New Orleans Republican.

OFFICIAL JOURNAL OF THE UNITED STATES

OFFICIAL JOURNAL OF THE STATE OF LOUISIANA

OFFICIAL:

PROCEEDINGS OF THE GENERAL ASSEMBLY OF THE STATE OF LOUISIANA.

THIRD SESSION.

JOURNAL OF THE SENATE.

Fiftieth Day's Session.

SENATE CHAMBER, Thursday, March 3, 1870.

The Senate met pursuant to adjournment.

Present: Hon. O. J. Dunn, Lieutenant Governor and President of the Senate; and Messrs. Anderson, Antoine, Bacon, Beares, Blackman, Braughn, Campbell, Coupland, Darrall, Day, Egan, Foute, Futch, Jenks, Jewell, Kelso, Lewis, Lynch, Monette, Offutt, Ogden, O'Hara, Packard, Pinchback, Poindexter, Ray, Thompson, Todd, Whitney, Wilcox, Williams, Wittgenstein—32.

Prayer by the Rev. Mr. Healy.

Reading of the previous day's journal was dispensed with.

MESSAGE TO THE HOUSE.

The Secretary informed the House that the President of the Senate had signed the following enrolled House bills, viz:

"An act for the relief of Mrs. C. Hyde."

"An act relative to the Atlas Company."

"An act for the relief of J. E. Trimble."

"An act relative to advertisements."

"An act changing the name of I. Levi.'

"An act to punish negligence of drivers of City Railroad Cars."

"An act to incorporate Bayou Castine Navigation Company."

"An act changing the name of F. Johnson."

"An act changing the name of E. Mongrean."

And asked the signature of the Speaker to the following enrolled Senate bills, viz:

"An act to exempt from taxation the Third District Odd Fellows' Hall Association."

"An act appropriating $5000 to the Ladies' Monumental Association of Fredericksburg, Virginia."

"An act to incorporate St. Mary's Benevolent Association."

"An act to compel certain parish Recorders to perform certain duties," etc.

"An act to prevent conflicts of jurisdiction," etc.

President Dunn then announced the hour for the sitting of the Court of Impeachment and vacated the chair.

The Court of Impeachment having adjourned, Lieutenant Governor Dunn resumed the chair.

The following Senators present:

Messrs. Anderson, Antoine, Bacon, Beares, Blackman, Braughn, Campbell, Coupland, Darrall, Day, Egan, Foute, Futch, Jenks, Jewell, Kelso, Lewis, Lynch, Monette, Offutt, Ogden, O'Hara, Packard, Pinchback, Poindexter, Ray, Thompson, Todd, Whitney, Wilcox, Williams, Wittgenstein—32.

A recess was then taken until seven o'clock this evening.

CHARLES H. MERRITT,
Secretary of the Senate.

PROCEEDINGS OF THE SENATE WHEN SITTING AS A COURT OF IMPEACHMENT.

FRIDAY, February 18, 1870.

At the hour of one o'clock P. M., Chief Justice Ludeling entered the Senate chamber and took the chair.

The roll being called, by direction of the Chief Justice, the following Senators answered to their names:

Anderson, Antoine, Bacon, Beares, Blackman, Braughn, Campbell, Coupland, Darrall, Day, Egan, Foute, Futch, Jenks, Jewell, Kelso, Lewis, Lynch, Monette, Offutt, Ogden, O'Hara, Packard, Pinchback, Poindexter, Pollard, Ray, Smith, Thompson, Todd, Whitney, Wilcox, Williams, Wittgenstein.

The Chief Justice: The Sergeant-at-Arms will open the court by proclamation.

Sergeant-at-Arms: Hear ye! hear ye! hear ye! All persons are commanded to keep silence. Sit! sit.

Mr. Braughn: I move that the reading of the minutes be dispensed with.

The motion being put and carried, the reading of the minutes was dispensed with.

The Chief Justice: The Secretary will inform the members of the House of Representatives that the Senate is ready to proceed with the trial of George M. Wickliffe, Auditor of Public Accounts of the State of Louisiana.

The honorable managers on the part of the House of Representatives appeared and took the seats provided for them.

Mr. T. J. Semmes and Henry Gray appeared as counsel for the accused.

The Chief Justice: Senators, when the court adjourned yesterday, it had under consideration the objection raised by counsel for the respondent as to the admissibility of the testimony of the witness, Mr. Graham, on the ground of interest. The Chief Justice had decided the objection not well taken, and, on motion of a Senator, the question was about to be submitted to the Senate, when the court adjourned. The Chief Justice desires to say that he has had an opportunity of examining the matter since rendering the decision yesterday, and that he was mistaken as to the extent of the language of the act of 1868; that at the time of the decision he was of opinion that the act was more extensive than it is. The act reads as follows. (The Chief Justice here read the act referred to.) The Chief Justice was of opinion that the expression of "civil matters" was not in the act. It becomes proper, therefore, for the Chief Justice to say that he still adheres to his opinion, notwithstanding these words in the act, because he regards this as a civil proceeding, and not as a criminal proceeding. The Chief Justice, therefore, adheres to the ruling which he made yesterday. Does the counsel desire to argue the question?

Mr. Semmes, of counsel for accused: I understand, from the opinion just delivered, that it is conceded that if this be a criminal prosecution, then the point raised by the counsel would be well taken.

The Chief Justice: That is the ruling.

