Received 12/16/2022 1:31:06 PM Commonwealth Court of Pennsylvania

Filed 12/16/2022 1:31:00 PM Commonwealth Court of Pennsylvania
563 MD 2022

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 563 MD 2022

LARRY KRASNER, IN HIS OFFICIAL CAPACITY AS THE DISTRICT ATTORNEY OF PHILADELPHIA,

Petitioner,

v.

SENATOR KIM WARD, IN HER OFFICIAL CAPACITY AS INTERIM PRESIDENT PRO TEMPORE OF THE SENATE, ET AL.,

Respondents.

BRIEF OF RESPONDENT SENATOR KIM WARD IN OPPOSITION TO APPLICATION FOR SUMMARY RELIEF AND IN SUPPORT OF CROSS-APPLICATION FOR SUMMARY RELIEF

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I. INTRODUCTION

The Pennsylvania Constitution commands the Senate as follows: when the House presents articles of impeachment, they "shall" be tried. Nothing about this case warrants a different result. Impeachments across multiple sessions are ordinary and in no way prohibited. Further, the District Attorney of Philadelphia is a "civil officer" subject to impeachment. Next, whether Petitioner Larry Krasner's alleged conduct amounts to "misbehavior in office"—a phrase with plain meaning—is an un-ripe question, and one that Respondent Senator Ward, an impartial juror in the matter, cannot opine on at this stage. Finally, *even if* Petitioner's claims have merit (they do not), the Court is without subject matter jurisdiction to proceed. *The Senate* tries impeachments, and notably the Senate is not a party, despite Petitioner expressly seeking relief against it (and the non-party Senate Impeachment Committee). The absence of this indispensable party renders these proceedings improper. In sum, this matter should be dismissed for a variety of reasons, and, accordingly, the Court should deny Petitioner's Application for Summary Relief and grant Senator Ward's Cross-Application for Summary Relief.

II. QUESTIONS PRESENTED

1. Where the Senate's constitutional impeachment duty is outlined separately from its lawmaking power and where history reflects a long-standing practice of survival of impeachment across legislative sessions, is the continuation across successive legislative sessions proper? *Suggested answer: yes.*

2. Is Petitioner a "civil officer" subject to impeachment under Article VI, Section 6? *Suggested answer: yes.*

3. Does the phrase "any misbehavior in office" in Article VI, Section 6 include conduct beyond the common law definition of "misbehavior in office"? *Suggested Answer: yes.*

4. Should the Petition for Review be dismissed for lack of subject matter jurisdiction for failure to join indispensable parties? *Suggested answer: yes.*

III. STATEMENT OF THE CASE

A. Factual background

Petitioner Larry Krasner is the District Attorney of Philadelphia County. On October 26, 2022, the House introduced House Resolution 240, entitled, "Impeaching Lawrence Samuel Krasner, District Attorney of Philadelphia for misbehavior in office; and providing for the appointment of trial managers." PFR Ex. A. On November 16, 2022, HR 240 was amended and passed by the House. PFR Ex. C. Two days later, in accordance with HR 240, Speaker of the House Representative Bryan Cutler announced a committee to exhibit the Articles of Impeachment to the Senate and conduct a trial.

On November 29, 2022, the Senate adopted two resolutions to set rules for conducting impeachment trials, Senate Resolution 386, and to invite the House of Representatives to exhibit the Articles of Impeachment on November 30, 2022, Senate Resolution 387. PFR Ex. D and E.

The House exhibited the Articles as instructed, following which the Senate adopted Senate Resolution 388, directing the issuance of a Writ of Impeachment Summons to Petitioner. PFR Ex. F. The Writ was

served on Petitioner on December 1, 2022. PFR Ex. G. The 206th General Assembly ended on November 30, 2022.

B. Procedural history

On December 2, 2022, Petitioner filed his Petition for Review in the Nature of a Complaint for Declaratory Judgment, alleging three counts for relief. Specifically, Petitioner seeks a declaration that the Articles of Impeachment became null and void on the adjournment *sine die* of the 206th General Assembly; Article VI, Section 6 of the Pennsylvania Constitution does not authorize impeachment of Petitioner; the Articles of Impeachment do not allege conduct within the meaning of Article VI, Section 6; Respondents do not have authority to take up the Articles of Impeachment and any efforts to do so would be unlawful; and any effort by Respondents and/or the General Assembly to take up the Articles of Impeachment or related legislation is unlawful. PFR Prayer for Relief.

On the same day Petitioner filed the Petition for Review, he simultaneously filed an Application for Summary Relief and sought expedited briefing. This Court granted the application in part on December 6, 2022, issuing a schedule for expedited briefing, petitions

for intervention, answers or preliminary objections to the Petition for Review, and cross-applications for summary relief.

In accordance with the Court's order, Senator Ward filed an Answer and New Matter to the Petition for Review on December 13, 2022. Among other things, Senator Ward averred in New Matter that the Petition for Review should be dismissed for lack of subject matter jurisdiction due to failure to join indispensable parties and because the claims are legally insufficient. Answer and New Matter at ¶¶ 80-83. At the same time as this brief, Senator Ward also filed an Answer to the Application for Summary Relief and a Cross-Application for Summary Relief.

C. Historical impeachments

Impeachments in Pennsylvania are not well cataloged in any single source. But research reveals at least nine impeachments since 1780, covering some twelve different persons (including one impeached twice), where the proceedings advanced to a verdict:

(1) Judge Francis Hopkinson (acquitted, 1780);[1]

[1] *See The Pennsylvania Senate Trials: Containing the Impeachment, Trial, and Acquittal of Francis Hopkinson and John Nicholson, Esquires*, at 3, 62 (1794), *available at* https://archive.org/details/pennsylvaniastat00hoga/page/n5/mode/2up; *see also* Frank M. Eastman, *Courts and Lawyers of Pennsylvania: A History 1623-*

(2) Comptroller General John Nicholson (acquitted, 1794);[2]

(3) Judge Alexander Addison (convicted, 1803);[3]

(4) Chief Justice Edward Shippen, Justice Jasper Yeates, and Justice Thomas Smith (acquitted, 1805);[4]

(5) Judge Walter Franklin, Judge Jacob Hibshman, and Judge Thomas Clark (acquitted, 1817);[5]

(6) Judge Walter Franklin (second impeachment; acquitted, 1825);[6]

1923, vol. II, at 343 (1922), *available at* https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t0qr53419&view=1up&seq=9.

[2] *See The Pennsylvania Senate Trials*, at 67, 762.

[3] *See Trial of Alexander Addison, On an Impeachment Before the Senate of the Commonwealth of Pennsylvania, in January 1803* (1803), *available at* https://babel.hathitrust.org/cgi/pt?id=mdp.35112204856779&view=1up&seq=9&skin=2021; *see also* Eastman, *Courts*, at 345.

[4] *See Report of the Trial and Acquittal of Edward Shippen, Esquire, Chief Justice and Jasper Yeats and Thomas Smith, Esquires, Assistant Justices, of the Supreme Court of Pennsylvania on an Impeachment Before the Senate of Pennsylvania of the Commonwealth, January 1805* (1805), *available at* https://babel.hathitrust.org/cgi/pt?id=hvd.hxh38z&view=1up&seq=5&skin=2021; *see also* Eastman, *Courts*, at 349.

[5] *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 27, appendix (1816) (appendix entitled: *Journal of the Proceedings of the Senate of Pennsylvania, Sitting as the High Court of Impeachment on the Trial of an Article of Accusation and Impeachment Preferred by the House of Representatives, Against Walter Franklin, President, and Jacob Hibshman and Thomas Clark, Associate Judges of the Court of Common Pleas of Lancaster County*), *available at* https://babel.hathitrust.org/cgi/pt?id=chi.74677493&view=1up&seq=471&skin=2021; *see also* Eastman, *Courts*, at 351.

[6] *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 35, at 821 (1824) (section titled: *Journal of the Court of Impeachment, for the Trial of Walter Franklin, Esquire, President Judge of the second judicial district of Pennsylvania, for Misdemeanors in Office, Before the Senate of the Commonwealth of Pennsylvania*), *available at* https://babel.hathitrust.org/cgi/pt?id=chi.74677859&view=1up&seq=821.

(7) Judge Robert Porter (acquitted, 1825);[7]

(8) Judge Seth Chapman (acquitted, 1826);[8] and

(9) Justice Rolf Larsen (convicted, 1994).[9] [10]

Of the foregoing cases, five impeachments warrant further discussion because they spanned two sessions of the General Assembly, as does the present impeachment of Petitioner.

1. Impeachment of Comptroller General Nicholson

At the time of Comptroller General Nicholson's impeachment in 1793 and trial in 1794, sessions of the General Assembly were just one year, since representatives stood for election annually under the Constitution of 1790. *See* Pa. Const. of 1790 art. II, § 2 ("The

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[7] *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 36, appendix (1825) (appendix entitled: *Journal of the Court of Impeachment for the Trial of Robert Porter, Esquire, President Judge of The Third Judicial District of Pennsylvania, Before the Senate of the Commonwealth of Pennsylvania*); *see also Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 35, at 769 (presentment in Senate of articles of impeachment against Judge Porter); Eastman, *Courts*, at 352.

[8] *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 36, appendix (1825) (appendix entitled: *Journal of the Court of Impeachment for the Trial of Seth Chapman, Esquire, President Judge of the Eighth Judicial District of Pennsylvania for Misdemeanors in office, Before the Senate of the Commonwealth of Pennsylvania*); *see also Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 35, at 760 (presentment in Senate of articles of impeachment against Judge Chapman); Eastman, *Courts*, at 352.

[9] *See In re Larsen*, 812 A.2d 640, 646 (Pa. Spec. Trib. 2002).

[10] Other impeachments have been introduced but failed in the House without triggering Senate action. *See generally* Robert B. Woodside, *Pennsylvania Constitutional Law*, at 364-67 (1985); Eastman, *Courts*, at 352.

Representatives shall be chosen, annually, by the citizens of the city of Philadelphia, and of each county, respectively, on the second Tuesday of October."). This continued until the Constitution of 1874, when representatives stood for election every two years. *See* Pa. Const. of 1874 art. II, § 3. Sessions of the General Assembly under the Constitution of 1790 began on the first Tuesday of December every year. Pa. Const. of 1790 art. II, § 10.

The articles of impeachment against Nicholson were first approved by the House of Representatives on April 10, 1793, and amended and adopted on September 3, 1793, during the legislative session beginning on December 4, 1792 (session 17). *See The Pennsylvania Senate Trials*, at 107, 188 (cited *supra* n.1); *see also* Dep't of Gen. Services, *The Pennsylvania Manual*, vol. 125, at 3-289 (2021).[11] They were presented in the Senate on September 3, 1793, and the Senate adjourned *sine die* on September 5. *See The Pennsylvania Senate Trials*, at 191, 193. However, the impeachment was not tried in the Senate until January 9, 1794, with a verdict on April 11, 1794. *See id.*

[11] *Available at* https://www.dgs.pa.gov/publications/Documents/ThePennsylvaniaManual_vol125_web.pdf.

at 195, 762. Thus, the trial was during the next legislative session (session 18), which began on December 3, 1793, *see Pennsylvania Manual*, at 3-289, after the one in which the articles were presented (session 17).

2. Impeachment of Judge Addison

The articles of impeachment against Judge Addison were approved by the House of Representatives on March 11, 1802, during the 26th legislative session, which began on December 1, 1801. *See Trial of Alexander Addison*, at 7 (cited *supra* n.3); *see also The Pennsylvania Manual*, at 3-289. The articles were presented to the Senate on March 23, 1802. *See Trial of Alexander Addison*, at 9. The Senate then adjourned *sine die* on April 6, 1802. *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 12, at 404 (1801) (relevant pages attached as Exhibit A). However, the impeachment was not tried to a verdict until January 1803. *See Trial of Alexander Addison*, at 21, 151-152. Thus, the trial was during the next legislative session (session 27), beginning on December 7, 1802, *see Pennsylvania Manual*, at 3-289, after the one in which the articles were presented (session 26).

3. Impeachment of Justices Shippen, Yeates, and Smith

On March 23, 1804, the House adopted articles of impeachment against Justices Shippen, Yeates, and Smith during the 28th legislative session, which began on December 6, 1803. *See Report of the Trial and Acquittal of Edward Shippen*, at 22 (cited *supra* n.4); *see also Pennsylvania Manual*, at 3-289. They were presented to the Senate on March 24, 1804, which voted on March 27 to try the impeachment in January 1805. *See Report of the Trial and Acquittal of Edward Shippen*, at 22, 25-26. The Senate adjourned *sine die* on April 3, 1804. *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 14, at 404 (1803) (relevant pages attached as Exhibit B).

The impeachment was tried to a verdict in January 1805. *See Report of the Trial and Acquittal of Edward Shippen*, at 33, 491; *see also* Eastman, *Courts*, at 351. Thus, the trial was during the next legislative session (session 29), which began on December 4, 1804, *see Pennsylvania Manual*, at 3-289; *see also Report of the Trial and Acquittal of Edward Shippen*, at 27, after the one in which the articles were presented (session 28).

4. Impeachment of Judge Porter

Articles of impeachment were exhibited in the Senate on April 11, 1825 against Judge Porter, which the Senate voted to try in December 1825. *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 35, at 769, 777, 784 (cited *supra* n.6). This occurred during legislative session 49, which began on December 7, 1824. *See Pennsylvania Manual*, at 3-289. On April 12, 1825, the Senate adjourned *sine die*. *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 35, at 800, 818. The impeachment was not tried until December 1825. *See Journal of the Court of Impeachment for the Trial of Robert Porter, Esquire, President Judge of The Third Judicial District of Pennsylvania, Before the Senate of the Commonwealth of Pennsylvania*, at 3, 59-62 (1825) (Exhibit C); *see also* Eastman, *Courts*, at 352. Thus, the trial was during the next legislative session (session 50), beginning on December 6, 1825, *see Pennsylvania Manual*, at 3-289, after the one in which the articles were presented (session 49).

5. Impeachment of Judge Chapman

Also on April 11, 1825, articles of impeachment were presented to the Senate against Judge Chapman. *See Journal of the Senate of the*

Commonwealth of Pennsylvania, vol. 35, at 760, 777 (cited *supra* n.6). The same day, the Senate voted to try this impeachment in February 1826. *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 35, at 784. The vote occurred during legislative session 49, which began on December 7, 1824. *See Pennsylvania Manual*, at 3-289. The Senate adjourned *sine die* on April 12, 1825. *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 35, at 800, 818. Trial took place in February 1826.[12] *See Journal of the Court of Impeachment for the Trial of Seth Chapman, Esquire, President Judge of the Eighth Judicial District of Pennsylvania for Misdemeanors in office, Before the Senate of the Commonwealth of Pennsylvania*, at 3, 28-30 (1826) (Exhibit D). Trial was therefore during the next legislative session (session 50), beginning on December 6, 1825, *see Pennsylvania Manual*, at 3-289, after the one in which the articles were presented (session 49).

[12] On January 16, 1826, just before the impeachment trial of Judge Chapman was to begin, the House withdrew and replaced the original articles of impeachment adopted during the prior legislative session. *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 36, at 175-76 (1825). If the original articles had ceased to have effect as Petitioner suggests in his matter, there would have been nothing for the House to "withdraw" in 1826.

IV. SUMMARY OF THE ARGUMENT

First, Petitioner's assertion that adjournment *sine die* extinguishes articles of impeachment adopted in a prior legislative session is textually and historically infirm. This is evidenced by long-standing practice of the Pennsylvania Senate on impeachments, the Opinion of the Attorney General, and authority from Pennsylvania's sister jurisdictions.

Second, Petitioner holds an office of public trust, representing and exercising the power of the Commonwealth within Philadelphia. The nature and duties attendant to the office of district attorney compel the determination that Petitioner is a civil officer and is, therefore, subject to impeachment under Article VI of the Constitution. Even if statutory impeachment procedures apply to Petitioner, they are not the exclusive means by which he may be subject to impeachment. Article VI permits the impeachment of the Philadelphia District Attorney.

Third, Petitioner's argument regarding the definition of "misbehavior in office" is distilled to two broad points. One, this Court should rely on a Pennsylvania Supreme Court decision interpreting a different constitutional provision. Two, this Court should ignore the text

of Article VI, Section 6—specifically, the term "any"—and adopt a definition of "misbehavior in office" that contradicts: (i) the plain language; (ii) other related constitutional provisions; and (iii) Section 6's own amendment history. This Court should reject Petitioner's attempt to narrow the definition of "misbehavior in office" and thereby narrow the legislature's constitutional authority to remove civil officers who misbehave. Instead, this Court should hold that Section 6's definition of "any misbehavior in office" is broader than the common law definition.

Moreover, Petitioner's arguments concerning the merits of his claims are not yet ripe because a trial has not been held and evidence has not been presented. Regardless, Senator Ward—who will serve as an impartial juror during trial—must refrain from taking a position on the merits-based arguments of Petitioner.

Finally, this Court lacks subject matter jurisdiction due to the absence of indispensable parties—the Senate and its Impeachment Committee. A party is indispensable when its rights are so connected with the claims asserted that an order cannot be entered without impairing those rights. Petitioner expressly seeks relief against both the Senate and the future members of the Senate Impeachment Committee,

which would impair the rights of these absent parties. Further, the Senate is the only entity under the Constitution with the sole obligation to try impeachments; thus, an action regarding such a trial necessarily prejudices its rights.

V. ARGUMENT IN OPPOSITION TO APPLICATION FOR SUMMARY RELIEF

A. The Senate is not only permitted to act upon the Articles of Impeachment adopted in the preceding session, but also it is obligated to do so.

Petitioner's lead claim is that the Senate is prohibited from conducting an impeachment trial because the Articles of Impeachment expired and, in essence, ceased to exist when the 206th General Assembly adjourned *sine die*. In this regard, the general principle that legislative matters pending before the preceding session of the General Assembly terminate upon adjournment *sine die* and do not "'carry over' from one General Assembly to the next[]"—which Petitioner inexplicably devotes substantial energy toward establishing—is not in serious dispute. But where Petitioner's theory unravels is in his efforts to apply that doctrine of legislative power to impeachment proceedings, since an examination of the Constitution within the settled interpretative framework prescribed by the Supreme Court firmly establishes that adjournment *sine die* had no impact on the Senate's responsibilities relative to the Articles of Impeachment.[13] Specifically,

[13] *See Com. v. Molina*, 104 A.3d 430, 441 (Pa. 2014) (explaining that Court "conduct[s] Pennsylvania constitutional analysis consistently with the model set forth in *Edmunds*[,]" under which, the Court examines, *inter alia*, the relevant text

as developed in greater detail below, each of the three considerations relevant to the present analysis weigh against Petitioner's proposed construct and, considered together, establish that conducting a trial on the Articles of Impeachment in the next legislative session is on firm constitutional footing.

1. The text and structure of the State Constitution reflect a deliberate intent to ensure that the Senate's impeachment function exists independent of its legislative powers.

As Count I involves a quintessential exercise in textual interpretation, the starting point is the Constitution's plain language. Here, a review of the pertinent constitutional provisions—and, in particular the structure and placement of Articles II and VI—confirms that the Senate's impeachment power is not legislative power and, thus, is not impaired by adjournment *sine die*.

When tasked with interpreting constitutional provisions, courts must "first look to their placement in the larger charter." *Molina*, 104 A.3d at 442. It is therefore useful to first examine the structure of the State Constitution with an eye toward the source of the two

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of the Pennsylvania Constitutional, historic developments surrounding those provisions, including Pennsylvania case law, and any pertinent caselaw from other jurisdictions").

constitutional precepts principally at issue—namely: (1) *sine die* adjournment of a legislative session, which emanates from Article II; and (2) the Senate's duties relative to an impeachment trial, which are set forth in Article VI.[14]

A careful survey of Article II, which, as relevant here, governs the length of legislative sessions, demonstrates that it is strictly confined to the subject of *legislative* power. Specifically, not only is the Article entitled "The Legislature," but its introductory section also provides that "[t]he *legislative* power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives." Pa. Const. art. II, § 1 (emphasis added). The three ensuing sections—which together form the predicate for the doctrine that adjournment *sine die* terminates all pending legislative business—relate to the election of Senators and Representatives in the General

[14] *Accord Com. v. Smith*, 186 A.3d 397, 402 (Pa. 2018) (explaining that courts do "not read words in isolation, but with reference to the context in which they appear"); *see also King v. Burwell*, 576 U.S. 473, 486 (2015) ("If the statutory language is plain, we must enforce it according to its terms. But oftentimes the meaning—or ambiguity—of certain words or phrases may only become evident when placed in context. So when deciding whether the language is plain, we must read the words in their context and with a view to their place in the overall statutory scheme." (internal quotation marks and citations omitted)).

Assembly, *see id.* at § 2, their terms of office, *see id.* at § 3, and the length of legislative sessions. *See id.* at § 4.

Equally important, nowhere in Article II is any reference made to impeachment.[15] Instead, that subject is covered in Article VI, titled "Public Officers." As relevant here, Section 4 vests "the sole power of impeachment" in the House of Representatives, *see* Pa. Const. art. VI, § 4, and Section 5 vests the Senate with the responsibility for trying impeached officers. *See* Pa. Const. art. VI, § 5. Finally, Section 6 provides, in part, that "[t]he Governor and all other civil officers shall be liable to impeachment for any misbehavior in office[.]" Pa. Const. art. VI, § 6. And again, just as Article II does not address impeachment, none of the provisions in Article VI reference the exercise of legislative power. In fact, the terms "General Assembly" or "Legislature" are nowhere to be found in the impeachment sections.

Against this textual backdrop, this Court should not countenance Petitioner's invitation to engraft Article II's limitations on legislative authority onto the impeachment provisions of Article VI. Specifically, as

[15] Similarly, Article III, titled "Legislation," also does not mention impeachment.

noted above, the central predicate of Petitioner's argument in this respect—*i.e.*, that adjournment *sine die* concludes all pending legislative matters—is derived from Article II, which relates to the exercise of *legislative* authority, which is defined as the power to "make, alter, and repeal laws." *Blackwell v. Com., State Ethics Comm'n*, 567 A.2d 630, 636 (Pa. 1989); *accord O'Neil v. Am. Fire Ins. Co.*, 30 A. 943, 944 (Pa. 1895). Stated differently, lawmaking is the power to prescribe "a rule of civil conduct[.]" *Belitskus v. Stratton*, 830 A.2d 610, 615 (Pa. Cmwlth. 2003) (internal quotation marks omitted)); *see also In re Baldwin Township Allegheny County Annexation*, 158 A. 272, 272-73 (Pa. 1931) (explaining that "[t]he word 'law' has a fixed and definite meaning[,]" which "[i]n its general sense … imports 'a rule of action[,]" (internal quotation marks omitted)).

But under the above definitional guidelines, the conduct of an impeachment trial—which is more accurately characterized as a "duty" enjoined upon the Senate, rather than a power granted to it—is not a "legislative" undertaking. Most fundamentally, the ultimate resolution of an impeachment trial does not result in a "rule of action," *Baldwin Township*, 158 A. at 272, or a "rule of civil conduct." *Belitskus*, 830 A.2d

at 615. Moreover, unlike an exercise of lawmaking under Article II, the Senate's impeachment verdict does not require concurrence from the House. *See Brown v. Brancato*, 184 A. 89, 93 (Pa. 1936) ("The Constitution contemplates the exercise of legislative power by concurrence of both House and Senate."). Indeed, the Constitution expressly imposes vastly different powers and duties on each chamber, with the House prosecuting, and the Senate adjudicating.

While the distinction between the power to impeach and the power to legislate is apparent from the Constitution's plain language and structure, to the extent there is any doubt in this regard, the Supreme Court's seminal decision in *Com. ex rel. Att'y Gen. v. Griest*, 46 A. 505 (Pa. 1900), further bolsters the conclusion that limitations on the exercise of legislative power are applicable only to actions taken by the General Assembly in its *lawmaking* capacity.

To explain, in *Griest*, the Court held that resolutions adopted pursuant to the General Assembly's power to propose constitutional amendments under Article XI were not subject to the procedural

requirements governing the exercise of legislative power.[16] In so holding, the Court first examined the structure of the State Constitution, under which it observed, "the method of creating amendments to the constitution is fully provided for" in "a separated and independent article, standing alone and entirely unconnected with any other subject." *Id.* at 506. Indeed, the *Griest* panel noted the Article does not "contain any reference to any other provision of the constitution as being needed or to be used in carrying out the particular work to which [it] is devoted[,]" but rather, "is a system entirely complete in itself; requiring no extraneous aid, either in matters of detail or of general scope, to its effectual execution." *Id.* at 507.

Conversely, the Court emphasized, the entirety of Article III "is confined exclusively to the subject of legislation[,]" and does not contain "the slightest reference to or provision for the subject of amendments to the constitution[,]" or "even allude[] to [it] in the remotest manner." *Id.* at 507. Given that the act of proposing a constitutional amendment "is not lawmaking …, but it is a specific exercise of the power of a people to

[16] At the time *Griest* was decided, the Article concerning amendments was denominated as Article XVIII. Aside from being renumbered, the structure and substance of the relevant provisions are materially identical to the ones presently in force.

make its constitution[,]" *id.* at 506—and based on the structural considerations outlined above—the Court declined to interpret Article III as coextensive with Article XI.

Applying *Griest*'s constitutional rubric, the flaws in Petitioner's formulation become pronounced. To begin, like the amendment process of Article XI, "the method of [impeachment] is fully provided for" in Article VI, which is "a separated and independent article, standing alone and entirely unconnected with any other subject."[17] Moreover, in striking resemblance to Article XI, the impeachment provisions of Article VI do not "contain any reference to any other provision of the constitution as being needed or to be used in carrying out [an impeachment,]" but rather prescribe "a system entirely complete in

[17] *Griest*'s overarching conclusion that not every official undertaking of the legislative branch or its subparts is an exercise of the legislative power, has been recognized in other contexts as well. *See Sweeney v. King*, 137 A. 178, 178 (Pa. 1927) (holding that Article III proscription against "legislation upon subjects other than those designated in the proclamation of the Governor calling such session" did not prohibit adoption of a concurrent resolution proposing a constitutional amendment by the General Assembly when it was convened in a special session, since such action was not an exercise of legislative power); *see also Russ v. Com.*, 60 A. 169, 171 (Pa. 1905) (acknowledging that a concurrent resolution may fall outside the ambit of Article III, even if unrelated to a constitutional amendment). Thus, any argument that *Griest*'s rationale is confined to the narrow circumstances before that panel is unpersuasive.

itself; requiring no extraneous aid, either in matters of detail or of general scope, to its effectual execution."

For its part, the entirety of Article II, much like Article III, "is confined exclusively to the subject of [the legislature,]" and does not contain "the slightest reference to or provision for" impeachment, or "even allude[] to [it] in the remotest manner." And just as proposing a constitutional amendment is not lawmaking, the Senate's impeachment trial is not a legislative act, but rather "is a specific exercise of the power" to render a verdict in impeachment proceedings.

Notably, this Court has previously recognized, albeit in dicta, that the role of the legislative branch in impeachment matters is analogous to its function in the constitutional amendment process. *See Mellow v. Pizzingrilli*, 800 A.2d 350, 359 (Pa. Cmwlth. 2002) (*en banc*) (explaining that a proposed amendment to the State constitution under Article XI "is not a legislative act at all, but a separate and specific power granted to the General Assembly, *similar to the impeachment and trial powers granted to the House of Representatives and Senate*, respectively, under Article VI, Sections 4 and 5" (emphasis added)); *accord Costa v. Cortes*, 142 A.3d 1004, 1013 (Pa. Cmwlth. 2016).

Finally, the language of Article VI, Section 5 standing by itself further suggests that articles of impeachment cannot be extinguished by adjournment *sine die*, because the Senate has a mandatory duty to conduct a trial once the articles of impeachment have been transmitted. *See* Pa. Const. art. VI, § 5. Specifically, this provision states that "[a]ll impeachments *shall* be tried by the Senate." Because "[t]he word 'shall' by definition is mandatory, and it is generally applied as such[,]" *Chanceford Twp. Bd. of Supervisors*, 923 A.2d 1099, 1104 (Pa. 2007), this constitutional command cannot be extinguished by adjournment *sine die*.

In sum, the text and structure of the Constitution suggest a conscious and deliberate intent to treat the impeachment function independent of the legislative power.

2. Persuasive authority from Pennsylvania and settled historical practices of the legislative branch firmly establish the Senate's duty to act upon articles of impeachment adopted in a prior session.

Another crucial factor in matters involving constitutional interpretation is the provision's "history, including Pennsylvania case law[.]" *Molina*, 104 A.3d at 441.

As an initial matter, although no court in Pennsylvania has assessed the interplay between *sine die* adjournment and the impeachment responsibilities vested in each chamber under Article VI, an opinion issued by the Attorney General—which, under this Court's precedent, is entitled to "great weight"[18]—expressly rejects the argument that the exercise of impeachment powers is affected by *sine die* adjournment. *See Umbel's Case*, 41 Pa.C.C. 414, 415 (Pa. Att'y Gen. June 26, 1913).[19]

To explain, in 1913, the chairman of a special committee empaneled by the House for the purpose of conducting an impeachment investigation requested a formal opinion from the Attorney General on "the power of [the] committee to continue its hearings and compel the attendance of witnesses and the production of books and papers after the adjournment *sine die* of the present session of the general assembly[.]" *Umbel's Case,* 41 Pa.C.C. at 415. Examining the provisions

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[18] *Baird v. Twp. of New Britain*, 633 A.2d 225, 229 (Pa. Cmwlth. 1993); *see also Com. ex rel. Pappert v. Coy*, 860 A.2d 1201, 1208 (Pa. Cmwlth. 2004) ("The Court notes, however, that although opinions of the Attorney General are not binding on the Court, the courts customarily afford great weight to official opinions of the Attorney General.").

[19] *Also available at* https://www.attorneygeneral.gov/wp-content/uploads/2018/01/1913_1914_AG_Bell_opinions.pdf (pages 362-366).

of the State Constriction and the relevant authorities, including *Com. v. Costello*, 21 Dist. R. 232 (Pa. Quar. Sess. Phila. 1912), on which Petitioner relies heavily, Attorney General Bell concluded the committee's authority to continue its business "will not cease by reason of the adjournment of the general assembly." *Umbel's Case*, 41 Pa.C.C. at 417.

While the Attorney General acknowledged that, under *Costello*, "the functions of the legislature are terminated by the adjournment, and that the conclusion of the session puts an end to all pending proceedings of a *legislative character*," he explained that the issue presented for his consideration was distinguishable and that *Costello* "furnishe[d] no precedent" because "the impeachment of a civil officer is not a joint power or duty, nor is it a legislative function within the ordinary acceptation of that word." *Umbel's Case*, 41 Pa.C.C. at 417 (emphasis added). Rather, "[e]ach branch of the legislature has a separate and distinct function to perform in such proceedings." *Id.*

Umbel's Case is on all fours and provides a simple, yet compelling rationale for its conclusion: adjournment *sine die* terminates pending business that is "legislative in character," but since impeachment is not

an exercise of legislative power, it is not subject to such adjournment. This Court should adopt the well-reasoned interpretation of the pertinent principles articulated in *Umbel's Case*.

Next, a historical survey of impeachment proceedings under the State Constitution reveals a long-standing recognition that impeachment is not a legislative undertaking and, thus, adjournment *sine die* has no impact on pending impeachment proceedings. Turning to that history, a careful review of the Senate's journals, *supra* § III.C, shows that at least ***five*** impeachment proceedings (more than half of all impeachment trials held by the Senate) saw articles of impeachment passed by the House in one session, then adjournment *sine die*, and a trial in the Senate in a new session.

Of course, the Senate's "understanding and practice are not … binding on the judiciary," *Com. ex rel. Greene v. Gregg*, 29 A. 297, 298 (Pa. 1894), but as the Supreme Court has emphasized, "the view of the two co-ordinate branches of the government … are entitled to respectful consideration and persuasive force, if the matter be at all in doubt." *Id.* And a "long continued legislative practice … is strong evidence of the true interpretation of the constitutional power of the legislature[.]"

Olive Cemetery Co. v. Philadelphia, 93 Pa. 129, 132 (1880). Here, the fact that multiple iterations of the General Assembly employed this procedure shows a "long continued legislative practice" and presents "strong evidence" in support of the procedure Petitioner seeks to declare infirm.

Importantly, the Senate's practice in this regard was not a novel arrogation of previously foreclosed powers. Rather, it is in keeping with the British parliament's longstanding interpretation of adjournment *sine die*, which is also sometimes referred to as "prorogation." As Sir William Anson, who has been described as "[o]ne of the most prominent English Constitutional Law scholars in the 1800s,"[20] explains, "[p]roceedings in the House of Lords on an impeachment are unaffected by a prorogation or a dissolution, and this has been held without question since Warren Hastings' case in 1786." Sir William R. Anson, *The Law and Custom of the Constitution*, pt. I, at 340 (2d ed. 1892);[21]

[20] Garrett Ward Sheldon, *Constituting the Constitution: Understanding the American Constitution Through the British Cultural Constitution*, 31 Harv. J.L. & Pub. Pol'y 1129, 1130 (2008).

[21] *Available at* https://babel.hathitrust.org/cgi/pt?id=nyp.33433075894778&view=1up&seq=366.

see also Jefferson's Manual of Parliamentary Practice, at § 620 (relying on authorities from the 1790s).

