin, associate judge as aforesaid, guilty of high crimes and misdemeanors, as alledged in the articles of impeachment, did pronounce judgment on him, in the words following, to wit:

"Whereas William Irwin, an associate judge in and for the county of Fairfield, has, by the decision of the senate sitting as a high court of impeachment, on articles of impeachment exhibited against him by the house of representatives, for a high misdemeanor in his said office, been found guilty of the charge in said articles of impeachment alledged against him.—

Resolved, therefore, That William Irwin shall be, and he is hereby removed from the office of an associate judge of the county of Fairfield." And then the senate withdrew to the senate chamber.

The house, according to order, again resolved itself into a committee of the whole house, on the bill for leasing section number twenty-nine, granted for religious purposes, Mr. Richardson in the chair, and after some time spent therein, Mr. Speaker resumed the chair and Mr. Richardson reported, that the committee had, according to order, had the said bill under consideration and made an amendment thereto, which he handed in at the clerk's table, and the same being read, was agreed to by the house. The bill was further amended at the clerk's table, and the third section being under consideration, in the words following, to wit;

"Sec. 3. *Be it further enacted*, That each regular religious society and their adherents, of any denomination, after giving themselves a name, shall appoint an agent, who shall forward a certificate to the trustees, containing a list of their names and numbers, specifying that they are citizens of said township; and the trustees shall pay over to said agent an equal dividend of the rent (according to their numbers) within three months after it is received, to be appropriated to the support of the gospel, at the discretion of each society: And the trustees shall each receive a sum not exceeding one dollar per day, for the time they may be necessarily employed in doing the business of the above mentioned section; and they shall allow the surveyor a sum not exceeding one dollar and fifty cents per day, for laying off said section into lots, to be paid out of the funds of said donation."

A motion was made to strike therefrom, in the first line, the word "regular."

And on the question thereupon,

It passed in the negative.—Yeas 8—Nays 16.

The yeas and nays being demanded,

Those who voted in the affirmative are,

Messrs. Collier,	Lewis,
Cloud,	Phelps,
Hatch,	Shelby and

R-117-2563

Footnote 5

JOURNAL

OF THE

SENATE

OF THE

STATE OF OHIO

IN SENATE OF THE STATE OF OHIO,

December 9th, 1805.

Resolved, That the proceedings of the senate, while sitting for the purpose of trying the impeachment prefered by the house of representatives, against William Irvin, associate judge of the court of common pleas for the county of Fairfield, shall be published in the same manner in which the legislative proceedings are now published, and annexed thereto; and this resolution shall have relation to all the proceedings in the trial of the said impeachment which have heretofore taken place in this session.

Attest.

THOMAS SCOTT,
Clerk of the senate.

Record

Of the Proceedings

OF THE HIGH COURT OF IMPEACHMENT,

ON THE

TRIAL OF WILLIAM IRVIN;

CONSISTING OF

The Senate of the State of Ohio,

AS IS PROVIDED BY THE CONSTITUTION,

AND IN PURSUANCE OF

A Resolution of the Senate.

By Authority.

CHILLICOTHE;
PRINTED BY THOMAS G. BRADFORD & Co. PRINTERS FOR THE STATE.

4

RECORD

Of the proceedings in the case of William Irvin.

THURSDAY, December, 5th, 1805.

Present—Mr. Bigger, Mr. Buell, Mr. Burton, Mr. Hempstead, Mr. Hough, Mr. Kerr, Mr. Kirker, Mr. M'Arthur, Mr. Sargent, Mr. Sharp, Mr. Smith, Mr. Snieder, Mr. Tod, Mr. Wood, and Mr. Pritchard (speaker.)

In senate—*Resolved,* That a committee of two, be appointed to enquire if any, and what further proceedings, at present, ought to be had by the senate, respecting the impeachment of William Irvin, made at the bar of the senate, on the second day of February, one thousand eight hundred and five, by two members of the house of representatives.

Ordered, That Mr. Tod and Mr. Sharp, be the said committee.

Ordered, That Mr. Wood acquaint the house of representatives therewith.

Adjourned to ten o'clock, to-morrow morning.

HIGH COURT OF IMPEACHMENTS.

FRIDAY, December 6th, 1805.

Present—The same as yesterday.

The State of Ohio, vs. William Irvin.

A message from the house of reprentatives, by Mr. Robinson.

Mr. Speaker,

The house of representatives have passed a resolution, on the subject of prosecuting the impeachment prefered on the second day of February last, against William Irvin, associate judge of Fairfield county, and have appointed Mr. Hine, Mr. Shepherd, Mr. Lewis and Mr. Langham, managers to conduct the same, on their part.

On motion,

Resolved, That a special messenger be appointed, to call on James Denny, esquire, sergeant at arms to the senate, (appointed, at the last session, for the special purpose of serving process on William Irvin, an associate judge of the court of common pleas for the county of Fairfield, on an impeachment prefered against him by the house of representatives, and made at the bar of the senate, by two members of the said house, at their last session, for a high misdemeanor and neglect of official duty, and to attend th senate, at the present session, while sitting as a high court of impeachment, on the trial of the said William Irvin) and enquire of him whether he has served the process, put into his hands by Thomas Scott, clerk of the senate, on the said William Irvin, agreeably to the command thereof; and that he be authorised to request the

said James Denny, esquire, to deliver up to him the said process, with his service of the same endorsed thereon and that the same be, by him, forthwith returned to the senate.

Ordered, That William Creighton, sen. esquire, be the said special messenger.

Ordered, That Mr. Tod acquaint the said William Creighton, sen. esquire, of his appointment and request his acceptance.

Adjourned to ten o'clock, to-morrow morning.

HIGH COURT OF IMPEACHMENT.

SATURDAY, December 7th, 1805.

Present—the same as yesterday.

The State of Ohio, vs. William Irvin.

Mr. Tod, appointed yesterday to wait on William Creighton, sen. esq. in order to inform him of his appointment, and request his acceptance as special messenger to call on James Denny, esquire, for the process put into his hands, by the clerk of the senate, against William Irvin, associate judge of the court of common pleas for the county of Fairfield, reported as follows:

Mr. Speaker,

The resolution which passed the senate on yesterday, appointing William Creighton, sen. esq. special messenger, for the purpose of calling on James Denny, esq. sergeant at arms for the senate, and to enquire of him, if service of the process issued the last session against William Irvin, esq. by the speaker of the senate, and put into his hands by Thomas Scott, clerk of the senate, had by him, been duly served, and to request the said sergeant at arms to deliver to him the said process with his necessary endorsement of service thereon, and requiring me to carry said resolution to William Creighton and request his acceptance of said appointment, was, according to order, carried to Mr. Creighton, and his acceptance desired. Report is now made, that Mr. Creigton has taken upon himself to perform the said service.

G. TOD.

December 7th, 1805.

Adjourned to ten o'clock, on Monday morning.

HIGH COURT OF IMPEACHMENT.

MONDAY, December 9th 1805.

Present—The same as yesterday,

The State of Ohio, vs. William Irvin.

The speaker laid before the senate a letter from William Creighton, sen. esq. who was appointed a special messenger in pursuance of and for the purpose expressed in the resolution of the 6th instant, which was read as follows:—

To the speaker of the senate,

Sir, agreeably to the request made in a resolution which passed the senate on the 6th instant, I have called on James Denny, esq. sergeant at arms for the senate, and have obtained the process therein mentioned, with Mr. Denny's endorsement of service thereon, which I herewith transmit to the senate.

I am sir, with due consideration
and respect, yours, &c.

WM. CREIGHTON, Sen.

December 9th, 1805.

On motion,

Resolved, That William Creighton, sen. esq. be appointed sergeant at arms for the senate while sitting as a high court of impeachment, on the trial of William Irvin, esq. associate judge of the court of common pleas for the county of Fairfield, on articles of impeachment prefered against him by the house of representatives, and to perform all such ministerial acts as may be enjoined by the said court, in the room of James Denny, esq. resigned.

Ordered, That Mr. Kerr wait on the said William Creighton, sen. esq. and notify him of his appointment, and enquire of him whether he will accept thereof.

On motion,

Resolved, That the following oath (or affirmation) be administered to the sergeant at arms for the senate, by the clerk, before entering upon the duties of his appointment to wit.

"You do solemnly swear (or affirm) that you will well and truly perform all the duties of a sergeant at arms for the senate faithfully and according to your best understanding: so help you god."

Mr. Kerr who was appointed this day to wait on William Creighton sen. esquire and notify him of his appointment and enquire of him whether he would accept thereof reported that according to order he had performed that service and that the said William Creighton sen. had informed him that he would accept thereof and attend this day at twelve o'clock in the senate chamber and take the oath of office.

On motion,

Resolved, That the following rules of proceeding be observed by the senate in the impeachment of William Irwin,

1. The court shall be opened this day at 12 o'clock and shall be adjourned from time to time until the trial shall be closed.

2. Subpœnas shall be issued by the clerk of the senate, upon the application of the managers of the impeachment or of the said William Irvin, or his counsel in the following form to wit:

To Greeting

You and each of you are hereby commanded, laying all excuses aside, to appear before the senate of the state of Ohio, on the day of at the senate chamber in the town of Chillicothe, then and there to testify, your knowledge in the cause before the senate, in which the house of representatives have impeached William Irvin. Fail not.

Witness James Pritchard, speaker of the senate of the state of Ohio, at the town of Chillicothe, the day of in the year of our Lord one thousand eight hundred and five.

Which shall be signed by the clerk of the senate and sealed with the seal. Which subpoena shall be, in every case, directed to the sheriff of the county where such witnesses respectively reside, to serve and return.

3. The form of direction to the sheriff, for the service of subpoenas, shall be as follows :—

(Seal) To the sheriff of county.

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

Dated at &c.

Clerk of the senate.

4. The speaker of the senate shall direct all necessary preparations in the senate chamber, and all the forms of proceeding while the senate are sitting for the purpose of the impeachment, and all the forms during the trial not otherwise specially provided for by the senate.

5. He shall also be authorised to direct the employment of the sheriff of Ross county, or any other person or persons in the state, during the trial to discharge such duties as may, by him be prescribed.

6. At twelve o'clock of this day, the said William Irvin shall be called to appear and answer the articles of impeachment exhibited against him ; If he appears or any person for him, the appearance shall be entered, stating particularly if by himself, or if by agent or attorney, naming the person appearing and the capacity in which he appears ; if no appearance be made, the same shall be recorded.

7. At twelve o'clock of this day, the legislative business of the senate shall be suspended and the clerk of the senate shall administer the following oath to the speaker :

"You do solemnly swear, or affirm, that in all things appertaining to the trial of the impeachment of William Irvin, you will do impartial justice, according to the constitution and laws of the state of Ohio."

8. And the speaker shall administer the said oath, or affirmation, to each senator present.

The clerk shall then give notice to the house of representatives, that the senate is ready to proceed upon the impeachment of William Irvin, in the senate chamber, which chamber is prepared with accommodations for the acceptance of the house of representatives.

9th. When the managers of the impeachment shall be introduced to the bar of the senate, and shall have signified that they are ready to exhibit articles of impeachment against the said William Irvin or any other person, the speaker of the senate shall direct the sergeant at arms to make proclamation, who shall, after making proclamation, repeat the following words "All persons are commanded to keep silence on pain of imprisonment, while the grand inquest of the state is exhibiting, to the senate of the state, articles of impeachment against William Irvin." After which the articles shall be exhibited, and then the speaker of the senate shall inform the managers, that the senate are ready to proceed with the trial.

10th. Counsel for the said William Irvin shall be admitted on the trial.

11th. All motions made by the parties or their counsel shall be addressed to the speaker of the senate; and if he shall require it shall be committed to writing ; and read at the clerk's table ; and all decisions shall be had by ayes and noes and without debate, which shall be entered on the records.

12th. Witnesses shall be sworn in the following form, to wit : "You do solemnly swear (or affirm) that the testimony you shall give in the case now depending between the state of Ohio and William Irvin shall be the truth, the whole truth and nothing but the truth : So help you God."

Which oath shall be administered by the clerk of the senate.

13th. Witnesses shall be examined by the party producing them and then cross examined in the usual form.

14th. If a senator is called as a witness he shall be sworn and give his testimony standing in his seat.

15th. If a senator wishes to put a question to any witness, the same shall be reduced to writing and put by the speaker.

Ordered, That twenty-five copies of the foregoing rules of proceeding be printed for the use of the senate.

The state of Ohio, vs. William Irvin.

Agreeably to the resolution of this day, the senate proceeded to organize the court.

The clerk of the senate administered the following oath to the speaker of the senate :—

"You do solemnly swear, that in all things appertaining to the trial of the impeachment of William Irvin, you will do impartial justice according to the constitution and laws of the state of Ohio."

The speaker of the senate administered the oath respectively to Mr. Bigger, Mr. Buell, Mr. Burton, Mr. Hempstead, Mr. Kerr, Mr. Kirker, Mr. M'Arthur, Mr. Sargent, Mr. Sharp, Mr. Snieder, Mr. Tod and Mr. Wood.

And the affirmation to Mr. Hough and Mr. Smith.

The clerk of the senate also administered the following oath to William Creighton sen. esquire, sergeant at arms to the senate :—

"You do solemnly swear that you will well and truly perform all the duties of a sargeant at arms for the senate, faithfully and according to your best understanding : So help you God."

Ordered, That the clerk of the senate, give notice to the house of representatives, that the senate in their capacity of a court of impeachment are ready to proceed upon the impeachment of William Irvin, in the senate chamber, which chamber is prepared for their reception.

The sargeant at arms was directed to make proclamation, in the words following :

"O yes !—O yes !—O yes !—

"All persons are commanded to keep silence, on pain of imprisonment, while the senate of the state of Ohio is sitting as a court of impeachment, on articles of impeachment against William Irvin, associate

judge of the court of common pleas, for the county of Fairfield, which court is now opened."

On motion,

Resolved, By the general assembly of the state of Ohio, That the senate sitting as a high court of impeachment for the trial of William Irvin, an associate judge for the county of Fairfield, may occupy the representatives chamber.

Ordered, That Mr. Tod request the concurrence of the house of representatives in this resolution.

A message from the house of representatives, by Mr. Smith.

Mr. Speaker,

The house of representatives have agreed to the resolution sent from the senate, on the subject of granting the senate the use of the representatives' chamber when sitting as a high court of impeachment on the trial of William Irvin, associate judge of the court of common pleas for the county of Fairfield.

Whereupon the court adjourned into the representatives' chamber and being there seated,

The managers on the part of the house of representatives, Mr. Hine, Mr. Shepherd, Mr. Lewis and Mr. Langham, were admitted; and Mr. Hine, the chairman, announced they were the managers, instructed by the house of representatives, to exhibit certain articles of impeachment against William Irvin, associate judge of the court of common pleas for the county of Fairfield.

They were requested by the president of the conrt to take the seats assigned them within the bar.

The sargeant at arms was directed to make proclamation in the words following:

O yes!—O yes!—O yes!

All persons are commanded to keep silence on pain of imprisonment while the grand inquest of the state, is exhibiting to the senate of the state, articles of impeachment against William Irvin!

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

ARTICLES

Exhibited by the house of representatives of the state of Ohio, in the name of themselves and all the people of the state of Ohio, against William Irvin, one of the associate judges of the court of common pleas, for the county of Fairfield, in maintainance and support of their impeachment against him, for a high misdemeanor and neglect of his official duties:

ARTICLE 1st.

That in contempt of the high trust and confidence reposed in him and neglectful of the important duties of his office, by which he was solemnly pledged to administer justice faithfully and without delay, the said William Irvin, at the court of common pleas held at New Lancaster, in and for the county of Fairfield, in the month of November and year of our lord one thousand eight hundred and four, whereat it was the duty of the said William Irvin, to sit as associate judge, conducted himself in a manner highly reprehensible, contemptuous and tending to the delay of justice, viz:

1st. In absenting himself from said court, on the second day of the term, without intimating any intention of the kind to any member of the court, notwithstanding a quorum of the court could not be formed without him.

2d. In declaring, publicly and openly at Lancaster aforesaid, on the first day of the term aforesaid, that he conceived the compensation allowed the associate judges very inadequate, and he would hold himself at liberty to neglect the duties of his office, whenever they interfered with his private concerns.

ARTICLE 2d.

That in consequence of this irregular conduct of the said William Irvin, as subversive of the due administration of justice as it is contrary to the sacred obligations imposed upon him by the express duties of his office, the said court of common pleas was necessarily adjourned, whereby all business therein pending before said court was postponed until the next term.

JOHN SLOANE,
Speaker of the house of representatives.

December 9th, 1805.

Whereupon,

The president of the court notified the managers, that the court would take proper order on the subject of the impeachment.

The managers then delivered the articles of impeachment at the clerk's table.

The return made by James Denny, esquire, sargeant at arms to the senate, on the process issued at the last session, against the said William Irvin, was read as follows:

"Executed by personal service, and lodged with him the said William Irvin, esquire, a copy of the said summons and articles of impeachment, sometime towards the latter end of March, 1805.

JAMES DENNY.

I do hereby certify that the endorsement as above stated, was sworn to by James Denny, esquire, before me,

Dec. 7th, 1805. Wm. CREIGHTON, sen. J. P.

William Irvin was then solemnly called, who appeared in his proper person and requested that E. B. Murwin and F. McHenry, esquires, might be admitted and considered as counsel for him, the said William Irvin.

The president of the court enquired of the managers, if they were ready to proceed in support of the articles of impeachment exhibited, who informed the president that they were ready to proceed in support of the articles of impeachment exhibited.

And thereupon the defendant by his counsel submitted a motion, which was read at the clerk's table, as follows:—

"The defendant appearing and new charges on the day of the trial being exhibited against him, motion by counsel is made to continue the same, until the first Monday in January, in the year one thousand eight hundred and seven."

And on the question,
It was unanimously determined in the negative. Nays 14.
Those who voted are,

Mr. Bigger, Mr. Sargent,
Mr. Buell, Mr. Sharp,
Mr. Burton, Mr. Smith,
Mr. Hempstead, Mr. Snieder,
Mr. Hough, Mr. Tod,
Mr. Kerr, Mr. Wood,
Mr. Kirker, Mr. Pritchard, (speaker.)
Mr. M'Arthur,

Thereupon the defendant by his counsel, submitted another motion which was read at the clerk's table, as follows :

The respondent by his counsel, E. B. Merwin and F. M'Henry, prays this high court of impeachment to postpone this trial, of his cause until the second Monday in January next, as it is out of the power of this respondent to procure his witnesses before that time, so that he may be enabled to have a fair trial.

E. B. Merwin, } Atts.
F. M'Henry. }

To which the president of the court replied that the motion would be taken into consideration, and they and the house of representatives should be notified of the result.

The court then adjourned into the senate chamber,
And after due consideration of the motion,
And the question put thereupon,
It was unanimously determined in the negative. Nays 13.
Those who voted are,

Mr. Bigger, Mr. M'Arthur,
Mr. Buell, Mr. Sargent,
Mr. Burton, Mr. Sharp,
Mr. Hempstead, Mr. Tod,
Mr. Hough, Mr. Wood,
Mr. Kerr, Mr. Pritchard, (speaker.)
Mr. Kirker,

Ordered, That the clerk notify the defendant and the house of representatives of the result.

A motion was made and seconded, that the following resolution be adopted :

" *Resolved*, That William Irvin, associate judge of the court of common pleas for the county of Fairfield, file his answer in writing, to the articles of impeachment prefered against him by the house of representatives on the first Monday of January next, and that the said William Irvin be then prepared for trial.

And on the question,
It was determined in the affirmative. Yeas 14,
Those who voted are,

Mr. Bigger, Mr. Sargent,
Mr. Buell, Mr. Sharp,

Mr. Burton, Mr. Smith,
Mr. Hempstead, Mr. Snieder,
Mr. Hough, Mr. Tod,
Mr. Kerr, Mr. Wood,
Mr. Kirker, Mr. Pritchard, (Speaker.)
Mr. M'Arthur.

Ordered, That the clerk acquaint the defendant and the house of representatives therewith.

Adjourned to ten o'clock to-morrow morning.

HIGH COURT OF IMPEACHMENT,

TUESDAY, December 10th, 1805.

The court met pursuant to adjournment; and were present as yesterday.

The state of Ohio, vs. William Irvin.

The court being opened by proclamation and all persons commanded to keep silence.

Ordered, That the clerk notify the defendant and the house of representatives, that the senate in the capacity of a high court of impeachment are now sitting and ready to hear any motions preparatory to the trial of William Irvin, associate judge of the court of common pleas, for the county of Fairfield.

The managers accompanied by the house of representatives attended.

The defendent with one of his counsel, to wit E. B. Murvin, also attended.

The president of the court informed the defendant and managers, that they might now proceed to make any motion preparatory to the trial on the articles of impeachment exhibited.

Whereupon,

Mr. Hine, on behalf of the managers, submitted a motion which was read at the clerk's table as follows :

" Motion by the managers, that the clerk of the senate be directed to issue subpoenas at any time upon request of the managers or counsel for the respondent."

And on the question being put,
It was unanimously determined in the affirmative. Yeas 14.
Those who voted are,

Mr. Bigger, Mr. M'Arthur,
Mr. Buell, Mr. Sargent,
Mr. Burton, Mr. Sharp,
Mr. Hempstead, Mr. Smith,
Mr. Hough, Mr. Snieder,
Mr. Kerr, Mr. Wood,
Mr. Kirker, Mr. Pritchard, (Speaker.)

The defendant by his counsel, moved that he might be permitted to lay on the clerk's table his protest against the proceedings of the house of representatives on the impeachment against him and reasons why he ought not further to answer to the charges exhibited against him; which being granted the same was by the defendant's counsel handed in at the clerk's table.

Mr. Shepherd on behalf of the managers, moved that the protest against the proceedings of the house of representatives on the impeachment against the defendent, and reasons why he ought not further to answer to the charges exhibited against him the said defendant, just laid on the clerk's table, might be read.

And on the question thereupon,

It was unanimously determined in the affirmative. Yeas 14,

Those who voted are,

Mr. Bigger,	Mr. M'Arthur,
Mr. Buell,	Mr. Sargent,
Mr. Burton,	Mr. Sharp,
Mr. Hempstead,	Mr. Smith,
Mr. Hough,	Mr. Snieder,
Mr. Kerr,	Mr. Wood,
Mr. Kirker,	Mr. Pritchard, (speaker.)

The same was read as follows:

State of Ohio,
vs.
William Irvin, } Impeachment,

To the honorable senate of the state of Ohio, now sitting at Chillicothe, as a high court of impeachment, on the trial of William Irvin, esquire, one of the associate judges of the court of common pleas, for the county of Fairfield, for a high misdemeanor in office.

In which cause the said William, by Elijah B. Merwin, his attorney, protests against the proceedings of the house of representatives in said cause and says, by law he is not bound further to answer to the said articles of impeachment of the said house of representatives, for the following reasons, to wit: That at the last session of the honorable legislature, the said house of representatives exhibited an article of impeachment against the said William Irvin, in consequence of which said article of impeachment so exhibited against him, the said William Irvin, the honorable senate issued their process, in nature of a summons, directed to James Denny, esquire, sargeant at arms, commanding him to summon the said William Irvin to appear before the senate of the state of Ohio sitting as a high court of impeachment, on the second Monday of December then next, in the senate chamber in the town of Chillicothe at the seat of government, then and there to answer to the state, on articles of impeachment exhibited to the said senate, by the members of the house of representatives in behalf of the people of the state of Ohio, which said process was signed by James Pritchard, speaker of the senate, and dated at Chillicothe the twenty-second day of February, in the year of our Lord one thousand eight hundred and five, which said process was served on the said William Irvin by the said James Denny sargeant at arms, by leaving a copy thereof, together with a copy of said article of impeachment in the words following, viz.

Art. 1st. That the said William Irvin, associate judge as aforesaid, did on the second day of the term of the court of common pleas held at New-Lancaster, in and for the county of Fairfield in the month of November, in the year of our Lord one thousand eight hundred and four

wilfully absent himself from said court and the duties of his office as judge aforesaid, in consequence of which all further proceedings in the said court for that term was finally stayed, and after waiting until the third day of the term aforesaid and he not appearing the president was necessitated to adjourn the said court;

And the said William Irvin, further states to this honorable court of impeachment, that in pursuance of the articles contained in said process as served upon him by the said James Denny, sargeant at arms, so as aforesaid, he did at the time and place mentioned in said summons, attend at the bar of said court of impeachment, prepared to make a complete and satisfactory answer to the said article of impeachment and to come to a fair investigation of the merits of said article of impeachment, yet when the said William Irvin appeared at the bar of said court of impeachment, said article of impeachment was not exhibited against him; but other articles seperate and distinct from that of which there was a copy served on him, William Irvin, by the said James Denny so as aforesaid, which said last mentioned articles of impeachment were to the following effect, viz:

Art. 1st. That in contempt of the legal trust and confidence reposed in him and neglectful of the important duties of his office, by which he was solemnly pledged to administer justice faithfully and without delay, the said William Irvin, at the court of the common pleas held at New Lancaster, in and for the county of Fairfield, in the month of November, and year of our Lord one thousand eight hundred and four, whereat it was the duty of the said William Irvin, to sit as associate judge, conducted himself in a manner highly reprehensible, contemptuous and tending to the delay of justice, viz:

1st. In absenting himself from said court on the second day of the term without intimating any intention of the kind, to any member of the court, notwithstanding a quorum of the court could not be formed without him.

2nd. In declaring publicly and openly at Lancaster aforesaid, on the first day of the term aforesaid, that he conceived the compensation allowed associate judges very inadequate and that he would hold himself at liberty to neglect the duties of his office, whenever they interfered with his private concerns.

Art. 2d. That in consequence of this irregular conduct of the said William Irvin, as subversive of the due administration of justice as it is contrary to the sacred obligation imposed on him by the express duties of his office, the said court of common pleas was necessarily adjourned, whereby all business therein pending before said court was postponed until the next term.

Which said articles were signed by John Sloane, speaker of the house of representatives, and dated December 9th, 1805.

Therefore the said William Irvin saith he is not bound by law to answer to any of the aforesaid articles of impeachment; he is in no wise bound or liable to answer to the first article of impeachment as it has been abandoned by the honorable house of representatives by their not exhibiting the said article against him the said William, at the time and place of

which he was ordered in the said summon served on him so as aforsaid to attend and make answer thereto; neither is he bound to make answer to the last articles of impeachment exhibited against him by the honorable house of representatives as there has never been any process served upon him the said William; giving notice of the said articles of impeachment and to answer the same; neither did the house of representatives in exhibiting their first article of impeachment reserve to themselves the right of exhibiting any new article of impeachment against the said William: therefore the said William Irvin, prays this honorable court that they will no further in prosecuting said articles of impeachment, take cognizance or proceed but that they will exonerate and dismiss this petitioner from any further attendance at this court to answer to said articles of impeachment, as he cannot legally go into a trial of any said articles and your petitioner as in duty bound will ever pray.

William Irvin, by his attorney E. B. MERWIN.

The president of the court informed the defendant's counsel and the the managers, that the protest and reasons therein assigned would be taken into consideration and they and the house of representatives informed of the result.

The managers accompanied with the house of repsesentatives retired.

The defendant with his counsel also retired.

Adjourned to twelve o'clock to-morrow.

HIGH COURT OF IMPEACHMENT.

WEDNESDAY, December 11th, 1805.

The court met pursuant to adjournment; and were piesent as yesterday.

The state of Ohio, vs. William Irvin.

The court being opened by proclamation.

The managers accompanied by the house of representatives attended.

The defendant with his counsel also attended.

Mr. Langham on behalf of the managers submitted a motion which was handed to the clerk's table and read as follows:

I move this honorable court to decide whether the managers shall immediately be put to argue against the protest and reasons, yesterday assigned by the defendant's counsel, why he ought not to answer to the articles exhibited against him.

The question was taken "Shall the managers immediately be put to argue against the protest and reasons yesterday assigned by the defendant's counsel, why he ought not to answer to the articles exhibited against him.

And determined in the negative. Yeas 2.—Nays 12.

Those who voted in the affirmative are,

Mr. Kerr, and Mr. Tod.

Those who voted in the negative are,

Mr. Bigger,	Mr. Sargent,
Mr. Buell,	Mr. Sharp,
Mr. Burton,	Mr. Smith,
Mr. Hough,	Mr. Sneider,
Mr. Kirker,	Mr. Wood,
Mr. M'Arthur,	Mr. Pritchard, (speaker.)

A motion, on behalf of the defendant, was then submitted as follows:

I move this honorable court to permit the defendant or his counsel, if he thinks proper, at any time previous to the trial of this cause to withdraw the protest and reasons by him assigned yesterday; why he ought not to answer to the articles exhibited against him, and; that he be permitted to plead, demur or answer as he may be advised is best.

And on the question,

It was unanimously determined in the affirmative. Yeas 14.

Those who voted are,

Mr. Bigger	mr. Sargent,
mr. Buell,	mr. Sharp,
mr. Burton,	mr. Smith,
mr. Hough,	mr. Sneider,
mr. Kerr,	mr. Tod,
mr. Kirker,	mr. Wood,
mr. M'Arthur,	mr. Pritchard, (speaker.)

Adjourned to the fiast Monday in January next, to meet at the hour of twelve o'clock.

HIGH COURT OF IMPEACHMENT.

MONDAY, January 6th, 1806.

Present—mr. Bigger, mr. Buell, mr. Burton, mr. Hough, mr. Kerr, mr. Kirker, mr. M'Arthur, mr. Sargent, mr. Sharp, mr. Smith, mr. Snieder, mr. Tod, mr. Wood and mr. Pritchard, (speaker.)

The state of Ohio—vs.—William Irvin.

The court being opened by proclamation,

Ordered, That the clerk notify the house of representatives that the senate is now ready to proceed upon the trial of William Irvin, one of the associate judges of the court of common pleas, for the county of Fairfield, and that they will occupy the chamber of the house of representatives during the said trial, agreeably to the joint resolution of both houses.

The court adjourned into the representatives' chamber, and being seated.

The managers accompanied by the house of representatives, attended, and the managers took the seats assigned them, within the bar.

The defendant by his counsel E. B. Merwin, appeared and requested that Jesup N. Couch, esquire, might also be admitted and considered as counsel for him, which was agreed to by the court.

Mr. Langham, on behalf of the managers, moved that the record of

the proceedings in this cause might be read,
And on the question,
It was determined in the affirmative. Yeas 12—Nays 2.
Those who voted in the affirmative are,

mr. Bigger,	mr. Sargent,
mr. Burton,	mr. Sharp,
mr. Hough,	mr. Smith,
mr. Kerr,	mr. Snieder,
mr. Kirker,	mr. Wood, and
mr. M'Arthur,	mr. Pritchard, (speaker.)

