No. 216, "Relative to the Supreme Court," etc., from second reading file.

Mr. Ray offered a substitute for the same, under the same title.

Which was read its first time.

The constitutional rule was then suspended by a four fifths affirmative vote, the bill read its second time, and considered engrossed for a third reading.

The constitutional rule was then further suspended by a four-fifths affirmative vote, the bill read its third and last, time, and finally adopted with its title.

By Mr. Darrall—Senate bill No. 135 "Granting ferry privileges to James H. Hand, his heirs or assigns," returned from the House with the following amendments, which were read as follows:

First section, thirteenth line, strike out the word "two," and insert "one," so as to read, "one mile above and one mile below."

Concurred in.

By Mr. Lynch—House bill No. 41, "To incorporate the Louisiana Savings Bank and Safe Deposit Company," from first reading file.

Which was read its first time.

The constitutional rule was further suspended by a four-fifths affirmative vote, and the bill read a second time.

The constitutional rule was then suspended by a four-fifths affirmative vote, the bill read its third and last time, and finally adopted, with its title.

By Mr. Campbell:

Resolved, That two hundred additional copies of the Revised Statutes, the Code of Practice and the Civil Code, adopted at this session be printed for the use of the Senate, to be paid for out of the contingent fund of the Senate.

Adopted.

HOUSE OF REPRESENTATIVES,
State of Louisiana,
Office of Chief Clerk,
New Orleans, March 15, 1870.

To the President and Members of the Senate:

I am directed to inform the Senate that the House has concurred in the following bills viz:

Senate bill No. 204, an act to reorganize the State Land Office, etc., with amendments.

Senate bill No. 51, an act to establish an additional District Court, etc.

Senate bill No. 138, an act relative to administrators, executors, curators and syndics, etc.

Senate bill No. 254, an act to incorporate the Alexandria, Homer and Fulton Railroad Company.

To ask concurrence of the Senate in the following bills, viz:

House bill No. 180, an act to improve the sanitary condition of the city of New Orleans, etc.

House bill No. 232, an act relative to the Mayor and Trustees of the town of Shreveport, etc.

House bill No. 234, an act relative to the floating debt of the State, etc.

House bill No. 288, joint resolution creating a joint committee to memorialize the riparian States of the Mississippi valley for the protection and reclamation of the Mississippi alluvian, etc.

To inform the Senate that the House has concurred in the following Senate joint resolutions, viz:

Senate joint resolution No. 38, "Joint resolution submitting an amendment to the constitution of the State, to the effect that article fifty of the constitution shall be abrogated and stricken out, by a vote of yeas, 72; nays, 3—two-thirds of the members elected voting in the affirmative.

Respectfully,
WILLIAM VIGERS,
Chief Clerk House of Representatives.

By Mr. Anderson—House bill No. 211, "Supplementary to an act entitled 'An act to reclaim and drain the swamp and overflowed lands lying and situated between the bayous Teche, Tortue and Vermillion, in the parish of St. Martin and Lafayette," from third reading file.

The Senate refused to pass the bill by the following vote:

Yeas: Anderson, Campbell, Offutt, Ogden, Todd—5.

Nays: Antoine, Bacon, Braughn, Campbell, Coupland, Darrall, Egan, Futch, Jenks, Lynch, Monette, Packard, Poindexter, Ray, Smith, Thompson, Whitney, Wilcox, Williams, Wittgen-stein—20.

By Mr Pinchback—House bill No. 105, "For the relief of the Orphans Home Society of Louisiana," from first reading file.

Which was read its first time.

The constitutional rule was then suspended by a four-fifths affirmative vote, the bill read its second time.

The constitutional rule was then suspended by a four-fifths affirmative vote, the bill read its third and last time, and finally adopted by the following vote:

Yeas: Anderson, Antoine, Campbell, Coupland, Egan, Jenks, Jewell, Lynch, Monette, Packard, Pinchback, Poindexter, Ray, Smith, Todd, Whitney, Wilcox, Williams, Wittgenstein—19.

Nays: Bacon, Braughn, Darrall, Ogden, Thompson—5.

The title was then adopted.

By Mr. Antoine—Senate bill No. 197, "To increase the salary of the Tenth Judicial District of the State of Louisiana."

Having been reported favorably by substitute from Finance Committee, the substitute was taken up and read first time.

The constitutional rule was then suspended by a four-fifths affirmative vote, the bill read its second time, and ordered engrossed for a third reading.

The constitutional rule was further suspended by a four-fifths affirmative vote, the bill read its third and last time, and finally adopted with its title.

By. Mr. Wilcox—Senate bill No. 256, "To incorporate the Feliciana Savings and Exchange Bank."

Which was read its second time and engrossed for a third reading.