The Senate's centuries-old practice of allowing impeachment matters to proceed unimpeded from one session to the next is also consistent with settled practice in the United States Congress. Indeed, the first federal judge impeached (Judge John Pickering) was "impeached by the House in one Congress and tried by the Senate in the next." Lewis Deschler, *Deschler's Precedents of the United States House of Representatives*, vol. 3, ch. 14, § 4 (Jan. 1, 1994) (also noting that the impeachment of Judge Harold Louderback spanned from the 73rd to the 74th Congress); *see also id.* at § 4.1 ("It should be noted that in neither the Louderback nor Pickering impeachments did the trial in the Senate begin before the adjournment *sine die* of the Congress.").[22] And this practice has endured the test of time, as evidenced by the fact that President Clinton was impeached in the 105th Congress, but tried and acquitted by the Senate in the 106th Congress. *See generally* U.S.

[22] *Available at* https://www.govinfo.gov/content/pkg/GPO-HPREC-DESCHLERS-V3/pdf/GPO-HPREC-DESCHLERS-V3.pdf.

Senate, *Impeachment of President William Jefferson Clinton*, 106th Congress, Doc. 106-2 (Jan. 13, 1999).[23]

Petitioner, for his part, acknowledges federal practice, but maintains that Congressional precedent is irrelevant because: (1) "federal law, unlike Pennsylvania law, does not address when matters carry over to a new session or to a new Congress[;]" and (2) "unlike the Pennsylvania Senate, the U.S. Senate is a 'continuing body' because two-thirds of U.S. Senators (more than a quorum) do not change at any election." Petitioner Br. at 16 n.6. Neither argument withstands scrutiny.

As an initial matter, Petitioner's first argument is simply and manifestly wrong. The doctrine that adjournment *sine die* (or prorogation) terminates all pending legislative business is, as discussed above, a basic tenet of parliamentary law. *See N.L.R.B. v. New Vista Nursing & Rehab.*, 719 F.3d 203, 221-44 (3d Cir. 2013) (tracing the underpinnings of the concepts of adjournment and prorogation and its modern application). And like the Pennsylvania General Assembly,

[23] *Available at* https://www.govinfo.gov/content/pkg/CDOC-106sdoc2/pdf/CDOC-106sdoc2.pdf.

"Congress is automatically dissolved—and any ongoing session ended—every two years by termination of the terms of one-third of Senators and all members of the House." *Id.* at 223. In fact, specifically discussing the effect of this principle on the Senate, the Third Circuit explained a "session of the Senate, everyone agrees, begins at the Senate's first convening and ends either when the Senate adjourns *sine die* or automatically expires at noon on January 3 in any given year." *Id.* at 234; *see also The Pocket Veto Case*, 279 U.S. 655, 672 (1929).

As for Petitioner's second argument, this theory is candidly difficult to follow. Insofar as it simply recasts the first argument to focus on the one chamber, the notion that the U.S. Senate never adjourns *sine die* is wrong in light of the foregoing. The U.S. Senate, therefore, is plainly not a "continuing body"—despite the fact that, as a practical matter, it may experience less "turnover." Moreover, as at least one Pennsylvania Court has recognized, "[t]he Senate of Pennsylvania is a continuing body, the members of which are elected for a period of 4 years, but are so divided that one half of its members are elected every 2 years." *Shelby v. Second Nat. Bank*, 19 Pa. D. & C. 202, 211 (C.P. Fayette 1933). Relying on federal precedent, the *Shelby* Court

concluded that "[i]f the Senate of the United States is a continuing body, it would necessarily follow that the Senate of Pennsylvania is also a continuing body and that its committee would have authority to act during a recess of the legislature." *Id.* (citing *McGrain v. Daugherty*, 273 U.S. 135, 181 (1927)). Thus, neither of Petitioner's attempts to distinguish the U.S. Senate and the Pennsylvania Senate withstand scrutiny.

In short, therefore, historical practices further confirm that which is implicit in the text and structure of the State Constitution: adjournment *sine die* cannot extinguish any pending matter related to impeachment.

3. Courts in at least four states have expressly held that adjournment *sine die* does not affect impeachment.

Finally, authorities from other states with similar provisions concerning impeachment appear to be in universal agreement that adjournment *sine die* has no impact on any pending matters related to impeachment. Indeed, research shows that Petitioner's argument has been roundly rejected by the courts in at least four states: Texas, New York, Florida, and Kansas.

Taking these cases in reverse chronological order, in *Ferguson v. Maddox*, 263 S.W. 888 (Tex. 1924),[24] the Texas Supreme Court held that "an impeachment proceeding, begun at one session of the Legislature, may be lawfully concluded at a subsequent one." *Id.* at 891. Thus, articles of impeachment presented in one session and a trial in a subsequent session was found constitutional.

Approximately a decade earlier, in *People ex rel. Robin v. Hayes*, 143 N.Y.S. 325, 327 (N.Y. Sup. Ct. 1913), *aff'd*, 149 N.Y.S. 250 (App. Div. 1914),[25] the New York Supreme Court (a trial court) considered the same issue. Like the Texas High Court, the *Hayes* panel rejected the

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[24] The impeachment process under the Texas State Constitution is materially identical to Pennsylvania's. *See* Tex. Const. art. XV, § 1 ("The power of impeachment shall be vested in the House of Representatives."); *id.* at § 2 ("Impeachment of the Governor, Lieutenant Governor, Attorney General, Commissioner of the General Land Office, Comptroller and the Judges of the Supreme Court, Court of Appeals and District Court shall be tried by the Senate."); *id.* at § 3 ("When the Senate is sitting as a Court of Impeachment, the Senators shall be on oath, or affirmation impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds of the Senators present.").

[25] The New York State Constitution prescribed a substantially similar process for impeachment, whereby the power of impeachment was vested in the lower chamber, and the duty to conduct the trial imposed upon the upper chamber, sitting together with judges of the court of last resort in New York. *See* N.Y. Const. of 1894, art. VI, § 13 ("The Assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The Court for the Trial of Impeachments shall be composed of the President of the Senate, the senators, or the major part of them, and the Judges of the Court of Appeals, or the major part of them.").

argument that "having adjourned *sine die* in any year, [the Legislature] is without power, no matter what hideous acts of crime or monstrous acts of tyranny or usurpation a Governor may be guilty of, to set the machinery of his punishment in motion until the stated day of the meeting of both branches of the Legislature." 143 N.Y.S. at 327. In this regard, the Court explained that "[t]he subject of impeachment, like the power of a legislative body to punish for contempt, has a different character from subjects requiring the action of both branches of the Legislature and of the Governor in order that laws may be enacted." *Id.* Addressing the general principle that adjournment *sine die* ends the session of an assembly, the Court explained that this precept "has reference only to the Legislature. It was not written of or concerning the Assembly as an independent state body exercising a function of a judicial character." *Id.* at 329.

About forty years prior to that, the Florida Supreme Court held that adjournment *sine die* did not extinguish articles of impeachment. *See In re Opinion of Justices*, 14 Fla. 289, 298 (1872).[26] Noting that in

[26] Although the current version of the Florida State Constitution expressly provides that the State Senate "may sit for the trial whether the house of representatives be in session or not[,]" Fla. Const. art. III, § 17(c), the provision in force at the time *In re Opinion of Justs* was decided was nearly identical to the

the impeachment context the Senate, in essence, sits as a judicial tribunal, the panel explained that "the Senate, like any other judicial tribunal, does not die or cease to exist with the adjournment of the session or term." *Id.* Rather, "[a]ll cases of impeachment pending and undisposed of at the preceding session remain upon its calendar or docket until *the Senate sitting as a court* enters an order finally disposing of each case." *Id.* (emphasis in original).[27]

And less than ten years before Florida, the Kansas Supreme Court held that adjournment *sine die* did not divest the Senate of its obligation and authority relative to impeachment and, thus, concluded that the ensuing trial was properly conducted. *State ex rel. Adams v. Hillyer*, 2 Kan. 17, 32 (1863).[28]

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impeachment process outlined in the Pennsylvania State Constitution. *See* Fla. Const. of 1868, art. IV, § 29 ("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 senators present.").

[27] Notably, in addition to its interpretive guidance, this decision also underscores the central role of historical practices. Specifically, in reaching its conclusion, Florida's High Court afforded substantial weight to the fact that the Florida State Senate had recently allowed an impeachment to go "over from one session to another." *Id.* at 299. This, the Court explained, "presents a precedent to establish the proposition that an adjournment for a session and a change in the individual Senators composing the Senate did not destroy the court." *Id.*

[28] Other than clarifying the type of oath required when sitting to try an impeachment, Kansas' impeachment provision is conterminous with Pennsylvania's. *See* Kan. Const. art. II, § 27 ("The house of representatives shall

Against this weight of authority, Petitioner's argument is utterly untenable because, as explained above, neither text, nor history, nor decisional law from other states support his theory. Thus, Count I fails as a matter of law.

B. Petitioner is a civil officer subject to impeachment by the General Assembly under Article VI.

Petitioner, a public official representing the Commonwealth, is a civil officer under the Commonwealth who is subject to impeachment pursuant to Article VI. As a civil officer holding a constitutionally created office, Petitioner is subject to the Constitution's impeachment provisions regardless of any additional statutory impeachment or removal procedures for municipal officers.

1. Civil officers are characterized by the duties and powers of their office and not the statewide or municipal level of the office.

Petitioner was elected to a constitutionally created position of public trust in order to exercise the sovereign power of the Commonwealth in Philadelphia. *See* Pa. Const. art. IX, § 4 ("County

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have the sole power to impeach. All impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall take an oath to do justice according to the law and the evidence. No person shall be convicted without the concurrence of two-thirds of the senators then elected (or appointed) and qualified.").

officers shall consist of commissioners, controllers or auditors, district attorneys …"). In that position, he is a civil officer subject to impeachment by the General Assembly. Petitioner attempts to distinguish himself from a civil officer by equating civil officers with statewide officeholders and not local officials. This distinction is not based in caselaw or the common understanding of the term civil officer.

Civil officers can and often do include municipal officers because that role is defined not by the level of government but by the nature and inherent authority of the office. *See Richie v. City of Philadelphia*, 74 A. 430, 431 (Pa. 1909) (noting the considerations for analyzing whether an office is a public office is determined by the nature of the office's services, duties imposed, and the governmental function and important character of the office's duties); *Alworth v. Cty. of Lackawanna*, 85 Pa. Super. 349, 352 (1925) (considering the nature of services, duties imposed, powers, conferred, election or appointment, and tenure of the office in classifying a public officer).

Our Supreme Court explained this in the context of removal procedures for the office of tax collector, which it deemed to be a public

official.[29] *Houseman v. Com. ex rel. Tener*, 100 Pa. 222 (1882). *Houseman* addressed the validity of a tax collector's appointment and the former officeholder's removal. The former tax collector argued that his removal from office was improper because the relevant constitutional provision does not extend to municipal officers. The Supreme Court disagreed. *Id.* at 230. Then-Article VI, Section 4 provided that "appointed officers" may be removed at the pleasure of the appointing power. *Id.* at 229. While the former tax collector asserted that this provision did not apply to municipal officers, the Supreme Court "saw nothing in [that section] which authorizes a distinction between state, county and municipal officers." *Id.* Rather, the only distinction drawn was between appointed and elected officers. *Id.* at 230.

Further, focusing on the character of the public office, the Court explained that the tax collector receives public money, a considerable part of that money is payable to the Commonwealth, the sums received can be large, and "[n]o element of mere private trust pertains to his

[29] Public officer and civil officer are often used interchangeably in constitutional analysis. *See Opinions of the Attorney General of Pennsylvania, 1974*, Official Opinion No. 49 (Sept. 18, 1974).

functions[.]" *Id.* at 234. "[S]uch considerations sufficiently indicate the public character of his official position." *Id.; see also Com. ex rel. Foreman v. Hampson*, 143 A.2d 369, 372 (Pa. 1958) (interpreting the phrase "public officer" in the Constitution as applied to a county solicitor to mean an elected or appointed officer with important duties and some functions of government exercised for the public benefit).

Similarly, in Philadelphia County, the Court of Common Pleas focused on the nature of the office and not whether it was local or statewide in *Bromley v. Hadley*, 10 Pa. D & C. 23 (C.P. Phila. 1927). There, the Board of Revision of Taxes appointed a chief personal property assessor whose qualifications were challenged under Article II, Section 6's prohibition on senators or representatives being appointed "to any civil office under the Commonwealth." *Id.*; Pa. Const. art. II, § 6. Although concluding it was not a civil office, the Court further emphasized the importance of analyzing the duties of the office in that determination. The duties of the chief personal property assessor were defined and administrative, with no function of government being exercised, and no oath being required. *Bromley*, 10 Pa. D & C. at 24.

These duties and powers did not include "the delegation of sovereignty" that marks a civil office. *Id.* As the Court explained:

> "'Civil officer' is a term embracing such officers as in whom part of the sovereignty or municipal regulations or the general interests of society are vested.... 'Civil officers ... are governmental agents–they are natural persons–in whom a part of the state's sovereignty is vested or reposed, to be exercised by the individual so entrusted with it for the public good. The power to act for the state is confided to the person appointed to act. It belongs to him upon assuming the office. He is clothed with the authority which he exerts, and the official acts done by him are done as his acts and not as the acts of a body corporate[.]'"

Id. at 24-25 (quoting 11 Corpus Juris 797, title "Civil Officer," and notes). Therefore, the crux of the Court's analysis was the distinction between mere employees or contractors from public officers with governmental power, duties, and privileges. *See id.* at 25; *see also Com. v. Kettering*, 119 A.2d 580, 583 (Pa. Super. 1956) (equating a district attorney to a "quasi-judicial officer" entrusted with "grave responsibilities" in representing the Commonwealth). The local nature of the office was never a focus of the Court in determining if it were a civil office, as Petitioner urges this Court to consider.

Further, this Court in *In re Ganzman*, 574 A.2d 732 (Pa. Cmwlth. 1990), albeit in a statutory context, has defined and applied the term

"civil officer" without distinction for the municipal or statewide nature of the office. On an appeal from a nominating petition challenge, this Court analyzed whether the office of Member of the Democratic Executive Ward Committeeperson is a civil officer. *Id.* at 733. This Court first examined the definition of "civil office" in Black's Law Dictionary and "civil officer" in Corpus Juris, which defined the terms as non-miliary offices with the powers and sovereignty of the government. *Id.* at 734. Far from limiting civil officers to statewide officers, Corpus Juris even expressly defined civil officer as a term that "'primarily, if not solely, has reference to municipal and State officers.'" *Id.* (quoting 11 Corpus Juris 797). Distinguishing political party officials from civil officials, this Court reasoned that "'civil officials' are those who are paid by the public, are regulated by public law or regulations, or who owe their loyalty to the public at large, regardless of political party affiliation." *Id.*

Taken together, *Houseman*, *Bromley*, and *Ganzman* drive home the futility of Petitioner's argument that civil officers are statewide

officeholders only.[30] Civil officers are not determined based on their role as state officers. *Houseman*, 100 Pa. at 229-30; *Ganzman*, 574 A.2d at 734. Rather, civil officers are defined by the position of public trust they hold and the delegation of sovereign power they exercise. *See Houseman*, 100 Pa. at 229-30; *Bromley*, 10 Pa. D & C. at 24-25.

Under this framework, Petitioner is a civil officer. Regardless of the countywide nature of the office of district attorney, Petitioner is a "government agent," in whom the "state's sovereignty is vested[.]" *Bromley*, 10 Pa. D & C. at 24-25. He is in a position of public trust and is entrusted with exerting the power of the Commonwealth within Philadelphia County. *See id.* at 24-25; *Ganzman*, 574 A.2d at 734. The status of his office as one that is statewide, municipal, or local, is irrelevant.

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[30] If anything, the term "civil officer" seeks to distinguish between military officers and government officers only. *See Ganzman*, 574 A.2d at 734; *see also* CJS Officer § 8 ("The expression 'civil officer' means any officer who is not a military officer and includes all officers connected with the administration of the government except military officers."). One leading commentator on the Pennsylvania Constitution expressly theorized this was the meaning of the phrase in Article VI, § 6: "The expression of 'civil officers' was probably used to distinguish the officers of the state, county or municipality from military or naval officers." *See* Thomas Raeburn White, *Commentaries on the Constitution of Pennsylvania*, at 342 (1907), *available at* https://babel.hathitrust.org/cgi/pt?id=mdp.39015005476885&view=1up&seq=9. The *Commentaries* treatise has many times been relied up on by the appellate courts of this Commonwealth. *See, e.g.*, *Zauflik v. Pennsbury Sch. Dist.*, 104 A.3d 1096, 1111, 1129, 1130 (Pa. 2014).

2. The framers' intent supports including local, municipal, and state officers within the definition of civil officers.

Defining civil officers based on the duties of the office is consistent with the framers' intent. As a preliminary matter on intent, it is notable that the power of impeachment appears in the Article governing "Public Officers" generally, where, among other things, various officers, including "county officers," are required to take a specific oath of office. *See* Pa. Const. art. VI, § 3. If the framers' intent was to exempt county officers, like district attorneys, from the power of impeachment, their placement of that power in the same Article as provisions *expressly* applying to them is anomalous.

Further, Petitioner's reliance on selective portions of the *Proceedings and Debates of the Convention of the Commonwealth of Pennsylvania to Propose Amendments to the Constitution, Commenced and Held at Harrisburg, on the Second Day of May, 1837*, vol. I (1837) ("1837 Debates") does not support an argument otherwise. For example, Petitioner notes a portion of the 1837 Debates in which it was questioned what civil officers were liable to impeachment. *See*

Petitioner Br. at 20-21 (quoting the 1837 Debates at 275). But ten pages later, the 1837 Debates include the following:

> But let it be remembered, that whilst this provision relates to judges, it also relates to the Governor, the Heads of Departments, the Prothonotaries, Clerks of Courts, Registers, Recorders, County Commissioners, and in fact, all the officers of the Commonwealth, of which the judges constituted but a small portion; and the provision is a general one as to all officers, whatever their tenure may be.

1837 Debates at 285. This shows that Article VI, Section 6 was intended to be a general provision without limitation to only statewide officers.

Next, former Chief Justice Saylor's concurrence in *Burger v. Sch. Bd. of McGuffey Sch. Dist.*, 923 A.2d 1155 (Pa. 2007), from which Petitioner again relies on selective portions, also does not support his argument. Initially, the majority controlling opinion in *Burger* cannot be ignored. At issue in *Burger* was whether the Public School Code removal provision for district superintendents was unconstitutional given an appointing power's exclusive right to remove an appointed official pursuant to Article VI, Section 7. "There [was] ***no dispute*** that the [superintendent] was a civil officer appointed by the School Board." *Id.* at 1161 (emphasis added). With that threshold question undisputed, the Court determined the removal power of Article VI, Section 7 was

not absolute, and the limitations placed on that power under the Public School Code were constitutional. *Id.* at 1163. Justice Saylor concurred and suggested that the superintendent was not a civil officer because he was not a statewide officer. *Id.* at 1167 (Saylor, J., concurring). But the Court's *majority* expressly noted Justice Saylor's opinion presented a "novel theory," and further observed the theory was in "facial tension with the prior decisions of this Court." *Id.* at 1161 n.6 (citing *Com. ex. rel. Schlofield v. Lindsay*, 198 A. 635 (Pa. 1938); and *Finley v. McNair*, 176 A. 10 (Pa. 1935)).

As Petitioner states, Justice Saylor reasoned that Article VI, Section 7 was intended to apply to district superintendents and the debates indicate that "state-level officials were almost exclusively in view when then-Section 4 of Article VI was framed[,]" *See* Petitioner Br. at 19 (quoting *Burger*, 923 A.2d at 1167 (Saylor, J., concurring)). Petitioner omits the next part of the same sentence, in which Justice Saylor continued "little attention was paid to the concept of local *appointing* powers and the manner in which their removal powers should or should not be constrained. I recognize that this Court has previously applied Article VI, Section 7 to some classes of local

officials[.]" *Burger*, 923 A.2d at 1167 (Saylor, J., concurring; emphasis added). Although it was not clear to Justice Saylor that those holdings considered a distinction between local officials and Commonwealth officials, in his view, Article VI, Section 7 was not intended to restrain the General Assembly in hiring and firing district superintendents. *Id.*

Viewing the *Burger* opinion in its entirety, Justice Saylor's concurring opinion does not carry the weight Petitioner ascribes to it. In short, *Burger* supports that the District Attorney of Philadelphia is a civil officer.

3. District attorneys are officers "under this Commonwealth" subject to impeachment and removal.

As a civil officer, the District Attorney of Philadelphia is an officer "under this Commonwealth," subject to removal from office upon impeachment under Article VI. While Petitioner disagrees that local officials can hold an office "of trust or profit under this Commonwealth," this interpretation is untenable.

Initially, as explained above, Petitioner holds a position of public trust in which he represents the Commonwealth in Philadelphia County (indeed, every criminal proceeding his office brings is in the

name of the Commonwealth). If an officer exerting the power and authority of the Commonwealth, albeit in one county, is not an officer "under this Commonwealth," it begs the question of which offices would qualify.

Just as the term "civil officer" is not limited to statewide officers, neither is the phrase "under this Commonwealth." In fact, the Office of Attorney General, issuing an opinion interpreting that phrase, did not limit it this way. *See Opinions of the Attorney General of Pennsylvania, 1974*, Official Opinion No. 49 (Sept. 18, 1974).[31] The question posed to the Attorney General was whether a newly elected school district superintendent was precluded under Article II, Section 6 from simultaneously holding the office of state representative. *Id.* at 193. Article II, Section 6 prohibits a senator or representative from being appointed or elected "to any civil office under this Commonwealth to which a salary, fee or prerequisite is attached."

The Attorney General concluded that a school district superintendent is a civil officer under the Constitution because a

[31] *Available at* https://www.attorneygeneral.gov/wp-content/uploads/2018/01/1974_AG_Packel_opinions.pdf.

superintendent is elected by the school board, takes an oath of office, has powers and duties set by statute, is paid a minimum statutory salary, and is specifically created by statute for a specific tenure. Opinion No. 49 at 195. The Attorney General further advised that the district superintendent is an office "under this Commonwealth." *Id.* at 196-97. That a district superintendent's authority was limited to one district was not controlling on the question; instead, because a school district is a legislatively created agency that administers the constitutional requirement of maintaining a public school system, he deemed it to be an office under this Commonwealth. *Id.*

Applying this reasoning here, a district attorney is also a "civil officer" holding an office "under this Commonwealth." As developed above, the power and duties inherent in the office of district attorney make Petitioner a civil officer. It is not relevant that Petitioner's jurisdiction is limited to Philadelphia. He is a civil officer carrying out the duties of his constitutionally created office.

Citing *Emhardt v. Wilson*, 20 Pa. D. & C. 608 (C.P. Phila.1934), Petitioner disagrees with the foregoing. But the Court in *Emhardt*, also interpreting Article II, Section 6 like Opinion No. 49 above, does not

hold that Philadelphia officials are not officers under this Commonwealth. *See* Petitioner Br. at 18. While acknowledging that an "inspectorship" was not an office "under this Commonwealth," the Court ultimately held that the relevant office of "supervisor of the Bureau of Weights and Measures" was not in any act or ordinance and was "merely an employe of the commissioners." *Id.* at 609-10. Petitioner is not a mere employee of the Philadelphia City Council and cannot be simplified or equated to such. *See Duggan v. 807 Liberty Ave., Inc.*, 288 A.2d 750, 753 (Pa. 1972) ("[T]he office of district attorney is actually something of a hybrid, denominated a county office holder by the Constitution, the district attorney performs his duties on behalf of the Commonwealth.").

In sum, there is no basis to limit civil officers "under this Commonwealth" to statewide officers.

4. The First Class City Government Law is not the exclusive method for impeaching Petitioner.

Finally, the First Class City Government Law does not preclude impeachment proceedings against Petitioner pursuant to Article VI of the Constitution. While Section 12199 of the First Class City Government Law contains removal procedures, 53 P.S. § 12199,

Petitioner's assertion that Section 12199 is the sole method of impeachment and/or removal is untenable.

As a threshold matter, the office of district attorney is a constitutionally created county officer, as established by Article IX, Section 4. *See* Pa. Const. art. IX, § 4 ("County officers shall consist of commissioners, controllers or auditors, district attorneys …"). Constitutionally created officers are subject to removal (and impeachment) procedures as set forth in the Constitution. *See In re Bowman*, 74 A. 203, 204 (Pa. 1909) (regarding a constitutional office, explaining that "a constitutional direction as to how a thing is to be done is exclusive and prohibitory of any other mode which the Legislature may deem more convenient"). Petitioner is, therefore, subject to impeachment under the Constitution.

But he disputes this based, in part, on Article IX, Section 13. Through the adoption of Article IX, Section 13 of the Pennsylvania Constitution in 1951, county offices in Philadelphia County were abolished for the city to "perform all functions of county government within its area through officers selected in such manner as may be

provided by law." Pa. Const. art. IX, § 13(a). Article IX, section 13 states:

> Upon adoption of this amendment all county officers shall become officers of the City of Philadelphia, and ***until the General Assembly shall otherwise provide, shall continue to perform their duties and be elected, appointed, compensated and organized in such manner as may be provided by the provisions of this Constitution*** and the laws of the Commonwealth in effect at the time this amendment becomes effective, but such officers serving when this amendment becomes effective shall be permitted to complete their terms.

Pa. Const. art. IX, § 13(f) (emphasis added).

Accordingly, the existing county officers in Philadelphia in 1951, including district attorneys, continue to perform the same duties, are elected, appointed, compensated, and organized in the manner they were prior ***unless the General Assembly provided otherwise***. The General Assembly has not yet provided otherwise with regard to the Philadelphia District Attorney's Office. Petitioner holds a constitutionally created office and is thus subject to impeachment under Article VI. Therefore, Article VI, Section 1, governing the election or appointment of "[a]ll officers[] whose selection is not provided for in this Constitution," does not apply, despite Petitioner's contention otherwise. Pa. Const. art. VI, § 1; *see* Petitioner Br. at 22.

This is consistent with the Supreme Court's interpretation of Article IX, Section 13. Article IX, Section 13 simply eliminated county offices because county offices were now within the purview of the city. *Com. ex rel. Truscott v. City of Philadelphia*, 111 A.2d 136, 137-38 (Pa. 1955); *Lennox v. Clark*, 93 A.2d 834, 838 (Pa. 1953). "In other words the county, now city, officers were to carry on their duties or functions just as before the transformation took place and until such *duties* or *functions* should be changed by legislative action." *Lennox*, 93 A.2d at 838 (emphasis in original). Given that some county offices are constitutionally created, they remain unique even after Article IX, Section 13. The Court recognized this in *Lennox*, holding that the constitutionally created offices of prothonotary and register of wills were "not transformed into … city office[s]," subject to the Philadelphia Home Rule Charter. *Id.* at 842;[32] *see also Com. ex rel. Specter v. Freed*, 228 A.2d 382, 386 (Pa. 1967) (holding the Philadelphia district attorney was a state officer whose powers were not affected by the Charter).[33]

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[32] While the Supreme Court later held that these offices were subject to the Charter, this was the result of a statutory amendment that specifically provided that these offices "shall no longer be considered constitutional officers[.]" *Walsh v. Tate*, 282 A.2d 284, 288 (Pa. 1971).

[33] In a series of cases in the 1960s, the Supreme Court wrestled with classifying the role of the Philadelphia District Attorney as a city officer or a state

In fact, nine years ***after*** the adoption of Article IX, Section 13(f), the Supreme Court reiterated the constitutional status of the office of district attorney. *McGinley v. Scott*, 164 A.2d 424 (Pa. 1960). While quashing a subpoena issued by a Senate committee investigating the Philadelphia District Attorney's Office, the Court explained that permissible purposes for legislative investigative subpoenas include those issued for carrying out the House and Senate's power of impeachment pursuant to the Constitution. *Id*. at 430-31. Accordingly, nearly a decade after the adoption of Article IX, Section 13, the Court expressly contemplated that the Philadelphia District Attorney holds a constitutionally created office and may be subject to impeachment proceedings before the General Assembly.

Nonetheless, because Section 12199 was already in existence at the time Article IX, Section 13(f) was adopted, Petitioner contends that it is the sole method by which a district attorney may be impeached. This alleged exclusivity of Section 12199 is unfounded. Fundamentally, Section 12199 applies to "municipal officers." 53 P.S. § 12199. The First

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officer in the context of the Charter. The Court never squarely addressed the issue presented in this matter, and, in any event, never reached a majority reasoning. *See Chalfin v. Specter*, 233 A.2d 562 (Pa. 1967); *Com. ex rel. Specter v. Martin*, 232 A.2d 729 (Pa. 1967); *Com. ex rel. Specter v. Freed*, 228 A.2d 382 (Pa. 1967).

Class City Government Law does not define "municipal officers" subject to impeachment and, moreover, the office of district attorney is not mentioned anywhere in the First Class City Government Law.

The lack of clarity regarding the application of Section 12199 is evident in caselaw, further undercutting Petitioner's contention. The Supreme Court's decision in *In re Marshall*, 62 A.2d 30 (Pa. 1948), is the only case to meaningfully address Section 12199, though it was decided prior to the adoption of Article IX, Section 13. *Marshall* concerned the application of local impeachment procedures to Philadelphia's Receiver of Taxes. Arguing he was not a municipal officer subject to statutory removal procedures, the Receiver of Taxes claimed he was a county officer subject to removal only under Article VI, Section 4 of the 1874 Constitution.[34] *Id.* The Court disagreed, but only because the statute creating the office also permitted statutory removal. *See id.* at 310.

Petitioner does not occupy a statutorily created office. Moreover, if Petitioner's narrow constructions of Section 12199 and the term "civil

[34] Article VI, Section 4 of the 1874 Constitution governed the condition of official tenure and removal of officers. The substance of that provision is now in Article VI, Section 7. Pa. Const. art. VI, § 7.

officer" were correct, the Supreme Court in *Marshall* could have simply determined that the Receiver of Taxes, a local office, was not a civil officer and, therefore, not subject to Article VI at all. It did not and, instead, relied on the statutory provisions creating and governing the office, suggesting the officer at issue was in fact a "civil officer" under Article VI.

Finally, to the extent that Section 12199 is inconsistent with Article VI, Section 6, it cannot stand. Indeed, in the context of Article VI, Section 7,[35] statutory removal provisions are regularly struck down as violative of the exclusive method for removal of officials in Article VI, Section 7. *See, e.g.*, *South Newton Twp. Electors v. South Newtown Twp. Sup'r, Bouch*, 838 A.2d 643, 644 (Pa. 2003) (holding removal provisions in the Second Class Township Code were contrary to the exclusive method of removal for elected officials in Article VI, Section 7); *Birdseye*

[35] "All civil officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime. Appointed civil officers, other than judges of the courts of record, may be removed at the pleasure of the power by which they shall have been appointed. All civil officers elected by the people, except the Governor, the Lieutenant Governor, members of the General Assembly and judges of the courts of record, shall be removed by the Governor for reasonable cause, after due notice and full hearing, on the address of two-thirds of the Senate." Pa. Const. art. VI, § 7.

v. Driscoll, 534 A.2d 548, 550-51 (Pa. Cmwlth. 1987) (explaining the constitutional directive in Article VI, Section 7 for removal of elected constitutional officers is "exclusive and prohibitory of any other method which the legislature may deem better or more convenient"); *Residents of Lewis Twp. v. Keener*, 63 Pa. D. & C. 4th 1 (C.P. Northumberland 2003) (holding statutory removal procedures unconstitutional and contrary to Article VI, Section 7). Even home rule charter removal procedures contrary to Article VI, Section 7 cannot stand. *See In re Petition to Recall Reese*, 665 A.2d 1162, 1167 (Pa. 1995) (the Kingston home rule charter's recall provisions were unconstitutional and contrary to the exclusive method of Article VII, Section 7). Thus, if Section 12199 is contrary to the exclusive constitutional procedures for impeachment, it is invalid.

Accordingly, in light of all of the foregoing, Petitioner is a civil officer subject to impeachment under Article VI, Section 6.

C. Petitioner's preferred definition of "misbehavior in office" is incorrect and his request to apply his supplied definition is premature.

Petitioner insists the term "misbehavior in office" is defined conterminously with the common law offense of the same name. But

this argument fails for four reasons, as set forth below. Petitioner also maintains the Articles of Impeachment are insufficient to satisfy the elements of common law "misbehavior in office." In essence, Petitioner is asking for an advisory opinion because these merits arguments are plainly not ripe at this pre-trial, post-indictment (Articles of Impeachment) stage. In any event, Senator Ward is prohibited from addressing the merits because of her duty to act as an impartial juror during the impeachment trial.

1. The phrase "any misbehavior in office" as used in Article VI, Section 6 is broader than the common law.

(a) Petitioner's reliance on *In re Braig* is misplaced because that decision did not interpret Article VI, Section 6.

Petitioner's interpretation of "misbehavior in office" in Article VI, Section 6 is based entirely on a decision that did not interpret this provision. According to Petitioner, "[m]isbehavior in office requires a very high showing: a public official has engaged in 'misbehavior in office' only if he 'fail[ed] to perform a positive ministerial duty of the office or the performance of a discretionary duty with an improper or corrupt motive.'" Petitioner Br. at 27 (quoting *In re Braig*, 590 A.2d 284,

286 (Pa. 1991)). The *In re Braig* Court endeavored to interpret the judicial removal provision in then-numbered Article V, Section 18(*l*):

> A justice, judge or justice of the peace convicted of misbehavior in office by a court, disbarred as a member of the bar of the Supreme Court or removed under this section 18 shall forfeit automatically his judicial office and thereafter be ineligible for judicial office.

