

Chapter LXXIII.

IMPEACHMENT AND TRIAL OF JAMES H. PECK.

1. Preliminary investigation by the House. Sections 2364–2366.
 2. The impeachment carried to the Senate. Section 2367.
 3. The articles and the managers. Sections 2368–2370.
 4. Writ of summons and appearance of respondent. Section 2371.
 5. Rules for the trial. Section 2372.
 6. Answer of the respondent. Sections 2373, 2374.
 7. Replication of the House. Section 2375.
 8. Presentation of evidence. Section 2376.
 9. Attendance of the House during trial. Section 2377.
 10. Final arguments. Section 2378.
 11. What are impeachable offenses. Sections 2379–2382.
 12. Final decision. Section 2383.
 13. Report of trial to the House. Section 2384.
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2364. The impeachment and trial of James H. Peck, United States judge for the district of Missouri.

The impeachment proceedings in the case of Judge Peck were set in motion by a memorial.

The investigation into the conduct of Judge Peck was revived by referring to a committee a memorial presented in a former Congress.

Form of memorial praying for an investigation into the conduct of Judge Peck.

The House decided formally to investigate the conduct of Judge Peck only after the Judiciary Committee had examined the memorial.

On December 8, 1826,¹ Mr. John Scott, of Missouri, presented a memorial of Luke Edward Lawless, for an inquiry into the official conduct of James H. Peck, district judge of the United States for the district of Missouri, in relation to certain proceedings on an attachment for contempt had by said judge against said Lawless. This memorial was referred to the Committee on the Judiciary. On February 15, 1827,² the House ordered the committee discharged from the consideration of the memorial, and gave leave to the memorialist to withdraw the same.

On December 29, 1828,³ on motion of Mr. George McDuffie, of South Carolina, it was

¹ Second session Nineteenth Congress, House Journal, p. 32.

² Journal, p. 300.

³ Second session Twentieth Congress, House Journal, p. 101.

Ordered, That the memorial of Luke Edward Lawless, presented on the 8th December, 1826, be referred to the Committee on the Judiciary.

No report was made at this session.

On December 15, 1829,¹ on motion of Mr. McDuffie, it was

Ordered, That the memorial of Luke Edward Lawless, presented on the 8th December, 1826, praying for impeachment of John H. Peck, judge of the United States court in the State of Missouri, be referred to the Committee on the Judiciary.

This memorial² was addressed as follows:

To the honorable the House of Representatives of the United States:

The petition of Luke Edward Lawless, a citizen of the State of Missouri, and of the United States, respectfully showeth:

That, on the 30th day of March, in the present year, 1826, there appeared in the Republican, a newspaper printed in the city of St. Louis, State of Missouri, an article purporting to be the final decree or opinion of the judge of the district court of the United States for the district of Missouri, in the cause in which the widow and heirs of Antoine Soulard were plaintiffs, and the United States defendant, etc.

The memorial goes on to set forth that an appeal had already been taken to the Supreme Court of the United States when this final decree was published; that the petitioner wrote a letter, which was published in a St. Louis newspaper, setting forth in courteous and decorous language the errors of fact and law which he conceived to exist in the decree. This publication, as petitioner conceived, was meritorious rather than censurable, since the land titles of a large district were affected adversely by the decree, and speculators were taking advantage of this fact. The petition goes on to set forth that he was, for this publication, punished by Judge Peck for contempt. In conclusion the memorialist says:

Having thus submitted to your honorable body the facts of his case, and the evidence in support thereof, your petitioner begs leave to observe that it appears from those facts:

First. That the said James H. Peck has, in his capacity of judge of a district court of the United States, been guilty of usurping a power which the laws of the land did not give him.

Second. That said James H. Peck has exercised his power, be the same usurped or legitimate, in the case of your petitioner, in a manner cruel, vindictive, and unjust.

Wherefore, and inasmuch as the said James H. Peck has not only outraged and oppressed your petitioner as an individual citizen, but, in your petitioner's person, has violated the most sacred and undoubted rights of the inhabitants of these United States, namely, the liberty of speech and of the press, and the right of trial by jury, your petitioner prays that the conduct and proceedings in this behalf, of said Judge Peck, may be inquired into by your honorable body, and such decision made therein as to your wisdom and justice shall seem proper.

And your petitioner, as in duty bound, will pray.

LUKE EDWARD LAWLESS.

ST. LOUIS, MO., *September 22, 1826.*

Various documents accompanied this memorial, in substantiation of those charges which he offered to prove.

On January 7, 1830,³ Mr. James Buchanan, of Pennsylvania, from the Com-

¹First session Twenty-first Congress, House Journal, p. 39.

²For copy of this memorial in full see "Report of the trial of James H. Peck," published in Boston, in 1833, by Hilliard Gray & Co. This publication has the proceedings of the trial in full. The Debates of Congress give them in a very fragmentary form.

³House Journal, p. 138.

mittee on the Judiciary, reported the following resolution, which was agreed to by the House:

Resolved, That the Committee on the Judiciary be authorized to send for persons and papers in the case of the charge of official misconduct against James H. Peck, judge of the district court of Missouri.

2365. Peck's impeachment, continued.

In reporting in favor of impeaching Judge Peck the committee submitted transcripts of testimony.

Following the Chase precedent, the committee refrained from giving their reasons for concluding that Judge Peck should be impeached.

In the investigation of Judge Peck, the respondent cross-examined witnesses, and addressed the committee.

The House declined to print with the evidence in the Peck investigation the memorial or the address of respondent.

The report favoring the impeachment of Judge Peck was committed to the Committee of the Whole House on the state of the Union.

On March 23¹ Mr. Buchanan submitted from that committee the following report:

That, in consequence of the evidence collected by them, in virtue of the powers with which they have been invested by the House, and which is hereunto subjoined, they are of opinion that James H. Peck, judge of the district court of the United States for the district of Missouri, be impeached of high misdemeanors in office.

In presenting the report Mr. Buchanan stated that the committee² deemed it fairest toward the party accused not to report to the House their reasons at length for arriving at the conclusion that he ought to be impeached. In this respect they thought it advisable to follow the precedent which had been established in the case of the impeachment of Judge Chase.

The report contains, however, an abstract of the case of heirs of Antoine Soulard *v.* United States, the opinion of Judge Peck therein, the letter of Mr. Lawless criticising the opinion, and the court records showing the arrest and punishment of the latter. The journal of the committee also accompanies the report. It gives the testimony of Mr. Lawless and others before the committee, and shows that Judge Peck was present in the committee room in person, and cross-examined the witnesses.

Mr. Buchanan moved that the report, with the documents as described and the transcripts of the testimony, be printed. Thereupon Mr. Clement C. Clay, of Alabama, moved to add to the matter to be printed "the memorial of Luke E. Lawless and the address of the judge to the committee." This amendment was disagreed to, and then the original motion of Mr. Buchanan was agreed to.

The report was committed to the Committee of the Whole House on the state of the Union.

¹House Journal, p. 454; Debates, p. 637; House Report No. 325.

²This committee consisted of Messrs. Buchanan, Charles A. Wickliffe, of Kentucky; Henry R. Storrs, of New York; Warren R. Davis, of South Carolina; Thomas T. Bouldin, of Virginia; William W. Ellsworth, of Connecticut, and Edward D. White, of Louisiana.

2366. Peck's impeachment, continued.

Judge Peck, threatened with impeachment, was permitted to make to the House a written or oral argument.

Judge Peck, threatened with impeachment, transmitted to the House a written argument, which was ordered to be read.

In Judge Peck's case the committee proceeded on the theory of an *ex parte* inquiry.

Judge Peck was not permitted to bring witnesses before the House committee, but cross-examined and filed a statement.

In the Peck case the House, with a view to English precedents, discussed the nature of the inquiry preliminary to impeachment.

Form of memorial in which Judge Peck asked leave to state his case to the House.

On April 5¹ the Speaker laid before the House a memorial:

To the honorable the Speaker and Members of the House of Representatives of the United States:

The memorial of James H. Peck, judge of the district court of the United States for the district of Missouri, respectfully represents:

That, by a report of the Committee on the Judiciary, made to your honorable body on the 23d March, 1830, on the petition of Luke E. Lawless, it is proposed that your memorialist be impeached of high misdemeanors in office.

The memorialist goes on to describe the status of the case, and says that in view of the gravity of the proceeding he—

presumes that it will not be displeasing to your honorable body to have a full view of the whole ground of this accusation before you proceed to decide finally on the report of the committee. In England, from which we borrow the process of impeachment, the House of Commons has been willing to receive such information from the party accused before they will vote the impeachment.

The memorialist then cites in support of this assertion the case of Warren Hastings.

The memorialist further asks that he may be permitted to adduce against the *prima facie* impression to his disadvantage arising from the report of the committee the fact that Mr. Lawless's petition had been presented in former Congresses, and that the able men to whom it was referred found no grounds for proceeding.

The petitioner suggests that any method which may be taken to enable him to present "a full exposition of all the facts" will be satisfactory to him, whether by direct address to the House or before a committee.

When the memorial of Mr. Lawless had been referred to the Judiciary Committee, they had notified the present memorialist, Judge Peck, that they would receive "any explanation" which he might think proper to make in reference to the charge. In the brief time allowed he had made such a statement as was possible, although it was inadequate. But when it was handed in, the chairman of the committee did not read it, but proceeded immediately to examine the witnesses.

It is true, also,

continues the memorial—

that your memorialist was permitted to cross-examine, to a certain extent, the witnesses who had been summoned and examined in support of the charge, but this cross-examination was much restricted by

¹House Journal, p. 499; Debates, p. 736; House Report No. 345.

frequent objections, and by the strong desire evinced by the committee to get through the examination at least within the two remaining days of the week; and your memorialist having been more than once admonished that he was there *ex gratia*, felt himself checked and restrained from extending the cross examination to points which seemed to him to belong to the inquiry, so that his having been permitted to be present under such circumstances is rather a disadvantage to him than a benefit, because it gives to the transaction all the semblance of a free and full investigation of the whole case, without the reality. Your memorialist does not make this remark in censure of the honorable committee; on the contrary, considering the proceeding, as they manifestly seemed to do, as being analogous to an inquiry by a grand jury and to be governed by the same rules, your memorialist is sincerely satisfied that it was their purpose to treat him, as, in this view of the subject, they did in fact treat him, with great liberality and indulgence.

But your memorialist submits, with great respect, that the proceeding of the House of Representatives, in inquiring whether they will, or will not, institute an impeachment, is not to be governed by those strict rules which confine a grand jury to *ex parte* evidence. It was not the course pursued by the House of Commons of Great Britain, in the case of Warren Hastings, to which he has referred, and in which the House, before they voted the impeachment, heard not only the defense, but the testimony of his witnesses.