Mr. Semmes: I came prepared with authorities to establish this proposition, but it being so decided, it is therefore entirely unnecessary to argue the question, except as to whether or not this is a criminal proceeding or a civil proceeding. This, sir, is the first time in the history of impeachments that I have heard it intimated that it was civil in its nature, and although I have not come this morning prepared, and am, to a certain extent, taken back by the announcement of such an opinion, yet I think the constitution of the State will very readily, in my judgment, determine the character of the proceeding. In the first place, sir, what is the line of demarcation between civil and criminal proceedings? Any fine as punishment, such as imprisonment inflicted in consequence of the proceedings, or any forfeiture, is, in my judgment, the test by which you are to ascertain the character of the proceeding. Why, sir, the Supreme Court of the United States, held—when the question of the constitutionality of the act by which attorneys were required to take what is termed the "iron clad" oath in order to be admitted to practice, in the case of —— and others—when that matter was before that court it was considered that forfeiture of the right to practice law was a penal forfeiture, which could not be inflicted by requiring a party to take an oath of that description.

And wherever a penalty, or any matter in the nature of a forfeiture, is to be adjudged against a party, that has always in the history of common law—and it is by the principles of that we are to be guided in the consideration of this case—been regarded as a punishment for offenses. What constitutes the character of this proceeding? Now, sir, how is this to be characterized under the constitution of this State? The judges of all the courts, under article eighty-one of the constitution of this State, shall be liable to impeachment for crimes and misdemeanors. That is article eighty-one of the constitution of this State. The constitution of the United States says that the officers therein described shall be liable to impeachment for treason, bribery or other high crimes and misdemeanors. The constitution of this State nowhere defines, unlike the constitution of the United States, it nowhere defines what shall be subject matter of impeachment, except in the case of judges. It is only in this article, eighty-one, that the words "crimes and misdemeanors" are used. For when you refer to title five—the title of impeachment in the constitution—you find it vests the power of impeachment in the House of Representatives, and goes on to say that "impeachment of the Governor, Lieutenant Governor, etc., shall be tried by the Senate. The Chief Justice of the Supreme Court, or the senior judge thereof, shall preside during the trial of such impeachments. Impeachments of the Judges of the Supreme Court shall be tried by the Senate. When sitting as a Court of Impeachment the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the Senators present."

It does not define the subject matter of impeachments, except as to judges; it leaves it an open question for what a man may be impeached, except as to judges, in which case it is to be confined to crimes and misdemeanors. That throws us back, therefore, of course, to ascertain what impeachment means, and for what an impeachment can be sustained. Now, sir, what is the language used in criminal prosecution? When a suit is entered to recover a sum of money, or in other civil proceedings, the term "convicted" is not used; the language of the judgment is: "Is is ordered, adjudged and decreed," or that he shall do so and so. But when you proceed against a party for an offense, or any matter in the nature of a crime, and the party is brought before the court, he is not "ordered, adjudged and decreed," but he is convicted. And the term "conviction" always applies to matters criminal in their nature, and no conviction can take place except in courts of criminal jurisdiction. Therefore, as the language of the constitution is, that "no person shall be *convicted* without a concurrence of two-thirds of the Senators present," this must be a criminal proceeding. The constitution of the United States differs also from the constitution of the State in this, that it nowhere declares that the Senate, when sitting to try an impeachment, is a court.

One of the most important questions raised in impeachment before a Senate, has been, whether or not that tribunal was or not a court. It is well known, that when the Senate of the United States was sitting for the trial of the impeachment of President Johnson, it was claimed that the Senate was sitting simply as a Senate, and the managers on behalf of the prosecution took the precaution throughout the entire trial to object to the use of the word "court," and always called it "Senate;" whereas the counsel for President Johnson, from the very commencement to the end of the trial, called it a court. Now, what was the object of the distinction of the two theories? On the one side, the prosecution, or the managers, maintained that the Senate was not a court of justice, but a political tribunal not governed by the rules of courts of justice; whereas the counsel for President Johnson insisted on the other theory, and appealed to the constitution of the United States. We, sir, are free from this difficulty, because we use the language of the constitution of the State, when we say, that the Senate is sitting as a "Court of Impeachment," for the very article which I quoted provides that "when sitting as a Court of Impeachment, Senators shall be upon oath or affirmation." Therefore, in this investigation we are entirely rid of that difficulty which existed in the trial of President Johnson, and which divided the opinion of the Senators, as to whether or not this is a court. And I think I have gained one step in establishing that this is a court, and a court within the meaning of the constitution, invested with judicial functions.

The Chief Justice: The Chief Justice would state that, at no time, has he said that this is not a court. The Chief Justice has ruled that this proceeding is not criminal, but civil.

Mr. Semmes: Mr. Chief Justice, I am aware of that, and the reason that I dwell upon that is, that I cannot conceive, if you grant that, of the possibility, unless you make this merely a political court, of making this other than a court of criminal jurisdiction. Therefore, in President Johnson's case, it became important to establish that it was a court under the constitution; if that fact is determined, it follows as a necessary consequence that there must be some offense known to the law, for which the party can be tried and convicted. Therefore, if it is conceded, and it can not be denied, that this is a court, then what kind of a court is it? What civil rights are you called upon to enforce? What is this prisoner at the bar here for? For what do you pronounce judgment against him? What is the language of the charges? We are called upon to answer for what? Crimes and misdemeanors. What are crimes and misdemeanors but criminal offenses? If this be a civil tribunal, what jurisdiction have you to try crimes and misdemeanors? None.

