IMPEACHMENT TRIAL.

[CONTINUED FROM THIRD PAGE.]

all those rules of proceeding, which are referred to by the managers, and which they regard as mere technicalities, are guards thrown around every man by the tender mercies of the law, for the purpose of protecting him when he is called before a solemn tribunal to defend himself from the charge made against him. Therefore, I care not what Mr. Wickliffe may have done, unless in this investigation you should come to the conclusion that it was done wilfully—that it was done intentionally. I say that it is not criminal, even though the act be denounced by statute, and when I say this, I am speaking the law of the civilized world. The law, it is true, in some instances, infers the intention from the act, such as if you kill a man, it is naturally inferred that you intended to do it, but in these other transactions, when the intention is a constituent element, the essence of the offense, the intention, and the corrupt intention must not only be averred to make the indictment good; but it must be proved upon the trial; therefore, if a man is charged with an act which is denounced by law, such as I have cited, using language having a tendency to excite discontent among slaves, unless it was averred that such language was used with that intention, although it had the effect, the Supreme Court decided that without intention it was no crime. This has brought me, therefore, Senators, to the discussion of the facts. I have laid down the principles by which I expect to be guided in my evisceration of the facts from this immense mass of evidence, and if I have succeeded in convincing you that I am correct as to the law, which I think I have, for I perceive that my remarks have been received with considerable attention on all sides, for which I thank you, and I believe I have produced the desired effect, I believe I have removed from the minds of Senators the strange and curious notions asserted by the managers. If I have laid down the principles by which you are to be guided in investigating the facts of this case, I think you are perfectly satisfied that if you adhere during the investigation to those principles, and examine the facts with those lights, that you are bound to come to the conclusion that G. M. Wickliffe is innocent. I care not how much against your personal prejudices, for I have no doubt that I am addressing some whose minds have, to a certain extent, been biased and prejudiced against my client, resulting from a variety of circumstances over which probably he had no control. You may entertain the idea that a great many sins have been committed by the party of which he is a member, and you want a victim, and you found him an easy victim—because it is demanded by public sentiment, as expressed in the public press; but when we come before a court of justice for the purpose of having our conduct investigated, we expect all these prejudices to be laid upon the altar of justice, so that when he kneels at this altar for the purpose of supplicating from you nothing more than justice; it is hoped and believed that you will be guided by those great principles of right and of law which should actuate a tribunal of this character to which the political destiny of the State, so far as its officers are concerned, has been entrusted.

Senator Antoine: If the Chief Justice will permit me, I move that we take a recess until seven o'clock this evening.

Mr. Manager Lowell: Mr. Chief Justice, am I to understand that the counsel is through?

The Chief Justice: No, sir; the counsel is not through. The counsel took his seat for the purpose of permitting the motion for a recess to be made.

The motion to take a recess being adopted, the Chief Justice declared the court adjourned until seven o'clock P. M.

Evening Session.

WEDNESDAY, March 2, 1870.

At the expiration of the recess at seven o'clock P. M., the Chief Justice entered the Senate Chamber and took the chair.

The roll was called, and the following named Senators answered to their names:

Messrs. Antoine, Bacon, Beares, Blackman, Braughn, Darrall, Day, Jenks, Jewell, Kelso, Lynch, Offutt, O'Hara, Packard, Ray, Thompson, Whitney, Williams, Wittgenstein—19.

The Chief Justice: The Senators will please give their attention to the argument of counsel.

Are the counsel for the defense ready to proceed with their argument?

Mr. Gray, counsel for respondent: Mr. Chief Justice and Senators, in this case we dislike to proceed with a bare quorum of the Senate present. We think that in all justice we have a right to ask at least the courtesy of the court in this respect, for it must have struck all persons here, and the members of the court, that at no time during the trial has there been a full attendance on the part of the Senators, and few of them have heard the whole evidence, and even while my colleague was arguing the case there were a number of them not present. As you perceive, we have a right to be heard. It seems but simple justice that we should have a right to have those present here to hear the argument who have not even heard the evidence, and therefore we object to proceed with a majority, and a mere majority of this court present. It is altogether a question of the determination of the court; and if it is intended to try us without a hearing, it is in the power of the court to do so; but I take for granted that there is a disposition to hear us, and under these circumstances, when it takes two-thirds of the members to convict, how is it possible for us to be tried, when hardly one-half of the members have been present during the whole progress of the trial. Therefore, I submit; we have no power to compel the attendance, but simply ask as a matter of justice for them to hear us before determining the case.

The Chief Justice: The Chief Justice will state, that he has not the power to compel the presence of the Senators. While he concurs in much of what has been said by the counsel, he can only say that he can not compel the presence of the Senators. It is for the court to determine whether or not to proceed with the members present.

Mr. Blackman: How many are present?

The Chief Justice: Nineteen.

Mr. Blackman: That is just a quorum.

The Chief Justice: Senators, is it the pleasure of the Senate to proceed with the number present?

Mr. Braughn: I think, Mr. Chief Justice, that since the roll was called, several Senators have come in, but in order to satisfy the counsel, I ask for a call of the Senate.

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

Messrs. Antoine, Bacon, Beares, Blackman, Braughn, Darrall, Day, Jenks, Jewell, Kelso, Lynch, Monette, Offutt, O'Hara, Packard, Ray, Smith, Thompson, Whitney, Wilcox, Williams, Wittgenstein—22.