The constitutional rule was then suspended by a four-fifths affirmative vote, the bill read its third and last time, and finally adopted with its title.

By Mr. Ogden—House bill No. 43, "To establish a public park in the city of New Orleans," etc.

Which was read its first time.

The constitutional rule was then suspended by a four-fifths affirmative vote, the bill read its second time.

The constitutional rule was further suspended by a four-fifths affirmative vote, the bill read its third and last time, and finally adopted with its title.

By Mr. Packard—Senate bill No. 264, "To annex a certain portion of Orleans, right bank, to the parish of Plaquemines."

Which was read its second time, and ordered engrossed for a third reading.

The constitutional rule was then suspended by a four-fifths affirmative vote, the bill read its third and last time, and finally adopted with its title.

Mr. Bacon, under a suspension of the rules, introduced the following resolution:

Resolved, That the President of the Senate shall designate some Senator, who shall be empowered thereby to edit and prepare for publication, and thereafter to have published in book form and bound, two hundred and fifty copies of the debates of the Senate at its several sessions in the years 1868, 1869 and 1870, and to have published in some daily journal in New Orleans, other than the official journal, the proceedings of the Senate during its sessions in 1870, with the debates of the respective days, provided that the prices paid shall not exceed those allowed by law; the same to be paid on his warrant out of the contingent fund of the Senate; and the reporter of the Senate be and is hereby required to place in his hands the full written out reports of said debates for this purpose.

GENERAL ASSEMBLY OF LOUISIANA,
Senate Enrollment Room,
New Orleans, March 15, 1870.

To the Honorable President and Members of the Senate:

GENTLEMEN—Your Committee on Enrollment beg leave to report the following bills as having been duly engrossed:

Senate joint resolution No. 39, "To appoint a committee as a commission to appraise and make necessary transfer of public properties and other necessary arrangements to complete the consolidation of the cities of New Orleans," etc.

And as enrolled—

Senate bill No. 215, "An act for the relief of taxpayers."

Respectfully,
C. B. DARRALL,
Chairman.

Mr. Ray, under a suspension of the rules, introduced the following resolution:

Resolved, That in order to complete the business of the Committee on Enrollment, the chairman and such a number of clerks as may be necessary, be authorized to sit a sufficient length of time not to exceed fifteen days, and that they be entitled to their per diem for such time.

Adopted.

Mr. Pinchback, under a suspension of the rules, called up House bill No. 21, "To amend and re-enact the forty-seventh section of the act to amend and re-enact an act to establish a Metropolitan Police District," etc., from second reading file.

Mr. Campbell offered the following amendment:

In line nineteen after the word "follows" insert "for the President of the Metropolitan Police Board an annual salary of $3000, payable quarterly on his own warrant, out of the Metropolitan Police Fund."

Adopted.

The amendment was considered engrossed and the bill adopted on second reading as amended.

The constitutional rule was suspended by a four-fifths affirmative vote, and the bill finally adopted by the following vote:

A motion to adjourn being adopted, the President announced that the Senate stood adjourned until to-morrow, the sixteenth instant, at twelve o'clock, M.

CHARLES H. MERRITT,
Secretary of the Senate.

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

Argument of Manager Lowell.

THURSDAY, March 3, 1870.

Mr. Manager Lowell: Mr. Chief Justice and Senators, I come before you to-day, not for the purpose of making a speech either of eloquence or of oratory; not for the purpose of appealing to your feelings in this case or in any other; not for the purpose of speaking on the technicalities of the law; not for the purpose of doing this thing or that thing to influence your judgment, but I come before you, gentlemen, to-day, asking you to examine the facts in the case, as they have been presented in the trial, and to compare these facts with the law as we understand it, and as I think every person who has given a proper examination understands it, and then give us your verdict.

We say that the respondent at the bar, arraigned before you as a high court of impeachment, is guilty of high crimes and misdemeanors. We say that that individual in whom were reposed the high duties of a high responsible office in the State, who had the management of the finances of the State, has so degraded the position he holds that he is no longer fit and worthy of that position. I come here, Senators, to-day under inauspicious circumstances; I come before you a young man, inexperienced in the considerations of high legal principles, for, although educated a lawyer, my experience and practice has been limited; I come before you to cope with the best lawyers of the land; I come to answer one whom I consider the most skilled and erudite lawyer in the whole South; a man who has made before you an argument such as I conceive no other man in this city could have made; but, I come, as David, when he went forth to meet the giant Goliath, of old, armed with truth and justice, and I feel that I am able to cope with the great giant whom I have this day to meet.