In re Braig, 590 A.2d at 286 (quoting Pa. Const. art. V, § 18(*l*)).[36]

The Judicial Inquiry and Review Board sought to enforce this removal provision against former-judge Braig, who had already been convicted of three counts of mail fraud and sentenced accordingly. *Id*. at 285. The Board argued Braig's conviction amounted to a conviction "of misbehavior in office" and therefore he should be automatically removed from office. *See id*. at 286.

The Court first observed that "[o]ur Constitution has long contained provisions specifying that civil officers 'shall be removed on conviction of misbehavior in office or of any infamous crime.'" *Id*. (quoting Pa. Const. of 1838 art. VI, § 9;[37] Pa. Const. of 1874 art. VI,

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[36] This Section is now at Section 18(d)(3) and is substantively identical. Pa. Const. art. V, § 18(d)(3).

[37] "All officers for a term of years shall hold their offices for the terms respectively specified, only on the condition that they so long behave themselves well; and shall be removed on conviction of misbehavior in office or of any infamous crime." Pa. Const. of 1838 art. VII, § 9.

§ 4;[38] (renumbered Article VI, Section 7 on May 17, 1966)[39]). And, according to the *Braig* panel, when those provisions were examined by our courts, "it was uniformly understood that the reference to 'misbehavior in office' was to the criminal offense as defined at common law." *Id*.[40] The Court analyzed some of those cases and concluded: "Based on our reading of all the cases, we must conclude that the language of Article V, Section 18(*l*), like the identical language of present Article VI, Section 7, refers to the offense of 'misbehavior in office; as it was defined at common law." *Id*. at 287. Thus, *In re Braig*'s definition of misbehavior in office is moored directly to its interpretation of present-day Article VI, Section 7—a provision distinct from, albeit related to, Section 6.

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[38] "All officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime." Pa. Const. of 1874 art. VI, § 4.

[39] "All civil officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime." Pa. Const. art. VI, § 7.

[40] Apparently, this principle was not uniformly understood after all. In *Com. ex rel. Duff v. Keenan*, 33 A.2d 244 (Pa. 1943), our High Court indicated that "misbehavior in office" is *not* limited to indictable offenses. *See Duff*, 33 A.2d at 249 n.4 ("'Misbehavior in office' justifying the incumbent's removal does not necessarily involve an act or acts of a criminal character. …. The official doin[g] of a wrongful act or official neglect to do an act which ought to have been done, will constitute the offence of misconduct in office, although there was no corrupt or malicious motive."). *In re Braig* did not even mention the Supreme Court's prior pronouncement.

Petitioner thus asks this Court to impose *In re Braig*'s interpretation of Article V, Section 18 on Article VI, Section 6.[41] In so doing, Petitioner dismisses out of hand the only Pennsylvania authority interpreting "any misbehavior in office" as used in Article VI, Section 6: *Larsen v. Senate of Pennsylvania*, 646 A.2d 694 (Pa. Cmwlth. 1994).

In *Larsen*, this Court considered former-Justice Larsen's request to preliminarily enjoin the Senate from conducting its impeachment trial. *See id.* at 695. One of Larsen's many claims was that the articles of impeachment did not set forth a constitutionally sufficient basis for impeachment. *See id*. at 698. Larsen argued that "misbehavior in office" was defined as it was at common law. *Id*. at 702. Because Larsen's conduct easily satisfied even the stringent common law standard, this Court did not have to decide the issue. *Id*. But, importantly, the panel noted that Larsen's interpretation "finds no support in judicial precedents." *Id*.

[41] Petitioner dismisses the distinctions between Article V, Section 18 and Article VI, Section 6 and asserts that the same "misbehavior in office" language is proof enough that they are the same. *See* Petitioner Br. at 39. In so doing, Petitioner wholly ignores the material distinction between removal, which requires conviction by a court, and impeachment, which is conducted exclusively by the House and Senate.

Petitioner downplays the significance of *Larsen* by arguing it is factually distinguishable; it is dictum; and *In re Braig* controls. *See* Petitioner Br. at 36-39. Each critique misses the mark. That Larsen's conduct was particularly severe and would have satisfied even the most stringent definition of "misbehavior in office" says nothing about what that definition is in Section 6. Next, although *Larsen*'s pronouncement is dicta, it is the only interpretation of "misbehavior in office" as used in Section 6 by any Pennsylvania Court. Finally, as developed above, *In re Braig* is inapposite as it involves the interpretation of an entirely different removal provision, and, as is important, was decided *three years before Larsen*, where this Court identified "*no support in judicial precedents*" for engrafting on the common law meaning. *See Larsen*, 646 A.2d at 488 (emphasis added).

The *Larsen* Court's wisdom will soon be apparent. Section 6's plain text, the relationship between the impeachment and removal processes, and the 1966 amendment to Section 6 all support a conclusion that "misbehavior in office" is not limited to its common law definition.

(b) A textual interpretation of Article VI, Section 6 leads to the inescapable conclusion that "any misbehavior in office" extends beyond the common law.

The plain language of Section 6 is controlling: It provides that civil officers are liable to impeachment "*for any* misbehavior in office[,]" Pa. Const. art. VI, § 6 (emphasis added). In contrast, civil officers are subject to removal "*on conviction of* misbehavior in office" under Section 7, and judges are subject to removal if "*convicted of* misbehavior" under Article V, Section 18(d)(3) (emphasis added). This textual difference is material. *See Jubelirer v. Rendell*, 953 A.2d 514, 528 (Pa. 2008) (actual language is "our ultimate touchstone" and "effect must be given to all of [the constitution's] provisions whenever possible" (internal quotations omitted)).

The language of the Constitution is interpretated "in its popular sense, as understood by the people when they voted for its adoption." *Id.*[42] According to Webster's Online Dictionary, the term "any" means "one or some indiscriminately of whatever kind" or "one, some, or all indiscriminately of whatever quantity[.]" *See also Mairhoffer v. GLS*

[42] Section 6 was last amended in 1966, therefore it should be interpreted as it would have been understood in 1966. *See* 1965 P.L.1928, J.R. 10 (May 17, 1966).

Capital, Inc., 730 A.2d 547, 550 (Pa. Cmwlth. 1999) ("In common usage, 'any' means 'one or more indiscriminately from all.' It is inclusive.") (quoting Webster's Third New International Dictionary 97 (1993)).

A natural reading of Section 6, giving the term "any" its due meaning, leads to the conclusion that Section 6 applies to one or more acts of misbehavior in office. The drafters used the "inclusive" term "any" ostensibly to broaden the scope of conduct captured by "misbehavior in office." An attempt to narrow that scope by confining the definition of "misbehavior in office" to a specific common law offense would be inconsistent with that inclusive language.[43] Petitioner's interpretation ignores the term "any"—a cardinal sin in constitutional interpretation. *Cf. Ind. Oil & Gas Assn. v. Bd. of Assessment*, 814 A.2d 180, 183 (Pa. 2002) ("Because the legislature is presumed to have intended to avoid mere surplusage, every word, sentence, and provision

[43] Critically, the framers used the term "any" in Section 7 as it relates to "infamous crimes." In so doing, the drafters demonstrated an intent to distinguish the specific (misbehavior in office) from the general (infamous crimes). *See In re Braig*, 590 A.2d at 286 n.4 (the generalized term "infamous crime" included "every species of *crimen falsi*"). The framers meant what they said when they used "*for any* misbehavior in office" in Section 6, and in order to give meaning to those words, Petitioner's interpretation must be rejected.

of a statute must be given effect."). The interpretation offered here is the only one that gives meaning to the *entirety* of the text of Section 6.

(c) The phrase "misbehavior in office" as used in the context of Article VI, Section 6 requires a different interpretation from the same phrase as used in Article VI, Section 7 and Article V, Section 18(d)(3).

Further still, Petitioner's interpretation must fail because it violates the well-established maxim that "the meaning of a particular word cannot be understood outside the context of the section in which it is used[.]" *Jubelirer*, 953 A.2d at 528. Here, Petitioner asks this Court to extract the meaning of the term "misbehavior of office" as used in Section 7 and Article V, Section 18(d)(3) and thrust it upon that same term in Section 6. But context is everything. And here the differences—as articulated in the Constitution—between Section 6 on the one hand and Section 7 and Article V, Section 18(d)(3) on the other—forbid Petitioner's request.

Section 6's impeachment process is unique in that it describes a process committed exclusively to the House and Senate, acting in sequence. *See Larsen*, 646 A.2d at 704. There is no judicial involvement and traditional rules of court do not apply—save for the requirement

that the impeachment trial be conducted in accord with all constitutional rights. Our drafters cabined the impeachment process within the House and Senate to reach those acts of misconduct that lay just out of our judiciary's grasp. Indeed, with regard to our federal charter:

> [O]ur fathers adopted a Constitution under which official malfeasance and nonfeasance, and, in some cases, misfeasance, may be the subject of impeachment, although not made criminal by Act of Congress or so recognised by the common law of England or of any state of the Union. They adopted impeachment as a means of removing men from office whose misconduct imperils the public safety, and renders them unfit to occupy official position.

William Lawrence, *The Law of Impeachment*, Am. L. Reg., vol. 6, at 647 (Sept. 1867);[44] *see id*. at 655 ("The purpose of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office" which cause may be a violation of law or "may exist where no offence against positive law has been committed, as where the individual has from immorality or imbecility or maladministration become unfit to exercise the office." (cleaned-up)).

[44] *Available at* https://www.jstor.org/stable/pdf/3303883.pdf?refreqid=excelsior%3Afe251025796842905d7ccf5fffad6f19&ab_segments=&origin=&acceptTC=1.

It does not take much imagination to predict that any official subject to impeachment will claim good faith in the exercise of discretion, thereby insulating himself from the courts and from our impeachment proceedings. *See id*. at 677-780 (providing examples). That is an untenable outcome—an outcome certainly not intended by our drafters when they bestowed the House and the Senate with the power to regulate public officeholders.[45]

The drafters of our Constitution understood the breadth of conduct subject to impeachment and therefore imposed several safeguards to shield impeachment from political abuse: the two-thirds vote requirement; the separate oath taken by Senators; limiting the scope of actionable conduct to misbehavior *in office*; and the non-criminal nature of the punishment. *See* Pa. Const. art. VI, §§ 4-6.

To illuminate, as it relates to the two-thirds vote requirement, a robust debate took place at the 1837 Convention over an amendment to reduce the vote threshold to a majority for conviction. Those who argued

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[45] *See* John Norton Pomeroy, *An Introduction to The Constitutional Law of the United States: Especially Designed for Students, General and Professional*, at 482-93 (1868) (offering a compelling analysis for why impeachment is not limited to indictable offenses), *available at* https://babel.hathitrust.org/cgi/pt?id=coo.31924019960818&view=1up&seq=514.

against the amendment did so because they understood that "misdemeanor in office" (the language in the Constitution of 1790) was not well defined and thus impeachment was susceptible to political headwinds:

> But the public officer is arraigned, and for what? For misdemeanors in office. And what are misdemeanors in office? Are they a class of crimes recorded in the statute book? No. They are mere political offenses, to be tried by a political tribunal. They are crimes by construction; and may be crimes today, but not crimes tomorrow, according to the temper of the times, the fluctuations of political opinion, and the ascendancy of political parties. I do not know, with any certainty, to what class these offences can be referred.

The Proceedings and Debates of the Convention of the Commonwealth of Pennsylvania to Propose Amendments to the Constitution, Commenced and Held at Harrisburg, on the Second Day of May, 1873, vol. I, at 271-72 (1873). This sentiment was echoed by the preeminent Thomas Raeburn White: "The offense for which officers are impeached are, as a rule, offenses of a political nature." White, *Commentaries,* at 342.[46]

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[46] Justice Story made similar observations with respect to the United States Constitution:

> The offences, which the power of impeachment is designed principally to reach, are those of a political, or of a judicial character. They are not those, which lie within the scope of the ordinary municipal jurisprudence of a country. They are founded on different principles; are governed by different maxims; are directed to different objects; and

In this light, the drafters viewed the two-thirds requirement as a fundamental safeguard: "Knowing to what heights party violence carried men, he should hesitate long before he would place in the hands of a bare majority the exercise of so dangerous a power." 1837 Debates, vol. I, at 260 (Mr. Earle); *see id*. at 253-54 (James Biddle: citing Judge Addison's impeachment and conviction as an example where "party feeling was permitted to mingle its poisonous influence" and concluding Addison's impeachment demonstrated "every safeguard should be interposed to defend a judge from being swept away by a tempest of political fury").[47]

Thus, as evidenced by our Charter's text, the drafters intended impeachment to be a broad removal mechanism. And rather than limit

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> require different remedies from those, which ordinarily apply to crimes.

Joseph Story, *Commentaries on the Constitution of the United States*, vol. II, at 220 (1833), *available at* https://babel.hathitrust.org/cgi/pt?id=hvd.hnqe3j&view=1up&seq=228.

[47] *See* White, *Commentaries,* at 342 (two-thirds "clause renders it extremely unlikely that any innocent person will ever be convicted"); *see also id*. at 341 (noting that the Senate is "the proper body to try impeachments" because "[i]t is a more conservative body, not so quickly answerable to waves of popular opinions or prejudices," and because "the offenses charged are apt to be of a political nature, which are more suitable to be tried by the senate than by a court"); Story, *Commentaries*, at 248 (advocating for two-thirds vote because "[i]f a mere majority were sufficient to convict, there would be danger, in times of high popular commotion or party spirit, that the influence of the house of representatives would be found irresistible").

the scope of conduct to which impeachment might apply—as Petitioner suggests—our drafters put in place safeguards that would prevent baseless convictions.[48] [49] Indeed, by leaving "misbehavior in office" vague the drafters invited the House and Senate to define its contours. *Cf.* Pomeroy, *An Introduction*, at 482-93 (arguing that "high crimes and misdemeanors" in the federal charter "seems to have been purposely vague; the words point out the general character of the acts as unlawful; the context and the whole design of the impeachment clauses show that these acts were to be official, and the unlawfulness was to consist in a violation of public duty which might or might not have been an ordinary indictable offense.").

In contrast, the Article VI, Section 7 and Article V, Section 18(d)(3) removal processes are purely judicial mechanisms. That is, removal is complete upon a conviction of either misbehavior in office or any infamous crime. *See Com. ex rel. Specter v. Martin*, 232 A.2d 729,

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[48] And those safeguards apparently work as there have only been two individuals in our Commonwealth's history who have been convicted by the Senate.

[49] *Cf.* Lawrence, *The Law of Impeachment*, Am. L. Reg., vol. 6, at 645 (discussing how the impeachment process in England was abused: "These abuses were not guarded against in our Constitution by limiting, defining, or reducing impeachable crimes, since the same necessity existed here as in England, for the remedy of impeachment, but by other safeguards thrown around it in that instrument.").

738 (Pa. 1967) (removal applies "by a sentence of a court"). Of course, a person must have committed a crime—either at common law or in statute—in order to be "convicted." This is the precise reason that the Court in *In re Braig* concluded the term misbehavior in office, as used in Section 18(d)(3), is coterminous with the common law *crime*.

With this context in mind, "misbehavior in office" as used in Article VI, Section 6 must be interpreted more broadly than that same phrase in Section 7 and in Article V, Section 18(d)(3) because Section 6—by its plain text, coupled with its two-thirds safeguard—was designed to reach a broader class of conduct. Petitioner ignores this context entirely. And Petitioner does so without citing to any authority interpreting or limiting "misbehavior in office" as used in Section 6. The authority above amply supports a broad interpretation in this context.

(d) The 1966 Amendment to Section 6 confirms it reaches beyond the common law.

Perhaps most consequentially, Section 6 was amended on May 17, 1966. *See* 1965 P.L. 1928, J.R. 10 (May 17, 1966).[50] Prior to the amendment, Section 6 subjected a civil officer to impeachment "for any

[50] *Available at* https://www.palrb.gov/Preservation/Pamphlet-Laws/View-Document/19001999/1965/0/const/jr10.pdf.

misdemeanor in office[.]" Pa. Const. of 1874 art. VI, § 3 (emphasis added). By 1966, this phrase accrued the common law definition of "misdemeanor in office." Indeed, in *In re Investigation by Dauphin County Grand Jury, September, 1938*, 2 A.2d 802 (Pa. 1938), our Supreme Court held the phrase means "a criminal act in the course of the conduct of the office, to which impeachments are limited." *Id.* at 803.

Apparently not satisfied with this restrictive definition, *cf. City of Philadelphia v. Clement and Muller, Inc.,* 715 A.2d 397, 399 (Pa. 1998) ("[t]he legislature is presumed to be aware of the construction placed upon statutes by the courts"), the electorate, after a joint resolution from the General Assembly, amended the provision to read "for any ***misbehavior*** in office[.]"[51]

Under Petitioner's interpretation of "misbehavior in office," this amendment would be meaningless because misbehavior in office and misdemeanor in office are the same to him. *See* Petitioner Br. at 28 (quoting *Com. v. Green*, 211 A.2d 5, 9 (Pa. Super. 1965) ("The common

[51] Just before this amendment in 1943, "misbehavior in office" had been interpreted by the Pennsylvania Supreme Court to extend beyond indictable offenses. *See Duff*, 33 A.2d at 249 n.4 (discussed *supra* n.40).

law crime of misconduct in office, variously called misbehavior, misfeasance or misdemeanor in office")). But that cannot be true. That the electorate amended Section 6 from "misdemeanor" to the broader term "misbehavior"—and maintained the word "any"—is compelling evidence that Section 6 reaches beyond the common law crime of misbehavior in office. *Cf. Masland v. Bachman*, 374 A.2d 517, 521 (Pa. 1977) ("A change in the language of a statute ordinarily indicates a change in legislative intent."). This Court should not give credence to Petitioner's attempt to render the 1966 amendment meaningless.

2. Petitioner's merits-based arguments are not ripe, and, in any event, Senator Ward cannot opine on whether the alleged conduct is misbehavior in office at this point in time.

At the outset, this Court should reject Petitioner's efforts to front a merits defense because those arguments are not yet ripe. As explained above, the impeachment process begins with the House filing articles of impeachment—which are analogous to an indictment in the criminal context. From there, the case proceeds to a trial before the Senate where evidence and argument will be presented to substantiate the allegations contained in the articles of impeachment.

To date, the Articles of Impeachment have been filed against Petitioner and he is awaiting trial. It is premature, at this pre-trial stage, for this Court to determine whether the Articles of Impeachment are sufficient to establish "any misbehavior in office" because we do not know what facts will be presented at trial. *See Phila. Entm't and Dev. Partners, L.P. v. City of Philadelphia*, 937 A.2d 385, 392 (Pa. 2007) ("The basic rationale underlying the ripeness doctrine is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements."). Petitioner can address these issues and defend his case at the trial, but this Court should decline his invitation to issue an advisory opinion on what the facts *might* reveal.

Regardless, pursuant to Article VI, Section 5, Senator Ward will be sworn in to serve as an impartial juror for the impeachment trial. *See* Pa. Const. art. VI, § 5; *see also* SR 386 at 13, lines 11-15 (setting forth oath, requiring all Senators to swear they "will do impartial justice") (PFR Ex. D). As such, Senator Ward cannot opine on whether the conduct alleged in the Articles of Impeachment are sufficient to remove Petitioner for misbehavior in office without pre-judging the facts and law, which would be inappropriate.

VI. ARGUMENT IN SUPPORT OF CROSS-APPLICATION FOR SUMMARY RELIEF

A. This Court lacks subject matter jurisdiction because Petitioner has failed to name indispensable parties.

A petitioner's failure to join an indispensable party "deprives this Court of subject matter jurisdiction and is fatal to a cause of action." *Bucks County Services, Inc. v. Philadelphia Parking Auth.*, 71 A.3d 379, 387 (Pa. Cmwlth. 2013); *accord Sprague v. Casey*, 550 A.2d 184, 189 (Pa. 1988). "A party is indispensable when his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights." *Sprague*, 550 A.2d at 189. The "corollary" to the foregoing rule is that "a party against whom no redress is sought need not be joined." *Id.* As courts have articulated, the analysis of whether a party is indispensable is "sometimes said to require" an examination of these factors:

> 1. Do absent parties have a right or interest related to the claim?
>
> 2. If so, what is the nature of that right or interest?
>
> 3. Is that right or interest essential to the merits of the issue?
>
> 4. Can justice be afforded without violating the due process rights of absent parties?

HYK Const. Co., Inc. v. Smithfield Tp., 8 A.3d 1009, 1015 (Pa. Cmwlth. 2010) (citing *City of Philadelphia v. Com.*, 838 A.3d 566, 581 n.11 (Pa. 2003)). Finally, as is material here, under the Declaratory Judgments Act, "all persons shall be made parties who have or claim any interest which would be affected by the declaration." *Bucks County.*, 71 A.3d at 387-88 (citing 42 Pa.C.S. § 7540(a)).

1. The Senate is an indispensable party.

Under the foregoing standards, the Senate is an indispensable party, and Petitioner's failure to join the Senate deprives this Court of subject matter jurisdiction over the Petition for Review. To begin to explain this, the Court need look no further than Petitioner's Petition for Review and his proposed order in support of his Application for Summary Relief: in each he *expressly* seeks an order declaring the rights of the non-party Senate. Indeed, he prays that this Court declare that "any effort by Respondents, House of Representatives *or Senate* to take up the Amended Articles or related legislation … is unlawful." *See* PFR Prayer for Relief at ¶ (E) (emphasis added); *see also* Proposed Order #2 at ¶ 1(E) (same). He is, in his own words, seeking a remedy against the Senate, and is also implicitly seeking such relief throughout

the balance of the remedies he proposes (wherein, among other things, he seeks to prevent the Senate from addressing business that has been brought before it by the House, *see* PFR Prayer for Relief at ¶ (A); Proposed Order #2 at ¶ 1(A)). With these requests, he is seeking impermissible redress from an absent party. *Cf. Sprague*, 550 A.2d at 189.

But beyond Petitioner's own words, the applicable law also shows the Senate's rights will be impermissibly impaired if it is not a party to this action. The Constitution expressly provides that "All impeachments shall be tried *by the Senate*." Pa. Const. art. VI, § 5 (emphasis added). As this Court articulated during the Larsen dispute—where, notably, the Senate *was named* as the lead party-respondent—this provision "commits the impeachment trial function exclusively to the Senate[.]" *See Larsen*, 646 A.2d at 703. While the Court's analysis concerned whether the Senate could use a committee to report to the entire body (the Court held it could), the underlying point was that the impeachment function was a textual prerogative of the Senate—as a whole—and thus it was up to the Senate to decide how to handle the function. *See id.* The key element there was, of course, that *the whole*

Senate, and not individual Senators alone, carried this constitutional mandate. *Cf. id.* This further shows the Senate is an indispensable party.

Finally, expressly applying each of the factors set forth in *HYK Construction* demonstrates this action cannot proceed without the Senate. First, as just noted, the Senate has a right or interest related to Petitioner's claims in that he seeks to prevent the Senate—as a whole—from engaging in proceedings textually committed to it under the Constitution. *See* Pa. Const. art. VI, § 5. Second, the rights Petitioner is seeking to foreclose belong to the Senate as a whole, and not just to individual Senators. *Cf. Larsen*, 646 A.2d at 703. Further, those rights cannot be refused: the Constitution says the Senate "*shall*" try "*all*" impeachments. *See* Pa. Const. art. VI, § 5 (emphasis added). Third, the Senate's right or interest is central to the merits of this case; again, the Senate's right to try impeachment cases is exclusively the Senate's. Fourth, and finally, justice cannot be afforded without violating the due process rights of the Senate, since the rights Petitioner seeks to take, define, or cabin belong first and foremost to this absent party.

Under all of these circumstances, the Court should find that an indispensable party is absent and should, accordingly, dismiss the Petition for Review for lack of subject matter jurisdiction. *See Bucks County*, 71 A.3d at 388; *HYK Constr.*, 8 A.3d at 1016; *Polydyne, Inc. v. City of Philadelphia*, 795 A.2d 495, 497 (Pa. Cmwlth. 2002).

2. The Senate Impeachment Committee is an indispensable party.

Even if the Court were to disagree that the Senate's absence from this case forecloses jurisdiction, it should agree the Senate Impeachment Committee's absence prevents proceeding further. Here, again, the Court can look to Petitioner's own words. He names non-existent John Doe members of the Committee as Respondents. *See* PFR at ¶ 17. By doing so, Petitioner represents to this Court, among other things, that there is a proper purpose in naming these Committee members and that the claims against them "are warranted by existing law" and have factual "evidentiary support." *See* Pa.R.C.P. 1023.1(c). That is, he has a good faith basis to believe the Committee, through its constituent members, must be here to answer his claims.

But as Petitioner also seemingly understands, the Committee does not yet exist nor, of course, does it have members who can be

substituted for the John Doe placeholders. *See* PFR at ¶ 17. This is problematic for a variety of reasons, not the least of which is that "[n]o final judgment may be entered against a defendant designated by a Doe designation." Pa.R.C.P. 2005(g).[52] This comes into sharp focus given that this case will be argued on December 29, 2022, at a time when the John Does still could not be parties to this case because whether the Committee exists at all is up to the Senate as a whole, *see* SR 386, § 9(a) (PFR Ex. D); *see also* SR 388 at 3, lines 8-9 (PFR Ex. F), and the new Senate will not meet as a body until the first Tuesday in January 2023. *See* Pa. Const. art. II, § 4. Only then, *at the earliest*, could the President Pro Tempore, with the Senate's approval, exercise the power to empanel the Committee. *See* SR 386, § 9(a).

All of this, plus the following, illustrates why the absence of the Committee, through its "John Doe" members, forestalls this Court's exercise of jurisdiction. First, according to Petitioner himself, the Committee has a right or interest related to his claims; if not, the "John

[52] The John Does named are also problematic because the label is being used as a "mere placeholder," which is improper. *See* Pa.R.C.P. 2005, Explanatory Comment ("It is important to note that designating a Doe defendant as a mere placeholder … is not a valid use of Rule 2005."). The use here is just such a case because these John Does members of a non-existent committee simply do not exist, as Petitioner is well aware.

Doe" members would not have been identified as party-Respondents. Moreover, this Committee will certainly have rights and duties to conduct the impeachment proceedings, *see* SR 386, § 10; SR 388 at 3, lines 8-14, which rights and duties Petitioner seeks to take away with his proposed relief. *See* PFR Prayer for Relief at ¶¶ (D)-(E); Proposed Order #2 at ¶ 1(D)-(E). The Committee's rights or interests are fully expressed in the Senate's resolutions, which grant to the Committee various mandatory duties. *See* SR 386, § 10; SR 388 at 3, lines 8-14. Third, these rights are essential to the merits of Petitioner's claims in that he seeks to foreclose *any* action by *any* Senator (Committee-member or otherwise). Fourth, and finally, justice cannot be afforded without violating the due process rights of the Committee because, as a basic fundamental "notice" matter, no Senator yet knows whether he or she should step up and defend the Committee's rights. In the absence of this basic notice from Petitioner, the Committee, and its members, will lose their rights as legislators before they even have a chance to answer the claims against them. Thus, the Court should hold the Committee is an indispensable party.

As a final note on the Committee, the deficiency caused by its absence is equal parts lack of an indispensable party and ripeness. The latter prudential concept arises because Petitioner elected to come to Court too soon, at least insofar as he seeks to foreclose rights of an entity that does not yet exist. Nevertheless, he made the affirmative choice to file now and to name these John Doe Committee members as party-Respondents, tacitly admitting that the Committee's members should be here to defend his claims. His choices should be held against him in that the Court should find that the Committee is an indispensable party whose absence prevents this Court from exercising subject matter jurisdiction.

B. Petitioner has failed to state legally sufficient claims.

For the reasons set forth above in Sections V.A-C, Petitioner has failed to state any claims as a matter of law. As such, should the Court find it has subject matter jurisdiction even without the Senate and the Senate Impeachment Committee as parties, Petitioner's claims should be dismissed. In turn, the Court should enter relief in Senator Ward's favor on the Cross-Application.

VII. CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's Application for Summary Relief and should grant Senator Ward's Cross-Application for Summary Relief.

Respectfully submitted,

Dated: December 16, 2022

/s/ Matthew H. Haverstick

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: December 16, 2022 /s/ Matthew H. Haverstick

WORD COUNT CERTIFICATION

I hereby certify that the above brief complies with the word count limit of the Court's Order of December 15, 2022 (18,000 words). Based on the word count feature of the word processing system used to prepare this brief, this document contains 17,277 words, exclusive of the cover page, tables, and the signature block.

Dated: December 16, 2022 /s/ Matthew H. Haverstick

Exhibit A

JOURNAL

OF THE

SENATE

OF THE

COMMONWEALTH

OF

PENNSYLVANIA,

WHICH COMMENCED AT *LANCASTER*, ON TUESDAY, THE FIRST DAY OF DECEMBER, IN THE YEAR OF OUR *LORD*, ONE THOUSAND EIGHT HUNDRED AND ONE, AND OF THE INDEPENDENCE OF THE UNITED STATES OF AMERICA THE TWENTY-SIXTH.

VOLUME XII.

LANCASTER,
Printed by WILLIAM & ROBERT DICKSON, North Queenſtreet,
1801.

I have alſo received the Addreſs of both Houſes of the Legiſlature, recommending the Removal of Henry Shoemaker, Eſquire, from the Office of a Juſtice of the Peace, in the County of Lycoming; and ſhall comply therewith, without delay.

THOMAS M'KEAN.

Lancaſter, April 6, 1802.

On motion of Mr. Whitehill, ſeconded by Mr. Mewhorter,

Reſolved, That a Committee be appointed, to join a Committee of the Houſe of Repreſentatives (if that Houſe ſhall judge it proper to appoint ſuch Committee) to inform the Governor, that the Legiſlature have agreed to adjourn this Day; and to inquire, whether he has any further Communications to make, at this time; and

Ordered, That Mr. Rodman, Mr. Whelen, and Mr. Harris be a Committee for the ſaid purpoſe.

Ordered, That an Extract of the foregoing be tranſmitted to the Houſe of Repreſentatives.

Mr. Huſton, Clerk of the Houſe of Repreſentatives, informed the Senate, that the Houſe of Repreſentatives have concurred the Amendments, by the Senate, on the Bill, entitled, "An Act to provide for the Payment of certain Expences of the Executive Department, and for other Purpoſes."

And alſo, on two Reſolutions, entitled, reſpectively, *to wit:*

1 A Reſolution, granting to Andrew Ellicott, Eſquire, a Teleſcope, with its Apparatus, the Property of this State.
2 A Reſolution, relative to the State of Maryland granting half Tolls, to the Suſquehanna Canal-company.

The Speaker informed the Senate, that the Clerk reports,

That, according to the Orders of the Senate, he has preſented to the Houſe of Repreſentatives, an Extract from the Journal of the Senate, appointing a Committee to join a Committee of the Houſe of Repreſentatives, to inform the Governor, that the Legiſlature have agreed to adjourn this day; and to know whether he has any further Communications to make, at this time.

Mr. Huſton, Clerk of the Houſe of Repreſentatives, preſented an Extract from the Journal of that Houſe; and the ſame was read, as follows, *to wit:*

In the Houſe of Repreſentatives.

TUESDAY, April 6, 1802, P. M.

Reſolved, That a Committee be appointed, to join a Committee of the Senate (already appointed) to inform the Governor, that the Senate and Houſe of Repreſentatives have paſſed a Reſolution to adjourn this day; and to know if he has any further Communications to make to the Legiſlature; and

Ordered, That Mr. Mitchell, Mr. Wayne, and Mr. Ferguſon be a Committee for the ſaid Purpoſe.

Mr.

3. A Reſolution, relative to an Application to the Secretary of State of the United States, for a Copy of the laſt Cenſus of this State.

4. A Reſolution, relative to printing the Laws, Journals, and Bills, of each Houſe, on a Medium Paper, in Octavo Form, and with Type of Pica Size.

5. A Reſolution, relative to inſtructing the Senators repreſenting this State, in the Senate of the United States, to endeavour to procure a Repeal of the Act paſſed at the laſt Seſſion of Congreſs, entitled, "An Act to provide for the more complete Organization of the Courts of the United States."

6. A Reſolution, relative to authoriſing one able Counſel, to aſſiſt the Attorney-general in defending the Rights of the Commonwealth, in the Trial of two Cauſes, *to wit*; one againſt the Commonwealth, by William Turnbull; the other, by the Comptroller-general, againſt the Heirs and Deviſees of David Rittenhouſe, late State Treaſurer.

7. A Reſolution, granting to C. W. Peale, during the Pleaſure of the Legiſlature, the Uſe of certain Parts of the Statehouſe, to diſplay his Muſeum.

8. A Reſolution, requeſting the Governor to preſent to Andrew Ellicott, Eſquire, for his Uſe, during the Pleaſure of the Legiſlature, the Teleſcope, the Property of this State, &c.

9. A Reſolution, relative to the State of Maryland granting half Tolls to the Suſquehanna Company, on Produce going down the Suſquehanna.

The Senate then adjourned, ſine die.

GEORGE BRYAN,

Clerk of the Senate.

Exhibit B

JOURNAL

OF THE

SENATE

OF THE

COMMONWEALTH

OF

PENNSYLVANIA,

WHICH COMMENCED AT LANCASTER, THE SIXTH DAY OF DECEMBER, IN THE YEAR OF OUR LORD, ONE THOUSAND EIGHT HUNDRED AND THREE, AND OF THE INDEPENDENCE OF THE UNITED STATES OF AMERICA THE TWENTY-EIGHTH.

VOLUME XIV.

LANCASTER:

PRINTED BY BROWN & BOWMAN,

EAST KING-STREET.

1803.