The Chief Justice: The counsel will proceed with the argument.

Mr. Gray, of counsel for respondent: Well, we cannot object, if with the presence of twenty-two Senators, the court decides that we have to proceed. But I will say, as a simple act of justice to the accused, we would like to ask that the absent members be sent for.

Mr. Blackman sent an order to the Secretary's desk, which was read.

Mr. Manager Lowell: Mr. Chief Justice, in justice to the cause I represent, I must object to the passage of any such order as that. It is well known that it is drawing toward the close of the session, and it seems to be the object to delay this matter, so that the cause shall not be brought to a final determination before the Senate is obliged to adjourn.

Mr. Blackman: Mr. Chief Justice, I rise to a point of order; I am sitting here as a Judge and a Senator, and have a right to send any order to be proposed to the court, and as a Judge and as a Senator, the counsel or the managers have no right to discuss or impugn my motives as a Judge and a Senator.

The Chief Justice: The Chief Justice is of an opinion that the point is well taken.

Mr. Manager Lowell: Mr. Chief Justice, it seems to me remarkable, as, under the rules established by the Senate for their own government, the privilege is allowed to discuss all motions. The twentieth rule adopted by the Senate gives this privilege, and it seems to me very queer and anomalous if we can not discuss this motion.

The Chief Justice: The Chief Justice understands that the point of order which the Senator made was, that it is improper for counsel to impugn the motives of a Senator. The Chief Justice is of an opinion that this point is well taken.

Mr. Manager Lowell: I agree fully with the Chief Justice, and it is not my intention to impugn the motives of the Senator; this proposition first arose from the counsel for the respondent, upon their persistence and their objection to proceed unless the Senate was full, while it is well known that a quorum is all that is necessary.

Mr. Gray, of counsel for respondent: Mr. Chief Justice, I have this to say: I am aware that the court can proceed with a quorum; we do not deny that fact; we do not ask this as a question of law, but simply as a matter of courtesy, addressing ourselves to the conscience and sense of justice of each Senator. It can not be concealed from the Senate that there has been, during the whole progress of this cause, a continual absence of these persons—sometimes present and sometimes absent—during the progress of the testimony, and this testimony is not before them in a printed form. How then is it that we stand here to defend ourselves, and have a bare quorum present of the judges? And the managers on the part of the House of Representatives ask what? To proceed with the argument without having the other persons here who are to judge, as well as the members present. For myself, I have no doubt that, in my representative capacity as counsel, the motives which actuate us in asking this question are as pure as those that actuate the managers

Mr Lynch: I rise to a point of order. This question is not debatable.

Mr. Gray, of counsel for respondent: The Chief Justice decided that it was, or I should not have spoken; for myself and my associate counsel I say that our motives are as pure as those of the honorable managers. You may call this a political court, or what you please, but is there no consistency or no sense of justice here? We say that it is unfair, we say that it is unjust to proceed with a bare quorum; we say that we have a right, if we are to be judged by two-thirds of the members of this court, that at least they should hear the accused before judging him. As a question of power, the court can do what it chooses; but it is the first time that I have ever heard of a judge sitting to administer law, and the accused is brought before him, and yet he will not hear him, nor compel the other judges to hear the accused. I do not ask it as a question of power, because the court can do what it chooses; but I ask it as a matter of justice and equity, and good faith on the part of the Senators toward the accused, that they should hear what he has to say in his defense.

Mr. Antoine: Mr. Chief Justice, I ask for a call of the Senate to ascertain how many of the members are present.

The Chief Justice: The Secretary informs me that there are twenty-six Senators present. The call will, however, be made, if insisted upon.

Mr. Bacon: I would ask, Mr. Chief Justice, whether a division of the question would be in order? Senator Blackman's order contains two propositions. The first requires the Sergeant-at-Arms to summon absent Senators, and the second proposition is, that we shall not proceed until all the Senators come in. If the question can be divided, I would like to have it done.

The Chief Justice: The Chief Justice is of an opinion that a Senator presenting an order has a right to have that order acted upon as presented.

Mr. Bacon: I will offer a substitute.

Mr. Blackman: I ask that the order presented by me be acted upon as presented.

Mr. Manager Lowell: Mr. Chief Justice, I have simply one remark to make, that if this order is adopted and we are not to proceed until all the Senators are present, that it defeats the whole object of the trial, because they can not all be present, and if this order is adopted we might as well close here and abandon the case.

The substitute offered by Mr. Bacon was read.

Mr. Gray, of counsel for respondent: Mr. Chief Justice, I wish it to be understood that we did not expect to have all the Senators here, but all that can be had.

Mr. Bacon: Mr. Chief Justice, I will withdraw my proposition.

The roll was called and the following named Senators answered to their names:

Messrs. Anderson, Antoine, Bacon, Beares, Blackman, Braughn, Campbell, Coupland, Darrall, Day, Egan, Foute, Futch, Jenks, Jewell, Kelso, Lynch, Monette, Offutt, O'Hara, Packard, Pinchback, Ray, Smith, Thompson, Todd, Whitney, Wilcox, Williams, Wittgenstein—30.

Mr. Blackman: I withdraw my order, Mr. Chief Justice.

The Chief Justice: The counsel will proceed with the argument.