Those who voted in the negative are,
mr. Buell, and mr. Tod.

The record of the proceedings in the cause was then read.

Mr. Merwin, counsel for the defendant, having withdrawn the protest, &c. entered in this cause on the 10th day of December last, filed a demurrer to the articles of impeachment exhibited against the said respondent, which was read by the clerk as follows:

State of Ohio,
vs. } Impeachment.
William Irvin,

In which cause the said William by Elijah B. Merwin, his attorney, comes into court and for plea saith, that by law he is not bound further to answer to the said articles of impeachment of the house of representatives for the following reasons to wit:

That at the last session of the honorable legislature, the said house of representatives exhibited an article of impeachment against the said William Irvin, in consequence of which said article of impeachment so exhibited against him the said William Irvin, the honorable senate issued their process in nature of a summons, directed to James Denny, esquire, sargeant at arms, commanding him to summon the said William Irvin to appear before the senate of the state of Ohio sitting as a high court of impeachment, on the second Monday of December then next, in the senate chamber in the town of Chillicothe at the seat of government, then and there to answer to the state, on articles of impeachment exhibited to the said senate, by the members of the house of representatives in behalf of the people of the state of Ohio, which said process was signed by James Pritchard, speaker of the senate, and dated at Chillicothe the twenty second day of February, in the year of our lord one thousand eight hundred and five, which said process was served on the said William Irvin by the said James Denny, sargeant at arms, by leaving a copy thereof, together with a copy of said article of impeachment, in the words following viz.

Art. 1st. That the said William Irvin associate judge as aforesaid did on the second day of term of the court of common pleas, held at New Lancaster, in and for the county of Fairfield, in the month of November in the year of our Lord one thousand eight hundred and four, wilfully absent himself from said court, and the duties of his office as judge aforesaid, in consequence of which all further proceedings in the said court for that term were finally stayed and after waiting until the third day of the term aforesaid and he not appearing the president was necessitated to

adjourn the said court, and the said William Irvin further states to this honorable court of impeachment, that in pursuance of the directions contained in said process, so served upon him by the said James Denny, sargeant at arms so as aforesaid, he did at the time and place mentioned in said summons attend at the bar of said court of impeachment prepared to make a complete and satisfactory answer to the said article of impeachment, and to come to a fair investigation of the merits of said article of impeachment, yet when the said William Irvin appeared at the bar of said court of impeachment said article of impeachment was not exhibited against him, but other articles seperate and distinct from that of which there was a copy served on him William Irvin, by the said James Denny, so as aforesaid, which said last mentioned articles of impeachment were to the following effect, viz.

Art. 1st. That in contempt of the legal trust and confidence reposed in him and neglectful of the important duties of his office, by which he was solemnly pledged to administer justice faithfully & without delay, the said William Irvin, at the court of common pleas, held at New Lancaster, in and for the county of Fairfield, in the month of November and year of our lord one thousand eight hundred and four, whereat it was the duty of the said William Irvin, to sit as associate judge, conducted himself in a manner highly reprehensible, contemptuous and tending to the delay of justice, viz.

1st. In absenting himself from said court on the second day of the term without intimating any intention of the kind to any member of the court, notwithstanding a quorum of the court could not be formed without him.

2d. In declaring publicly and openly at Lancaster aforesaid, on the first day of the term aforesaid, that he conceived the compensation allowed to associate judges very inadequate, and that he would hold himself at liberty to neglect the duties of his office whenever they interfered with his private concerns.

Art. 2d. That in consequence of this irregular conduct of the said William Irvin, as subversive of the due administration of justice as it is contrary to the sacred obligation imposed on him by the express duties of his office, the said court of common pleas was necessarily adjourned, whereby all business therein pending before said court was postponed until the next term. Which said articles were signed by John Sloane, speaker of the house of representatives, and dated December 9th, 1805.

Therefore the said William Irvin saith, that he is not bound by law to answer to any of the aforesaid articles of impeachment, he is in no wise bound or liable to answer to the first article of impeachment, as it has been abandoned by the honorable house of representatives, by their not exhibiting the said article against him the said William, at the time and place at which he was ordered in the said summons, served on him so as aforesaid, to attend and make answer thereto, neither is he bound to make answer to the last articles of impeachment exhibited against him by the honorable house of representatives as there has never been any process served upon him, the said William, giving him notice of said articles of impeachment and to answer to the same, neither did the house of representatives in exhibiting their first article of impeachment reserve to

themselves the right of exhibiting any new articles of impeachment against the said William—Therefore the said William Irvin moves this honorable court to quash the proceedings, and that they will no further take cognizance or proceed in the trial of said articles of impeachment, but that they will exonerate and dismiss this respondent from any further attendance at this court, to answer to said articles of impeachment, as he is not legally neither is he bound by law to make further answer to the same.

William Irvin, by his attorney, ELIJAH B. MERWIN.

Whereupon,

Mr. Hine, on behalf of the managers, moved that they have time until to-morrow, to consult the house of representatives on a joinder to the demurer and to file the same.

And on the question thereupon,

It was determined in the affirmative. Yeas 12—Nays 2.

Those who voted in the affirmative are,

Mr. Bigger,	Mr. Sargent,
Mr. Burton,	Mr. Sharp,
Mr. Hough,	Mr. Smith,
Mr. Kerr,	Mr. Snieder,
Mr. Kirker,	Mr. Wood and
Mr. M'Arthur,	Mr. Pritchard, (president.)

Those who voted in the negative are,

Mr. Buell and Mr. Tod.

Adjourned to ten o'clock to-morrow morning.

HIGH COURT OF IMBEACHMENT.

TUESDAY, January 7th, 1806.

Present—Mr. Bigger, Mr. Buell, Mr. Burton, Mr. Hempstead, Mr. Hough, Mr. Kerr, Mr. Kirker, Mr. M'Arther, Mr. Sargent, Mr. Sharp, Mr. Smith, Mr. Snieder, Mr. Tod, Mr. Wood and Mr. Pritchard (president.)

The state of Ohio, vs. William Irvin.

The court being opened by proclamation, and all persons commanded to keep silence.

Ordered, That the clerk notify the house of representatives, that the senate are ready to proceed further on the trial of the impeachment of William Irvin, one of the associate judges of the court of common pleas, for the county of Fairfield, in the representatives' chamber, agreably to the joint resolution of both houses.

The court adjourned into the representatives' chamber and being there seated,

The managers, accompanied by the house of representatives, attended and the managers took the seats assigned them within the bar.

The respondent by his counsel also attended.

The president enquired of the managers whether they were prepared to put in their joinder to the demurer, filed yesterday in this cause by the respondents counsel? To which the managers replied that they had consulted with the house of represeutatives on a joinder and were then ready to put in the same.

The managers then rose and Mr. Hine, their chairman, read the joinder of the house of representatives to the respondent's demurrer, as follows:

The state of Ohio, vs. William Irvin. } The house of representatives of the state of Ohio, have considered the demurer of William Irvin, one of the associate judges, of the court of common pleas, for Fairfield county, to the articles of impeachment by then exhibited against him, in the name of themselves and all the people of this state, and reply that the proceedings upon the said impeachment thus far have been every way regular and legal, whatever may be stated in the said demurer to the contrary notwithstanding, that the demurer ought not to be sustained, but the respondent ought to be ruled to answer the articles of impeachment exhibited against him.

Signed by order and in behalf of the house,

JOHN SLOANE, speaker.

Attest,
Wm. R. Dickison.

Mr. President enquired of the respondents counsel, whether they were ready to proceed in support of the demurer, by them filed in this cause? to which the respondant's counsel replied in the affirmative.

Mr. Couch, counsel for the respondent then rose and offered his arguments in support of the demurer, and having concluded,

Mr. Lewis on behalf of the managers, rose and offered his arguments in opposition to the demurrer and in support of the articles of impeachment and regularity of the proceedings of the house of representatives in the cause.

Mr. Lewis was followed by mr. Merwin, on behalf of the respondent; mr. Merwin was followed first by mr. Shepherd, next mr. Lewis, and after him mr. Hine on behalf of the managers; mr. Hine was followed by mr. Merwin on behalf of the respondent; mr. Merwin by mr. Hine on behalf of the managers, and after mr. Hine, the arguments were closed by mr. Merwin counsel for the respondant.

After due consideration of the premises, the question was put by the president of the court, to wit;

You who are of opinion that the demurer of the respondent is insufficient to support his defence, and that he ought to answer over fully to the articles of impeachment exhibited against him by the house of representatives,—Say aye—Contrary opinion—say no.

And determined in the affirmative. Yeas 14—Nays 1.

Those who voted in the affimative are,

Mr. Bigger,	Mr. Sargent,
Mr. Buell,	Mr. Sharp,
Mr. Burton,	Mr. Smith,
Mr. Hempstead,	Mr. Snieder,
Mr. Hough,	Mr. Tod,
Mr. Kirker,	Mr. Wood, and
Mr. M'Arthur,	Mr. Pritchard, (President.)

The vote in the negative was,

Mr. Kerr.

Ordered, That the respondent have time until to-morrow at ten o'clock, to file his answer and that the court then proceed on the trial of the impeachment.

Adjourned to ten o'clock to-morrow morning.

HIGH COURT OF IMPEACHMENT,

WEDNESDAY, January the 8th, 1806.

The court met pursuant to adjournment and were present as yesterday,

The state of Ohio, vs. William Irvin,

The court being opened by proclamation and all persons commanded to keep silence.

Ordered, That the clerk notify the house of representatives that the senate are ready to proceed further on the trial of the impeachment of William Irwin, one of the associate judges of the court of common pleas for the county of Fairfield, in the representatives' chamber, agreeable to the joint resolution of both houses.

The court adjourned into the representatives' chamber and being there seated.

The managers accompanied by the house of representatives attended and the managers took the seat assigned them within the bar.

The respondent by his counsel also attended.

Mr Merwin one of the respondants counsel rose and notified the president of the court that the respondant was prepared to file his answer to the articles of impeachment exhibited against him by the house of representatives which answer, with the permission of the court, he read in the words following:

"State of Ohio,
vs. } Impeachment.
William Irvin.

The answer and plea of William Irvin one of the associate judges of the court of common pleas for the county of Fairfield on articles of impeachment exhibited against him by the honorable house of representatives of the state of Ohio in support of their impeachment against him for a high misdemeanor and neglect of official duty alledged to have been by him committed.

This respondent by his attorney Elijah B. Merwin and Joseph N. Couch comes into court and protesting that there is no high misdemeanor or neglect of official duty particularly alledged in said articles of impeachment to which he is, or can be by law bound to answer, and saving to himself now and at all times hereafter all benifit of exceptions to the insufficiency of said articles of impeachment and to the defects therein appearing in point of law or otherwise. and protesting also that he ought not to be injured in any manner by any insufficiency or want of form in this his answer, he submits the following observations by way of answer to the said articles.

The first article, too vague and uncertain for reply, is rendered more definite by two specific charges,

The first relates to his supposed misconduct in absenting himself from court on the second day of the term of the court of common pleas held at Lancaster in and for the county of Fairfield, in the month of November, in the year of our Lord one thousand eight hundred and four, without intimating any intention of the kind to any member of the court, notwithstanding a quorum of the court could not be formed without him.—To which said specific charge this respondent saith that although necessity compelled his absence from said court on the second day of the term aforesaid, yet as such absence was not through corrupt or wicked motives and as he was not bound by the constitution or any known law to an absolute and indispensible attendance on court, such absence did not amount to a high misdemeanor in office. The second specific charge of the said article relates to his supposed misconduct in declaring publicly and openly at Lancaster aforesaid, on the first day of the term aforesaid, that he conceived the compensation allowed to the associate judges very inadequate and that he would hold himself at liberty to neglect the duties of his office whenever they interfered with his private concerns—To which specific charge the respondent for answer saith, that although he has no recollection of ever uttering the expressions aforesaid, and though he might incautiously express his private opinion that the compensation allowed by law was not adequate to the service rendered by an associate judge; yet, having no corrupt motives and not being answerable for his opinion, however incorrect, when unaccompanied with an overt act, and the said conversation being in no manner relative to the actual exercise of his official duty, was not a high misdemeanor or neglect thereof. And the said respondent, for plea to the said first article of impeachment saith, that he has been guilty of no high misdemeanor or neglect of official duty.

And to the second article of impeachment, the respondent saith that as it contains no specific criminal charge, whatever, he is not by law bound to answer thereto, that altho' true it is, that all business pending before said court of common pleas held at Lancaster, on the day and year aforesaid, was postponed until the next ensuing term, yet he saith on the first day of the said term, the grand jurors, for the county aforesaid, not being legally impannelled, were dismissed by said court, and that no petit jury having been summoned agreeable to law, no cause whatever could have been at issue and tried that term: neither was the absence of this your respondent from the court aforesaid, in any manner subversive of the due administration of justice or contrary to the sacred obligation, imposed on him by the duties of his office, and altho' the importance and urgency of business which caused the absence of this respondent from the court aforesaid, might prevent a quorum of the court from being formed; yet he saith as the court of common pleas for the state of Ohio, is composed of three associate judges and one president, any three of whom constitute a quorum, his said absence was not the only, or immediate cause of the adjournment of said court, and the said respondent for answer to the said second article of impeachment, saith that he hath been guilty of no high misdemeanors or neglect of official duty therein alledged against him.

To all and singular of which said charges and articles of impeachment the said William Irvin saith he is not guilty, and this he prays may be enquired of by this honorable court, in such manner as law and justice shall seem most reasonably to require.

William Irvin, by his attorney's,

ELIJAH B. MERWIN, and
JESUP N. COUCH.

And the answer was filed.

Whereupon,

Mr. Hine on behalf of the managers, moved that they have time until to-morrow at ten o'clock, to consult the house of representatives on a replication, and that they be furnished with a copy of the answer.

And on the question thereupon,

It was unanimously determined in the affirmative,

Those who voted are,

Mr. Bigger,	Mr. Sargent,
Mr. Buell,	Mr. Sharp,
Mr. Burton,	Mr. Smith,
Mr. Hempstead,	Mr. Snieder,
Mr. Hough,	Mr. Tod,
Mr. Kerr,	Mr. Wood, and,
Mr. Kirker,	Mr. Pritchard, (president.)
Mr. M'Arthur,	

The court then adjourned into the senate chamber.

Ordered, That the clerk carry to the house of representatives an attested copy of the answer of William Irvin, one of the associate judges of the court of common pleas, for the county of Fairfield, to articles of impeachment, exhibited against him by the house of representatives.

Adjourned to ten o'clock, to-morrow morning.

HIGH COURT OF IMPEACHMENT.

THURSDAY January 9th, 1806.

The court met pursuant to adjournment and were present as yesterday.

The State of Ohio, vs. William Irvin.

The court being opened by proclamation and all persons commanded to keep silence.

Ordered, That the clerk notify the house of representatives that the senate are ready to proceed further on the trial of the impeachment of William Irvin, one of the associate judges of the court of common pleas for the county of Fairfield, in the representatives' chamber agreeable to the joint resolution of both houses.

The court adjourned into the representatives' chamber and being their seated.

The managers accompanied by the house of representatives attended and the managers took the seats assigned them within the bar.

Philomon Beecher, on the part of the respondent, was sworn, examined and cross-examined.

The following interrogatory was made by Mr. Merwin on behalf of the respondent :

"Question 1. Did you hear William W. Irvin (who drafted and circulated a petition for the removal of the respondent) express an opinion that he would use every means for the removal of judge Irvin."

This was objected to by Mr. Hine on behalf of the managers.

And on the question "Is it competent for the respondent's counsel to put the said question to the witness?"

It was determined in the negative. Yeas 2—Nays 13.

Those who voted in the affirmative are,

Mr. Bigger and Mr. Sharp.

Those who voted in the negative are,

Mr. Buell, Mr. Sargent,
Mr. Burton, Mr. Smith,
Mr. Hempstead, Mr. Shieder,
Mr. Hough, Mr. Tod,
Mr. Kerr, Mr. Wood and
Mr. Kirker, Mr. Pritchard, (president.)
Mr. M'Arthur,

Samuel Kratzer, on the request of the respondent's counsel, was sworn, examined and cross-examined.

The court adjourned into the senate chamber.

On motion,

Resolved, That the fifteenth section of the rules of proceedings to be observed by the senate in the impeachment of William Irvin, be rescinded : and in lieu thereof the following be adopted.

That if any senator wishes to put a question to a witness he may do it sitting in his seat.

On motion,

The court adjourned into the representatives' chamber.

At the desire of Mr. Tod ; Mr. Belt, Mr. Brush and Mr. Beecher were each again examined and cross-examined.

On motion of Mr. Merwin on behalf of the respondent, a transcript from the records of the court of common pleas for the county of Fairfield, at their November term 1804, was handed to the table and red by the clerk.

The evidence being gone through on both sides,

Mr. Langham on behalf of the managers, rose and proceeded to state some points on which he meant to rely.

Mr. Hine then rose and moved the court to postpone the trial until tomorrow ten o'clock, that they might have an opportunity of consulting with the house of representatives.

And on the question " Will the court postpone the trial of this cause until to-morning ten o'clock ?"

It was determined in the affirmative. Yeas 12—Nays 3.

Those who voted in the affirmative are,

mr. Buell, mr. Sargent,

mr. Burton, mr. Smith,
mr. Hempstead, mr. Shieder,
mr. Kerr, mr. Tod,
mr. Kirker, mr. Wood, and
mr. M'Arthur, mr. Pritchard, (president.)

Those who voted in the negative are,

mr. Bigger, mr. Hough.
mr. Sharp, and

A message from the house of representatives, by Mr. Williams.

Mr. Speaker,

I am directed to inform the senate that the house of representatives have appointed Mr. Beecher a manager to conduct the impeachment against William Irvin, an associate judge of the court of common pleas for the county of Fairfield, in place of Mr. Langham resigned.

Adjourned to ten o'clock to-morrow morning.

HIGH COURT OF IMPEACHMENTS.

FRIDAY, January 10th, 1806.

The court met pursuant to adjournment ; and were present as yesterday.

The state of Ohio vs. William Irvin.

The court being opened by proclamation, and all persons commanded to keep silence,

Ordered, That the clerk notify the house of representatives, that the senate are ready to proceed further on the trial of the impeachment of William Irvin, one of the associate judges of the court of common pleas for the county of Fairfield, in the representatives' chamber agreeable to the joint resolution of both houses.

The court adjourned into the representatives' chamber, and being there seated,

The managers accompanied by the house of representatives attended ; and the managers took the seats assigned them within the bar.

The respondent by his counsel also attended.

Mr. Hine on behalf of the managers rose and notified the court, that they had consulted with the house of representatives, and that mr. Beecher was appointed manager on the part of the house in the room of mr. Langham, who had resigned.

The president enquired of the managers and the respondents' counsel if they were prepared to proceed on the trial ? Who each answered in the affirmative.

Mr. Lewis on behalf of the managers, commenced the argument in support of the articles of impeachment.

Mr. Couch on behalf of the respondent, proceeded in his defence and produced his authorities.

Mr. Shepherd on behalf of the managers, continued the argument in support of the articles of impeachment ; and was followed by Mr. Beecher, who produced his authorities.

Mr. Merwin on behalf of the respondent, concluded his defence.

Mr. Hine on behalf of the managers, concluded the argument in support of the articles of impeachment.

A motion was made and seconded, that the senate come to the following resolution:

Resolved, That in taking the judgment of the senate upon the articles of impeachment now depending against William Irvin, the president of the senate shall call on each member by his name, and upon each article propose the following question, in the manner following:

Mr. —— how say you, is the respondent, William Irvin, guilty or not guilty of a high misdemeanor and neglect of official duty, as charged in the article of impeachment?"

Whereupon, each member shall rise in his place and answer guilty or not guilty.

Resolved, That the said motion be committed to a committee of the whole senate immediately.

The senate accordingly resolved itself into the said committee, and after some time spent therein, the speaker resumed the chair and Mr. Tod reported, that the committee had according to order, had the said motion under consideration and made an amendment thereto, which he handed in at the clerk's table, where the same was read and agreed to as follows

"*Resolved*, That in taking the judgment of the senate upon the articles of impeachment now depending against William Irvin, the speaker of the senate shall call on each member by his name and propose the following question in the manner following:

"Mr. —— how say you, is the respondent, William Irvin, guilty or not guilty of a high misdemeanor and neglect of official duty, as charged in the articles of impeachment?"

Whereupon, each member shall rise in his place and answer guilty or not guilty.

The clerk was directed to read the articles of impeachment as follows:

"Articles exhibited by the house of representatives of the state of Ohio, in the name of themselves and all the people of the state of Ohio, against William Irvin, one of the associate judges of the court of common pleas for the county of Fairfield, in maintenance and support of their impeachment against him for a high misdemeanor and neglect of his official duties.

Article 1st. That, in contempt of the high trust and confidence reposed in him, and neglectful of the important duties of his office by which he was solemnly pledged to administer justice faithfully and without delay; the said William Irvin, at the court of common pleas held at New-Lancaster, in and for the county of Fairfield, in the month of November and year of our lord one thousand eight hundred and four; whereat it was the duty of the said William Irvin to sit as associate judge conducted himself in a manner highly reprehensible, contemptuous and tending to the delay of justice, viz.

1st. In absenting himself from said court on the second day of the term, without intimating any intention of the kind to any member of

the court, notwithstanding a quorum of the court could not be formed without him.

2d. In declaring publicly and openly at Lancaster aforesaid, on the first day of the term aforesaid, that he conceived the compensation allowed the associate judges very inadequate, and that he would hold himself at liberty to neglect the duties of his office, whenever they interfered with his private concerns.

Article 2d. That in consequence of this irregular conduct of the said William Irvin, as subversive of the due administration of justice, as it is contrary to the sacred obligations imposod upon him by the express duties of his office, the said court of common pleas was necessarily adjourned, whereby all business therein pending before said court was postponed until the next term.

JOHN SLOANE,
Speaker of the house of representatives.

December 9th, 1805."

The speaker took the opinion of the members of the court respectively, in the form following:

Mr. —— how say you, is the respondent, William Irvin, guilty or not guilty of a high misdemeanor and neglect of official duty, as charged in the articles of impeachment?"

Those who pronounced GUILTY are,

Mr. Bigger,	Mr. Sargent,
Mr. Buell,	Mr. Sharp,
Mr. Burton,	Mr. Smith,
Mr. Hempstead,	Mr. Shieder,
Mr. Hough,	Mr. Tod,
Mr. Kirker,	Mr. Wood and
Mr. M'Arthur,	Mr. Pritchard, (Speaker.)

He who pronounced NOT GUILTY was,

Joseph Kerr.

Mr. Couch, on behalf of the respondent, rose and made some observations in order to evince to the court the propriety of proportioning the respondent's punishment to the neture of his offence, and was followed by Mr. Merwin.

Mr. Hine on behalf of the managers, made some remarks, by way of answer to the observations of the respondent's counsel.

Adjourned to ten o'clock to-morrow morning.

HIGH COURT OF IMPEACHMENTS.

SATURDAY, January 11th, 1806.

The court met pursuant to adjournment; and were present as yesterday.

The State of Ohio vs. William Irvin.

The court being opened by proclamation and all persons commanded to keep silence.

A motion was made and seconded, that the following resolution be adopted by the senate:

"Whereas William Irvin, an associate judge in and for the county of Fairfield, has by the decision of the senate sitting as a high court of impeachment, on articles of impeachment exhibited against him by the house of representatives, for a high misdemeanor in said office, been found guilty of the charge in said articles of impeachment alledged against him. *Resolved* therefore, That the said William Irvin be suspended in his said office of judge as aforesaid, for the term of days, and that he receive the following reprimand from the speaker of the senate:

"You, William Irvin, have been charged with a high misdemeanor in office—and on the charge you have been found guilty. The respectability of your character would almost preclude the possibility of a suspicion to your name—a neglect of important official duties is an actual crime, and in the case of a judge would strike to the very existence of political society. The evil which must necessarily result from repeated instances of similar neglect of duty would be evidently great, injurious and destructive. Your good sense will move your approbation of these remarks. The punishment inflicted is light, but we trust it will have the desired effect.

"At the expiration of the time before specified, we hope you will return to the performance of these important duties, which devolve on a judge of law. Your attention hereafter to the duties of the dignified station of a judge, we flatter ourselves will be honorable to yourself and beneficial to the public.

Resolved, That the said motion be committed to the consideration of a committee of the whole senate immediately.

The senate accordingly resolved itself into the said committee, and after some time spent therein, the speaker resumed the chair and Mr. Sargent reported, that the committee had, according to order, had the said motion under consideration, and directed him to report to the senate their agreement to the said motion amended, to read as follows:

Wheraas William Irvin, an associate judge, in and for the county of Fairfield, has by the decision of the senate, sitting as a high court of impeachment, on articles of impeachment, exhibited against him by the house of representatives, for a high misdemeanor in his said office, been found guilty of the charge alledged against him.—*Resolved therefore*, That William Irvin, shall be and he is hereby removed from the office of an associate judge of the county of Fairfield.

And on the question that the senate agree with the report from the committee of the whole, in their agreement to the said motion as amended.

It was determined in the affirmative. Yeas 11—Nays 4.

Those who voted in the affirmative are,

mr. Buell,	mr. Sharp,
mr. Burton,	mr. Smith,
mr. Hough,	mr. Snieder,
mr. Kirker,	mr. Wood, and
mr. M'Arthur,	mr. Pritchard, (speaker.)
mr. Sargent,	

Those who voted in the negative are,

mr. Bigger,	mr. Kerr, and
mr. Hempstead,	mr. Tod.

Ordered, That the clerk notify the house of representatives, that the senate are ready to proceed to pronounce judgment on William Irvin, one of the associate judges of the court of common pleas, for the county of Fairfield, on the articles of impeachment exhibited against him by the house of representatives, in the representatives' chamber, agreeable to the joint resolution of both houses.

The court then adjourned into the representatives' chamber, and being there seated.

The managers accompanied by the house of representatives attended; and the managers took the seats assigned them within the bar.

The respondent with his counsel also attended.

The speaker of the senate pronounced the judgment of the court; And

Then the court adjourned without day.

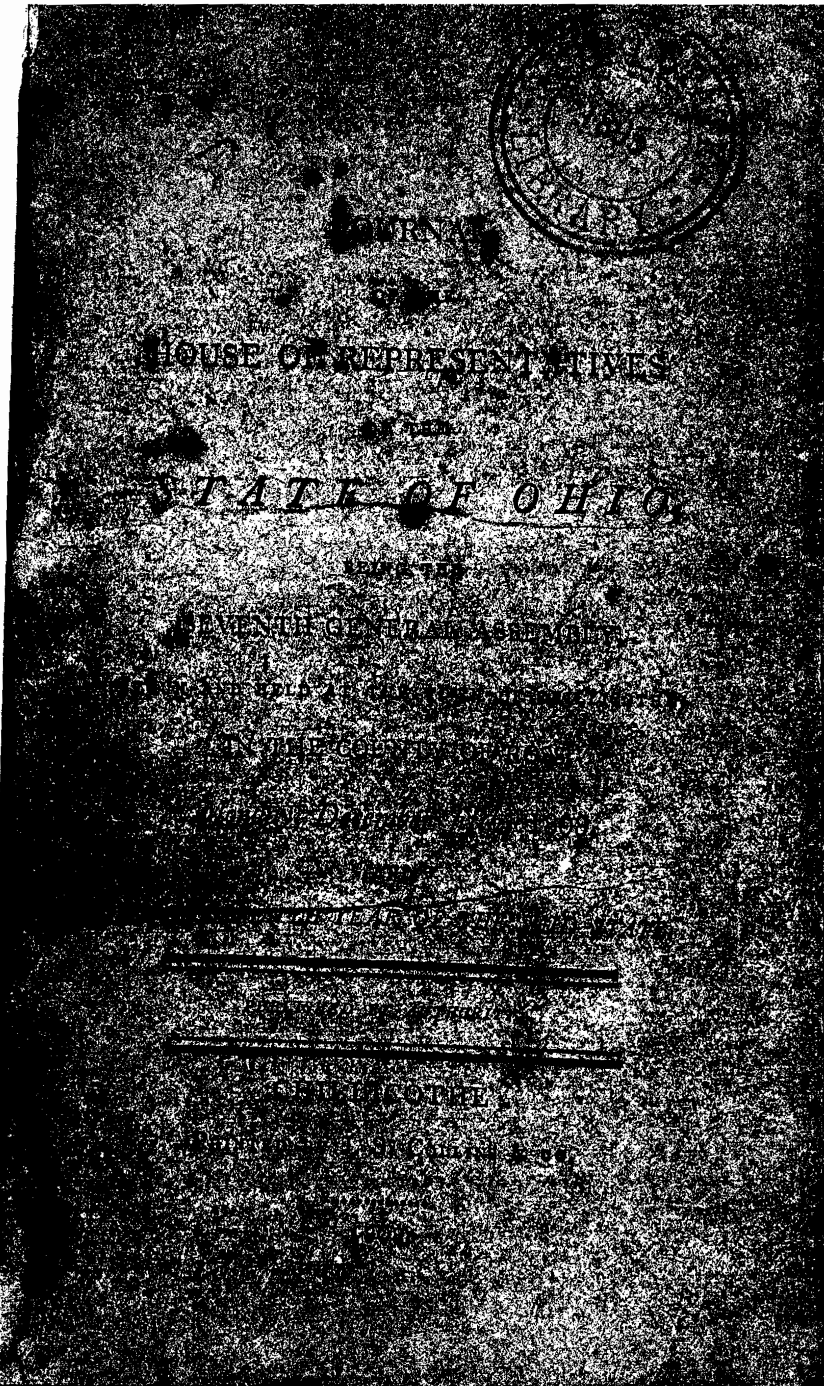
A copy.

Attest,

THOMAS SCOTT,

Clerk of the Senate.

Footnote 6 (Tod)



JOURNAL

OF THE

HOUSE OF REPRESENTATIVES

OF THE

STATE OF OHIO,

BEING THE

SEVENTH GENERAL ASSEMBLY,

CHILLICOTHE

Richard E. Meade, 2
John Thompson, 2
John Robinson, 1
Henry Brush, 1

Neither of the persons voted for, having obtained a majority of the whole number of votes given, the two houses proceeded as before mentioned to a second ballot, when on canvassing the ballots and counting the votes, they were found—

For Jeremiah M'Lene, 44
Joseph Tiffin, 20
William W. Irvin, 6

Jeremiah M'Lene having obtained a majority of all the votes of the members present, was declared by the two speakers to be duly elected.

The senate having retired to their chamber, and the further proceedings of the house being postponed, the house then adjourned until to-morrow morning, ten o'clock.

TUESDAY, December 13th, 1808.

The house met pursuant to adjournment.