1. "An act for the relief of Marcus, Hulings, jun.

2. "An act to incorporate an academy, or public school, in the town of Norris, and county of Montgomery, and for other purposes therein mentioned."

3. "An address to remove Samuel Preston from the office of judge of Wayne county."

4. "An act to extend and continue an act, entitled "A supplement to the act, entitled "An act to complete the benevolent intention of the Legislature of this commonwealth, by distributing the donation lands to all who are entitled thereto."

On motion of Mr. Steele, seconded by Mr. Barton,

Agreed, That the second reading, and further consideration of the bill, entitled "An act for annexing part of Luzerne county, to Lycoming county," be the order of the day, for Monday next, the 26th instant.

The Senate resumed the consideration of the bill, entitled "An act, to repeal part of an act, entitled "An act to enforce the due collection of the revenues of the state, and and for other purposes therein mentioned," postponed for the present, on the third January last.

Whereupon,

The Senate resolved itself into committee of the whole, (Mr. Gamble in the chair) for the further consideration of the same; and after some time spent therein, the committee rose, and the Chairman reported the bill with amendments; which were read, as reported.

On motion of Mr. Rodman, seconded by Mr. Pearson, and by special order, the said bill was read the second time as reported, considered by section, and agreed to.

The preamble and title being agreed to.

Ordered, That the said bill be transcribed for the third reading.

The report of the committee, read on the 10th instant, to whom was referred the petition of the inhabitants of Nittany Valley, and the memorial of George Bressler, was again read, and the resolution therein contained, adopted, to wit:

Resolved, That the petitioners have leave to withdraw their petition.

The Clerk of the House of Representatives, presented to the Speaker for signature, the bills, entitled as follow, to wit:

1 "An act authorising the Governor, to incorporate a company, for making an artificial road in Wayne and Luzerne counties."

2 "An act granting relief to the heirs of Michael Irick, deceased."

3 "An act altering and extending the powers of the corporation of the borough of Bristol."

Whereupon,

The Speaker signed the said bills.

Adjourned till 3 o'clock in the afternoon.

SAME DAY, *in the Afternoon.*

The Senate met according to adjournment.

The Clerk of the House of Representatives presented an extract from the journal of that House; a copy of which is as follows, to wit:

"*In the House of Representatives,*
"*March* 23, 1804.

"Resolved, That the article of impeachment against Edward Shippen, Esq. Chief Justice, and Jasper Yeates, and Thomas Smith, Associate Justices of the Supreme

Court of Pennsylvania, be engrossed, and signed by the Speaker; and that a committee be appointed to exhibit said article to the Senate, and, on behalf of this House, to manage the trial thereof.

"And ordered,

"That Messrs. Maclay, Boileau, Engle, Mitchell, and Bucher, be the committee for that purpose."

The Speaker laid before the Senate, a letter from the Secretary of the Commonwealth, of which the following is a copy:

Secretary's Office, March 24th, 1804.

SIR,

In compliance with a resolution of the General Assemble, of the fourteenth of January, last, relative to the distribution of Carey and Bioren's edition of the laws; I addressed a circular letter to the Prothonotaries of the several counties within this commonwealth, requiring them to transmit to this office, a true statement, or list of the names of the judges and justices of the peace within their counties, respectively, who had not already been furnished with the first second and third volumes of Dallas's edition of the laws, or with Read's digest. I have now the honor to lay before the Senate the statements transmitted in reply to that letter; the last of which was received but two days since. It becomes necessary that I should state, for the information of the Legislature, that sixty-six new appointments of justices of the peace, have been made since the first of January last; who consequently cannot have been furnished with the laws and are not included in the Prothonotaries statements, to wit; in Philadelphia county one, Bucks one, Chester four, York one, Cumberland five, Bedford one, Westmoreland three, Washington one, Fayette five, Montgomery one, Luzerne two, Huntingdon three, Allegheny four, Mifflin three, Somerset seven, Lycoming one, Adams one, Centre one, Crawford six, Beaver six, and Butler nine; no communication has been received on this subject from the Prothonotary of Erie. The county

commissioners of that county have returned fourteen acting Justices of the peace, six of whom were in office whilst it constituted part of Allegheny county. There has also been commissioned for said county three Associate Judges not hitherto furnished with the laws.

I have the honor to be very respectfully, your obedient servant,

T. M. THOMPSON, *Sec'ry.*

The Honorable the Speaker of the Senate.

The amendments by the House of Representatives, on the bills, entitled as follow, were again read, considered, and concurred, to wit:

1. "An act conferring certain powers on the commissioners of Berks county, and for other purposes."

2. "A supplement to an act entitled "An act to authorise the Governor of this commonwealth to incorporate a company for erecting a bridge over the river Delaware, at or near Trenton."

3. "An act for dividing the borough of Lancaster into two election wards."

Ordered, That the Clerk inform the House of Representatives thereof.

The Sergeant-at-Arms announced the managers, appointed by the House of Representatives, to conduct the impeachment against the Chief Justice of the Supreme court, and Jasper Yeats and Thomas Smith, esquires, justices of the same court.

Whereupon,

The managers being introduced, Mr. Maclay their Chairman, delivered the following message.

"Mr. Speaker,

"In obedience to a resolution of the House of Repre-

sentatives, the committee appointed for that purpose, prefer to the Senate, in the name of the representatives and citizens of the commonwealth of Pennsylvania, an accusation and impeachment against Edward Shippen, esquire, Chief Justice, and Jasper Yeats, and Thomas Smith esquires, Associate Justices of the Supreme court of the commonwealth, and are ready, on the part of the said representatives, to support the charges so exhibited, at such time as the Senate may appoint."

After which he presented to the Speaker the article of impeachment preferred by the House of Representatives, against the said judges,

Thereupon,

The managers being conducted to seats which had been provided for the occasion ;

The article of accusation and impeachment was read; a copy of which is as follows, to wit:

Article of Accusation and Impeachment, against Edward Shippen, esquire, Chief Justice, and Jasper Yeates, and Thomas Smith, esquires, Assistant Justices of the Supreme Court of the Commonwealth of Pennsylvania, preferred by the House of Representatives of the said Commonwealth in their name, and in the name of the People of Pennsylvania, and exhibited to the Senate of the said Commonwealth.

Article 1. That the said Edward Shippen esquire Chief Justice and Jasper Yeates and Thomas Smith esquires Assistant Justices of the Supreme Court of this Commonwealth of Pennsylvania duly commissioned and appointed and acting in their official capacities on the 18th day of September A. D. 1802 granted a rule against Thomas Passmore of the city of Philadelphia on the affidavits of Andrew Bayard and James Kitchen to shew cause on the first day of the then next term why an attachment should not issue against him the said Thomas Passmore for a contempt in consequence of the following publication to wit.

" The subscriber publicly declares that Pettit and Bayard " of this city merchants and quibbling underwriters has " basely kept from the subscriber for nine months " above five hundred dollars and that Andrew Bayard the " partner of Andrew Pettit did on on the third or fourth " instant go before John Inskeep esquire alderman and " swore to that which was not true by which the said Pettit and Bayard is enabled to keep the subscriber out of " his money for about three months longer; and the said " Bayard has meanly attempted to prevent others from " paying the subscriber about two thousand five hundred " dollars, but in this mean dirty action he was disappointed in: I therefore do publicly declare Andrew Bayard a " liar a rascal and a coward; and I do offer two and an " half per cent. to any good person or persons to insure " the solvency of Pettit and Bayard for four months from " this date.

" THOMAS PASSMORE.

" *Philadelphia, 8th Sept.* 1802."

That on the 8th of December 1802 an attachment was awarded against the said Thomas Passmore and he was bound with sureties to appear from day to day during the continuation of the court to answer such interrogatories as should be exhibited to him and to abide the sentence of the court.

That interrogatories were accordingly exhibited to the said Thomas Passmore which are as follows; together with the answers filed by the said Thomas Passmore to the same viz.

In the Supreme Court of Pennsylvania.

The Commonwealth of Pennsylvania vs. *Thomas Passmore.* } On Attachment for Contempt.

Interrogatories exhibited to Thomas Passmore the above named defendant.

1*st Interrogatory.* Was there an action depending in the Supreme Court of Pennsylvania on the 8th day of September 1802 wherein you were plaintiff and Andrew Pettit and Andrew Bayard merchants and co-partners trading under the firm of Pettit and Bayard were defendants. If aye, when was such action instituted and is the same still depending in the said court.

2*d Interrogatory.* If such action was brought and is still depending in the said court, state whether the same was referred by consent of parties; whether the referrees made report, and when; whether exceptions were filed to the report, by whom and when; whether an affidavit was made by the said Andrew Bayard in support of the said exceptions; when, and before whom the said affidavit was made; and whether the said exceptions and affidavit were filed in the said court on or before the 8th day of September 1802.

3*d Interrogatory.* Peruse the paper filed in this court purporting to be signed by you, dated Philadelphia 8th Sept. 1802, whereupon the motion was made in this court for a rule to shew cause why an attachment should not issue against you for a contempt of the said court; and declare whether the said paper is written and subscribed by you, and when the same was written and subscribed; and whether the said paper so written and subscribed was by you or by any other person, and who, by your request and direction placed and affixed to a board in the exchange room in the city-tavern in the city of Philadelphia and attached to the said board in the said room by wafers in the manner advertisements are there usually posted up and fixed.

4*th Interrogatory.* If the said paper was subscribed and written by you, and by you or by some person by your request and direction, placed and affixed as above mentioned, state whether the declaration in the said paper contained, to wit: "That Andrew Bayard the partner of Andrew Pettit did on the third or fourth instant go before John Inskeep esquire alderman and swore to that which was not true?" refers to the said affidavit taken and filed in this court by the said Andrew Bayard as aforesaid, in support of the said exceptions filed to the said report of the referrees in the said action depending in this court as aforesaid between you as plaintiff and the said Pettit and Bayard as defendants?

By J. DALLAS.

(Copy.)

Supreme Court—Pennsylvania.

The Commonwealth of Pennsylvania vs. *Thomas Passmore.* } Sur Attachment for Contempt.

The answer of Thomas Passmore the examinant to the several interrogatories filed on the part of the prosecutor in this case.

1*st Interrogatory.* To the first Interrogatory the said examinant answers, That to the best of his judgment and belief there was no action depending in the Supreme Court of Pennsylvania on the 8th day of September last wherein he was plaintiff and Andrew Pettit and Andrew Bayard merchants and co-partners trading under the firm of Pettit and Bayard were defendants. That such an action had been instituted on or about the 13th day of July last, referred under an amicable agreement between the said parties, a report made in favor of the plaintiff and the suit determined by a judgment entered thereupon on or about the 6th day of August last.

2*d Interrogatory.* In answer to the second interrogatory the examinant saith that he apprehends this question is best answered by a recurrence to the records of the court which must certainly afford the surest evidence of the facts to which the interrogatory relates but the examinant has no objection to declaring that the said suit instituted by him against the said Andrew Pettit and Andrew Bayard was referred by consent of parties that the referees made report

thereon in favor of the said Thomas Passmore, on or abou
the 6th day of August last, that the exceptions to the sai
report were filed on the part of Messrs. Pettit and Bayar
on or about the fourth day of September last together wit
an affidavit made by the said Andrew Bayard as this ex
aminant has heard and believes in support of the same ex
ceptions before John Inskeep esquire one of the aldermen
of the city; and this defendant further saith that the actio
was instituted by him against the said Andrew Pettit and
Andrew Bayard in order to recover from them the loss
sustained by him on a policy subscribed by them for five
hundred dollars in the office of Shoemaker and Berret of
this city on or about the thirteenth day of September in the
year one thousand eight hundred and one, on the brig Mi-
nerva belonging to this examinant; and to the best of his
recollection he took out of the office of the prothonotary of
this court on the very day on which the said award was
rendered two copies thereof and left at the insurance office
of the said Shoemaker and Berrett on the next day one co-
py of said report, with directions to them to communicate
the same to Messrs. Pettit and Bayard and the other under-
writers in the said policy. And the examinant has been
informed and believes, that the said award was made
known by them to the said Andrew Pettit and Andrew
Bayard, or the said Andrew Bayard, on or about the se-
venth day of August last, and the examinant declares that
on the ninth or tenth of the said month the said Andrew
Bayard told this examinant he had seen it; that the ex-
aminant has always understood and believed and at the
present day doth believe it to be a rule of this court, that
if exceptions are not filed to an award under such circum-
stances, to wit: When the report is by the tenor of the
submission to be made into the office within four days af-
ter the same is made known to the party against whom it
is to operate such award is thereby rendered absolute and
unavoidable. This was the impression on the mind of
the examinant from about the middle of August last to
the day when he first learned that the exceptions in said
cause were filed and it immediately aftewards occurred to

him that they were out of time and void and therefore that
the judgment in this examinant's favour must remain ab-
solute. And this examinant was more confirmed in the
belief of the validity of this report, because James Lysle
an underwriter on the same risk for one thousand dollars
gave an order in the examinant's favor for the amount on
the next day after the said award was rendered Messrs.
Phillips, Cramond, & Co. underwriters also on the same
risk for one thousand dollars, gave an order for the amount
in this examinant's favor within about four days after, and
Messrs. Nicklin & Griffith underwriters on the same risk
for five hundred dollars gave a similar order at about the
same time. That the examinant soon after was allowed
without opposition to prove his loss on the said policy
against the estate of James Yard a bankrupt who also was
an underwriter of one thousand dollars on said policy so
that of the four solvent defendants parties to the said award
Messrs. Pettit and Bayard were the only underwriters who
had not settled with the defendant on said policy, in a very
few days after the said award given.

3d Interrogatory. In answer to the third interrogatory this examinant saith, that the paper alluded to in this interrogatory was subscribed by him on the day of its date and by the examinant placed or fixed up to a board in one of the rooms of the city-tavern but it was pulled down within a minute after before any person could read it.

4th Interrogatory. In answer to the fourth interrogatory this examinant saith, that the first exception filed to the said award states that the referees therein named had a meeting on the subject of the reference with the plaintiff when the defendants the said Pettit and Bayard were not present nor notified in opposition to which the examinant states that there was no meeting of the said referees to which either of the parties to that suit were admitted of which a notification was not given either by information to the said Andrew Bayard himself or by the referees when they made their adjournment. That this examinant was conscious of this when he signed the said paper and did for

that reason assert that what was so stated in the affidavit taken before John Inskeep esquire in support of said exceptions was not true, but in doing this he had not the most distant intention to prejudice the public mind in his favor or to treat with disrespect the judicial authority of his country for which he has always entertained the utmost respect. That this defendant having recently settled with every other of the underwriters in said policy and having every reason to believe that the award would not be disputed by any other person than the said Andrew Bayard was surprised to find that such exceptions had been filed on the part of Pettit and Bayard as he had perused; wearied by the delays and trouble which he had undergone in the pursuit of his just claim, hearing that the said Andrew Bayard had expressed himself in terms derogatory to the character of the examinant and reflecting on the referees having good reason to believe that he used every exertion in his power to prevent the other underwriters on the policy from settling with the examinant he felt much irritated when he first saw the exceptions and in the moment of his heat and passion published the impressions he experienced without allowing himself time to reflect on the harshness of the manner in which they were conceived or the extent of their application. With respect to Mr. Andrew Pettit one of the said firm of Pettit and Bayard the examinant has always entertained a respectful opinion of him and is sorry that expressions escaped him which from their generality may tend to implicate a gentleman who has never been seen to take any active step in the measures of which he complains and altho' he thought at that time and still thinks that he was extremely ill used by Mr, Bayard he certainly would not have adopted the measure of publishing if the impetuosity of the moment had not hurried him into it.

THOMAS PASSMORE.

Sworn 27th December 1802, before

EDWARD BURD, *Prothonotary.*

In which answers the examinant deposeth to the best of his judgment and belief that there was no action depending in the Supreme court of Pennsylvania wherein he was plaintiff and Andrew Pettit and Andrew Bayard were defendants at the time the supposed contempt was committed.

And in his fourth answer disclaims in the most explicit terms the most distant intention either to prejudice the public mind in his favor or treat with direspect the judicial authority of his country which answers ought in legal construction to have purged the contempt if any had existed notwithstanding which the Justices aforesaid passed sentence upon the said Thomas Passmore on the 28th day of December A. D. 1802, "That the said Thomas Passmore should be committed to the custody of the Sheriff of Philadelphia county in the debtors' apartment of the common jail of said county for the space of thirty days and pay a fine of fifty dollars to the commonwealth and in the mean while that he should be committed &c." Which sentence of fine and imprisonment under all the circumstances of the case was arbitrary and unconstitutional and a high misdemeanor of the said Chief Justice and the Associate Justices aforesaid in their official capacities.

First. Because the publication did not reflect on the Judges in their judicial capacity nor personal character.

Second. Because there was no direct allusion in the paper called a libel to any cause pending before the court.

Third. Because it appears from the record that the said Thomas Passmore was warranted in the conclusion that the suit between him and Pettit and Bayard was then ended judgment having been entered and execution issued this opinion is confirmed because the judgment was not set aside until after the term of his imprisonment had expired and after his application to the Legislature for the impeachment of the Judges.

Fourth. Because it appears from the evidence that the

court were satisfied with the answers of Thomas Passmore to the interrogatories so far as respected the alledged contempt against themselves.

Fifth. Because it appears that the punisment was inflicted not because he had committed a contempt of court but because he would not apologize or make atonement to Mr. Andrew Bayard as the court had expected.

And the said House of Representatives saving to themselves by protestation the liberty of exhibiting at any time hereafter any other accusation or impeachment against the said Edward Shippen esquire Chief Justice and the said Jasper Yeates and Thomas Smith esquires Assistant Justices as aforesaid of the Supreme Court and also of replying to the answers which the said Justices or any of them shall make to the impeachment aforesaid and of offering proof of the premises and every part of them or any other accusation or impeachment which shall or may be exhibited by them as the case may require against the said Chief Justice or Justices aforesaid or any of them Do demand that the said Edward Shippen esquire Chief Justice as aforesaid and the said Jasper Yeates and Thomas Smith esquires Associate Justices as aforesaid and each of them may be put to answer all and every of the premises and that such proceedings examination trial and judgment may be had against them or any of them as are conformable to the constitution and laws of this Commonwealth—And the said House of Representatives are ready to offer proof of the premises at such time as the Senate of the said Commonwealth of Pennsylvania may appoint.

SIMON SNYDER,

Speaker of the House of Representatives.

Moved by Mr. Reed, seconded by Mr. Porter,

That the Speaker do inform the managers, that the Senate will, as early as convenient, take order on the articles of accusation and impeachment exhibited by the said managers, and inform them of the result thereof.

The question on the motion, being put; was determined in the affirmative.

Whereupon,

The Speaker rose, and addressed the managers, who also rose, as follows:

Gentlemen,

Senate will, without delay, attend to your demand, take order on the article of accusation and impeachment preferred by the House of Representatives, and which you have presented; and timeously inform you of the order which shall be so taken.

Thereupon,

The managers withdrew.

On motion of Mr. Pearson, seconded by Mr. Porter,

The following resolution was twice read, considered and adopted to wit:

Resolved, That a committee be appointed to ascertain and fix, at what time it may be most proper and convenient for the Senate to proceed to the trial of Edward Shippen, Esq. Chief Justice of the Supreme Court of Pennsylvania, and Jasper Yeates, Esq. and Thomas Smith, Esq. Judges of the said court, on an article of impeachment exhibited against them by the House of Representatives, in their name, and in the name of the people of Pennsylvania.

Ordered, That Mr. Pearson, Mr. Rodman, Mr. Reed, Mr. Porter, and Mr. Hartzell, be the committee for that purpose.

Adjourned till 10 o'clock Monday morning.

MONDAY, March 26, 1804.

The Senate met according to adjournment.

According to the orders of the Senate, the Clerk presen-

ted to the House of Representatives, for concurrence, the bill, entitled "An act for the inspection of ground black-oak bark, intended for exportation."

And he informed the House of Representatives, that the Senate have concurred the amendments by that House, on the bills, entitled, as follow, to wit:

1 "An act for dividing the borough of Lancaster into two election wards."

2 "A supplement to an act entitled "An act to authorise the Governor of this commonwealth to incorporate a company for erecting a bridge over the river Delaware, at or near Trenton."

3 "An act conferring certain powers on the commissioners of Berks county, and for other purposes."

The Secretary of the Commonwealth presented a message from the Governor, together with the bills, mentioned therein, numbered 2, and 4, and informed, that he has returned to the House of Representatives, the other bills mentioned in the message.

The message was read; a copy of which is as follows, viz.

To the Senate and House of Representatives of the Commonwealth of Pennsylvania.

GENTLEMEN,

I have this day approved, and signed the following acts of the General Assembly, and directed the Secretary to return the same to the respective Houses, in which they originated, to wit:

1 "An act for the relief of the supervisors of Somerset township, in Somerset county, for the year 1801."

2 "An act to incorporate the Philadelphia insurance company."

3 "An act to erect parts of Lycoming, Huntingdon and Somerset counties, into separate county ditricts."

4 "An act in confirmation of a partition made of certain lands in Lycoming county."

5 "An act transferring the powers of the trustees of the county of Adams, to the commissioners of said county, and authorising them to levy a further sum, for completing the public buildings therein."

6 "An act for the relief of Elizabeth Febiger."

THOMAS M'KEAN.

Lancaster, March 26th, 1804.

Mr. Pearson, from the committee appointed for the purpose, on the 24th inst. made the following report, to wit:

The committee, appointed to ascertain the time, when it may be most proper, and convenient for the Senate to proceed to the trial of Edward Shippen, Esq. Chief Justice, and Jasper Yeates, and Thomas Smith, Esqrs. Judges of the Supreme Court;—Report,

That, having maturely considered the subject referred to them; offer the following resolution, to wit:

Resolved, That the second Tuesday of December next, will be the most convenient time for the Senate to commence the said trial.

The bill, entitled "An act, to repeal part of an act, entitled "An act to enforce the due collection of the revenues of the state, and for other purposes therein mentioned;" was read the third time.

Whereupon,

Resolved that this bill pass;—and

Ordered, That the Clerk present the same to the House of Representatives, for concurrence.

According to the order of the day, the bill, entitled

The remaining sections, with the title, being agreed to.

Ordered, That the said bill be transcribed for the third reading.

On motion of Mr. Barton, seconded by Mr. Lane,

Resolved, That a member be added to the committee, appointed to compare bills, and present them to the Governor for his approbation, in the room of Mr. Rodman, who is absent.

Ordered, That Mr. Harris be added to that committee.

The report of the committee, appointed to ascertain the time, when it may be most proper, and convenient for the Senate to proceed to the trial of Edward Shippen, Esq. chief Justice, and Jasper Yeates, and Thomas Smith, Esqrs. Judges of the Supreme Court, was again read.

Whereupon,

On motion of Mr. Heston, seconded by Mr. Lane,

The Senate resolved itself into committee of the whole, (Mr. M'Arthur in the chair) for the further consideration of the resolution contained in the report of the committee, to wit:

"Resolved, That the second Tuesday of December next, will be the most convenient time for the Senate to commence the said trial;" and after some time spent therein, the committee rose, and the Chairman reported the same, without amendment.

On motion of Mr. Reed, seconded by Mr. Pearson;

Ordered, That the second reading, and further consideration of the bill, entitled "An act for re-building the bridges over Swatara Creek and Deep Creek, on the Tulpehocken road, in the county of Berks," be the order of the day, for to-morrow.

The resolution presented by Mr. Pearson, on the 22d instant, was again read, considered, and adopted, as follows, to wit:

Resolved, That a committee be appointed, to join a committee of the House of Representatives, to ascertain particularly, what laws, passed this session, ought to be published in the newspapers, at the public expence, in pursuance of a resolution of the General Assembly, passsd in the present session.

Ordered, That Mr. Pearson, Mr. Steele, and Mr. Heston, be the committee for that purpose; and that the Clerk present an extract from the journal respecting the same.

Mr. Harris, from the committee appointed for that purpose, reported, that the bills, entitled as follow, have been duly compared, to wit:

1 "An act to empower the administrators to the estates, and guardians of the minor children of Benjamin Lodge, and James Carnahan deceased, to sell and convey certain real estates."

2 "An act dividing the borough of Lancaster into two election wards."

3 "An act authorizing Jacob Eichelberger, and Frederick Shultz, to sell and convey, a certain lot of land in Heidelberg township, in the county of York, belonging to the German Lutheran congregation, in and near Hanover, in the said county."

4 "An act conferring certain powers on the commissioners of Berks county, and for other purposes."

5 "A supplement to the act, entitled "An act concerning divorces and alimony."

Mr. Lane, from the same committee, reported, that the bill, entitled "A supplement to an act entitled "An act to authorise the Governor of this commonwealth to incorporate a company for erecting a bridge over the river Delaware, at or near Trenton." has been duly compared.

According to the order of the Senate, the Clerk presen-

ted to the House of Representatives, for concurrence, the bill, entitled "An act, to repeal part of an act, entitled "An act to enforce the due collection of the revenues of the state, and for other purposes therein mentioned."

Adjourned until 10 o'clock to-morrow morning.

TUESDAY, March 27, 1804.

The Senate met according to adjournment.

Mr. Brady presented the memorial of Edward Shippen, Chief Justice, Jasper Yeates, and Thomas Smith, Esqrs. Justices of the Supreme Court, which was read;

Whereupon,

It was moved by Mr. Brady, seconded by Mr. Barton, and

Agreed, That the said memorial be inserted at large on the journal; the following is a copy thereof, to wit:

To the Honorable the Senate of the Commonwealth of Pennsylvania.

The memorial of the subscribers, Justices of the Supreme Court of the said Commonwealth,

Respectfully Sheweth;

That your memorialists have understood, that the honorable House of Representatives have preferred articles of impeachment against them, for a high misdemeanor in office, by arbitrarily, and unconstitutionally, fining and imprisoning Thomas Passmore.

They verily believed, that every thing they have done in the premises, in their judicial capacity, is warranted by the laws and constitution of the state; and their consciences

acquit them of every species of corruption and partiality whatever.

They have urged a speedy trial, by two memorials to the House of Representatives; they are prepared to answer for their conduct; they demand, as a matter of constitutional and common right, a speedy public trial by an impartial court, to confront their adversary, and meet the witnesses face to face.

They cannot dissemble their satisfaction, that they are entitled to a hearing in a court of justice, where their conduct will be judged of by the evidence alone; where passion, prepossession, and prejudice cannot enter, and where a due discharge of the official duties of the members is secured to them by the sanctions of religion, a solemn appeal to Heaven.

Your memorialists beg leave to represent, that their labors of the last term are just terminated and they will soon be called to the performance of other duties in the circuit courts.

They implore you, as men of honor and virtue, to take into your serious consideration, whether thus charged with a breach of the constitution they have sworn to support, and with arbitrary conduct, unsupported by law, they can with propriety, go into the different counties, to administer the justice of the country; and whether such a step, while the charge against them remains untried, would not reflect disgrace on their individual and official characters, in the eyes of every virtuous citizen, and do irreparable injury to the obedience justly due to the laws.

They therefore request your honorable House to appoint an early day for the trial of their impeachment, which they are anxiously prepared to answer, and to grant them compulsory process for obtaining witnesses in their favor.

And your memorialists will pray, &c.

(SIGNED) EDWARD SHIPPEN,
J. YEATES,
THOMAS SMITH.

That the said bill be postponed, and recommended to the Senate, at their next session.

The question on the motion, being put, was determined in the affirmaative.

On motion of Mr. M'Arthur, seconded Mr. Mewhorter,

Agreed, That the second reading, and further consideration of the bill, entitled "An act for ascertaining the rights of this state to certain lands, lying north and west of the rivers Ohio, Allegheny, and Conewango Creek," be the order of the day, for to-morrow.

On motion of Mr. Pearson, seconded by Mr. Reed,

Agreed, That the second reading, and further consideration of the bill, entitled "A supplement to the act for the prevention of vice and immorality, and of unlawful gaming, and to restrain disorderly sports and dissipation," be the order of the day, for Thursday, the 29th instant.

The Clerk of the House of Representatives, presented to the Speaker for signature, the bills and resolution, entitled as follow, to wit:

1 "An act authorising Jacob Eichelberger and Frederick Shultz, to sell and convey a certain lot of land in Heidelberg township, in the county of York, belonging to the German Lutheran congregation in and near Hanover, in the said county."

2 "An act for dividing the borough of Lancaster into two election wards."

3 "A supplement to an act, entitled "An act to authorise the Governor of this commonwealth, to incorporate a company for erecting a bridge over the river Delaware, at or near Trenton."

4 "An act to empower the administrators to the estates and guardians of the minor children of Benjamin Lodge, and James Carnahan, deceased, to sell and convey certain real estates."

5 "An act conferring certain powers on the commissioners of Berks county, and for other purposes."

6 "A supplement to the act, entitled "An act concerning divorces and alimony."

7 "Resolution to prevent laws of a local nature from being printed in newspapers, at the public expence."

Whereupon,

The Speaker signed the said bills and resolution.

The report of the committee, fixing the the time for trying the impeachment preferred against three of the Judges of the Supreme Court, as reported yesterday, by committee of the whole, was read the second time.

Whereupon,

It was moved by Mr. Heston, seconded by Mr. Barton and

Agreed, That the said report be re-committed to the committee of the whole.

On motion of Mr. Lane, seconded by Mr. Brady, and by special order, the memorial of three of the Judges of the Supreme Court, presented this day, was again read, and referred to the committee of the whole, to whom was recommitted the report on the same subject.

Thereupon,

The Senate resolved itself into committee of the whole, (Mr. M'Arthur in the chair) for the further consideration of the said report; and after some time spent therein, the committee rose, and the Chairman reported the resolution contained therein, with an amendment; which was read, as reported, to wit:

"Resolved, That the first Monday in January next, will be the most convenient time for the Senate to commence the said trial."

On motion of Mr. Barton, seconded by Mr. Lane, and by special order, the report of the committee of the whole, was read the second time;

Whereupon,

It was moved by Mr. Barton, seconded by Mr. Lane,

That the words "the first Monday in January" be stricken out, and "Thursday, the 5th of April" be inserted in place thereof.

The yeas and nays, on agreeing to the amendment, were required by Mr. Barton, and Mr. Pearson; and on the question being put, the members voted as follow, to wit:

YEAS.

Messrs. 1 Barton,
2 Brady,
3 Follmer,
4 Harris,
5 Lane,
6 Pearson,

NAYS.

Messrs. 1 Gamble,
2 Hartzell,
3 Heston,
4 Lower,
5 Lyle,
6 M'Arthur,
7 Mewhorter,
8 Morton,
9 Piper,
10 Poe,
11 Porter,
12 Reed,
13 Richards,
14 Spangler,
15 Steele,
16 Whitehill,
Speaker.

Six yeas, and sixteen nays; by which it appeared, that the question was determined in the negative.

Whereupon.

The yeas and nays, on the question, on adopting the said resolution, were required by Mr. Barton, and Mr. Harris; and on the question being put, the members voted as follow, to wit:

YEAS.

Messrs. 1 Brady,
2 Follmer,
3 Gamble,
4 Harris,
5 Hartzell,
6 Heston,
7 Lane,
8 Lower,
9 Lyle,
10 M'Arthur,
11 Mewhorter,
12 Morton,
13 Pearson,
14 Piper,
15 Poe,
16 Porter,
17 Reed,
18 Richards,
19 Spangler,
20 Steele.
21 Whitehill,
Speaker.

NAY. Mr. Barton.

Twenty-one yeas, and one nay; by which it appeared, that the question was determined in the affirmative, and the resolution adopted, as follows, to wit:

"Resolved, That the first Monday in January next, will be the most convenient time for the Senate to commence the said trial."—And,

Ordered, Mr. Porter, That Mr. Lane, and Mr. Lyle, be a committee to inform the House of Representatives thereof.

According to the orders of the Senate, the Clerk returned to the House of Representatives, the bills, entitled as follow, to wit:

1 "An act to empower Chambers Gaw, to sell and convey a certain real estate therein mentioned, and for other purposes."

2 "An act directing the mode of selling unseated lands for taxes."

And informed, that the Senate have passed the first bill without amendment, and the last, with amendments.

7 "An act granting relief to the heirs of Michael Irick, deceased."—And, an

8 "An address for the removal of Samuel Preston, an associate judge of Wayne county, from office."

Adjourned till 10 o'clock to-morrow morning.

WEDNESDAY, March 28, 1804.

The Senate met according to adjournment.

Mr. Heston, from the committee to whom was referred, on the 24th instant, the bill, entitled "An act to regulate the payment of costs on indictments," reported the said bill with amendments, which were read as reported.

Ordered, That the further consideration of the said bill, be the order of the day, for to-morrow.

Mr. Porter, from the committee appointed yesterday, to acquaint the House of Representatives, that the Senate have fixed on the first Monday in January next, for the trial of Edward Shippen, Esq. Chief Justice, and Jasper Yeates, and Thomas Smith, Esqrs. Justices of the Supreme Court, reported that the committee had performed that service.

Mr. Harris, from the committee appointed for that purpose, reported, that the bill, entitled an "An act to empower Chambers Gaw, to sell and convey certain real estate therein mentioned, and for other purposes," has been duly compared.

The bill, entitled, "An act erecting certain election districts, and making alterations in other districts in certain counties within this commonwealth," was read the third time.

Whereupon,

Resolved that this bill pass;—and

Ordered, That the Clerk return the said bill to the House of Representatives, with information, that the Senate have passed the same, with amendments, in which the concurrence of that House is requested; which amendments are as follow, to wit:

Section I, Strike out all that follows the word "that" in line 4, to the end of the section, and insert as follows; "until another public school-house shall be erected in Mifflin town, the electors of Fermanagh and Milford townships in the county of Mifflin shall hold their elections in the school-house now occupied by David Steele in Mifflin town aforesaid."