Mr. Semmes' Argument—Continued.

Mr. Semmes, of counsel for respondent: Mr. Chief Justice and Senators, I concluded my argument on the legal propositions in regard to the principles which should govern the Senate in determining the facts in this case. Those propositions are: First, that this is a court; second, that this is a court of criminal jurisdiction; third, that in the administration of justice this court is to be guided by the law of the land, and the rules governing criminal courts; and fourth, that the common law, does not prevail in the State of Louisiana; that no act is recognized as an offense against the State, except it is defined as an offense by the statutes of the State. Of course I do not propose to reiterate any thing connected with that argument, but merely to state the propoitions which I submitted to the judgment of the Senate, and which I hope I brought their minds to believe. I submit that it is in pursuance of that theory they are to examine the facts connected with the case. I would observe, further, that this court differs from every other court. There is no appeal from the decisions of this court. There is no higher tribunal recognized by the constitution of the State. There is no motion to be made for a new trial, in case you committed error during the progress of the trial. There is no motion to be made in arrest of judgment; the consequence is on the final argument of the case, as there can be no appeal, as there can be no motion to arrest judgment, as there can be no motion for a new trial, you have the right now, in the discussion of the question, to revise all the judgments which you have made during the trial, when you come to the final adjudication upon the case. So that if, during the progress of the trial, you have improperly admitted evidence, which, in another court, would have been thrown out, on motion for a new trial, you will now reject it, on determining the merits of the case; so that, if you have come to any erroneous judgment as to what was necessary to allege in framing the articles of impeachment as to indictment, I say nothing; you can now, in coming to your final conclusion, revise that judgment. This is the last and only opportunity for you to do justice; and, therefore, you approach the case just as if no judgment had ever been rendered; just as if the questions were originally and for the first time submitted to you, and I shall argue the case on that principle, because this is the time to revise your judgment, and there is no future time allowed you to do so.

The first proposition to which I directed your attention, if I remember correctly, was this: This morning I called your attention to the fact that there can be no crime unless accompanied by intention; that that was the essence of the crime; that so far as murder is concerned, it is necessary to allege and prove malice aforethought; that so far as larceny is concerned, it was necessary to allege and prove the *animus furandi;* that so far as forgery was concerned, it is necessary to allege and prove the intention to defraud; and so throughout the whole catalogue of crime. That a man may do an act in violation of the law, yet, if there is no intention to violate the law, there is no crime. Now, then, bearing that principle in mind, I invite your attention to every article contained in these articles of impeachment. There is not a solitary article charging George M. Wickliffe with having done any act charged in these articles corruptly, or with intent to violate the law—read them all.

Let us take the first one as an example, and it approaches the nearest to any allegation of intent, and you will perceive that what I have said is correct. Read the first article:

ARTICLE I.

That the said George M. Wickliffe, Auditor of Public Accounts for the State of Louisiana, at New Orleans, Louisiana, on or about the sixth day of October, A. D. one thousand eight hundred and sixty-nine, unmindful of the high duties of his office, and of his oath of office, having been summoned to appear at the Sixth District Court, in and for the parish of Orleans, to show cause why a writ of mandamus should not issue against him, the said George M. Wickliffe, in his capacity of Auditor of Public Accounts, to compel the issue of warrants upon the State Treasury in favor of John B. Howard, for the sum of eleven thousand and six dollars and seventy cents, as the assignee of one J. C. Kathman, of an appropriation made to said Kathman by the General Assembly of Louisiana, in act No. 213 of acts of 1868, did neglect to answer said summons of the Sixth District Court of the parish of Orleans, and allowed the cause to go by default, and the mandamus to be made peremptory, he, the said George M. Wickliffe, well knowing that the prayer of the petitioner was groundless, and not founded upon fact or law, all to the injury of the State, in the sum of eleven thousand and six dollars and seventy cents; whereby the said George M. Wickliffe, Auditor of Public Accounts for the State of Louisiana, did commit and was guilty of a high misdemeanor in office.

What is the *gravamen* of the charge here? The charge is, not that he knew that the claim was groundless, for a man might know a claim to be groundless, and yet, if he by accident, or by any combination of circumstances over which he had no control, neglected to answer, although he knew it to be groundless, it can not be a crime. The *gravamen* of the charge ought to have been, it ought to have stated, that it was his duty to appear in court, to defend, this cause; that he knew the claim to be groundless, and that he willfully, corruptly, and intentionally neglected to appear and defend the cause; because the crime is not that the claim was groundless, but that he neglected to appear to defend it. To illustrate, let us suppose that he had appeared in the Sixth District Court, as he did in the Fourth District Court, and that the judgment of the Fourth District Court had been different from what it was in the Sixth District Court; in both cases he failed to appear, and you allege the claim to be groundless; but the judgment in one case you say is lawful, and in the other case unlawful; in order to charge any crime, or if he is guilty of anything, it must be alleged, that he willfully, and corruptly neglected to appear in court from corrupt motives, in order to allow a party to commit a fraud on the treasury of the State by his non-appearance, and there is not a single allegation in this charge that his neglect to appear arose from any corrupt or dishonest motive, so that all that may have been asserted may be admitted to be true, and unless you allege, and charge, and prove that it was from corrupt motives that he withheld his appearance, he is guilty of no violation of law—if the doctrine be correct that the intention constitutes the crime, and that is the nearest approach to any allegation of intent.