And the memorialist concludes:

Your memorialist, therefore, respectfully prays that your honorable body will receive from him a written exposition of the whole case, embracing both the facts and the law, and give him, also, process to call his witnesses from Missouri in support of his statements, before any discussion or vote shall be taken on the evidence as it is now presented with the report of the committee. * * *

If this prayer can not be granted, his hope and prayer is that your honorable body will, if it meet your own approbation, vote the impeachment at once, without any discussion on that partial evidence which presents a garbled view of the subject, greatly to the prejudice of your memorialist, and that he may have as speedy an opportunity as the nature of the case will allow to exhibit before the tribunal of the Senate and before his country the entire transaction, in all its parts, as it really occurred, being conscious and confident that to insure his acquittal from all censure in the minds of all honorable men accustomed to discussions of this kind, the case requires only to be fully understood.

And in the strong hope that the one or the other of these prayers will be granted, your memorialist, as in duty bound, will ever pray.

JAMES H. PECK.

WASHINGTON CITY, APRIL 5, 1830.

Mr. Henry R. Storrs, of New York, at once moved that the memorial be referred to the Committee of the Whole House on the state of the Union, to which the report of the Judiciary Committee had already been referred.

A debate¹ at once arose as to the propriety of granting the prayer of the petitioner. Mr. Clement C. Clay, of Alabama, said:

As to precedents, there was no uniformity in them on this subject. One high case had been referred to, that of Warren Hastings, and also that of Judge Chase. But the practice in the several States differed from that which had been pursued by the General Government. In his own State (and he hoped he should not be considered as presumptuous in referring to the practice of a State which had so recently been admitted to the Union) the course pursued in cases of impeachment was different and he thought there were many inducements for the House to pursue the practice there adopted. He could not unite in the opinion that the House should proceed precisely as did a grand jury in ordinary cases of indictment. The present case was totally different. A great officer had been accused of a great offense. Did gentlemen suppose, could they think, that when a high officer of the Government was accused by a private individual he must, on the mere *ex parte* testimony of that accuser, be at once impeached? Mr. Clay said he should hesitate much before he could subscribe to such an opinion. He thought the House ought to proceed with very great caution. Merely to accuse was not all that was necessary in

¹Annals, pp. 737, 738.

order to have a judge impeached. Some gentlemen seemed to conceive that the memorial of this petitioner asked that witnesses might be examined at the bar of that House; but it made no such request directly. It only asked this as one alternative—that his witnesses might be heard here, if not elsewhere.

Mr. Buchanan said:

Judge Peck, in that memorial, suggests that the Committee on the Judiciary sent for such witnesses only as had been selected by Mr. Lawless. That is far from being the fact. The committee acted upon higher principles. They were sensible of the high responsibility which they owed, both to this House and to the country, for the correctness of their proceedings; and had, therefore, inquired and ascertained, from the best sources in their power, the names of such witnesses as would be most likely to give an impartial and intelligent statement of the transaction. They had sent for and examined seven witnesses; and he owed it to them to say that, although he had long been in the habit of examining witnesses in courts of justice, he had never observed, on any occasion, more candor or more impartiality than these seven gentlemen had exhibited upon their examination before the committee.

It is true, as the memorial suggests, that, in the case of Warren Hastings, the House of Commons did hear the accused, and did permit him to produce testimony, before they voted an impeachment against him. But this was only a single instance. That course might have been adopted, because Mr. Burke, merely as an individual Member of the House, had risen in his place, and moved the impeachment. Whether he was correct in this conjecture or not, it was certain there had been no case of an impeachment by this House, in which so much indulgence was granted, as had been allowed to the accused upon the present occasion. He was permitted to furnish the committee with a written explanation of his conduct, and his request that he might cross-examine the witnesses was promptly granted.

Mr. Ralph I. Ingersoll, of Connecticut, confessed that this was, in a great measure, a new case to him. The only one that he had ever before witnessed was that in which charges, through a newspaper of this district, had been brought against the Vice-President about three years ago. That officer had presented these charges to the House, as the grand inquest of the nation, and requested an inquiry. A committee had been appointed to investigate them; and, before that committee, a friend of the Vice-President had been permitted to appear and represent him throughout the whole investigation. Witnesses, also, had been examined on the part of the accused. How it had been in the case of Judge Chase, or of Judge Pickering, from New Hampshire, he did not recollect; but he well recollected that witnesses in favor of the Vice-President had been examined, as well as against him, and that his representative had been allowed to be present before the committee through every stage of that examination. The committee at that time took some pains to ascertain what was the proper mode of proceeding, and they became satisfied that the party accused had, in these preliminary proceedings, a right to be thus heard.

Mr. Spencer Pettis, of Missouri, said that the practice in cases of impeachment, so far as regarded the proceedings of this House, was now to be settled; for it was obvious that it had not yet been settled by precedent. Gentlemen had, indeed, spoken of the case of Judge Chase; but that case had no application to the present one as it now stands. Judge Chase did not ask to make his defense before this House, nor did he ask either to cross-examine witnesses on the part of the Government, or to have an examination of his own witnesses. As the present question was not then raised, that case can form no precedent to govern in this instance.

Mr. Pettis also went on to cite the investigations of the conduct of Mr. John C. Calhoun, as Secretary of War, and of Secretary of the Treasury William H. Crawford. In both investigations the accused had been permitted to have witnesses examined

before the committees. Both these gentlemen were charged with high misdemeanors, and the charges had been preferred in times of great political excitement.

Mr. James Strong, of New York, said that, from the little examination he had been able to give to this subject, he had come to the conclusion that the present proceedings should be strictly *ex parte*, rigidly so. It had been said by the gentleman from Massachusetts [Mr. Everett] that the committee had departed somewhat from this line. It was true that they had deviated from it in a slight degree, but the departure was not such as to warrant the House in taking the other step which was now requested. There was a very material difference between hearing the party accused and hearing his witnesses. The Members of the House were not judges to try or to condemn the accused. It was true that the matters in this testimony might not be such as to mix themselves up with party politics; but suppose that it were proposed to impeach a political man of high standing, and that the witnesses were brought to the bar of the House, he put it to every man to say whether the safety of the country did not require that in such cases politics should be thoroughly excluded from that tribunal. And how could this be done but by keeping the proceedings strictly *ex parte*? Complaints had been made that the committee had not reported articles of impeachment; the case had been referred to them for no such purpose; their duty had been simply to ascertain facts. The House did not want even their opinions; it wanted the facts only, and on one side. What the House had to decide was, whether the testimony did or did not contain matter to warrant an impeachment. If it did, then the House would say the party should be impeached, and the next step would be to appoint a committee to frame the articles. These would be reported to the House, and, if they were agreed upon, then managers would be appointed to conduct the trial before the Senate. It struck him that the safest course would be to keep the proceedings as near *ex parte* as possible.

Finally the memorial was ordered to be laid on the table for printing, and was not referred to the Committee of the Whole.

On April 7,¹ Mr. Pettis proposed a resolution which, after modifications, read as follows:

Resolved, That James H. Peck, judge of the district court of the United States for the district of Missouri, be permitted, at any time, until Wednesday next at 12 o'clock, to make to this House any written or oral argument on the law or matters of fact, now in evidence before the House, he may think proper, in answer to the charges preferred against him by Luke E. Lawless, esq., which charges have been reported on by the Committee on the Judiciary.

Mr. William Drayton, of South Carolina, moved to strike out the words "or oral." He said that in making the motion he had no intention of preventing the individual concerned from availing himself of the full benefit of what the resolution proposed to grant to him, but had been influenced by the consideration that, if his exposition should be made in writing all the Members of the House would have an opportunity of examining it; but if made orally it would be impossible that all the Members should distinctly hear it, and, if they did, they would probably not retain the substance of it distinctly in their memories. This was one reason which actuated him. Another was that, in his opinion, ill consequences would be likely to arise

¹ House Journal, p. 513; Debates, p. 746-753.

from the personal appearance of the memorialist before the House. He might aver that a material fact could be established by testimony incorrectly or imperfectly referred to in the report of the committee, and ask leave to introduce it fully. Should his application be rejected, he might regard the permission to be heard as illusory. Should his application be acceded to, they would be drawn into a trial of the cause.

The amendment was disagreed to by the House.

On behalf of the resolution, Mr. Pettis said that he had examined the precedents since 1640 and had found none against the proposed action.

Mr. Buchanan said that he had examined the British precedents, and found that in several cases the party had been admitted to the floor of the House of Commons simply to make an argument on the testimony which had been previously given to the House. This was the utmost extent of the privilege so far as he had examined, except in a single instance—that of Warren Hastings. He should make no objection to a mere permission to make an exposition of the law and an argument upon the facts as they appeared in the testimony already taken.

Mr. William Drayton, of South Carolina, drew a distinction between this House and the House of Commons. This House had no other inquisitorial authority than was expressly delegated to it by the Constitution. The House of Commons, on the other hand, was the “grand inquest” of the nation. It may even supersede the courts in cases of individual misdemeanors, as in the case of Alice Pierce, Sir John Fenwick, etc. British precedents were more likely to mislead than assist. The Constitution simply gives this House power to decide whether the case shall be tried before another body. The House could not itself try the case. Unless it should confine itself to what was termed *ex parte* evidence there would be no bounds to the inquiry.

Mr. Buchanan said his desire was that the House might establish such a precedent as should protect the interests of the accused in all future time. The Judiciary Committee had Judge Chase’s trial before them. The mode of proceeding in that trial they considered as strictly proper and delicate. The committee in that case were directed to report their opinion on the charges against Judge Chase, which had been made on the floor of the House. For the purpose of enabling them to do so they procured all the testimony in their power. This they reported to the House, together with a simple statement of their own opinion upon it—nothing else. And why? He presumed that, as it was a judicial proceeding, they wished to leave every gentleman to decide for himself on the naked testimony. They considered one Member as competent to decide as another. Their report was referred to the Committee of the Whole House on the state of the Union, and there it was discussed. If in this case the Committee of the Whole should concur with the Judiciary Committee in their view of the case, then the House would appoint a committee to draft articles of impeachment. These articles would be considered and adopted by the House. Until after this second decision the accused would not be called upon to answer. As to the course pursued by the Pennsylvania house in a similar case, it had never met his approval.

The House agreed to the resolution proposed by Mr. Pettis without division.

Judge Peck did not avail himself of the permission to come before the House and make an oral statement; but on April 14¹ the Speaker laid before the House a letter from Judge Peck transmitting his “explanation in answer to the charges,” with documents referred to in the answer.

The House decided that the explanation should be read, but after a time the reading was suspended and the statement alone having been ordered printed, it was, with the documents, referred to the Committee of the Whole House on the state of the Union.

2367. Peck’s impeachment, continued.

After consideration in Committee of the Whole, the House concurred in the proposition to impeach Judge Peck.

The impeachment of Judge Peck was only for “high misdemeanors in office.”

Forms and ceremonies of carrying the impeachment of Judge Peck to the Senate.

The impeachment of Judge Peck was carried to the Senate by a committee of two.

After discussing precedents the Senate appointed a committee to consider the message impeaching Judge Peck.

The Blount precedent for requiring bonds of the respondent was discussed adversely in the Peck case.