A bill further to amend the act, entitled "An act defining the duties of auditor and treasurer of state," was read a second time, and committed to a committee of the whole house, and made the order of the day for Saturday next.

A bill to prevent the abatement of suits in certain cases, was read the second time, and committed to a committee of the whole house, and made the order of the day for Monday next.

On motion Mr. Kerr and seconded,

Ordered, That the committee of the whole house be discharged from further proceedings on the bill reported by the committee of unfinished business, making certain instruments of writing negotiable; and that the said bill do stand for its second reading;

Whereupon,

The said bill was read the second time, and committed to a committee of the whole house, and made the order of the day for Monday next.

Ordered, That Mr. Looker acquaint the senate of the said bill having been reported in this house.

On motion Mr. Perry and seconded,

That the house come to the following resolution,

Resolved, by the general assembly of the state of Ohio, That our senators in congress be instructed, and our representative be requested, to use their endeavors to have such a sum of money appropriated for the payment of the expenditure occasioned by an order from the acting governor, for turning out and embody-

ing the militia in the first brigade and first division of Ohio, which documents has heretofore been forwarded to the secretary at war, by the governor of the state of Ohio, &c, and the said resolution being twice read, was concurred in.

Ordered, That Mr. Perry do carry the said resolution to the senate and desire their concurrence.

The house, according to order, resolved itself into a committee of the whole, on the resolution "for appointing a committee to draft articles of impeachment against the judges of the supreme court, and president of the third circuit," Mr. Corwin in the chair, and after some time spent therein, Mr. Speaker resumed the chair and Mr. Corwin reported, that the committee, according to order, had under their consideration the said resolution, together with the petitions to them referred, and had made an amendment to the said resolution, which he handed in at the clerk's table.

Whereupon,

The house proceeded to consider the said amendment, which was read as followeth:

Strike out the whole of the resolution from the word "resolved," and insert the follwing;

"That a committee of three members be appointed to enquire into the official conduct of Samuel Huntington, esquire, late judge of the supreme court, and George Tod, esq. one of the judges of the court aforesaid; also Calvin Pease, esq. president of the court of common pleas for the third circuit, and such of the associate judges as concurred with the aforesaid judges in setting aside that part of the law defining the duties of justices of the peace, which extends their jurisdiction above twenty dollars, and allowing costs contrary to the provisions of the said act; and that the said committee be empowered to issue compulsory process, to procure the attendance of witnesses, and such papers and documents as, in their opinion, may appear proper, and that they have privilege to exhibit articles of impeachment, or report otherwise."

On motion Mr. Corwin and seconded,

To strike out of the said amendment the following words, in the latter clause, viz.

"And that they have privilege to exhibit articles of impeachment, or report otherwise," and to insert the words,

"And to report accordingly."

On the question being taken thereupon,

It passed in the negative.

On motion Mr. Lucas and seconded,

That the house do agree to the said amendment as reported by the committee of the whole;

On the question being taken thereupon,

It was resolved in the affirmative.

said election to the seat of government, to be filed with the se
tary of state; and the same being read, were refered to the c
mittee of claims.

A message from the senate, by Mr. Kinney.

Mr. Speaker,

I am directed to inform this house, that the speaker of th
nate did, this day, sign the enroled resolution instructing ou
nators and requesting our representative in congress, to use
endeavors to procure an appropriation of money, as therein
cified, and it has been delivered to the joint committee of e
ments, to be deposited in the office of the secretary of state.

A message from the senate, by Mr. Barrer.

Mr. Speaker,

The senate have passed a resolution instructing the joint
mittee appointed to enquire into the situation of the three per
fund to procure the reports of certain road commissioners, an
other purposes, in which they desire the concurrence of this h

A message from the senate, by Mr. Kinney.

Mr. Speaker,

The senate have appointed a committee to prepare and
in a bill for the prevention of certain immoral practices.

A bill from the senate, entitled "An act authorising th
prietor of the town of Boardman, in the county of Trumbu
alter or vacate the same, was read the first time.

Mr. M'Cune moved for the further order of the day:

Whereupon,

The house, according to order, resolved itself into a comm
of the whole, on the articles of impeachment exhibited
committee appointed to enquire into the official conduct of
judges, &c. against Calvin Pease, esq. president of the thi
cuit of the courts of common pleas of this state, and after
time spent therein, Mr. Speaker resumed the chair and Mr
reported, that the committee, according to order, had under
consideration the said articles and the documents to them r
and had made progress therein, and asked leave to sit again

Mr. Morris notified the house, that he would to-morro
leave to amend the standing rules of this house, so far as
to the thirty-ninth rule, and to restrict the time of speaking
committee of the whole house.

And then the house adjourned until to-morrow mornin
o'clock.

Tuesday, December 20th, 1808.

The house met, pursuant to adjournment.

The bill from the senate, entitled "An act authorisi
proprietor of the town of Boardman, in the county of Tru

alter or vacate the same," was read the second time, and com-
mitted to a committee of the whole house, and made the order
of the day for Friday.

Mr. Morris, from the committee appointed by the resolution
of this house, to enquire into the official conduct of certain judges
therein mentioned, and to report by articles of impeachment, or
otherwise, made a further report of an article of impeachment
against George Tod, esquire, one of the judges of the supreme
court, with documents to substantiate the charge therein contain-
ed, which were received and read, and ordered to lie on the table.

On motion Mr. Merwin, and seconded,

That the house come to the following resolution,

Resolved, That those members of the senate, and of the house
of representatives, who gave testimony before the select com-
mittee appointed to enquire into the official conduct of the presi-
dent of the third circuit, &c. be requested, by a message from
this house, to attend at the bar thereof, on this day, at
o'clock, to answer to such interrogatories as may be put to them
under the direction of the speaker of this house.

On motion Mr. Kerr, and seconded,

To amend the said resolution, by filling the blank with the
word "twelve," so as to read "twelve o'clock."

And on the question thereupon,

It was resolved in the affirmative.

And on the question being taken, that the house do agree to the
said resolution, as amended,

It passed in the negative—Yeas 13—Nays 34.

Those who voted in the affirmative, were—

Messrs. Blair,
Couch,
Elliott,
Jewitt,
Kerr,
King,
Looker,
Marple,
Merwin,
Owings,
Rodgers,
Sabin, and
Woodbridge,—13.

Those who voted in the negative, were—

Messrs. Bryson,
Corwin,
Clark, (of Musk.)
Clark, (of Ham.)
Geo. Clark,
Crumbacker,
James Dunlap,
Samuel Dunlap,
Ellison,
Fee,
Ford,
Gunckell,
James,
Lucas,
Monett,
Munger,
M'Cune,
M'Knigt,
M'Culloch,
Morris,
Pritchard,
Perry,
Shelby,
Shields,

of high crimes and misdemeanors, and that such proceedings, trials and judgments may be therein had and given, as are agreeable to law and justice.

And on the question being taken, that the house do agree to the said third article of impeachment,

It was resolved in the affirmative.

The yeas and nays being required, were—Yeas 35, Nays 11.

Those who voted in the affirmative, were—

Messrs. Bryson,	Looker,
Corwin,	Lucas,
Clark (of Musk.)	Monett,
Clark (of Ham.)	Munger,
Geo. Clark,	M'Cune,
Crumbacker,	Marple,
James Dunlap,	M'Knight,
Samuel Dunlap,	Morris,
Ellison,	Pritchard,
Fee,	Perry,
Ford,	Shelby,
Gunckell,	Shields,
Harlan,	Sharp,
Harbaugh,	Swearingen,
Heaton,	Stewart,
Hughes,	Vore,
Holden,	and
James,	Campbell, speaker, 35

Those who voted in the negative, were—

Messrs. Blair,	Merwin,
Couch,	Owings,
Elliott,	Rodgers,
Kerr,	Sabin,
King,	Woodbridge—11.

On motion,

Ordered, That the said articles of impeachment be engross[ed] and read the third time to-morrow.

Mr. Sharp moved for the order of the day:

Whereupon,

The house according to order, resolved itself into a committe[e] of the whole, on the article of impeachment exhibited by th[e] committee appointed for the purpose against George Tod, es[q.] one of the judges of the supreme court of this state, and aft[er] some time spent therein, Mr. Speaker resumed the chair, an[d] Mr. Couch reported, that the committee, according to order, ha[d] under their consideration, the said article of impeachment, an[d] the documents to them referred, and that they had made [an] amendment thereto, which he presented at the clerk's table.

Whereupon,

The house according to order, resolved itself into a committee of the whole, on the bill for laying out and leasing section number sixteen in the township of Columbia; and after some time spent therein, Mr. Speaker resumed the chair, and Mr. Clark (of Musk.) reported, that the committee, according to order, had under their consideration the said bill, and had made several amendments thereto, which he presented at the clerk's table, and they being severally read, some were agreed to, and others disagreed to; and the said bill being further amended was, with the amendments, ordered to be engrossed and read the third time on Monday.

A message from the senate by Mr. Bigger.

Mr. Speaker,

The senate have passed a resolution discharging the joint committee appointed to examine what laws ought to be revised or amended, in which they desire the concurrence of this house.

Whereupon,

The house proceeded to consider the said resolution at the clerk's table, and the same being read, was concurred in.

Ordered, That Mr. Geo. Clark acquaint the senate therewith.

Mr. Morris from the joint committee appointed to examine and to report what laws in their opinion are necessary to be revised, reported

That the committee are of opinion, that the following acts need a revision, viz:

1 An act for the assignment of bail bonds.

2 An act to provide for the elections of justices of the peace, and the several acts amendatory thereto.

3 An act organizing the judicial courts, and the several acts amendatory thereto.

4 An act defining the duties of justices of the peace and constables, in civil and criminal cases, and the several acts amendatory thereto, and

5 An act regulating arbitrations.

Which report was received and read, and ordered to lie on the table.

A message from the senate by Mr. Massie.

Mr. Speaker,

The senate have appointed a committee to prepare and bring in a bill for the assignment of bail bonds.

A message from the senate by Mr. M'Connel,

Mr. Speaker,

The senate have appointed a committee to prepare and bring in a bill providing for the election of justices of the peace.

A message from the senate by Mr. Elliott.

Mr. Speaker,

The senate have agreed to the 1st, 2d, 3d, and 4th, and disagreed to the 5th member of the report made on yesterday to the senate, by the joint committee appointed to examine what laws are necessary to be revised during the present session.

A message from the senate by Mr. Abbot.

Mr. Speaker,

The senate have appointed a committee to prepare and bring in a bill to regulate bail.

A message from the senate by Mr. Kinney.

Mr. Speaker,

A bill to stay proceedings on executions, and for other purposes, has this day been reported to the senate.

The house proceeded to consider at the clerk's table, the report of the committee of the whole laid on the table on yesterday, on the bill for the more speedy distribution of the laws and journals, and for other purposes; and the amendments reported thereto being severally read, some were agreed to, and others disagreed to, and the said bill being further amended, was, with the amendments, ordered to be engrossed and read the third time, on Monday next.

Mr. Pritchard moved for the further order of the day:

Whereupon,

The house according to order, resolved itself into a committee of the whole house, on the bill appointing Amos Evans and George Wilson, agents for the heirs of John Wilson, deceased, and after some time spent therein, Mr. Speaker resumed the chair, and Mr. Ellison reported, that the committee, according to order, had under their consideration the said bill, and had made several amendments thereto, which he presented at the clerk's table.

And then the house adjourned until to-morrow morning, ten o'clock.

Saturday, December 24th, 1808.

The house met pursuant to adjournment.

An engrossed bill, for leasing a fractional section, number twenty-nine, in the township of Belpre, was read the third time.

On motion,

Resolved, That the said bill do pass, and that the title be "An act for leasing a fractional section, number twenty-nine, in the township of Belpre."

Ordered, That Mr. Jewett do carry the said bill to the senate, and request their concurrence.

Mr. James Dunlap presented to the house, an account against the state of Ohio, exhibitted by Thomas Steel, coroner of Ross

county, acting as sheriff, for services rendered during the last election for electors to vote for president and vice president of the United States, which was received and read, and referred to the committee of claims.

The engrossed articles of impeachment exhibited against Calvin Pease, esquire, president of the courts of common pleas for the third circuit, were read the third time, and agreed to by the house:

Whereupon,

The said articles of impeachment were signed by the speaker and attested by the clerk.

The house proceeded to consider at the clerk's table, the amendment reported on yesterday to the article of impeachment against George Tod, esquire, judge of the supreme court, by the committee of the whole house, which being read was agreed to.

On motion Mr. Morris and seconded,

Ordered, That the engrossing of the said article be dispensed with, and that the said article be read a third time to-day.

Whereupon,

The said article of impeachment was read as followeth:

ARTICLE

Exhibited by the house of representatives of the state of Ohio, in the name of themselves, and of all the people of the state of Ohio, against George Tod, one of the judges of the supreme court for the state aforesaid, in maintenance and support of their impeachment against him, for a high crime and misdemeanor.

ARTICLE I.

"That whereas it is provided by the fifth section of an act of the general assembly of the state aforesaid, passed on the twelfth day of February, in the year of our Lord, one thousand, eight hundred and five, entitled "An act defining the duties of justices of the peace and constables, in criminal and civil cases." That the power of justices of the peace in this state, shall in civil cases, be co-extensive with the township in which they may respectively be elected and reside, and their jurisdiction in such cases, shall extend under the restrictions and limitations therein after provided, to any sum not exceeding fifty dollars, &c. That unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them faithfully and impartially, the said George Tod, judge of the said supreme court of the said state of Ohio, the said act of the said general assembly, not regarding, but wilfully, wickedly and maliciously with intent to evade, nullify and make void the same, and thereby to bring the acts and doings of the said general assembly into contempt and disgrace, and to induce the good citizens thereof to disregard them, and

thereby to introduce anarchy and confusion into the government of the state of Ohio aforesaid, at a supreme court holden at Steubenville, in and for the county of Jefferson, in the month of August, in the year of our Lord, one thousand, eight hundred and seven, whereat the said George Tod sat as judge in a certain cause, then and there depending and undetermined, wherein Rutherford was plaintiff, and M'Faddon defendant, did in his judicial capacity, adjudicate and determine that the said fifth section of the act of the general assembly aforesaid, was unconstitutional, null and void, and for that cause only, did reverse, set aside, annul and make void, the proceedings had before the court of common pleas, for the county of Jefferson aforesaid, and the justice of the peace in the said cause, to the manifest injury of him the said Rutherford; to the evil example of all the good citizens of the state of Ohio aforesaid, contrary to its constitution and laws; disgraceful to his own character as a judge, and degrading to the honor and dignity of the state of Ohio.

And the house of representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter, any further articles or other accusation or impeachment, against the said George Tod; and of replying to his answers which he shall make to the said articles, or any of them; and of offering proof to the aforesaid article, and to all and every other article, impeachment or accusation, which shall be exhibited by them, as the case shall require; do demand that the said George Tod may be put to answer to the said high crime and misdemeanor; and that such proceeding, examination, trial and judgment, may be thereupon had, and given, as may be agreeable to law and justice.

And on the question being taken, that the house do agree to the said article of impeachment, it was resolved in the affirmative.

The Yeas and Nays being required, were—Yeas 33, Nays 9.

Those who voted in the affirmative were—

Messrs.	Bryson,	Lucas,
	Corwin,	Looker,
	Clark, (of Musk.)	Monett,
	Geo. Clark,	Munger,
	Crumbacker,	M'Cune,
	James Dunlap,	Marple,
	Samuel Dunlap,	M'Knight,
	Ellison,	Morris,
	Fee,	Pritchard,
	Ford,	Perry,
	Gunckel,	Shelby,
	Harlan,	Shields,
	Heaton,	Sharp,

	Hughes,	[illegible]
	Holden,	[illegible]
	James,	Campbell Speaker, 33.
	Swearingen,	

Those who voted in the negative were—

Messrs.	Blair,	[illegible]
	Couch,	Merwin,
	Clark (of Ham.)	Rodgers,
	Jewett,	Woodbridge—9.
	Kerr,	

Whereupon,

The said article was signed by the speaker and attested by the clerk.

Mr. Sharp presented to the house, a newspaper containing the publication of the opinion of judge Tod, which was alluded to in the affidavit of Peter Parcels, taken by the select committee appointed to enquire into the official conduct of [illegible] judges, &c. in order to substantiate the charges exhibited [illegible] the said George Tod, which was received and read, and ordered to lie on the table.

On motion Mr. Merwin and seconded,

Resolved, That five managers be appointed by ballot, to prosecute in behalf of the house of representatives, their impeachment against Calvin Pease, and George Tod, in their name, and in the name of the people of the state of Ohio, and that a plurality of votes shall be considered a choice.

Whereupon,

The house proceeded, agreeably to the said resolution, to the appointment of managers, and upon examining the ballots, it was found that Mr. Morris, Mr. Sharp, Mr. Pritchard, Mr. [illegible] and Mr. Merwin appeared to be duly elected.

On motion Mr. Merwin and seconded,

Ordered, That he be excused from serving as one of the managers, in prosecuting the before mentioned impeachments.

Whereupon,

The house proceeded to elect another manager, in place of Mr. Merwin, when on examining the ballots, it appeared that Mr. Looker was duly elected.

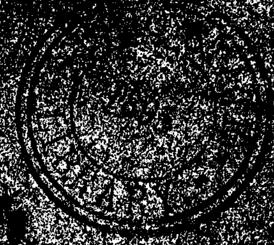
Ordered, That Mr. Perry acquaint the senate therewith.

On motion, Mr. Morris and seconded,

Resolved, That the managers, appointed to conduct the impeachments against Calvin Pease, esq. president of the third circuit, of the courts of common pleas, of this state, and Geo. Tod, one of the judges of the supreme court, be directed to proceed to the bar of the senate, with the articles of impeachment aforesaid, and there demand, that the said Calvin Pease and Geo. Tod, be put to answer the said articles of impeachment.

Ordered, That Mr. Morris acquaint the senate therewith.

- Footnote 6 (Pease)



JOURNAL

OF THE

HOUSE OF REPRESENTATIVES

OF THE

STATE OF OHIO

SEVENTH GENERAL ASSEMBLY

CHILLICOTHE

Richard E. Meade,	2
John Thompson,	2
John Robinson,	1
Henry Brush,	1

Neither of the persons voted for, having obtained a majority of the whole number of votes given, the two houses proceeded as before mentioned to a second ballot, when on canvassing the ballots and counting the votes, they were found—

For Jeremiah M'Lene,	44
Joseph Tiffin,	20
William W. Irvin,	6

Jeremiah M'Lene having obtained a majority of all the votes of the members present, was declared by the two speakers to be duly elected.

The senate having retired to their chamber, and the further proceedings of the house being postponed, the house then adjourned until to-morrow morning, ten o'clock.

TUESDAY, December 13th, 1808.

The house met pursuant to adjournment.

A bill further to amend the act, entitled "An act defining the duties of auditor and treasurer of state," was read a second time, and committed to a committee of the whole house, and made the order of the day for Saturday next.

A bill to prevent the abatement of suits in certain cases, was read the second time, and committed to a committee of the whole house, and made the order of the day for Monday next.

On motion Mr. Kerr and seconded,

Ordered, That the committee of the whole house be discharged from further proceedings on the bill reported by the committee of unfinished business, making certain instruments of writing negotiable; and that the said bill do stand for its second reading;

Whereupon,

The said bill was read the second time, and committed to a committee of the whole house, and made the order of the day for Monday next.

Ordered, That Mr. Looker acquaint the senate of the said bill having been reported in this house.

On motion Mr. Perry and seconded,

That the house come to the following resolution,

Resolved, by the general assembly of the state of Ohio, That our senators in congress be instructed, and our representative be requested, to use their endeavors to have such a sum of money appropriated for the payment of the expenditure occasioned by an order from the acting governor, for turning out and embody-

ing the militia in the first brigade and first division of Ohio, which documents has heretofore been forwarded to the secretary at war, by the governor of the state of Ohio, &c, and the said resolution being twice read, was concurred in.

Ordered, That Mr. Perry do carry the said resolution to the senate and desire their concurrence.

The house, according to order, resolved itself into a committee of the whole, on the resolution "for appointing a committee to draft articles of impeachment against the judges of the supreme court, and president of the third circuit," Mr. Corwin in the chair, and after some time spent therein, Mr. Speaker resumed the chair and Mr. Corwin reported, that the committee, according to order, had under their consideration the said resolution, together with the petitions to them referred, and had made an amendment to the said resolution, which he handed in at the clerk's table.

Whereupon,

The house proceeded to consider the said amendment, which was read as followeth:

Strike out the whole of the resolution from the word "resolved," and insert the follwing;

"That a committee of three members be appointed to enquire into the official conduct of Samuel Huntington, esquire, late judge of the supreme court, and George Tod, esq. one of the judges of the court aforesaid; also Calvin Pease, esq. president of the court of common pleas for the third circuit, and such of the associate judges as concurred with the aforesaid judges in setting aside that part of the law defining the duties of justices of the peace, which extends their jurisdiction above twenty dollars, and allowing costs contrary to the provisions of the said act; and that the said committee be empowered to issue compulsory process, to procure the attendance of witnesses, and such papers and documents as, in their opinion, may appear proper, and that they have privilege to exhibit articles of impeachment, or report otherwise."

On motion Mr. Corwin and seconded,

To strike out of the said amendment the following words, in the latter clause, viz.

"And that they have privilege to exhibit articles of impeachment, or report otherwise," and to insert the words,

"And to report accordingly."

On the question being taken thereupon,

It passed in the negative.

On motion Mr. Lucas and seconded,

That the house do agree to the said amendment as reported by the committee of the whole;

On the question being taken thereupon,

It was resolved in the affirmative.

On motion, Mr. Kerr and seconded,

That the house come to the following resolution:

Resolved, by the senate and house of representatives of the state of Ohio, That the joint committee of ways and means be instructed to close the contract with Joseph S. Collins & Co. agreeable to their propositions, taking sufficient bond and security for the performance of the work, agreeable to the said propositions, and within the times therein specified; and the same being twice read, was concurred in.

Ordered, That Mr. M'Knight do carry the said resolution to the senate and request their concurrence.

Mr. Morris from the committee appointed to enquire into the official conduct of certain judges, agreeably to a resolution of this house, and to report by articles of impeachment or otherwise. Reported in part.

"Articles of impeachment preferred against Calvin Pease, esquire, president of the third circuit of the courts of common pleas of this state," accompanied by affidavits to substantiate the charges therein contained; and the same being read,

On motion, Mr. Jewitt and seconded,

Ordered, That the said articles of impeachment, with the documents accompanying the same, be committed to a committee of the whole house, and made the order of the day for Monday next.

On motion, Mr. Kerr and seconded,

Ordered, That eighty copies of the said articles of impeachment be printed for the use of the members of the legislature.

On motion Mr. Corwin, and seconded,

Ordered, That the clerk have printed all the bills that stand committed, to a committee of the whole house.

A message from the senate by Mr. Smith.

Mr. Speaker,

The senate have appointed a committee of three, to enquire into the expediency of passing a law for preventing the sale of property on execution for a limited time, and to report by bill or otherwise.

The house according to order, resolved itself into a committee of the whole on the bill for leasing a fractional section, number twenty-nine, in the township of Belpre, and after some time spent therein, Mr. Speaker resumed the chair, and Mr. Harlan reported:

That the committee, according to order, had under their consideration the said bill, and had agreed to the same without an amendment, which he presented at the clerk's table.

And then the house adjourned until to-morrow morning, te[n] o'clock.

SATURDAY, December 17th, 1808.

The house met pursuant to adjournment.

The bill "providing for laying out and leasing section numb[er] sixteen, in the township of Columbia," was read the seco[nd] time, and committed to a committee of the whole, and made [the] order of the day for Tuesday next.

Mr. Pritchard moved for the order of the day.

Whereupon,

The house according to order, resolved itself into a commit[tee] of the whole on the bill "further to amend the act entitled [an] act defining the duties of auditor and treasurer of state," [and] after some spent therein, Mr. Speaker resumed the chai[r,] Mr. Shields reported progress therein, and asked leave to [sit] again.

Mr. Jewitt presented to the house, an account exhibite[d by] Silvanus Ames, sheriff of Athens county, against the sta[te of] Ohio, for services rendered in attending the last electio[n of] electors of President and Vice President of the United S[tates,] and travelling to the seat of government, to make return [to the] office of the secretary of state, which was received and rea[d, and] refered to the committee of claims.

Mr. Kerr moved for the order of the day.

Whereupon,

The house according to order, resolved itself into a comm[ittee] of the whole, on the bill to amend an act entitled "An act fo[r the] limitation of actions;" and after some time spent therein, [Mr.] Speaker resumed the chair, and Mr. Pritchard reported tha[t the] committee according to order, had under their consideratio[n the] said bill, and had made several amendments thereto, whic[h he] presented at the clerk's table.

A message from the senate, by Mr. M'Connel.

Mr. Speaker,

The senate have passed the bill, entitled "An act requiri[ng the] treasurer of Muskingum county, to pay certain monies [to the] treasurer of Tuscarawas county."

A message from the senate by Mr. Burton.

Mr. Speaker,

The senate have passed a bill entitled "an act authorisi[ng the] proprietors of the town of Boardman, in the county of [illegible] to alter or vacate the same," in which they request [the con]currence of this house.

On motion Mr. M'Culloch, and seconded,

Ordered, That he have leave of absence from the service [of this] house until Monday evening, three o'clock.

And then the house adjourned until Monday morning [illegible] o'clock.

The county of Gallia—Thomas Rodgers.
The county of Scioto—Robert Lucas.
The county of Miami—Arthur Stewart.
The county of Champaign—Samuel M'Culloch.
The counties of Licking and Knox—Alexander Holden.
The county of Geauga—Nehemiah King.

And the said report being read, was agreed to by the house.

Mr. Morris presented at the clerk's table, the affidavits of Richard L. Elliott and Abel Sabin, esquires, taken further to substantiate the charges exhibited by the committee appointed to enquire into the official conduct of certain judges, against Calvin Pease, esquire, president of the third circuit of the courts of common pleas of this state; which were received and read, and refered to the same committee to whom was refered the articles of impeachment, exhibited against the said Calvin Pease, esquire.

Mr. Morris moved for the order of the day;

Whereupon,

The house according to order resolved itself into a committee of the whole, on the articles of impeachment exhibited against Calvin Pease, esquire, president of the third circuit of the courts of common pleas of this state, and the documents to them referred, and after some time spent therein, Mr. Speaker resumed the chair, and Mr. James Dunlap reported, that the committee, according to order, had under their consideration the said articles of impeachment, and the documents to them refered, and had made several amendments thereto, which he presented at the clerk's table.

And then the house adjourned until to-morrow morning ten o'clock.

THURSDAY, December 22d, 1808.

The house met, pursuant to adjournment.

Mr. Sabin, from the committee appointed on the ninth inst. to enquire into the expediency of repealing the several acts concerning black and mulatto persons, and to report by bill or otherwise, reported a bill to repeal an act, entitled "An act to amend an act, entitled "An act, regulating black and mulatto persons," which was read the first time.

Mr. Clark (of Musk.) presented to the house, petitions from sundry inhabitants, of the county of Tuscarawas, setting forth, that for the want of a more general distribution of the laws of this state, they have experienced many difficulties, grievancies and privations, ever since the first settlement of the county; in consequence of which their justices of the peace are deprived

of knowing what laws are in force, and frequently, for the want of this information, they are induced to proceed agreeably to the provisions of the laws of the respective states, from which they migrated; and this has a tendency to lead them into error, and for other more urgent reasons therein stated, praying, that the legislature may take their grievance into consideration (and as they are ever anxious to have the laws of the land for their guide) if they should deem it expedient to have a sufficient number of the *revised* laws of the state of Ohio, struck off or printed, so that every officer, civil and military, of the county may be furnished with a copy, &c. which was received and read, and ordered to lie on the table.

Mr. Clark (of Musk.) also presented to the house, a petition from sundry inhabitants of Tuscarawas county, setting fourth, that it was with feelings of the utmost alarm and regret, that they learned, at the last session of the legislature, that *Still-water* was declared a navigable stream, from its confluence with the river Muskingum, as far up as the mouth of the Brushy fork of said stream; and that any person having in use a mill and dam thereon, had from the time of passing said act, within three years therefrom, to comply with all and every provision of the same; that in consequence of the passing of this act, the proprietor of the only mills on this stream, who erected the same at least two years prior thereto, will be under the necessity of tearing away his dam and mill, as their construction will not admit of a slope, without insuring the destruction of both; and for other reasons therein urged, praying that the legislature would take the subject into their consideration, on whom they look with confidence for relief, and repeal so much of the act, declaring certain streams navigable, as includes Still-water in that number, or by an act amendatory thereto, declare it navigable as far up as Michael Uhrich's mills and no farther, it being the highest point on this stream fit for navigation.

Mr. Clark presented also, a memorial from Michael Uhrich, the person whose mills are above alluded to, setting forth, that the memorialist, in the year 1806, erected a grist and saw mill on Still-water (since declared a navigable stream, as far up as the mouth of the Brushy fork) and by an act of assembly, the proprietor of the mills situated thereon, required to make locks and slopes to their dams for the passage of boats and crafts up or down stream; a thing impracticable to the memorialist, without tearing away his dam and saw mill entirely, as it could not be done without; and for other reasons therein contained, praying, that should the act take effect, his mills must be destroyed, which to erect, cost him two thousand dollars, that the legislature will be pleased to pass an act for his relief, and award him a just equivalent in money for the loss he will in that case sustain. And the said petition and memorial being read, were refered to a committee of Messrs. Clark, (of Musk.) Sharp and

Whereupon,

The house, according to order, resolved itself into a committee of the whole, on the bill for the more speedy distribution of the laws and journals, and for other purposes, and after some time spent therein, Mr. Speaker resumed the chair, and Mr. Blair reported:

That the committee, according to order, had under their consideration the said bill, and had made several amendments thereto, which he presented at the clerk's table.

And then the house adjourned until to-morrow morning, ten o'clock.

FRIDAY, December 23d, 1808.

The house met, pursuant to adjournment.

1. A bill from the senate, entitled "An act establishing the county of Dark."

2. A bill to enable religious societies to hold lands in fee simple: and,

3. A bill to repeal an act, entitled "An act, to amend an act entitled "An act regulating black and mulatto persons," were severally read the second time, and committed to a committee of the whole house; the two first made the order of the day for Tuesday next, and the last the order for Wednesday.

The house proceeded to consider, at the clerk's table, the report of the committe of the whole house of the 16th instant, on the bill for leasing fractional section number twenty nine, in the township of Belpre, which was reported without an amendment, and the same being read, was concurred in.

On motion,

Ordered, That the said bill be engrossed, and read the third time to-morrow.