Because the sole purpose and object of this proceeding is to fix upon the party arraigned before you the imputation of criminal conduct, growing out of the acts charged against him in the articles of impeachment; and these acts are characterized as crimes and misdemeanors; and we are called upon to answer for these acts, thus characterized, and for nothing. Does a civil court ever inflict punishment? Does a civil court ever pronounce forfeiture for the criminal acts of the party? I understand, viz: that property may be forfeited for acts done by the property itself regardless of the ownership, and that, to a certain extent. But this forfeiture arises out of the use of the property; and in 1862 was passed an act of Congress, the constitutionality of which has not yet been pronounced upon. In 1861, regardless of the ownership, if the property was doing, or if used for a prohibited purpose, the property was forfeited as being the guilty thing; like a vessel running the blockade, it is forfeited, because the vessel is the guilty thing, subject to confiscation. But when you proceed against a person, he himself must be found guilty of some crime charged against him. Under the act of 1862 it was supposed to authorize the confiscation of land for acts done by the owner, and the constitutionality of that act has not been determined, and I apprehend that that act is unconstitutional, because of the discrimination between confiscating property for acts of an individual, and confiscating property for the use to which it is applied.

Now, then, here is an individual arraigned before this tribunal, to evict him from office—not only that, but to inflict a punishment more disgraceful than confinement in the Parish Prison—the punishment of entire forfeiture of his civil rights, his rights to hold office under the laws of the State. Is not that more criminal or penal in its character than the law which prohibits attorneys from practicing in courts in consequence of refusal to take a certain oath; and that is criminal in its nature, because the Supreme Court so decided, and that it was an *ex post facto* law; and everybody knows that this is not only executive but penal or criminal legislation. Therefore, here we have a party arraigned for crimes and misdemeanors, we have a court here to convict or acquit, and it is necessarily a criminal proceeding. We have a penalty imposed equivalent to any penalty imposed by a court of criminal jurisdiction, and we have all the proceedings of indictment against him in a court, where his plea is "not guilty;" not that "I do not owe this debt," but "I am not guilty of this act."

Then, take into consideration, that the constitution of the State itself has provided means for removing a person occupying office, who is not guilty of any crime—I mean by "address," which provision does not exist in the constitution of the United States. This provision was introduced in England during the reign of William and Mary, after the revolution, in order to provide means of getting rid of incompetent or improper officers.

That was the first time it was introduced in the constitution of England, a provision which has been copied in the constitutions of the various States of the Union. The object was to get rid of the difficulty of impeaching for incompetency or other reasons that do not amount to crimes. The very fact of incorporating this clause in the constitution, that all civil officers may be removed, and the causes are not to be stated except in the case of judges; in regard to judges the cause of removal must be spread upon the journal. But in regard to every other officer you may remove with or without cause, provided you have a two-thirds vote.

And on this subject I will call the attention of the Senate to the argument made by learned manager, and read by the Secretary, that this clause of the constitution which provides for removal by address, does not apply where provision is made for officers being impeached. The learned gentleman who prepared that brief is not certainly aware of the history of that very clause of the constitution to which he refers. Had he been, he would have known that it was adjudged by the Supreme Court of the State in a celebrated case. Every one knows of the excitement in the elections of 1855 and 1856, and the violence practiced at the polls; every one knows of the destruction of the ballot box that took place then. A celebrated individual named Humphries was the candidate put up against the Democratic candidate for the office of Sheriff; and when it was ascertained that the Democratic candidate was elected, the mob destroyed a ballot-box, thereby destroying thirteeen hundred votes, and Humphries was returned as elected, thereby defeating the Democratic candidate. Suit was instituted under the law, contesting the election of Humphries, and the court decided the case in his favor. In this state of things a Democratic Legislature assembled. The case had been contested between these two officers, and decided by the civil courts. The Democratic party, then in the ascendancy, felt the outrage perpetrated upon the people, or on them as representing the people. They felt that it was required by the people that nobody should hold office by any violence of that nature. When it came up for consideration before the Legislature, it was admitted that Humphries could not be charged personally with the offense committed; he, therefore, must be regarded as innocent. The question then arose as to the power of removal by address, and it was found that it was unnecessary to declare the reason for removal, except where you attempt to remove a judge. It then became a question whether to exercise this power without giving any reason, and it was decided to proclaim it openly, and it was thought best, as a matter of policy, that the reason should be so proclaimed. Those friends of Humphries, and those who raised the hue and cry on the ground that the civil courts had decided the contest, and that the matter was *res adjudicata* contended that the Legislature had no right to revise the action of the courts, and therefore that it was an infriction on the constitution to exercise this power of removal. This argument had no weight upon the ground that this was no contest for office. It was true that the case had been decided in the courts, but under the then state of affairs, the public demanded the removal, and therefore the Legislature announced that they would remove him, not because he was guilty of any crime, but to vindicate the purity of the ballot-box, and prevent the repetition in future of such crimes. Upon that public and high ground he was removed from office. There never was a case presented better calculated to give validity to this argument, for he was removed, not on account of any personal offense, but on high public consideration, irrespective of the individual. The Supreme Court then decided that they had no right to revise the action of the Legislature; that the Legislature had the right to remove for any cause they saw fit; and although the right to remove by impeachment existed, they interpreted this clause of the constitution as distinctive from the right of removal on impeachment, one not being in contest with the other. Now, the learned manager attempts to say that the right of removal by address does not apply to officers whose removal is provided for by impeachment. But the constitutions of 1864 and 1868 have adopted the exact language of 1852. Now, then, I say that here you have means provided by the constitution of the State to get rid of any unpopular officer; to get rid of any insane officer; any incompetent person for political reasons, or personal reasons; because he is not a gentleman; because he is not a faithful officer, or for any cause you please, whether criminal or not, and your right to do so is not questioned, and the means is afforded you by the constitution to get rid of them in that way. But when you come to impeachment, then it becomes personal to the individual. You charge him with something known to the law of the land; you arraign him before the court; you put him upon trial; you charge him with crimes and misdemeanors, and he is placed before this tribunal. You are put on your oath to say whether you will convict or acquit; you are here, not as a jury, but as judges. This court is composed of the Senate and the Chief Justice; you are the judges, and with your votes you pronounce sentence, which the jury does not. For after you shall have convicted, after your judgment is rendered, it is executed through the instrumentality of your executive officer. You have not the power to confine the party, nor to put him in the Penitentiary; but you would have that power but for the fact that the constitution reserves that for other tribunals; but it says: "The convicted parties shall, nevertheless, be subject to indictment, trial and punishment according to law." When a man was impeached in England, he could be punished to any extent which the law allowed. But it is not so in America. In the United States, when the constitution was framed, it was considered that that tribunal, which was to try such cases, would be, to a certain extent, governed by political ideas and feelings, and therefore, it was that this right was given to some other tribunal and that you were merely to have the power to remove and disqualify him from ever holding office. If this is not criminal or penal, I would like to know what you characterize as criminal or penal? What are we here for? Are you suing here to recover office? If this was merely a suit against Wickliffe to recover back his office which was given him by the votes of the people, it might be characterized as a civil suit; but you are here not having any rights to that office under the constitution. You are here not to test his rights to that office, but to declare his forfeiture of it and to further disqualify him from ever holding office, in consequence of crimes and misdemeanors alleged in these articles of impeachment. Now, then, if that be the case, how can this be called a civil proceeding? Civil tribunals are to decide between individuals in contests in regard to property of some kind or civil rights of some kind. The State never institutes civil proceedings unless to assert some right of the State to property, but this proceeding is instituted by the State, by the House of Representatives, for the purpose of declaring forfeiture of office. Nothing more or less than forfeiture, and it is a suit criminal in character, to inflict penal suffering in consequence of these alleged offenses. Therefore, for the life of me, I can not see why you characterize this as a civil proceeding. I want your definition of civil proceedings. I want to know what they are. What are the elements of civil proceedings? By what marks are they known to the community? Where is the line of demarcation? And if no better line can be drawn, I maintain that a civil proceeding always is instituted as to the rights between parties. The State does not institute civil proceedings, but this proceeding is instituted by a public body, conducted by public prosecutors, to wit: the managers, and is to be followed by a penalty. I could describe negatively. I can give an idea what criminal proceedings are; I can say what is a civil proceeding, and I can say that the opposite to that is criminal. For these reasons, I sincerely hope that I may be able to produce such arguments as will cause you, Mr. Chief Justice, to reverse the decision which you gave yesterday, because the very nature of this prosecution depends on this question. I have been called upon to discuss this question in advance, without that due preparation which I should have given it, but I will be better prepared upon the final argument. I have been, as it were, taken aback by your decision; it astounded me, as authors, Lieber and others, declare though you are a political court, they all seem to regard that, although the offense may be political, yet the court itself has criminal jurisdiction. That has always been the controversy in cases of impeachment, not as to the character of the proceeding, but as to whether or not the court could say what is and what is not evidence, and that it was not bound by the law of the land. For these reasons I humbly submit that this witness is not competent, because he is interested in the result, and the change in the legislation applies only to the civil code, and this is not a civil action, but criminal in its nature.