Mr. Senator Benton was excused from voting on a preliminary question in the Peck impeachment.

On April 21, 22, 23, and 24² the Committee of the Whole House on the state of the Union considered the question of impeachment, the debate being on a resolution proposed, as follows, by Mr. Buchanan:

Resolved, That James H. Peck, judge of the district court of the United States for the district of Missouri, be impeached of high misdemeanors in office.

Mr. Edward Everett, of Massachusetts, moved to amend the resolution by striking all out after the word “*Resolved*” and inserting as follows:

That though, on the evidence now before it, this House does not approve of the conduct of James H. Peck, judge of the district court of the United States for the district of Missouri, in his proceeding by attachment against Luke E. Lawless for alleged contempt of the said court, yet there is not sufficient evidence of evil intent to authorize the House to impeach the said judge of high misdemeanors in office.

This amendment was disagreed to.

The resolution was then agreed to, ayes 113, negative not taken.

The Committee of the Whole then rose and reported the resolution to the House, whereupon the question was put:

Will the House concur with the Committee of the Whole House [on the state of the Union] in the adoption of the said resolution?

and there were ayes 123, nays 49.³

¹House Journal, p. 532; Debates, p. 789; House Report, No. 359.

²House Journal, pp. 558, 560, 564, 565; Debates, pp. 810, 814, 818.

³It was stated later by Mr. Manager Spencer, in his argument to the high court, that this decision was not at all on party lines. (See Report of the trial of James H. Peck, p. 289.)

So the resolution was agreed to.

It was then ¹—

Ordered, That Mr. Buchanan and Mr. Henry R. Storrs, of New York, be appointed a committee to go to the Senate and, at the bar thereof, in the name of the House of Representatives and of all the people of the United States, to impeach James H. Peck, judge of the district court of the United States for the district of Missouri, of high misdemeanors in office, and acquaint the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same.

Ordered, That the committee do demand that the Senate take order for the appearance of the said James H. Peck to answer to said impeachment.

On motion of Mr. Henry R. Storrs, of New York—

Resolved, That a committee be appointed to prepare and report to this House articles of impeachment against James H. Peck, district judge of the United States for the district of Missouri, for high misdemeanors in his said office.

And Mr. Buchanan, Mr. Storrs, of New York; Mr. George McDuffie, of South Carolina; Mr. Ambrose Spencer, of New York, and Mr. Charles A. Wickliffe, of Kentucky, were appointed the said committee.

All of this committee were from among those who had voted in favor of the impeachment.

On April 26 ²—

Ordered, That James H. Peck have leave to withdraw his memorials and the documents which accompanied the same.

On April 26,³ in the Senate Messrs. Buchanan and Storrs, Members of the House of Representatives, with a message from that House, were announced, and, having taken the seats assigned them,

The President⁴ informed them that the Senate was ready to receive any communication they might have to make.

Mr. Buchanan then rose and said:

We are commanded, in the name of the House of Representatives and of all the people of the United States, to impeach James H. Peck, judge of the district court of Missouri, of high misdemeanors in office, and to acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him and make good the same, and we do demand that the Senate take order for the appearance of the said James H. Peck to answer to said impeachment.

Messrs. Buchanan and Storrs, having retired,

Mr. Littleton W. Tazewell, of Virginia, rose and said that in looking over similar cases for the purpose of ascertaining what would be the proper course of proceeding, he discovered that messages, similar in most particulars to the one just received, had been presented to the Senate in three cases. The first was the case of Blount, one of the Members of this body; the next was that of John Pickering, judge of the district court of New Hampshire, and the third was that of Judge Chase. Upon each of these cases there seemed to have been some anxious consideration in order to adopt the course most proper to be pursued. Mr. Tazewell

¹House Journal, pp. 566, 567; Debates, p. 819.

²House Journal, p. 670.

³Senate Journal, p. 269; Debates, pp. 383, 384.

⁴John C. Calhoun, of South Carolina, Vice-President, and President of the Senate.

would state in what the proceedings in these cases differed. The case of Mr. Blount, being the first of the kind that had ever occurred, presented so anomalous a practice that it never could be referred to as a precedent. The other two were consistent with the general principles of law and justice. From these it seems that it had been settled that when the House of Representatives informed the Senate that they were about to present articles of impeachment a select committee was appointed to take the subject into consideration and report what measures were proper to be taken. He would read for the information of the Senate the cases as they occurred.

Mr. Tazewell, having read the precedents in the cases of Blount, Pickering, and Chase, said that as to the precedent in the case of Blount the idea of calling upon an individual to enter into a recognizance to appear at no named time at no given place to answer charges not yet set forth in articles of impeachment was so manifestly contrary to justice that the Senate itself seemed to have abandoned it. Therefore he concluded that the Blount case would not be considered a fit precedent, so he moved the following resolution to the message:

Resolved, That it be referred to a select committee, to consist of three members, to consider and report thereon.

This resolution was agreed to.

The Senate then proceeded to ballot for the committee.

Mr. Thomas H. Benton, of Missouri, asked to be excused from voting on the question, and the question being taken he was excused.

Then the committee were chosen, as follows: Messrs. Tazewell, Samuel Bell, of New Hampshire, and Daniel Webster, of Massachusetts.

On the same day, in the House,¹ Mr. Buchanan reported that, in obedience to the order of the House, they had been to the Senate, and in the name of the House of Representatives and of all the people of the United States had impeached James H. Peck, judge, etc., of high misdemeanors in office; that the committee had acquainted the Senate that the House of Representatives would, in due time, exhibit particular articles of impeachment against the said James H. Peck and make good the same, and that the committee had demanded that the Senate take order for the appearance of the said James H. Peck to answer to the said impeachment.

On April 27² in the Senate, Mr. Tazewell, from the Select Committee appointed on the subject, made the following report; which was concurred in by the Senate:

Whereas the House of Representatives on the 26th of the present month, by two of their members, Messrs. Buchanan and Storrs, of New York, at the bar of the Senate, impeached James H. Peck, judge of the district court of the United States for the district of Missouri, of high misdemeanors in office, and acquainted the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same; and likewise demanded that the Senate take order for the appearance of the said James H. Peck, to answer the said impeachment: Therefore,

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

And the committee further recommended to the Senate that the Secretary of the Senate be directed to notify the House of Representatives of the foregoing resolution.

¹ House Journal, p. 671.

² Senate Journal, p. 271; Debates, p. 385.

Accordingly, after the report had been concurred in, it was

Ordered, That the Secretary notify the House of Representatives accordingly.

On the same day the message was communicated to the House.¹

2368. Peck's impeachment, continued.

The respondent in the Peck impeachment communicated with the Senate as to the trial before articles had been presented.

The article of impeachment against Judge Peck was considered in Committee of the Whole before being agreed to by the House.

All of the committee who framed the article in the Peck case had voted for the impeachment. (Footnote.)

The article in the Peck impeachment appears in the House Journal on the day of its adoption.

The managers of the Peck impeachment were chosen by ballot, a majority vote being required for election.

Instance wherein the Journal recorded the names of the tellers on a vote by ballot.

Form of resolutions providing for carrying to the Senate the article impeaching Judge Peck.

All the managers in the Peck trial were of those who had voted for impeachment.

On April 28² the Vice-President communicated to the Senate two letters from Judge Peck, notifying the Senate of his intention to go to Baltimore, where he should remain some days; and requesting that, in the arrangement of the Senate chamber preparatory to his impeachment, a seat might be assigned him by which he might avoid facing the windows. The letters, having been read, were laid on the table.

On April 29,³ Mr. Buchanan, from the committee appointed for the purpose, reported an article, to be exhibited to the Senate of the United States in behalf of themselves and of all the people of the United States, against Judge Peck, a judge of the district court of the United States for the district of Missouri, in maintenance and support of their impeachment against him. It was laid on the table and directed to be printed.

On April 30,⁴ on motion of Mr. Buchanan,

Ordered, That the article of impeachment against James H. Peck, judge of the district court of the United States for the district of Missouri, be committed to the Committee of the Whole House on the state of the Union.

On May 1,⁵ the article was considered in Committee of the Whole, and, after a verbal amendment, was reported favorably to the House.

And the question was then put:

Will the House adopt the said article, as its article of impeachment against James H. Peck, judge of the district court of the United States for the district of Missouri?

¹ House Journal, pp. 573, 574.

² Senate Journal, p. 272.

³ House Journal, p. 584; Debates, p. 863.

⁴ House Journal, p. 588; Debates, p. 866.

⁵ House Journal, pp. 591–596; Debates, p. 869.

And it passed in the affirmative, without division.

The article ¹ appears in full in the Journal of the House of this date.

On motion of Mr. Buchanan,

Resolved, That five managers be appointed, by ballot, to conduct the impeachment against James H. Peck, judge of the district court of the United States for the district of Missouri, on the part of this House.

The House proceeded to the appointment of five managers, by ballot, when the following gentlemen received a majority of votes, and were appointed, viz: James Buchanan, of Pennsylvania; Henry R. Storrs, of New York; George McDuffie, of South Carolina; Ambrose Spencer, of New York, and Charles Wickliffe, of Kentucky.

The first four were elected on the first ballot. But four ballots were taken before a majority was given for Mr. Wickliffe.

The Journal records that Messrs. William McCoy, of Virginia, Daniel H. Miller, of Pennsylvania, and Robert Desha, of Tennessee, were appointed tellers to examine the ballots on the vote.

The managers were the same as the committee appointed to prepare the article of impeachment; and all had been favorable to the impeachment.

On motion of Mr. Buchanan, it was

Resolved, That the article agreed to by this House, to be exhibited, in the name of themselves and of all the people of the United States, against James H. Peck, in maintenance of their impeachment against him for high misdemeanors in office, be carried to the Senate by the managers appointed to conduct said impeachment.

On motion of Mr. Buchanan, it was

Resolved, That a message be sent to the Senate, to inform them that this House have appointed managers to conduct the impeachment against James H. Peck, judge of the district court of the United States for the district of Missouri, and have directed the said managers to carry to the Senate the article agreed upon by this House, to be exhibited in maintenance of their impeachment against the said James H. Peck, and that the Clerk of this House do go with said message.

2369. Peck's impeachment continued.

The message announcing to the Senate that an article impeaching Judge Peck would be presented gave the names of the managers.

The Senate adopted a rule prescribing ceremonies for receiving as a court the articles impeaching Judge Peck.

Form of oath prescribed for Senators in the Peck trial.

Form of proclamation of the Sergeant-at-Arms when articles of impeachment against Judge Peck were to be presented.

On May 3,² in the Senate, the Clerk of the House delivered this message:

Mr. President, I am directed to inform the Senate that the House of Representatives have appointed Mr. Buchanan, of Pennsylvania, etc. (naming the others), managers to conduct the impeachment against James H. Peck, judge of, etc.; and have directed the said managers to carry to the Senate the articles agreed upon by the House to be exhibited in maintenance of their impeachment against the said James H. Peck.