Section II, Line 3, strike out "aforesaid" and insert "of Bedford."

Section XI, Line 5, strike out "Barnet Gilliland" and insert "Alexander Ramsey."

The Clerk of the House of Representatives, presented for concurrence, the bills, entitled as follow, to wit:

1 "An act to enable persons appointed to offices of public trust, to recover official documents appurtenant to the said offices, from persons detaining the same."—And

2 "An act for the relief of Nicholas Reim."—And

3 "A further supplement to the act, entitled "An act directing the descent of intestates' real estates, and distribution of their personal estates, and for other purposes therein mentioned."

4 "A supplement to the act, entitled "An act to alter and amend the act, entitled "An act to regulate the elections within this commonwealth."

5 "An act to authorise and require the State Treasurer to receive the interest arising on federal stock, the property of this commonwealth, and for other purposes."

recting the mode of selling unseated lands for taxes," were again read.

Whereupon,

Resolved, That the Senate recede therefrom; and

Ordered, That the Clerk inform the House of Representatives thereof.

After some time, The Clerk reported, that he had given the House of Representatives, the information directed on the said bills.

Moved by Mr. Pearson, seconded by Mr. Reed,

Resolved, That the Senate will meet at the court-house, in the borough of Lancaster, on the first Monday in January, 1805, and then and there, commence the trial of Edward Shippen, Esq. Chief Justice of the Supreme Court of Pennsylvania, and Jasper Yeates, and Thomas Smith, Esqrs. Assistant Justices of the same Court, on the article of impeachment, exhibited against them by the House of Representatives, in their name, and the name of the people of Pennsylvania; and that the Speaker be directed to issue an order, requiring them, the said Edward Shippen, Jasper Yeates, and Thomas Smith, Esqrs. to attend on the day aforesaid, to answer to the article of impeachment aforesaid; and, that the said order be served on them, and a copy of the said article of impeachment be delivered to each of them, the said Edward Shippen, Jasper Yeates, and Thomas Smith, Esqrs. at least thirty days before the day appointed for trial.

Ordered to lie upon the table.

Adjourned till 3 o'clock in the afternoon.

SAME DAY, *in the Afternoon.*

The Senate met according to adjournment.

Mr. Barton, from the committee appointed for that purpose, reported, that the bills, entitled as follow, have been duly compared, to wit:

1 "An act to provide for the inspection of ground black oak bark, intended for exportation."

2 "An act to authorise Alexander M'Intire, to erect a toll-bridge over French Creek."

The Senate resumed the consideration of the question on transcribing the bill, entitled "An act to dissolve the marriage contract between Thomas Dewees, and Mary his wife," postponed for the present, on the 15th ult. and on the question being put, *Shall the said bill be transcribed for the third reading?* it was determined in the affirmative.

On motion of Mr. Lyle, seconded by Mr. Pearson, and by unanimous consent, the said bill was read the third time.

Whereupon,

The yeas and nays, on the question *Shall this bill pass?* were required by Mr. Lane, and Mr. Morton; and on the question being put; the members voted as follow, to wit:

YEAS.		YEAS.	
Messrs.	1 Follmer,	Messrs.	8 Pearson,
	2 Harris,		9 Piper,
	3 Hartzell,		10 Poe,
	4 Heston,		11 Richards,
	5 Lower,		12 Steele,
	6 Lyle,		13 Whitehill, *Speaker.*
	7 M'Arthur,		
NAYS.		NAYS.	
Messrs.	1 Lane,	Messrs.	4 Porter,
	2 Mewhorter,		5 Reed,
	3 Morton,		

Thirteen yeas, and five nays; by which it appeared, that the question was determined in the affirmative.

Ordered, That the Clerk return the same to the House of Representatives, with information that the Senate have passed the said bill without amendment.

After some time, The Clerk reported that he had performed that service.

Mr. Harris, from the committee appointed for that purpose, reported, that the bill, entitled as above, has been duly compared.

The resolution presented in the forenoon, by Mr. Pearson, respecting the trial of three of the Judges of the Supreme Court, was again read, considered, and adopted.

The Clerk of the House of Representatives, returned the bill, entitled "An act to repeal part of the act, entitled "An act to enforce the due collection of the revenues of the state, and for other purposes therein mentioned," and informed the Senate, that the House of Representatives have passed the same, with amendments; in which they request the concurrence of Senate.

And he presented, for signature, the bills and address, entitled respectively as follow, to wit:

1 "An act to provide for the inspection of ground black oak bark, intended for exportation."

2 "An act to authorise Alexander M'Intire, to erect a toll-bridge over French Creek."

3 "An act to dissolve the marriage contract between Thomas Dewees, and Mary his wife."

4 "Address to the Governor, for the removal from office, of H. H. Brackenridge, one of the Judges of the Supreme Court."

And he informed that the House of Representatives have receded from their non-concurrence, in the amendments by Senate, on the bill, entitled "An act making appropriations for the expences and support of government, for the year 1804, and for other purposes."

The Speaker signed the bills and address presented for signature, numbered 1, 2, 3 and 4.

On motion, and by special order, the amendments by the House of Representatives on the bill, entitled "An act to repeal part of the act entitled "An act to enforce the due collection of the revenues of the state and for other purposes therein mentioned, were agaid read as follow, to wit:

Strike out the preamble.

Section I, strike out all that follows the word "allowed" in line 5, to the end of the section and insert "the sum of one thousand dollars per annum to pay clerk hire in the Treasury-Office"

Whereupon,

On the question, *Will the Senate agree to the said amendments?* being put, was determined in the negative.

Ordered, That the Clerk inform the House of Representatives thereof.

After some time, The Clerk reported that he had performed that service.

The Senate resumed the consideration of the bill, entitled "An act suspending for a limited time, the act entitled "An act to establish and confirm the place for holding the courts of justice and to provide for erecting the public buildings for the use of Armstrong county."

Section I, being under consideration;

The question, on agreeing thereto, being put; was determined in the negative, and so the bill was lost.

The report of the committee, read the 24th ult. to whom was referred, the petition of Arthur St. Clair, was again read, and the resolution therein contained adopted, to wit:

Resolved, That the petition of Arthur St. Clair be recommended to the early attention of the next Legislature.

Mr. Lane from the committee appointed for that pu
pose, reported, that the bills and address entitled as follo
have been presented to the Governor for his approbation,
wit:

1 "An act to enable James Wallis to obtain a title to
lot of land in the township of Charlestown, and county
Chester."

2 "An act to regulate the payment of costs on indi
ments."

3 "An act to authorise and require the State-Treasu
to receive the interest on federal stock the property
this commonwealth, and for other purposes."

4 "An act declaring part of big Fishing creek and Ca
wissa creek in the county of Northumberland, public hig
ways."

5 "An act to enable persons appointed to offices of pu
lic trust, to recover official documents appurtenant to t
said offices from persons detaining the same."

6 "An act to enable the proprietor or proprietors o
the Conewago canal, to receive a toll from the boats, raf
and vessels passing the same."

7 "An act authorising the State-Treasurer to transfer to
certain individuals the stock held by the state for their use
in the Loan-Office of the United States."

8 "An act to provide for the inspection of ground
black oak bark, intended for exportation."

9 "An act to authorise Alexander M'Intire to erect a
toll-bridge over French creek."

10 "An act to dissolve the marriage contract between
Thomas Dewees, and Mary his wife."

11 "Address to the Governor, for the removal from of
fice, of Hugh Henry Brackenridge, one of the Judges of
the Supreme Court."

12 "An act directing the Register-General and State-Treasurer to exhibit printed statements of their accounts."

13 "An act for the election of Constables in the township of Pittsburg."

14 "A supplement to the act entitled "An act for establishing an Health-Office, and to secure the city and port of Philadelphia from the introduction of pestilential and contagious diseases."

Adjourned until 9 o'clock to-morrow morning.

TUESDAY, April 3, 1804.

The Senate met according to adjournment.

Mr. Pearson, from the commitee of accounts, made further report, as follow, to wit:

That the committee have examined the account of George Bryan, Clerk of the Senate, and find that he has made the following disbursements, to wit:

Paid for Ellicott's Journal, 3 copies -	£	18	
Paid for alteration in stove-pipe, and other iron work - - -		27	80
Paid Thomas Dobson for supplementary volumes of the Encyclopediæ -		34	
Paid Do. for stationary - -		1	25
Paid Adam Hart, door-keepers' account for sundries - - -		17	5
Paid Miller and Getz accounts for binding books - - -		24	52 1-2
Paid for Tucker's Blackstone - -		20	
Paid Frederick Steinman for sundries -		19	41
Paid Jacob Eberman for candles - -		23	38
Paid J. Humrich for sundries - -		4	66
Paid G. Lechler for mending chairs, &c. -		6	25
Amount Carried forward,	£	196	32 1-2

Amount brought forward,	$ 196	32 1-2
Paid sundry small accounts - -	12	77
Paid Zachariah Poulson for newspapers -	18	
Paid Bronson & Chauncey for ditto -	5	26
	$ 232	35 1-2
Deduct a warrant issued in favor of the Clerk 12th January last -	200	
Balance due the Clerk,	$ 32	35 1-2

And, that the following accounts remain unpaid, to wit:

William Duane for newspapers - -	$ 40	60
Wilson & Blackwell do. - -		48
Samuel Relf - do. - - -	2	87 1-2
Henry Miller book-binding - -	1	33
William Dickson stationary - - -	52	75
Stacy Potts, jun. transcribing bills -	154	87 1-2
George Moore, postage on newspapers -	27	27
Adam Hart, for twine - - -		28
	$ 280	44

The committee therefore, offer the following resolution, to wit:

Resolved, That the Speaker draw a warrant on the State-Treasurer, in favor of George Bryan, Clerk of the Senate, for $ 32 35 cents; and also one for $ 280 44 to satisfy the above accounts.

Whereupon,

The said report was, on motion, and by special order, again read, considered, and the resolution therein contained, adopted; and warrants were accordingly so drawn.

Moved by Mr. Pearson, seconded by Mr. Reed.

Resolved by the Senate and House of Representatives of the Commonwealth of Pennsylvania,

That the Secretary of the Commonwealth be, and he is hereby enjoined and required, to transmit to the prothonotaries of the respective counties, the necessary number of copies of the edition of the laws of this Commonwealth, printed by Mathew Carey and John Bioren, for the use of the justices of the peace of the said counties respectively, as they may be entitled to receive the same, agreeably to a resolution of the General Assembly, of the 14th January last, and the statements transmitted by the said prothonotaries to the office of the Secretary, aforesaid.

On motion, and by special order, the said resolution was again read, considered, and adopted.

Ordered, That the Clerk present the same to the House of Representatives, for concurrence.

After some time, The Clerk reported that he had performed that service.

On motion of Mr. Pearson, seconded by Mr. Reed,

The following resolution was twice read, considered and adopted, to wit:

Resolved, That a warrant be drawn by the Speaker, on the State-Treasurer, in favor of George Bryan, Clerk of the Senate, for $ 200 to defray the incidental expences thereof, he to be accountable therefor.

And a warrant was accordingly so drawn.

The Secretary of the Commonwealth presented a message from the Governor, together with the bill therein mentioned.

The message was read; a copy of which is as follows, to wit:

To the Senate and House of Representatives of the Commonwealth of Pennsylvania.

GENTLEMEN,

I have perused and considered the bill, entitled "An act to empower the administrators to the estates, and guardians of the minor children of Benjamin Lodge, and James Car-

nahan, deceased, to sell and convey, certain real estates," and as I do not approve it, have directed the Secretary to return it to the Senate, in which it originated; with my reasons for not assenting to its being passed into a law.

My objection to this bill is, that it appears to me to be inoperative and ineffectual; as the laws of Kentucky alone can direct the manner in which real estates, lying within that state can be acquired, aliened, or lost. Besides, I cannot consent that the real estate of the minors, mentioned in the bill, should be sold, unless other reasons shall be assigned, than those therein alledged.

THOMAS M'KEAN.

Lancaster, April 2, 1804.

Whereupon,

The said bill was taken up for re-consideration; and on the question, *Shall this bill pass?* the yeas and nays, according to the constitution in such cases, were required; and on the question being put, the members voted as follow, to wit:

YEAS.		YEAS.	
Messrs.	1 Harris,	Messrs.	4 Piper,
	2 Hartzell,		5 Poe,
	3 Morton,		

NAYS.		NAYS.	
Messrs.	1 Follmer,	Messrs.	7 Pearson,
	2 Heston,		8 Porter,
	3 Lane,		9 Reed,
	4 Lower,		10 Richards,
	5 Lyle,		11 Whitehill,
	6 M'Arthur,		*Speaker.*

Five yeas, and eleven nays; by which it appeared, that the question was determined in the negative, and so the bill was lost.

The Clerk of the House of Representatives returned the "Resolution for the further distribution of the laws of this state, printed by Carey and Bioren," and informed, that the House of Representatives have passed the same with an amendment, in which the concurrence of the Senate is requested; which amendment is as follows, to wit:

"And it shall be the duty of the prothonotaries respectively, to take receipts from the justices to whom the said laws shall be delivered, and to transmit such receipts to the office of the Secretary of the Commonwealth, in order that it may be ascertained, whether the same have been distributed agreeably to the directions of the Legislature."

Whereupon,

On motion, and by special order, the said amendment was again read, considered, and concurred.

Ordered, That the Clerk inform the House of Representatives thereof.

After some time, The Clerk reported that he had performed that service.

The Secretary of the Commonwealth presented a message from the Governor, together with the two last bills mentioned therein; and informed, that he had returned the other bills, mentioned in the message, to the House of Representatives.

The message was read; a copy of which is as follows, to wit:

To the Senate and House of Representatives of the Commonwealth of Pennsylvania.

GENTLEMEN,

I have this day approved, and signed the following acts of the General Assembly, and directed the Secretary to return the same to the respective Houses, in which they originated, to wit:

1 "An act declaring part of big Fishing creek and Catawissa creek in the county of Northumberland, public highways."

2 "A supplement to the act entitled "An act for establishing an health office, and to secure the city and port of Philadelphia from the introduction of pestilential and contagious diseases."

3 "An act to authorise the proprietor or proprietors of the Conewago canal, to receive a toll from the boats, rafts, or vessels passing the same."

4 "An act to authorise and require the State-Treasurer to receive the interest on federal stock the property of this commonwealth, and for other purposes."

5 "An act authorising the State-Treasurer to transfer to certain individuals the stock held by the state for their use in the Loan-Office of the United States."

6 "An act to enable James Wallis to obtain a title to a lot of land in the township of Charlestown, and county of Chester."

7 "An act to enable persons appointed to offices of public trust, to recover official documents appurtenant to the said offices from persons detaining the same."

8 "An act directing the Register-General and State-Treasurer, to exhibit printed statements of their accounts."

9 "An act for the election of constables in the township of Pittsburg."

10 "An act to dissolve the marriage contract between Thomas Dewees, and Mary his wife."

11 "An act to authorise Alexander M'Intire to erect a toll-bridge over French creek."

12 "An act to provide for the inspection of ground black oak bark, intended for exportation."

THOMAS M'KEAN.

Lancaster, April 2, 1804.

Mr. Barton, from the committee appointed for that purpose, reported, that the bills and resolution, entitled as follow, have been duly compared, to wit:

1 "An act to ascertain the rights of this state to lands, lying north and west of the rivers Ohio and Allegheny, and Conewango Ceek."

2 "An act directing the mode of selling unseated lands for taxes."

3 "An act for the punishment of perjury, or subornation of perjury."

4 "An act making appropriations for the expences and support of government, for the year 1804, and for other purposes."

5 "An act erecting certain election districts, and making alterations in other districts, within this Commonwealth."

6 "A supplement to the act, entitled "An act for laying out and keeping in repair, the public highways within this Commonwealth, and for laying out private roads."

"Resolution for the further distribution of Carey and Bioren's edition of the laws of Pennsylvania."

The Clerk of the House of Representatives presented to the Speaker, for signature, the above-mentioned bills and resolution.

Whereupon,

The Speaker signed the said bills, and resolution.

After some time,

Mr. Lane from the committee appointed for that purpose, reported, that the above-mentioned bills and resolution, have been presented to the Governor for his approbation.

The Clerk of the House of Representatives, presented an extract from the journal of that House; a copy of which is as follows, to wit:

"*In the House of Representatives, April* 3, 1804.

"Resolved, That a committee be appointed, to join a committee of the Senate, (if the Senate shall appoint such committee) to inform the Governor, that the Legislature have agreed to adjourn this day; and to enquire whether he has any further communications to make at this time—and

"Ordered, That Messrs. Holgate, Findley, and Heister, be the committee for that purpose."

Adjourned till 5 o'clock in the afternoon.

SAME DAY, *in the Afternoon.*

The Senate met according to adjournment.

The Secretary of the Commonwealth, presented a message from the Governor, together with the resolution therein mentioned; and informed, that he had returned the bills mentioned in the message, to the House of Representatives.

The message was read; a copy of which is as follows, to wit:

To the Senate and House of Representatives of the Commonwealth of Pennsylvania.

GENTLEMEN,

I have this day approved, and signed the following acts of the General Assembly, and directed the Secretary to return the same to the respective Houses in which they originated, viz.

1 "An act erecting certain election districts, and making alterations in other districts, in certain counties within this Commonwealth."

2 "A supplement to the act, entitled "An act for laying out and keeping in repair, the public highways within this commonwealth, and for laying out private roads."

3 "An act for ascertaining the right of this state to certain lands, lying north and west of the rivers Ohio and Allegheny, and Conewango Creek."

4 "An act for the punishment of perjury, or subornation of perjury."

5 "An act making appropriations for the expences and support of government, for the year 1804, and for other purposes."

6 "An act directing the mode of selling unseated lands for taxes."

7 "A resolution respecting the distribution of Carey and Bioren's edition of the laws."

THOMAS M'KEAN.

Lancaster, April 3, 1804.

On motion of Mr. Porter, seconded by Mr. Reed, the following resolution was twice read, considered, and adopted, to wit:

Resolved, That a committee be appointed, to join a committee of the House of Representatives, to inform the Governor, that the General Assembly is now ready to adjourn, and to enquire whether he has any further communications to make.

Ordered, That Mr. Porter, Mr. Reed, and Mr. Lower, be the committee for that purpose.

Mr. Pearson, from the committee appointed for that purpose, made report; and the same was read, as follows, to wit:

The committee, appointed to join a committee of the House of Representatives, and ascertain particularly, what laws, passed this session, should be printed in the newspa-

pers, at the public expence, in pursuance of a resolution of the General Assembly, passed in the present session; have agreed to recommend to their respective Houses, that the following laws, in addition to those reported on the 29th ult. be published in the newspapers, to wit:

1 "An act for the recovery of debts and demands, not exceeding one hundred dollars, before a justice of the peace, and for the election of constables, and for other purposes."

2 "An act to extend and continue an act, entitled "A supplement to the act, entitled "An act to complete the benevolent intention of the Legislature of this Commonwealth, by distributing the donation lands to all who are entitled thereto."

3 "A supplement to the act, entitled "An act concerning divorces and alimony."

4 "A further supplement to the act, entitled "An act directing the descent of intestates' real estates, and distribution of their personal estates, and for other purposes therein mentioned."

5 "An act to provide for the payment of certain balances of purchase money yet due, and remaining charged on lands which have been patented on warrants obtained since surveys were originally made, in pursuance of old proprietary warrants and location, and for other purposes."

6 "An act making compensation to brigade inspectors, for printing blank forms."

7 "A supplement to the act entitled "An act to alter and amend the act entitled "An act to regulate the general elections within this commonwealth."

8 "An act for annexing part of Luzerne county, to the county of Lycoming."

9 "A supplement to the act, entitled "An act for establishing an health-office, and to secure the city and port of

Philadelphia from the introduction of pestilential and contagious diseases."

10 "An act to authorise the proprietor or proprietors of the Conewago canal, to receive a toll, from the boats, rafts or vessels, passing the same."

11 "An act enabling persons appointed to offices of public trust, to recover official documents appurtenant to the said offices, from persons detaining the same."

12 "An act to provide for the inspection of ground black oak bark, intended for exportation."

13 "A supplement to the act, entitled "An act for laying out and keeping in repair, the public highways within this commonwealth, and for laying out private roads."

14 "An act for ascertaining the right of this state to certain lands, lying north and west of the rivers Ohio and Allegheny, and Conewango Creek."

15 "An act for the punishment of perjury, or subornation of perjury."

16 "An act making appropriations for the expences and support of government, for the year 1804, and for other purposes."

17 "An act directing the mode of selling unseated lands for taxes."

18 "A Resolution respecting the distribution of Carey and Bioren's edition of the laws."

Whereupon,

On motion, and by special order, the said report was again read, considered, and adopted.

On motion of Mr. Steele, seconded by Mr. Pearson,

The following resolution was twice read, considered, and adopted, to wit:

Resolved, That the Clerk be instructed, to ascertain with precision, how far the printers for the Senate, have complied with their contracts, agreeably to a resolution, passed the 19th of February, 1802; and that any deficiencies therein, shall be deducted in the final settlement of their accounts.

On motion of Mr. Pearson, seconded by Mr. Reed,

The following resolution was twice read, considered, and adopted, to wit:

Resolved, That the Clerk of the Senate, be directed to furnish the Secretary of the Commonwealth with a transcript of the titles of those laws passed in the present session, which are to be published in the newspapers, at the public expence:—and

Ordered, That it be presented to the House of Representatives, for concurrence.

After some time, The Clerk reported that he had performed that service.

Mr Porter, from the committee, appointed to wait upon the Governor, and inform his excellency, that the General Assembly have agreed to adjourn, *sine die*, this day, and to know whether he had any further communication to make to the Legislature, reported that the committee had performed that service, and that the Governor was pleased to say, he had no further communications to make.

A committee from the House of Representatives being introduced, informed the Senate, that the House of Representatives have finished their business, and are now ready to adjourn.

On motion, Mr. Steele was appointed a committee to acquaint the House of Representatives that the Senate have finished their business, and are now ready to adjourn.

After some time, Mr. Steele reported that he had performed that service.

The following resolution was laid upon the Clerks' table by Mr. Porter and Mr. Hartzell, and the same was read to wit:

Resolved, That the Senate vote their thanks to the Speaker, for his impartial and judicious conduct during the present session.

And, on the question, on agreeing thereto, being put by the Clerk; it was unanimously adopted.

Whereupon,

The Speaker rose, and expressed the high sense he felt of the approbatory vote of the Senate, in the discharge of his duties as Speaker.

Mr. Lane, from the committee appointed for that purpose, reported, that the acts passed in the present session have been deposited in the Rolls-Office, the titles of which are as follow, to wit:

1 An act to revive the act, entitled "A supplement to the act, entitled "An act to extend the powers of the justices of the peace of this state." Passed January 2, 1804.*

2 An act for the inspection of butter, intended for exportation. Approved January 7, 1804.

3 An act to ratify on behalf of the state of Pennsylvania, an amendment to the constitution of the United States, relative to the choosing of a President and Vice-President of the United States. Approved January 7, 1804.

4 An act altering and erecting certain election districts, in the county of Somerset. Approved January 7, 1804.

5 An act to quiet the claim of James Gunn, to the estates real and personal of General James Gunn, deceased. Approved January 7, 1804.

* *This act was returned by the Governor, with his objections, and passed by a constitutional majority of the General Assembly.*

6 An act authorising Elizabeth Shiner, Christian Shiner and John Neyman, administrators of Christophel Shiner, deceased, to convey a certain messuage and tract of land, situate in New-Hanover township, in the county of Montgomery. Approved January 14, 1804.

7 An act enabling certain trustees, to sell and dispose of the real estate of Henry Meckley, a lunatic. Approved January 14, 1804.

8 An act directing the mode of taking testimony in cases of complaint against justices of the peace. Approved January 14, 1804.

9 An act for the relief of John Loney. Approved January 14, 1804.

10 An act to alter the limits of the borough of Beaver. Approved January 14, 1804.

11 An act to dissolve the marriage contract between Samuel Swan, and Hannah his wife. Approved January 20, 1804.

12 An act in aid of the Northumberland academy, in the town and county of Northumberland. Approved January 20, 1804.

13 An act erecting the townships of Rockhill, Bedminster, and Hiltown, in the county of Bucks, into an election district. Approved January 20, 1804.

14 An act for the relief of Alexander Boatiçar. Approved January 30, 1804.

15 A supplement to the act, entitled "An act to enable the owners of Greenwich island, to embank and drain the same, to keep the outside banks and dams in good repair for ever, and to raise a fund to defray sundry contingent yearly expences accruing thereon." Approved January 30, 1804.

16 A supplement to an act, entitled "An act to provide for the erection of houses, for the employment and support of the poor, in the counties of Chester and Lancaster." Approved January 30, 1804.

17 An act dissolving the marriage between Cornelius Burk and Elizabeth his wife. Approved January 30, 1804.

18 An act declaring Le Pœuf creek, in the county of Erie, from the town of Waterford, to Brotherton's mills, a public highway. Approved January 30, 1804.

19 An act to incorporate the Union insurance company of Philadelphia. Approved February 6, 1804.

20 An act to incorporate the Phœnix insurance company of Philadelphia. Approved February 6, 1804.

21 An act to continue in force for a limited time, the act, entitled "An act for instituting a board of property, and for other purposes therein mentioned." Approved February 6, 1804.

22 An act to raise by way of lottery, a sum not exceeding eight thousand dollars, for the use and benefit of the minister, wardens, and vestry of the African Episcopal church of Saint Thomas, in the city of Philadelphia. Approved February 6, 1804.

23 An act appointing a trustee in the county of Centre. Approved February 6, 1804.

24 An act declaring Wyosox creek from the mouth thereof, to Jacob Meyers's mill-dam, in the county of Luzerne, a public stream or highway. Approved February 6, 1804.

25 An act to provide for the erection of a house for the employment and support of the poor in the county of York. Approved February 6, 1804.

26 An act prohibiting the commissioners of the respective counties of this Commonwealth, from selling, for a limited time, unseated lands for taxes. Approved February 8, 1804.

27 An act to regulate the fisheries in the river Delaware and its branches and for other purposes. Approved February 8, 1804.

28 An act for the relief of Alexander Patterson. Approved February 10, 1804.

29 An act to enable the Governor of this Commonwealth to incorporate a company for making an artificial road from Erie to Waterford. Approved February 13, 1804.

30 An act declaring Clearfield creek, in the county of Huntingdon, and Sinnemahoning creek, in the county of Lycoming, public highways. Approved February 13, 1804.

31 An act to provide for the erection of a house, for the employment and support of the poor, in the county of Delaware. Approved February 13, 1804.

32 An act for the relief of George Stevenson. Approved February 13, 1804.

33 A supplement to an act for establishing a nightly watch, providing lamps and supporting pumps for public use, in the borough of Lancaster, in the county of Lancaster; passed the fourth day of April, one thousand seven hundred and ninety two. Approved February 20, 1804.

34 A supplement to an act, entitled "An act to empower the overseers and guardians of the poor of the several townships of this commonwealth, to recover certain fines, penalties and forfeitures, and for other purposes," passed the fourth day of April, one thousand eight hundred and three. Approved February 20, 1804.

35 An act altering the place of holding elections in Southampton township, in Somerset county. Approved February 20, 1804.

36 An act for the relief of John Gilchrist. Approved February 20, 1804.

37 An act to empower the heirs, executors or administrators, to the estate of John Hirst, senior, deceased, to sell and convey a certain lot or piece of ground, with the buildings thereon erected, in the city Philadelphia. Approved February 20, 1804.

38 An act authorising and directing the Comptroller and Register-Generals to adjust and settle a certificate with John Evans, lawful administrator of the estate of Thomas M'Farlane, deceased, in whose name it was issued. Approved February 27, 1804.

39 An act declaring Mushannon creek (a boundary line between Centre and Huntingdon counties) a public highway. Approved March 5, 1804.

40 An act to enable the Governor of this commonwealth to incorporate a company, for making an artificial road from Lancaster, through Elizabeth-town, to Middletown. Approved March 5, 1804.

41 An act for the relief of George Eicholtz. Approved March 5, 1804.

42 An act to enable the Governor of this commonwealth to incorporate a company for making an artificial or turnpike-road, from the intersection of Bristol and Newtown roads, at the rock in Oxford, through Bustleton and Smithfield, in the county of Philadelphia, to the Buck tavern in Southampton, in the county of Bucks. Approved March 5, 1804.

43 An act appointing the place whereupon to erect the court-house and public offices for the county of Crawford. Approved March 5, 1804.

44 An act to alter the place of holding the elections in the seventh election district, in the county of Huntingdon. Approved March 5, 1804.

45 An act authorising the Governor of this commonwealth to incorporate a company, for making an artificial road from the western side of Laurel-hill, near Union-Town, to the state line, in a direction towards Cumberland, in the state of Maryland. Approved March 5, 1804.

46 An act declaring part of Conedogwinet Creek, in the

county of Cumberland, a public highway. Approved March 5, 1804.

47 An act to alter an act, entitled "An act to erect the town of Pittsburg, in the county of Allegheny, into a borough, and for other purposes therein contained. Approved March 5, 1804.

48 An act to enable the administrators of Conrad Weiser, to sell, and make title to certain lots, adjoining the town of Selinsgrove, in Northumberland county. Approved March 5, 1804.

49 An act to erect Somerset town, in the county of Somerset, into a borough. Approved March 5, 1804.

50 An act to enable the Governor of this Commonwealth to incorporate a company to make an artificial road from the top of Chesnut-hill, through Flour-town, to the Springhouse tavern, in Montgomery county. Approved March 5, 1804.

51 An act to incorporate the Philadelphia Bank. Approved March 5, 1804.

52 An act for the relief of Robert Harris. Approved March 12, 1804.

53 An act authorising Joseph Potts and Joseph Thomas, administrators of Martha Potts, deceased, to sell and convey a certain messuage and lot of land, in the township of Plymouth, and county of Montgomery. Approved March 12, 1804.

54 An act to authorise the Governor of this Commonwealth, to incorporate a company for erecting a bridge over the river Delaware, near the town of Milford, in the county of Wayne. Approved March 12, 1804.

55 An act erecting one new election district, and changing the places of holding elections in two other districts in the county of Northumberland. Approved March 12, 1804.

56 An act to erect Weisenburg and Lynn townships, in the county of Northampton, into a separate election district. Approved March 12, 1804.

57 An act to enable Alexander M'Pherson to obtain a title to a lot of land in the township of Sadsbury, and county of Chester. Approved March 12, 1804.

58 A supplement to the act, entitled, "An act to enable executors and administrators, by leave of court, to convey lands and tenements contracted for with their decedents, and for other purposes therein mentioned." Approved March 12, 1804.

59 An act to incorporate the Delaware insurance company of Philadelphia. Approved March 12, 1804.

60 An act to enable and enforce the owners and possessors of a certain tract of marsh meadow, situate partly in the township of Lower Chichester and the township of Delaware, to keep the banks, dams, sluices and flood-gates in repair, and for other purposes. Approved March 19, 1804.

61 An act to raise by way of lottery, a sum not exceeding ten thousand dollars, for the use and benefit of the trustees and members of the fourth Presbyterian church in the city of Philadelphia. Approved March 19, 1804.

62 An act to erect a new election district in the county of Franklin. Approved March 19, 1804.

63 An act enjoining certain duties on the Surveyor-General. Approved March 19, 1804.

64 An act for the relief of Alexander Simonton. Approved March 19, 1804.

65 An act to provide for the more effectual education of the children of the poor, gratis. Approved March 19, 1804.

66 An act to raise by way of lottery, a sum of money,

not exceeding two thousand and sixty dollars, to finish and complete two churches, in the county of Franklin. Approved March 19, 1804.

67 An act for the relief of Jacob Walter, the legal representative of Michael Walter, deceased. Approved March 19, 1804.

68 An act to appropriate a sum of money, for viewing, marking, and opening a road from Tuscarora Valley, in Mifflin county, to Shearman's Valley, in Cumberland county. Approved March 19, 1804.

69 An act for the relief of the heirs of captain John Brady, late of Northumberland county, deceased. Approved March 19, 1804.

70 An act to enable the Governor of this commonwealth to incorporate a company, to make an artificial road from the Susquehanna river, at or near Wright's ferry, to the borough of York. Approved March 19, 1804.

71 An act to enable Margaret Keim to sell and convey a certain tract of land in Middletown township, Cumberland county. Approved March 19, 1804.

72 An act to regulate the administering of certain oaths. Approved March 19, 1804.

73 An act for the relief of Peter Keplinger. Approved March 19, 1804.

74 An act to authorise the select and common councils of the city of Philadelphia, to erect market-houses in the said city. Approved March 19, 1804.

75 An act to enable the Governor of this commonwealth to incorporate a company, for making an artificial road, by the best and nearest route, from the north-eastern branch of the Susquehanna river, between the Lower Whapehawley and Nescopeck creeks, in Luzerne county, to the north side of Nesquehoning creek, near its entrance into the river Lehigh. Approved March 19, 1804.

76 An act for the relief of the supervisors of Somerset township, in Somerset county, for the year one thousand eight hundred and one. Approved March 26, 1804.

77 An act to incorporate the Philadelphia insurance company. Approved March 26, 1804.

78 An act to erect parts of Lycoming, Huntingdon, and Somerset counties, into separate county districts. Approved March 26, 1804.