Let us take as an example anything that I open here; take article twelve, which I find by accident:

ARTICLE XII.

That said George M. Wickliffe, Auditor of Public Accounts for the State of Louisiana, unmindful of the high duties of his office, and of his oath of office, and in violation of the constitution and laws of the State, did, on or about the month of March or April, A. D. one thousand eight hundred and sixty-nine, refuse to audit an account against the State in favor of one J. W. Menard, editor of the *Radical Standard*, a newspaper published in the parish of Jefferson, for public printing by him, the said J. W. Menard done, without the said J. W. Menard would pay him, the said George M. Wickliffe, Auditor of Public Accounts for the State of Louisiana; and the said Wickliffe did then and there exact, extort and take from the said J. W. Menard a five hundred dollar certificate of indebtedness, to the use and benefit of him, the said Wickliffe, and did then audit the said account, and deliver warrants and certificates for same to the said J. W. Menard, whereby the said George M. Wickliffe, auditor of Public Accounts, did then and there commit and was guilty of a high crime in office.

There is no allegation of corrupt refusal; no intentional refusal with a view to commit crime. Did I say that all indictments require that it should be stated that the alleged crime or offence was done corruptly and with improper intentions? There is nothing of that kind alleged here, and I undertake to say that throughout all the articles of impeachment, there is not a single allegation of corrupt and willful violation of the law charged against the defendant; and if that be so, we might admit all that you have proved to be true, and you could not, as judges on your oaths, and on these articles, as they stand, pronounce him guilty. Do you say that these are the technicalities of the law? Do you say that these are the meshes and webs of the law that ingenious counsel have devised for the purpose, and for this occasion? Why, sir, read any work on law on this subject; consult any authority, and you will find that it is necessary, in order to convict a party of crime or of offenses, that the intention shall be charged, and not only charged, but proven; and where it is not charged, and a jury finds the party guilty, the Supreme Court has over and over again, in this State and everywhere else, arrested the judgment and remanded the case for a new trial, on the ground that the allegations in the indictment did not sustain the verdict. I therefore say in the outset that I do not care what is proved; I do not care what you think; I do not care what inferences you draw; I do not care what may have been the facts submitted to you; that if you are conscientious judges, governed as you ought to be by the laws of the land, controlled as you ought to be by the rules of evidence and the principles applicable to such cases, not one of you can conscientiously as a judge on your oath, declare that any article, as charged against the defendant, constitutes a crime. And I want the learned managers to answer this; I want the learned managers to meet it; for one of the essential elements of a prosecution is, that it should present a case which, after judgment has been pronounced, will show on the record that a crime was charged. I say that after going through the evidence, and admitting all of it true, without any dissection or investigation of it, that any judge of any court would pronounce them all insufficient, even supposing the allegations to be all true. We therefore demur to all the articles of indictment. We therefore maintain that you can not go one step further; that as the charges have not been made in pursuance of law, you are here arrested, and cannot examine the facts; that the charges are not made in pursuance of the statutes, and therefore the accused is to be acquitted.

But, suppose you disagree with me as to that: The next question is, what is the evidence in regard to the first article? The evidence is that there was an appropriation made under act No. 213 of the Acts of 1868, appropriating eleven thousand and odd dollars to J. C. Kathman. Now, a great deal has been said about that, and my own opinion is, that Mr. Wickliffe, in his defense, in the Fourth District Court, and the Managers, and Dr. Noyes, and the Governor, and all concerned, have mistaken the law. I read from page 284 of the Acts of 1868, act No. 213:

I call the attention of the court to this, and you will perceive that in the first section there is made a distinct appropriation of $11,006, to pay the expenses of the Bureau of Immigration, for printing, stationery, articles furnished, and salary; that is, an appropriation for that purpose, so entered on the Auditor's books, to be drawn for in pursuance of law. Remember that Mr. Kathman was out of office, and Mr. Noyes in office, and it was an appropriation for the purposes of the bureau.

Now read the second section:

(That the State Treasurer, etc., pay to J. C. Kathman the sum mentioned, to reimburse him for money advanced.)

You will observe that the first section is an appropriation to pay the expenses of the bureau, to pay for printing, stationery, etc., and that the second section makes an appropriation to J. C. Kathman of a similar sum, to reimburse him. Now, I contend that these are two distinct and independent appropriations, and that the appropriation in the second is but a reference to the first section, for the purpose of ascertaining the amount. I now speak of the law as it stands, for, as was well said by one of the managers on the part of the House of Representatives, when Senator Ray was examined as a witness, in reference to his position toward the pension act, that the intention he had in framing the bill had nothing to do with the intention of the Legislature in passing it, and the law must be construed as it stands on the statute books, irrespective of any acts or intentions of the legislators in passing or supporting it. And the question is, whether on a legitimate construction of the law, there are not two independent and distinct appropriations, one for the purpose of paying the expenses of the bureau, the other for the individual benefit of Mr. Kathman. I make this proposition, and I now ask the Senators to look at the act. The second section directs the Treasurer to pay this amount to Mr. Kathman for money advanced by him. The subject matter of his claim, we presume, had been investigated by a committee of the Legislature, and they were satisfied that he did advance this money, therefore, he was entitled to it, and it should be paid to him for his benefit. The only indication in the act by which it can, by any possibility, be construed otherwise, is the words: "The sum mentioned in the first section," which, I understand, to designate the amount appropriated to Mr. Kathman, and which the Auditor and everybody else understood to be the same sum. I say it is impossible, because the money could not then be applied to the benefit of Mr. Kathman, which the second section declares shall be done; therefore I say, according to a legitimate construction placed upon the act, that there are two distinct and independent appropriations; one to pay the expenses of the bureau, and the other to reimburse Mr. Kathman for money advanced. And on that principle, no doubt, it was that the counsel for Mr. Kathman, Mr. Howard, proceeded in his mandamus; and I therefore disagree with the Judge of the Fourth District Court in regard to the judgment rendered in the case, and, in all probability that view of the case was not presented to him, that it was not the same sum; but that these words were used, simply to indicate the amount, and that it was not the identical sum mentioned in the first section.