¹ As shown above, the committee which framed this article was composed entirely of Members who voted for the impeachment.

² Senate Journal, p. 282; Debates, p. 405.

The message having been delivered and read, on motion by Mr. Tazewell, it was

Resolved, That at 12 o'clock to-morrow the Senate will resolve itself into a court of impeachment, at which time the following oath or affirmation shall be administered by the Secretary to the President of the Senate, and by him to each Member of the Senate, viz:

"I solemnly swear (or affirm, as the case may be) that in all things appertaining to the trial of the impeachment of James H. Peck, judge of the district court of the United States for the district of Missouri, I will do impartial justice according to law."

Which court of impeachment being thus formed will, at the time aforesaid, receive the managers appointed by the House of Representatives to exhibit articles of impeachment, in the name of themselves and of all the people of the United States, against James H. Peck, judge of the district court of the United States for the district of Missouri, pursuant to notice given to the Senate this day by the House of Representatives that they had appointed managers for the purposes aforesaid; and that the Secretary of the Senate lay this resolution before the House of Representatives.

Resolved, That after 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 James H. Peck, the President 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 nation is exhibiting to the Senate of the United States articles of impeachment against James H. Peck, judge of the district court of the United States for the district of Missouri." After which the articles shall be exhibited and the President 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.

On the same day the first of the above resolutions was communicated to the House of Representatives by message.¹

On May 4² the Senate resolved itself into a high court of impeachment,³ and the Secretary administered the prescribed oath to the Vice-President, who then administered it in turn to the Senators.

The managers on the part of the House of Representatives appeared and were admitted; and Mr. Buchanan, their chairman, having announced that they were the managers instructed by the House of Representatives to exhibit a certain article of impeachment against James H. Peck, judge of the district court of the United States for the district of Missouri, they were requested by the Vice-President to take seats assigned them within the bar; and the Sergeant-at-Arms was directed to make proclamation in the words following:

Oyez! Oyez! Oyez! All persons are commanded to keep silence, on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States articles of impeachment against James H. Peck, judge of the district court of the United States for the district of Missouri.

2370. Peck's impeachment, continued.

The article of impeachment against Judge Peck.

The article of impeachment in the Peck case was signed by the Speaker and attested by the Clerk.

The article of impeachment in the Peck case was read by the chairman of the managers, and appears in full on the journal of the trial.

¹House Journal, p. 603.

²Senate Impeachment Journal, second session Twenty-first Congress, pp. 240-243; Debates, pp. 411-413.

³During this trial the court is described by the singular number "impeachment." In former trials the word has been "impeachments."

Having laid the article impeaching Judge Peck on the Senate table, the managers returned and reported verbally to the House.

The article of impeachment against Judge Peck having been presented, the Senate ordered a writ of summons to issue, and informed the House thereof.

After which the managers rose, and Mr. Buchanan, their chairman, read the following article, which appears in full in the journal of the impeachment:

Article exhibited by the House of Representatives of the United States, in the name of themselves, and of all the people of the United States, against James H. Peck, judge of the district court of the United States for the district of Missouri, in maintenance and support of their impeachment against him for high misdemeanors in office.

ARTICLE.

That the said James H. Peck, judge of the district court of the United States for the district of Missouri, at a term of the said court, holden at St. Louis, in the State of Missouri, on the 4th Monday in December, 1825, did, under and by virtue of the power and authority vested in the said court, by the act of the Congress of the United States, entitled "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims," approved on the 26th day of May, 1824, render a final decree of the said court in favor of the United States, and against the validity of the claim of the petitioners, in a certain matter or cause depending in the said court, under the said act, and before that time prosecuted in the said court, before the said judge, by Julie Soulard, widow of Antoine Soulard, and James G. Soulard, Henry G. Soulard, Eliza Soulard, and Benjamin A. Soulard, children and heirs at law of the said Antoine Soulard, petitioners against the United States, praying for the confirmation of their claim, under the said act, to certain lands situated in the said State of Missouri; and the said court did, thereafter, on the 30th day of December, in the said year, adjourn to sit again on the third Monday in April, 1826.

And the said petitioners did, and at the December term of the said court, holden by and before the said James H. Peck, judge as aforesaid, in due form of law, under the said act, appeal against the United States from the judgment and decree so made and entered in the said matter, to the Supreme Court of the United States; of which appeal, so made and taken in the said district court, the said James H. Peck, judge of the said court, had then and there full notice. And the said James H. Peck, after the said matter or cause had so been duly appealed to the Supreme Court of the United States, and on or about the 30th day of March, 1826, did cause to be published, in a certain public newspaper, printed at the city of St. Louis, called "The Missouri Republican," a certain communication, prepared by the said James H. Peck, purporting to be the opinion of the said James H. Peck, as judge of the said court, in the matter or cause aforesaid, and purporting to set forth the reasons of the said James H. Peck, as such judge, for the said decree, and that Luke Edward Lawless, a citizen of the United States, and an attorney and counsellor at law in the said district court, and who had been of counsel for the petitioners in the said court, in the matter aforesaid, did, thereafter, and on or about the 8th day of April, 1826, cause to be published in a certain other newspaper, printed at the city of St. Louis, called "The Missouri Advocate and St. Louis Enquirer," a certain article signed "A Citizen," and purporting to contain exposition of certain errors of doctrine and fact alleged to be contained in the opinion of the said James H. Peck, as before that time so published, which publication by the said Luke Edward Lawless was to the effect following, viz:

"To the Editor:

"SIR: I have read, with the attention which the subject deserves, the opinion of Judge Peck on the claim of the widow and heirs of Antoine Soulard, published in the Republican of the 30th ultimo. I observe that, although the judge has thought proper to decide against the claim, he leaves the grounds of his decree open for further discussion.

"Availing myself, therefore, of this permission, and considering the opinion so published to be a fair subject of examination to every citizen who feels himself interested in, or aggrieved by, its operation, I beg leave to point the attention of the public to some of the principal errors which I

think I have discovered in it. In doing so, I shall confine myself to little more than an enumeration of those errors, without entering into any demonstration or developed reasoning on the subject. This would require more space than a newspaper allows, and, besides, is not, as regards most of the points, absolutely necessary.

“Judge Peck, in this opinion, seems to me to have erred in the following assumptions, as well of fact as of doctrine:

“1. That, by the ordinance of 1754, a subdelegate was prohibited from making a grant in consideration of services rendered or to be rendered.

“2. That a subdelegate in Louisiana was not a subdelegate, as contemplated by the said ordinance.

“3. That O’Reily’s regulations, made in February, 1770, can be considered as demonstrative of the extent of the granting power of either the governor-general or the subdelegates, under the royal order of August, 1790.

“4. That the royal order of August, 1770 (as recited or referred to in the preamble to the regulations of Morales, of July, 1799), related exclusively to the governor-general.

“5. That the word ‘mercedes,’ in the ordinance of 1754, which, in the Spanish language, means ‘gifts,’ can be narrowed, by anything in that ordinance, or in any other law, to the idea of a grant to an Indian, or a reward to an informer, and much less to a mere sale for money.

“6. That O’Reily’s regulations were in their terms applicable, or ever were in fact applied to, or published in, upper Louisiana.

“7. That the regulations of O’Reily have any bearing on the grant to Antoine Soulard, or that such a grant was contemplated by them.

“8. That the limitations to a square league of grants to new settlers in Opelousas, Attakapas, and Natchitoches (in eighth article of O’Reily’s regulations) prohibits a larger grant in upper Louisiana.

“9. That the regulations of the governor-general, Gayoso, dated 9th September, 1797, entitled ‘Instructions to be observed for the admission of new settlers,’ prohibit, in future, a grant for services, or have the effect of annulling that to Antoine Soulard, which was made in 1796, and not located or surveyed until February, 1804.

“10. That the complete titles made by Gayoso are not to be referred to as affording the construction made by Gayoso himself, of his own regulations.

“11. That, although the regulations of Morales were not promulgated as law in upper Louisiana, the grantee in the principal case was bound by them, inasmuch as he had notice, or must be presumed, ‘from the official station which he held,’ to have had notice, of their terms.

“12. That the regulations of Morales ‘exclude all belief that any law existed under which a confirmation of the title in question could have been claimed.’

“13. That the complete titles (produced to the court) made by the governor-general, or the lieutenant-general, though based on incomplete titles, not conformable to the regulations of O’Reily, Gayoso, or Morales, afford no inference in favor of the power of the lieutenant-governor, from whom these incomplete titles emanated, and must be considered as anomalous exercises of power in favor of individual grantees.

“14. That the language of Morales himself, in the complete titles issued by him, on concessions made by the lieutenant-governor of upper Louisiana, anterior to the date of his regulations, ought not to be referred to as furnishing the construction which he, Morales, put on his own regulations.

“15. That the uniform practice of the subdelegates, or lieutenant-governor of upper Louisiana, from the first establishment of that province to the 10th March, 1804, is to be disregarded as proof of law, usage, or custom therein.

“16. That the historical fact that nineteen-twentieths of the titles to lands in upper Louisiana, were not only incomplete but not conformable to the regulations of O’Reily, Gayoso, or Morales at the date of the cession to the United States, affords no inference in favor of the general legality of those titles.

“17. That the fact that incomplete concessions, whether floating or located, were, previous to the cession, treated and considered by the Government and population of Louisiana as property, salable, transferable, and the subject of inheritance and distribution ab intestato, furnishes no inference in favor of those titles, or to their claim to the protection of the treaty of cession, or of the law of nations.

“18. That the laws of Congress heretofore passed in favor of incomplete titles furnish no argument or protecting principle in favor of those titles of a precisely similar character, which remain unconfirmed.

"In addition to the above, a number of other errors, consequential on those indicated, might be stated. The judge's doctrine as to the forfeiture which he contends is inflicted by Morales's regulations, seems to me to be peculiarly pregnant with grievous consequences. I shall, however, not tire the reader with any further enumeration, and shall detain him only to observe, by way of conclusion, that the judge's recollection of the argument of the counsel for the petitioner, as delivered at the bar, differs materially from what I can remember, who also heard it. In justice to the counsel I beg to observe that all that I have now submitted to the public has been suggested by that argument as spoken, and by the printed report of it, which is even now before me.

"A CITIZEN."