You have been told that the managers and the House of Representatives, and I am sorry that that expression fell from the lips of the honorable counsel—you have been told that the framing of these articles show that we are brainless; that we did not have the sense of common men; that we knew not how to frame articles of impeachment; that we knew not the ground upon which we were traveling. You have been told, Senators, that you yourselves, if you convict this man you convict yourselves; that you are sitting here as the first Senate under the new *regime*—the first Senate that acknowledges that the black man has rights co-extensive with the white man, and that if you convict this man, you acknowledge that the new system is a failure, and that we ought to go back to the old system of slavery. An appeal has been made to the colored Senators that they must stand by Wickliffe or they will fall themselves; that the theory that they advance is false and groundless, unless they acquit this man who was elected on the same ticket with them. Senators, I stand here to-day as a man who supported George M. Wickliffe; as a man who supported the Governor and the Republican ticket at that election, and I am willing to attack him if I think he is guilty of misdemeanors. I stand here to-day, and am ready to arraign before the bar of this Senate the Governor of the State, or any other officer whom I supported, if I am satisfied he is guilty of high crimes and misdemeanors; and I do not desire any counsel to tell me that, because I acknowledge those principles, and now arraign this man, therefore I acknowledge those principles to be wrong. Not at all. We claim that under the reconstruction acts, we will establish a new rule in this country, and we will have no man in high office guilty of misdemeanors, be he of our choosing or be he not. That is the principle. That if we elect a man, and we find that we have been deceived, we are the first men that should come up and remove him from office.

You have been told by the two counsel that this is a case between the Governor and the Auditor; that this is a personal quarrel as to who should be most popular in the State, the executive or the respondent at the bar. I told you in my opening that the Governor has nothing at all to do with this question; we, the House of Representatives, to-day, arraign this respondent at the bar. It is not the Governor who does this, but we, the House of Representatives, say that we believe that the Auditor of Public Accounts is guilty of such deeds as should remove him from office. We do not come here representing the Governor, but we come representing the people of this great commonwealth; and we ask you to turn aside this attempt made to prejudice your minds because, forsooth, some of you, Senators are, or may be, hostile to the executive. That is the reason, and the only reason, that this attempted argument has been adduced in this trial, because you are thought to dislike the Governor. The fact that the Governor has instituted, or has made the report upon which these charges are based, has nothing at all to do with this officer failing to do his duty or with the conduct of the trial. The trial to-day is between the State, represented by the House of Representatives, and this officer; not George M. Wickliffe as a man, but George M. Wickliffe as Auditor of Public Accounts. I shall briefly cite the law in the case:

We claim, Senators, that you are sitting here to try this man, not as a man, not as an individual who has committed an offense against public society, not as an individual who has defamed the law and the constitution of the State; but we come here and arraign him as a public officer—arraign him in his public capacity. We come here with articles of impeachment because, had the Auditor of Public Accounts been guilty of murder, had the Auditor of Public Accounts been guilty of burglary, had he been guilty of highway robbery, we might have presented articles of impeachment, not for the specific offense of murder, not because he had killed a brother man, but because in killing him he had degraded the position of Auditor of Public Accounts, and rendered himself unworthy of any longer holding a public position of such dignity. After we are through with him, some other court, the Criminal Court and jury, may try him for any specific criminal offense.

Before I discuss the nature of this court, I will briefly discuss the nature of the position of this respondent before you. We present him to-day, as the Auditor of Public Accounts, not as George M. Wickliffe, and I say, in behalf of the managers and the House of Representatives, that a public officer has no *right* whatever to the office that he holds; he has no *vested right*, no *natural right*; but in a republic like ours, every man, when he becomes a citizen thereof, enters into a solemn compact, tacit it may be, with the citizens of the commonwealth and agrees with all of them that he will do his share, or his part, to aid in carrying on the administration of that government and faithfully perform the duties of his citizenship, and that the citizens of this republic, of this State or of the United States have a right to demand the services of every citizen to help in the administration of the government; and it is their duty, when called upon, to accept and to exercise the functions of any office which the people may ask them to perform. And it is your duty, furthermore, if you accept office and you enter into a tacit contract or agreement that you will render to the State your utmost services, and will perform the duties and functions of the office faithfully and well. I undertake to say that no man in a republic has a right to any office; no man has a claim to any public position; the people have a claim upon individual members of the republic, but the individual member has no claim whatever upon any public position. Every public position belongs to the people, and when the people make a mistake in the selection of one of their number, they have a right, and it is their duty, if they find that he is not competent, to remove him and put some other more competent man in his place. You, Mr. Chief Justice, occupying the highest judicial position in the State, and you, Senators, hold your offices not as a matter of right, but you hold them as individual members of this State; you are called upon to perform these duties, acting in your representative capacity for the State, because you are presumed to be more competent to perform these particular duties than any other individual in the State. You have no vested right to the position. In monarchies, perhaps, a man may, either through caste, or position, or family, have an individual and vested right in an office, but in a republic it is not so. You, Senators, are filling the positions which you hold simply as representatives of the people, and you have no rights here except such as the people have delegated to you.