But suppose I am in error in regard to that. The question still arises, was Mr. Wickliffe guilty of crime in neglecting to appear before the Sixth District Court? What is the evidence? The evidence is that a mandamus was procured from the Fourth District Court, and that that mandamus was made peremptory. I call the attention of Senators to the fact, that in the Fourth District Court Mr. Wickliffe was ordered to pay the money, because he did not appear there.

I read the petition in this case:

J. C. Kathman vs. G. M. Wickliffe, Auditor of Public Accounts—Fourth District Court, parish of Orleans—No. 22,363.

Filed June 3, 1869.

On motion of John B. Howard, attorney for J. C. Kathman, and, on suggesting to the court that, by virtue of an act of the General Assembly, approved December 2, 1868, the sum of eleven thousand and six dollars and seventy cents was appropriated, to be paid to him by the State Treasurer, on the warrant of the Auditor of Public Accounts; and, on further suggesting that said Auditor, G. M. Wickliffe, has failed and refused, though often requested to deliver to said J. C. Kathman, the warrants provided for in said appropriation, so that the State Treasurer might pay him, as specially provided in said act; and, upon further suggesting that the State Treasurer has not paid J. C. Kathman the whole or any part of said appropriation—

It is ordered that G. M. Wickliffe, Auditor of Public Accounts, show cause, on Thursday, the tenth day of June, 1869, why he should not issue to J. C. Kathman warrants on the State Treasurer for the sum of eleven thousand and six dollars and seventy cents, as provided in said act, approved December 2, 1868, to reimburse him for moneys advanced.

Minutes, June 3, 1869.

On motion of John B. Howard, attorney for J. C. Kathman, and for the reasons assigned and on file—

It is ordered that G. M. Wickliffe, Auditor of Public Accounts, show cause on Thursday, the tenth day of June, 1869, why he should not issue to J. C. Kathman warrants on the State Treasurer for the sum of eleven thousand and six dollars and seventy-one hundredths, as provided in said act, approved second December, 1868, to reimburse him for moneys advanced.

On the tenth of June, 1869, we find this entry: The rule herein taken on defendant, on the third instant, came on this day for trial. J. B. Howard for plaintiff, defendant not represented—when, for reasons orally assigned, the said rule was made absolute. So that on the tenth of June, this writ of mandamus was made peremptory. How comes that? Does anybody charge Mr. Wickliffe with complicity, or with dereliction of duty here? Manifestly, this was an accident, and you are all willing to admit that this was an accident, because, on the twelfth of June, you find the following entry: "By consent of counsel this case is reopened, and its trial fixed for Friday, the eighteenth instant, at ten o'clock A. M." So that here you have, occurring in the Fourth District Court, the same neglect which you charge as criminal in the Sixth District Court. In the Fourth District Court the mandamus was made peremptory, but you do not complain, because, two days afterward, he discovered it, and by consent of counsel the case was reopened. What does this show? You acquit him in the Fourth District Court; you say, gallant officer, faithful in the performance of your duty, you discovered this in time, and you have gone with the consent of counsel and reopened the case, you made your defense, and the Judge decided in your favor. There was no crime there. Why? Simply because you are satisfied that the original mandamus was made peremptory, and it was accidental. And now, as the same thing happens in the Sixth District Court, after the case has been pending a long time, and when a new mandamus had been taken out, without any new demand having been made upon Mr. Wickliffe, and within a few days after the decision in the Fourth District Court, and, supposing it to be the same case, he put the papers away, and the mandamus being made peremptory upon him, you charge upon him crime, and that without charging that this neglect was criminal, corrupt, intentional or dishonest.