And the said James H. Peck, judge as aforesaid, unmindful of the solemn duties of his station, and that he held the same, by the Constitution of the United States, during good behavior only, with intention wrongfully and unjustly to oppress, imprison, and otherwise injure the said Luke Edward Lawless, under color of law, did, thereafter, at a term of the said district court of the United States for the district of Missouri, begun and held at the city of St. Louis, in the State of Missouri, on the 3d Monday in April, 1826, arbitrarily, oppressively, and unjustly, and under the further color and pretense that the said Luke Edward Lawless was answerable to the said court for the said publication signed "A Citizen," as for a contempt thereof, institute, in the said court, before him, the said James H. Peck, judge as aforesaid, certain proceedings against the said Luke Edward Lawless, in a summary way, by attachment issued for that purpose by the order of the said James H. Peck, as such judge, against the person of the said Luke Edward Lawless, touching the said pretended contempt, under and by virtue of which said attachment the said Luke Edward Lawless was, on the 21st day of April, 1826, arrested, imprisoned, and brought into the said court, before the said judge, in the custody of the marshal of the said State; and the said James H. Peck, judge as aforesaid, did, afterwards, on the same day, under the color and pretenses aforesaid, and with the intent aforesaid, in the said court, then and there, unjustly, oppressively, and arbitrarily, order and adjudge that the said Luke Edward Lawless, for the cause aforesaid, should be committed to prison for the period of twenty-four hours, and that he should be suspended from practicing as an attorney or counsellor at law in the said district court for the period of eighteen calendar months from that day, and did then and there further cause the said unjust and oppressive sentence to be carried into execution; and the said Luke Edward Lawless was, under color of the said sentence, and by the order of the said James H. Peck, judge as aforesaid, thereupon suspended from practicing as such attorney or counsellor in the said court for the period aforesaid, and immediately committed to the common-prison in the said city of St. Louis, to the great disparagement of public justice, the abuse of judicial authority, and to the subversion of the liberties of the people of the United States.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any further articles, or other accusations or impeachment, against the said James H. Peck, and also of replying to his answers which he shall make unto the article herein preferred against him, and of offering proof to the same, and every part thereof, and to all and every other articles, accusation, or impeachment, which shall be exhibited by them as the case shall require, do demand that the said James H. Peck may be put to answer the misdemeanors herein charged against him, and that such proceedings, examinations, trials, and judgments, may be thereupon had and given, as may be agreeable to law and justice.

A. STEVENSON,

Speaker of the House of Representatives, United States.

Attest:

M. ST. CLAIR CLARKE,

Clerk House of Representatives, United States.

The Vice-President then informed the managers that the Senate would take proper order thereon, of which the House of Representatives should have due notice.

The managers, by their chairman, delivered the article of impeachment at the table of the Secretary, and then withdrew.

On motion by Mr. Tazewell, it was

Resolved, That the Secretary be directed to issue a summons, in the usual form, to James H. Peck, judge of the district court of the United States for the district of Missouri, to answer a certain article

of impeachment exhibited against him by the House of Representatives on this day: that the said summons be returnable here on Tuesday next, the 11th instant, and be served by the Sergeant-at-Arms, or some person to be deputed by him, at least three days before the return day thereof; and that the Secretary communicate this resolution to the House of Representatives.

On motion by Mr. Tazewell,

The court then adjourned to Tuesday next at 12 o'clock.

On the same day, in the House, the managers reported:¹

That they did, this day, carry to the Senate, then in session as a high court of impeachment, the article of impeachment agreed to by this House on the 1st instant, and that they were informed that they would take proper measures relative to the said impeachment, of which the House would be duly notified.

A little later, on the same day, the Secretary of the Senate communicated² a message:

IN SENATE OF THE UNITED STATES,
HIGH COURT OF IMPEACHMENT,
Tuesday, May 4, 1830.

The United States *v.* James H. Peck.

Resolved, That the Secretary be directed to issue a summons, etc. [here follows the text of the resolution already given above].

Attest:

WALTER LOWRIE, *Secretary*.

2371. Peck's impeachment, continued.

Form of proclamation of Sergeant-at-Arms enjoining silence at the opening of the high court of impeachment for the Peck trial.

Form used by the Sergeant-at-Arms in calling Judge Peck to appear and answer the article.

Form of return made by the Sergeant-at-Arms in the Peck trial, and oath taken by him at the time.

Ceremonies at the appearance of Judge Peck in response to the writ of summons.

Judge Peck appeared in person, attended by counsel, in answer to the writ of summons.

Having appeared, Judge Peck asked time to prepare his answer, accompanying the request with an affidavit.

The Senate declined to allow Judge Peck until the next session of Congress to file his answer, and set an earlier date.

The answer of Judge Peck to the article of impeachment was ordered to be filed with the Secretary.

The Senate notified the House of the date fixed for Judge Peck to file his answer.

On May 11,³ the high court of impeachment was opened by proclamation of silence by the Sergeant-at-Arms, as follows:

Oyez! Oyez! Oyez! Silence is commanded on pain of imprisonment while the Senate of the United States is sitting as a high court of impeachment for the trial of James H. Peck, judge of the district court of the United States for the district of Missouri.

¹House Journal, p. 605; Debates, p. 872.

²House Journal, p. 606.

³Senate Impeachment Journal, second session Twenty-first Congress, pp. 244–248; Debates, p. 432.

The return of the Sergeant-at-Arms of the summons issued to James H. Peck was read, as follows:

I, Mountjoy Bayly, Sergeant-at-Arms of the Senate of the United States, in obedience to the within summons, to me directed, did proceed to Barnum's Hotel, in the city of Baltimore, on Thursday, the 6th instant, and did then and there deliver to, and leave with, the within-named James H. Peck a true copy of the within writ of summons and a true copy of the precept thereon indorsed, and did show him both.

MOUNTJOY BAYLY.

WASHINGTON, *May 8, 1830.*

The Secretary then administered the following oath to the Sergeant-at-Arms:

You, Mountjoy Bayly, Sergeant-at-Arms to the Senate of the United States, do swear that the return made and subscribed by you upon the process issued on the 4th day of May, instant, by the Senate of the United States against James H. Peck, judge of the district court of the United States for the district of Missouri, is truly made, and that you have performed said services as therein described. So help you God.

Proclamation was then made as follows:

Oyez! oyez! oyez! James H. Peck, judge of the district court of the United States for the district of Missouri, come forward and answer the article of impeachment exhibited against you by the House of Representatives.

Whereupon James H. Peck appeared at the bar, attended by William Wirt, as his counsel, and they were seated within the bar.

The Vice-President informed Judge Peck that the court was ready to receive his answer.

Judge Peck rose and addressed the Senate as follows:

Mr. President: I appear, in obedience to a summons from this honorable court, to answer an article of impeachment exhibited against me by the honorable the House of Representatives; and I have a motion to make, which I request may be done by my counsel.

The Vice-President having signified the willingness of the court to receive the motion,

Mr. Wirt rose and read a letter addressed to the President of the Senate and signed by the respondent, in which were set forth the necessity of time to prepare a defense, and in which was also included a motion, respectfully submitted:

1. That a reasonable time may be allowed me to prepare my answer and plea; and, for this purpose, I ask until the 25th day of the present month.
2. That, after my answer and plea shall be filed, process for witnesses may be awarded to me, and a reasonable time may be allowed to collect my witnesses and proofs from the State of Missouri.

The communication also referred to an accompanying affidavit. In this affidavit James H. Peck made oath that certain named persons were material witnesses for him, that there were other witnesses not named who would be material, and that there were certain public records needful to his defense; and that in order to produce these the delay asked for was not too much. He further made oath that his application was not for purposes of delay.

The reading having concluded, Mr. Daniel Webster, of Massachusetts, then submitted the following order:

Ordered, That James H. Peck file his answer and plea with the Secretary of the Senate to the article of impeachment exhibited against him by the House of Representatives, on or before the second Monday of the next session of Congress.

On motion of Mr. George M. Bibb, of Kentucky, this order was amended by striking out all after the words “on or before” and inserting “the 25th day of the present month;” and as amended the order was agreed to.

It was further—

Ordered, That the Secretary notify the foregoing order to the House of Representatives and to James H. Peck.

On the same day this message was duly communicated to the House.¹

2372. Peck’s impeachment, continued.

In the Peck trial new rules were not adopted, the rules framed in the Chase trial being considered as operative.

On May 11,² also, the Senate (not the high court of impeachment) agreed to the following:

Ordered, That the Secretary of the Senate direct copies of the rules of proceedings, prescribed in cases of impeachment, to be printed for the use of the Members, and laid on their tables on the first day of the next session of the court; and also that copies be furnished to the managers of the impeachment in the case of James H. Peck and to the accused and his counsel.

The rules referred to are those agreed upon at the trial of Samuel Chase. They are printed as a footnote in the Journal of the impeachment; but they were not acted on in any way by the court at this time, being treated as existing rules.³

2373. Peck’s impeachment continued.

In the Peck trial the House decided to attend its managers at the presentation of the answer but not during the trial.

On May 25,⁴ in the House, Mr. Storrs, of New York, observed that, as the Senate would meet to-day as a court of impeachment for the purpose of receiving the answer of the respondent, Judge Peck, it was indispensable that the House come to some order immediately on the subject. He therefore moved a resolution that the House would, in Committee of the Whole, attend the Senate during the trial of James H. Peck. Mr. Storrs argued that the resolution was in accordance with former usage and that the House should be present during every day of the trial. The appointment of managers was not intended to dispense with the presence of the House. The managers could take no step without consulting the House, which must, therefore, be present.

On the other hand, Mr. Pettis and Mr. Joel B. Sutherland, of Pennsylvania, insisted that the presence of the managers alone would be sufficient, and that if the House were to attend daily the other business would suffer. Mr. Sutherland said it would be very proper to go to the Senate to-day, and be present at the opening of the court for the impeachment, and receiving the answer of the accused; but afterwards, unless some very pressing occasion should require it, the presence of the House would be unnecessary. The object in appointing managers was to leave it to them to conduct the impeachment. He cited Jefferson’s Manual to

¹ House Journal, p. 625.

² Senate Journal, first session Twenty-first Congress, p. 296.

³ Senate Impeachment Journal, second session Twenty-first Congress, pp. 248–250.

⁴ House Journal, p. 714; Debates, p. 1134.

sustain his opinion, and moved to modify the resolution so as to provide that the House would attend this day.

In accordance with this suggestion, the resolution was modified and agreed to as follows:

Resolved, That this House will, this day, at such hour as the Senate shall appoint, resolve itself into Committee of the Whole, and attend in the Senate on the trial of the impeachment there pending of James H. Peck, judge of the district court of the United States for the district of Missouri.

2374. Peck's impeachment continued.

Arrangement of the Hall and ceremonies at the presentation of Judge Peck's answer.

Form of answer of Judge Peck in answer of the article of impeachment.

Judge Peck, in his plea, declared that the acts charged were justified by the law of the land.

The answer in the Peck case was read by counsel for respondent and then delivered to the Secretary.

Form of journal entry describing the attendance of the House in Committee of the Whole at the Peck trial.

The House was furnished by the court with a copy of Judge Peck's answer.

On the same day, May 25,¹ in the high court of impeachment, at the hour of 12 o'clock, the court was opened by proclamation in the usual form.

On motion by Mr. Webster, it was

Ordered, That the Secretary give notice to the House of Representatives that the Senate are now in their Chamber and are ready to proceed on the trial of the impeachment of James H. Peck, judge of the district court of the United States for the district of Missouri; and that seats are provided for the accommodation of the Members of the House of Representatives.

And this notice was duly received by the House.²

In the high court seats had been arranged on the right and left of the Chair, for the accommodation of the Senators, and their seats assigned to the managers and Members of the House of Representatives, and the accused and his counsel.