79 An act in confirmation of a partition made of certain lands in Lycoming county. Approved March 26, 1804.

80 An act transferring the powers of the trustees of the county of Adams, to the commissioners of said county, and authorising them to levy a further sum for completing the public buildings therein. Approved March 26, 1804.

81 An act for the relief of Elizabeth Febiger. Approved March 26, 1804.

82 An act for the recovery of debts and demands, not exceeding one hundred dollars, before a justice of the peace, and for the election of constables, and for other purposes. Passed March 28, 1804.*

83 An act authorising the Governor to incorporate a company for making an artificial road in Wayne and Luzerne counties. Approved March 29, 1804.

84 An act granting relief to the heirs of Michael Irick, deceased. Approved March 29, 1804.

85 An act to incorporate an academy or public school in the town of Norris, and county of Montgomery, and for other purposes therein mentioned. Approved March 29, 1804.

86 An act altering and extending the powers of the cor-

* *This act was kept by the Governor ten days, consequently it became a law without his signature.*

poration of the borough of Bristol. Approved March 29, 1804.

87 An act to erect the town of Morrisville into a borough. Approved March 29, 1804.

88 An act to extend and continue an act, entitled "A supplement to the act, entitled "An act to complete the benevolent intention of the Legislature of this Commonwealth, by distributing the donation lands to all who are entitled thereto." Approved March 29, 1804.

89 An act for the relief of Marcus Hulings, jun. Approved March 29, 1804.

90 A supplement to an act, entitled "An act to authorise the Governor of this commonwealth to incorporate a company for erecting a bridge over the river Delaware, at or near Trenton. Approved April 2, 1804.

91 An act conferring certain powers on the commissioners of Berks county, and for other purposes. Approved April 2, 1804.

92 An act authorising Jacob Eichelberger and Frederick Shultz, to sell and convey a certain lot of land in Heidelberg township, in the county of York, belonging to the German Lutheran congregation in and near Hanover, in the said county. Approved April 2, 1804.

93 An act for dividing the borough of Lancaster into two election wards. Approved April 2, 1804.

94 An act to empower Chambers Gaw, to sell and convey certain real estate therein mentioned and for other purposes. Approved April 2, 1804.

95 A supplement to the act, entitled "An act concerning divorces and alimony. Approved April 2, 1804.

96 An act to provide for opening and improving a road through Igoe's narrows, in the county of Huntingdon. Approved April 2, 1804.

97 An act for rebuilding the bridges over Swatara creek and Deep creek, on the Tulpehocken road, in the county of Berks. Approved April 2, 1804.

98 A further supplement to the act, entitled "An act directing the descent of intestates' real estates, and distribution of their personal estates, and for other purposes therein mentioned." Approved April 2, 1804.

99 An act to provide for the payment of certain balances of purchase money yet due, and remaining charged on lands which have been patented on warrants obtained since surveys were originally made, in pursuance of old proprietary warrants and location, and for other purposes. Approved April 2, 1804.

100 An act for the relief of David Jackson. Approved April 2, 1804.

101 An act for the relief of Nicholas Reim. Approved April 2, 1804.

102 An act making compensation to brigade inspectors, for printing blank forms. Approved April 2, 1804.

103 An act to provide for the copying a certain ancient book of records, in the office of the recorder of deeds, in the county of Chester. Approved April 2, 1804.

104 A supplement to the act, entitled "An act to establish a board of wardens for the port of Philadelphia, and for the regulation of pilots and pilotages, and for other purposes therein mentioned." Approved April 2, 1804.

105 A supplement to the act, entitled "An act to alter and amend the act entitled "An act to regulate the general elections within this commonwealth." Approved April 2, 1804.

106 An act for annexing part of Luzerne county, to the county of Lycoming. Approved April 2, 1804.

107 An act to authorise Alexander M'Intire, to erect a toll-bridge over French creek. Approved April 3, 1804.

108 An act directing the Register-General and State-Treasurer, to exhibit printed statements of their accounts. Approved April 3, 1804.

109 An act for the punishment of perjury, or subornation of perjury. Approved April 3, 1804.

110 An act to provide for the inspection of ground black oak bark, intended for exportation. Approved April 3, 1804.

111 An act to dissolve the marriage contract between Thomas Dewees, and Mary his wife. Approved April 3, 1804.

112 An act directing the mode of selling unseated lands for taxes. Approved April 3, 1804.

113 An act erecting certain election districts, and making alterations in other districts, in certain counties within this Commonwealth. Approved April 3, 1804.

114 A supplement to the act entitled "An act for establishing an health office, and to secure the city and port of Philadelphia from the introduction of pestilential and contagious diseases. Approved April 3, 1804.

115 An act for ascertaining the right of this state to certain lands, lying north and west of the rivers Ohio and Allegheny, and Conewango Creek. Approved April 3, 1804.

116 An act to authorise and require the State-Treasurer to receive the interest on federal stock the property of this commonwealth, and for other purposes. *Approved April 3, 1804.*

117 An act enabling persons appointed to offices of public trust, to recover official documents appurtenant to the said offices, from persons detaining the same. Approved April 3, 1804.

118 An act for the election of constables in the township of Pittsburg. *Approved April 3, 1804.*

119 A supplement to the act, entitled "An act for laying out and keeping in repair, the public highways within this commonwealth, and for laying out private roads." Approved April 3, 1804.

120 An act to authorise the proprietor or proprietors of the Conewago canal, to receive a toll, from the boats, rafts or vessels, passing the same. Approved April 3, 1804.

121 An act to enable James Wallis to obtain a title to a lot of land in the township of Charlestown, and county of Chester. *Approved April 3, 1804.*

122 An act declaring part of big Fishing creek and Catawissa creek in the county of Northumberland, public highways. *Approved April 3, 1804.*

123 An act making appropriations for the expences and support of government, for the year 1804, and for other purposes. Approved April 3, 1804.

124 An act authorising the State-Treasurer to transfer to certain individuals the stock held by the state for their use in the Loan-Office of the United States. *Approved April 3, 1804.*

RESOLUTIONS.

1 A resolution requiring the Comptroller-General to lay before the Legislature, a statement of such proceedings, if any, as have been had, agreeably to a resolution passed 18th February, 1802. *Approved December 28, 1803.*

2 A resolution for distributing the laws of the state, printed by Mathew Carey and John Bioren. *Approved January 14, 1804.*

3 A resolution authorising the Comptroller-General to employ counsel to prosecute the suit brought by the commonwealth, against the heirs and devisees of David Rittenhouse, deceased. *Approved March 19, 1804.*

4—A resolution respecting the printing of the laws in the newspapers, at the public expence. *Approved April 2, 1804.*

5 A resolution for the printing of certain laws extending the jurisdiction of the justices of the peace. Approved *April 2, 1804.*

6 A resolution for the further distribution of Carey and Bioren's edition of the laws of Pennsylvania. Approved *April 3, 1804.*

Thereupon,

The Senate adjourned *Sine Die.*

GEORGE BRYAN,

Clerk of the Senate.

EXPIRATION OF THE APPOINTMENTS OF THE MEMBERS OF SENATE.

1804.

John Pearson,
William Rodman,
Christian Lower,
Matthias Barton,
Aaron Lyle,
James Harris.

1805.

John Porter,
Jonas Hartzell,
Robert Whitehill,
John Piper,
Thomas Morton,
William M'Arthur,
William Reed,

1806.

James Gamble,
John Kean,
John Heister,
John Steele,
Jacob Follmer,
Presley Carr Lane.

1807.

Edward Heston,
Thomas Mewhorter,
John Richards,
Rudolph Spangler,
James Poe,
James Brady.

INDEX

TO THE

JOURNAL

OF THE

SENATE

OF

PENNSYLVANIA.

SESSION 1803—4.

LANCASTER,
PRINTED BY WILLIAM DICKSON.
1807.

Exhibit C

JOURNAL

OF THE

COURT OF IMPEACHMENT

FOR THE TRIAL OF

ROBERT PORTER, ESQUIRE,

President Judge of the third Judicial District of Pennsylvania,

FOR

MISDEMEANORS IN OFFICE,

BEFORE

THE SENATE

OF THE

COMMONWEALTH OF PENNSYLVANIA.

HARRISBURG:

PRINTED BY CAMERON & KRAUSE,

1823.

TUESDAY, December 13, 1825.

At half past three o'clock, P. M. the Senate proceeded to organize themselves as a court of impeachment. The following members present:

Henry Allshouse, William Audenried, Thomas Burnside, Lewis Dewart, Stephen Duncan, James Dunlop, George Emlen, Christian Garber, Daniel Groves, John Hamilton, William G. Hawkins, Mathew Henderson, Zephaniah Herbert, James Kelton, John Kerlin, Henry King, Ely Kitchin, Jonathan Knight, John Leech, Joel K. Mann, William M'Ilvain, Robert Moore, Alexander Ogle, Samuel Power, Adam Ritscher, John Ryon, junr. George Schall, John St. Clair, Moses Sullivan, Joel B. Sutherland, Henry Winter, Alexander Mahon, *President.*—32

The oath prescribed by the constitution, and in the form required by the resolution of the senate, adopted on this day, was administered to the president, by Mr. Burnside,

After which,

Mr. Sutherland asked leave to be excused from serving as a member of the court, on account of his having signed the articles of impeachment, as Speaker of the House of Representatives.

Which was not agreed to.

Mr. King asked leave to be excused from serving as a member of the court, on account of his being a witness on the part of the commonwealth.

Which was agreed to.

Mr. Sullivan asked leave to be excused from serving as a member of the court, on account of his having been, at the time the charges were preferred, a member of the House of Representatives.

On the question,

Will the court excuse Mr. Sullivan from serving?

The yeas and nays were required by Mr. Emlen and Mr. Ogle, and were as follow:

YEAS.		YEAS.	
Messrs.	Burnside,	Messrs.	Kitchin,
	Dewart,		Knight,
	Duncan,		M'Ilvain,
	Dunlop,		Schall,
	Emlen,		Sutherland,
	Henderson,		Winter,
	Kelton,		Mahon, president, 15.
	Kerlin,		

NAYS.		NAYS.	
Messrs.	Allshouse,	Messrs. Mann,	
	Audenried,	Moore,	
	Garber,	Ogle,	
	Groves,	Power,	
	Hamilton.	Ritscher,	
	Hawkins,	Ryon,	
	Herbert,	St. Clair,	15.
	Leech,		

So it was determined in the negative.

The president administered the oath required and prescribed, to the following members, viz: Messrs Herbert, Power, Mann, St. Clair, M'Ilvain, Dunlop, Moore, Henderson, Hamilton, Winter, Ogle, Audenried, Ryon, Hawkins, Duncan Kelton, Burnside, Emlen, Kitchin, Sutherland and Dewart, who subscribed their respective names thereto.

And the affirmation, to Messrs. Schall, Garber, Groves, Ritscher, Allshouse, Leech, Knight, Sullivan and Kerlin.

The court being now duly organized and opened by proclamation.

On motion,

Ordered, that the clerk give notice to the House of Representatives, that the court of impeachment for the trial of Robert Porter, Esq. president judge of the courts of common pleas for the third judicial district of Pennsylvania, is ready to proceed to business.

In a few minutes the managers. viz: Messrs. Maclean, Irwin, Thomas, Cunningham, Farrel, W. B. Forster and M'Reynolds, accompained by the House of Representatives, in committee of the whole, entered and took the seats assigned them respectively.

The president ordered Robert Porter, Esq. president judge of the courts of common pleas of the third judicial district of Pennsylvania, to be called; and on his appearance at the bar, the president directed John De Pui, clerk of the Senate, to read the articles of impeachment preferred by the late House of Representatives, in their own name and in the name of the people of Pennsylvania, a copy of which is as follows:

ARTICLES of impeachment exhibited by the House of Representatives of the commonwealth of Pennsylvania, in their own name and in the name of the people of Pennsylvania, against Robert Porter, Esquire, president judge of the third judicial district of the commonwealth of Pennsylvania, in support of their impeachment against him for misdemeanors in office.

ARTICLE I.

That the said Robert Porter, being duly appointed and commissioned president judge of the third judicial district of the commonwealth of Pennsylvania, composed of the counties of Berks, Northampton and Lehigh, regardless of the duties of his office, in violation of the constitution and laws of this commonwealth, and the sacred rights guaranteed to every citizen, to have justice administered without sale, denial or delay, the said Robert Porter, in the case of Jacob W. Seitzinger against Henry Zeller, a judgment entered in the common pleas of Berks county, on a warrant of attorney, some of the creditors of Zeller applied to the court to open the judgment and take defence to it. It was agreed by the counsel of Seitzinger, that the judgment should be considered as opened and all matters referred to Judge Porter, under the act of one thousand seven hundred and five; that Judge Porter proceeded in the business, and made a report reducing the amount of the judgment from eleven hundred dollars to five hundred and seventy-six dollars and sixty-three cents; to which exceptions were filed by the counsel of Seitzinger. When the exceptions came up for argument, the counsel for the creditors of Zeller moved to dismiss them, on the ground of their not being specific enough. Judge Porter, against the will of one of the parties, presided in the court, on the argument of the motion to dismiss the exceptions, and when called on to furnish a statement of the calculations and reasons upon which his report was made, he replied that he had none or kept none, and refused to give any statement, and finally dismissed the exceptions, for the reasons assigned by the counsel for the creditors. Thus wilfully and corruptly denying a citizen the right of having justice administered to him without sale, denial or delay.

ARTICLE II.

That the said Robert Porter, president judge as aforesaid, while holding a court in Allentown, in the county of Lehigh, about the year one thousand eight hundred and eighteen, the said judge Porter ordered a constable to bring into court Abraham Beidleman and John Young, innkeepers of the said town; that the said Judge Porter, sitting on the bench in court, did reprimand and insult the said Beidleman and Young, and accused them of suffering gaming in their houses and keeping disorderly houses, and threatened if they did so again, he would take away their licenses and punish them severely, or words to that effect; and said further to them, "Go home, you villains, and mind your business," or words to that effect. And also, that during the sitting of the court in Lehigh county, in May, one thousand eight hundred and twenty-four, Judge Porter sent a constable for George Haberacker, of Allentown, innkeeper, and in open court, from the bench reprimanded and in-

sulted the said Haberacker, by telling him that he understood that he, the said Haberacker, had suffered gambling in his house, and if ever he did so again, he would punish him severely for it, and called his attention to a rule of court on the subject of licensed innkeepers permitting gaming in their houses, and then told the said Haberacker to walk off and mind his business—although there was no oath, presentment or charge whatsoever against either of the said persons. By which outrageous, tyrannical and unlawful conduct, the personal liberty and constitutional rights of the said Beidleman, Young and Haberacker were violated, the character of the court degraded and the authority of the laws brought into contempt.

ARTICLE III.

That the said Robert Porter, president judge as aforesaid, in a case where a certain Mary Waltz, alias Mary Everhart, was bound over before Jacob Weygandt, jr. a justice of the peace of Northampton county, on a charge of larceny, endeavored to prevail upon Jacob Reese, jr. the prosecutor, to withdraw his prosecution, and wished him to sign an instrument of writing, certifying that the defendant was not guilty, and that it was not larceny but trespass; that the said Jacob Rees, jr. refused, and insisted that she was guilty, and that it had been proved before the justice. Judge Porter then accompanied Reese to the office of justice Weygandt, and told the justice he wished the case of Mary Waltz disposed of in some way without a return to court, and proposed to make it a case of trespass; the justice replied, that he Judge Porter knew that he could not avoid returning the recognizance to court, nor could he sanction the making up of such a case; that he had no objection to their settling the case in court, and that he would return the recognizance, which he did, and the defendant was tried and convicted in the court where Judge Porter presided. Thus unlawfully attempting to suppress and compound a felony, to screen the guilty from punishment, by endeavoring to induce a judicial officer to violate his duty, and thereby commit a misdemeanor in office, in contempt of the laws, and against the peace and dignity of the commonwealth of Pennsylvania.

ARTICLE IV.

That the said Robert Porter, president judge as aforesaid, in the case of the commonwealth *vs.* John Mills, on a charge of larceny, for stealing a bond or single bill, tried before the said judge Porter, at a court of quarter sessions, in and for the county of Northampton, at the January term one thousand eight hundred and nineteen, after the evidence had been gone through on both sides, Judge Porter urged the parties to compromise and settle the business, to which they agreed, and a bond was drawn up in court and signed by the prisoner Mills, with two sureties,

for one hundred and sixty or seventy dollars, and delivered it to George Levers, the prosecutor, being the amount of his claim against Mills; and the said Judge Porter then directed the jury to acquit the prisoner, which they according did—thus wilfully and unlawfully permitting a prisoner under a charge of larceny to purchase his acquittal, by executing a bond in open court, and delivering it to a prosecutor, in violation of the constitutional right of every citizen to have justice administered according to law, and against the peace and dignity of the commonwealth of Pennsylvania.

ARTICLE V.

That the said Robert Porter, president judge aforesaid, in a case of Wannemacher *vs.* Seckler, which was an action of trespass, assault and battery, tried before the said Judge Porter, at a court of common pleas, held in and for the county of Lehigh, the said Judge Porter charged the jury in favor of the plaintiff, the jury brought in a verdict for the defendant; that he Judge Porter, refused to receive the verdict, and told the jury that the plaintiff was entitled to a verdict by law, or words to that effect; that Henry King, the counsel for the defendant, told the jury that they had a right to persist in their verdict, if they thought proper. Judge Porter manifested strong symptoms of passion, and told the said counsel, in presence of the jury, and with a loud voice, that he the said counsel was endeavoring to make the jury perjure themselves, or words to that effect; intending thereby to intimidate and insult the said jury, by charging them with perjury in the verdict they had agreed on; that he the said Judge Porter, did require the jury to go out again and reconsider their verdict; that they did so, and again returned with the same verdict; he Judge Porter, immediately upon its being recorded, did order the verdict to be set aside, and directed a new trial, without motion or application being made by any person. By all which improper, unlawful and injurious conduct, did obstruct the administration of justice, infringe the constitutional right of trial by jury, insult a co-ordinate branch of the court, in the proper discharge of their duty, evincing disgraceful passions and partialities, thereby denying justice and bringing the administration of it into contempt.

ARTICLE VI.

That in the case of James Hays *vs.* Hugh Bellas, November term, one thousand eight hundred and fifteen, number twenty-three, tried in Northampton county, at the April term, one thousand eight hundred and eighteen, before the said Judge Porter, exceptions were taken to testimony received, and likewise to the opinion of the court delivered by Judge Porter, upon which the cause was finally carried by writ of error to the supreme court; that in the mean time, before the record of the proceedings in the

case was taken from the court below, Judge Porter altered and falsified said record in two particulars, to wit: after his opinion was signed and filed according to law, he, Judge Porter, added by interlineation, as appears by said record, the following words: "a man may, if he pleases, buy an imperfect right, and if he is not imposed upon, but buys with the knowledge of the imperfections, he shall, in law, be held to the performance of his contract." And likewise, upon one of the bills of exceptions in the above named case, as appears by the record, he Judge Porter wrote along the margin, the following words: "and the same papers were objected to for want of proof of the hand writing of the said Henry L. Clark, and for other causes, but it was finally and mutually agreed that the whole correspondence between the parties should be given in evidence, and that the third exception before mentioned be therefore withdrawn, and the last mentioned papers were read in evidence accordingly," which interpolation was untrue, unauthorised and unwarrantable; thus wilfully and illegally, obstructing and violating the legal rights of the parties.

ARTICLE VII.

That the said Robert Porter, president judge as aforseaid, disregarding the duties of his office, and the positive provisions of the twenty-fifth section of the act, entitled "An act to alter the judiciary system of this commonwealth," passed the twenty-fourth of February, one thousand eight hundred and six, by refusing or neglecting to reduce his opinions to writing, in the cases of Elizabeth Swenk, widow of Mathias Swenk, *vs.* Daniel Ebert.

Same *vs.* same. Appeals from the judgment of a justice of the peace to the court of common pleas of Northampton county.

Also, in the cases of

Grim and Helfrick *vs.* Seip's administrators.

Same *vs.* same, in the court of common pleas of Lehigh county, though required so to do, contrary to the provision of said act, and the legal rights of the parties.

ARTICLE VIII.

That, that the said Robert Porter, president judge as aforesaid, in the matter of the appeal of James Greenleaf, from the assessment of the supervisors of the public roads and highways of the township of Northampton, in the county of Lehigh, determined at a general court of quarter sessions, of the peace held in and for the said county, at the September session, one thousand eight hundred and twenty-four, unlawfully altered the valuation on which the assessment of the said road tax for the year one thousand eight hundred and twenty-three, on the appellant's property in said township was made, and which had

been taken from the last return of taxable property, made in the township for the last county tax and in conformity with the provisons of the law—and in accepting an assessment made by the appellant himself, and reduced certain lots from one hundred and fifty dollars each to seventy five, and the total valuation of the appellant's property in the township of Northampton, from forty-six thousand five hundred and eighteen dollars, to twenty-four thousand one hundred and thirty-five dollars; thus reducing the appellant's road tax from two hundred and twenty-three dollars and twenty cents to one hundred and fifteen dollars and eighty cents. By all of which unlawful proceedings, the just rights of the inhabitants of the said township have been unlawfully and wilfully disregarded; and the provisions of the acts, of assembly, in such cases made and provided, disregarded.

ARTICLE IX.

That the said Robert Porter, president judge as aforesaid, at a court held in Northampton county, did threaten, intimidate and insult, in open court, on the bench, John Cooper, Esquire, one of the judges of the court of common pleas of Northampton county, duly appointed and commissioned, to wit: Two boys of the names of Smith, sentenced by the court of quarter sessions of Northampton county, to give surety to keep the peace and also to pay the costs, were imprisoned until the sentence should be complied with. Some few days after, judge Cooper was informed that he was wanted in court; he immediately went, and found Judge Porter alone on the bench, who stated to Judge Cooper, that one of the boys was sick, and said they had better discharge both of them, and pirect the county to pay the costs. The boys were both in court, and Judge Cooper expressing some doubts as to the sickness of the boy, and his dissent to liberating both of them on that account, Judge Porter got into a violent passion, and in a loud voice, with a violent and rude manner, in the presence of a number of persons in court, said to Judge Cooper, "If the boy dies in jail, his blood be on your head," which expressions, with other rudeness and violence then exhibited by Judge Porter, caused Judge Cooper to leave the bench. Thus illegally and unconstitutionally usurping an authority not delegated by the constitution and laws; by endeavoring by coercion and threats to deprive the said Judge Cooper from exercising his right as a judge of the said court, thereby corruptly abusing and degrading the high office of president and judge.

ARTICLE X.

That the said Robert Porter, president judge aforesaid, in the case of Witchell *vs.* German, an action of ejectment tried before the said Robert Porter and John Cooper, in the com-

mon pleas of Northampton county, the said Judge Porter charged the jury in favor of the defendant, the jury found a verdict for the plaintiff. A motion was made for a new trial; Judge Cooper told Judge Porter that the verdict was according to the evidence, and that he approved of it; and supposing it a clear case of right, he was not willing to disturb the verdict. Judge Porter struck his fist on the desk, in a violent manner, and with great displeasure said, if ever there was a case where a new trial ought to be granted, this was the case, and in a great hurry and anger sent for Judge Wagner; Judge Wagner soon came to the court, and appeared disposed not to interfere, as he had not heard the case; Judge Porter exhibited great violence and talked loudly, with great gesticulation and anger; the counsel on both sides addressed the court in a rapid manner, and there was great confusion and disorder in the court; Judge Wagner finally said if he must decide, he would agree with the president, and a rule to shew cause was finally granted.

Also, in another instance, while the trial list was before the court, the jury unemployed, Judge Cooper invited the attention of Judge Porter to the trial list. Judge Porter turned round in a violent and exceedingly rude manner, and said "he would thank him for less of his dictation; Judge Cooper replied he did not intend any thing like dictation, when Judge Porter rose from his seat in a great passion, and rapidly went out of the court house, and left Judge Cooper alone on the bench. Thus illegally and unconstitutionally, usurping an authority not delegated; endeavouring by violence and passion, to prevent the said Judge Cooper from exercising his legal and constitutional rights as a judge of the said court, exhibiting unbecoming passions and prejudice on the bench, and thereby degrading the high office of president and judge, and bringing the court and the laws into contempt.

ARTICLE XI.

That the said Robert Porter, president judge as aforesaid, in the case of Reese vs. Sickman, tried in the court of common pleas of Northampton county, during the argument of the counsel, the said Judge Porter stood at some distance from his seat; and immediately at the close of the argument, he the said Judge Porter, returned to his seat and commenced charging the jury. The said Judge Cooper made several efforts to speak with Judge Porter, but his conduct was so abashing and his movements so rapid, that he the said Judge Cooper, was prevented from expressing his opinion to, or consulting with the said Judge Porter; that the charge of the said Judge Porter, to the jury was against the opinion of Judge Cooper, and when he had finished his charge, the said Judge Cooper was about addressing the jury, and had proceeded to say, "that he was of a different opinion," when the said Judge Porter turned round to him, and with an angry countenance and loud voice, said " it is

the opinion of the court, sir;" and thereby prevented the said Judge Cooperf rom proceeding in his address to the jury; thus illegally and unconstitutionally did stop, threaten and prevent the said Judge Cooper from addressing a jury, as of right he might do; abusing and attempting to degrade the high offices of president and judge as aforesaid to the denial and prevention of public right and due administration of justice, and to the evil example of all others in like case offending, and against the peace and dignity of the commonwealth of Pennsylvania.

ARTICLE XII.

That the said Robert Porter, president judge as aforesaid, has on frequent occasions treated the said Judge Cooper in a rude insolent and contemptuous manner, while holding the courts in Northampton county by neglecting and refusing to consult him; by paying no regard to his opinion; and when papers were handed to the court, which it was necessary for the said judges to sign or examine, he the said Judge Porter, would either throw or push such paper towards Judge Cooper in a rude, insolent and contemptuous manner. Thus by his violent, wilful and arbitrary conduct, obstructing the due admistration of justice; usurping and exercising an authority not delegated to him; attempting to degrade one of the judges of the court, in which he the said Robert Porter presides, and thereby degrading the court of justice, and bringing the law into contempt, in violation of the constitution and against the peace and dignity of the commonwealth.

And the said House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter, any other accusation or impeachment against the said Robert Porter, president judge aforesaid, and also of replying to the answers which he the said Robert Porter shall make unto the said articles, or to any or either of them, and of offering proof of the said premises, or of any of them, or of any other accusation or impeachment, which shall or may be exhibited by them, as the case shall require, do demand that the said Robert Porter, president as aforesaid, may be put to answer all and every of the premises, and that such proceedings, examintion, trial and judgment, may be against and upon him had, as are agreeable to the constitution and laws of this commonwealth, and the said House of Representatives are ready to offer proof of the premises, at such time as the Senate of the said commonwealth of Pennsylvania shall appoint.

JOEL B. SUTHERLAND, *Speaker*
of the House of Representatives.

The president then required of Robert Porter, Esqr. what answer if any, he had to make in his behalf, to the articles of impeachment, preferred against him.

The respondent thereupon desired that his answers might be read by his brother, James M. Porter, Esq., and they were accordingly read by him, as follows:

The respondent in his proper person comes here into court, and protesting that there is no crime or misdemeanor laid to his charge, or particularly set forth in the said articles of impeachment, or any of them, to which he is or ought to be bound by law to answer, and saving and reserving to himself now and at all times hereafter, all and every benefit and advantage of exception to the said articles and every of them, for the insufficiency thereof, and the defects and imperfections, both as to matter of form and matter of substance, therein appearing in point of law or otherwise: and protesting that he ought not to be injured by any expressions, or terms, or want of form in these his answers; he begs leave to submit in detail the following facts and observations, by way of answer to the said articles of impeachment.

The respondent begs leave to premise that it behoves him for the legal justification of his conduct, and for the vindication of his character, which to him is particularly dear, to meet each charge with as full and particular an answer, as the circumstances of his case will admit.

The charges which have been preferred against him, are grounded upon exparte evidence; they have for months been spread before the public; and he deems it but right, that the facts and circumstances of each case referred to, should be fully detailed, as well to correct the false impression which the exhibition of the articles of impeachmeet was calculated to make, as to apprize this honorable court of the course and nature of his defence, so that his judges having the whole ground of his defence before them, will be enabled to understand, and apply the testimony and the arguments.

The facts on which the impeachment is said to rest are various, embracing a period of nearly eight years of the respondent's official conduct in three of the counties, which have at different times composed the judicial district, in which it has been his lot to preside. These facts are numerous, many of them of such a nature as to depend, for their criminality or innocence, on minute circumstances or slight shades of difference, and often on the different manner in which the same circumstances may have affected different auditors and spectators, all equally disposed to tell the truth. Where, however, the minds of the witnesses may be so prejudiced, or their views and feelings at the times or since, may have been such as to cause them to imbibe improper ideas, and to give a criminal aspect to that which was innocent in itself, your respondent enters the list with a vast preponderance against him, for it can scarcely be expected that his own recollection at this distant day will furnish him with all the minutiæ of facts and circumstances,

which may have made little impression at the time, or that he can obtain witnesses, who watched all the transactions of the court with so much particularity, as now to give in detail so many of its transactions for nearly eight years past.

ARTICLE I.

The first article relates to the circumstances attending the submission of the case of Jacob W. Seitzinger vs. Henry Zeller to the respondent as a referee, and the subsequent dismission of the exceptions filed to his report.

The circumstances attending upon that case, are so different in point of fact from those stated in the article of accusation and impeachment, as to require the following correct detail.

Upon the 12th day of July, eighteen hundred and twenty-three, a judgment was entered in the court of common pleas of Berks county, at the suit of Jacob W. Seitzinger vs. Henry Zeller, upon a bond and warrant of attorney to confess judgment, of the same date, in the penalty of $2,200, conditioned for the payment, by the defendant to the plaintiff of $1100 on demand, with interest. Upon the same day the plaintiff issued a writ of fieri facias upon the said judgment, returnable to August term, 1823, upon which the sheriff levied and sold the personal property of the defendant. Upon the 11th day of August, 1823, the creditors of Henry Zeller, upon the allegation that the said judgment was fraudulently and collusively obtained, for a much larger sum than was due, applied to be let into a defence, to which the plaintiff and his counsel assented, the judgment, execution and levy, remaining as a security. Both parties professed to be desirous of a speedy determination of the matter, and consented to a reference, but there was difficulty in agreeing upon referees. At length the counsel of the plaintiff proposed to refer the matter to this respondent, to which the counsel for the creditors of the defendant assented. This respondent perceiving the difficulty in fixing upon referees, and being ever willing to obligehis fellow citizens, and believing that there would be no impropriety in his acting as a referee, was after some solicitation induced to serve. The case was thereupon referred to the respondent, under the act of 1705, and he spent several days during the vacation, in hearing the evidence and arguments of counsel, without fee or reward. The evidence was very contradictory; after full deliberation the respondent found that the amount due to the plaintiff, was only $576 63, and in forming that opinion, he relied on the testimony of major Daniel Graeff, in connection with other evidence. The report was filed upon the 15th day of November, 1823, and upon the 17th day of the same month, the plaintiff filed exceptions to the report. After they had been filed, William Witman, jr. Esquire, one of the associate judges of the court, mentioned to the respondent that he could not sit upon the argument of the

case, as his son-in-law, Daniel H. Otto, was one of the creditors of Henry Zeller; accordingly, when it was called up for argument, judge Witman withdrew from the bench. Jacob Schneder, Esq. the other associate judge, could not hold the court alone, and this respondent had to remain on the bench to constitute a court; and he solemnly declares that he did not hear any objection to his sitting, and was not aware of any such objection. This respondent recollects, that Marks John Biddle, Esquire, one of the counsel for the plaintiff, about the commencement of the argument asked him for his calculation; the respondent replied that he had not kept it, but was willing to explain the grounds of his report. This respondent had not stated an account, but had made calculations upon a piece of paper which he had not preserved. He had reported the full amount due to the plaintiff, as he then believed, and still believes. During the argument, judge Witman returned to the bench, but why he did so, was not communicated to this respondent at the time. In fact, this respondent did not know the cause until several weeks after the final decision of the case; when judge Witman informed this respondent that the counsel of Jacob W. Seitzinger, the plaintiff, had requested him to resume his seat and take part in the decision.

The court finally dismissed the exceptions for want of sufficient particularity in specifying the alledged error in the report; the reasons for the opinion of the court were reduced to writing, at the request of the plaintiff's consel, and signed by all the judges of the court and are now subject to the revision of the supreme court of Pennsylvania.

And the said Robert Porter, for plea to the said first article of accusation and impeachment, saith that he is not guilty of the misdemeanor in the said article alleged in manner and form as it is therein alleged against him.

ARTICLE II.

The second article of impeachment charges the respondent with alleged tyranny and oppression, and the use of indecorous language towards Abraham Beidleman and John Young, two tavern keepers of the borough of Northampton, about the year one thousand eight hundred and eighteen, and with similar tyranny and oppression in regard to George Haberacker, another tavern keeper of the said borough, at May session, 1824, whereby "the personal liberty and constitutional rights of the said Beidleman, Young and Haberacker were violated, the character of the court degraded, and the authority of the laws brought into contempt."