Have you no bowels of compassion? Have you no consideration for the accidents of business? Have you no consideration for the accidents of an office crowded with applicants, crowded with mandamuses—an officer whose attention has been distracted by the mass of business arising out of the peculiar situation of affairs? And suppose the money dishonestly and corruptly obtained, who derives any advantage? It is shown that he is not the guilty party, for in the Fourth District Court he discovered his error, and, fortunately for him, corrected it. This mandamus had been pending before the public and discussed through the newspapers; it was instituted by a person in the office of the Attorney General, and in constant communication with him, who might have known what was going on in the courts, irrespective of his association with Mr. Howard, and it was his duty to have intervened on the part of the State. Ah, but you say that he discovered his mistake and corrected it in one court, and it was an accident, and in the other he did not. Is he, therefore, to be charged with having criminally and intentionally allowed these warrants to be drawn on the treasury, without any benefit to himself? It is not charged that he did this corruptly; the charge is not proved. He derived no benefit from it, and yet you are called, on your oaths, to say that under these circumstances his neglect to appear was corrupt and willful neglect, intentional neglect, which you must believe in order to find him guilty of the first article. There is no principle of law authorizing you to presume a corrupt intent, but every thing is to be presumed in favor of a public officer; corrupt intention cannot be inferred; and I put it to your consciences and your oaths. There is not one solitary fact in evidence which can induce you to believe that there was any corrupt intention on his part in failing to appear in the Sixth District Court. If so, I want to know it. I want the honorable managers on the part of the House of Representatives to point out one solitary circumstance from which that is to be inferred. If he participated in the money, if he combined and arranged with other parties to accomplish this object, then he would be guilty; but you ask, simply, because an officer has accidentally neglected to appear in court to defend a case that therefore he is guilty of crime. Senators, it is perfectly monstrous, because the essential element of the crime should be that it was intentional dereliction of duty.

Let these gentlemen point out where it is made the duty of the Auditor to defend suits. The Auditor's law authorizes him to employ counsel to prosecute delinquent tax payers, and to pay them a commission of ten per cent. It is true he often appeared in court, but all these appearances were owing to his personal integrity, irrespective of the law. Whenever he had the opportunity he appeared to defend the State, which is proved in regard to these printing warrants, because you have offered in evidence the various mandamuses in the Fifth and Sixth District Courts. These mandamuses were made peremptory, and by the judge's decision, he was compelled to issue these warrants in favor of the printers. Everywhere he made the defence which he conceived proper, but that was no duty of his. Do you say that in the Kathman case it was his duty to notify the Attorney General? But did he not have the right to suppose that the Attorney General knew of this from his association? Even suppose it was his duty to notify him, did he not, from all the surrounding circumstances, did he not have a right to suppose that the Attorney General was cognizant of it, and that he did not see fit to intervene? But, it may be said, why not appeal? That is all very well, but the mandamus was made peremptory But why did you not appeal, and notify the Attorney General you say. I tell you why; the mandamus is simply a petition. It was made peremptory because there was no appearance; there was no evidence on record, nothing but the law; there was no evidence that the money had been previously paid, and the Supreme Court must have decided the case on the record; it was perfectly palpable and plain that they must have affirmed the judgment of the lower court. It was too late; you can not introduce new evidence in the Supreme Court. The Supreme Court is not a court of original jurisdiction; it only examines cases on the proof submitted in the inferior court, and therefore it was useless to appeal, because on the face of the papers the claim appeared to be a just one, owing to the non-appearance of the respondent. It would have been a useless expense, and the original judgment must have been affirmed. I therefore say, that so far as this charge is concerned, it is manifest that there is no allegation of intent—no proof of it, no proof of anything from which to infer the intention to commit a crime, and therefore there is no crime.

The second and third articles fall with the first; they are based on the first. If he is not guilty of the first, he is, necessarily, not guilty of the second and third, because he was bound to obey the order of court, and, therefore, whether he overdrew the appropriation or not, it was the mandate of the court, which he obeyed. That is ample defense of the second and third charges, and the managers so understand it.

The next charge is the fourth article, the coupon case. It is the issue of warrant No. 7071, in favor of J. B. Richardson, issued on coupons for bonds, overdue before the bonds were issued. In this you will observe that there is no corrupt intention charged, but I do not pretend to defend it on that ground. I undertake to say—notwithstanding the eulogies passed on Senator Lynch—that the evidence establishes beyond controversy that this warrant was issued in error, and by mistake on the part of the defendant. And why do I think so? I say that all the surrounding circumstances necessarily impel the mind of any unprejudiced person to that conclusion. The learned managers have detailed a conversation which Senator Lynch says he had with Mr. Wickliffe, and what was that conversation? It was discovered in the Treasurer's office that there was some mistake about this warrant. Senator Lynch, after the warrant had been paid, for there was some hesitancy, called upon Mr. Wickliffe. What was Mr. Wickliffe's reply? Was there any hesitancy on his part—any confusion when the bonds were called for? They were promptly produced. The coupons were examined; Senator Lynch was present. Mr. Lynch called for the coupons, and they were produced. They went to Mr. Wickliffe's private office in the adjoining room; Mr. Wickliffe went back into the public office and brought the bond book. The coupons and the bonds were compared; it was discovered it was an error. Mr. Lynch said, "There must be somebody stealing," and asked in whose favor the warrant was issued. He ascertained that it was in favor of a young man named Richardson. And as soon as Mr. Lynch said "Richardson must be the man guilty of stealing," what does Mr. Wickliffe say? Does he say yes? Does he remain silent? No. He says, "If anybody is to blame I am the man, not Richardson." Is that the conduct of a guilty man?