Judge Peck appeared, accompanied by William Wirt and Jonathan Meredith as his counsel, and they occupied seats assigned them to the right of the Chair.

The managers and Members of the House of Representatives appeared and took the seats usually occupied by the Senate.

The Vice-President then asked Judge Peck whether he was prepared to answer the article of impeachment exhibited against him.

Judge Peck replied that his answer and plea were prepared and desired that they might be read by his counsel.

The Vice-President asked Judge Peck whether the answer now to be made was to be considered as his final answer on which he intended to rely; and the judge having answered in the affirmative, the counsel was directed to proceed to read it.

¹Senate Impeachment Journal, second session Twenty-first Congress, pp. 249–326; Debates, pp. 455, 456.

²House Journal, p. 717.

Mr. Meredith read the answer (which occupied upward of two hours). In form the answer began as follows:

The answer of James H. Peck to the article of impeachment exhibited against him by the honorable House of Representatives of the United States.

The said James H. Peck, saving to himself all exceptions whatsoever to the said article and the charges therein contained, answers and says:

Here follows the answer in detail, and the conclusion:

In all which actions and doings of this respondent in the premises, he avers that he was supported and justified by the Constitution and laws of the land, and that he will be prepared to make good this averment at such time as this honorable court shall appoint.

And, solemnly denying the intention charged to him by the article of impeachment, "wrongfully and unjustly to oppress, imprison, and otherwise injure the said Luke E. Lawless, under color of law," and asserting, in the presence of the Supreme Searcher of Hearts, that in all that he did in the premises he was actuated by the purest sense of what he deemed a high official duty and was, as he believed and still confidently believes, well warranted and supported in every step by the Constitution and laws of the land, this respondent, for plea to the said article of impeachment, saith that he is not guilty of any high misdemeanor, as in and by the said article is alleged, and this he prays may be inquired of by this honorable court in such manner as law and justice shall seem to them to require.

JAMES H. PECK.

This answer, with sundry exhibits referred to therein, is spread on the Journal of the high court of impeachment. It was delivered to the Secretary of the Senate after the reading.

Mr. Storrs, in behalf of the managers, moved

That they have time to consult the House of Representatives on a replication, and that they be furnished with a copy of the answer of the respondent, which was agreed to.

On motion by Mr. Webster it was

Ordered, That when this court adjourn, it adjourn to meet again on the second Monday of the next session of Congress, at 12 o'clock, then to proceed with the said impeachment.

Mr. Wirt desired to know whether blank summons as for the attendance of witnesses would be allowed to the respondent.

The Vice-President replied that they would.

The court then adjourned to the second Monday of the next session of Congress.

The House Journal of this day has this entry:¹

The House then, in pursuance of a resolution agreed to this day, resolved itself into a Committee of the Whole House, and proceeded in that capacity to the Senate Chamber, to attend the trial by the Senate of the impeachment against James H. Peck, judge of the district court of the United States for the district of Missouri; and, after sometime spent therein, the committee returned into the Chamber of the House; and the Speaker having resumed the Chair, Mr. P. P. Barbour, of Virginia, from the said Committee of the Whole, reported that the committee had, according to order, attended the trial by the Senate of the said impeachment; that the answer and plea of the said James H. Peck were delivered in their presence; that some progress was made in said trial, and that the Senate, sitting as a high court of impeachment, had adjourned to meet again on the second Monday of the next session of Congress, at 12 o'clock.

And on May 31² the Congress adjourned.

¹Page 717.

²House Journal, p. 812.

2375. Peck's impeachment, continued.

A recess of Congress intervened between the filing of the answer and the presentation of the replication in the Peck trial.

Form of replication to Judge Peck's answer and forms of resolutions providing for its presentation.

Senators elected after the beginning of an impeachment trial are sworn as in the case of other Senators.

At the next session of Congress the proceedings were resumed where they had ended at the preceding session.

On December 13,¹ 1830, in the House,

Mr. Buchanan, on behalf of the managers appointed to conduct the impeachment against Judge James H. Peck, submitted the following report:

The committee of managers appointed by the House of Representatives to conduct the impeachment against James H. Peck, judge of the district court of the United States for the district of Missouri, report that they have had under consideration the answer of Judge Peck to the article of impeachment exhibited against him by the House, and recommend the adoption of the following replication thereto:

REPLICATION.

By the House of Representatives of the United States to the answer and plea of James H. Peck, judge of the district court of the United States for the district of Missouri, to the article of impeachment exhibited against him by the said House of Representatives.

The House of Representatives of the United States having considered the answer and plea of James H. Peck, judge of the district court of the United States for the district of Missouri, to the article of impeachment against him by them exhibited, in the name of themselves and of all the people of the United States, reply that the said James H. Peck is guilty in such manner as he stands impeached; and that the House of Representatives will be ready to prove their charges against him at such convenient time and place as shall be appointed for that purpose.

The replication being read was agreed to by the House.

Thereupon, on motion of Mr. Buchanan,

Resolved, That the foregoing replication be put into the answer and plea of the aforesaid James H. Peck on behalf of this House; and that the managers be instructed to maintain the said replication at the bar of the Senate, at such time as shall be appointed by the Senate.

Resolved, That a message be sent to the Senate to inform them that this House have agreed to a replication on their part to the answer and plea of James H. Peck, judge of the district court of the United States for the district of Missouri, to the article of impeachment exhibited to the Senate against him by this House, and have directed the managers appointed to conduct the said impeachment to carry the said replication to the Senate, and to maintain the same at the bar of the Senate, at such time as shall be appointed by the Senate.

On the same day² the high court of impeachment was opened by proclamation,³ and the President⁴ administered the oath to Messrs. David J. Baker, of Illinois, and George Poindexter, of Mississippi, newly-elected Senators who had taken their seats at the first of the session.

On motion of Mr. Levi Woodbury, of New Hampshire,

¹Second session Twenty-first Congress, House Journal, pp. 47, 48; Debates, pp. 354, 355.

²Senate Impeachment Journal, pp. 326, 327; Debates, p. 3.

³The Debates say that this proclamation was made by the marshal of the District of Columbia.

⁴John C. Calhoun, of South Carolina, Vice-President and President of the Senate.

Ordered, That the Secretary inform the House of Representatives that the Senate are in their public Chamber, and are ready to proceed on the trial of the impeachment of James H. Peck, judge of the district court of the United States for the district of Missouri, and that seats are provided for the accommodation of the Members.

The message from the House of Representatives announcing that the managers had been directed to carry the replication was received.

The respondent, accompanied by Mr. Wirt and Mr. Meredith, his counsel, appeared at the bar of the Senate. They were conducted to seats, with a table before them, prepared for their convenience.

In a few minutes the managers to conduct the impeachment on the part of the House of Representatives also came in and took their seats.

Mr. Buchanan, one of the managers, rose and said that the managers, on the part of the House of Representatives, were ready to present the replication of that House, to the answer and plea of James H. Peck, judge of the district court of the United States for the district of Missouri, to the articles of impeachment exhibited against him by that body. He then read the replication, after which it was handed to the Secretary to be filed.

2376. Peck's impeachment, continued.

In the Peck trial, after the witnesses had been called, the court granted the request of the managers for delay to await a material witness.

The President then informed the managers that they were at liberty to proceed in support of the article of impeachment exhibited.

On request of Mr. Buchanan the witnesses on behalf of the managers were called; and on request of Mr. Meredith the witnesses for the respondent were also called.

Then it was

Ordered, That the Secretary inform the House of Representatives that the Senate will, on Monday next, at 12 o'clock, be ready further to proceed on the trial of the impeachment of James H. Peck, judge. * * *

The court then adjourned to Monday next at 11 o'clock.

2377. Peck's impeachment continued.

The House attended its managers a portion of the time during the Peck trial, including the days of final argument.

The subject of attendance with the managers was discussed during the Peck trial, with citation of American and English precedents.

The court of impeachment provided that the House should be notified daily of its sittings.

The court of impeachment may adjourn over without interfering with session of the Senate in the interim.

When the managers had returned to the House,¹ a question was raised over the fact that the House itself had not attended the managers. Mr. Buchanan said that no motion had been made on the subject, and the managers had felt it their duty to go and present the replication without awaiting action. As to the question of attendance generally, with the permission of the House he would state the course that had been pursued by the managers. They had examined all the precedents

¹ Debates, p. 358.

which had occurred in this country to guide them to a correct performance of their duty. It was ascertained that since the adoption of the present Constitution there had been three impeachments, viz, those of Messrs. Blount and Pickering and Judge Chase. On the trial of the first two the House did not attend in a body, but left it to the managers to conduct the impeachment; on the trial of Judge Chase, they did attend every day. It not being considered by the managers of the pending trial that any principle so important as to interrupt the legislative business of the House was involved in the present case, they had gone to the Senate this day, as managers, and presented to that body the replication agreed upon by the House. Mr. Buchanan further remarked that he had consulted the English precedents. On the trial of Warren Hastings the House of Commons attended at the commencement of the trial, but they did not continue to do so. On the trial of the Earl of Macclesfield they did not attend until his conviction by the House of Lords; and then they attended in consequence of a message having been sent them by that body that they were ready to pronounce judgment on the impeached, if the House of Commons would attend and demand it.

This question arose from time to time during the trial. On December 20,¹ when the trial was to begin, Mr. Michael Hoffman, of New York, proposed an order that the House, from time to time, resolve itself into Committee of the Whole to attend, but after discussion as to the state of the general business before the House, it was decided to modify the proposition so as to provide merely for attendance on that day. On December 22,² a proposed order that the House attend each day until otherwise ordered was disagreed to, yeas 83, nays 88. On December 23,³ by a vote of yeas 96, nays 30, it was—

Resolved, That during the trial of the impeachment now pending before the Senate this House will meet daily at the hour of 11 o'clock in the forenoon; and that, from day to day, it will resolve itself into a Committee of the Whole and attend said trial during the continuance thereof, and until the conclusion of the same.

The House acted in accordance with this resolution until January 4,⁴ when the vote agreeing to it was reconsidered, and then the resolution was disagreed to, yeas 69, nays 118. Thereupon Mr. Kensey Johns, jr., of Delaware, proposed this resolution:

Resolved, That a message be sent by the Clerk of the House, informing the Senate that the House of Representatives decline further attendance during the trial of the impeachment of Judge Peck.

This was criticised as likely to give an impression that the House had abandoned the impeachment. Finally, after being amended, on motion of Mr. Storrs, the resolution was agreed to in this form:

Resolved, That the managers appointed to conduct the impeachment of James H. Peck be instructed to attend the trial of the said impeachment, at such times as the Senate shall appoint for that purpose; and that the attendance of the House be dispensed with until otherwise ordered by the House, and that the Clerk communicate this resolution to the Senate.

¹ Debates, p. 378; House Journal, p. 80.

² Debates, p. 379; House Journal, pp. 91, 92.

³ Debates, p. 382; House Journal, p. 97.