The house also proceeded to consider at the clerk's table, the report of the committee of the whole house of the 21st instant, on the articles of impeachment exhibited by the committee appointed for that purpose, against Calvin Pease, esq. president of the third circuit of the courts of common pleas of this state, which was reported with amendments, and they being seve-verally read, some were agreed to, and others disagreed to:

Whereupon,

The first section of the articles of impeachment aforesaid, as amended, was read as followeth:

ARTICLES,

Exhibited by the house of representatives of the state of Ohio, in the name of themselves and all the people of the state of Ohio, against Calvin Pease, esquire, president of the courts of common pleas of the third circuit, now consisting of the coun-

ties of Geauga, Trumbull, Columbiana, Jefferson, Belmont, Stark and Portage, in support of their impeachment of him, the said Calvin Pease, for high crimes and misdemeanors.

ARTICLE 1.

That whereas it is provided by the fifth section of the act, entitled "An act defining the duties of justices of the peace and constables, in criminal and civil cases;" that the power of justices of the peace in this state, shall in civil cases, be co-extensive with the township in which they may respectively be elected and reside, and their jurisdiction in such cases shall extend, under the restrictions and limitations therein after provided, to any sum not exceeding fifty dollars, &c. That the said Calvin Pease being duly appointed, commissioned, and sworn president of the courts of common pleas of the third circuit, in the state aforesaid, composed of the counties aforesaid, and while acting in his official capacity as president, in the county of Trumbull, in the circuit aforesaid, in the term of June, in the year of our Lord, eighteen hundred and eight, unmindful of the sacred duties of his office, and of the solemn obligation with which he stood bound to discharge them, wickedly, wilfully and corruptly did then and there, in open court of common pleas aforesaid, and while sitting in said court as president thereof, a certain cause was then and there pending and undetermined, which cause was originally instituted before a justice of the peace in the county aforesaid, and judgment therein legally and properly rendered by the justice aforesaid, for the sum over twenty dollars, agreeably to the act aforesaid, and which judgment was removed into the court aforesaid, for the purpose of vexation and delay; and the said Calvin Pease, as president of the court aforesaid, did then and there decide, adjudge and declare, that part of the act aforesaid, which extends the jurisdiction of justices of the peace to sums not exceeding fifty dollars, to be unconstitutional, null and void, and for that cause only in open court aforesaid, and while sitting as president thereof, did reverse, set aside, make null and void, the judgment of the justice of the peace, in the cause aforesaid, so as aforesaid obtained, in direct violation of the statute aforesaid.

And on the question being taken, that the house do agree to the said first article,

It was resolved in the affirmative.

The yeas and nays being required, were—Yeas 35—Nays 14.

Those who voted in the affirmative, were—

Messrs. Bryson,	Looker,
Corwin,	Lucas,
Clark (of Musk.)	Monett,
Clerk (of Ham.)	Munger,
Geo. Clark,	M'Cune,
Crumbacker,	Marple,

James Dunlap,	M'Knight,
Samuel Dunlap,	Morris,
Ellison,	Pritchard,
Fee,	Perry,
Ford,	Shelby,
Gunckell,	Shields,
Harlan,	Sharp,
Harbaugh,	Swearingen,
Heaton,	Stewart,
Hughes,	Vore, and
Holden,	Campbell, speaker—35
James,	

Those who voted in the negative, were—

Messrs.	Blair,	Merwin,
	Couch,	Owings,
	Elliott,	Rodgers,
	Jewett,	Sabin,
	King,	Woodbridge—11,
	Kerr,	

And whereupon, the second article of the impeachment aforesaid was read as followeth:

ARTICLE II.

Whereas it is provided by the 5th section of the act entitled "An act, organizing the judicial courts," that the courts of common pleas shall have original jurisdiction in all cases, both in matters of law and equity, where the matter in dispute exceeds the jurisdiction of a justice of the peace; and the said Calvin Pease, president as aforesaid, wilfully, wickedly, and corruptly, as aforesaid, at a court of common pleas, held in the county of Trumbull, on the third Tuesday of June, 1808, in a certain case there pending and undetermined, E. Wadsworth vs. Sol. Braynard, which was commenced by original writ from said court, for the sum of twenty dollars and some cents, and a recovery had by the plaintiff aforesaid against the defendant aforesaid, for the sum of seventeen dollars, did as president aforesaid, in open violation of his duty, and in contempt of the laws, and against the statute aforesaid, allow and adjudge to the plaintiff his costs of suit, to the great injury and damage of the defendant aforesaid.

And on the question being taken that the house do agree to the said second article,

It was resolved in the affirmative.

The yeas and nays being required, were—Yeas 36—Nays 10.

Those who voted in the affirmative were,

Messrs.	Bryson,	Looker,
	Corwin,	Lucas,
	Clark (of Musk.)	Monett,
	Clark (of Ham.)	Munger,

George Clark,	M'Cune,
Crumbacker,	Marple,
James Dunlap,	M'Knight,
Saml. Dunlap,	Morris,
Ellison,	Owings,
Fee,	Pritchard,
Ford,	Perry,
Gunckell,	Shelby,
Harlan,	Shields,
Harbaugh,	Sharp,
Heaton,	Swearingen,
Hughes,	Stewart,
Holden,	Vore, and
James,	Campbell, speaker, 36.

Those who voted in the negative, were—

Messrs.	Blair,	King,
	Couch,	Merwin,
	Elliott,	Rodgers,
	Jewett,	Sabin, and
	Kerr,	Woodbridge—10.

And thereupon, the third article of the said impeachment was read as followeth:

ARTICLE III.

And the said Calvin Pease, president as aforesaid, in the circuit aforesaid, and at divers other times, while acting as president in the courts held in the counties aforesaid, under pretence of doing his duty as president aforesaid, unjustly, illegally, and contrary to the constitution and laws of this state, and to the great perversion of justice and oppression of individual suitors, did anjudicate and determine, that the court had full power to set aside, suspend and declare null and void, any act or acts of the legislature of this state, and did then and there at the times and places last aforesaid, proceed to set aside, suspend and declare null and void, that part of the act aforesaid which extends the jurisdiction of justices of the peace to sums not exceeding fifty dollars, to the great perversion of justice, and in open violation of his duties as president aforesaid, and contempt of the constitution and laws of this state.

And the house of representatives by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any further articles, or other accusation, and impeachment against him, the said Calvin Pease, and also of replying to his answers, which he shall make to their charges, or any of them, and offering proof to all and every of the aforesaid charges, and to all and every other article or articles of impeachment or accusation which shall be exhibited by them, as the case shall or may require, do demand in the name of all the people of the state of

of high crimes and misdemeanors; and that such proceed-ings, trials and judgments may be therein had and given, as are agreeable to law and justice.

And on the question being taken, that the house do agree to the said third article of impeachment,

It was resolved in the affirmative.

The yeas and nays being required, were—Yeas 35, Nays 11.

Those who voted in the affirmative, were—

Messrs.		
	Bryson,	Looker,
	Corwin,	Lucas,
	Clark (of Musk.)	Monett,
	Clark (of Ham.)	Munger,
	Geo. Clark,	M'Cune,
	Crumbacker,	Marple,
	James Dunlap,	M'Knight,
	Samuel Dunlap,	Morris,
	Ellison,	Pritchard,
	Fee,	Perry,
	Ford,	Shelby,
	Gunckell,	Shields,
	Harlan,	Sharp,
	Harbaugh,	Swearingen,
	Heaton,	Stewart,
	Hughes,	Vore,
	Holden,	and
	James,	Campbell, speaker, 35.

Those who voted in the negative, were—

Messrs.		
	Blair,	Merwin,
	Couch,	Owings,
	Elliott,	Rodgers,
	Kerr,	Sabin,
	King,	Woodbridge—11.

On motion,

Ordered, That the said articles of impeachment be engross[ed] and read the third time to-morrow.

Mr. Sharp moved for the order of the day:

Whereupon,

The house according to order, resolved itself into a committe[e] of the whole, on the article of impeachment exhibited by th[e] committee appointed for the purpose against George Tod, es[q.] one of the judges of the supreme court of this state, and aft[er] some time spent therein, Mr. Speaker resumed the chair, an[d] Mr. Couch reported, that the committee, according to order, ha[d] under their consideration, the said article of impeachment, an[d] the documents to them referred, and that they had made [an] amendment thereto, which he presented at the clerk's table.

Whereupon,

The house according to order, resolved itself into a committee of the whole, on the bill for laying out and leasing section number sixteen in the township of Columbia; and after some time spent therein, Mr. Speaker resumed the chair, and Mr. Clark (of Musk.) reported, that the committee, according to order, had under their consideration the said bill, and had made several amendments thereto, which he presented at the clerk's table, and they being severally read, some were agreed to, and others disagreed to; and the said bill being further amended was, with the amendments, ordered to be engrossed and read the third time on Monday.

A message from the senate by Mr. Bigger.

Mr. Speaker,

The senate have passed a resolution discharging the joint committee appointed to examine what laws ought to be revised or amended, in which they desire the concurrence of this house.

Whereupon,

The house proceeded to consider the said resolution at the clerk's table, and the same being read, was concurred in.

Ordered, That Mr. Geo. Clark acquaint the senate therewith.

Mr. Morris from the joint committee appointed to examine and to report what laws in their opinion are necessary to be revised, reported

That the committee are of opinion, that the following acts need a revision, viz.:

1 An act for the assignment of bail bonds.

2 An act to provide for the elections of justices of the peace, and the several acts, amendatory thereto.

3 An act organizing the judicial courts, and the several acts amendatory thereto.

4 An act defining the duties of justices of the peace and constables, in civil and criminal cases, and the several acts amendatory thereto, and

5 An act regulating arbitrations.

Which report was received and read, and ordered to lie on the table.

A message from the senate by Mr. Massie.

Mr. Speaker,

The senate have appointed a committee to prepare and bring in a bill for the assignment of bail bonds.

A message from the senate by Mr. M'Connel.

Mr. Speaker,

The senate have appointed a committee to prepare and bring in a bill providing for the election of justices of the peace.

A message from the senate by Mr. Elliott:

Mr. Speaker,
The senate have agreed to the 1st, 2d, 3d, and 4th, and disa-
greed to the 5th member of the report made on yesterday to
the senate, by the joint committee appointed to examine what
laws are necessary to be revised during the present session.
A message from the senate by Mr. Abbot.
Mr. Speaker,
The senate have appointed a committee to prepare and bring
in a bill to regulate bail.
A message from the senate by Mr. Kinney.
Mr. Speaker,
A bill to stay proceedings on executions, and for other pur-
poses, has this day been reported to the senate.
The house proceeded to consider at the clerk's table the
report of the committee of the whole laid on the table on yes-
terday, on the bill for the more speedy distribution of the laws
and journals, and for other purposes; and the amendments re-
ported thereto being severally read, some were agreed to, and
others disagreed to, and the said bill being further amended,
was, with the amendments, ordered to be engrossed and read
the third time, on Monday next.
Mr. Pritchard moved for the further order of the day:
Whereupon,
The house according to order, resolved itself into a commit-
tee of the whole house, on the bill appointing Amos Evans and
George Wilson, agents for the heirs of John Wilson, deceased,
and after some time spent therein, Mr. Speaker resumed the
chair, and Mr. Ellison reported, that the committee, according
to order, had under their consideration the said bill, and had
made several amendments thereto, which he presented at the
clerk's table.
And then the house adjourned until to-morrow morning,
ten o'clock.

Saturday, December 24th, 1808.
The house met pursuant to adjournment.
An engrossed bill, for leasing a fractional section, number
twenty-nine, in the township of Belpre, was read the third time.
On motion,
Resolved, That the said bill do pass, and that the title be "An
act for leasing a fractional section, number twenty-nine, in the
township of Belpre."
Ordered, That Mr. Jewett do carry the said bill to the senate,
and request their concurrence.
Mr. James Dunlap presented to the house, an account against
the state of Ohio, exhibitted by Thomas Steel, coroner of Ross

county, acting as sheriff, for services rendered during the last
election for electors to vote for president and vice president of,
the United States, which was received and read, and refered to
the committee of claims.
The engrossed articles of impeachment exhibited against
Calvin Pease, esquire, president of the courts of common pleas
for the third circuit, were read the third time, and agreed to by
the house:
Whereupon,
The said articles of impeachment were signed by the speaker
and attested by the clerk.
The house proceeded to consider at the clerk's table, the
amendment reported on yesterday to the article of impeach-
ment against George Tod, esquire, judge of the supreme court,
by the committee of the whole house, which being read was
agreed to.
On motion Mr. Morris and seconded,
Ordered, That the engrossing of the said article be dispensed
with, and that the said article be read a third time to-day.
Whereupon,
The said article of impeachment was read as followeth:

ARTICLE

Exhibited by the house of representatives of the state of Ohio,
in the name of themselves, and of all the people of the state of
Ohio, against George Tod, one of the judges of the supreme
court for the state aforesaid, in maintenance and support of
their impeachment against him, for a high crime and misde-
meanor.

ARTICLE I.

That whereas it is provided by the fifth section of an act of
the general assembly of the state aforesaid, passed on the
twelfth day of February, in the year of our Lord, one thousand,
eight hundred and five, entitled "An act defining the duties of
justices of the peace and constables, in criminal and civil cases."
That the power of justices of the peace in this state, shall in
civil cases, be co-extensive with the township in which they
may respectively be elected and reside, and their jurisdiction
in such cases, shall extend under the restrictions and limita-
tions therein after provided, to any sum not exceeding fifty
dollars, &c. That unmindful of the solemn duties of his office,
and contrary to the sacred obligation by which he stood bound
to discharge them faithfully and impartially, the said George
Tod, judge of the said supreme court of the said state of Ohio,
the said act of the said general assembly, not regarding, but
wilfully, wickedly and maliciously with intent to evade, nullify
and make void the same, and thereby to bring the acts and do-
ings of the said general assembly into contempt and disgrace,
and to induce the good citizens thereof to disregard them, and

Footnote 6

JOURNAL

OF

THE SENATE,

OF

THE STATE OF OHIO,

IN CASES OF

IMPEACHMENTS.

DECEMBER 24, 1808.
Published conformably to a resolution of the Senate.

CHILLICOTHE:

Printed at the office of the Supporter,

BY NASHEE AND DENNY, FOR JOSEPH S. COLLINS & Co.

1809.

IN SENATE OF THE STATE OF OHIO.

DECEMBER 26, 1809.

Resolved, That the proceedings of the senate, while sitting for the purpose of trying impeachments, shall be published in the same manner in which the legislative proceedings are now published, as other journals of the senate and attached thereto.

ATTEST,

THOMAS SCOTT, *Clerk*.

RECORD

OF THE

PROCEEDINGS

OF THE

HIGH COURT OF IMPEACHMENT,

ON THE

TRIAL OF CALVIN PEASE,

CONSISTING OF THE

SENATE OF THE STATE OF OHIO,

AS IS PROVIDED

BY THE CONSTITUTION,

AND

IN PURSUANCE OF A RESOLUTION

OF

THE SENATE.

RECORD

OF THE

PROCEEDINGS

IN THE

CASE OF CALVIN PEASE.

SATURDAY, December 24, 1808.

A message was received from the house of representatives by Mr. Perry, one of the members of said house, in the words following:

Mr. Speaker,

The house of representatives have preferred articles of impeachment against Calvin Pease, Esquire, president of the courts of common pleas of this state, for high crimes and misdemeanors, and have appointed five managers on their part to prosecute the said articles, in their name, and in the name of all the people of the state of Ohio: And then he withdrew.

A message from the house of representatives by Mr. Morris.

Mr. Speaker,

The house of representatives have instructed the managers appointed to conduct the impeachment against Calvin Pease, Esquire, president of the third circuit, of the courts of common pleas, of this state, to proceed to the bar of the senate with the articles of impeachment against the said Calvin Pease, Esquire, and there demanded, that the said

Calvin Pease, Esquire, be put to answer the said articles of impeachment exhibited against him : And he withdrew.

HIGH COURT OF IMPEACHMENTS.

MONDAY, December 26.

The State of Ohio vs. *Calvin Pease.*

Mr. Wood submitted the following motion,

Resolved, That a committee be appointed to prepare and report rules of proceedings to be observed in cases of impeachment, and

The motion was agreed to, and

Ordered, That Mr. Bryan, Mr. Wood and Mr. Bigger be the committee.

Mr. Bryan submitted the following motion,

Resolved, *By the senate of the state of Ohio*, That be and he is hereby appointed to serve as sergeant at arms, and he is hereby authorised and required to serve and return all such process, and perform such other duties as shall be required to carry into execution the impeachments now, or that hereafter may be pending before the senate, during the present session.

It was agreed that this motion lie for consideration.

Mr. Bryan, from the committee last named, made report, which was read, and committed to a committee of the whole senate immediately.

The senate accordingly resolved itself into the said committee, and after some time spent therein, the speaker resumed the chair, and Mr. Barrere reported, that the committee had, according to order, had the said report under consideration, and made several amendments thereto, which he handed in at the clerk's table, where the same were read, and on the question severally put thereupon, agreed to by the senate.

The said report being again read, was on the question put thereupon, agreed to as follows :

RULES

For the government of the senate, in cases of impeachment.

1 Whenever the senate shall receive notice from the house of representatives, that managers are appointed on their part, to conduct an impeachment against any person, and are directed to carry such articles to the senate, the clerk of the senate shall immediately inform the house of representatives, that the senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment, agreeably to the said notice.

2 When the managers of an impeachment shall be introduced to the bar of the senate, and shall have signified that they are ready to exhibit articles of impeachment against any person, the speaker of the senate shall direct the sergeant at arms, to make proclamation, who shall, after making proclamation, repeat the following words :

" All persons are commanded to keep silence on pain of imprisonment, while the grand inquest of the state is exhibiting to the senate of Ohio, articles of impeachment against"

After which the articles shall be exhibited, and then the speaker of the senate shall inform the managers that the senate will take proper order on the subject of the impeachment, of which due notice shall be given to the house of representatives.

3 A summons shall issue, directed to the person impeached, in the form following :

The state of Ohio, ss.

The senate of the state of Ohio.

To *Greeting :*

Whereas the house of representatives of the state of Ohio, did, on the of exhibit to the senate articles of impeachment against you the said in the words following :

(Here recite the articles.)

And did demand that you the said should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials and judgments, might be thereupon had as are agreeable to law and justice. You the said are therefore hereby summoned to be, and appear before the senate of the state of Ohio, at their chamber, in the town of Chillicothe, on the of then and there to answer to the said articles of impeachment,

and then and there to abide by, obey and perform such orders and judgments as the senate of the state of Ohio, shall make in the premises according to the constitution and laws of the state of Ohio. Hereof you are not to fail.

Witness,

Speaker of the senate of the state of Ohio, at the town of Chillicothe, this day of in the year of our Lord, one thousand eight hundred and

Which summons shall be signed by the clerk of the senate, and sealed with their seal, and served by the sergeant at arms to the senate, or by such other person as the senate shall specially appoint for that purpose, who shall serve the same, pursuant to the directions given in the form next following:

4 A precept shall be endorsed on the said writ of summons, in the form following, viz.

The state of Ohio, ss.

The senate of the state of Ohio,

To Greeting:

You are hereby commanded to deliver to, and leave with if to be found, a true and attested copy of the within writ of summons, together with a like copy of this precept, shewing him both; or in case he cannot with convenience be found, you are to leave true and attested copies of the said summons and precept, at his usual place of residence; and in whichsoever way you perform the service, let it be done at least days before the appearance day, mentioned in the said writ of summons. Fail not and make return of this writ of summons and precept, with your proceedings thereon endorsed, on or before the appearance day mentioned in said writ of summons.

Witness.

Speaker of the senate of the state of Ohio, at Chillicothe, this day of in the year of our Lord one thousand eight hundred and

Which precept shall be signed by the clerk of the senate, and sealed with their seal.

5 Subpœnas shall be issued by the clerk of the senate, upon the application of the managers of the impeachment,

or of the party impeached, or of his counsel, in the form following, to-wit:

To Greeting:

You and each of you, are hereby commanded to appear before the senate of the state of Ohio, on the day of at the senate chamber, in the town of Chillicothe, then and there to testify your knowledge in the cause which is before the senate, in which the house of representatives have impeached

Fail not.

Witness.

Speaker of the senate, at Chillicothe, this day of

Which shall be signed by the clerk of the senate, and sealed with their seal, which subpœna shall be directed to the sergeant at arms, or to the sheriff of the county in which such witness or witnesses may reside, to serve and return.

6 The form of direction to the sergeant at arms, or the sheriff, for the service of the subpœna, shall be as folows:

The state of Ohio:

To the sergeant at arms of the senate, or the sheriff of the county of (as the case may be) you are hereby commanded to serve and return the within subpœna according to law dated at Chillicothe, this day of in the year of our Lord

Clerk of the senate.

7 The speaker of the senate shall direct all necessary preparations in the senate chamber, and all the forms of proceeding while the senate are sitting for the purpose of trying an impeachment, and all forms during the trial, not otherwise specially provided for by the senate.

8 He shall also be authorised to direct the employment of the sheriff of the county of Ross, or any other person or persons during the trial, to discharge such duties as may be prescribed by him.

9 At o'clock of the day appointed for the return of the summons against the person impeached, the legislative business of the senate shall be postponed, and the clerk of the senate shall administer an oath to the returning officer in the form following, viz.

You do solemnly swear (or affirm) that the return made and subscribed by you upon the process, issued upon the day of by the senate of

the state of Ohio against is truly made, and that you have performed said services as therein described—so help you GOD. Which oath shall be entered at large on the records.

10 The person impeached, shall then be called by the sergeant at arms, to appear and answer the articles of impeachment exhibited against him. If he appears, or any person for him, the appearance shall be recorded, stating particularly, if by himself, or if by agent or attorney, naming the person appearing, and the capacity in which he appears. If he does not appear either personally, or by agent or attorney, the same shall be recorded.

11 At o'clock of the day appointed for the trial of an impeachment, the legislative business of the senate shall be postponed; the clerk shall then administer the following oath or affirmation to the speaker: You solemny swear or affirm, that in all things appertaining to the trial of the impeachment of you will do justice according to law and evidence.

12 And the speaker shall administer the said oath or affirmation to each senator present. The clerk shall then give notice to the house of representatives, that the senate is ready to proceed upon the impeachment of, in the senate chamber, which chamber is prepared with accommodations for the reception of the house of representatives.

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

14 All motions made by the parties or their counsel, shall be committed to writing, be addressed to the speaker of the senate, and read at the clerk's table, and all decisions shall be had by ayes and noes, which shall be entered on the records.

15 Witnesses shall be sworn in the following form, to-wit: "You do swear or affirm, (as the case may be) that the evidence you shall give in the case now depending between the state of Ohio and shall be the truth, the whole truth, and nothing but the truth:—so help you God." Which oath shall be administered by the clerk.

16 Witnesses shall be examined by the party producing them, and then cross examined in the usual form.

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

18 If a senator wishes to put a question to a witness, it shall be reduced to writing, and put by him standing in his place.

19 At all times while the senate is sitting upon the trial of an impeachment, the doors of the senate chamber shall be kept open, except the senate shall wish a discussion previous to putting the main question.

Ordered, That one hundred copies thereof be printed.

The senate resumed the motion, made this day by Mr. Bryan, for the appointment of a sergeant at arms, and the same being amended, was agreed to as follows:

Resolved, *By the senate of the state of Ohio*, That William Creighton, sen. be and is hereby appointed to serve as sergeant at arms; and he is hereby authorised and required to serve and return all such process and perform such other duties as shall be required to carry into execution the impeachments now or that hereafter may be pending before the senate during the present session.

Mr. Bigger submitted the following motion:

Resolved, That the door-keeper be directed to inform William Creighton, sen. of his appointment as sergeant at arms, and request his attendance in the senate chamber to take the oath of office.

And the motion was agreed to.

William Creighton, sen. sergeant at arms elect, pursuant to notice given him, appeared in the senate chamber and took the oath of office before Joseph Tiffin, esq. a justice of the peace, for the township of Scioto, in the county of Ross.

Adjourned.

HIGH COURT OF IMPEACHMENTS.

TUESDAY, December 27.

State of Ohio vs. *Calvin Pease.*

Ordered, That the clerk of the senate immediately inform the house of representatives, that the senate is ready to receive the managers for the purpose of exhibiting articles of impeachment against Calvin Pease, president of the

courts of common pleas, for the third circuit, agreeably to the notice given for that purpose by the house of representatives.

Agreeably to the above notice, the managers on the part of the H. R. to-wit:—Mr. T. Morris, Mr. Joseph Sharp, Mr. James Pritchard, Mr. Samuel Monett and Mr. Othniel Looker were admitted; and Mr. Morris, the chairman, announced "that they were the managers instructed by the house of representatives to exhibit certain articles of impeachment against Calvin Pease, president of the court of common pleas, for the third circuit."

The managers were requested by the speaker to take seats assigned them within the bar, & the sergeant at arms was directed to make proclamation in the words following:

"O YES! O YES! O YES!

All persons are commanded to keep silence on pain of imprisonment, while the grand inquest of the state is exhibiting to the senate of Ohio, articles of impeachment against Calvin Pease, president of the courts of common pleas, of the third circuit."

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

ARTICLES

Exhibited by the house of representatives of the state of Ohio, in the name of themselves and all the people of the state of Ohio, against Calvin Pease, esq. president of the courts of common pleas for the third circuit, now consisting of the counties of Geauga, Trumbull, Columbiana, Jefferson, Belmont, Stark and Portage, in support of their impeachment of him, the said Calvin Pease, for high crimes and misdemeanors.

ARTICLE I.

That whereas it is provided by the fifth section of the act, entitled "An act, defining the duties of justices of the peace and constables, in criminal and civil cases," that the powers of justices of the peace in this state, shall in civil cases be co-extensive with the township in which they may respectively be elected and reside, and their jurisdiction in such cases shall extend, under the restrictions and limitations therein after provided, to any sum not exceeding fifty dollars, &c. That the said Calvin Pease being duly appointed, commissioned and sworn president of the courts of common pleas of the third circuit, in the state aforesaid, composed of the counties aforesaid, and while acting in his official capacity as president, in the county of Trumbull, in the circuit aforesaid, in the term of June, in the year of our Lord, eighteen hundred and eight, unmindful of the sacred duties of his office, and of the solemn obligation with which he stood bound to discharge them, wickedly, wilfully and corruptly did then and there, in open court of common pleas aforesaid, and while sitting in said court as president thereof, a certain cause was then and there pending and undetermined, which cause was originally institute d before a justice of the peace, in the county aforesaid, and judgment therein legally and properly rendered by the justice aforesaid, for a sum over twenty dollars, agreeably to the act aforesaid, and which judgment was removed into the court aforesaid, for the purpose of vexation and delay; and the said Calvin Pease, as president of the court aforesaid, did then and there decide, adjudge and declare, that that part of the act aforesaid, which extends the jurisdiction of justices of the peace to sums not exceeding fifty dollars, to be unconstitutional, null and void, and for that cause only in open court aforesaid, and while sitting as president thereof, did reverse, set aside, make null and void, the judgment of the justice of the peace, in the cause aforesaid, so as aforesaid obtained, and in direct violation of the statute aforesaid.

ARTICLE II.

Whereas it is provided by the 5th section of the act, entitled "An act, organising the judicial courts," that the courts of common pleas shall have original jurisdiction in all cases, both in matters of law and equity, where the matter in dispute exceed the jurisdiction of a justice of the peace; and the said Calvin Pease, president as aforesaid, wilfully, wickedly and corruptly, as aforesaid, at a court of common pleas, held in the county of Trumbull, on the 3d Tuesday of June, 1808, in a certain case there pending and undetermined, E. Wadsworth vs. Solomon Braynard, which was commenced by original writ from said court, for the sum of twenty dollars and some cents, and a recovery had by the plaintiff aforesaid against the defendant aforesaid, for the sum of seventeen dollars, did as president aforesaid, in open violation of his duty, and in contempt of the laws; and against the statute aforesaid, allow and adjudge to the plaintiff his costs of suit to the great injury and damage of the defendant aforesaid.

ARTICLE III.

And the said Calvin Pease, president as aforesaid, in the circuit aforesaid, and at divers other times, while acting as president in the courts held in the counties aforesaid, under pretence of doing his duty as president aforesaid, unjustly, illegally and contrary to the constitution and laws of this state, and to the great perversion of justice and oppression of individual suitors, did adjudicate and determine, that the court had full power to set aside, suspend and declare null and void, any act or acts of the legislature of this state; and did then and there, at the times and places last aforesaid, proceed to set aside, suspend and declare null and void, that part of the act aforesaid, which extends the jurisdiction of justices of the peace to sums not exceeding fifty dollars, to the great perversion of justice, and in open violation of his duties as president aforesaid, and contempt of the constitution and laws of this state.

And the house of representatives, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any further articles or other accusation and impeachment against him, the said Calvin Pease, and also of replying to his answers which he shall make to their charges or any of them, and offering proof to all and every of the aforesaid charges, and to all and every other article or articles of impeachment or accusation which shall be exhibited by them, as the case shall or may require, do demand in the name of all the people of the state of Ohio, that the said Calvin Pease be put to answer these charges of high crimes and misdemeanors, and that such proceedings, trials and judgments may be thereon had and given, as are agreeable to law and justice.

ALEXANDER CAMPBELL,
Speaker of the house of representatives.

ATTEST, TH: S. HINDE,
Clerk of the house of representatives.

SATURDAY, December 24, 1808.

Whereupon,

The speaker notified the managers, that the senate would take proper order on the subject of the impeachment, of which due notice should be given to the house of representatives.

The managers delivered the articles of impeachment at the table and withdrew.

Adjourned.

HIGH COURT OF IMPEACHMENTS.

WEDNESDAY, December 28.

The State of Ohio vs. Calvin Pease.

On motion of Mr. Bureau.

Resolved, By the senate, that the summons to be issued against Calvin Pease, esq. to answer the articles of impeachment exhibited against him shall be made returnable on the 24th of January next, that the service of the same shall be performed at least fifteen days previous to said day, and that the same shall be returned on or before the day first above mentioned.

Ordered, That the clerk notify the house of representatives accordingly.

A motion was made by Mr. M'Arthur and seconded, to reconsider the third rule for the government of the senate, in cases of impeachment.

And it passed in the negative.

A motion was made by Mr. Bryan, to reconsider the third rule for the government of the senate, in cases of impeachment.

And determined in the affirmative.

A motion was then made to amend the said rule, by inserting after the words, "and served by the sergeant at arms, to the senate," these words, " his deputy or deputies."

And determined in the affirmative.

Adjourned.

HIGH COURT OF IMPEACHMENTS.

THURSDAY, December 29.

The state of Ohio vs. Calvin Pease.

A motion was made by Mr. Bryan, to amend the rules

for regulating the proceedings of the senate in cases of impeachment, as follows :

Additional rules for the government of the senate, on the trial of impeachments.