Does not that rather remind you of the friendship of Nisus and Euryolus, so beautifully described by Virgil? Euryolus was in the hands of the Rutuli, a prisoner. Nisus, concealed at a distance, endeavored to destroy the enemy by hurling his javelins at those who detained his friend, Euryolus; he succeeded in slaying two of the enemy. They, not knowing whence the destroying weapons came, or by whom they were hurled, became infuriated, and their leader, the fierce Volscens, turning upon the prisoner, was in the act of piercing him with his sword, when Nisus, prompted with the desire of saving the life of his friend, emerged from his place of concealment and cried out: "*Me, me, adsum, qui feci; in me convertite ferrum.*" Me, me, I am the man who did it; turn your swords on me! And that was the case with Mr. Wickliffe. With the same generosity, the same disposition to prevent any imputation on a young and innocent man, he exclaims, "I am the man, not Richardson." And you say his conduct was that of a guilty man. Shakspeare says a guilty man is one who seeks to hide and to conceal. Horatio tells us when the cock crew the "ghost started like a guilty thing." Wickliffe came out and said at once, "I am the man, and I did it through error and mistake." Mr. Lynch says Mr. Wickliffe said: "I did it to make a few cents, and I was a damn fool." Is that true? Is it consistent? I ask if it is true, because I put it to him twice, and because twice he denied that Mr. Wickliffe had said it was a mistake.

And yet the witness, Campbell, who is still in the Treasurer's office, testified in the First District Court, and testified here, that Mr. Lynch told him, on the very day of the transaction, that Mr. Wickliffe said it was a mistake, and that it was done through error, and he would refund the money.

And yet, great God! who am I speaking to? One of the judges, who can not believe me, who can not decide in favor of my client, without convicting himself of falsehood. And is it possible that he sits here to judge, when his own veracity is involved in his judgment? And you tell me that any judge, placed in a condition to pronounce his own want of veracity, or pronounce against the accused, would dare to sit upon such a case? He may appeal to the constitution: he may appeal to the law—what then? But I say, if he sits here as a judge in this case, it will damn him forever in the community if he pretends to pronounce judgment upon my client. He has the power; you can not prevent it. Nobody can drive him out; if he attempts to vote, you can not do it. Mr. Chief Justice, nothing but his own sense of honor and integrity can prevent it. I know that. But if Mr. Wickliffe is convicted by his vote, the whole world will cry out that he is innocent, because the judge who convicted him could not, by any possibility, have been impartial.

I say it was a mistake. I say that he said so, and I say that his conduct shows it. Why, this occurred in January—January, 1869; the Legislature was sitting for two months after that, and this poor, innocent man, honest John Lynch, does not know what to do, though he communicated the facts to members of the Finance Committee of the Senate and the Committee of Ways and Means of the House. He, the chairman of the Finance Committee of the Senate, and the chairman of the Committee on Ways and Means of the House, to whom he communicated his discoveries, did nothing, but allowed this robber and plunderer to remain in charge of the finances of the State, to put his arm in as deep as he pleased, and they hold their tongues. The Governor of the State, who should certainly have been fired with feelings of indignation, remained silent for two months. They wait two long months, when they certainly had the same cause to impeach then as now, yet they allowed this same plunderer, this same scoundrel—as he is represented now—to remain in office, and they hold their tongues, remain quiet, keep silent, say not one word, and why? Great God! Why? I ask, why?

It is true that it was an error on the part of Mr. Wickliffe; they considered it an error, regarded it as an error, looked upon it as an error, and it was only some offense committed by my client against the Governor and his clique, that induced them afterward, after the Legislature had adjourned, to pursue the unconstitutional course which they did; to eject him from office; to indict him before the Grand Jury, and endeavor to convict him, when, in fact, they believed him innocent. Am I correct? What does Mr. Lynch do after this thing was settled, as Mr. Campbell says it was? It was all settled, and Mr. Lynch attends a festive banquet in the saloon of Mr. Wickliffe. But he would have us believe that he alone was there, like Lara in the Halls of Otho—

> "He leaned against a lofty pillar nigh,
> With folded arms and long attentive eye."

He tasted not, he drank not, he ate not, he shook hands not—but he was there still, participating, as far as his presence went, in this banquet of this scoundrel Auditor, this thief, this man who had stolen from the treasury—he was there, and yet Mr. Lynch comes forward now and says he is a thief.

Now, I ask any sensible man, can you believe this? If you believe this man, honest John Lynch; this man of high character who had charge of the finances of the State; who so successfully negotiated bonds in New York at 51¼, when they could have been sold here for a great deal more. (Applause in the lobby.)

Mr. Campbell: Mr. Chief Justice, I wish to say that if this occurs again, I shall move that the court be cleared.

The Chief Justice: It is highly improper. The counsel will proceed with the argument.

Mr. Semmes: I say if this man is what he is represented to be, how came he to consort with thieves, participate and mingle in the festive crowd, drinking champagne—he says he did not—with this delinquent officer that he should have been there and harbored these thoughts of guilt and only after the lapse of two months make these developments? I say that is impossible, and I say that Senator Lynch is mistaken in regard to what he testified to, or he is what I represent him to be, and if he is what the managers represent him to be, then he is mistaken, that is all. If he says what he believes to be true—I do not say that he intentionally says what is false—but if he says what he believes to be true, then it is so warped by his prejudices in the construction which he puts on the language, that he is mistaken, or he is what I represent him to be. But he is not what I represent him to be; he is what the managers represent him to be, I am willing to take it for granted; but, I say, if it be so, then his conduct proves he is mistaken, and my client said it was an error, and if he did say it was an error, then he is guiltless of any offense.