⁴ Debates, p. 399; House Journal, p. 140.

On January 17¹ it was resolved by the House that “during the argument of counsel in the impeachment” this House “will, from day to day, resolve itself into a Committee of the Whole on the state of the Union and attend the same.”

And in accordance with this order the House attended until the end of the session.

On December 24,² after the House had decided to attend each day, the high court of impeachments—

Ordered, That the Secretary notify the House of Representatives, from day to day, that the Senate is sitting as a high court of impeachment for the trial of James H. Peck, judge of the district court of the United States for the district of Missouri.

And on January 3, 1831,³ when it was ordered that the adjournment of the high court on that day (a Monday) be to Wednesday, it was also ordered that the House be informed. It may be noted that while the high court of impeachment adjourned over January 4, the Senate itself was in session on that day.

2378. Peck’s impeachment continued.

The presentation of evidence and the arguments in the Peck trial.

On the final arguments in the Peck trial the managers had the opening and closing.

In the Peck trial a Senator was examined as a witness on behalf of respondent.

On receipt of a letter from a physician, showing the illness of one of Judge Peck’s counsel, the court adjourned.

On Monday, December 20,⁴ the court having been opened by proclamation, and the managers accompanied by the House of Representatives, and the respondent accompanied by his counsel having attended, at the request of Mr. Meredith the witnesses in behalf of the respondent were called. Although one or two material witnesses failed to answer, Mr. Meredith announced that they were ready to go to trial.

The President informed the managers that they might now proceed to substantiate their charge.

Mr. McDuffie thereupon proceeded to open the cause, and concluded on the succeeding day. Then, on December 21⁵ and thereafter until January 5, 1831, witnesses were called for the managers, the same being cross-examined on behalf of the respondent.

On January 5,⁶ Mr. Meredith opened the defense and began the introduction of testimony, which continued to January 17.

On January 11,⁷ Thomas H. Benton, a Senator from Missouri, was sworn on behalf of the respondent.

¹ Debates, p. 518; House Journal, p. 186.

² Senate Impeachment Journal, p. 329.

³ Senate Journal, pp. 67, 330.

⁴ Senate Impeachment Journal, pp. 327, et seq.; Debates, p. 10.

⁵ Senate Impeachment Journal, pp. 328–330.

⁶ Journal, pp. 331–335; Annals, p. 26.

⁷ Journal, p. 334; Debates, p. 28.

On January 13,¹ the Vice-President communicated a letter from the physician attending Mr. Wirt, one of the counsel for the respondent, stating that Mr. Wirt would be unable to attend until the 17th. Thereupon the high court adjourned until that date. Once previously it had adjourned for the same reason at request of counsel and with consent of managers.

On January 17,² Mr. Spencer, on behalf of the managers, commenced the argument in support of the article of impeachment, and on January 18, Mr. Wickliffe, also on behalf of the managers, continued.

On January 19,³ Mr. Meredith commenced the argument on behalf of the respondent, and continued until January 22, when Mr. Wirt continued the argument for the respondent until January 25, when he concluded.

From January 26 to 29,⁴ Messrs. Storrs and Buchanan occupied the time with the arguments for the managers.

2379. Peck's impeachment, continued.

In the arguments in the Peck trial the managers resisted the theory that impeachment might be only for indictable offenses.

Argument of Mr. Manager Spencer on the nature of impeachable offenses.

In the course of the argument the managers and counsel for respondent considered not only the evidence and law applicable to the article itself, but discussed the nature of the power of impeachment. Mr. Manager Spencer said:⁵

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

2380. Peck's impeachment continued.

Argument of Mr. Manager Wickliffe on the constitutional provisions relating to impeachment.

Mr. Manager Wickliffe said:⁶

I do not know that it will be contended by the counsel for the respondent, as it has been on a former impeachment before the Senate of the United States, with great ability and apparent confidence, "that a judge can not be impeached for any offense which is not indictable; that the Constitution declares the judges shall be removed from office by impeachment for treason, bribery, and other high crimes and misdemeanors;" consequently as nothing less than the commission of some offense which may be punishable by indictment, presentment, or information comes within the known interpretation of the terms "high crimes and misdemeanors," no act, judicial or otherwise, unless indictable, is impeachable.

I do not agree with this interpretation of the Constitution. * * *

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

¹ Journal, p. 335; Debates, pp. 23, 27, 28.

² Journal, p. 335; Debates, p. 34.

³ Journal, pp. 335, 336; Debates, p. 34.

⁴ Journal, p. 337; Debates, p. 44.

⁵ Report of the trial of James H. Peck, p. 290.

⁶ Report of the trial of James H. Peck, pp. 308-310.

The framers of the Constitution wisely limited the punishment which this court may award, fixing a point beyond which you can not go, but leaving you in the exercise of a sound discretion to make it less than removal from office. They were governed by equal wisdom when they left the official delinquent to answer personally to the offended laws of the State in which he had committed any crime or misdemeanor against their injunctions.

The offense for which an officer may be impeached might not, in the judgment of his triers (though deserving punishment), require the infliction of the severer punishment, that of removal from and disqualification for office. It might not deserve both of these penalties, perhaps neither; a reprimand, a temporary suspension of his functions and salary, might, in particular cases, be a punishment equal to the official misdemeanor.

If nothing else had been said in this Constitution upon the subject of impeachment, who would doubt the plenitude of power, the nature of the punishment, or the objects upon which Congress could exercise it? But, sir, the members of the convention, as if solemnly impressed with the danger to the judiciary and other departments of the Government, resulting from the humanity and mercy of the members of the tribunal for the trial of impeachment; or, perhaps, looking at the dark side of the picture of human nature, believing it possible that the time might come when a judge or other officer, though stained with the foul crime of treason and bribery, or other high crimes and misdemeanors, would find favor in the sympathies, or cover in the bad passions of his triers, who would blush, however, to pronounce him not guilty in the face of conclusive evidence; but who would, nevertheless, diminish the punishment under the discretionary power in the first article, and leave the traitor or convicted felon to disgrace the judicial ermine or official robe. To guard against this possible state of the case, * * * the members of the convention intended, by the sixth section of the second article, to declare what shall be the punishment to be awarded by the court of impeachment for the enumerated offenses of treason, bribery, and other high crimes and misdemeanors; hence they declared that "the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors." This language is imperative; it leaves you no discretion; you can not stop short of removal from office; you can not exceed it,

If the construction of the Constitution which was contended for in the impeachment to which I have referred be the true reading of the instrument, and it shall be decided that no offense, no conduct of an officer, unless it be a high crime and misdemeanor, within the technical meaning of these terms, and punishable by some known and existing criminal law, is impeachable, what would be the condition of our Government, and especially the judicial department? No matter what was the conduct of a judge in or out of court, if he kept himself without the pains and penalties enacted for the punishment of treason, felony, and vice, in the most degraded of civil society, no power exists to strip him of the judicial character which he degraded. He would, covered with disgrace and immorality, smile with contempt at your power, and shield himself under the imputed ignorance of the members of the convention.

A few cases will, I think, suffice to prove the fallacy of such a construction of the Constitution. Suppose a judge, who is bound to open his court at stated periods for the trial of causes, fulfills the letter of the law, opens his court at the regular stated terms, but as regularly adjourns, and refuses to hear and decide the causes pending in court. This, sir, would be no indictable offense under any law; yet I am inclined to believe this court would remove him from office for official misconduct, for misbehavior in office, a forfeiture of the condition upon which he held his commission.

Suppose a judge, under the influence of political feeling, * * * shall award to his favorite a new trial, in an important cause, against known law, would this be an indictable offense under any code of laws in force in this Government?

Suppose a judge shall forget the dignity which belongs to the station he fills, and to disregard that decorum which should ever regulate the conduct of a judge, in and out of court, shall, while in court, take advantage of his situation, and labor for two hours in pouring forth his abuse and vituperation upon a respectable and unoffending citizen, whom he has dragged before him by the strong arm of usurped power—in what court would you file your indictment against him, for a high misdemeanor?
* * *

Take the case of the President of the United States. Suppose him base enough, or foolish enough, if you please, to refuse his sanction to any and every act which Congress may pass. This is a power which, according to the Constitution, he can exercise. Will it be contended that he could be indicted for it, as a misdemeanor, in any court, State or Federal? Yet where is the man who would hesitate to remove him from office by impeachment? If one of the heads of a department shall so far forget the

obligations of his official duty as to direct his power and patronage, not to the promotion of the welfare of the country, but with the known and avowed purpose of his own personal or political aggrandizement, who would think of finding an indictment in a criminal court of justice against him? Yet who would not remove him from office by impeachment?

If precedent is to have any authority in this court, I consider the question settled by the Senate of the United States in the trial of Judge Pickering, of New Hampshire. The principal charge exhibited against him was a disregard of a plain statute of the United States, which makes it the duty of a district court, before restoration of goods libeled for a violation of the revenue laws of the United States, to the claimant in court, to take from him bond and security to return the goods or to perform the judgment of the court. Upon this charge the Senate found him guilty and removed him from office. He was also charged with intemperance, which, though a misdemeanor, has never been denominated or regarded by the laws of any country a "high misdemeanor."

2381. Peck's impeachment, continued.

Argument of Mr. Manager Buchanan on the nature of impeachable offenses.

Argument that the proof of intention is not necessary in an impeachment trial to secure punishment for the fact.

Mr. Manager Buchanan said:¹

The Constitution of the United States declares the tenure of the judicial office to be "during good behavior." Official misbehavior, therefore, in a judge is a forfeiture of his office. But when we say this we have advanced only a small distance. Another question meets us. What is misbehavior in office? In answer to this question, and without pretending to furnish a definition, I freely admit that we are bound to prove that the respondent has violated the Constitution or some known law of the land. This, I think, was the principle fairly to be deduced from all the arguments on the trial of Judge Chase, and from the votes of the Senate in the articles of impeachment against him, in opposition to the principle for which his counsel in the first instance strenuously contended, that in order to render an offense impeachable it must be indictable. But this violation of law may consist in the abuse, as well as in the usurpation of authority. The abuse of a power which has been given may be as criminal as the usurpation of a power which has not been granted. Can there be any doubt of this? Suppose a man to be indicted for an assault and battery. He is tried and found guilty, and the judge, without any circumstances of peculiar aggravation having been shown, fines him a thousand dollars and commits him to prison for one year. Now, although the judge may possess the power to fine and imprison for this offense, at his discretion, would not this punishment be such an abuse of judicial discretion and afford such evidence of the tyrannical and arbitrary exercise of power as would justify the House of Representatives in voting an impeachment? But why need I fancy cases? Can fancy imagine a stronger case than is now, in point of fact, before us? A member of the bar is brought before a court of the United States guilty, if you please, of having published a libel on the judge—a libel, however, perfectly decorous in its terms and imputing no criminal intention, and so difficult of construction that though the counsel for the respondent have labored for hours to prove it to be a libel, still that question remains doubtful. If, in this case, the judge has degraded the author by imprisonment and deprived him of the mean of earning bread for himself and his family by suspending him from the practice of his profession for eighteen months, would not this be a cruel and oppressive use of authority, even admitting the power to punish in such a case to be possessed by the judge?