Mr. Semmes, of counsel: Mr. Chief Justice, if the manager will permit me to interrupt him, I have a communication to present from my client, presenting a fact which will probably terminate this cause without any further discussion of this case. The following communication was then presented and read by the Secretary:

NEW ORLEANS, March 3, 1870.

To the Honorable the Chief Justice and Members of the Senate of Louisiana, sitting as a Court of Impeachment:

I hereby respectfully notify this honorable court that I have resigned, and I do hereby resign my office of Auditor of Public Accounts for this State into the hands of the people of Louisiana, who have done me the honor to elect me to the same.

G. M. WICKLIFFE.

The Chief Justice: Senators, you have heard the note addressed to the Senate read. It is for you to decide what order you will take in the matter.

Mr. Ray: I suppose it must be officially communicated to the Senate before we can take any action in the matter. This is not official.

Mr. Semmes: I do not know that anything could be more official. Here is a communication from the respondent over his own signature to the Senate, presented by the counsel.

Mr. Ray: I understand that the resignation was handed to the Governor and when that resignation has been accepted the Governor will notify the Senate

Mr. Manager Lowell: Mr. Chief Justice and Senators, I suppose I may be allowed to proceed. I do not suppose that it is necessary to discuss this matter of resignation. Here this man, knowing that he is guilty, that he has violated the law of the land, that he has trampled upon the constitution of the State; knowing that the Senate, as honest men and representatives of the people, must, upon the evidence adduced before them, convict him, remove him from office and disqualify him from ever after holding office, now comes, at the very close of the argument, and tenders his resignation.

Mr. Ray: I think that it would be well to communicate with the Governor.

The Chief Justice: It is for the court to determine what course to pursue.

Mr. Blackman: I move that the court take a recess for ten minutes.

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

Mr. Foute: Mr. Chief Justice, I think that this can be done by the clerk without interrupting the proceedings. The clerk can ascertain this from the Governor. It can be easily found out; but I have not yet made up my mind on the legal question of this case, whether he is still before this court or not.

Mr. Blackman withdrew his order.

Mr. Manager Lowell: Now, Senators, I was arguing that the position of office is not a vested right; not a right which an individual can claim as a right, but simply and exclusively a duty which every individual of a republic owes to the people, and he can not avoid the performance of this duty, even if he would, and still be a faithful subject of the commonwealth. Having accepted the duty imposed on him by the republic, he must, if he has any respect for the sacradness of the oath which he has sworn, when he became a member of the republic, perform the duties of this office faithfully and well. He must devote his entire energy, talent and time to the satisfaction of the duties of the office. We say that this respondent at this bar, instead of being a faithful subject of the commonwealth, and a diligent officer, has degraded the high duties of his office, and turned it into a means of making money, as a means of personal advantage, and a means of oppressing the creditors of the State. We arraign him before this bar as a Court of Impeachment, and never have I said, in the course of this trial, that the Senate was anything but a Court of Impeachment. I have said it, and again do I say it, that you, as a Court of Impeachment, do not sit as having exclusive criminal jurisdiction or exclusive civil jurisdiction in the case as it is technically known to the law; but you are simply sitting as a Court of Impeachment, possessing the same power and the same rights and the same authority that Courts of Impeachment always have held. It is true that you are sitting as a Court of Impeachment in the State of Louisiana, and you have been told that the State of Louisiana, being under the rule of the civil law, the common law practice does not prevail. That I admit, as far as trial of civil causes in civil courts is concerned, but are you a court of justice? Are you sitting here as a jury, presided over by a judge? No, you are sitting here as a constitutional court, with specific constitutional duties and specific constitutional rights and powers, which are delegated to you, not from the old Roman civil law, but from the fact that the State of Louisiana is a State in this great confederacy of States. One of the principles of the constitution of the United States is, that every State shall have a republican form of government. The constitution of the State of Louisiana was patterned from the constitution of the United States, and because impeachments arise solely and entirely from the constitution, it is a cause that comes under the constitutional and parliamentary law. You are sitting here as the grand tryers on the part of the people, representing the whole people, and you are to judge whether this public officer shall any longer be deemed fit to hold his office. You are not sitting here to try George M. Wickliffe for committing any specific offense against society, but if you are to try him at all, you are to try him as a public officer. Now, how shall this court be formed? The constitution prescribes the method in which an officer, if unfaithful, shall be deprived of his office. The first constitution of the State was patterned after, and had the same language as the constitution of the United States in this respect. Afterward it became modified, and I might read from the several constitutions of the State to verify this assertion. The United States constitution says:

"ART. 1, SEC. 3. The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment, in cases of impeachment, shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

ART. 2, SEC. 4. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors."