The respondents recollects, that many years since, it was a constant source of complaint among the moral part of the community in Allentown or Northampton, that the vice of gambling prevailed to an alarming extent; that the fact of its prevalence was one of general public notoriety; that helpless

families were suffering for want, while those, who should and ought to have provided for them, were spending their time and their money at the gambling table, in houses licensed by the court as taverns. These general complaints were often heard and reached the ears of the respondent and his associates, judges of the courts of Lehigh county; and upon one occasion the late judge Hartzel, who is now deceased, stated to the respondent while on the bench at Allentown or Northampton, that information had been given to him, that Abraham Beidleman and John Young, two of the tavernkeepers of the borough had the evening before, openly suffered gambling in their houses. Upon consultation, it was believed by the respondent and judge Hartzel, (respondent rather thinks the other associate, judge Fogel, was not on the bench) that a lecture in open court would have a better effect in preventing a repetition of the offence, than a prosecution and conviction under the act of assembly. Under this view of the subject, one of the officers attendant on the court, was directed to go to the houses of Abraham Beidleman and John Young, and desire them to come to court. In pursuance of this notice, they voluntarily appeared before the court, and the respondent then, as the organ of the court, stated to them the complaint that had been made; they did not attempt to deny the charges, but admitting that they had offended, endeavored to palliate and excuse their conduct. The respondent then stated to them, that their conduct was a violation of law and morality; that they had been licensed by the court to keep houses of public entertainment, and not sinks for the corruption of public morals; that the court were disposed to look over the offence, which they had then committed, if ther future conduct gave no cause for complaint; but that if they did not desist from tolerating and encouraging gaming, the consequence would be prosecution and punishment by fine and the forfeiture of their licenses; and advised them to pursue the legitimate purposes of their occupations to gain a livelihood by honest industry and not by the violation of the law, or in language of that purport. The respondent does most unequivocally deny that he used the word "villains" in any part of his address to the said Young and Beidleman, or that his language or manner was either indecorous or improper.

For some time this lecture produced the desired effect. The court heard no more complaints for some years; but in the years 1822, 1823 and 1824, the practice had again become so prevalent, as not only to be a subject of general complaint among the reflecting part of the community, but also to be a disgrace to the borough, and a reflection on the laws of the county; still no person was willing to encounter the animosity of the persons engaged in this practice, by being the instrument of a prosecution against them, and the court were again compelled to interfere, and for that purpose, and with the sole view

of enforcing the laws against gambling, at the May sessions, 1824, of the court in Lehigh county, the court adopted the following rule, and directed the clerk to endorse it on each license issued.

Notice to Tavern-keepers.

The judges of the court of quarter sessions, in and for the county of Lehigh, have determined not to renew at the May sessions next, the license of any tavern-keeper in the said county, who permits or suffers gambling of any description, or other disorder, and in the mean time to enforce the acts of assembly, made for the punishment of such offences.

By order of the court,

FREDERICK HYNEMAN, *Clerk.*

That George Haberaeker, who was at the same sessions licensed to keep a house of public entertainment in the borough of Northampton, was, as the respondent understood, present in the court house when the above rule was adopted and publicly read; that immediately after the same was read, he, Haberacker, walked up to the desk of the clerk, and asked him to read the order to him again, so that he might understand it, which Mr. Hyneman, the clerk, did. And then Mr. Haberacker remarked to Mr. Hyneman, "You need not put that on my license, I am fully acquainted with it," or words to that effect. The order was, however, printed on all the licenses issued. Some time in the course of the following week, the respondent was informed, that George Haberacker had suffered gambling in his house nearly the whole night previous, and that a young man, a stranger from Philadelphia, had lost all his money there at play. That upon this information, when the court met in the afternoon, the respondent, satisfied in his own mind, that something should be done to stop the practice of gambling, which was then openly prevailing to a very great extent, sent a messenger to tell Mr. Haberacker that the court wished to see him. The messenger, who was one of the attending constables, went, and in a few minutes returned—stating that Mr. Haberacker would be in court in a short time. Mr. Haberacker came in shortly afterwards, and was called up by the side of the clerk's desk, between the counsel table and the bench, the respondent then read the order of the court above mentioned to him, and asked him if he had known of that order, to which Mr. Haberacker *replied he had not.* The respondent then told Mr. Haberacker, that he had understood, he had suffered gambling in his house the night previous, and that a young man from Philadelphia, a stranger, had lost all the money he had with him. To this Mr. Haberacker made no reply, but from his conduct admitted the truth of the charge. The respondent then went on to tell him that it was

against the law, and that he (Haberacker) knew it, and that the court would let him know also, that he was not above the law, but that the law was above him. The respondent cannot recollect all that was said, but true it is, he did tell Mr. Haberacker to go home and attend to his business, and not to let the court hear of his behaving in that manner any more, or they certainly would have him punished; but in so doing, the respondent denies that he was influenced by any inclination to violate the liberty and constitutional rights of any person, and protests, that his only motive in so doing, was a wish to stop the outrageous course of conduct, which for years had been pursued by the licensed tavern-keepers in Allentown or Northampton, only because no person was willing to institute a public prosecution against them.

The respondent would here beg leave to add, that since the admonitions thus given to the said Beidelman, Young and Haberacker, have become an article of accusation and impeachment against him, to such extent had gambling again progressed in the borough of Northampton, that at May sessions, 1825, the constable of that borough, made return of no less than six tavern-keepers, for openly and publicly suffering gambling in their houses. Upon this return, the attorney general deemed it his duty to send bills to the grand jury, which were found true as it regards this very same Abraham Beidleman, and against John Hill, Wm. Kinkinger and Philip Sellers. Upon arraignment Beidleman pleaded not guilty, and Hill, Kinkinger and Sellers pleaded guilty. Beidleman was subsequently tried, and on his trial, the defence set up was, that the prosecution had not been instituted within the period limited by the act of assembly, and that sometime in the month of April, 1825, having been complained of before justice Saeger, of Northamton, for suffering gambling in his house, which was alleged by him to be the same gambling charged against him in the indictment, he had compromised with the prosecutor, paid the justice the moiety of the fine, directed to be paid to the overseers of the poor, and the costs of prosecution, and that the prosecutor had exonerated him from the payment of the part of the fine directed to be paid to him, which he contended was equivalent to a former conviction for the same offence: and that he could not legally and constitutionally be again tried for the same offence. The jury under all the circumstances acquitted the defendant, but directed him to pay the costs, which he was sentenced to do. Hill and Kinkinger were both sentenced as directed by law, and Sellers applied for leave to withdraw his plea of guilty and plead not guilty, grounded upon an affidavit, that the plea of guilty was entered under a misapprehension, or mistake of his rights and liabilities. He was permitted to withdraw bis plea of guilty, and plead not guilty, and his case was continued until the next sessions, at which he was

acquitted, because the gambling had been more than thirty days before the commencement of the prosecution, but the jury directed him to pay the costs, which he was sentenced to do.

And the said Robert Porter for plea to the said second article of accusation and impeachment, saith that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

ARTICLE III.

The third article of impeachment charges the respondent with attempting to suppress, and compound a felony, to screen the guilty from punishment, by endeavoring to induce a judicial officer to violate his duty, and commit a misdemeanor in office, in the case of the commonwealth vs. Mary Waltz alias Mary Everhart.

According to the respondent's best recollection, aided by reference to the records of the court, the circumstances of that case, were as follows: On or about the 6th day of June, 1822, a quarrel took place between Jacob Rees, jr. and Mary Everhart, who lived near neighbours to each other in the borough of Easton, in the course of which, the former charged the latter with having stolen some meal from him. She immediately applied to counsel, who instituted an action of slander for her against him. As soon as Jacob Rees, jr. discovered this, he proceeded to the office of justice Weygandt, who issued a warrant against Mary Everhart, for the alleged larceny, upon which she and some of the witnesses were recognized for their appearance at court. When court was coming on, both parties appeared to have gotten over their passion, and they mutually agreed, the one to discontinue her action, the other, his prosecution. In pursuance of this agreement, Mary Everhart went to the prothonotary's office on the 19th day of August, 1822, being the first day of the court, paid off the costs and discontinued the action of slander. And Jacob Rees, jr. went to the office of justice Weygandt, to put an end to the prosecution. Justice Weygandt doubting his authority, as it was a case of felony, declined doing any thing in the matter without the sanction of the court. All this had happened before the respondent's arrival in Easton. Shortly after his arrival, he was told by William White, Esp. at whose house the respondent has put up for many years, in the presence of Jacob Reese, jr. that Mary Everhart and Jacob Rees, jr. had had a quarrel about a little meal. That it was a trifling matter, and they had agreed to settle it, but that justice Weygandt declined doing any thing without the respondent's sanction, and was desirous of seeing the respondent. Respondent walked up street with Jacob Rees, jr., he does not recollect having much, if any conversation with him going up, but he thinks that at Mr. White's, he observed to them both, that if Mr. Rees could with truth say, that on reflection, he considered the

taking of the flour a mere trespass, and not a larceny, that the justice would be justified in making an end of the matter. And he thinks that when they arrived at the justice's office, he made the same observation to Justice Weygandt, but that justice Weygandt said he could not permit it to be so done, as in his opinion, it was a clear case of larceny. Respondent said nothing more to him on the subject, but left the office, as the information given by justice Weygandt placed the matter in a different light from that in which it had been represented to the respondent. The recognizance was returned to court, a bill of indictment was sent, and found, and she was convicted of larceny in "stealing twelve pounds weight of wheat flour, and one earthen pot of the value of fifty cents." She was thereupon sentenced to restore the property, pay a fine of fifty cents, and undergo an imprisonment for ten days in the jail of Northampton county. The costs it appears amounted to $37 11½ which she paid, as respondent has been informed, before her discharge from prison.

In this transaction the respondent does most unequivocally deny, that he had any desire, or design to compound a felony, to screen the guilty, or to induce justice Weygandt to violate his duty. Justice Weygandt is honorably known, as an upright, independent, and valuable officer, and above the suspicion of being unduly influenced in office by any man. In the conduct of the respondent, he was governed by a sense of duty, growing out of the representations made to him by the prosecutor and the bail of the defendant, and a desire, if the case were a trifling one, growing out of a bickering between neighbours, to put an end to a prosecution in the institution of which, passion, not public justice, was consulted.

And the said Robert Porter, for the plea to the said third article of accusation and impeachment, saith that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

ARTICLE IV.

The fourth article of impeachment, charges the respondent with urging the parties to compromise, and settle a prosecution for larceny, in the case of the commonwealth vs. John Mills, and when they had done so, directing the jury to acquit the defendant. "Thus wilfully and unlawfully permitting a prisoner under a charge of larceny to purchase his acquittal by executing a bond in open court, and delivering it to a prosecutor in violation of the constitutional right of every citizen, to have justice administered according to law, and against the peace and dignity of the commonwealth of Pennsylvania."

If the facts stated in the premises were true, they would by no means warrant the conclusion thus drawn from them. But

the circumstances of the case, as they occurred, and as represented in this article, differ most widely. It is true that at the January sessions, 1819, of the court of quarter sessions of Northampton county, a person named John Mills, was indicted for larceny of a bill obligatory, alleged to be the property of George Levers. But the defendant was not a prisoner, he was under recognizance of bail for his appearance at court. On the trial of the indictment, after the testimony on both sides was concluded, it appeared to the whole court, manifestly, that it was not a case of larceny; that the defendant had taken the bill in question, which was payable to himself, from a third person, and had never been assigned by him to Mr. Levers, under an express claim of property. Under these circumstances the court believed, and that correctly too, that no larceny had been committed, but they thought the defendant ought in justice to secure Mr. Levers the amount of the debt, which had given rise to the controversy. They so stated their opinion to the prosecuting counsel, and the counsel for the defendant, who assented to it, and a bond with surety was executed to Mr. Levers for the amount due him from the defendant, in open court; and the defendant was thereupon acquitted, as he necessarily must have been, had no bond been executed.

And the said Robert Porter, for plea to the said fourth article of accusation and impeachment, saith that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

ARTICLE V.

The fifth article of impeachment, charges the respondent with having been guilty of harsh, tyrannical, and partial conduct and the indulgence of intemperate feelings and language, in refusing to receive a verdict, and granting a new trial in the case of Wannemacher vs. Sechler. "Thereby obstructing the administration of justice, infringing the constitutional right of trial by jury, insulting a co-ordinate branch of the court in the proper discharge of their duty, evincing disgraceful passions and partialities, thereby denying justice and bringing the administration of it into contempt."

The circumstances attending the case of Wannemacher *vs.* Sechler, are as follows: It was an action of trespass for an assault and battery, instituted by Casper Wannemachr *vs.* Joseph Sechler, in the common pleas of Lehigh county, to December term, 1820. The cause came on for trial on the fourth day of May, 1821, when the following facts appeared in evidence: the battery complained of took place in the public road; that Wannemacher was knocked down by Sechler, wounded in the head, so that he considered his hearing was affected; that Wannemacher did not strike Sechler, nor offer to strike him, but on the contrary warned Sechler not to strike him. It further ap-

peared in evidence, that to September sessions, 1820, in the quarter sessions of Lehigh county, a bill of indictment was presented, and found "*true*" by the grand jury, against Sechler for the same assault and battery, to which on the fifth of September, 1820, the defendant pleaded guilty, and submitted to the court. Whereupon he was sentenced to pay a fine of $10, and the costs of prosecution, which he accordingly did. The charge of the court was decidedly in favor of the plaintiff, upon the point of law in the case, but they submitted the amount of damages exclusively to the jury, as a matter of their consideration. The respondent considers the rule of law to be unbending; that where an indictment for an assault and battery is preferred against a person, to which he pleads guilty, and a subsequent civil action is instituted to recover damages for the personal injury, the record of the indictment being given in evidence on the trial of the civil action is conclusive, so as to entitle the plaintiff to damages, although it is for the jury to say under all the circumstances of the case, what amount of damages would compensate him for the injury he may have sustained, and so he expounded the law to the jury, who from what motives the respondent cannot say, unless that influence was exerted with them out of court, disregarding the settled law of the land as laid down to them by the court, returned a verdict for the defendant. The respondent upon consultation with the other members of the court, recommended to the jury to reconsider their verdict, and to retire again to their room: This the jury agreed to do, and they did not make any objection to the recommendation of the court. As the jury were going out of the box, for the purpose of so retiring, Mr. King, the defendant's counsel, observed to them, that if they saw proper, they might return the same verdict, or words to that effect. Whereupon the respondent replied to Mr. King, not to endeavor to make the jury do that which would be improper and contrary to the law and evidence in the cause, that the jury had sworn to decide the cause according to the evidence, and that he should let them do so, or words to that import. The jury then withdrew to their room, and after some time, returned with a verdict for the defendant, which Frederick Smith, Esq. the counsel for the plaintiff, moved to set aside, and the court believing as they then did, and still do, that the verdict was contrary to law, granted the motion, and ordered a new trial.

This exhibits a plain and unvarnished history of the case as it occurred; and the respondent thinks that there was nothing improper, harsh, tyrannical or partial in his conduct. He was actuated by but one motive, and that was a wish to administer justice to his fellow men according to the law of the land.

The respondent denies having manifested strong symptoms of passion, or using improper and insulting language to Mr. King. He most positively denies any intention to intimidate or insult the

jury, or having used any language, which could be so construed, and never charged, or intended to charge the jury with perjury.

And the said Robert Porter for plea to the said fifth article of accusation and impeachment, saith that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

ARTICLE VI.

The sixth article of impeachment, charges the respondent with having altered and falsified the record, in the case of James Hays vs. Hugh Bellas, in two particulars—the first, in interlining in the charge of the court after it was filed, the following words, "a man may, if he pleases, buy an imperfect right, and if he is not imposed upon, but buys with a knowledge of the imperfections, he shall, in law, be held to the performance of his contract." And of having written along the margin of one of the bills of exception in that case, the following words: "and the same papers were objected to for want of proof of the hand writing of the said Henry L. Clark, and for other causes; but it was finally and mutually agreed, that the whole correspondence between the parties should be given in evidence, and that the third exception before mentioned be therefore withdrawn, and the last mentioned papers were read in evidence accordingly," which interpolation, as it is called, is stated in the article of impeachment to be untrue, unauthorised and unwarrantable, "thus wilfully and illegally obstructing and violating the legal rights of the parties."

This serious charge requires nothing but a correct statement of the facts of the case, to shew its falsity. Those facts are as follows:

Hugh Bellas, Esq. had purchased from major James Hays, the right of making, using, and vending to others to be used, within the former county of Northumberland, an alleged new and useful invention in distillation, called the "Steam Still and Water Boiler," for which, a patent had been granted to one Phares Barnard, who had transferred the patent right for a certain district of country, (including that sold to Mr. Bellas,) to major Hays. The consideration expressed in the sale to Mr. Bellas, was $ 1,000, of which $ 100 were paid down, and the remaining $ 900 to be paid, as stipulated in the articles of agreement. Mr. Bellas not paying the consideration money, a suit was instituted in the common pleas of Northampton county, by James Hays against him for the same; the case being put to issue, came on for trial before your respondent and his associates, at April term 1818. The counsel for the plaintiff were George Wolf and Samuel Sitgreaves, Esquires. For the defendant John M. Scott and James M. Porter, Esquires. During the progress of the trial, which was conducted with great zeal and earnestness by the counsel, several objections were made by the counsel for the defendant to the admission of evidence, and exceptions to the decision of the court taken, in overruling those objections. In the course of the trial, the plaintiff offered in evi-

dence, as rebutting testimony, a letter from Hugh Bellas, the defendant, to Henry L. Clark, the agent of the plaintiff, dated 10th December, 1813. The admission of this letter was objected to, solely on the ground of its being only "*a part of the correspondence.*" The objection was overruled, and the letter received in evidence. The defendant subsequently offered in evidence the following papers:

Letter from Henry L. Clark to Hugh Bellas, dated 2d Dec. 1813.
Do. do. do. do. 15th & 23d Aug. 1814.
Do. do. do. do. 2d November, 1813.

To the admission of which in evidence, the plaintiff's counsel objected for several reasons, but more particularly, on account of the defect of proof of the hand writing. The court observed to the counsel on both sides, that perhaps it would be better to waive all captious objections, and let the whole correspondence go to the jury; this the respondent understood to be assented to, on both sides and the letters were read to the jury. Subsequently, the defendant gave in evidence, a letter from Hugh Bellas to Henry L. Clark, dated the 12th August, 1814, which the plaintiff produced, on request, without notice and a copy of a letter from Hugh Bellas to H. L. Clark, dated 9th September, 1814, both of which were admitted by consent, and without any proof, under the foregoing agreement. After the arguments of the counsel were closed, the court charged the jury; the charge was a verbal one, not having been previously reduced to writing; notes of it were taken by James M. Porter, who from them, wrote out a charge, and on its being submitted to the respondent the next morning he thinks, he looked over it, signed it, and handed it again to Mr. Porter, who, at that time, or subsequently, was directed to prepare the bills of exception in form, and have them ready by the next court, as those which had been prepared by Mr. Bellas himself during the trial, were so informal and imperfect, that the plaintiff's counsel and the court, objected to their being signed. At the next term, Mr. Porter submitted to the respondent a set of bills of exceptions, to which was affixed the charge of the court, previously signed as before stated. Respondent examined them, as did also Mr. Sitgreaves, who was counsel for the plaintiff, and before the respondent signed the bill of exceptions he interlined in the charge of the court, these words, "a man may, if he pleases, buy an imperfect right, and if he is not imposed on, but buys with a knowledge of the imperfections, he shall, in law, be held to the performance of his contract;" which words he had used in his charge to the jury, but, in the hurry of taking down the charge, had been omitted by Mr. Porter. He also corrected the bills of exceptions before signing, by stating the fact of the withdrawal of the third bill of exceptions by consent. He then signed the bills, and handed them to general Spering, the prothonotary. At the time of making the interlineation in the charge, the respondent did not know that the same had been filed, but believed it had remained in Mr. Porter's

possession, more especially as it had been made by a pro ut, a part of the bills of exceptions.

The respondent presumes he was not obliged to sign any thing which might be presented to him in the shape of bills of exceptions, and that he had a right to correct them, according to the truth of the case, as he did in the present instance. The charge of the court was corrected under a similar impression and similar views, and without any knowledge of its having been previously filed. The bill of exceptions as corrected, contains the truth, as it took place in relation to the third exception, and the charge of the court as corrected, contains nothing but what was addressed to the jury, in the charge actually delivered to them.

And the said Robert Porter, for plea to the said sixth article of accusation and impeachment, saith, that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

ARTICLE VII.

The seventh article of accusation and impeachment, charges the respondent with a disregard of the duties of his office, by refusing, or neglecting to reduce his opinion to writing in the cases, Elizabeth Swenck, widow of Matthias Swenck vs. Daniel Ebert. Same vs. same; appeals from a justice of the peace to the common pleas of Northampton county; and in the cases of Grim & Helfrich vs. Seip's administrators, and same vs. same, in the court of common pleas of Lehigh county, though required so to do, contrary to the provision of the act of assembly and the legal rights of the parties. The respondent knows of but one case in the common pleas of Northampton county, wherein Elizabeth Swenk, widow and relict of Matthias Swenk was plaintiff, and Daniel Ebert, defendant, which is to be found, of April term 1822, No. 92. That was an appeal from the judgment of justice Horn, in which judgment was rendered before the justice, on the 7th day of March, 1822, for $ 28 50 and costs. The defendant on the same day appealed. The cause was tried in court, on the first day of May, 1823, when a verdict was rendered for plaintiff for $ 27 05 damages, and six cents costs; the defendant offering no evidence whatever on the trial. On the 3d of May, 1823, a rule was taken to shew cause why the judgment should not be entered without costs. On the 20th of November, 1823, after argument, this rule was made absolute and the judgment entered without costs. The respondent has no recollection of being required to reduce his opinion to writing, or file the same, nor could such a course have been necessary to obtain a revision of the judgment, because all the necessary facts appear by the record.

It appears that there were two actions of debt instituted in the common pleas of Lehigh county, by Jonathan Grim and Daniel Helfrich against Peter Seip, administrator of John Seip, deceased, to May term 1819. The suits were founded on joint bonds, executed by Abraham Knerr and by the defendant's intestate, as his surety; and the cases were first tried at February term 1820, when

the plaintiffs suffered a non-suit in each case. Rules were obtained to shew cause why these non-suits should not be stricken off, which on the 4th of September, 1820, were made absolute and leave was granted in each case to amend the narr. by filing a statement agreeably to the act of assembly. On the 7th day of December, 1820, the causes were again tried, and verdicts were rendered for the defendant. The respondent has no recollection of being called upon to reduce his charge to writing, and file the same, until some terms afterwards, when the matter was mentioned by the plaintiff's counsel, who alleged such a request had been made on the trial, which was denied by the defendant's counsel; the respondent observed, that he had not recollection upon the subject, and after such a lapse of time, could not file the charge without consent; which consent defendant's counsel refused to give.

And the said Robert Porter for plea to the said seventh article of accusation and impeachment, saith, that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

ARTICLE VIII.

In regard to the eighth article of accusation and impeachment, the said Robert Porter respectfully submits to the honorable court, whether from the circumstances under which this article of accusation and impeachment was preferred against him, he is bound in law or in justice to answer to it. The circumstances alluded to, are as follows: Mr Charles Davis, who, with Mr. Sitgreaves, had been counsel for the appellees in the said matter of James Greenleaf's appeal, having been examined before the committee of the House of Representatives as to the facts, which preceded the decision of the cause, mentioned in the eighth article, stated that he was not in court at the time the final decree was made, and that he did not know how the case was ended until he saw the decree in the clerk's office. He was then asked, whether that decree, which he saw in the clerk's office, was not in the hand writing of his colleague, Saml. Sitgreaves, Esqr. and having answered that question in the affirmative, a consultation took place among the members of the said committee, and the chairman then announced to the respondent and his counsel, as well as to the prosecutor, that they would hear no further testimony on the subject of the said charge, in consequence of which, the respondent was prevented from further cross examining the said Charles Davis, in relation to the said matter; and when Henry King, Esqr. was subsequently examined before the committee, on the part of the prosecution, the respondent's counsel, when proceeding to the cross examination of the said Henry King, Esqr. who had been of counsel with the appellant, James Greenleaf, enquired of the said committee, whether they might be permitted to examine Mr. King, relative to the circumstances, which took place in the court of quarter sessions of Lehigh county, on the hearing

and determination of the said case of Greanleaf's appeal; when Mr. J. A. Mahany, chairman of the said committee, informed the respondent and his counsel, that that case no longer constituted one of the charges against the respondent, and no other testimony in relation to the said matter was afterwards adduced, to the knowledge of the respondent. Under these circumstances, the said respondent submits to the court whether he ought to be bound to answer the said charge contained in the said eighth article of accusation and impeachment.

Should this honorable court however think, that under these circumstances, he is still bound to answer, he then submits the following facts in relation to the said charge in the said article contained. The record of the court in the case of Greenleaf's appeal is in the following words:

In the court of general quarter sessions of the peace, for the county of Lehigh.

It is thus contained

FEBRUARY SESSIONS, 1824.

Sitgreaves, Davis.	The supervisors of the public roads & highways of the township of Northampton, *vs.*	Appeal, entered Feb. 2d, 1824 Feb. 3d, 1824, continued at the instance of the appellees, until the second day of the next sessions at 10 o'clock, A. M.
Porter, J. Evans.	James Greenleaf. (Affidavit filed.)	

And now, September 2, 1824, the said appeal being duly heard and considered, it is ordered and decreed, that the assessment from which the appeal has been made, be rectified so as to stand as follows, that is to say:

Trout Hall buildings,	$4,000
208¾ acres of land, at 40	8,350
169 town lots, at 75,	11,675
2 horses,	100
A cow,	10
	$24,135

And that the tax thereon, according to the rate at which the same was levied, be reduced to the sum of $115 80, for which amount the collection of the said tax may proceed, and that each party pay his, or their own costs, (signed by the three judges)

Copy of the appeal.

To the honorable the judges of the court of common pleas of the county of Lehigh, now composing the court of quarter sessions of the peace, in and for the said county.

The petition of Jas. Greenleaf of the borough of Northampton, in the said county, respectfully represents. That your petitioner finds himself aggrieved with the assesment made of the real es-

tate of Ann P. Greenleaf, his wife, for road taxes, for the year 1823 in the borough and township of Northampton, in the said county. That in pursuance of the said assessment, which your petitioner believes to have been illegally and unjustly made, Jacob Bishop and John Keiper, styling themselves supervisors of the public roads and highways of the township of Northampton, applied on the eighth day of December last, to Charles Deshler, Esq. one of the justices of the peace, in and for the said county, and obtained from him a warrant for the distraining of the goods and chattles of your petitioner, in order to compel the payment of the two hundred and twenty-three dollars and twenty cents, the amount claimed to have been assessed as aforesaid for road tax; that in virtue of the said warrant of seizure, the said Jacob Bishop and John Keiper, on the day and year last aforesaid, did levy on the goods and chattles of your petitioner; and your petitioner has appealed from the said assesment to this court.

Your petitioner therefore prays the court that his appeal may be received and entered, and that the court will take such order hereon, as to justice and law shall appertain.

JAMES GREENLEAF.

Feb. 2d. 1824.

Endorsed.

"February Sessions, 1824.

The supervisors of the public roads and highways of the wnship of Northampton, *vs.* James Greenleaf.

Appeal from the assessment of road tax, &c.

February 2d. 1824, read and filed, and the court order the appeal to be entered."

Copy of the exceptions.

The supervisors of the public roads and highways of the township of Northampton, *vs.* James Greenleaf. } Appeal from the assessment of road tax.

Exceptions to the proceedings.

1. That the assessment of the county tax, on which the road tax is predicated, is illegal, and consequently, the road tax is also illegal.

1. The oaths of office of the commissioners do not appear to have been duly taken and filed.

2. The return of the election of the assessors, was not made, as required by law.

3. But one assessor and two assistant assessors, appear to have been elected for, and but one joint assessment made for the borough and township of Northampton.

4. The assessors were not duly sworn, and their oaths of office filed, as directed by law.

5. There was no meeting of the commissioners within 30 days after the general election, to make an estimate of the probable expense of the county, for the year ensuing, nor any precept issued to the assessors, to make return of all taxable persons, and property, or any such return made, in the time or manner directed by law.

6. The commissioners did not proceed to quota the several townships, or send accurate transcripts of the assessments to the assessors, in the time or manner prescribed by law.

7. The assessor or collector did notify the inhabitants of the sum at which they were rated, and the rate per cent. and amount of tax, and the time and place of appeal, in the time or manner prescribed by law.

8. The property of the appellant was rated higher than the assessors thought it would bona fide sell for, in ready money.

9. The appellant is rated for property which he did not own, to wit: 214 town lots in the borough of Northampton, rated at $150 each; Whereas in truth, he owned but one hundred and seventy lots making and overcharge of $6,600, in that item of the assessment. Also 43 acres in the township of Northampton, rated at $1958 which should have been rated and assessed in the name of the Messrs. Saeger's.

2. That the road tax was illegally laid.

1. That by the act incorporating the borough of Northampton, the roads and highways within the borough, are placed under the direction of the corporation, who may assess taxes not exceeding ½ of a cent in the dollar.

2. That the supervisors who have presumed to lay the road tax, were elected at a joint election by the inhabitants of the borough of Northampton, and the township of Northampton, whereas there should have been supervisors only elected by the inhabitants of the township, for the township alone, excluding the limits of the borough.

3. That the supervisors were not legally elected, and the certificate of their election filed before the 25th of March.

4. In laying the road tax, the supervisors did not take the assessors to their assistance.

5. The road tax was not apportioned from the last corrected apportionment of county tax, put into the hands of the township collector.

3. The supervisors did not give notice to the inhabitants, to attend and work out their tax.

4. The seizure was illegal, because the goods and chattels of the appellant, in the borough of Northampton, were seized for tax, assessed on property in the township of Northampton.

5. That no tax to the amount, or at the rate that the tax complained of, could be assessed within the borough of Northampton.

6. That the supervisor of the township of Northampton, have no authority to levy and collect taxes in the borough of Northampton, or in any way to intermeddle with the making or repairing the streets and public highways in said borough. The town council and the street commissoiners, being by the act incorporating said borough, invested by said act, with the legal powers for said purposes.

J. M. PORTER,
H. KING, } For the appellant.

Endorsed, "filed May 4. 1824."

Copy of the order of the court.

In the matter of James Greenleaf's appeal from the assessment of his property in the borough and township of Northampton, for the road tax of 1823

And now September 2, 1824, the said appeal being duly heard and considered, it is ordered and decreed that the assessment from which the appeal has been made, be rectified so as to stand as follows, that is to say:

Trout Hall buildings,		$4,000
208¾ acres of land at	$40,	8,350
169 town lots, at	$75,	11,679
2 horses,		100
A cow		10
		$24,135

And that the tax thereon, according to the rate at which the same was levied, be reduced to the sum of $115 80, for which amount the collection of the said tax may proceed, *and that each party pay his or their own costs.*

R. PORTER,
President of the third judicial district of Pennsylvania.

Endorsed in the matter of James Greenleaf's appeal. } JOHN FOGEL,
A judge of Lehigh county, Pennsylvania.

JACOB STEIN,
Judge of Lehigh county, Pennsylvania.

Lehigh county, ss.

I Frederick Hyneman, clerk of the court of general quarter sessions of the peace for Lehigh county, do hereby certify, that the foregoing is a true and perfect copy of the record of said court, in the matter of the appeal of James Greenleaf, from the assessment of his property, for road tax, for the year 1823, so full and entire as in the said court it remains.

In testimony whereof, I have hereunto set my hand and the [L. s.] seal of the said court, this sixteenth day of September, 1825.

FRED'K. HYNEMAN, Clerk.

The appeal being entered to February sessions, 1824, was called up for hearing on the 3rd day of that month, and the appellees, in order to shew to the court the correctness of the proceeding on their part, offered evidence to prove the assessment of county tax deposited in the commissioners' office, on which the road tax appealed from was predicated; to the admission of which in evidence, the counsel for the appellant objected, on the ground that it was incumbent on the appellees, to shew that all the requisites of the acts of assembly, regulating county rates and levies previous -o the assessment, had been complied with. Whereupon Mr. Sitgreaves, counsel for the appellees, stated to the court, that if they were required so to do by the opposite counsel, he would have to ask the indulgence of the court, till the next sessions, which was acceded to, and the hearing was continued until the second day of May sessions. As May sessions, the cause came on for hearing again, and the appellees were unable to prove all the preparatory steps previous to the assessment. On the part of the appellant, it was proved that he did not own 43 acres of land, charged to him and rated at $1958, he having conveyed it away some years previous to the assessment; and it was also proved, that he owned only 169 town lots, when he was charged in the assessment with 214. Evidence was also adduced to show, that the town lots, which consisted each of about one third of an acre, were valued at $150, when they were not worth more than $75. Some discussion was gone into, but the argument in chief upon the whole case was not. The counsel for the appellant had filed, as will be seen by reference to therecord, upwards of twenty exceptions to the proceedings; and as the tax was not proved to have been regularly laid, and both parties disclaimed a wish to have more than justice, the respondent, together with the associates, who were both on the bench at the time, suggested to the counsel, whether the parties could not compromise the matter upon fair and equitable terms. The counsel appeared to acquiesce, but as the appellant, Mr. Greenleaf was absent, no arrangement could be entered into, and on the 2d day of September, eighteen hundred and twenty-four, and the case was then continued until the August sessions, 1824, the counsel for the appellees, Mr. Sitgreaves, presented to the court a formal order, drawn out by him and in his hand writing, for the signatures of the court, agreeably (as respondent understood and believed, and yet believes) to the terms of compromise entered into between the parties. To the end of that paper so presented by Mr. Sitgreaves, the respondent added the words "and that each party pay his or their own costs" and then the said paper was signed by the respondent and his associates. The respondent and the other members of the court, took no part in reducing the valuation; but it was understood by the court, that the same was reduced by compromise between the parties.