Mr. Manager Lowell: Mr. Chief Justice, in reply to the arguments adduced by the counsel for respondent, I have but very few words to say. As to the definition of civil and criminal suits, I do not propose to differ with the learned counsel. But I take the ground that this is neither a civil nor criminal proceeding in the legal acceptation of the term. I take the ground that this body is a political body under the constitution, not to try a civil suit as between man and man. Not to try a criminal suit, as between the State and an individual, but to ascertain by facts before you, whether this public officer is fit for the position which he holds. The counsel for the accused, because we, in the articles of impeachment, use the terms, high crimes and misdemeanors, undertakes to take for granted that we mean only such crimes and offenses which may be indicted before the courts. Now, if we study the law on impeachment, we find that the words high crimes, as used in the court on trial, means just what I will read from authorities.

When the words high crimes and misdemeanor are used in prosecution by impeachment, the words high crimes and misdemeanors have no definite meaning, but are used merely to give greater solemnity to the charges. Now, we say that impeachment is purely a political proceeding. It is neither a criminal proceeding nor a civil suit, and that the rules of evidence, which apply in civil and criminal proceedings, are not the rules to be applied here, but the rules we adopt in the trial of an impeachment as in England and in this country, are entirely different. Gentlemen, as I said in the opening argument, this is not a court of justice, neither a criminal court, nor a civil court of justice, but you are sitting here as the grand inquest of the nation to determine whether this officer, having been placed in his high position by the suffrages of the people, is competent for that position, or whether it is for the benefit of the State to remove him therefrom. In a criminal suit, the party is either imprisoned or a fine imposed. In this case, neither is done, but he is simply deprived of a political office, and forever disqualified from holding any office. The question is not as to his personal rights, therefore this is neither a criminal prosecution nor a civil suit. I wish the Senators would distinctly understand and study this, and not be cajoled by the eloquent remarks of the counsel into the belief that this is something else than a Senate sitting as a Court of Impeachment. If the framers of the constitution had intended this to be tried according to the rules of justice, then they would have said, take the party before a court of justice. But you are simply to determine whether he is fit to hold his office and then the courts can take charge of the criminal matter afterward; and, if he has embezzled any money or stolen any property from the State, he is not only amenable to the criminal law, but may be under certain circumstances amenable to the civil law, under his bond. I do not desire, Senators, to discuss this question at length, because I do not intend to take up the time of the Senate in investigating these questions. The whole thing is merely a matter of fact, whether upon the testimony as produced, this party is unfit to hold his office; and we do not propose to contradict these points or technical objections, or to discuss them, for it seems that it is simply on technicalities that the defense relies. We do not propose to discuss these technicalities, and I have already intruded much further on the time of the Senate than I shall do hereafter.