The constitution of 1812—the first constitution of this State—states in its article on impeachment the following:

"SECTION 1. The power of impeachment shall be vested in the House of Representatives alone.

"SEC. 2. All impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present.

"SEC. 3. The Governor and all the civil officers shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than to the removal from office, and disqualification to hold any office of honor, trust or profit under this State; but the parties convicted shall, nevertheless, be liable and subject to indictment, trial and punishment according to law."

So that the article in the constitution of 1812, the first one in this State, is identical in language with the constitution of the United States, thereby showing that the original framers of the first constitution of the State intended that cases of impeachment should be tried in the same manner and for the same offenses that they are by the Congress of the United States. Afterward another constitution was framed in 1845, and the mode was a little changed, and it read as follows:

"ART. 84. The power of impeachment shall be vested in the House of Representatives.

"ART. 85. Impeachment of the Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, and of the Judges of the District Courts 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 impeachment. 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.

"ART. 86. Judgments in cases of impeachment shall extend only to removal from office and disqualification from holding any office of honor, trust or profit under this State, but the parties convicted shall, nevertheless, be subject to indictment, trial and punishment according to law.

"ART. 87. All officers against whom articles of impeachment may be preferred, shall be suspended from the exercise of their functions during the pendency of such impeachment. The appointing power may make a provisional appointment to replace any suspended officer until the decision on the impeachment.

"ART. 88. The Legislature shall provide by law for the trial, punishment and removal from office of all other officers of the State by indictment or otherwise."

The judgment was the same as in the prior constitution. In 1852, another constitution was framed and adopted by the people of this State, and it had provisions in it on impeachment—the first section reads the same as the former, but in this there is an additional article, that judges may be removed by address in case that it was found that they had performed such immoral acts, or malfeasances in office as shall not come up to the high grade of impeachment. Then we come down to the constitution of 1868, and it is, Senators, under this constitution that we try the present case. The constitution of this State, under the article of impeachment, reads as follows:

"ART. 95. The power of impeachment shall be vested in the House of Representatives.

"ART. 96. Impeachments of the Governor, Lieutenant Governor, Attorney General, Secretary of State, Auditor of Public Accounts, State Treasurer, Superintendent of Public Education, and of the judges of the inferior courts, Justices of the Peace excepted, shall be tried by the Senate; the Chief Justice of the Supreme Court, or the senior Associate Judge thereof, shall preside during the trial of such impeachment. 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."

Then follows the judgment, and, notice this, that in the constitution of 1868, the one under which this trial is conducted, there is not one single specification as to what specific charges these officers shall be tried for. It does not say, as does the constitution of the United States, or as did the first constitution of this State, that the party shall be tried for treason, bribery, and other high crimes and misdemeanors, but it simply gives to the Legislature, to the General Assembly, to the House of Representatives as the impeaching party, and to the Senate as the trying party, a right and power to determine under the present established law, the common parliamentany law, what cases they will try; but the constitution does not specify a single offense, except in the case of judges. It says that the judges of all courts shall be liable to impeachment for high crimes and misdemeanors, but there is not a single specification set forth as to the charges necessary to be brought against other officers. And I say, Senators, that you have a right to examine into the acts of this officer; and I say, furthermore, that the House of Representatives, under the constitution of the State of Louisiana, could have presented him for impeachment without preferring any specific articles of impeachment, and put him before the bar of the Senate, and you, by virtue of the constitution, and by virtue of the duties imposed upon you, would be bound to try him and investigate into the whole affairs of his office. Under the constitution we are not compelled to allege that he committed any crime; we are simply to say that he has committed such acts and conducted his office in such a manner that he is no longer worthy to fill that position. We bring him before the bar of the Senate on the general charges of corruption, incompetency and incapacity, and it is your duty as the representatives of the people to try him. Now, one word in regard to the matter of address. The learned counsel say that this officer might have been arraigned before the General Assembly, and might have been dismissed by address; but notice the article. You can not address the Auditor of Public Accounts out of office by any manner of means. He may be guilty of the highest offenses known to the law of this or any civilized country, but you can not address him out of office, because the article of address reads as follows:

"ART. 106. All civil officers shall be removable by an address of two-thirds of the members elect to each House of the General Assembly, except those whose removal is otherwise provided for by this constitution."

"Except those whose removal is otherwise provided for by the constitution!"

Now, articles ninety-six and ninety-seven provide that the Auditor of Public Accounts shall be removed by impeachment, so that this article one hundred and six can not be made to apply to the Auditor. You must impeach him, or you can not remove him at all.