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

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

¹ Report of the trial of James H. Peck, pp. 427–429.

may be true as a, general proposition, and yet it may have but a slight bearing upon the present case. Did the gentlemen mean to contend that before the judge could be convicted we must prove by positive testimony malice in his breast, a lurking enmity against Mr. Lawless and the purpose of gratifying a base revenge? I should suppose that to have been the reason for which they asked so many questions to show that the judge and Mr. Lawless had previously been upon good terms. This argument may be answered with great force in the strong language of the respondent himself in his answer to the article of impeachment." Both in law and morals (says the judge) every man is presumed to intend the natural consequences of his own actions." This was the rule by which he tried Mr. Lawless. He took up the article signed "A Citizen" and from that article alone he inferred the intention of its author. In doing this he acted correctly; but his jaundiced mind and wounded vanity had so diseased his perceptions that he saw burnt letters upon the scroll, although in themselves they were perfectly innocent and harmless. * * *

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

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

The fourth article of impeachment exhibited against Judge Pickering charged him with having appeared upon the bench in a state of total intoxication. This was gross official misbehavior. Would the Senate in that case have gravely listened to an argument to prove that the judge might have got drunk without an evil intention? Certainly not. The act was done. The tribunal had been disgraced, and the Senate inferred his intention from his conduct and turned him out of office.

2382. Peck's impeachment continued.

Mr. William Wirt argued in defense of Judge Peck that a judge might not be impeached for a mere mistake of the law without guilty intent.

Mr. William Wirt's argument that intent was not established by proof of the mere commission of an unlawful act.

Arguing for the respondent, Mr. Wirt said:¹

Even if the judge were proved to have mistaken the law, that would not warrant a conviction, unless the guilt of intention be also established. For a mere mistake of the law is no crime or misdemeanor in a judge. It is the intention that is the essence of every crime. The maxim is (for the principal is so universally admitted that it has grown into a maxim) *actus non facit reum nisi mens sit rea*.

Sir, if the impeachment had not contained the charge of the guilty intention the respondent, under the advice of his counsel, would have demurred to it; not by any special demurrer to the form, but a general demurrer to the substance, for the intention is the substance of the crime. The honorable managers who prepared this article of impeachment were perfectly aware of this and have, therefore, very properly charged the intention in express terms. Sir, it is a material part of the charge, and what it was material to charge it is material to prove. * * * One of the honorable managers, seeming to perceive the impossibility of satisfying any candid mind that the respondent was guilty of the intention charged, endeavored to escape this rule of the criminal law by contending that if they fixed on the respondent the commission of an unlawful act, the guilty intention charged in the impeachment followed as a necessary implication of law. This I deny; for then every mistake of law on the part of a judge would become a crime or a civil injury, for which he would be personally responsible. The honorable manager sought to illustrate his proposition by the cases of murder and forgery. "If," said he, "a party be proved to have committed a deliberate murder, will he not be presumed to have intended

¹ Report of the trial of Judge Peck, pp. 485, 486, 492, 494-497.

to commit murder? Is separate proof of intention ever required in such a case? Or if a man be proved to have committed forgery, will not the law infer the intention from the act?" This is plausible; let us examine its solidity: It is the proposition which they must maintain, and from which alone they can have any hope of success in this case. Is it sound?

Mr. Wirt then proceeded to discuss the crimes of murder and forgery to show that the guilty intention was part of the proof in such cases, since neither crime existed without guilty intention. Continuing, he said:

Another of the honorable managers (Mr. Wickliffe) has advanced a proposition so novel and so directly confronted by all the authorities, that had it not been for some other things that I have heard in this case, I should have heard it with unmixed surprise. The honorable manager tells us that "he cares not for proof of intention; that he cares not whether the judge acted wrong from ignorance or intention. That ignorance of the law is no excuse in an unlearned layman, much less in a learned judge. That every man is presumed to know the law, and a fortiori, a judge whose office it is to understand and administer the law. If, therefore, a judge through ignorance of the law has done that which he has no power to do, he is just as guilty in the eye of the law as if he had sinned intentionally against the light of knowledge."

Then, according to this process of reasoning, a mistake of the law by a judge is an impeachable offense. But is it possible that the honorable manager can mean to contend that a judge is answerable, either civilly or criminally, for an error of judgment; that he can be either sued, indicted, or impeached for such an error? If such be his meaning, he is in direct conflict with all the authorities on the subject. The question is not a new one. It has been long since settled both in England and the United States; and I am not aware that, for many centuries, any judge or advocate has, even by inadvertence, sanctioned or even countenanced the position which has been thrown out by the gentleman. From the reign of Edward III to the present day the current of authorities is clear and uniform the other way, and establish beyond controversy the principle that the judge of a court of record is not answerable either civilly or criminally for a mistake of judgment in his judicial character.

Mr. Wirt then discusses the case of Yates and Lansing, wherein the English authorities were reviewed by Chief Justice Kent, and says:

What does the judge declare would be an impeachable offense? The acting with knowledge (scienter) that the judge was violating the law—"the intentional violation of the law." The chancellor, he says, was bound to imprison the party if he considered his conduct as a contempt of court. He might have been mistaken in considering that as a contempt, which in truth was not one. But this would have been a mere error of judgment, for which he was not answerable either civilly much less criminally. If he knew it was not a contempt, and still punished it as one, it would have been an intentional violation of the law, which would have been an impeachable offense. Here is the very doctrine for which we are contending—that it is the guilty intention which forms the gist of the charge in every impeachment, and that a mere mistake of judgment is not an impeachable offense. * * *

I have examined, with all the attention and care in my power, the various cases of impeachment of judges, both in England and the United States, and I have not observed that any counsel, even under the severest stress of the evidence, has taken refuge in so bold a proposition as this which we are considering—that error of judgment is an impeachable offense. On the contrary, I think it will be found, on the strictest perusal of all the cases that have been cited, that the counsel on both sides have uniformly proceeded on the concession that the guilty intention is the gist of the impeachment.

The discussion of the power of impeachment was preliminary merely, the main force of the arguments going to the question of law as to the right of the judge to punish for contempt, and the question of fact as to his intention.

2383. Peck's impeachment continued.

The Senate proceeded to judgment in the Peck case without prior deliberation in secret session.

The House accompanied its managers when the court pronounced judgment in the Peck impeachment.

Form of question put in ascertaining the judgment of the court in the Peck trial.

A Senator who had been a witness for respondent was excused from voting on the judgment in the Peck trial.

A Senator who had taken his seat after part of the testimony in the Peck trial had been taken was excused from voting.

Two-thirds not voting guilty, the Vice-President declared Judge Peck acquitted.

Judgment being rendered in the Peck impeachment, the Vice-President directed an adjournment sine die.

On Saturday, January 29,¹ at the conclusion of the arguments, on motion of Mr. Daniel Webster, of Massachusetts:

Resolved, That the Senate will, on Monday next, at 12 o'clock, proceed further on the trial of the article of impeachment exhibited by the House of Representatives of the United States against James H. Peck, judge of the district court of the United States for the district of Missouri.

On Monday, January 31,² the court was opened as usual, with proclamation. The managers, accompanied by the House of Representatives, attended. James H. Peck, the respondent, and his counsel also attended.

Mr. Littleton W. Tazewell, of Virginia, moved the following resolution:

Resolved, That this court will now pronounce judgment upon James H. Peck, judge of the district court of the United States for the district of Missouri.

Mr. Tazewell observed that if there were one member of the court unprepared for a decision on this impeachment at this time, or preferred any other mode of proceeding to pronounce judgment, he would cheerfully withdraw the resolution.

No objection having been made, the resolution was unanimously adopted.

The names of the Senators were then called over by the Secretary.

The Secretary of the Senate, under the direction of the Vice-President, read the article of impeachment exhibited by the House of Representatives against James H. Peck, judge of the district court of the United States for the district of Missouri.

The Vice-President rose and said:

Senators: You have heard the article of impeachment read; you have heard the evidence and the arguments for and against the respondent; when your names are called you will rise from your seats and distinctly pronounce whether he is guilty or not guilty, as charged by the House of Representatives.

The Vice-President then, in an audible voice, put the following question to each of the Senators in alphabetical order:

Mr. Senator ———: What say you: Is James H. Peck, judge of the district court of the United States for the district of Missouri, guilty or not guilty of the high misdemeanor charged in the article of impeachment exhibited against him by the House of Representatives?

Each Senator rose from his seat as this question was propounded to him, and answered.

¹ Senate Impeachment Journal, p. 337.

² Journal, pp. 337, 338; Debates, p. 45.

Messrs. Thomas H. Benton, of Missouri, who had been a witness, and John M. Robinson, of Illinois, who had taken his seat on January 4, after the testimony for the managers had been concluded, were, on their request, excused from voting.

The vote having been ascertained, the Vice-President said:

Senators: Twenty-one Senators having voted that the respondent is guilty and 22 that he is not guilty, and two-thirds of the Senate not having voted for his conviction, it becomes the duty of the Chair to pronounce that James H. Peck, the judge of the district court of the United States for the district of Missouri, stands acquitted of the charge exhibited against him by the House of Representatives.

The Vice-President then directed the marshal to adjourn the court of impeachment; and it was accordingly adjourned sine die.

2384. Peck's impeachment continued.

A report of the acquittal of Judge Peck was made in the House in the report of the chairman of the Committee of the Whole.

Forms of reports made by a chairman of a Committee of the Whole after attending an impeachment trial. (Footnote.)

The House attended the Peck trial as a Committee of the Whole House. (Footnote.)

The journal of the House for this day has this entry: ¹

The House again resolved itself into a Committee of the Whole House, and proceeded to the Senate Chamber to attend the trial by the Senate of the impeachment of James H. Peck, judge of the district court of the United States for the district of Missouri; and, after some time spent therein, the committee returned into the Chamber of the House; and, the Speaker having resumed the chair, Mr. Cambreleng [Churchill, C., of New York], from the Committee of the Whole, reported that the committee had, according to order, attended the trial of the said impeachment, and that the said James H. Peck had been acquitted by the Senate of the matter whereof he stood charged by the House of Representatives, as contained in their article of impeachment exhibited against him.²

¹House Journal, p. 236.

²The reports from day to day had been similar, but varied to meet the conditions. Usually they ended somewhat like this: "That further progress had been made therein, and that the court of impeachment had adjourned to meet again to-morrow, at 12 o'clock meridian." If no progress had been made, the report simply gave the hour to which the court had adjourned. (Journal, pp. 226, 229.) Mr. William D. Martin, of South Carolina, acted as chairman of the Committee of the Whole a portion of the time.

It is to be noticed that, while the impeachment had been considered in Committee of the Whole House on the state of the Union, the House resolved itself into the Committee of the Whole House to attend the proceedings.