1st. The managers appointed by the house of representatives shall first introduce their testimony, & after the testimony is gone through both on the part of the managers and of the respondent, the managers by themselves and counsel may open the prosecution, the respondent may then proceed by himself and counsel, to make his defence, and the managers be heard in reply, and in case the managers shall offer any new matter in their reply, the said respondent shall be permitted to answer.

2. After the arguments are thus gone through by both parties, the house of representatives and respondent shall retire from the senate chamber, and any member of the court shall be at liberty to offer the reasons for the vote he intended to give.

3. When the court are prepared to vote the house of representatives and the respondent shall have notice thereof by the clerk of the court or sergeant at arms.

It was agreed that the consideration of this motion be postponed until 3 o'clock this afternoon.

Three o'clock, P. M.

Ordered, That the consideration of the motion last made, be postponed until to-morrow.

Adjourned.

HIGH COURT OF IMPEACHMENTS.

FRIDAY, December 30.

The state of Ohio vs. *Calvin Pease.*

The senate resumed the consideration of the motion made yesterday by Mr. Bryan and agreed thereto as follows :

Additional rules for the government of the seante on the trial of impeachments.

1st. The managers appointed by the house of representatives, shall first introduce their testimony, and after the testimony is gone through both on the part of the managers and of the respondent, the said managers by themselves and counsel may open the prosecution, the respondent may then proceed by himself and counsel to make his defence, and the managers be heard in reply, and in case the managers shall offer any new matter in their reply, the said respondent shall be permitted to answer.

2. After the arguments are thus gone through by both parties, the house of representatives and respondent shall retire from the senate chamber, and any member of the court shall be at liberty to offer the reasons for the vote he intends to give.

3. When the court are prepared to vote, the house of representatives and the respondent shall have notice thereof by the clerk of the court or sergeant at arms."

On motion of Mr. Bigger, the following rule was also adopted.

" 4. Each member when called upon to give his final decision shall have the privilege to state the reasons which govern him in his vote."

Adjourned.

HIGH COURT OF IMPEACHMENTS.

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THURSDAY, January 4, 1809.

The state of Ohio vs. *Calvin Pease.*

A message from the house of representatives by Mr. Morris.

Mr. Speaker,

The house of representatives have appointed Mr. Alexander Campbell, the speaker to said house, and Mr. Robert Lucas, a member of said house, to assist the managers appointed to prosecute the impeachment in the name of themselves and the people of the state of Ohio, prefered against Calvin Pease, president of the courts of common pleas for the third circuit, now pending before the senate as a high court of impeachment.

Adjourned.

HIGH COURT OF IMPEACHMENTS.

THURSDAY, January 12.

The state of Ohio vs. *Calvin Pease.*

On motion,

To reconsider the 2d additional rule for the government of the senate, on the trial of impeachments.

And the question being taken thereupon,

It was resolved in the affirmative.

The said additional rule being read as follows:

"2. After the arguments are thus gone through by both parties, the house of representatives and respondent shall retire from the senate chamber, and any member of the court shall be at liberty to offer the reasons for the vote he intends to give."

And on the question to disagree thereto,

It was determined in the affirmative.

On motion,

To reconsider the 3d additional rule for the government of the senate, on the trial of impeachments;

And the question being taken thereupon,

It was resolved in the affirmative.

The said additional rule being read as follows:

"3d. When the court are prepared to vote, the house of representatives, and the respondent shall have notice thereof, by the clerk of the court or sergeant at arms:

And on the question to disagree thereto,

It was determined in the affirmative.

On motion,

To amend the 4th additional rule for the government of the senate, on the trial of impeachments, by striking out therefrom the word "final:"

And the question being taken thereupon,

It was determined in the affirmative.

On motion,

To amend the 19th rule for the government of the senate, in cases of impeachment, by striking from the end thereof these words, "except the senate shall wish a discussion previous to putting the main question:"

And the question being taken thereupon,

It was determined in the affirmative.

Adjourned.

HIGH COURT OF IMPEACHMENTS.

TUESDAY, January 24.

The state of Ohio vs. *Calvin Pease.*

The return made by the sergeant at arms was read as follows:

"I Wm. Creighton, sen. sergeant at arms, to the senate of Ohio, in obedience to the within summons, to me directed, did proceed (by deputy) to the residence of the within named Calvin Pease, on the 9th day of January, 1809, and did then and there leave a true copy of the within writ of summons, together with a true copy of the articles of impeachment, as therein contained, with him the said Calvin Pease,

WM. CREIGHTON, SEN.

Sergeant at arms to the senate."

After which the clerk administered to him the oath as follows: "You, Wm. Creighton, sen. sergeant at arms to the senate of Ohio, do solemnly swear, that the return made and subscribed by you, upon the process issued on the 28th day of December last, by the senate of Ohio, against Calvin Pease, president of the courts of common pleas, for the third circuit, is truly made, and that you have performed said services as therein described—so help you GOD."

By order of the speaker, Calvin Pease was called by the sergeant at arms, three several times, in the words following, to appear and answer:

"HEAR YE! HEAR YE! HEAR YE!

Calvin Pease, president of the court of common pleas, for the third circuit, come forward and answer the articles of impeachment, exhibited against you by the house of representatives."

Notwithstanding which, the said Calvin Pease did not appear.

The oath prescribed was administered to the speaker by the clerk.

The speaker administered the oath prescribed to the following members:

Messrs. Abbot, Barrere, Bigger, Bryan, Burton, Bureau, Cone, Cooper, Curry, Elliott, Foos, Irwin, Kinney, Massie, M'Arthur, M'Connell, M'Laughlin, Scofield, Sharp, Price, and Wood.

And the affirmation was administered to,

Messrs. Dillon and Smith.

Adjourned until three o'clock to-morrow morning.

HIGH COURT OF IMPEACHMENTS.

WEDNESDAY, January 25.

The state of Ohio vs. *Calvin Pease.*

The court was opened by proclamation.

Ordered, That the clerk give notice to the house of representatives that the senate, in the capacity of a high court of impeachment, is ready to proceed upon the trial of the impeachment of Calvin Pease, president of the courts of common pleas for the third circuit in the senate chamber, which chamber is prepared with accommodations for the reception of the house of representatives.

The managers accompanied by the house of representatives attended, and the managers were requested by the speaker to take seats assigned them within the bar who seated themselves accordingly.

By order of the speaker, Calvin Pease was again solemnly called, by the sergeant at arms, to appear and an-

swer the articles of impeachment exhibited against him by the house of representatives.

Notwithstanding which the said Calvin Pease did not appear.

At the request of Mr. Morris, one of the managers, Charles Hammond who had been summoned as a witness in this cause was called by the sergeant at arms who answered and took a seat within the bar.

The managers accompanied by the house of representatives retired.

The court then adjourned until next Monday morning ten o'clock.

HIGH COURT OF IMPEACHMENTS.

MONDAY, January 30.

The state of Ohio vs. *Calvin Pease.*

The court was opened by proclamation.

Ordered, That the clerk give notice to the house of representatives, that the senate is in their public chamber and ready to proceed further on the trial of the impeachment of Calvin Pease, president of the courts of common pleas, for the third circuit of this state.

The managers accompanied by the house of representatives attended.

Calvin Pease was again solemnly called, who appeared in his own proper person and submitted the following motion, which was reduced to writing addressed to the speaker and read at the clerk's table.

"Calvin Pease in his proper person here in court, moves this honorable court that day be given him until Wednesday next, to make plea or answer to the several articles of impeachment exhibited against him, by the honorable house of representatives of the state of Ohio, or to make such other pleas or motions as may be necessary for his just defence and the due attainment of justice."

And on the question to agree to the said motion.

It passed unanimously in the affirmative—Yeas 23.

Those who voted are,

Messrs. Abbot,	Irwin,
Barrere,	Kinney,
Bigger,	Massie,
Bryan,	M'Arthur,
Burton,	M'Connell,
Bureau,	M'Laughlin,
Cone,	Sharp,
Cooper,	Smith,
Curry,	Price,
Dillon,	Wood, and
Elliott,	Kirker, (Speaker.)
Foos,	

The respondent then rose and requested that William Creighton, jun. and Henry Brush, Esquires, might be admitted and considered as counsel for him the said Calvin Pease, who were accordingly admitted.

The court then adjourned until next Wednesday morning ten o'clock.

HIGH COURT OF IMPEACHMENTS.

WEDNESDAY, February 1, 1809.

The state of Ohio vs. *Calvin Pease.*

The court was opened by proclamation.

Ordered, That the clerk give notice to the house of representatives, that the senate is in their public chamber, and ready to proceed further on the trial of the impeachment of Calvin Pease, president of the court of common pleas for the third circuit of this state.

The managers accompanied by the house of representatives attended.

The respondent with his counsel also attended and were requested by the speaker to take seats assigned them within the bar, who seated themselves accordingly.

The respondent being called upon by the speaker to make answer to the articles of impeachment exhibited against him by the house of representatives; thereupon rose and submitted the following motion, which being re-

duced to writing, was addressed to the speaker and read at the clerk's table.

"Calvin Pease in his proper person in court, prays judgment of Thomas Elliott, esq. a senator of the state of Ohio, for the county of Jefferson whether the said Thomas Elliott ought to sit in the trial of this cause and vote thereon, for that the said Thomas Elliott is prejudiced therein, and has formed and delivered an opinion prejudicial to the cause of the said Calvin, and hath pledged himself to support the same by his vote—all which the said Calvin is ready to verify and prove when and where this honorable court shall appoint."

Mr. Brush, on behalf of the respondent, argued in support of his motion, and was followed by Mr. Campbell and Mr. Morris on behalf of the managers who insisted that the motion was not in order, the said Thomas Elliott having been sworn to try the cause according to law and evidence.

And the speaker having decided the motion not to be in order, it not having been made before the said Thomas Elliott was sworn to try the cause.

An appeal was prayed by the respondent from the decision of the speaker to the court.

And on the question, "Is the decision of the speaker in order?"

There appeared yeas 14—nays 8.

Those who voted in the affirmative are,

Messrs. Abbot,	M'Arthur,
Bryan,	M'Connell,
Barrere,	M'Laughlin,
Curry,	Sharp,
Dillon,	Smith,
Irwin,	Price and
Kinney,	Wood.

Those who voted in the negative are,

Messrs. Bigger,	Cooper,
Bureau,	Foos,
Burton,	Massie, and
Cone,	Scofield.

Whereupon,

The speaker stated that the court had decided that the decision he had given was in order.

After which Mr. Creighton rose on behalf of the respondent and insisted, that by the constitution of this state,

the decision of the speaker was decided to have been incorrect, there not having been two thirds of the senators who voted in favor of such decision, and thereupon submitted the following motion, which being reduced to writing, was addressed to the speaker and read at the clerk's table.

"The respondent moves this honorable court, that upon every motion on the trial of this impeachment, it shall require two thirds of all the senators to decide any question against the respondent."

And the question being taken upon the motion,

It was decided in the negative—yeas 4—nays 20.

Those who voted in the affirmative are,

Messrs. Cone, Cooper, Elliott, and Scofield.

Those who voted in the negative are,

Messrs. Abbot, Barrere, Bigger, Bryan, Burton, Bureau, Curry, Dillon, Foos, Irwin, Kinney, Massie, M'Arthur, M'Connell, M'Laughlin, Sharp, Smith, Price, Wood and Kirker, (Speaker.)

The respondent being again called upon by the speaker, to make answer to the articles of impeachment exhibited against him by the house of representatives, rose and read his answer as follows:

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THE ANSWER OF CALVIN PEASE, PRESIDENT OF THE COURTS OF COMMON PLEAS, FOR THE THIRD CIRCUIT OF THE STATE OF OHIO, TO ARTICLES OF IMPEACHMENT EXHIBITED AGAINST HIM, BY THE HONORABLE THE HOUSE OF REPRESENTATIVES OF SAID STATE, IN THE NAMES OF THEMSELVES AND OF ALL THE PEOPLE OF SAID STATE.

THIS respondent, by protestation saving to himself the benefit of all manner of exceptions to the many defects, insufficiencies and informalities of said articles of impeachment, and to the vague and uncertain manner in which said charges are set forth, and the want of any charge of particular facts to which this respondent can, in any wise, directly answer.

This respondent saith, that to the first article, for want of any specific fact therein set forth, he is unable to make any answer otherwise than by raising certain suppositions thereon.

Supposing, therefore, in the first place, that the gist of the supposed high crime or misdemeanor therein set forth, consists in the wicked and corrupt intention by which this respondent was actuated—he for plea saith, that he is thereof in no wise guilty, and this he prays may be enquired of by this honorable court.

Supposing in the second place, that the supposed high crime or misdemeanor consists in an erroneous opinion of the court of common pleas, in reversing and setting aside the judgment of the justice of the peace, for the causes therein set forth:—this respondent in answer saith, that by the first section of the third article of the constitution of this state it is declared, that "the judicial power of this state, both as to matters of law and equity shall be vested in a supreme court, in courts of common pleas for each county, in justices of the peace and in such other courts as the legislature may from time to time establish."—By this article the whole judicial power is vested in the courts of law, and no judicial power whatever is vested in the legislature, or in either branch thereof, in the ordinary administration of justice. The cause stated in the first article was legally removed into the court of common pleas by one of the parties, and was there depending for a judicial adjudication, which it was the bounden duty of said court to make, that this respondent, together with his associates while sitting as a court of common pleas, in pursuance of the duties of their office, did proceed to hear, adjudge and determine the question of law, then and there submitted to their consideration, according to the constitution and laws of the land, and in conformity to an adjudication previously made upon the same question by the highest judicial tribunal known to the constitution and laws of this state; and this respondent expressly avers, that the question aforesaid, by him in form aforesaid adjudged, was purely judicial and one of which this court can hold no plea or take cognizance unless the judgment is manifestly erroneous, arbitrary and

oppressive, and wilfully, wickedly and corruptly given, and then the error of the heart is only criminal, and not that of the head. All crimes consist in the wicked intention with which the act is committed, and by the known and established laws of this and all other civilized countries, the mere involuntary acts of men or their errors in judgment are no way criminal or punishable as crimes, more especially judicial officers whose duty it is to decide in doubtful and difficult cases, and who must be guided in a great measure by the light of their own understanding. It would be a principle too monstrous, too pernicious in its consequences to be admitted in a free state, that judicial officers shall be answerable, either civilly or criminally, for mere error of opinion in a cause within their jurisdiction. Where is the infallible test by which their opinions are to be tried?—None but the opinions of other men who are also liable to err, and where men differ in opinion, men must decide, and it is at last but matter of opinion who is right and who is wrong.

But let us ask wherein consists the error of opinion, in the case stated in said first article of impeachment. The decision of the court was founded upon a supposed unconstitutionality of that part of the act, entitled "An act, defining the duties of justices of the peace and constables in criminal and civil cases," which gives jurisdiction to justices in sums over twenty dollars. Here it becomes necessary to resort to certain fundamental principles to give construction to that part of the constitution which governs the case.

It is a sound and uncontroverted principle in politics, that when a people in forming a constitution reserve the right of enjoying those privileges and exemptions, by it intended to be secured to them freely, uncontroled and unrestrained without the least hindrance or molestation; and what cannot by direct means be taken away, cannot by indirect be either taken away or impaired.

By the 8th section of the 8th article of the constitution of this state, is declared, "that the right of trial by jury shall be inviolate;" here an important right is intended to be secured to the people, to be exercised freely and unimbarrassed. It is secured in the most emphatic language, not merely that it shall not be *destroyed* or *taken away*, but that it shall not even be *violated*, being considered a right

of too much importance to the liberties of the people, too sacred to be in the least tittle infringed.

This right is no where defined in the constitution. It is mentioned as a right then existing, well defined and understood. We can, therefore, no where find this right but by adverting to the laws in existence at the time of framing our constitution. We there find that in all civil cases arising upon tort, and in all arising upon contract, where the sum in dispute exceeds twenty dollars, the action was cognizable only in a court of record to which a jury is incident where the parties had the right to submit their cause (if an issue in fact) to the decision of a jury of their country without any restraint.

By the 5th section of the before recited act, the jurisdiction of a justice of the peace in civil cases, is extended to the sum of fifty dollars in cases both of tort and contract.

By this act the parties are compelled in numerous cases, before cognizable by a court, where the parties might have their cause tried by a jury, to a trial before a single magistrate without the benefit of a jury. So far the right is denied. But it may be objected that the parties may still obtain the privilege by an appeal—true they may, provided no impediment is thrown in their way; but if such embarrassments are thrown in the way, as to put it out of the power of the party to obtain an appeal, is not his right violated? Nay, is it not absolutely taken away?

By the sixteenth section of the aforesaid act, it is provided, "that if any person or persons shall conceive him or themselves injured by any judgment of any justice of the peace, it shall be lawful for such person or persons, to appeal to the court of common pleas, at any time within twenty days, next after rendering of such judgment, by entering into recognizance with at least one sufficient surety, in a sum double the amount of said judgment and costs, conditioned to prosecute said appeal to effect, and to abide the order which the court may make therein."

By this section of the act, the party wishing to appeal, must before his appeal is allowed, procure bail to abide the order of the court, which order (if the defendant is cast) is in substance, that he pay the debt and costs, and the bail of course stands holden for both debt and costs, as is also apparent from the circumstance, that the penalty of the bond is to be in double the amount of debt and costs,

which is clearly intended to secure both. Now in proportion, as the sum and the extent of the liability of the bail is increased, in the same proportion is the difficulty of procuring bail increased; and whenever a party, from poverty, want of friends or acquaintance, or any other cause, is unable to procure bail, this inestimable privilege is absolutely withheld, an evil which will fall almost exclusively upon the poor and the stranger, whose rights the humanity of the laws ought ever to guard with the most careful vigilance.

For these and many other reasons, which this respondent deems conclusive, he, with his associates, did adjudicate and determine, that so much of the act aforesaid, as extends the jurisdiction of justices of the peace to sums over twenty dollars, was unconstitutional, null and void, as by the constitution and laws of the land, and the solemn obligations he was under to perform the duties of his office he was bound to do.

Supposing in the third place, that the supposed criminality consists in this respondent's assuming the right to decide upon the constitutionality of the acts of the legislature. This respondent in answer saith, that the power of deciding upon the constitutionality of legislative acts, when the question takes a judicial form, is vested in the courts of justice, derived immediately from the people through the constitution; and to demonstrate this principle it is necessary to take a view of the American constitutions, from their origin and the subsequent practice under them.

All government in its original simple state is purely democratic, that is, resting solely with the great body of the people, and no one man possesses an inherent right to controul or command another. If he does it, he must either usurp that authority, or it must have been previously delegated to him by the people, so that no legitimate authority can be exercised by any one man or set of men over a state, without the consent of the governed.

This sovereign power which is inherent in the people, consists of all the civil powers, the legislative, executive and judicial, of the ecclesiastical, military and maratime powers combined.—It is without limitation, responsibility or controul. It is the power to do any thing, which the physical force of man put into action by the combined will of the whole is able to perform, whether just or unjust,

however arbitrary, tyrannical, oppressive or cruel. By a single operation of the will, the law is made, adjudicated upon and executed; and where this power is exercised in its original simple form, or where the whole of it is delegated to any one man or set of men, it forms a perfect despotism.

That the people have a right to delegate this power, or a part of it in such portions, and under such limitations and restrictions as they deem most beneficial for their safety and welfare is unquestionable. When the people of these United States revolted from the tyranny of Great Britain, and asserted their own inherent rights, they exercised this right of delegating the powers of government to a few who were to represent the whole. They had before them the history of other nations and other times—they could discover the excellencies and defects of other governments, and well knew from what department of the government the greatest danger to their liberties was to be apprehended. They had from a long course of sad experience learned from what source their oppressions came, and actuated by a pure spirit of patriotism, and an invincible love of liberty, their great solicitude was, so to distribute the powers of government into the hands of different bodies of magistracy, with such mutual checks, one upon the other, with such a degree of independence of each other, and such responsibility to the people, that their liberties might be in the least possible danger.

The legislative power being the most important of all, and subject to the least controul while in action, being the most able to assert its own rights, and (if so disposed) to violate the rights of others, having in its hands the sword and purse of the nation, their power is delegated with the most sparing hand, and guarded by the most careful vigilance. The power is vested in two distinct bodies of men, with a negative upon each other, and by the United States' constitution, and that of most of the individual states, the executive magistrate has a qualified negative upon their acts. They are elected for short periods, and all the high and most dangerous powers are absolutely withheld from them.

The executive power is vested in a chief magistrate, with such powers as are necessary to enable him to execute such laws as appertain to his department, and under such

restrictions and limitations as are necessary to render the people secure from his ambition or tyranny.

The judicial power being the weakest of all, and least able to protect itself against the encroachment of the others, and being the power through which the force and operation of the laws are most immediately felt, and by which the rights of the people are to be ascertained and vindicated, it is delegated in the most ample manner to the judicial courts; and the greatest pains are taken to render them so far independent, that they may exercise their opinions freely—*unawed* and uninfluenced by the other powers. By securing to them a competent salary during their continuance in office, they are rendered inaccessible to bribery. By securing to them their offices during their good behaviour, they are placed above the slavish passion of fear, which might convert them into vile instruments of ambitious tyranny.

Each of these powers are an emanation of the sovereign power, and are conferred immediately by the people through the constitution; and each body of magistracy represents the people in their respective departments. The legislature represents only the legislative power of the people to the extent delegated, and to that extent their acts are the acts of the people; but when they exceed that extent they act without authority, and although their acts have the form of laws they have no binding force.

The chief magistrate represents the executive power of the people, and the judges the judicial powers, and these powers being all derived from the same source, no one is subordinate to the other; but each is a separate branch of the government, and the acts of each are the acts of the people. By the legislature, the people make laws; by the chief magistrate they execute such laws as appertain to that department, and by the judicial courts they administer justice. That those powers may be perfectly defined, understood and remembered, a constitution is formed by the people, reduced to written precision, and recorded for a perpetual testimony. It has the force of a law given it—a law in its nature paramount to all other human laws—a law unalterable and unrepealable, except by the mighty hand of the people—a law to which all men are bound to yield obedience, and which all magistrates, whether legislative, executive or judicial, are solemnly bound to obey and support.

The judicial power consists in expounding the laws of the country, and administering justice according thereto. And whenever a question arises judicially before the court upon the construction of any law, the court are bound to decide *what the law is.*

Two contradictory laws cannot exist and be in force at the same time. If two acts having the form of laws are in existence, one must give place to the other, and the courts are to make the decision when the question comes judicially before them. If therefore, the rights of A and B come in question before a court of justice, A claiming a right secured to him by the constitution, and B claiming under an act of the legislature, in opposition to A's right, each has the right of being heard in support of his claim, and the court are bound to decide the controversy according to law and to establish that right which has law to support it. The constitution is the supreme law by which the court is bound. The act of the legislature, (if contrary to the constitution) is void from the beginning, and has not the force of a law, and no one is bound to yield obedience to it. The court then is under the indispensable necessity of confirming the right of A, which is bottomed upon the constitution, and rejecting the claim of B, which is founded upon a void act.

This power to decide upon the constitutionality of legislative acts, is not only necessary by incident to the courts of justice, under the American constitutions, and so universally considered; but the principle is expressly enforced in the constitution of the United States, not only upon the judges of the United States by a solemn oath, but also upon the judges of the individual states. By the 6th article of the constitution of the United States, it is declared, that this constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States shall be the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding. It is also recognized and further enforced by the 25th section of an act of congress, passed the 24th day of September, A. D. 1789, entitled " An act, to establish the judicial courts of the United States, wherein provision is made for removing certain causes from the state courts into the supreme court of the United

States, wherein the constitutionality of laws is drawn in question.

The judicial courts of the United States and of the individual states, have uniformly maintained the principle, and the legislatures have acquiesced therein. The case of Vanhorne's Lessee vs. Dorrance, reported in second of Dallas's Reports, page 304. The case of Marberry vs. Maddison, Cranch's Reports, vol. 1, page with many others prove the fact. Such also, have been the principles maintained by the opinions and writings which have been published to the world by our most eminent statesmen, who have since enjoyed the highest confidence of the nation.

When the people of this state formed their constitution, they had for their guide the constitutions, laws and usages of the United States, and all the individual states, with their long course of experience. The citizens were most of them emigrants from the other states, and well knew their laws and customs. They framed a constitution similar in its leading features to that of the United States, and with a full knowledge of this construction being put upon the grant of judicial powers by all the states and the United States. They made no contrary provision, nor were they at liberty to adopt a contrary principle. By the ordinance of congress, and the law authorising the people of the North Western Territory to frame a constitution and state government, they were expressly prohibited from introducing any principle, incompatible with republicanism, and this is considered as one of the most valuable provisions in our republican institutions. But the people of this state, have not *barely omitted* to prohibit the exercise of this power. On the contrary, they have expressly enjoined it upon the judges. They have laid them under the strongest possible obligation to perform it as a duty: not merely by their mandate, but by a solemn oath registered in HEAVEN! A vow which they are compelled to fulfil, under the penalty of incurring the awful vengeance of the Almighty! Can human nature be so inconsistent as to require a man to take a solemn oath, and afterwards compel him to violate it? Or can man be so vain and presumptuous, as to require his fellow man, to yield him more honor and obedience than to his Maker, and thus set the Almighty at defiance?

This oath is not a mere pompous form of words to add dignity to the office, but a substantial tie of conscience, to

compel the judge to do his duty, whenever through fear, or some other cause, he might otherwise be disposed to neglect it. If the courts do not possess this power, of what use is the constitution? How are the people to obtain the rights secured to them by it, when invaded by the legislature? It is in the courts of justice that the rights of men are to be ascertained and vindicated, and if the courts are shut agaist them, of what avail is the constitution? It is said, that an effectual remedy may be had through the medium of elections—waving the supposition that the legislature may at once strike at the root, and at one blow, overthrow that remedy, of what avail would the repeal of an unconstitutional act, be to a man who had been ruined by it? Or can an election restore a man to life, who has been executed under an unconstitutional act? Without this efficient check, the constitution becomes a dead letter. Where is the mighty danger to be apprehended from the exercise of this power? What possible advantage can the judges propose to themselves, from a wanton abuse of it? Can they obtain wealth? Their salaries are fixed, and the treasury is in secure hands. Can they obtain fame? None but that which but few men will aspire after. Can they obtain power? They can neither command armies nor levy taxes. Can they perpetuate their offices? The legislature will take care of that. The power may be abused. So it may in any other department of the government. Because power *may* be abused, is it a sufficient reason that it should not be delegated? If it is, no power whatever should be delegated, but all rest in the great body of the people, to be exercised by them collectively, which would inevitably end in anarchy or despotism. It is absolutely necessary to the existence of civil society, that a part of the sovereign power should be delegated—that confidence should be placed in the different departments, and that they should place confidence in each other.

It is asserted by some, that the judicial power is subordinate to the legislature—that the judges derive both their offices and powers from them. This I deny. The offices are created by the constitution. The legislature are only authorised to designate the persons who are to fill them. The judges are, therefore, not indebted to the legislature for their offices, but merely for their good will in placing them therein. Nor are they indebted to them for their judicial powers. If the constitution does not give it to the

courts, it certainly does not give it to the legislature. And how can the legislature give what it does not possess? The constitution unquestionably gives the power. The legislature can only apportion that power among the several courts. To illustrate the proposition, suppose a man dies seized of lands, leaving two sons, A and B, his heirs. The lands descend to them in common. C is appointed to divide the lands, and set to each his due proportion. Now, notwithstanding, A and B will each derive his right to hold his particular share, in severalty, through the act of C, yet both will derive their *title* from their ancestors.

British authorities are frequently resorted to, to prove that the judicial power is subordinate to the legislative; but their government and ours, in that respect, are dissimilar. In Great Britain the judicial power is an emanation of the royal prerogative. It is derived from the crown, the fountain of justice. Their legislative power is omnipotent, uncontrouled by any written constitution. And the king, from whom the judges derive their power, being a part of the legislature, the judicial power is, consequently, subordinate to the legislslative. But the case is quite different in the American governments, as I have before shewn.

In whatever rational point of view the subject is placed, it is manifest, that the courts possess this power, and are bound to exercise it. It is a question on which men differ in opinion, and the opinions of many may be formed in this case, as they frequently are on other general principles, by considering rather the subject on which it operates, than the intrinsic merits of the principle itself. If a principle of law, correctly applied to a case, should have an operation repugnant to the feelings and desires of men, they are extremely apt, instantly to condemn it, and every argument which human ingenuity can devise is advanced to overthrow it—while on the other hand, had the same principle been applied to a different case, where its operation would have gratified the feelings, it would be cherished as an inestimable blessing. Every principle in law or politics, ought to be cooly and impartially tested by the force of reason—how it will operate under all circumstances, and in all cases, and what are all its possible consequences. In cases which excite public attention and agitate the public mind, it is the most difficult duty a judge

has to perform, to divest himself of those feelings which he may possess, in common with other men. To stem the torrent of popular prejudice, where they are opposed to the principles, which ought to govern in the case.

This respondent avers, that there is no high crime or misdemeanor charged in the said first article of impeachment, and he is, therefore, guilty of none.

In answer to the second article, this respondent says, that he is not guilty of the facts therein charged, nor do said charges amount to any high crime or misdemeanor. This respondent, however, begs leave to state the following facts: An action was brought in the court of common pleas, for Trumbull county, by Elijah Wadsworth against Solomon Braynard, on a promissory note, on which something more than twenty dollars was due, as set forth in said article. The defendant appeared by his council, and plead the general issue, and gave notice that he should give in evidence a claim upon the plaintiff as an offset.—A compromise took place between the parties, and the plaintiff agreed to allow a part of the defendant's demand; and the same was accordingly endorsed upon said note, which reduced the sum to seventeen dollars and some cents; and the defendant being advised by counsel, suffered judgment to go against him by default, knowing that the costs were to be taxed, and the judgment was entered, and the costs taxed in the clerk's office, according to the usual practice of courts in such cases, without the knowledge or interference of the court.

In answer to the third article of said impeachment, this respondent saith, that the same is insufficient, vague and uncertain, that there is neither time nor place, nor any particular fact therein set forth, to which this respondent can answer, nor is he by the laws of the land bound to answer thereto; and hereof he prays judgment of this honorable court.

This respondent having answered the several charges exhibited against him, so far as from the nature of them, and the short time requested, he has been enabled, commits himself to this honorable court, demanding only that the same measure of justice, with the same impartial hand, with the same integrity of heart, be meted unto him, which has ever been his most ardent desire, and constant endeavor to mete unto others.

And he handed in the same at the clerk's table.
The court then adjourned until half past two o'clock this afternoon.

HIGH COURT OF IMPEACHMENTS.

WEDNESDAY, February 1.—Half past 2 o'clock, P. M.