It has been argued by the opposite counsel, with all eloquence and power, that this officer, having been once tried, before a criminal court of the State, can not be presented now before the bar of this Senate upon the same charge, but the constitution, in explicit and full terms, states that the only way he can be removed from office is by impeachment, and it says further:

"ART. 97. Judgments in case of impeachment shall extend only to removal from office, and disqualification from holding any office of honor, trust or profit in the State; but the convicted parties shall, nevertheless, be subject to indictment, trial and punishment, according to law."

Now, if the respondent at the bar be guilty of extortion; if he be guilty of robbery, if he be guilty of burglary; yes, if he has committed murder, the criminal courts of the State have not the power to remove him from office. They may try him to-day, and convict him, adjudge him guilty of the highest crimes known to the statute law of the State but they do not possess the power to remove him from office. Now, if the proposition of the learned counsel be correct, that if a man has been tried once for an offense that you have not the right to arraign that criminal and to remove him from office by impeachment, that you have no remedy; but a criminal must remain in office. Is not that a strange proposition? A strange application of the provision of the constitution which says that no man shall be tried twice for the same offense? And when we see that the skillful counsel make use of that defense, we know that they have a bad cause.

Now, this is my proposition, that the Senate of the State, sitting under the constitution as a court of impeachment, *has* a right—yes, not only has a right, but it is your sworn duty to examine into the whole affairs of this office, and you need not have any specific allegations as required in the practice of the criminal law, in the articles presented by the House of Representatives. You come under the common parliamentary law of the land, not under the civil law—not under the law of practice established by the courts of the State, but under the law of Parliament establishment by their own principles of custom and of practice. You come here to try this man not as a criminal, but as an officer. You, I undertake to say, are competent to examine into the whole affairs of the office, and it is not necessary that we, as a House of Representatives, draw our articles with the precision and conciseness necessary in indictments before criminal courts. It is not necessary, I undertake to say, for us to specify anything except to charge him with having so conducted his office as to render him unfit and unworthy and incompetent of the office which the people have reposed in him. We refer to the trials of the past. I do this upon the hypothesis that you believe as I believe, that you are nothing but a Court of Impeachment, and that the rules of evidence and the rules of law which are to be made applicable to this court are the rules of evidence and the rules of law which were made applicable in the trial of cases of impeachment in the past. Under the old Roman law which is the civil law of this State, such a thing as impeachment was never known. Impeachments were instituted in England. Impeachments became a part of the common parlimentary law of England, transmitted to the United States as the daughter of England. In England impeachments can be made before the House of Lords, not only for political offenses, but for any and all *criminal* offenses, but in this Republic we have made this distinction, that criminal trials are to be tried before criminal courts, and that political offences should be tried before courts of impeachment. Will any one dare to say that a court martial, sitting to try an officer or a soldier, shall be governed by the same rules or strictures that criminal courts are? Suppose you try before a court martial a soldier for having committed robbery. They try the man as a soldier, not as a citizen, and sentence him as such. Suppose an officer is tried for conduct unbecoming an officer and a gentlemen. When he has committed robbery, is not that officer amenable to the law of the State? Can not he be arraigned before any criminal court where the offense was committed and to be tried, and if found guilty, punished? Will any one dare to say, because an officer has been tried once and either acquitted or convicted before a criminal court that he is not still amenable to a court martial? How otherwise could he be dismissed the service. Now, that, I say, is precisely a parallel case with the case of an officer before a Court of Impeachment. It is like a court martial; it is a separate and distinct trial from a trial before the courts established under the law of the State. We examine the trials of impeachment in the past, and how are the articles drawn? I refer to the trial of Judge Peck, and I call the attention of the Senators to the language used in the articles of impeachment then. There is not a single allegation that he had done anything in violation of the law, or in violation of the constitution, or that he had committed any crime. There is no allegation that he committed any high crimes or misdemeanors, and it was adjudged by the Senate of the United States that these articles were sufficient, because they presented the facts, and it is a right and the duty of the Senate to examine into the facts, and if it be found that the officer has trampled on the law and violated the common justice, or done anything wrong which renders him unfit and unworthy to hold the office, you pass upon it, and you have the only right and the only power known to the law of the land to remove such an officer. And you tell me that if George M. Wickliffe should have become such a notorious drunkard as to render him incompetent to perform the duties of this or any other office, that you have not the power to remove him from office. Pray tell me if you have not the power, who has? And if there is no power in the land delegated by any specific law, are you to say that a drunkard and a man totally inefficient and incompetent is to remain in an office, and the whole interests of the State to be jeopardized because there is no express law to remove him? Such a thing as that is preposterous and in conflict with the principles of our government. But, thank God, we have a remedy, and that remedy rests, gentlemen, with you, given you by the constitution and the common practice of parliamentary court—to wit, Courts of Impeachment.