Mr. Gray, of counsel for the accused: Mr. Chief Justice, I do not intend—

The Chief Justice: The Senate has adopted a rule that all preliminary questions shall be argued not exceeding one hour. The Chief Justice desires to know whether that discussion shall be conducted by one counsel on one side or more?

Mr. Foute: Mr. Chief Justice, I think that when there are three or four managers there may be two counsel.

The Chief Justice: The question that the Chief Justice put was whether more than one counsel on each side should conduct the argument.

Mr. Ray: I understand very clearly that under this rule one hour in allowed for each side, the question propounded then is whether two counsel shall be allowed to participate in the discussion.

The Chief Justice: The question is whether more than one counsel on either side shall be allowed to discuss preliminary questions.

Mr. Pinchback: Mr. Chief Justice, as I understand the proposition, if we vote for more than one counsel we extend the time.

The Chief Justice: The Chief Justice is of opinion that the discussion is limited to one hour on each side. The question then is whether, within the hour allowed, more than one counsel on either side may discuss the question.

Mr. Ogden: I move that further time be given to counsel for the defense to answer.

Mr. Blackman: Let me understand the motion. Is it for the purpose of arguing the question now before us?

The Chief Justice: I understand the motion to be general—in other words, to change rule twenty.

Mr. Ogden's motion was put to the Senate and lost.

The question then recurred on the proposition to allow more than one counsel within the hour to discuss preliminary or interlocutory questions.

The motion was carried by the following votes:

Yeas: Anderson, Antoine, Bacon, Blackman, Braughn, Campbell, Coupland, Darrall, Day, Egan, Foute, Jenks, Jewell, Kelso, Lynch, Offutt, Ogden, O'Hara, Packard, Pinchback, Poindexter, Pollard, Ray, Smith, Thompson, Todd, Whitney, Williams, Wittgenstein—29.

Nay: Monette—1.

Mr. Gray, of counsel, for accused: Mr. Chief Justice and Senators, I should not have consumed as much time if I had been allowed to speak as that which the Senate has consumed in discussing whether I shall have the right. As far as I am concerned I say that there does seem to exist some understanding. Yesterday, objection was made to the introduction of the testimony of a witness on the ground of interest. The court announced that in criminal law the objection was well taken, and if this was a criminal proceeding the point was well taken. Now, sir, I differ with the learned manager who spoke. I do not conceive how a man ever can contend that one can ever be deprived of his property without due course of law. It is contended by the managers that if a man is elected to office and duly invested with the rights of that office, it can be taken away without due course of law. And what is due course of law? There can be no distinctive right to office, politically speaking. If, Mr. Chief Justice, a man is elected to office by the people how can he be deprived of it? Has he not the right to it, and can it be taken away from him by an accidental majority in the Legislature? I take it not, and the constitution says that no man shall be deprived of his vested rights without due course of law. In the manner pointed out by law there are two modes by which a man can be deprived of his office—by address of both branches of the Legislature and by impeachment. And there is a distinction between the two modes; in the first no member of the Legislature is compelled to swear to do justice; but the law secures this that he shall be addressed out of office by a two-thirds vote.

But this prosecution is instituted by a majority of the House of Representatives to divest Mr. Wickliffe of his office, to which he was elected by the people and which he has a right to hold. How has he forfeited it? Suppose two-thirds of the Senate convict him of what justified the action of the House of Representatives. That would not deprive him of his office. To deprive him of it he must have forfeited it for some crime or misdemeanor,

Now, sir, if the court please, there is not a single allegation in the articles that does not conclude that he is guilty of crimes or misdemeanors. As far as I understand the law, there is no such thing as misdemeanor—there is under the common law, but the common law is not in force here—in the criminal jurisprudence of Louisiana, there is no such thing as misdemeanors, which, under the common law, subjects the party to fine and imprisonment.

But as far as the law of Louisiana is concerned there is nothing here that we understand as misdemeanors, and no decision of the Supreme Court establishing such an offense. But suppose there were, what would be the definition? and how would it deprive him of his office? How is that to be ascertained? And here I must insist upon the attention of the Senate to the distinction drawn by my colleague between civil and criminal proceedings. By necessity, if a man demands his land, his horse or his money, that is merely a matter of private rights or a civil proceeding; but whenever the proceeding is for a breach of the law, a man does not proceed against him. Has he the right to proceed against a person because he does not do his duty? Not so; the State has to do that, and no private individual. And that which is a violation of the law; that which works punishment; that which deprives a man of life and liberty, is a criminal proceeding, and I do not care what garb you place it in. Here, it is the House of Representatives that comes and says:

"You were fairly elected, but we say, having been fairly elected to office, we still have the right to take it away, even if you are guilty of no offense."

Such I understand to be the extraordinary position taken by the managers; that, though fairly and duly elected, and holding his office and discharging the duties thereof, yet that office can be taken away from him without his having been guilty of any offense. In other words, can one branch of the Legislature deprive a man of his office, to which he was elected by the public, simply upon the vote of two-thirds of the members of one branch of the Legislature? I admit that if this was a political proceeding, that two-thirds of the members of both branches of the Legislature could address the man out of office; and they are not compelled in that capacity to assign any reason whatever for the act which they do. But, sir, when it comes to impeachment—I understand, in the first instance, that the Chief Justice decided that we were to be governed by the rules of evidence—I understand, therefore, that, if Mr. Wickliffe is to be turned out of office, it is not because any other man has a better right to that office, but simply because, by some crimes or misdemeanors, he has forfeited his right to that office. What is forfeiture? What are crimes and offenses? And what is the penalty? You may impose what sanction you please upon it, but whenever a man is once elected and conducted into office, if you take that away from him, and declare him ineligible to office, what is that but a punishment? Legislation may address him out of office, and that is all; but the judgment of this court is criminal; it not only invalidates his vested rights in that office, but declares that he shall be ineligible. If that is not a punishment, I do not know what it is, and such is the decision of the Supreme Court of the United States. There is a very wide distinction as to the question, as to whether or not this is a criminal or civil proceeding. Do I understand that the Chief Justice regards this as a civil proceeding? If so, who are the parties? Has the House of Representatives any right to the office of the Auditor, or any title in the offices? Are they the proper persons to indict? Certainly they are, but when they do, and when this court is sworn, and should they pronounce him guilty, deprive him of his right to vote, and his right to hold office in the State, the deprivation of it is a punishment, and I do not care in what language they choose to define it. I am much obliged to the Senate for the time they have given me for my argument.