The state of Ohio vs. *Calvin Pease.*

The court was opened by proclamation.
Ordered, That the clerk give notice to the house of representatives, that the senate is in their public chamber and ready to proceed further on the trial of the impeachment of Calvin Pease, president of the court of common pleas for the third circuit, in this state.
The managers accompanied by the house of representatives attended.
The respondent with his counsel also attended.
Mr. Campbell, on behalf of the managers, asked and having obtained permission read the replication of the house of representatives, to the plea and answer of Calvin Pease, president of the courts of common pleas for the third circuit, of this state, as follows :

THE REPLICATION OF THE HOUSE OF REPRESENTATIVES, TO THE PLEA AND ANSWER OF CALVIN PEASE, PRESIDENT OF THE COURTS OF COMMON PLEAS, FOR THE THIRD CIRCUIT.

THE house of representatives of the state of Ohio, have considered the answer of Calvin Pease, president of the court of common pleas for the third circuit, to the articles of impeachment against him, by them exhibited, in the name of themselves and all the people of the state of Ohio, and observe,
That the said Calvin Pease, hath endeavored to cover the high crimes and misdemeanors laid to his charge, by evasive insinuations and misrepresentations of facts ; that the said answer does give a gloss and coloring, false and untrue, to the various criminal matters contained in the said

article ; that the said Calvin Pease, did in fact commit the crimes, of which he stands accused, and the house of representatives, in full confidence of the truth and justice of their accusation, and of the necessity of bringing the said Calvin Pease, to a speedy and exemplary punishment, and not doubting that the senate will use all becoming diligence to do justice to the proceedings of the house of representatives, and to vindicate the honor of the state, do aver their charge against the said Calvin Pease, to be true, and that the said Calvin Pease is guilty in such manner as he stands impeached ; and that the house of representatives are ready to prove their charges againt him, at such convenient time and place as shall be appointed for that purpose : and the house of representatives further say, that for any thing by the said Calvin, in his plea above pleaded, to the said third article of impeachment, he ought not to be precluded from answering thereto, because they say, that the said third article of impeachments is good and sufficient in law, and this the house of representatives pray may be enquired of by this honorable court.

ALEXANDER CAMPBELL,
Speaker of the house of representatives.

ATTEST, TH: S. HINDE,
Clerk of the house of representatives.

WEDNESDAY, February 1, 1809.

And he handed the same at the clerk's table.
Mr. Creighton on behalf of the respondent submitted the following motion, which being reduced to writing, was addressed to the speaker and read at the clerk's table :
" The respondent moves this honorable court to continue the trial of the articles of impeachment, exhibited against him by the honorable the house of representatives, until he can procure the attendance of Elisha Whittlesey, esq. of Canfield, in the county of Trumbull, whom he deems an important and material witness in his defence, and that he cannot go on safely to trial without his testimony, and hopes and expects, with the aid of the process of this honorable court, to obtain the attendance and testimony of the witness aforesaid, in a reasonable time, (say)
and that this motion is not made for the purpose of delay, but the attainment of justice."
Mr. Creighton, in behalf of the respondent, argued in support of the motion, and was followed by Mr. Campbell and Mr. Morris, in behalf of the managers, who opposed

the motion, and the respondent and Mr. Brush, in his behalf, was heard in reply.

Whereupon,

The speaker informed the said Calvin Pease, that the court would take time to consider his motion.

And the court adjourned to ten o'clock to-morrow morning.

HIGH COURT OF IMPEACHMENTS.

THURSDAY, February 2.

The state of Ohio vs. *Calvin Pease.*

The court was opened by proclamation.

Ordered, That the clerk give notice to the house of representatives, that the senate is in their public chamber, and ready to proceed further on the trial of the impeachment of Calvin Pease, president of the courts of common pleas for the third circuit, in this state.

The managers, accompanied by the house of representatives, attended.

The respondent with his counsel also attended.

The court resumed the motion made yesterday by the respondent, in the words following:

"The respondent moves this honorable court to continue the trial of the articles of impeachment, exhibited against him by the honorable the house of representatives, until he can procure the attendance of Elisha Whittlesey, esquire, of Canfield, in the county of Trumbull, whom he deems an important and material witness in his defence, and that he cannot go on safely to trial without his testimony, and that he hopes and expects, with the aid of the process of this honorable court, to obtain the attendance and testimony of the witness aforesaid, in a reasonable time, (say) and that this motion is not made for the purpose of delay, but the attainment of justice."

And on the question to agree thereto,

It passed in the affirmative—yeas 22—nay 1.

Those who voted in the affirmative are,

Messrs. Barrere, Bigger, Bryan, Burton, Bureau, Cone, Cooper, Curry, Dillon, Elliott, Foos, Irwin, Kinney, Massie, M'Arthur, M'Connell, M'Laughlin, Scofield, Sharp, Smith, Wood and Kirker, (Speaker.)

The vote in the negative was

Mr. Abbot.

On motion,

By Mr. Bryan, to fill the blank with the words, "The first Monday in January next.

The yeas and nays being taken,

It passed in the negative—yeas 10—nays 13.

Those who voted in the affirmative are,

Messrs. Bigger, Bryan, Bureau, Cone, Cooper, Irwin, Massie, Scofield, Sharp and Wood.

Those who voted in the negative are,

Messrs. Abbot, Barrere, Burton, Curry, Dillon, Elliott, Foos, Kinney, M'Arthur, M'Connell, M'Laughlin, Smith and Kirker, (Speaker.)

On motion,

By Mr. M'Arthur, to fill the blank with the words, "The 22d instant."

The yeas and nays being taken,

It passed in the affirmative—yeas 14—nays—9.

Those who voted in the affirmative are,

Messrs. Barrere, Burton, Curry, Dillon, Elliott, Foos, Kinney, M'Arthur, M'Connell, M'Laughlin, Smith, Wood and

Irwin, Kirker, (Speaker.)

Those who voted in the negative are,

Messrs. Abbot, Bigger, Bryan, Bureau, Cone, Cooper, Massie, Scofield and Sharp,

The court adjourned to three o'clock this afternoon.

HIGH COURT OF IMPEACHMENTS.

THURSDAY, February 2—Three o'clock P. M.

The state of Ohio vs. *Calvin Pease.*

The court was opened by proclamation.

Ordered, That the clerk notify the house of representatives, that the senate is in their public chamber, and ready to proceed further on the trial of the impeachment of Calvin Pease, president of the courts of common pleas for the third circuit, of this state.

The managers, accompanied by the house of representatives attended.

The respondent with his counsel also attended.

And by consent of the parties, the court adjourned to ten o'clock to-morrow morning.

HIGH COURT OF IMPEACHMENTS.

FRIDAY, February 3.

The state of Ohio vs. *Calvin Pease.*

The court was opened by proclamation.

Ordered, That the clerk give notice to the house of representatives that the senate is in their public chamber, and ready to proceed further on the trial of the impeachment of Calvin Pease, president of the courts of common pleas for the third circuit, of this state.

The managers accompanied by the house of representatives attended.

The respondent with his counsel also attended.

By consent of the managers an affidavit of Elisha Whitlesey, esq. now in the respondent's possession, is to be read as evidence on the trial of this cause, and the parties mutually agree to go into the trial to-morrow.

The court adjourned to ten o'clock to-morrow morning.

HIGH COURT OF IMPEACHMENTS.

SATURDAY, February 4.

The state of Ohio vs. *Calvin Pease.*

The court was opened by proclamation.

Ordered, That the clerk give notice to the house of representatives, that the senate is in their public chamber and ready to proceed further on the trial of the impeachment of Calvin Pease, president of the courts of common pleas for the third circuit, in this state.

The managers accompanied by the house of representatives attended.

The respondent with his counsel also attended.

Proclamation was made to keep silence, and also as follows:

"O YES! O YES! O YES!

Whereas a charge of high crimes and misdemeanors hath been exhibited by the house of representatives of the state of Ohio, in the name of themselves, and all the people of the state of Ohio, against Calvin Pease, president of the courts of common pleas for the third circuit, of this state, all persons concerned are to take notice that he now stands upon his trial, and they may come forth in order to make good the said charge."

The speaker informed the managers, that they were at liberty to proceed in support of the articles of impeachment exhibited; and on request by Mr. Morris, the witnesses on behalf of the managers, to-wit: George Par-

sons, James Cloyd, Thomas Patton, and John Ward, Esquires, were each called and sworn, and Mr. Parsons was examined.

Mr. Morris produced and read as evidence in the cause, an exemplified copy of the record of the court of common pleas, for the county of Trumbull, at their June terms, in the year 1808, under the official seal of the clerk of said court, in the case E. Wadsworth vs. Sol. Braynard as stated in the second article of impeachment.

By consent of the managers and the respondent and his counsel, the respondent's demurre to the third article of impeachment, exhibited against him by the house of representatives, was submitted to the consideration of the court without argument. On consideration whereof, and the question being taken by the speaker in these words, "shall the respondent be ruled to answer over to the third article of impeachment against him?"

It was decided in the negative—yeas 8—nays 16.

Those who voted in the affirmative are,

Messrs. Abbot, Barrere, Curry, Dillon, Irwin, M'Connell, Smith and Price.

Those who voted in the negative are,

Messrs. Bigger, Bryan, Burton, Bureau, Cone, Cooper, Elliott, Foos, Kinney, Massie, M'Arthur, M'Laughlin, Scofield, Sharp, Wood. and Kirker, (Speaker.)

George Parsons was then cross examined by the respondent.

And the following question was proposed to this witness by the respondent:

"In the case of E. Wadsworth vs. Sol. Braynard, on which judgment was rendered by default, in the court of common pleas, for Trumbull county, at the term of June, 1808, was the substance of that cause ever made known to this respondent or the court, at the time judgment was rendered? Or did this respondent or the court give any opinion in said cause? Or was the judgment aforesaid made up in the clerk's office, without the knowledge of this re-

spondet or the court, according to the ordinary course of rendering judgments on notes, when judgment goes by default?

This being objected to by the managers and submitted to the court—

Mr. Morris, on behalf of the managers, assigned his reasons why the question ought not to be put and answered. Mr. Creighton and Mr. Brush, in behalf of the respondent, assigned their reasons in support of the question; and Mr. Campbell, Mr. Morris, and Mr. Pritchard and Mr. Looker, in behalf of the managers, was heard in reply.

And on the question, "Is it competent for the respondent to put the said question to the witness?"

It was determined the negative—yeas 8—nays 16.

Those who voted in the affirmative are,

Messrs. Bigger, Burton, Bureau, Cone, Cooper, Elliott, Foos and Massie.

Those who voted in the negative are,

Messrs. Abbot, Barrere, Bryan, Curry, Dillon, Irwin, Kinney, M'Arthur, M'Connell, M'Laughlin, Scofield, Sharp, Smith, Price, Wood and Kirker, (Speaker.)

Mr. Parsons was further examined.

The respondent was notified, that he might now proceed to make his defence, and Mr. Creighton in his behalf, opened his defence, and produced and read an affidavit of Elisha Whittlesey.

The testimony being gone through, and the managers declining to offer any arguments at this time.

Mr. Creighton, in behalf of the respondent, proceeded in his defence, in which he was followed by Mr. Brush.

Mr. Campbell, in behalf of the managers, proceeded to reply to the arguments of the respondent's counsel, in which he was followed by Mr. Morris. Mr. Campbell made a few additional observations, in which he was followed by Mr. Monett. Mr. Morris made a few addition-

al remarks, and was followed by Mr. Pritchard and Mr. Looker.

The court then adjourned to ten o'clock next Monday morning.

HIGH COURT OF IMPEACHMENTS.

MONDAY, February 6.

The state of Ohio vs. *Calvin Pease.*

The court was opened by proclamation.

Ordered, That the clerk notify the house of representatives that the senate is in their public chamber, and ready to proceed further on the trial of the impeachment of Calvin Pease, president of the courts of common pleas for the third circuit of this state.

The managers accompanied by the house of representatives attended.

The respondent with his counsel also attended on the first article of impeachment.

The clerk took the opinion of the members of the court respectively in the form following.

Mr.——how say you, is the respondent Calvin Pease guilty or not guilty of a high crime or misdemeanor as charged in the first article of impeachment.

Those who pronounced not guilty are,

Messrs. Abbot, Barrere, Bigger, Bryan, Burton, Bureau, Cone, * Cooper, Curry, Dillon, Elliott, Foos, Irwin, Kinney, Massie, M'Arthur, M'Connell, M'Laughlin, Scofield, Sharp, Smith, Price, Wood and Kirker, (Speaker.) 24.

On the second article of impeachment, the clerk took

the opinion of the members of the court respectively in the form following.

Mr. —— how say you is the respondent Calvin Pease, guilty or not guilty, of a high crime or misdemeanor, as charged in the second article of impeachment.

Those who pronounced guilty are,

Messrs. Abbot, Barrere, Bryan, Curry, Dillon, Elliott, Kinney, M'Arthur, M'Connell, M'Laughlin, Sharp, Smith, Price, Wood, and Kirker, (Speaker.) 15.

Those who pronounced not guilty are,

Messrs. Bigger, Burton, Bureau, Cone, Cooper, Foos, Irwin, Massie and Scofield—9.

Whereupon,

The speaker declared that Calvin Pease, president of the courts of common pleas for the third circuit in this state, is acquitted of all the charges contained in the articles of impeachment, exhibited against him by the house of representatives: And,

The court adjourned without day.

A COPY. ATTEST. THOMAS SCOTT, Clk.

RECORD

OF THE

PROCEEDINGS

OF THE

HIGH COURT OF IMPEACHMENT,

ON THE

TRIAL OF GEORGE TOD,

CONSISTING OF THE

SENATE OF THE STATE OF OHIO,

AS IS PROVIDED

BY THE CONSTITUTION,

AND

IN PURSUANCE OF A RESOLUTION

OF

THE SENATE.

RECORD

OF THE

PROCEEDINGS

IN THE

CASE OF GEORGE TOD.

SATURDAY, December 24, 1808.

A message was received from the house of representatives by Mr. Perry, one of the members thereof, in the words following:

Mr. Speaker,

The house of representatives have preferred articles of impeachment against George Tod, esq. one of the judges of the supreme court, for a high crime and misdemeanor, and have appointed five managers, on their part, to prosecute the said article in their name, and in the name of all the people of the state of Ohio: And he withdrew.

A message from the house of representatives by Mr. Morris.

Mr. Speaker,

The house of representatives have instructed the managers, appointed to conduct the impeachment against George Tod, esq. one of the judges of the supreme court, to proceed to the bar of the senate, with the article of impeachment against the said George Tod, esq. and there demand that the said George Tod, esq. be put to answer the said article of impeachment exhibited against him: And he withdrew.

Adjourned.

HIGH COURT OF IMPEACHMENTS.

TUESDAY, December 27.

The state of Ohio vs. *George Tod.*

Ordered, That the clerk of the senate immediately inform the house of representatives, that the senate is ready to receive the managers for the purpose of exhibiting articles of impeachment against George Tod, one of the judges of the supreme court, agreeably to the notice given for that purpose by the house of representatives.

Agreeably to the above notice, the managers on the part of the house of representatives, to-wit: Mr. Thomas Morris, Mr. Joseph Sharp, Mr. James Pritchard, Mr. Samuel Monett and Mr. Othniel Looker were admitted; and Mr. Morris, the chairmain, announced "that they were the managers instructed by the house of representatives to exhibit a certain article of impeachment against George Tod, one of the judges of the supreme court."

The managers were requested by the speaker to take seats assigned them within the bar, and the sergeant at arms was directed to make proclamation in the words following:

"O YES! O YES! O YES!

All persons are commanded to keep silence on pain of imprisonment, while the grand inquest of the state is exhibiting to the senate of Ohio, a certain article of impeachment against George Tod, one of the judges of the supreme court."

The managers then rose and Mr. Morris, their chairman, read the article as follows:

ARTICLE,

EXHIBITED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF OHIO, IN THE NAME OF THEMSELVES AND OF ALL THE PEOPLE OF THE STATE OF OHIO, AGAINST GEORGE TOD, ONE OF THE JUDGES OF THE SUPREME COURT, FOR THE STATE AFORESAID, IN MAINTENANCE AND SUPPORT OF THEIR IMPEACHMENT AGAINST HIM, FOR A HIGH CRIME AND MISDEMEANOR.

ARTICLE I.

THAT whereas it is provided by the fifth section of an act of the general assembly of the state aforesaid, passed

on the twelfth day of February, in the year of our LORD one thousand eight hundred and five, entitled "An act, defining the duties of justices of the peace and constables, in criminal and civil cases," that the power of justices of the peace, in this state, shall, in civil cases, be co-extensive with the township in which they may respectively be elected and reside, and their jurisdiction in such cases, shall extend, under the restrictions and limitations therein after provided, to any sum not exceeding fifty dollars, &c. That unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them faithfully and impartially, the said George Tod, judge of the said supreme court, of the said state of Ohio, the said act of the said general assembly, not regarding, but wilfully, wickedly and maliciously, with intent to evade, nullify, and make void the same, and thereby to bring the acts and doings of the said general assembly into contempt and disgrace, and to induce the good citizens thereof to disregard them, and thereby to introduce anarchy and confusion into the government of the state of Ohio aforesaid, at a supreme court, holden at Steubenville, in and for the county of Jefferson, in the month of August, in the year of our LORD, one thousand eight hundred and seven, whereat the said George Tod sat as judge in a certain cause, then and there depending and undetermined, wherein Rutherford was plaintiff, and M'Faddon defendant, did, in his judicial capacity, adjudicate and determine, that the said fifth section of the act of the general assembly aforesaid, was unconstitutional, null and void, and for that cause only, did reverse, set aside, annul and make void the proceedings had before the court of common pleas, for the county of Jefferson, aforesaid, and the justice of the peace in the said cause, to the manifest injury of him, the said Rutherford, to the evil example of all the good citizens of the state of Ohio, aforesaid, contrary to its constitution and laws, disgraceful to his own character as a judge, and degrading to the honor and dignity of the state of Ohio.

And the house of representatives, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any further articles, or other accusation or impeachment against the said George Tod; and of replying to his answers, which he shall make to the said articles,

or any of them; and of offering proof to the aforesaid article, and to all and every other articles, impeachment or accusation, which shall be exhibited by them, as the case shall require, do demand that the said George Tod, may be put to answer to the said high crime and misdemeanor; and that such proceeding, examination, trial and judgment may be thereupon had and given, as may be agreeable to law and justice.

ALEXANDER CAMPBELL,
Speaker of the house of representatives.

ATTEST, TH: S. HINDE,
Clerk of the house of representatives.

SATURDAY, December 24, 1808.

Whereupon,

The speaker notified the managers that the senate would take proper order on the subject of the impeachment, of which due notice should be given to the house of representatives.

The managers delivered the article of impeachment at the table and withdrew.

Mr. Bureau submitted the following motion:

Resolved by the senate, That the summons to be issued by the clerk, against George Tod, esq. to answer the article of impeachment this day exhibited against him, shall be made returnable on the first Monday in January next.

It was agreed that this motion lie for consideration.

Adjourned.

HIGH COURT OF IMPEACHMENTS.

WEDNESDAY, December 28.

The State of Ohio vs. George Tod.

The senate resumed the motion made yesterday by Mr. Bureau, and the same being amended, was agreed to as follows:

Resolved, By the senate, that the summons to be issued against George Tod, esquire, to answer the article of impeachment exhibited against him shall be made returnable on the first Monday of January next—that the same shall be served three days previous to the aforesaid day, and returned on or before the day first above mentioned.

Ordered, That the clerk notify the house of representatives accordingly.

Adjourned.

HIGH COURT OF IMPEACHMENTS.

MONDAY, January 2.

The state of Ohio vs. George Tod.

The return made by the sergeant at arms, was read as follows:

"I William Creighton, sen. sergeant at arms to the senate of the state of Ohio, in obedience to the within summons, to me directed, did proceed to the residence of the within named George Tod, on the 29th day of December, 1808, and did then and there leave a true copy of the said writ of summons, together with a true copy of the articles of impeachment therein contained, shewing him both, with him the said George Tod.

WM. CREIGHTON, SEN.
Sergeant at arms.

After which the clerk administered to him the oath, prescribed in the rules, as follows:

"You Wm. Creighton, sen. sergeant at arms to the senate of Ohio, do solemnly swear, that the return made and subscribed by you upon the process, issued upon the 28th day of December last, by the senate of the state of Ohio, against George Tod, one of the judges of the supreme court, is truly made, and that you have performed said services, as therein described—So help you GOD."

George Tod was then solemnly called, who appeared in his own proper person, and was requested by the speaker to take a seat, assigned him within the bar, who seated himself accordingly.

On motion,

The oath prescribed by the rules and as directed by the constitution, was administered to the speaker by the clerk.

The speaker administered the oath prescribed to the following members :

Messrs. Abbot,	Irwin,
Barrere,	Kinney,
Bigger,	Massie,
Bryan,	M'Arthur,
Burton,	M'Connell,
Bureau,	M'Laughlin,
Cone,	Sharp,
Curry,	Price and
Elliott,	Wood.

And the affirmation was administered to
Dillon and Smith.

The court was then opened by proclamation.

On motion,

Ordered, That the clerk give notice to the house of representatives that the senate is ready, in the capacity of a high court of impeachment, to proceed upon the impeachment of George Tod, one of the judges of the supreme court, on the article of impeachment, exhibited against him by the house of representatives, in the name of themselves and all the people of the state of Ohio, in the senate chamber, which chamber is prepared with accommodations for the reception of the house of representatives.

Agreeably to this notice, the managers, accompanied by the house of representatives, attended ; and the managers were requested to take seats assigned them within the bar, who seated themselves accordingly.

The speaker then informed the said George Tod, that the court were ready to receive any answer he had to make to the article of impeachment, exhibited against him by the house of representatives, in the name of themselves and all the people of the state of Ohio.

The respondent then rose and submitted the following motion :

" George Tod, who has been ruled by this hon. court, to appear therein at this time, and to file his answer to a certain article of impeachment, exhibited against him by the house of representatives, charging him with a high crime and misdemeanor, in the discharge of his official duties, as a judge of the supreme court for this state, prays this hon. court to indulge him with further time, till Monday next, to prepare and file his answer."

The motion being reduced to writing, was addressed to the speaker, and read at the clerk's table.

The respondent argued in support of his motion, and was followed by Mr. Morris, and Mr. Pritchard, two of the managers, who spoke in opposition thereto, and the respondent was heard in reply.

The speaker took the opinion of the court as follows : " Shall the respondent have time until Monday next, to prepare and file his answer, to the article of impeachment exhibited against him by the house of representatives, charging him with a high crime and misdemeanor, in the discharge of his official duties, as a judge of the supreme court of this state.

And unanimously determined in the affirmative—yeas 21.

Those who voted are,

Messrs. Abbot,	Kinney,
Barrere,	Massie,
Bigger,	M'Arthur,
Bryan,	M'Connell,
Burton,	M'Laughlin,
Bureau,	Sharp,
Cone,	Smith,
Curry,	Price,
Dillon,	Wood and
Elliott,	Kirker, (Speaker.)
Irwin,	

The respondent again rose and informed the court, that the most respectable gentlemen of the bar had tendered their services, in order to assist him in conducting his defence against the article of impeachment exhibited by the house of representatives against him, in which he conceived they had done honor to themselves and society—he therefore requested that those gentlemen, to-wit :—*Jacob Burnet*, *Arthur St. Clair*, *William Creighton*, *Lewis Cass* and *Henry Brush*, *esquires*, might be admitted and considered as counsel for him the said George Tod.

And they were accordingly admitted.

The speaker then enquired of the said George Tod, and the managers whether they had any other motion to make, at this time preparatory for the trial—who each replied in the negative.

The court then adjourned to next Monday morning ten o'clock.

HIGH COURT OF IMPEACHMENTS.

WEDNESDAY, January 4.

The state of Ohio vs. *George Tod.*

The following written message was received from the house of representatives by Mr. Morris, chairman of the managers of the impeachment of Gearge Tod.

Mr. Speaker,

The house of representatives have appointed Mr. Alexander Campbell, the speaker to said house, and Mr. Robert Lucas, a member of said house, to assist the managers appointed to prosecute the impeachment in the name of themselves and the people of the state of Ohio, preferred against George Tod, judge of the supreme court, now pending before the senate as a high court of impeachment:—And he withdrew.

Adjourned.

HIGH COURT OF IMPEACHMENTS.

MONDAY, January 9.

The state of Ohio vs. *George Tod.*

The court was opened by proclamation.

The oath prescribed in the rules and as required by the constitution, was administered to Mr. Cooper, Mr. Foos and Mr. Scofield.

Ordered, That the clerk notify the house of representatives, that the senate is ready, in the capacity of a high court of impeachment, to proceed further on the trial of George Tod, one of the judges of the supreme court, of this state, in the senate chamber, which chamber is prepared with accommodations for the reception of the house of representatives.

Agreeably to notice, the managers accompanied by the

house of representatives attended, and the managers took the seats assigned them within the bar.

The respondent with his counsel also attended and took their seats within the bar.

The respondent rose and submitted the following motion:

"George Tod moves the honorable court, that William Sprigg, esq. be admitted to appear within the bar of this court as additional counsel for him."

The motion being reduced to writing, was addressed to the speaker and read at the clerk's table.

The respondent and Mr. Burnet argued in support of the motion, and Mr. Morris and Mr. Campbell, two of the managers, argued in opposition thereto.

And the question being taken upon the motion,

It passed in the negative—yeas 5—nays 17.

Those who voted in the affirmative are,

Messrs. Cone, Cooper, Foos, Scofield and Kirker, (Speaker.)

Those who voted in the negative are,

Messrs. Abbot, Bigger, Bryan, Burton, Bureau, Curry, Dillon, Elliott, Irwin, Kinney, M'Arthur, M'Connell, M'Laughlin, Sharp, Smith, Price and Wood.

George Tod, the respondent, being called to make answer to the article of impeachment, exhibited against him by the house of representatives, again rose and asked permission to read his answer, which being granted, he read his answer as follows:

:::::::::

GEORGE TOD, in his proper person, comes into the said court, and protesting, that there is no high crime or misdemeanor, charged in the said article of impeachment, to which he is, or can be, by law, bound to make answer; and saving to himself now, and at all times hereafter, all benefit of exception to the insufficiency of the said article; and to the defects in law or otherwise, therein manifest; and protesting also, that he ought not to be injured in any manner, by any words, or by any want of form in this

his answer: he submits the following facts and observa-
tions by way of answer to the said article of impeachment.

The said article has a relation to this respondent's con-
duct and judicial opinion, given at a supreme court in the
month of August, 1807, in the county of Jefferson, as a
judge in said court, in a case in which Benjamin Ru-
therford was plaintiff in error, and Daniel M'Faddon de-
fendant in error, states that, he, "unmindful of the so-
lemn duties of his office, and contrary to the sacred obli-
gation by which he stood bound to discharge them faithful-
ly & impartially," he did there, sitting as a judge of the said
supreme court, in the cause before mentioned, in his judici-
capacity, adjudicate and determine, that the fifth section
of the act of the general assembly of the state of Ohio,
entitled "An act, defining the duties of justices of the
peace and constables, in civil and criminal cases," was un-
constitutional, null and void; and that he did, for that
cause only, wilfully, wickedly and maliciously, with intent
to evade *nullify*, and make void the said act of the gene-
ral assembly, and thereby to bring the acts of the same in-
to contempt and disgrace, and to induce the good citizens
of said state to disregard them, and thereby to introduce
anarchy and confusion into the state of Ohio.

This charge is indefinite, informal, wanting legal sub-
stance and unsupported by any evidence whatever. Tho'
this is the character of the accusation against him, this
respondent is sensible that it alludes to his judicial con-
duct, in hearing and deciding upon a question, in which
the constitutionality of said act was made a point.—He be-
ing ever mindful of the solemn and important duties of a
judge, and deeming it judicial meanness to shrink, through
timidity, from the discharge of those duties, or to avail
himself of any technical advantages, to repel any charge
which may call in question his integrity as a judicial offi-
cer, will spread before this hon. court, and the world, a true
history of the transaction in the article aforesaid alluded
to. He meets the accusation with a confidence, inspired by
a sense of his integrity; of which this court *must* judge,
and of which posterity *will* judge.

Daniel M'Faddon brought his suit before Mr. Justice
Hough, of Stubenville, a justice of the peace in the coun-
ty of Jefferson, against Benjamin Rutherford, demanding
in *damages*, thirty-two dollars. Justice Hough gave and
entered up a judgment against the defendant, Rutherford,

in favor of M'Faddon, for that sum. Rutherford brought
the proceedings of the justice, by a writ of certiorari,
which was regularly and duly issued, before the court of
common pleas for the county of Jefferson. The plaintiff
in the certiorari (Rutherford) by his counsel, assigned for
error in the proceedings of the justice, that by the consti-
tution and laws of Ohio, he had no power to hear and deter-
mine a case, sounding in damages, where the sum in de-
mand was equal to the sum in this case demanded. Upon
this error assigned, the defendant joined an *issue in law*.—
The parties were heard, by their counsel, before the com-
mon pleas; and said court, on consideration, affirmed the
proceedings of the justice of the peace. From that decision
of the common pleas, the cause was removed to the su-
preme court, by a writ of error, which issued in confor-
mity to law and the practice of the said supreme court.—
Rutherford, the plaintiff in error, assigned for error, that
the court of common pleas, in supporting and affirming the
proceedings and judgment of the justice of the peace, in
said court had and given, manifestly erred and mistook the
law, in giving judgment for M'Faddon, the defendant in
the certiorari; for by the law of the land, that court
ought to have given judgment for the plaintiff in the cer-
tiorari. On this error the parties were at issue before the
supreme court of Ohio, sitting in and for the county of
Jefferson.

In the month of August, 1807, at Stubenville, in said
county of Jefferson, the cause came to a hearing before
the supreme court aforesaid. Counsel learned in the law,
and well acquainted with the nature and extent of their con-
stitutional rights, were heard on both sides. On consi-
deration, this respondent, one of the judges of said su-
preme court, who then and there sat on the bench in his
judicial capacity, was of opinion that the question made, was
a *judicial question*, and properly cognizable before said su-
preme court. He is still of that opinion.

He admits, that at the supreme court aforesaid, he did
give it as his opinion, that it was the duty of the court to
hear and determine the question of law made in the
pleadings in said suit; that the court was legally com-
petent to decide upon the constitutionality of a legislative
act, when that was made a point in the pleadings. He fur-
ther admits, that in deciding on that cause, he gave it as
his opinion, that so much of the act of the general assem-

bly of the state of Ohio, entitled "An act, defining the duties of justices of peace and constables, in civil and criminal cases," which extended, the judicial power of justices of the peace, in civil cases, to fifty dollars, was not law, because he deemed it unconstitutional.