You are here to-day representing the whole people for this very purpose. Now, I think that I have shown satisfactorily that you have the right to try this case whether the articles have been drawn specifically and carefully, and with the precision necessary, in an indictment or not. I think that I have shown that under the constitution of this State it is only necessary that we impeach the officer, and it is your duty to inquire into the whole length and breadth of his conduct since he has been an officer. In you, and upon you, rests the removing power. Then, if you are competent to try the case without the charges being in the form of an indictment, next, comes the question as to whether any impeachable offense has been committed. But, first, one word more in this connection. Unfortunately during this argument, the counsel for the respondent made an attack upon one of the Senators, and said that one of your number, Senators, ought to recuse himself, if he could not be ruled out or challenged. Now, sir, if you will examine the history of the trial of impeachments in this country and in England, you will find that Senator Lynch can not recuse himself if he would. He sits here as a member of the Senate, representing a portion of the people of the State, and, taking the rules laid down and established in impeachment cases heretofore, he has no right to recuse himself, even if he desired. He sits here not in his individual capacity, but representing a portion of the people of the State. He sits here as a sworn officer of the State to discharge his duties in behalf of the State. I will cite, gentlemen, authority to verify what I have asserted, in the case of the trial of Judge Pickering, a Judge of the United States Court in New Hampshire. This was a case not for any indictable offense; not for any offense known to the criminal law, either common or statute, but he was tried for what was exclusively, simply and purely a political offense. Mr. Smith, of New York, rose, when the question was presented in the Senate of the United States, and asked to be excused from voting for the reason that when this officer was impeached in the House of Representatives, he, Mr. Smith, was a member of the House and voted for the impeachment, and afterward when the trial came up he (Smith) had been returned by the people to the Senate. Mr. Smith, of Maryland, occupied the same position; he was a member of the House at the time the articles of impeachment were adopted, and afterwards was elected was elected to the Senate, and he said that he would not be influenced from doing his duty, and that he felt no delicacy in voting, and that the vote he gave in the other House would not influence his vote in the Senate, and his constituents had a right to his vote, and he would not consent to deprive them of it. The vote being taken on the question in the Senate, it was determined that these gentlemen should and must vote, by a vote of 19 to 7. There is an instance presented where a Senator rose and asked to be recused because he had prejudged the case, as expressed in the record, and the Senate refused to allow it, claiming that he represented not himself, but his constituents. There are several precedents of the same character. I read from the opening argument of General Butler in the case of the impeachment of the President:

Page ninety-two and ninety-three.—"On the trial of Samuel Chase before the Senate of the United States, no challenge was attempted, although the case was decided by an almost strict party vote in high party times, and doubtless many of the Senators had formed and expressed opinions upon his conduct.

"That arbitrary judge, but learned lawyer, knew too much to attempt any such futile movement as a challenge to a Senator. Certain it is that the proprieties of the occasion were not marred by the worse than anomalous proceeding of the challenge of one Senator to another, especially before the defendant had appeared. Nor did the managers exercise the right of challenge, although Senators Smith and Mitchell, of New York, were members of the Senate on the trial, and voted not guilty on every article, who had been members of the House when the articles were formed, and had there voted steadily against the whole proceeding.

"Judge Peck's case, which was tried in 1831, affords another instance in point. The conduct of Judge Peck had been the subject of much animadversion and comment by the public, and had been for four years pending before the Congress of the United States before it finally came to trial. It was not possible but that many of the Senate had both formed and expssessed opinions upon Peck's proceedings, and yet it never occurred to that good lawyer to make objection to his triers. Nor did the managers challenge, although Webster, of Massachusetts, was a member of the committee of the House of Representatives to whom the petition for impeachment was referred, and which, after examination, reported thereon, 'leave to withdraw,' and Sprague, of Maine, voted against the proceedings in the House, while Livingstone, of Louisiana, voted for them. All of these gentlemen sat upon the trial, and voted as they did in the House.

"A very remarkable and instructive case was that of Judge Addison, of Pennsylvania, in 1804. There, after the articles of impeachment were framed, the trial was postponed to another session of the Legislature. Meanwhile, three members of the House of Representatives, who had voted for the articles of impeachment were elected to the Senate and became the triers of the articles of impeachment of which they had solemnly voted the respondent to be guilty. To their sitting on the trial Judge Addison objected, but after an exhaustive argument his objection was overruled, 17 to 6. Two of the minority were the gentlemen who had voted him guilty, and who themselves objected to sitting on the trial.

"Thus stands the case upon authority. How does it stand upon principle?

"In a conference held in 1691, between the Lords and Commons, on a proposition to limit the number of judges, the Lords made answer:

'That in the case of impeachments, which are the groans of the people, and for the highest crimes, and carry with them a greater supposition of guilt than any other accusation, there all the Lords must judge.'