The Chief Justice: The Chief Justice feels some embarrassment as to the course he has to pursue in rendering his decision. If he does it without giving any reasons, it might place him in a false position; and to give the reasons at length, might seem to be defending or prosecuting. But he feels it his duty succinctly to give the reasons why he says that he regards this as a civil, and not a criminal proceeding, and he will do so briefly by answering a few questions of the counsel, and by referring to a point made by the prosecution.

The counsel in the first place asks, "Why are we here?" The Chief Justice answers: To determine whether or not the Auditor is worthy of holding his office, or any offices. It is an inquest of office. The proceeding, said the counsel for the defense, is either civil or criminal, if it is not civil, it is criminal, but the converse is equally true. If it is not criminal it is civil; and I will refer to the article of the constitution which satisfies me that this is not a criminal proceeding. I refer to article six of the constitution, which declares that prosecutions shall be by indictment or information, and the accused shall be tried by jury. The counsel also says that the distinction between impeachment and address out of office is, that the latter is for incompetency, and the former on account of crime or misdemeanor, and for offenses other than incapacity; and he refers to the case of Hufty to sustain his position. The Chief Justice, in answer to this, says that the contest was for the office of Sheriff, and under the constitution of 1852 the Sheriff might be addressed out of office, but he was not impeachable. Under the constitution of 1868 those officers subject to be impeached can not, in the opinion of the Chief Justice, be addressed out of office, and if it be true that these officers cannot be addressed out of office, the converse of the proposition of the counsel for the defense is true that they may be impeached for insanity, drunkenness, incapacity and other facts, which disqualify a man from office. These are the views of the Chief Justice, and he feels it his duty to state them.

Mr. Blackman: Mr. Chief Justice, I send to the Secretary's desk a motion that the Senate retire to the Hall of House of Representatives for consultation on the question now before the court.

This motion was put by the Chief Justice and lost.

Mr. Ogden: Mr. Chief Justice, I desire now that the sense of the Senate be taken on the decision of the Chair.

The question being put, the decision of the Chief Justice was sustained by the following vote:

Yeas: Anderson, Antoine, Bacon, Beares, Campbell, Coupland, Darrall, Day, Foute, Kelso, Lewis, Lynch, Monette, Offutt, Packard, Pinchback, Poindexter, Pollard, Ray, Todd, Wilcox, Williams, Wittgenstein—23

Nays: Blackman, Braughn, Egan, Jenks, Jewell, Ogden, O'Hara, Smith, Thompson—9.

The name of James Graham, the witness sworn yesterday, was called, and he was found not present.

Mr. Manager Lowell: As Mr. Graham is not present, I would call Mr. Lagroue.

The name of Mr. Lagroue was called, and he failed to respond.

Mr. Manager Lowell: Mr. Chief Justice, I would like to have these witnesses, after having been summoned to be in attendance. Mr. Chief Justice, as these witnesses are absent, I will call Senator Lynch.

TESTIMONY OF JOHN LYNCH.

Senator Lynch being sworn, gave his testimony, standing in his place.

Examination in chief by Manager Lowell:

Question. What is your name?

Answer. John Lyech.

Q. What is your position; what State position did you hold in the winter of 1869 in the Senate, and on what committees?

A. I am a Senator, representing the Seventeenth Senatorial District in the State Senate; I was on several committees; I was chairman of the Committee on Finance, and served on the Committee on Railroads and on the Committee on Education, and on the Committee on Levees.

Q. In your capacity as chairman of the Finance Committee, did you have frequent interviews with the Auditor and Treasurer of the State?

A. I visited their offices occasionally, with the view to inform myself as to the finances of the State.

Q. Were you at the Treasurer's on or about the ninth of January?

A. I was there frequently about that time.

Q. Now, I would ask you to state what conversation occurred between you and the Treasurer about that time?

This question was objected to by counsel for respondent.

Q. Then state what conversation you had with the Auditor.

A. I had several conversations with the Auditor, particularly one.

Q. On the ninth of January?

A. I could not tell, but on or about the ninth of January I had a conversation with the Auditor of Public Accounts in regard to certain warrants issued against the Auditor of Public Accounts on the Treasurer to pay certain coupons, to which warrants the Treasurer called my attention. I then had a conversation with the Auditor of Public Accounts, and asked to know the vouchers upon which the warrants were issued. On taking them to the party, I asked him for the vouchers; he produced coupons attached to the bonds of the issue of 1867. From my knowledge of the bonds, I knew that none of these coupons, which were numbered "one" and "two," should properly be out as debts of the State, as but ten bonds had been issued in the year after the date of these bonds; each coupon representing the semi annual interest on the bond. I said to the Auditor that these warrants or these coupons were not properly out against the State, that there was something wrong, and that there was some one stealing; and having ascertained the name of the party, I said, as near as I remember, that this man Richardson must be attended to first. I could not give the words particularly, but the substance of what I said was that he must be attended to first; I supposed him to be the guilty party. The Auditor then said to me in substance that this Richardson was not responsible; that he himself was responsible, and that for the sake of making a few cents he had done it himself. That was the substance of what he said, using, perhaps, not the exact language, and he said that, rather than have any trouble, he would pay the money back into the treasury.