In thus proceeding, he was influenced by an uncorrupted purity of intention, with a view to the preservation of individual rights and constitutional privileges. He disclaims having been actuated by any wicked, wilful, or malicious motive, with an intent to evade and make void, the act aforesaid, or any part thereof : a sense of duty prompted his conduct.

This respondent might with safety, he trusts, rest his defence here : but, propriety and a just regard for his own character, requires that he should urge to the consideration of this honorable court, in his answer, some of the principles which lead to, and supported his opinion, that he was bound, as a judge, to decide on the question made.

This respondent's first position is, that the constitution of Ohio is the *supreme law* of the state—subordinate, however, to the constitution of the United States and the acts of congress, passed under the authority of the same. The people in their sovereign capacity have given the constitution as a *rule* to guide and govern us. Limitations and restrictions are not attributes of sovereignty. The people, in their constitution, have not detracted any thing from their supreme authority, otherwise than by delegating a portion of it to their confidential agents. The authority of the general assembly, to enact laws for the wholesome regulations of society, is not an authority inherent in any set of men, who may meet and style themselves a legislative body. It is a power derived through a constitutional grant. It is given. It is likewise an attribute of sovereign authority to impose restrictions and limitations on the exercise of delegated power. It may give *more* or *less*, *all* or *none*. If it gives *all*, the right to controul is also given. If it gives none, the government, if any, would be a perfect democracy. Our government is instituted on the principle of representation. The people have retained some of their power and delegated some.

By looking into the constitution, the authority given the legislature is a *limited* authority. The people did not mean to vest in it supreme authority. "The legislature," says the 19th sec. of 1st article, "*shall not allow* the fol-

lowing officers of government greater annual salaries," &c. "Here is an express limitation." Restrictions and limitations are frequently imposed by the constitution. It necessarily follows then, that as all legislative power is derived to the legislature through the constitution, no legislative authority can be efficiently exercised, when it is not only not given, but expressly *forbidden*. Notwithstanding it has been denied by some, argumentatively, though not perhaps in direct terms, the candor and good sense of this court will lead it to acknowledge, that the constitution is the paramount law of the state.

Something further may yet be inferred from the cautious steps of the framers of the constitution. Could they rationally have confided in the wisdom of the legislature, from year to year, they would not have hampered them with restrictions. Knowing that legislative bodies being composed of men, like all other men, liable to err—that they might wander from the path of wisdom and truth and embrace error—the framers influenced by knowledge and guided by prudence, were sensibe that it was possible a legislative assembly might overstep the bounds of policy and expediency. Deeming it safe to establish certain principles, as fundamental ones, on which the government might safely, both in stormy and peaceable times, rest, the framers wisely imposed restraints on the exercise of legislative functions. Exercising this saesonable caution, implies most clearly, that it was possible the legislature might pass an unconstitutional act.

If an act is passed, forbidden by the constitution, it is absolutely void. Though it has all the outward forms of a law, yet it has not the authority of a law. An act to be binding, must be passed by *competent* authority. The legislature having no power to pass an unconstitutional act, all their unconstitutional acts therefore, must necessarily be null and void.

This respondent's next enquiry will be, who has the power of deciding on the constitutionality of a legislative provision?

The 28th sec. 8th article of the constitution declares, "That to guard against the transgression of the high powers which we have delegated, we declare that all powers not hereby delegated remain with the people." This part of the charter of our rights has been commented on by a writer of modern times.

"They (the people) have a sufficient check on the legislature," and in the first place, in the opinion of this respondent, it seems to be conceded by the author, that there is, and ought to be a check to legislative authority. This *check* is the people; and the manner by him pointed out by which this *checking* power is to be exercised is, "by means of the annual elections," which are *secured* to us in the constitution. This position is begging the question.— This respondent has endeavored to shew, that an unconstitutional act of the legislature cannot, and ought not to have the force of a law.

We may suppose the legislature, by a legislative provision, to take away *the right of trial by jury.* If they should pass such an act, it would be only an *attempt*, and a futile one, on the principles of this respondent—for the judiciary, on proper application, *should* declare that act to be no *law*, as it was not warranted by the constitution.— But on the principles quoted, the *proposed check* of the writer, would be a very uncertain and a very insecure one.

If the legislature can pass one act in the face of the constitution, they can pass another. Suppose, then, they should enact, that "*the* right of trial by jury," should be in all cases, taken away. The same abuse of constitutional powers, may be exercised for the purpose of rendering ineffectual the *check* founded on "annual elections." It would be as *easy*, and in this respondent's opinion, as *safe* for the legislature to restrict the constitutional *right of suffrage*, by enacting that no person shall give a vote for a member to the general assembly, who shall not have arrived to the age of forty years; and who shall not have been or then was a justice of the peace, a militia officer, and possessing in his own right, a freehold estate, worth ten thousand dollars.

Upon the notions of the writer, if such an act should be passed, his *check* has fled with the rest of our constitutional rights. His constitutional *check* is only an imaginary one, and can only be effectual (if at all) through the preservation of every constitutional privilege. Every legislative assembly, possessed of powers, transcendently great, *may* at their pleasure, change the character of a government— destroy, extend or restrict the right of suffrage, and give the constituent parts of their own body, the power of retaining their seats, and authority therein, for three, five or ten years; or even for life. The parliament of Great Britain, whose powers are unlimited by any written constitu-

tion; and which, politically speaking, is omnipotent in its authority, have acted on a fluctuating system, in regard to the important right of suffrage. It has frequently changed the tenure by which a member could hold or retain his seat. In that country, where the popular branch in is legislative department is filled by a popular election; they have, with a witness, all the energies of the *check*, which is deemed "*sufficient*," by the annotator on our constitution. The history of Great Britain will prove the danger of giving such power to any legislative body whatever, and of the exercise of that power without a sure and efficient check, and a safe and certain amenability therefor.

This respondent begs leave to give his own exposition of that clause of the constitution, which provides "that to guard against the transgression of the high powers which we have delegated; we declare, that all powers not hereby delegated remain with the people."

From a careful enquiry into the nature of civil government, as generally understood, this clause does not import much. It may serve as a memento to delegated authority, that it walks circumspectly within the sphere assigned. Power not given by the people, is necessarily retained, without expressly withholding it. As all power, legislative and judicial, emanated from the people, the fountain of authority, where they do not *yield* nothing can be *taken*. Expressly therefore retaining all power not delegated, neither increases or lessens the amount of authority delegated; for to ascertain what is *retained*, it must first be determined what is *given*.

This brings us to the point. What powers, by the constitution, have the people delegated? It may be read in that instrument; that 'the *legislative authority of this state* shall be vested in a general assembly.' 'Legislative authority,' implies necessarily the power of making laws. This authority may be a *sovereign* & *supreme* authority—or may be a limited authority. Sovereign power where it rests in the people is always exercised without constraint, without restriction, and without amenability. Whatever power is, in the exercise of its will, whether in *legislating* or in *adjudging*, its power is transcendant and unlimited.

The people, originally, had the sole power of exercising legislative authority. When they did exercise that power, their acts were all valid. They in framing and ratifying the constitution, exercised their sovereign will and plea-

sure. They have not given to the general assembly all their power, in regard to legislation. They have used a part of that power inherent in them—delegated a *part* and *retained* a part, to be used as their sovereign wisdom shall direct. What part have they exercised? They have constituted a legislative assembly—judicial courts: Pointed out who may be electors—& who may not be *elected*—how often elections shall be held; and many other acts have they done. What have they delegated? To the legislature a limited authority of making laws from time to time, apportioning the representation therein among the several counties, &c. They have given complete criminal and civil jurisdiction to our courts of law.

What have the people *retained?* They have retained, "at all times, a complete power to *alter*, *reform* or *abolish* their government, whenever they may deem it necessary." By this it must be necessarily inferred, that they alone can give force to an unconstitutional act; which can only be done either by altering, reforming or abolishing their government.

It inevitably follows, from what this respondent has urged, that the authority of a general assembly, is not *supreme* but much limited. Its light is not original, inherent; it is borrowed. The constitution gives all the power it can boast of.

The legislature, possessing but a limited power in making laws, for the better government and welfare of its constituents, it may not be improper again to look into our constitution, and if possible, ascertain what requisites are necessary for the *formation* of a *law* which would be obligatory on all.

The members of the general assembly must possess certain specified qualifications; they must be elected in a certain way—at a certain time, and by certain persons, and when met, must take an oath. Suppose a law were to be passed, dispensing with all constitutional regulations in relation to the forming of a general assembly, and constituting it on arbitrary and sovereign principles. Such an act would not be law.

This respondent begs leave to give to this honorable court, another view of this subject.

The short history of the state of Ohio establishes the fact, that its legislature have passed acts, which itself have deemed unconstitutional. The constitution as clearly il-

lustrates the truth of another position, that such unconstitutional acts are null and void; for they were illegitimate, and were brought into the world without authority. They are no laws.

"That the general, great and essential principles of liberty and free government may be recognized, and *forever unalterably established*, We, "The people," declare, &c." The object of forming our state constitution, seems to be not less than the sublime one of establishing "the great and essential principles of liberty and free government," on a basis never to be shaken. This object, a very desirable one to the philantropic mind, can only be attained but by *preserving* those "essential principles" pure and untouched. Their preservation rests in their unalterable nature. If they are to be defined by the ordinary legislative authority, from year to year, or to be by them enlarged, crippled or abrogated, those "unalterable" principles will be as fleeting as the wind.

It seems from the principles advanced by this respondent, that the people no where in delegating authority, have vested the legislature with authority to palm on *them*, that for *law*, which they in the constitution have declared shall not be law. Neither have they expressly, or constructively, *reserved* to themselves the power of determining what is law under the constitution, nor have they given that power to the legislature.

Have they given it to the courts—is the remaining question.

In the elucidation of this question, how were some of the terms and expressions used in the constitution, at the time the constitution was adopted.

"Legislative authority," was well understood to be the power of making *laws*, not unconstitutional, but such laws as might be authorised by that instrument. It is an authority separate and distinct from the *judicial*. In their nature they are different: in policy they are different, and in the understanding of all well informed patriots, they imply different and distinct powers, and require different duties. "Judicial power," is the power of deciding controversies between man and man.

From a candid and attentive perusal of the constitution it will evidently appear, that the intention of its framers, was, to vest the power in question, in the judicial court.

In article third, section first of the constitution, it is

provided, that "the judicial power of the state, both in matters of *law and equity*, shall be vested in the supreme court," &c. 'Upon the exercise of judicial power, the constitution has imposed no restriction whatever. It has vested, in general and unqualified terms, in certain judges, the whole judicial power of the state. We have seen that the general grant of legislative authority, was not its exercise limited by the constitution, would have given the legislature supreme, sovereign, uncontrollable authority.—Does not the general grant of judicial power, vest the same authority in the judges? It certainly does. No controversy can arise between the citizens, respecting their liberty, property or reputation, to which the judicial power does not extend. There was no necessity for limiting the powers of the judiciary. The power of judging can only extend to subjects arising under the constitution, or the law.' There would be a failure in justice, if the courts have not the right to decide upon all controversies between individuals. We find that judicial power is extended, and necessarily and properly extended, to many cases not provided for in any of our statutes. Our stutes give the supreme court no power to hear and determine an action of slander: yet that power is derived to the court from the general provision in the constitution, 'that all *courts* shall be open, and every person for an injury done him in his lands, goods, person or *reputation*, shall have remedy by due course of law," &c. The courts would not be *open*, if it could not try such a suit. It would be a downright denial of justice. If the courts, by authority of the constitution, alone have jurisdiction over questions, touching the good name of an individnal, that power cannot, by legislative interference, be withdrawn.

Judicial power can effect individuals only, in its exercise; it can in no essential way be used to put into jeopardy the rights of a government. It has no force—it is unarmed. It cannot become the assailant. Judicial power is created and organized for the very purpose of deciding controversies between citizens of the state, respecting their rights and privileges, where such questions are brought judicially before them. It will not, I trust, be denied, that the citizens of this state have certain rights under the constitution. A controversy concerning those rights may arise, out of which will grow a constitutional question; which question presents itself to the court for a *hearing*

and determination. The courts cannot turn their backs on such questions; they must, if they do their duty, meet them as an important and a necessary duty.

If it is the duty of the courts to hear and decide upon a question of *right*, it has a judgment to exercise. The court, the better to enable it to decide with a view to law and justice, must first ascertain, so far as in its power, what the law is. Being satisfied on that point, the decision of the judge must be guided by the conviction that such is the law. To decide against a well founded persuasion that such is the law, supported by long usages in other courts, in these and in other days, would be wrong and meriting reprehension. Give a court the right of deciding, you give it the power, and require of it as a duty to decide as its judgment shall dictate. To call on a man to discharge the duties of a judge of law, and then to pass an act requiring him to decide a particular question, directly against his own opinion of the *law*, would be tyrannical. Suppose a question should arise before any court in this state, having jurisdiction, in which an individual in this state was one party, and a public officer of the state another—the private citizen should rely on a well established principle of law under the constitution, subjecting all to the operation thereof; the legislature should pass an act, 'that the suit thus pending, should be dismissed, for that by the law, the officer was not liable to be sued;' the officer would claim of the court to dismiss the suit against him, and urge this act as a reason;—the private citizen, who perhaps had been injured in his property or reputation, would repel the motion, by shewing to the court, that what the act had annouced as law, was not law, for it is not the province of legislative authority to determine what is *the law*. Out of these mutual altercations would arise a question. The respondent asks—Is it not a question of *law?* And is it not competent for the court to decide that question of law? It will undoubtedly be acceded to. Is the court bound to decide in favor of the act, and dismiss the suit, against a well grounded conviction, that according to *law*, and the universal practice of courts in relation to constructions, the suit ought not to be dismissed? Or may the court, unawed by threats—uninfluenced by fear, coolly enquire, deliberately form, and firmly decide, as its conscience shall persuade, and its judgment confirm?

The court's decision, let it be for which of the parties it might, being the result of such labor, and not springing from any corrupt intention, can never be imputed to it as a crime—nor by our constitution and laws would such conduct be an impeachable offence.

It requires no great depth of political discernment to discover the wide distinction between legislative power and judicial power. They are branches of our government, distinct and separate in their nature, independent and unblended in their operation.

The power exercised by this respondent, sitting in his judicial capacity, in the case of Rutherford against M'Fadden, appears, and did then appear to him, as a power appertaining to our courts. This conviction was rought in his mind at an early hour in his political life. A careful and attentive enquiry into the nature of our government, into the character and extent of constitutional rights and privileges, confirmed his first impressions. The oath he has taken induced the investigation, and his conscience and judgment approbate his conduct.

Had this respondent been doubtful, as to the authority of the court, to declare a legislative provision void for unconstitutionality, the opinion of many great and learned men on the subject, would have led him into the path which he pursued.

The supreme court of the United States, and the congress thereof—the supreme court of Kentucky, and the legislature thereof, have, by their decision and acts established the authority, as in the courts. Both of these courts exercised the same power—both of these legislative assemblies have acquiesced therein.

These facts, however glaring—however conclusive on the question, may not sanctify error. They will tend to account for his conduct, without shewing corruption. An improper motive, ought never to be ascribed—when the action can be accounted for, as proceeding from an honest endeavor.

This respondent might rely on the authority of the house of representatives, as a complete justification of his conduct. That body, this winter is two years, expressed it as their opinion, that the power which this respondent since that time exercised, was a power inherent in our judicial courts. Such an authority, it is presumed, would

clear this respondent from the imputation of corruption, at least.

This respondent might have erred, in considering the constitutionality of a legislative act, a judicial question.— If he erred in so doing, he erred in common with both the honorable judges with whom he was associated on the trial. Every judge with whom he has associated since that time, on the bench of the supreme court, has given a concurring opinion. If such an error is not deemed criminal in them, he hopes it will not be imputed to him as a crime. If he did err, he feels that the reasons which he has assigned, will induce and justify a conviction that he sincerely believed he was right. He thinks if they are carefully weighed, the court will find in them an ample excuse for his conduct.

This respondent would further state to this hon. court, by way of further answer, that at the trial aforesaid, he did sincerely think, that a part of the act relating to the duties of justices of the peace, &c. was unconstitutional, and therefore *not law*. He further insists, that the opinion was a sound, correct and tenable opinion. Time will not permit him, in this his answer, to state to this honorable court, the principles and reasons on which this respondent rests the correctness of his opinion. He deems it by no means necessary for him to satisfy the minds of this honorable court, that his opinion was founded on correct, legal and constitutional notions.

"He is not bound to answer here for the correctness of those principles, though he thinks them incontestable; but merely for the correctness of his motives in declaring such an opinion. A contrary opinion would convert this honorable court, from a court of impeachment, into a court of error and appeals; and would lead directly to the strange absurdity, that whenever the judgment of an inferior court should be reversed, on appeal or writ of error, the judges of that court must be convicted of high crimes and misdemeanors, and turned out of office; that error in judgment is a punishable offence and that crimes may be committed without any criminal intention. Against a doctrine so absurd and mischievous, so contrary to every notion of justice hitherto entertained, so utterly subversive of all that part of our system of jurisprudence which has been wisely and humanely established, for the protection of innocence, this respondent deems it his duty now,

and on every fit occasion, to enter his protest, to lift up his voice; and he trusts, that in the discharge of this duty, infinitely more important to the state than to himself, he shall meet approbation and support in the heart of every American, of every man throughout the world, who knows the blessings of civil liberty, and respects the principle of universal justice."

If he acted from an impurity of thought and design, in delivering the opinion, he confesses that he is justly answerable. The correctness of his motives, ought to be presumed, until the contrary is shewn by proof direct or by presumption irresistable, arising from the respondent's deportment on the trial, or from the striking impropriety of the opinion itself. "He admits that cases may be supposed of an opinion delivered by a judge, so palpably erroneous, unjust and oppressive, as to preclude the possibility of its having proceeded from ignorance or mistake."

This respondent confidently trusts, that no glaring improprieties characterize his conduct on that trial. The parties in the suit were perfect strangers to him—the sum in demand was of little importance. During the trial his mind was undisturbed by passion—unmoved by fear, favor or affection. He is not apprized of any principle which could have induced him to have delivered the opinion he did, were it contrary to his own conviction: neither is he sensible of any thing which could in the least have induced him to *wish* to possess any particular opinion on the constitutionality of the act in question. A wish to do his duty was the proud wish of his heart.

This respondent further insists, that there is nothing so evidently wrong in the opinion itself, as to excite a well grounded suspicion, that it resulted from a depraved mind.

Some of the reasons which actuated his mind, have been submitted to the public, through the medium of newspapers. That opinion is now in the possession of the honorable the house of representatives. Other arguments, drawn entirely from the constitution and the statutes of the general assembly, might be adduced to shew the correctness of the opinion.

The question as the constitutionality of the justices' act was a new question—therefore it was impossible for this respondent to receive assistance from former adjudications of courts. The novelty of the question increased its im-

portance, and added to the difficulties of making a correct decision. But the punishment of a judge should not be more sure, because the novelty of the question leaves him no guide but his integrity, information and judgment. In such cases, let the error be ever so palpable, the mere *suspicion* of impurity can hardly be entertained.

This respondent would further remark, that a diversity of opinion among good and well informed men, as to the constitutionality of the justices' act, is known to exist. This fact, of itself, is sufficient to remove every presumption of insincerity and improper motives.

Is it a "misdemeanor in a judge," conscientiously to discharge a judicial duty, with firmness and integrity? or is it praise worthy in a judge submissively, to turn to the right or left that he might evade his duty, evade truth;—in the first place delay, then deny justice—because by the exercise of authority not delegated, it is required at his hands?

This respondent in his answer further says, that if this article of impeachment can be sustained, the tenure of the judicial office, will hereafter depend on the will of the house of representatives and the senate, to be declared on impeachment, ungoverned by any established principles, and resting in their sovereign will, governed by their arbitrary discretion.

And the said George Tod, for plea to the said article of impeachment, saith, that he is not guilty of any high crime or misdemeanor, as in said article is alleged against him, and this he prays may be enquired of by this honorable court, in such manner as law and justice seem to require.

As well as the time allowed him would permit, this respondent has related all the circumstances of his case, with as much perspecuity as he is master of. He has made a true statement of the case, which has given rise to this impeachment, and his conduct on the trial thereof, so far as his recollection extends. If he has mistated any material fact, or omitted any important circumstance, it will, he trusts be imputed to the treachery of his memory, and not to a corrupt wish to misrepresent. It has never been his aim to wear the cloak of dissimulation. He has ever thought it would not set easy on him. His heart is open to the inspection of all. That he may have frequently erred in the discharge of his official duties of judge, would be arrogance in him to deny. He acknowledges he has

foibles and weaknesses—so have all; but his mind has ever soared above the unhallowed temptations of corruption in any character or in any shade.

He has often felt his inability to discharge the highly important duties of a judge. The rights of a suitor, it has been his best endeavor to pursue, without distinguishing the rich from the poor, the elevated from the lowly. His conscience, in accents sweetly encouraging, whispers to him her approbation.

This respondent looks up to this honorable court for a just decision. In its present elevated standing, it has to decide upon the guilt or innocence of a public officer. If guilt on him shall be established, either directly or by strong presumptive evidence, he will not seek refuge in the mercy of the court. Without such evidence, he has a right to demand an acquittal. If no shades of guilt obscure his innocence, he confidently expects an acquittal—honorable to this court, and honorable to himself.

This respondent, with cheerfulness, submits his cause to this honorable court.—On its integrity, and the justice of his case, rest his hopes, that the issue will give stability and value to our rights and liberties.

And he handed in the same at the clerk's table.

Mr. Barrere senator from the county of Highland appeared and took his seat.

Mr. Morris, on behalf of the managers, submitted the following motion.

"The managers on the part of the house of representatives, pray this honorable court that time be given them until Monday next, to consider of the answer of the honorable George Tod, and to reply thereto, and that a copy thereof be furnished the managers for their use."

The motion being reduced to writing was addressed to the speaker and read at the clerk's table.

The motion was supported by Mr. Campbell, Mr. Morris, Mr. Looker and Mr. Pritchard, on behalf of the managers, and opposed by the respondent and Mr. Cass, Mr. Burnet, Mr. Brush and Mr. Creighton, counsel for the respondent, and the arguments on the motion was closed by Mr. Campbell.

A division of the question being called for by Mr. Bigger,

The question was taken on the first member thereof in these words.

"The managers on the part of the house of representatives pray this honorable court, that time may be given them until Monday next, to consider of the answer of the honorable George Tod and to reply thereto."

And determined in the negative—yeas 6—nays 17.

Those who voted in the affirmative are,

Messrs. Bryan,	M'Arthur,
Elliott,	M'Laughlin and
Kinney,	Price.

Those who voted in the negative are,

Messrs. Abbot,	Foos,
Barrere,	Irwin,
Bigger,	M'Connell,
Burton,	Scofield,
Bureau,	Sharp,
Cone,	Smith,
Cooper,	Wood and
Curry,	Kirker, (Speaker.)
Dillon,	

The question being taken on the latter member of the said motion which is in these words.

"And that a copy thereof be furnished the managers for their use."

And determined in the affirmative—yeas 21—nays 2.

Those who voted in the affirmative are,

Messrs. Bigger,	Kinney,
Bryan,	M'Arthur,
Burton,	M'Connell,
Bureau,	M'Laughlin,
Cone,	Scofield,
Cooper,	Sharp,
Curry,	Smith,
Dillon,	Price,
Elliott,	Wood and
Foos,	Kirker, (Speaker.)
Irwin,	

Those who voted in the negative are,

Messrs. Abbot and Barrere.

The managers accompanied by the house of representatives retired.

The respondent with his counsel also retired.

Mr. Bigger submitted a motion which was addressed to the speaker and read at the clerk's table, as follows:

"*Resolved*, That the managers be ruled to put in their replication on Wednesday next at ten o'clock."

A motion was made to amend the said motion, by striking out therefrom the word "Wednesday," and inserting in lieu thereof the word "Tuesday."

A division of the question being called for,

The question was first taken on striking out the word "Wednesday."

And determined in the affirmative—yeas 13—nays 10.

Those who voted in the affirmative are,

Messrs. Abbot, Barrere, Bryan, Dillon, Kinney, M'Arthur, M'Connell, M'Laughlin, Sharp, Smith, Price Wood and Kirker, (Speaker.)

Those who voted in the negative are,

Messrs. Bigger, Burton, Bureau, Cone, Cooper, Curry, Elliott, Foos, Irwin and Scofield.

Several motions were then made to fill up the blank as follows:

"Tuesday the 17th."
"Saturday."
"Friday."
"Thursday."
"Tuesday."

The question, agreeable to the rules of the senate, was taken on the motion to fill up the blank with "Tuesday the 17th."

And it passed in the negative—yeas 6—nays 17.

Those who voted in the affirmative are,

Messrs. Bryan, Burton, Dillon, M'Arthur, M'Connell and M'Laughlin,

Those who voted in the negative are,

Messrs. Abbot, Barrere, Bigger, Bureau, Cone, Cooper, Curry, Elliott, Foos, Irwin, Kinney, Scofield, Sharp, Smith, Price, Wood and Kirker, (Speaker.)

The question was then taken on filling the blank with the word "Saturday."

And it was determined in the affirmative—yeas 15—nays 8.

Those who voted in the affirmative are,

Messrs. Barrere, Bryan, Burton, Dillon, Elliott, Irwin, Kinney, M'Arthur, M'Connell, M'Laughlin, Sharp, Smith, Price, Wood and Kirker, (Speaker.)

Those who voted in the negative are,

Messrs. Abbot, Bigger, Bureau, Cone, Cooper, Curry, Foos and Scofield.

On the question to agree to the motion as amended, the yeas and nays being taken.

It was determined in the affirmative—yeas 18—nays 5.

Those who voted in the affirmative are,

Messrs. Abbot, Barrere, Bryan, Burton, Dillon, Elliott, Foos, Irwin, Kinney, M'Arthur, M'Connell, M'Laughlin, Scofield, Sharp, Smith, Price, Wood and Kirker, (Speaker.)

Those who voted in the negative are,

Messrs. Bigger, Bureau, Cone, Cooper and Curry,

The managers accompanied by the house of representatives, and also the respondent with his counsel attended, and was informed by the speaker of the result.

On motion,

Ordered, That one hundred copies of the answer of the respondent be printed.

Adjourned until next Saturday morning at 10 o'clock.

HIGH COURT OF IMPEACHMENTS.

SATURDAY, January 14.

The state of Ohio vs. *George Tod.*

The court was opened by proclamation.

Ordered, That the clerk notify the house of representatives that the senate, in the capacity of a high court of impeachment, is ready to proceed further on the trial of the impeachment of George Tod, one of the judges of the supreme court, in the senate chamber, which chamber is prepared with accommodation for the house of representatives.

Agreeably to notice the managers, accompanied by the house of representatives, attended, and the managers took their seats within the bar.

The respondent with his counsel, to-wit: Mr. Creighton, Mr. Cass, and Mr. Brush also attended, and took their seats within the bar.

The speaker informed the managers that the senate were ready to receive the replication of the house of representatives, to the plea and answer of George Tod, one of the judges of the supreme court, to the article of impeachment exhibited against him by the house of representatives, in their name and in the name of all the people of Ohio:

Whereupon,

Mr. Morris, the chairman of the managers, rose and asked permission to read the replication, which being granted, the replication was read by Mr. Morris and Mr. Campbell, as follows:

:::::::::

THE house of representatives have considered the plea and answer of the said George Tod, to the article of impeachment exhibited against him, in the name of themselves and all the people of the state of Ohio, and observe, that the said George Tod hath endeavored to cover the high crime and misdemeanor with which he stands charged, by evasive insinuations, and misrepresentations of the constitution and laws of this state, and also by misrepresentations of matters of fact; and the house of representatives say, that the said George Tod did commit the act with which he stands charged in the said article of impeachment. And the house of representatives, in full confidence of the truth of their accusation, and of the necessity of bringing the said George Tod to a speedy and exemplary punishment, and not doubting but the senate will use all becoming diligence to do justice to the proceedings of the house of representatives, and to vindicate the honor of the state, do aver their charge against him, the said George Tod, to be true, and that the said George Tod is guilty of a high crime and misdemeanor, as he stands charged in the said article of impeachment, and that the house of representatives will be ready to prove and maintain their charge against him, at such time and place as the senate shall appoint for that purpose.

And the house of representatives, in more especially replying to the answer of the said George Tod, think it not necessary that they should stop to examine all the positions, hypothesis, deductions and insinuations presented by the respondent's answer, but proceed to the examination of the main question, viz. Have the judges of the supreme court a right to set aside an act of the legislature, under pretence that the same is unconstitutional? To determine this question, it will be necessary to ascertain,

First—Whether this power is expressly given by the constitution of this state?

If it is, it will only be considered necessary to point to the clause containing this grant, and the question is decided. This, it is believed, will not be contended for by the most strenuous advocates of judicial power: It seems not to be contended for by the respondent himself, and may therefore be assumed as an undeniable position, that no such power is given by any of the express provisions of the constitution.

Secondly—If then this power is not expressly given by the constitution, it must arise by necessary implication, or the judges have no authority to exercise it.

In the examination of this subject, the first enquiry which presents itself is, whether to set aside an act of the legislature, is an exercise of legislative or judicial power? And this leads us to an examination of the several powers delegated by the constitution to the different branches of the government.

In the first section, first article of the constitution, it is provided, that "the legislative authority of this state, *shall* be vested in a general assembly, which shall consist of a senate and house of representatives, both to be elected by the people." The words "legislative authority," seem to have been considered by the framers of the constitution, as fully understood at the time of its adoption, and to imply, necessarily, the power of making laws. This is manifest by the whole tenor of the constitution, and more particularly by referring to the eighteenth section of the same article, where it is declared, "that the style of the laws of this state shall be," "*Be it enacted by the general assembly of the state of Ohio.*" It may also be observed, that the terms used, *had been* completely defined in the constitution of the United States, referred to in the preamble of our state constitution. In the first article, first section of that instrument, nearly the same words are used as in the first article, first section of the state constitution. At the time of the adoption of the constitution of the United States, the extent of the terms, 'legislative powers,' used in that instrument, seems not to have been so fully understood, or so completely defined, as at the time of the adoption of the state constitution: and the framers of that instrument, in establishing the fundamental principles of the government upon a sure and solid base, were cautious in defining those terms. In the eigthth section, first article, the powers granted to the legislative department of the government, are specifically defined; and in the section next preceding, the manner in which those powers shall be exercised is also pointed out. In the seventeenth section, first article of the state csnstitution, the manner in which legislative powers shall be exercised, is clearly pointed out; but the precise extent of those powers is not defined in that instrument, nor was such a definition necessary, as the terms, 'legislative authority,' had, at that time, received a known and definite signification, being fully understood to be the power of making all laws ne-

cessary to carry into effect the power delegated to each department of the government by that instrument.