"There have been many instances in England where this necessity that no peer be excused from sitting on such trials, has produced curious results. Brothers have sat upon the trials of brothers, fathers upon the trials of sons and daughters, uncles upon the trials of nephews and neices, no excuse being admitted. One, and a most peculiar and painful instance, will suffice upon this point to illustrate the strength of the rule. In the trial of Anne Boleyn, the wife of one sovereign of England, and the mother of another, her father, Lord Rochefort, and her uncle, the Duke of Norfolk, sat as judges, and voted guilty, although one of the charges against the daughter and niece was a criminal intimacy with her brother, the son and nephew of the judges.

"It would seem impossible that in a proceeding before such a tribunal so constituted there could be a challenge, because as the number of triers is limited by law, and as there are not now, and never have been, any provisions, either in England or in this country, for substituting another for the challenged party, as a talesman is substituted in a jury, the accused might escape punishment altogether by challenging a sufficient number to prevent a quorum, or the accuser might oppress the respondent by challenging all persons favorable to him until the necessary unanimity for conviction was secured."

I have cited English authority, and I have cited American authority enough, I think, to satisfy you as to that most unjust, and, as I conceive it, brutal attack upon one of your members, which said that if he had any sense of justice and right, he would withdraw from the court. Senator Lynch can not withdraw from the trial, unless he is a coward and runs away, and I believe he possesses none of the attributes of a coward or a knave, but rather principles strong and pure enough to stand up in the Senate honestly and perform his duty as he conceives it, faithfully and well.

It is, perhaps, unnecessary to discuss what are impeachable offenses. I think I have discussed it sufficiently. I undertake to say that you can try any case, or any conduct of your public officers, which, by the constitution, you can impeach, and, if in your opinion, sitting here as the grand inquest of the State, sitting here as the high court of impeachment, representing the people, and for the purpose of ascertaining whether a public officer has performed his duty, you can inquire into anything he has done, and, if you feel on your oath that he is incompetent, unworthy, or unfit for the position delegated to him, you have the power—yes, it is your right, it is your sworn duty to remove him, and to impose upon him the further penalty of disqualification from ever after holding public office. Because a man who is a citizen of a free republic, having accepted the obligation of a member of that republic, who degrades the position of a public office, never should hold any other office within the gift or the selection of that republic. What has this officer done? How has this officer, elected to fill one of the highest positions in the State, performed the trust? What do the facts show? First, we have shown to you that that officer, having been served with a summons to appear before the Sixth District Court, in this city, to answer to a petition for mandamus to compel him to issue a warrant for a claim which we say was wrong, failed to appear, and we say that the Auditor knew that the claim was wrong, and he failed to respond. He allowed judgment to issue, because the case went by default. The mandamus was issued, and within two days after, a peremptory mandamus was issued, the party in whose favor it was issued appears in the office of the Auditor, and the Auditor issues the warrant without question, well knowing, as he ought to have known—for I understand that he has been a practicing lawyer—that he could have appeared, either by himself or by counsel, or notified the Attorney General, and he could have appeared and applied for a nullity of judgment on the ground that under the law it was *res adjudicatur*, because the case had been determined once and decided adverse to the applicant. But the Auditor does not do it, and what excuse does he give? He says it was an accident. An accident! Do you want a man in a high public office, managing the finances of the State, controlling the whole financial interests of the whole State, to set up a plea before this grand tribunal of the people that he allowed the State to be cheated out of a large sum of money by accident? And he says he thought it was a continuation of the other case, when he well knew that the other case had been decided, and that at that time it could not be reopened; that if there was any case at all it was a new process, whether in that or any other court. It looks to me very strange that this officer should undertake to introduce this plea. Another thing that looks strange to me is that gentlemen so learned in the law, so skilled in the construction of the language of the law, as evinced from their argument, should undertake to assume the position which the honorable counsel have taken in regard to this same law, when he undertakes to say to you that the proper constitution of that law is that it carried two appropriations; that the first section appropriated eleven thousand and odd dollars to J. C. Kathman, for expenses which were incurred for the bureau, and that the second section was an appropriation for the same amount to J. C. Kathman, as an individual, and that the reference from the second section to the first was simply to indicate the amounts appropriated. Does not the honorable counsel know that the constitution of the State provides that every act passed by the Legislature shall have the subject matter of the act set forth in the title? And what is the title of this act? "An act for the relief of J. C. Kathman, late chief of the Bureau of Emigration." Not for the relief of J. C. Kathman as an individual, but for J. C. Kathman as a public officer of the State to pay the expenses of that office. Well, that is sufficient in regard to that, with this single proposition which I beg the Senators to bear in mind, and examine carefully and well before determining the case; it is this proposition, that when a citizen accepts an office and assumes the duties of a high public office, that individual is bound to perform the