Q. Do you know whether he did pay the money back?

A. I suppose he did. I returned the warrants to the Treasurer and told him the result of this conversation, and the Treasurer gave the warrants to one of his clerks. I do not know from myself, only from hearsay, whether he paid the money back or not.

Q. In whose favor were the warrants?

A. In the favor of Richardson.

Q. What was the amount?

A. There were two warrants, amounting to some nineteen hundred dollars.

Cross-examined by counsel for respondent:

Q. Mr. Lynch: After you had this conversation, in the Auditor's office, did you go into the Treasurer's office and have a conversation with Mr. Campbell?

A. None, in the presence of the Treasurer. I do not remember having any conversation with Mr. Campbell—my conversation was with the Treasurer.

Q. What did you then say to the Treasurer, in the presence of Campbell?

A. I stated to the Treasurer, in substance, the result of my interview with the Auditor, and that he would pay the money back into the treasury.

Q. Did you not then say, either to the Treasurer, or to Campbell, that Wickliffe had said to you that it was a mistake, and that he would pay the money back, or words to that effect?

A. No, sir.

Q. Where was the Auditor when you called on him about these coupons?

A. In his private room.

Q. His private room adjoins his public office?

A. Yes, sir.

Q. There is a room back of that private room, is there not?

A. Yes, sir.

Q. When you showed him these coupons did you have any documents there?

A. Yes.

Q. And books?

A. The bond register kept in the Auditor's office was produced. I said to the Auditor that if the bond register was produced, I could convince him from the date that these coupons could not be justly out against the State; and, also, show that the ten bonds issued were returned after that date; consequently no bonds were issued within the first twelve months after the date of these bonds. The bond register was then taken into the room further back so that I could compare the number on the coupons with the bond register so as to identify the bonds upon which they were issued. When I should do so, I thought it necessary to ascertain to whom the bonds were issued.

Q. You did ascertain then to whom the bonds were issued?

A. Yes.

Q. Who were they?

A. I can not remember.

Q. Where were the coupons at the time of the interview between you and Wickliffe?

A. The coupons were taken out of the desk in the office of the Auditor of Public Accounts. The Auditor took from the desk a package of papers. There were several small packages there, and one of these packages contained thirty three No. 1 and thirty-three No. 2 coupons.

Q. He produced these to you; did he make any delay?

A. No.

Q. Was there any hesitancy on his part?

A. No.

Q. Did you call for these vouchers?

A. I called for the vouchers.

Q. Then he immediately went to his desk and tendered the package to you?

A. He produced them.

Q. Did you call in his private office?

A. In his private office.

Q. After they were produced did you go back to the other room to compare the coupons with the register?

A. Yes, he showed me in the room.

Q. Who had this book in possession; how did you get it?

A. It was taken from the outer office.

Q. Who went for it?

A. The Auditor, I think.

Q. The Auditor then went into the public office and carried this book back into that room, and there both of you compared it with the coupons?

A. Yes sir.

Q. Now, sir, did he not say, when it was discovered, that these coupons had been cut off; that it was an accident?

A. I think not, sir.

Q. Did you say, that you did not say, to Campbell or to the Treasurer, that Wickliffe had said that it was an accident.

A. I said in substance to the Treasurer, that the Auditor of Public Accounts had said, that he would pay the money back into the treasury; as near as my memory serves me, I give the substance of the interview which I had had, and, that the Auditor of Public Accounts would pay the money back rather than have any trouble.

Q. You have said that he said he did it to make a few cents?

A. Yes.

Q. You adhere to that?

A. That is my recollection.

Q. Have you not some reason for wishing to change that statement?

A. My recollection, on reflection, as near as I can remember, is, that he said: "Like a damn fool, to make a few cents, I did it myself;" that is as near as I can recollect.

Q. Did you not think he was a damn fool to tell you so?

A. I thought he was, and also from other acts of his.

Q. When was this?

A. At the time of the interview alluded to.

Q. When was this conversation, what time of the year?

A. About the early part of January; a year ago, sir.

Q. The Legislature was in session?

A. Yes, sir.

Q. You were chairman of the Finance Committee?

A. Yes, sir.

Q. Did you communicate this extraordinary development to anybody?

A. Yes, sir.

Q. To whom?

A. To several. I communiced it to to several members of the Finance Committee of the Senate, and to members of the Committee on Ways and Means of the House, and to the Governor and Lieutenant Governor.

Q. How long was the Legislature in session after that?

A. The Legislature adjourned on the fourth of March.

Q. This was in December?

A. In January, 1869, sir.

Q. Did you take no steps of any kind in regard to this extraordinary development, to bring the matter before the Legislature?

A. I had a bill introduced myself, to provide for the manner of cancelling coupons. That was the extent of my action; and as a Senator and a member of the court, I did not think it my duty to prefer articles of impeachment.

Q. How was it that you waited till after the adjournment of the Legislature before taking any steps to have him tried before a criminal court?

A. I can not answer you; I do not know.

Q. Did you make any official communication to the Governor, and if so, when?

A. I made an official communication to the Governor; I addressed him officially, I think, a few days after the adjournment of the Legislature, on the subject.

Q. But you communicated the facts to him a long time before?

A. Yes.

Q. What was your motive, after having communicated verbally, to make a more formal and official communication?

A. Considering the Governor the executive officer of the State, whose duty it was to see that the laws were executed, I was of the opinion that by waiting longer, no action having been taken as yet, that I would not have been doing my duty.

Q. Did those members of the Finance Committee of the Senate, or of the Committee on Ways and Means of the House, with whom you communicated, take any steps that you are aware of to protect the interests of the State from such a dangerous individual?