From these considerations it appears, that the constitution has vested in the legislature, the power of making all laws necessary and proper for carrying into effect the specific powers delegated by the constitution to the different branches of the government, and each and every department thereof.

The next enquiry is as to the powers delegated to the judicial department, which is contained in the third article of the constitution. It cannot escape observation, that no jurisdiction whatever is given to the judicial courts by the constitution—that the only authority given by that instrument, is the power to receive jurisdiction, "in such cases as shall be directed by law." This remark is applicable to every court within the state, as well superior as inferior, as will appear by a reference to sections two, three, four, five and eleven, of the last mentioned article.

In this respect, our constitution is entirely different from that of the United States. In the latter instrument, the jurisdiction of the judicial courts is given and defined, by the constitution itself; while the power of giving and defining the jurisdiction of courts is, under our constitution, confided to the legislative department.

From this examination of the powers granted by the constitution to the legislative and judicial departments, it appears manifest, that to declare what *shall* or *shall not* be law, is an exercise of legislative, and not of judicial power. If this be the case, we may conclude that the "general assembly" alone have the right to exercise it.

It is contended by the advocates of judicial power, that it is the province of courts to decide what the *law is*, and that therefore, the courts possess the power of setting aside and declaring void acts of the legislature.

The position is not admitted in the latitude contended for, nor are the deductions drawn from it admitted. The idea is borrowed from the English system of jurisprudence and has never been attempted to be carried to the extent in that country, which is contended for in this—on the contrary, the power of the judiciary to set aside an act of parliament, under any pretence whatever, is entirely disclaimed by the best theoretical writers, and has never been attempted in practice. The authority of the courts to decide "*what the law is*," in that country, extends only to

the "*lex non scripta*," or "unwritten laws," and the construction or exposition of legislative acts—which acts they are bound to decide, according to the intention of the legislature. If then, in that country, from which the idea is borrowed, no power exists in the judiciary, of setting aside an act of the legislature, it is not perceived, how such authority can possibly exist in this country, where the powers of the judiciary are defined and restrained by the constitution and laws, within narrow limits.

It is the province of the legislature to make laws—and it is the province of the courts to expound those laws agreeable to the intentions of the makers, and apply them to particular cases. This exposition of the laws, is what is understood by the terms, "to decide what the law is," when applied to legislative acts. Hence it follows, that "to decide what the law is," gives no power to the courts, to set aside, annul or make void a legislative act.—The exercise of such a power would be either to repeal or suspend the law. Should an act be passed by the legislature in the manner prescribed by the constitution, and go into operation, any two of the judges might (if they possess this power) at any distant period, set it aside, notwithstanding it had met the approbation of every man in the state; notwithstanding it had been acquiesced in for a number of years, and individual rights, to the amount of many millions of dollars had been adjudicated upon, and settled in pursuance of such act.

Should the office of one of the judges after having given such decision, become vacant, by resignation or otherwise, and a new judge be elected, who entertained a different opinion—if he considered himself bound by the decision of his predecessor, the law would be completely repealed.

If, on the other hand, he should not consider the opinion of his predecessor binding upon him (which is most probable)the decision of the court would revive the law, although some years might have elapsed between the former and the latter decisions.

In this case the first decision of the court would have *suspended the law*, in direct violation of the 9th section, 8th article of the constitution, which provides "that no power of suspending laws shall be exercised, unless by the legislature."

In vain would it be argued, in such a case, that the act

of the legislature was void in its *creation*, and never had any legal existence; the decision of the court which should pronounce it a constitutional act, would be at war with such a declaration, and would shew that it not only had "all the outward forms of a law," but that it had also, "the authority of a law," and was completely obligatory—whether such a power exercised by the court would operate as a repeal or a suspension of the law, is equally an exercise of legislative authority, and not delegated by our constitution or laws to the judicial courts. It would be no less than requiring the aid of the judiciary in every legislative act, and no act of the legislature could become a law, until approved by the judges of the supreme court. This would be, in fact, to erect the judges into legislators, and it would be impossible for the citizens to know or conjecture either what was, or what would be law: this would destroy all confidence in legislative acts, and would be giving to the judges "a practical and real omnipotence;" a power to control every department of the government, while they themselves would be uncontrollable by any human power. Vattel says, "that all well governed nations have perceived the necessity of positive laws." "It would be dangerous to commit the interests of the citizens to the mere arbitrary will of those who ought to distribute justice. The legislature should assist the understanding of the judges, force their prejudices and inclinations, and subject their will to simple, *fixed* and *certain rules*. The best laws are useless, if they are not observed. The nation ought then, to take pains to maintain them, and to cause them to be punctually executed; no measures can be taken in this respect too just, too extensive and too effectual; for on this, in a great measure, depends its happiness, glory and tranquility.

The authority of the judges to set aside an act of the legislature, is attempted to be inferred from the first section, third article of the constitution; it is observed, that "upon the exercise of judicial power, the constitution has imposed no restriction whatever. It has vested, in general and unqualified terms, in certain judges the whole judicial power of the state." It has already been observed, that the constitution has given to the judges no authority whatever, except that of receiving jurisdiction, to be defined by legislative provisions; it would therefore have been entirely useless, for the framers of the constitution to

have imposed restrictions on the exercise of powers not delegated by that instrument. As the power of giving and defining the jurisdiction of courts was confided to the wisdom of the legislative department, so also, the power of extending or restraining that jurisdiction, was necessarily and properly placed in the same hands, to be used according to their sound discretion, and in such manner as to promote the best interests of the people.

The power thus placed in the hands of the legislature, has been constitutionally exercised, in the act entitled "An act, defining the duties of justices of the peace and constables in criminal and civil cases," and in the act, entitled "An act organizing the judicial courts," and the several acts amendatory thereto ; without the exercise of this constitutional power, on the part of the legislature, the courts would have possessed no powers whatever, which could in any manner have been exerci sed.

From this view of the subject, it would appear manifestly absurd, even to the most superficial observer, that the courts should possess the power to set aside the acts of that department of the government, from which their very *existence*, and all their *efficient powers* are derived. We find then, that the constitution has not only, *not* vested in the judges, supreme, sovereign, uncontrollable authority, as contended for by the respondent, but that it was not vested in them any authority whatever, which can in any manner be exercised, but by the aid of legislative provisions—In this point of view the observation is correct, that 'there was no necessity for limiting the powers of the judiciary by the constitution, that authority having been confided to the legislature.'

The authority of the judges is next attempted to be inferred from the general provision of the constitution—

'That all courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law,' &c. It cannot be perceived how this provision of the constitution can warrant the inference attempted to be drawn from it—that the judges are authorised to set aside an act of the legislature. Surely, it will not be contended that the words '*shall have remedy by due course of law*,' authorise the judges to set aside the law, and declare void a legislative act. These words of the constitution are understood to mean, that justice shall be administered in such manner

and such form as are prescribed by the laws of the state, and not as containing within themselves a new grant of powers—to give to this provision the construction contended for, would render it incompatible with, and contrary to the provisions contained in the third article of the constitution—which provides that the several courts therein mentioned shall have jurisdiction, 'in such cases as shall be directed by law.' The legislature have in the act organizing the judicial courts, given that jurisdiction to the courts therein named, according to the provisions of the constitution, and pointed out the manner in which that jurisdiction shall be exercised; but they have no where given the power to the courts of setting aside a legislative act under any pretence whatever. It is not admitted that 'the courts by authority of the constitution alone, have jurisdiction over questions touching the good name of an individual.'—The contrary is manifest from what has already been observed. It is by virtue of the act organizing the judicial courts, and not by virtue of any provision of the constitution that the 'power to hear and determine an action of slander' as well as all other actions is given to the courts, and without which no such power could possibly be exercised. This view of the subject shews that the inferences attempted to be drawn from the general provision of the constitution, are entirely inadmissible. 'Judicial power is created and organized for the very purpose of deciding controversies between citizens of the state, respecting their rights and privileges.' This power is to be exercised under the restrictions imposed by the authority delegating it—the limitations imposed on delegated power are not to be transcended in the exercise of that power. It is not perceived, on a careful examination of the constitution and laws of this state, that the authority claimed and exercised by the respondent in declaring void an act of the legislature, is incident to any power granted to the judicial courts or necessary to its execution—consequently such power cannot pass by implication, and its exercise is an usurpation of authority not to be submitted to by the people of a free and independent state.

It may be further observed, that this power is too important in its nature to be suffered to pass by implication. It is hardly possible to believe that the framers of the constitution intended to vest in the judicial courts a power which would overwhelm every other department of the govern-

ment, and render them subservient to their sovereign will and pleasure—on the contrary it is believed, that if the framers of the constitution had intended to vest, in the judicial courts, a power of such extent and such magnitude, they would have inserted in that instrument an express provision to that effect. The constitution contains no such provision, neither has it left *this* nor any *other power* to pass by implication, and to be exercised or not, as the whim or caprice of different individuals should suggest. The framers of that instrument, in *establishing* "the great and essential principles of liberty and free government," for a people jealous of their rights and liberties, were careful to insert in the instrument itself an express provision against the transgressions of the powers actually delegated. Sec. 28. Art. 8. "To guard against the transgressions of the high powers which we have delegated, we declare that all powers, not hereby delegated, remain with the people." It is urged by the respondent, that this clause gives to the judicial courts, by implication, the power to declare void, acts of the legislature, and that the people have only retained "the power to *alter*, *reform* or *abolish* their government," &c. Never perhaps, was so broad a construction applied to a text so clearly unsusceptible of it. And if any colour for the inference could be found, it must be in the impossibility of finding any other construction, to satisfy the expressions. The first part of the proposition, 'that this clause of the constitution, gives to the judicial courts, by implication, the power to declare void, acts of the legislature," is neither more nor less, than to declare, that the reservation with the people, of powers not delegated, shall in its effects operate to extend the powers of the judiciary —if this be true, then indeed is judicial authority unlimited, and it is not perceived why the same principle would not apply with equal force to every other branch of the government. If this be the case, ours is in fact, a government of unlimited powers, which it is believed was never contemplated by the framers of the constitution, and would appear to be an absurdity too gross to be insisted on. The latter branch of the propositions is considered equally untenable, 'that the people have retained *only* the power to *alter*, *reform* or abolish their government,' &c. It will be found by a reference to the first section, eighth article, that the people have *expressly* retained 'a complete power to alter, reform or abolish their goverment, whenever they may deem it

necessary.' If no other powers are retained by the general reservation of powers, contained in the 28th section, the section itself is a perfect nullity, a mere dead letter and altogether useless. This would be giving a construction to the constitution, which it is believed was never intended by the framers of that instrument, nor ever before imagined by men professing to understand the principles of government. If this construction be correct, what necessity could have existed for making such a reservation? Is not a special reservation of defined powers, equal to a general reservation of the *same* powers? Or does a double reservation render the powers thus reserved more secure to the people? Lastly, would not such a construction render the 28th section of the 8th article entirely inoperative? That such would be the effect is manifest; and therefore such a construction is by no means admissible. This section was undoubtedly intended to prevent the usurpation of powers by any branch or department of the government not delegated to it by the express provision of the constitution. Such is the natural import of the terms used; and such was undoubtedly the intention of the framers of that instrument.

If then the constitution has not expressly given to the judicial courts the power to set aside or declare void the acts of the legislature, this section expressly forbids its exercise, and renders it utterly impossible that such power should pass by implication without destroying the constitution itself, and subverting the fundamental principles of the government: From these considerations it appears, that the constitution has not only not vested the power contended for in the judicial courts, either expressly or by implication, but that its exercise is expressly forbidden by that instrument; and consequently the exercise of such powers is a usurpation dangerous to the liberties of the people, and subversive of that very constitution which was intended to preserve those liberties.

A variety of cases have been supposed by the respondent, in his answer, which seem to have been intended rather to shew the *expediency* of vesting in the judicial courts the power to set aside or declare void the acts of the legislature, than to prove that such power is actually vested in them, by the constitution; and this brings us to the question—Whether it would have been expedient in the formation of our constitution, to have vested in the judicial

courts this uncontrouled authority? The first objection which presents itself, in the very threshold of the question, is—that such a power vested in the judicial courts, would be (as before observed) to erect the judges into legislators, and would blend the legislative and judicial departments of the government. This union of power would tend to subvert the fundamental principles of our government. It has become an axiom in the science of government, that the separation of the legislative and judicial departments of goverment, is necessary to the preservation of public liberty. The second objection is, that the judges are not responsible directly to the people, for the violation of the powers delegated to them; and no principle seems to be better understood, and none is more necessary than that the responsibility of every department of government ought to be proportionate to the magnitude of the powers with which it is entrusted; this power placed in the hands of the judges, would enable them to violate the constitution, abridge or destroy the liberties of the people, and trample under foot their laws, while they would be responsible to no earthly tribunal. The third objection is, one which has already been hinted at, that it would be impossible for the citizens to know or conjecture, either what is, or what would be law; although an act of the legislature should have been approved of by the judges of the supreme court, yet whenever their seats should become vacant, and others be elected to supply their places, these latter judges might declare that very act unconstitutional, and therefore null and void; or if an act had been declared void by one set of judges, others might declare it valid, and thereby give to it all the form and effect of a law.—This would render all laws dependent on the arbitrary will, whim or caprice of the judges, and would necessarily introduce perfect anarchy and confusion into the government; destroy its fundamental principles,& subvert every principle of public liberty. Objections of this kind might be multiplied with as much ease, as there would be difficulty in answering them.

The only argument, meriting consideration, which has been, or which (it is believed) can be offered, in favor of placing this power in the hands of the judges, is—that this power is necessary as a *check* upon the legislative department. In answer to which, it may be observed, that each branch of the government has sufficient checks with-

in itself, without giving to any department, the power to check and control every other. That branch of the government on which checks are most necessary, and on which the greatest have been imposed by our constitution, is the *deliberative* or *legislative* branch: each branch of the legislature has a check upon the other, and the people have a check upon both. Every law which they pass, and every act which they perform, is published, promulgated and submitted to the inspection of the people. If then, it were possible that the legislature would become so corrupt as to violate their sacred oaths, attempt to break down the barriers imposed on them by the constitution, and sport with the liberties of the people *they* have a *sure* and *sufficient check* " by means of the annual elections;" and it would appear absurd at first view, that those liberties should be committed to the *safe* keeping of judges appointed by that very legislature who are supposed to be so very corrupt, and so degraded as to violate their sacred trust.—It has never been the policy of any wise government to impose unnecessary restrictions on the *execution* of laws, it is on *deliberations* that *checks* are most necessary; and to give to any set of men, or any department of government, the power to check or to control the *execution* of laws, and preventing their going into operation, after having been enacted by constitutional authority, would destroy all the energies of government, and subject the interests of the citizens, and even the government itself, " to the arbitrary will of those who ought to distribute justice." Such a principle would be dangerous in theory and destructive in practice.

Among other hypothetical cases stated by the respondent, is the following: Suppose the legislature should pass an act to restrict the right of *suffrage?*—The first answer is, that *this* as well as all other suppositions, founded on the supposed corruption of the legislature, is in itself *unconstitutional;* it is a gross insult offered to the legislative department of our government—it is not warranted by the constitution. The second answer is, that such an act would be entirely inefficient and inoperative: the people would assemble in the usual manner, at the time stated in the constitution, and would elect their representatives and other officers of the government, and by this their conduct, would declare void such legislative act. If any justification of

their conduct were necessary, it would be found in the 28th section, 8th article of the constitution.

The third answer is, that such an infraction of the constitution could not be remedied by judicial interposition. The act would have gone into operation, and must necessarily have been executed before any question under it could be brought judicially before the court, & one or more years might elapse, before any final determination could be had. Neither is it believed necessary to commit the interests of the people, in such case, to the safe keeping of the judges, or to render them subservient to the slow and tardy process of judicial proceedings. It appears to be a plain principle, founded in common sense, illustrated by common practice, and essential to the nature of compacts; that where resort can be had to no tribunal superior to the authority of the parties, the parties themselves must be the rightful judges whether the bargain made has been pursued or violated. The constitution of this state was formed by the sanction of the people, given in their sovereign capacity.

It adds to the stability and dignity, as well as to the authority of the constitution, that it rests upon this legitimate and solid foundation.—The people then being the parties to the constitutional compact, and in their sovereign capacity, it follows of necessity that there could be no tribunal above their authority to decide whether the compact made by them be violated; and consequently that as the parties to it, they must themselves decide such questions as are of sufficient magnitude to require their interposition.

"If there arises any disputes in a state, on the fundamental laws on the public administration, or on the prerogatives of the different powers of which it is composed, it is the business of the *nation alone* to judge and determine them, according to its political constitution."

It is deemed unnecessary to examine, separately, each of the hypothesis of the respondent. It is believed that the observations already made, furnish sufficient objections to the expediency of placing such *unlimited* powers in the judicial courts.

The remaining question is, whether the *usurpation*, by the respondent, of powers not delegated to him, by our constitution or laws is an impeachable offence?

It is urged by the respondent, that his conduct on the trial of the cause of M'Faddon against Rutherford, in de-

claring void the act of the general assembly, entitled "An act, defining the duties of justices of the peace and constables, in criminal and civil cases," did not originate from any impure or corrupt motives, and therefore that such conduct is not an impeachable offence. In answer to which, it may be observed, that it is impossible, on almost every occasion, to ascertain the *thoughts* and *motives* of an individual, in the commission of any particular act, except from the act itself. If it were necessary to prove the intention or motives of one who had violated the laws, by other evidence, there is hardly a case in which the most notorious culprit could be brought to justice. Whenever the law is violated, common reason infers th[illegible] intention from the act, and attaches to it the crime; [illegible] most cases it is as unnecessary, as it would be impo[illegible] to prove the intention by any other evidence.

It is not believed necessary to enquire [illegible] motives or intention of the respondent.

The only legitimate and proper enquiry [illegible] the constitution or laws of this state been essentially violated by the respondent, in the exercise of power not delegated to him?

In the examination of this question, it will not be contended, that the *mere error of opinion* in a judge, on a subject legally and constitutionally before him, could be imputed to him as a crime. Such a principle is entirely disclaimed.

A wide distinction is perceived to exist between a mere error of opinion, and a *usurpation* by the court of extraordinary powers, not only not delegated to it by the constitution or laws, but expressly forbidden. The case now under consideration is of the latter description.

Every exercise, by any branch or department of the government, of powers not delegated to it by the constitution, is an *usurpation*, and consequently an infraction of that instrument.

Vattle on this subject observes, that "to attack the constitution of a state, and violate its laws, is a *capital crime against society*, and if those guilty of it are invested with authority, they add to this crime a perfidious abuse of the power with which they are intrusted."

Never, perhaps, was an observation more just, or more directly applicable.

The constitution of this state was formed and adopted

to secure to the people the unalienable rights of freemen, and to prevent the violation of those rights, by those to whom they delegated certain trusts. And the theory of such government must be, that every branch and department of the government is in some way responsible, for an infraction of the powers with which it is intrusted.—Consequently the judges, as well as other officers, are responsible for violations of the constitution.—On any other hypothesis, the delegation of judicial power would annul the authority delegating it; and the acquiescence of the legislature and the people, in usurped powers, would subvert forever, and beyond the possible reach of any rightful remedy, the very constitution intended to prevent those violations.

It is not perceived that the offence, with which the respondent stands charged, is the less reprehensible because committed by "a public officer." On the contrary, it adds to the violation of the constitution and laws of the state, "a perfidious abuse of power," the more dangerous, in proportion to the elevated dignity of his station—and, therefore, calls more loudly and more imperiously for the interposition of constitutional authority.—Neither is it perceived, that any other course could have been adopted, than that now pursued, to redress the injury sustained, and preserve the honor and dignity of the state.—The house of representatives cannot but perceive, in the conduct of the respondent, as admitted in his answer, the most palpable and alarming infractions of the constitution and laws of this state. Neither can they fail to perceive, that the exercise of such powers by the judicial courts, as are contended for by the respondent, would tend to degrade every branch of the government, to break down all the barriers of the constitution, destroy the liberties of the people, and render them subservient to arbitrary and uncontrollable power—a power which despots only possess.

Against the recognation of such principles, and the exercise of powers, so dangerous to the state and destructive to liberty, the house of representatives feel it their indispensable duty to enter their solemn protest.

With these observations, and under a firm conviction of the justice of this prosecution, they submit their cause with cheerfulness to this honorable court, fully persuaded that its decision will vindicate and preserve the honor of the

state, give dignity and stability to our political institutions, and tranquility to the public.

ALEXANDER CAMPBELL,
Speaker to the house of representatives.
TH: S. HINDE,
Clerk to the house of representatives.

January 14, 1809.

And the replication was filed.

The respondent rose and submitted the following motion, which was reduced to writing, addressed to the speaker, and read at the clerk's table: "George Tod moves this honorable court, to reconsider its decision, in overruling his motion, for the admission of Wm. Sprigg, esq. as additional counsel in his defence, and to admit him."

This motion was supported by the respondent, and Mr. Creighton and Mr. Brush, two of his counsel, and was opposed by Mr. Morris and Mr. Campbell, on behalf of the managers.

And the question being taken upon the motion,

It passed in the negative—yeas 8—nays 16.

Those who voted in the affirmative are,

Messrs. Abbot, Bureau, Cone, Cooper, Foos, Massie, Scofield and Kirker, (Speaker.)

Those who voted in the negative are,

Messrs. Barrere, Bigger, Bryan, Burton, Curry, Dillon, Elliott, Irwin, Kinney, M'Arthur, M'Connell, M'Laughlin, Sharp, Smith, Price, and Wood.

The speaker enquired of the managers whether they were now ready to proceed to the trial, who each replied in the affirmative.

The court adjourned till half past two o'clock.

HIGH COURT OF IMPEACHMENTS.

Half past two o'clock SATURDAY, January 14.

The state of Ohio vs. *George Tod.*

The court met pursuant to adjournment, and being opened by proclamation.

Ordered, That the clerk give notice to the house of representatives, that the senate is ready to proceed further on the trial of the impeachment of George Tod, one of the judges of the supreme court, in the senate chamber, which chamber is prepared with accommodations for the reception of the house of representatives.

The managers, accompanied by the house of representatives attended, and the managers took their seats within the bar.

The respondent with his counsel also attended, and took their seats within the bar.

Proclamation was made to keep silence, and also as follows:

"O YES! O YES! O YES!

Whereas a charge of a high crime and misdemeanor hath been exhibited by the house of representatives, in the name of themselves and of all the people of the state of Ohio, against George Tod, one of the judges of the supreme court, all persons concerned are to take notice, that he now stands upon his trial, and they may come forth in order to make good the said charge."

The speaker informed the managers, that they were at liberty to proceed in support of the article of impeachment exhibited; and on the request of Mr. Morris, Mr. Hough was affirmed and in part examined, and produced his docket, in the case M'Faddon vs. Ruthefrord, which was read:

Whereupon,

Mr. Brush, on behalf of the respondent rose and submitted the following motion, which was reduced to writing, addressed to the speaker, and read at the clerk's table.

"The counsel for the honorable George Tod, moves this honorable court to overrule the testimony, read from the docket of Mr. Justice Hough, so far as it relates to

the issuing and return of a certiorari, by which that cause was removed to the court of common pleas."

This motion was supported by the respondent, and Mr. Brush, Mr. Creighton and Mr. Cass, his counsel, and opposed by Mr. Morris and Mr. Campbell, on behalf of the managers.

And the question being taken on the motion,

It was unanimously determined in the affirmative—yeas 24.

Those who voted are,

Messrs. Abbot, Barrere, Bigger, Bryan, Burton, Bureau, Cone, Cooper, Curry, Dillon, Elliott, Foos, Irwin, Kinney, M'Arthur, Massie, M'Connell, M'Laughlin, Scofield, Sharp, Smith, Price, Wood and Kirker, (Speaker.)

Mr. Hough was further examined and cross examined in the usual form.

Mr. Creighton gave notice that on the trial of this cause they will introduce and read the journal of the house of representatives, in the year 1806, and the journal of the senate, while the bill extending the jurisdiction of justices of the peace, was pending before the senate.

Ordered, That one hundred copies of the replication to the plea and answer of the respondent, be printed for the use of the senate.

The court adjourned to eleven o'clock next Monday morning.

HIGH COURT OF IMPEACHMENTS.

MONDAY, January 16.

The state of Ohio vs. *George Tod.*

The court was opened by proclamation.

Ordered, That the clerk give notice to the house of re-

presentatives, that the senate is in their public chamber, and ready to proceed further on the trial of the impeachment of George Tod, one of the judges of the supreme court of this state.

The managers accompanied by the house of representatives attended and the managers took their seats within the bar.

The respondent with his counsel also attended and took their seats within the bar.

At the request of Mr. Brush, counsel for the respondent, the hon. John Bigger was sworn, examined and cross-examined standing in his place.

Mr. Brush offered to read as evidence in this cause a copy of a record of the Mason district court, in the commonwealth of Kentucky, which had not been certified under the official seal of the clerk thereof:

Whereupon,

Mr. Morris, on behalf of the managers, rose and submitted the following motion:

The respondent's counsel, offerred in evidence, a paper purporting to be a record of the Washington district court, of the commonwealth of Kentucky, the managers object to its admission as evidence for the reasons following, to-wit:

1st. That it has no bearing on the question now under consideration.

2d. That it is not officially certified.

3rd. That the managers have not had notice that such a paper would be produced.

4th. That the paper offered is not the copy of a record."

And the question being taken on the motion to reject the evidence.

It was determined in the affirmative—yeas 23—nays 1.

Those who voted in the affirmative are,

Messrs. Abbot, Bigger, Bryan, Burton, Bureau, Cone, Cooper, Curry, Dillon, Elliott, Foos, Irwin, Kinney, Massie, M'Arthur, M'Connell, M'Laughlin, Scofield, Sharp, Smith, Price, Wood and Kirker, (Speaker.)

The vote in the negative was, Mr. Barrere.

The speaker informed the managers that they might now proceed to substantiate their charges.

Mr. Morris opened the cause and was followed by Mr. Monett and Mr. Looker, two of the other managers.

The court adjourned to ten o'clock to-morrow morning.

HIGH COURT OF IMPEACHMENTS.

TUESDAY, January 17.

The State of Ohio vs. George Tod.

The court was opened by proclamation.

Ordered, That the clerk give notice to the house of representatives, that the senate is in their public chamber and ready to proceed further on the trial of the impeachment of George Tod, one of the judges of the supreme court of this state.

The managers accompanied by the house of representatives attended.

The respondent with his counsel also attended.

Mr. Brush on behalf of the respondent opened his defence and was followed by Mr. Creighton.

The court adjourned until ten o'clock to-morrow morning.

HIGH COURT OF IMPEACHMENTS.

WEDNESDAY, January 18.

The state of Ohio vs. George Tod.

The court was opened by proclamation.

Ordered, That the clerk give notice to the house of representative, that the senate is in their public chamber and ready to proceed further on the trial of the impeachment

of George Tod, one of the judges of the supreme court of this state.

The managers accompanied by the house of representatives attended.

The respondent with his counsel also attended.

Mr. Creighton continued his observations in the respondent's defence.

The court adjourned to three o'clock this afternoon.

HIGH COURT OF IMPEACHMENTS.

Three o'clock, P. M.—Wednesday, January 18.

The state of Ohio vs. George Tod.

The court was opened by proclamation.

Ordered, That the clerk give notice to the house of representatives, that the senate is in their public chamber and ready to proceed further on the trial of the impeachment of George Tod, one of the judges of the supreme court of this state.

The managers accompanied by the house of representatives attended.

The respondent with his counsel also attended.

Mr. Creighton continued and concluded his observations in the respondent's defence.

The court adjourned until half past nine o'clock to-morrow morning.

HIGH COURT OF IMPEACHMENTS.

Thursday, January 19.

The state of Ohio vs. George Tod.

The court was opened by proclamation.

Ordered, That the clerk give notice to the house of representatives, that the senate is in their public chamber and ready to proceed further on the trial of the impeachment

of George Tod, one of the judges of the supreme court of this state.

The managers accompanied by the house of representatives attended.

The respondent with his counsel also attended.

Mr. Cass, in behalf of the respondent, proceeded in and concluded his defence.

Mr. Pritchard, in behalf of the managers, proceeded to reply to the arguments advanced by the respondent's counsel, and in support of the article of impeachment against him.

Mr. Cass, in behalf of the respondent, rose and requested permission to state one point, which had been omitted by him in the respondent's defence, which being acquiesced in by the managers and the court, Mr. Cass proceeded to state the same to the court.

Mr. Looker, in behalf of the managers, proceeded in replying to the arguments advanced by the respondent's counsel, and in support of the article of impeachment, in which he was followed by Mr. Campbell and Mr. Morris, two of the other managers.

The court adjourned to ten o'clock to-morrow morning.

HIGH COURT OF IMPEACHMENTS.

Friday, January 20.

The state of Ohio vs. George Tod.

The court was opened by proclamation.

The managers accompanied by the house of representatives attended.

The respondent with his counsel also attended.

The following agreement was entered into between the respondent and the managers in open court, to-wit:

It is agreed between the respondent and the managers as follows: The said respondent waves all exceptions to the article of impeachment against him by the house of representatives and the managers on their part agrees that the Docket of Justice Hough, so far as it relates to the confession of judgment in the suit, M'Faddon vs. Rutherford, shall not be considered as evidence in the cause that not

being made a point in the pleadings before the supreme court."

Mr. Morris, in behalf of the managers continued his observations in support of the impeachment and in reply to the arguments advanced by the respondent's counsel, in which he was followed by Mr. Menett and Mr. Campbell, two of the other managers.

A few remarks were submitted by the respondent and Mr. Creighton, one of his counsel on his behalf, and the arguments were closed by Mr. Morris, in behalf of the managers.

The clerk took the opinion of the members of the court respectively, in the form following:

Mr. —— how say you is the respondent, George Tod guilty or not guilty, as charged in the article of impeachment.

Those who pronounced guilty are,

Messrs. Abbot, Barrere, Bryan, Curry, Dillon, Elliott, Irwin, M'Arthur, M'Connell, M'Laughlin, Sharp, Smith, Price, Wood and Kirker, (Speaker.)

Those who pronounced not guilty are,

Messrs. Bigger, Burton, Bureau, Cone, Cooper, Foos, Kinney, Massie and Scofield,

Whereupon,

The speaker declared that George Tod, one of the judges of the supreme court, is acquitted of the charge contained in the article of impeachment, exhibited against him by the house of representatives.

The court adjourned without day.

COPY. ATTEST, THOMAS SCOTT, *Clerk.*

ERRATA.

In the title page of the Journal of the Senate, for "*Sixth* General Assembly," read "*Seventh* General Assembly—" Also, for Monday, December "*Seventh*," read "Monday December *Fifth*."