We come now to the little $1000 warrant, issued in favor of these Sisters of Charity in the parish of Jefferson. This is an awful case, perfectly horrible, that the Auditor should have recognized the validity of this warrant, because it was issued under the government of 1862—the rebel government. That raises simply a legal question. They do not say that he corruptly did it, because, although they say that he did it for a money broker, no one can for a moment believe but that the warrant was issued originally to the Sisters of Charity, and, therefore, the money broker got it because the Sisters of Charity sold it for value. I do not presume that the Sisters of Charity gave it to the money broker—*nemo presumitur donare.* On that question I feel very sore, because, fortunately for me, I have a decision of the Supreme Court of the United States on the subject, that all acts done by the rebel government in the respective States were not void. I call them rebel governments, in deference to the phraseology used by the honorable managers, and I suppose, as events turned out, they were. The principle is this: The constitution of the United States, as amended, only declares invalid any obligation or contract made in aid of the rebellion; and the question is whether the giving of sustenance or support to these poor orphans in the parish of Jefferson was an act in aid of the rebellion. The truth is, that the Supreme Court of the United States held all acts done by the *de facto* government of the rebel States which were not directly in aid of the rebellion, but acts necessary for the protection of the public peace, or protection of life and property, were valid, and on that point I cite the case:

White vs. State of Texas, 7 Wallace, page 733. Chief Justice Chase says: "It is not necessary to attempt any exact definitions within which the acts of such a State government must be treated as valid or invalid. It may be said, perhaps with sufficient accuracy, that acts necessary to peace and good order among citizens, such, for example, as acts sanctioning and protecting marriage, and the domestic relations governing the course of descents, regulating the transfer and conveyance of property, real and personal, and providing remedies for injuries to person and estate, and other similar acts, which would be valid if emanating from a lawful government, must be regarded in general as valid when proceeding from an actual, though unlawful government; and that acts in support or in furtherance of rebellion against the United States, or intended to defeat the just rights of citizens, and other acts of like nature, must in general be regarded as invalid and void."

Thus drawing a line of distinction which every sensible man must draw, between ordinary acts of government, acts for the general good of society, and acts in support of the rebellion, or at least in aid of it.

I cite, also, the case of the State vs. Louisiana State Bank (Twentieth Annual, page 469), when the sole question was whether certain bonds issued in 1863 were or were not issued in aid of the rebellion. In that case the Supreme Court goes into a lengthy discussion to establish that the bonds in question were void, not because they were issued in 1862 by a rebel government, and therefore void, but because they were issued to aid the rebellion, and for that reason illegal—a discussion entirely unnecessary, if bonds of every description issued when Louisiana was in rebellion were for that reason alone stricken with nullity.

In this case the Supreme Court refused to recognize the validity of these bonds because they were issued in aid of the rebellion.

Therefore, I say that this article seems to be nothing more than an ungenerous appeal to prejudice, and based on an undefined and general idea that everything connected with the rebellion was wrong; every thing done within the lines of the rebellion, no matter how good an act. If a man paid his debts it was treason; if a man buried his child within the lines of the rebellion it was sin, and he was doomed to perdition, and his prayers could not be heard. This is a vindictive prejudice which I am satisfied this enlightened body will never allow to operate on it, but as far as I can judge, this court will do as the counsel for the accused do, and as we desire, to bury the past, and recognize the new order of things, the progress of civilization, such as produced by the war, and growing out of it, and we desire to go hand in hand with you, recognizing the rights of all men, civil and political, and let the dead past bury its dead. This is what we desire to effect, and thus obliterate passion and prejudice, which we all wish to bury forever.

But Mr. Wickliffe has plundered the State; and here I wish to call the attention of Senators to the articles where he is charged with plundering. If he plundered any one, it was individuals, and not the State. This $1000 warrant I have explained; these coupon warrants I have explained; the Kathman case I have explained; but he has issued, good Lord! how many warrants for pensions overdrawn; how much the appropriation for printing. You appropriated $150,000, and he issued $400,000. You thought that the pensions would amount to $30,000, and he issued Lord knows how many warrants for pensions. I take it for granted; but whose fault is that? Whose fault is it? Why at the prayer meeting which we held this morning, one of the honorable managers confessed and asked the Lord to forgive him for having participated in such legislation; and the Senator from Ouachita, when examined as a witness, said that he understood, in framing the law, that every pension granted was a specific appropriation. I think he was right. I show that my client carried out his intention; and yet, because this "Lord deliver us" law was passed, and you opened the stable door to let every man come in, who would make the necessary affidavit; Mr. Wickliffe is to be made the scapegoat for having allowed it to be done. That is the charge. He is the person upon whom all the sins of the State are to be concentrated; he is the holocaust to be sacrificed; he is to be made the scapegoat of the Legislature, for the benefit of the public.

I want to call your attention now to the differences between certificates of indebtedness and warrants. The act of 1865 makes a distinction, which I will read. I hope, Senators, you will excuse me for the length of time I occupy; it is not my desire to occupy time, but these charges have been hurled against us in such general terms, we are called upon to answer everything, and we have to explain everything. We take for granted that many of you do not know these laws; and, therefore, a great deal of time has to be consumed in explanation. And in regard to these pension warrants, I feel satisfied that when you come down to a radical investigation you will find that there is nothing, really nothing in the charge.

I read from the Auditor's law, page twenty-eight, acts of 1855: "In all cases where the law recognizes the claim for