A. I do not know.

Q. Why was it not communicated, so as to have him impeached then as well as now?

A. I was in doubt as to what manner the interests of the State could best be served, as to impeachment, as I said before I did not wish to follow that course myself, or those who united with me. I was in doubt, as to the best mode to pursue for the interests of the State. I therefore, had this bill introduced to prevent recurrences of that kind.

Q. I can very well understand how that bill could be introduced to prevent accidents; but, if his conduct was criminal, I do not see why some communication was not made with the view to bring about his impeachment?

A. For the reason that I did not know what course was best to pursue, and upon consultation with others.

Q. You knew that there was one Attorney General of the State?

A. Yes.

Q. Did you, or not, communicate with the Attorney General of the State, or seek his advice?

A. No.

Q. Did you, or not, advise with any one as to what course to pursue?

A. I did not ask to be directed myself, I communicated the information, and consulted as to the best means of protecting the interests of the State.

Q. Did you or not make any formal communication to the Finance Committee of the Senate, or to the Finance Committee of the House on this subject?

A. No.

Q. Did you or not suggest to the Finance Committee any course to pursue?

A. I do not know that I did.

Q. How many members of the Finance Committee of the House are there?

A. I do not know; of the Senate committee there are five.

Q. The House has an equally large number on its committee?

A. I believe so.

Q. When these facts were communicated to them by you, was there any surprise manifested?

A. I do not know that there was much surprise, but there was indignation.

Q. What was the evidence of the indignation?

A. I can not tell you, sir.

Q. Then how do you know that there was any indignation at all?

A. From the general tone of the remarks?

Q. Did this indignation subside, and all parties become perfectly quiescent; why was not Wickliffe indicted then; how did it break through or subside?

A. I do not know that it broke through or subsided; the general impression was that the State not having a faithful officer, should be regretted rather than otherwise.

Q. Mr. Lynch, are you not very anxious to have Mr. Wickliffe convicted on this impeachment?

A. If he is proven guilty; I am.

Q. But is it not your own desire to convict him?

A. No, my feelings are not prejudiced.

Q. I am not questioning your capacity as a judge, but is it not your desire to convict Mr. Wickliffe?

A. No. I do not know but that the mode in which the questions have been asked, may have called forth answers unconsciously looking that way; but I certainly have no such intention.

Q. You say that your disposition and feeling is such as not to desire his conviction?

A. If the evidence is substantiated I desire his conviction; but I certainly do not desire his conviction if the evidence is not substantiated.

Q. You are already satisfied he is guilty of this charge?

A. I give my testimony and I believe it to be true.

Q. Therefore you must be satisfied that he is guilty?

A. As far as my testimony goes, I am.

Q. Therefore you desire him convicted?

A. You may draw your own conclusion.

Q. I ask you whether you desire his conviction?

A. I believe my own testimony to be true.

Q. And you leave me to draw the inference?

A. Yes, sir.

The counsel here closed his cross-examination.

Mr. Blackman: I ask the Senator if he occupied any other official position in the State or the United States except that of Senator, and, if so, what official position?

The Chief Justice: The Senator will reduce the question to writing.

The following was then sent to the Secretary's desk:

Question by Senator Blackman: Do you hold any office, either under the United States government or of the State, other than member of the Legislature?

Mr. Manager Lowell: Mr. Chief Justice, I am directed by the managers to request the presiding officer, inasmuch as it has been decided that the rules of evidence are to be applied, that these rules be applied to the question propounded by the Senator. This question we conceive to be not germain to the subject.

After some delay, Mr. Manager McMillen said: Mr. Chief Justice, on behalf of the managers, we desire again to object to the question submitted by the Senator from Claiborne, on the ground that the question is not pertinent to the subject matter of this investigation.

Mr. Semmes, of counsel for accused: Mr. Chief Justice, it seems to me that the same latitude given to the cross examination should be extended to any Senator. The witness has been examined on one side, and cross examined on the other. A Senator, it seems, according to the rules of the court, has the right to ask questions, and is not that in the nature of a cross examination? If so, the same latitude should be allowed.

The Chief Justice: The Chief Justice is not prepared to say that it is in the nature of the cross examination, nor to decide whether the question is pertinent. The Chief Justice does not know the object of the Senator in asking that question.

Mr. Blackman: I have a right under the rules, Mr. Chief Justice. Rule No. 18 says——

The Chief Justice: It is not in order for the Senator to discuss the question.

Mr. Blackman: I see nothing in the rules——

Mr. Ogden: I move now that the court adjourn.

Mr. Blackman: That motion is not in order.

The Chief Justice: The Chief Justice is of opinion that the motion is in order.

The roll was called on the motion to adjourn.

Mr. Foute: I change my vote from yes to no on the ground that you, Mr. Chief Justice, have the right to adjourn the court whenever you please.

The vote was then announced as follows on the motion to adjourn:

Yeas: Anderson, Antoine, Beares, Braughn, Campbell, Jenks, Jewell, Kelso, Lynch, Monette, Offutt, Ogden, O'Hara, Pinchback, Poindexter, Pollard, Ray, Smith, Todd, Whitney, Wilcox, Williams, Wittgenstein—23.

Nays: Bacon, Blackman, Coupland, Darrall, Day, Egan, Foute, Packard—8.

Whereupon the Chief Justice announced that the court stood adjourned till one o'clock P. M. Saturday, February 19, 1870, and vacated the chair.

SATURDAY, February 19, 1870.

At the hour of one o'clock the Chief Justice entered the Senate chamber and took the chair.

The roll being called the following members of the Senate answered to their names:

Messrs. Anderson, Antoine, Bacon,

CORN—There were liberal receipts to-day, C Cavaroc—2d district