The respondent denies, that he unlawfully altered the valuation on which the assessment was founded, and he also denies, that he accepted an assessment made by the appellant himself, but declares that with his associates, he acted with a due regard to the rights of both parties, by giving effect to a compromise entered into between them.

And the said Robert Porter, saving and reserving to himself, the right of objecting to the said eighth article of accusation and impeachment, for plea to the said eighth article of accusation and impeachment, saith, that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

ARTICLE IX.

The ninth, tenth, eleventh, and twelfth articles of impeachment, all relate to alleged maltreatment by the respondent, of John Cooper, Esquire, one of the associate judges of Northampton county.

As to the subject matter of complaint, alleged in the said ninth article, the following will be found to be a history of the facts of that case.

To August sessions, 1823, a recognizance for surety of the peace, on the complaint of Susanna Spangenburg, was returned against Charles Smith. On the hearing of the case, on the 19th of August, 1823, it appeared that a very aged woman who was the mother of one of the defendants and grand mother of the other, was picking some blackberries along the fence of a lot occupied by the husband of the prosecutrix, when the prosecutrix came out and ordered the old woman away, and some words passed between them; about this time, the defendants came up, and took the old woman's part, as the prosecutrix was endeavouring to throw her over the fence; and if the respondent recollects aright, the prosecutrix swore, that one of them said, he would shoot her, if she did not let the old woman alone. Upon the hearing, the court thought that the defendants could pay the costs, and as they had used improper language, although they had not so offended as to induce the court to continue the recognizance, they orderd them to pay the costs; being unable to comply with the sentence, they were committed to prison. On the 21st day of August, 1823, just as the respondent was going to court, the sister of one of the defendants, and mother of the other, informed him, that her son was very sick, and in all probability would die, if continued in jail; the respondent went into court, sent for the jailor, and inquired of him, as to the situation of the prisoner; finding that he corroborated the statement made by the mother, the respondent directed some one of the persons in attendance on the court, to go for one or both of the associate judges, in order to constitute a court of quarter sessions, and directed

the jailor to bring the boy into court; the boy being brought, in a short time judge Cooper came into court; the respondent stated the circumstances to him, and as he, judge Cooper, was a physician, requested him to examine the boy and ascertain his situation, this judge Cooper, in a very rude and unfeeling manner, refused; adding something about the general bad behaviour of the Smiths, and the respectability of the prosecutrix's family. The respondent expostulated mildly with him for some time, and desired to be informed as to the real state of the health of the prisoner, who appeared very sick, but finding it in vain, he at length, provoked by the conduct of judge Cooper, which appeared to the respondent to be inhuman in the extreme, did say to judge Cooper, that "if the boy dies in jail, his blood will not be on my head." The respondent had despatched a messenger also for judge Wagener, the other associate, and as judge Cooper saw him coming down street, he left the bench and went in a direction to meet judge Wagener, did meet him, and endeavoured, out of the court house, to dissuade him from joining the respondent, in making any alteration in the sentence of the Smiths. Judge Wagener came into court, and, on hearing and being satisfied that the boy was really sick, and that the defendants were unable to pay the costs, the court believed it better to change the sentence and direct the county to pay the costs, which was accordingly done: and both the defendants were discharged, the court believing that the complaint and proceedings against them being joint, the determination ought to be joint also.

The respondent neither threatened, intimidated, nor insulted the said judge Cooper, nor did he cause him to leave the bench, nor did exert any authority not delegated him, or endeavour, by coercion and threats, to prevent the said judge Cooper from exercising his right as a judge of the court, nor did the respondent corruptly abuse and degrade the office of president judge, which he fills.

And the said Robert Porter, for plea to the said ninth article of accusation and impeachment, saith that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

ARTICLE X.

The tenth article of impeachment, charges the respondent with somewhat similar maltreatment of judge Cooper, in two instances therein alleged.

In the case of Witchell vs. German, the cause of action had once been tried, and a verdict and jugdment rendered in favor of defendants, to the satisfaction of the court. The plaintiff brought a new ejectment, and on the trial of this second action, a verdict was rendered in favor of the plaintiff contrary to the charge of the court. A motion was made to set the verdict aside; the respondent was in fa-

vor of granting the rule, and judge Cooper was opposed to it; judge Wagener was sent for, and on coming into court, he expressed his reluctance to decide upon a case, the trial of which he had not heard, but finally joined in granting the rule to shew cause why a new trial should not be granted. And it is also true, that subsequently, the respondent, judge Cooper and judge Wagener agreed in granting the new trial. It is possible that the respondent may have said, earnestly, that if there ever was a case in which a new trial ought to be granted, that was such a case; for he honestly thought so then, and honestly thinks so still. But he denies, that while that case was before the court, his conduct was such, as is alleged in the article of impeachment.

To the other instance alleged in the said article, as neither time nor circumstances are mentioned, from which, if it did take place, the respondent could have his recollection referred to the transaction, he does not conceive that he ought to be bound to answer; nor has he any recollection of any such occurrence having taken place, unless the following incident be the matter alluded to. Many years since, while the gentlemen of the bar were engaged profitably for the public, in adjusting a case depending in the court of common pleas of Northampton county, judge Cooper came into court, took his seat upon the bench, and in a very rude and dictatorial manner, addressed this respondent as follows, "why don't you attend to the trial list," this respondent replied to him "that he would thank him for less of his dictation," and he believes that there was much more courteousness in his reply, than in judge Cooper's address. Judge Cooper apologized for his rudeness, and the respondent supposed that this affair was thus consigned to oblivion between them. But he knows of no rule of law, reason, or mere common courtesy, which should prevent him from repelling dictation attempted to be exercised over him by any other, not having the right to control him.

And the said Robert Porter for plea to the said tenth article of accusation and impeachment, saith, that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

ARTICLE XI.

The eleventh article of impeachment accuses the respondent with charging the jury, in the case of Rees vs. Sigman, without consulting judge Cooper, or giving him an opportunity of expressing his opinion, and when he had finished charging the jury and judge Cooper was proceeding to address them, preventing the said judge Cooper from so doing.

All the allegations in this article, are contrary to the facts as they occurred.

Jacob Rees, jun. brought an action before justice Able against Elizabeth Sigman, as executrix in her own wrong of Jacob Sigman, deceased, for a debt amounting to between ten and eleven dollars.

The justice on a hearing, gave judgment in favour of the defendant, from which the plaintiff appealed; and the matter came on for trial at January term, 1822, of the common pleas of Northampton county. In the trial, it very clearly appeared to judge Wagener and the respondent, that the plaintiff had no claim, either in law or justice, upon the defendant. Judge Cooper had, during the trial expressed a different opinion. When the testimony and arguments were closed, the respondent, as usual, addressed the jury, expecting, as a matter of course, that if judge Cooper continued to dissent, he would express his sentiments to the jury. The respondent has no recollection of judge Cooper's attempting to charge the jury, and is very certain, there was nothing, either in the manner or expressions of the respondent, which prevented him from so doing.

And the said Robert Porter for plea to the said eleventh article of accusation and impeachment, saith, that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged againt him.

ARTICLE XII.

The twelfth article of impeachment, charges the respondent with having, on frequent occasions, treated the said judge Cooper in a rude, insolent and contemptuous manner, while holding courts, by neglecting and refusing to consult him, paying no regard to his opinion, and when papers were handed to the court, which it was necessary for the judges to sign or examine, moving or pushing them to judge Cooper, in a rude, insolent and contemptuous manner. Thus obstructing the due administration of justice, usurping and exercising powers not delegated to him, attempting to degrade one of the judges of the court in which he presides; and thereby degrading the courts of justice, and bringing the law into contempt.

The respondent deems it right to protest against answering this charge, inasmuch as the principles of law and justice require, that every charge of an offence, should be made in such precise and definite terms, as that it may be met by precise and definite proof. The law expects no man to come into a court of justice, prepared to answer for every act of his life, and therefore requires such certainty of description as to time, place and offence, as will put the party on his guard, and enable him to meet the accusation with proof. The accusation is so general, vague and uncertain, as to render it almost impossible to meet it. He therefore respectfully submits to the court, whether he ought to be called on to answer to the said charges, in the said article contained.

Should this honorable court, however, think that he is still bound to answer, he then for answer says, that he has not on frequent occasions, nor on any occasion, treated the said judge Cooper in a rude, insolent and contemptuous manner, while holding court with him, by neglecting or refusing to consult

with him, nor by treating his opinions with disregard, nor has he ever, in the manner stated in the said twelfth article, thrown or pushed a paper or papers towards judge Cooper in a rude, insolent and contemptuous manner; nor has he ever, by violent, wilful and arbitrary conduct, obstructed the due administration of justice, nor usurped and exercised authority, not delegated to him; nor has he ever attempted to degrade any of the judges of the court, in which he presides, nor did he ever degrade the court of justice, and bring the law into contempt, in violation of the constitution, or against the peace and dignity of the commonwealth of Pennsylvania.

This respondent has been president judge of the 3d judicial district for upwards of 16 years, in which time he has had on the bench with him in the various counties of his district, no less than eighteen associate judges, to wit: Seven in Berks county, of whom five are yet living; two in Schuylkill county, both of whom are yet living; four in Lehigh county, two of whom are yet living; four in Northampton county, two of whom are yet living; and two in Wayne county, both of whom are yet living. From no one of this number, has any complaint been preferred, except by Dr. John Cooper, although it may have been the respondent's lot, at one time or another, to have differed in opinion with some of them.

And the said Robert Porter for plea to the said twelfth article of accusation and impeachment, (saving and reserving to himself the right of objecting to the said article for the insufficiency thereof,) saith, that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

Conscious of the uniform rectitude of his intentions, the respondent feels no fears as to the result before this court. Because he is confident, that in every instance since his appointment to the station which he holds, he has acted according to the honest dictates of his conscience, and with a sole view to the administration of justice according to law, without fear, favor or affection. He has not the vanity to believe, that he has been always right, for that would be arrogating to himself more than belongs to humanity. He will not even say, that he has, upon every occasion, been able to command his feelings, as fully as upon subsequent reflection, he could have wished he had done; but this much he does know, and he saith it with a full conviction of its truth, that whatever errors he may have committed in the course of his judicial career, have been "errors of the head and not of the heart."

The respondent is one of the few surviving officers of the army of the revolution; he saw his country rise into political existence, and aided in the struggle for her emancipation; he has seen the generation of that period nearly all pass from the stage of human action, and their decendants rise and take

their places; he would be destitute of feeling, were he to be insensible to charges, which, if well founded, would go to consign his old age to ignominy, and his character to disgrace. He only asks that he may, and expects that he will receive, at the hands of his judges, that which he has always endeavoured to administer to his fellow men, "equal and impartial justice."

R. PORTER.

December 13, 1825.

The respondent then handed to the president of the court, the pleas and answers which had been read.

Seats were then assigned to the respondent and his counsel.

The president of the court then demanded of the gentlemen, managers of the House of Representatives, what reply they had to make to the said pleas and answers of the respondent.

Mr. Maclean on behalf of the managers, requested time until eleven o'clock, on Monday morning next, to consult the House of Representatives, as to such replication as will be proper to make to the respondents answers and pleas.

Which the court granted. And,

On motion,

Of Mr. Burnside and Mr. Kerlin,

The president ordered the court to be adjourned until eleven o'clock, on Monday morning next.

MONDAY, December 19, 1825.

The court was opened precisely at eleven o'clock, A. M. by proclamation, the members of the court were all present, and answered to their respective names.

The managers, viz: Messrs. F. Smith, Petrikin, Heston, Beeson, Thomas, W. B. Foster, and M'Reynolds.

The respondent attended with his brother, James M. Porter, Esq and his counsel, David Paul Brown, Esq.

Mr. F. Smith, on behalf of the managers, read the replication of the House of Representatives, to the answers and pleas of Robert Porter, Esq. as follows:

In the House of Representatives,

December 17, 1825.

The House of Representatives of the Commonwealth of Pennsylvania, prosecutors on behalf of themselves, and the people

of Pennsylvania, against Robert Porter, Esq. president of the third judicial district of the commonwealth of Pennsylvania, reply to the plea or answer of the said Robert Porter, Esq. and aver that the charges against the said Robert Porter, Esq. are true, and that the said Robert Porter, Esq. is guilty of all and every the matters contained in the articles of accusation and impeachment, by the late House of Representatives, exhibited against him, in manner and form as they are therein charged, and this the present House of Representatives, are ready to prove against him at such convenient time and place as the Senate shall appoint for that purpose.

(Signed) JOSEPH RITNER, Speaker
of the House of Representatives.

Attest,

FRANCIS R. SHUNK, Clerk.

And informed that Samuel Douglass, Esq. would act as counsel on their behalf, to whom a seat was assigned.

The president inquired whether the parties were ready to proceed.

Mr. F. Smith, on behalf of the managers, begged the indulgence of the court, until to-morrow afternoon, at 3 o'clock.

Which the court granted.

On motion of Mr. Kerlin and Mr. Garber,

The witnesses on the part of the commonwealth, were called by the clerk to the number of 22.

The following persons answered to their names, viz:

Marks J. Biddle, Jacob W. Seitzinger, Geo. Haveracker, Chas. Davis, John Seip, Geo M. Stroud, Henry King, 7.

On motion of Mr. Garber and Mr. Ryon,

The witnesses on the part of the respondent, were called by the clerk, to the number of 34.

The following persons answered to their names, viz:

Fredk. Hyneman, Chas L. Hutter, Wm. Witman, jr. John Fogel, Gabriel Hiester, Robert M. Brooke, James M. Porter, Jacob Stein, Abrm. Sigman and Henry King, 10.

On motion of Mr. Burnside and Mr. Power,

The president ordered the court to be adjourned until 11 o'clock, to-morrow morning.

TUESDAY, December 20, 1825.

The court was opened precisely at eleven o'clock, A. M. by proclamation. The members of the court were all present and answered to their respective names.

The managers, Messrs. F. Smith, Petrikin, Heston, Beeson, Thomas, W. B. Foster and M'Reynolds, with their counsel Samuel Douglass, Esq

The respondent, attended by his brother, Jas. M. Porter, Esq. and his counsel, David Paul Brown, Esq.

The counsel on the part of the commonwealth, requested that the names of the witnesses on the part of the prosecution, might be called to ascertain who were present.

They were accordingly called to the number of twenty-two, as follows, viz:

Hugh Bellas, Marks J Biddle, Samuel Baird, Henry Betz, Jacob W. Seitzinger, George Haveracker, John Young, Cha's. Davis, Jacob Bishop, John Seip, Henry Jarrett, Abraham Beidleman, Jacob Rees, jr. Jacob Weygandt, jr. George Levers, Hugh Ross, John Cooper, Samuel Shouse, Josiah Davis, Thomas Sebring, Henry King, George M. Stroud.—22.

It appeared that the following named were the only ones present, who answered to their names, viz.

Marks J. Biddle, George Haveracker, Charles Davis, Jacob Bishop, John Seip, Henry Jarrett, Abm. Beidleman, Jacob Reese, jr. Hugh Ross, John Cooper, George M. Stroud, Thomas Sebring, Henry King.—13.

The counsel on the part of the commonwealth requested that the return of the subpoena for Hugh Bellas, Esq. should be made by the sergeant-at-arms, which being done, Hugh Bellas, Esq not attending, the counsel requested an attachment to be issued against him.

Which the court granted, and an attachment was accordingly issued.

The counsel on the part of the commonwealth requested the court to direct subpoena's for Samuel Sitgreaves, Jefferson K. Heckman, Hopewell Hepburn, Daniel Helfrich, Christian F. Beitel and John M. Scott, which was granted.

And subpoenas were accordingly issued

On motion of Mr. Dunlop and Mr. Kitchin,

The following resolution was read, viz.

Resolved, That the article of impeachment, exhibited by the House of Representatives against Robert Porter, Esq. does not contain a charge of an impeachable nature, that the court would not be justified in hearing evidence to support it, and

that the managers therefore proceed to the establishment of the article of impeachment.

The same being under consideration,

A motion was made by Mr. Dunlop and Mr. Kitchin, to fill the first blank with the word *first*.

Which was not agreed to.

A motion was then made, by Mr. Dunlop and Mr. Kitchin, to fill the first blank with the word *second*.

A motion was then made by Mr. Emlen and Mr. Kerlin, to postpone the question, together with the resolution for the present. When

A motion was made by Ogle and Mr. Ritscher, to amend the motion by making it read *indefinitely*.

Which was agreed to.

And the question, together with the resolution, were indefinitely postponed.

Mr. Douglass, counsel on the part of the commonwealth, requested the court to issue a commission to take the testimony of Samuel Baird, Esq.

To the granting of which the counsel on the part of the respondent, objected.

On the question,

Will the court direct a commission to issue to take the depotion of Samuel Baird, Esquire?

On this question a discussion arose.

A motion was made by Mr. Ogle and Mr. Hawkins, that the court adjourn until 3 o'clock, P. M.

Which was agreed to,

And the president ordered the court to be adjourned until that hour.

SAME DAY—IN THE AFTERNOON.

The court was opened precisely at three o'clock, P. M. by proclamation. The members of the court were all present and answered to their respective names.

The managers attended with their counsel, and the respondent attended with his counsel.

The question recurring,

Will the court direct a commission to issue to take the deposition of Samuel Baird, Esquire?

The yeas and nays were required by Mr. Burnside and Mr. Sutherland, and were as follow.

YEAS

Messrs. Allshouse,
Groves,
Leech,
M'Ilvain,
Power,
Ryon,
St. Clair,
Sutherland,
Winter, 9.

NAYS.

Messrs. Audenried,
Burnside,
Dewart,
Duncan,
Dunlop,
Emlen,
Garber,
Hamilton,
Hawkins,
Henderson,
Herbert,
Kelton,
Kerlin,
Kitchin,
Knight,
Mann,
Moore,
Ogle,
Ritscher,
Schall,
Sullivan,
Mahon, president 22.

So it was determined in the negative.

A motion was made by Mr. Dunlop and Mr. Ogle, that the court adjourn until 11 o'clock, Friday morning next.

Which was not agreed to.

On motion of Mr. Duncan and Mr. Kitchin,

The president ordered the court to be adjourned until eleven o'clock, to-morrow morning.

WEDNESDAY, December 21, 1825.

The court was opened precisely at eleven o'clock, by proclamation. The members of the court were all present, and answered to their respective names.

The managers attended with their counsel, and the respondent attended with his counsel.

On motion of Mr. Garber and Mr. Moore,

Ordered, That the names of the witnesses be called over every morning, and that the absentees be noted.

The names of the witnesses were accordingly called to the number of 62.

The following named persons did not answer to their names, Hugh Bellas, Samuel Baird, John Young, George Levers,

Samuel Sitgreaves, Hopewell Hepburn, Jefferson K. Heckman, Daniel Helfrick, Christian F. Beitel, John M. Scott, John R. Lattimore, Gabriel Hiester, William White, Frederick Smith, James Hays, James Greenleaf, Peter Ihrie, jr. M Robert Butz, John Coolbaugh, William P. Spering, William Stroud, William Lattimore—22.

The counsel on the part of the commonwealth, requested that the return of the subpœna for Saml. Baird, should be made by the sergeant-at-arms, which being done and he not attending, the counsel requested an attachment to be issued against Samuel Baird, Esquire, which the court granted, and an attachment was accordingly issued.

On motion and with the consent of the respondent,

Thomas Sebring and John Seip, witnesses on the part of the commonwealth, were discharged at the request of the counsel on the part of the commonwealth,

At half past eleven o'clock, Mr. Douglass, counsel on the part of the commonwealth, opened the impeachment and concluded at half past twelve o'clock, and proceeded to the examination of witnesses in support of the charge contained in the second article, and called

Abraham Beidleman who was sworn and examined.

On the cross examination of the above named witness, the counsel for the respondent proposed to put the following question to the witness.

"Did you, at the time when you were required to appear before the court, knowingly permit gambling in your house."

Which was objected to by the counsel on behalf of the managers.

On the question,

Shall the question as proposed, be permitted to be put to the witness?

It was determined in the negative.

On motion of Mr. Kitchin and Mr. Ogle,

Ordered, That when the court adjourns, it will adjourn to meet at 3 o'clock, in the afternoon, and that that be the standing hour of meeting until otherwise ordered.

On motion of Mr. Burnside and Mr. Ogle,

The president ordered the court to be adjourned until three o'clock, in the afternoon.

SAME DAY—IN THE AFTERNOON.

The court was opened at 3 o'clock, precisely, by proclamation.

The members of the court were all present, and answered to their respective names.

The managers attended with their counsel, and the respondent with his counsel.

The counsel on the part of the commonwealth, resumed the examination of witnesses, in support of the charges contained in the second article.

George Haveracker, sworn and examined.

The counsel on the part of the commonwealth proceeded to the examination of witnesses, in support of the charge contained in the third article, and called

Jacob Reese, jr. who was sworn and examined.

Jacob Weygandt, jr. who was sworn and examined.

On motion of Mr. Burnside and Mr. St. Clair,

Ordered, That when the court adjourn it will adjourn to meet at ten o'clock, to-morrow morning, and that that be the standing hour of meeting until otherwise ordered.

A motion was made by Mr. Dunlop and Mr. Duncan, that the court adjourn.

On the question,

Will the court adjourn?

The yeas and nays were required by Mr. Hawkins, and Mr. Burnside, and were as follow.

YEAS		YEAS	
Messrs.	Dewart,	Messrs. Mann,	
	Duncan,	Moore,	
	Dunlop,	Ogle,	
	Groves,	Ryon,	
	Hawkins,	Sullivan,	
	Herbert,	Winter,	13.
	Kelton,		
NAYS.		NAYS.	
Messrs.	Allshouse,	Messrs. Knight,	
	Audenried,	Leech,	
	Burnside,	M'Ilvain,	
	Emlen,	Power,	
	Garber,	Ritscher,	
	Hamilton,	Schall,	
	Henderson,	St. Clair,	
	Kerlin,	Sutherland,	
	Kitchin,	Mahon, president	18.

So it was determined in the negative.

At the request of the counsel for the respondent, the names of the witnesses who did not answer to their names when called in the morning, were again called, when John Coolbaugh, M. Robert Buttz and William Sroud answered.

On motion of Mr. Groves and Mr. Kelton,

The president ordered the court to be adjourned until ten o'clock, to-morrow morning.

THURSDAY, December 22, 1825.

The court was opened precisely at ten o'clock, A. M. by proclamation. The members of the court were all present, and answered to their respective names.

The managers attended with their counsel, and the respondent attended with his counsel.

Agreeably to order,

The names of the witnesses were called by the clerk, to the number of 62, the following named did not answer, viz.

Samuel Baird, John Young, George Levers, Samuel Sitgreaves, Hopewell Hepburn, Jefferson K. Heckman, Daniel Helfrick, Christian F. Beitel, John M. Scott, John R. Lattimore, Gabriel Hiester, William White, Frederick Smith, Jas. Hays, James Greenleaf, William P. Spering, William Lattimore.—17.

The witnesses on the part of the commonwealth, to testify on the 4th, 5th, 6th, 7th and 8th articles not being in attendance,

The counsel on the part of the commonwealth proceeded to the examination of witnesses in support of the charge contained in the ninth article.

Hugh Ross, Esq. was sworn and examined.
Henry Jarret Esq. " "
Hon. John Cooper " "
Samuel Strouse " "
George M. Stroud affirmed and examined.

The counsel on the part of the commonwealth, having gone through with the examination of all the witnesses present, on the ninth article of impeachment, then proceeded to the examination of witnesses in support of the charges contained in the first clause of the tenth article, and

Henry Jarret, Esquire, was examined.

On motion of Mr. Ogle and Mr. Ritscher,

The president ordered the court to be adjourned until three o'clock, in the afternoon.

SAME DAY—IN THE AFTERNOON.

The court was opened precisely at three o'clock, by proclamation. The members of the court were all present and answered to their respective names.

The managers attended with their counsel, and the respondent attended with his counsel.

The counsel on the part of the commonwealth resumed the examination of witnesses in support of the charge contained in the first clause of the tenth article; and

George M. Stroud, Esq was examined.
Hon. John Cooper "
Hugh Ross, Esquire "

The counsel on the part of the commonwealth having gone through with the examination of witnesses in support of the first clause of the tenth article then proceeded to the examination of witnesses in support of the charge contained in the second clause of the tenth article.

Henry Jarret, Esq. was examined.
Hugh Ross, "
Hon. John Cooper, "

The counsel on the part of the commonwealth having gone through with the examination of witness on the second clause of the tenth article, then proceeded to the examination of witnesses in support of the charge contained in the eleventh article of impeachment.

Hugh Ross, Esq. was examined.
Henry Jarret "
Hon. John Cooper "

On motion of Mr. Kitchin and Mr. Mann,

The president ordered the court to be adjourned until ten o'clock, to-morrow morning.

FRIDAY, December 23, 1825.

The court was opened precisely at ten o'clock, A. M. by proclamation, the members of the court were all present, and answered to their respective names.

The counsel on the part of the commonwealth, and the respondent attended with his counsel.

Agreeably to order,

The names of the witnesses were called by the clerk: the following named did not answer, viz.

Samuel Baird, Samuel Sitgreaves, Daniel Helfrich, Frederick Smith, William Lattimore, John Young, Hopewell Hepburn, Christian F. Beitel, James Greenleaf, George Levers, Jefferson K. Heckman, John M. Scott, William P. Spering—13.

At this time the managers came into the court and presented to the president an extract from the journal of the House of Representatives, which was read as follows, viz.

In the House of Representatives,
December 23, 1825.

Whereas, the House of Representatives, on a resolution offered by Mr. Dillinger, on the 12th of December instant, proceeded to the appointment of managers on the part of the said house to prosecute the articles of impeachment against Robert Porter, Esq. president and judge of the 3d judicial district of Pennsylvania, to wit. Messrs. Maclean, Irwin, Cunningham, Farrel, Thomas, W. B. Foster and M'Reynolds, who were accompanied by the said house, in committee of the whole, on the 13th December, to the bar of the Senate, to hear the answers, if any, which the said Robert Porter had to make in his behalf to the articles of impeachment thus preferred against him. And whereas, Mr. Maclean, on behalf of the managers, requested and obtained time until 11 o'clock on Monday, the 19th December then next, to consult the House of Representatives as to such replication as would be proper to make to the answers and pleas of the respondent. On the 17th of December instant, four of the said managers, to wit: Messrs. Maclean, Irwin, Cunningham and Farrel asked and obtained leave from the House of Representatives to withdraw from the committee of managers aforesaid, in the room of whom were appointed Messrs. Heston, F. Smith, Beeson and Petrikin. And whereas, from the shortness of the time allowed to the said managers to prepare for the trial of the said Robert Porter, Esq. and the want of knowledge on their part, of the witnesses to be produced, or the preparation to be made, it will be necessary to ask the honorable the Senate to continue the trial now pending, until such time as the attendance of witnessses already subpœnaed on the part of the commonwealth can be compelled, or take such other order as the said court in its wisdom shall think expedient, to secure justice to the commonwealth: Therefore,

Resolved, That the honorable court of impeachment now holding, for the trial of Robert Porter, Esq, president judge of the third judicial district of Pennsylvania, be and they are hereby respectfully requested to continue the said trial until Monday the 26th inst. at 10 o'clock, or take such other order as will effect the purposes above mentioned.

Extract from the journal.
FRANCIS R. SHUNK, Clerk.

Laid on the table.

The counsel on the part of the commonwealth, having gone through with the examination of witnesses on the second clause of the tenth article, then proceeded to the examination of witnesses in support of the charges contained in the first

article of impeachment, and offered in evidence the records of the case of Jacob W. Seitzinger vs. Henry Zellers, in the court of common pleas of Berks county.

Marks J. Biddle was then sworn and examined.

On motion, and with the consent of the respondent,

Marks J. Biddle and George M. Stroud, witnesses on the part of the commonwealth, were discharged at the request of the counsel on the part of the commonwealth.

The counsel on the part of the commonwealth having gone through with the examination of witnesses on the first article, then proceeded to the examination of witnesses in support of the charges contained in the fourth article of impeachment.

When Hugh Ross, Esq. was called, and on his examination the counsel on the part of the commonwealth proposed to ask the witness the following question:

"State what evidence was given of a larceny before the judgment bond was given by Mills and his two sureties to the prosecutor, Levers."

Which being objected to by the counsel for the respondent.

On the question being put to the court,

Shall the question be put to the witness as proposed?

It was determined in the affirmative.

When a discussion arose among the members of the court, on the propriety of the question being put to the witness at the present time.

A motion was made by Mr. Duncan and Mr. Henderson,

To reconsider the vote just given,

Which was agreed to, and

The question then recurring,

Shall the question be put to the witness as proposed?

It was at the request of the counsel with the unanimous consent of the court, withdrawn for the present.

When on motion of Mr. M'Ilvain and Mr. Power,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened at three o'clock precisely, by proclamation. The members of the court were all present and answered to their respective names.

The managers attended with their counsel, and the respondent with his counsel.

On motion, and with the consent of the respondent,

George Haveracker and Abraham Beidleman, witnesses on the part of the commonwealth, were discharged at the request of the counsel on the part of the commonwealth.

The counsel for the commonwealth requested that the return of the subpoena for George Levers, should be made by the sergeant at-arms.

The service of the subpoena being proved to the satisfaction of the court, and Mr. Levers being absent, the counsel then requested that an attachment might be granted by the court against the said George Levers.

Which was granted, and

An attachment was accordingly issued.

The counsel for the commonwealth then resumed the examination of witnesses in support of the charges contained in the fourth article of impeachment.

Hugh Ross was again examined.

Mr. Jacob Reese, jun. one of the witnesses on the part of the commonwealth, at his request was permitted to explain part of his testimony which he gave on the third article, which being done,

On motion, and with the consent of the respondent,

Jacob Reese, jr. was discharged at the request of the counsel on the part of the commonwealth.

The managers having gone through with the examination of witnesses on the fourth article, then proceeded to the examination of witnesses in support of the charge contained in the fifth article of impeachment.

Henry King, Esq. was sworn and examined.

The counsel on the part of the commonwealth having gone through with the examination of witnesses in the fifth article, then proceeded to the examination of witnesses in support of the charges contained in the sixth article of impeachment, and at the same time offered in evidence the record of the case of James Hays vs. Hugh Bellas, in the court of common pleas of Northampton county.

Hugh Bellas, Esq. was then sworn and examined.

On motion of Mr. Dewart and Mr. Ryon,

The president ordered the court to be adjourned until ten o'clock, to-morrow morning.

SATURDAY, December 24, 1825.

The court was opened precisely at ten o'clock, A. M. by proclamation. The members of the court were all present and answered to their respective names.

The managers attended with their counsel, and the respondent attended with his counsel.

Agreeably to order,

The names of the witnesses were called over by the clerk, the following named did not answer: Samuel Baird, Jno. Young, George Levers, Samuel Sitgreaves, Hopewell Hepburn, Jefferson K. Heckman, Danl. Helfrich, Christian F. Beitel, Jno. M. Scott, Gabriel Hiester, Fredk. Smith, James Greenleaf, Christopher Meixsell, Wm. P. Spering, Wm. Lattimore, 15.

The counsel on the part of the commonwealth having gone through with the examination of witnesses in support of the charge contained in the sixth article of impeachment, then proceeded to the examination of witnesses, in support of the charge contained in the seventh article, and

Henry King, was examined.

Chas, Davis, was sworn and examined.

Hugh Ross, "

The counsel on the part of the commonwealth having gone through with the examination of witnesses in support of the seventh article, then proceeded to the examination of witnesses in support of the charge contained in the eighth article of impeachment.

Jacob Bishop was sworn and examined.

The counsel on the part of the commonwealth, then submitted in evidence the record of the case of the supervisors of the public roads and highways of the township of Northampton vs. James Greenleaf.

Charles Davis, was then examined.

Henry Jarret, " "

The counsel on the part of the commonwealth having gone through with the examination of witnesses, in support of the charge contained in the eighth article of impeachment,

On motion, and with the consent of the respondent,

Saml. Shouse, Jacob Weygandt, jr. and Josiah Davis, Esqrs. witnesses on the part of the commonwealth, were discharged at the request of the counsel on the part of the commonwealth.

On motion of Mr. Hawkins and Mr. Ritscher,

The president ordered the court to be adjourned until ten o'clock, on Monday morning next.

MONDAY, December 26, 1825.

The court was opened pecisely at ten o'clock, A. M. by proclamation. The members of the court were all present except Mr. Sutherland.

The managers attended with their counsel, and the respondent attended with his counsel.

Agreeably to order,

The names of the witnesses were called over by the clerk; the following named did not answer, viz:

Hugh Bellas, Saml. Sitgreaves Jno. M. Scott, Fredk. Smith, Wm. P. Spering, Saml. Baird, Danl. Helfrick, Alex. L. Hays, James Greenleaf, Wm. Lattimore, John Young, Christian F. Beitel, Robert M. Brooke, Peter Ihrie, jr.—14.

A motion was made by Mr. Dewart and Mr. Mann,

That the court proceed with the trial, in the absence of Mr. Sutherland.

When Mr. Douglas, counsel on the part of the commonwealth, submitted to the court the following:

The managers on behalf of themselves and the House of Representatives, conducting the impeachment now pending before the honorable the Senate, against Robert Porter, Esq. believing that it is the just, legal and constitutional right, both of the commonwealth and the respondent, to have each and every member of the court who have been sworn or affirmed to try said impeachment, present during the whole of the trial thereof, unless in the case of the death or sickness of any of the said members; and as all of the members of the court are not now present, they respectfully object against proceeding on said trial at this time. By

SAMUEL DOUGLAS,
Their Attorney.

December 26, 1825.

On the question,

Will the court proceed with the trial in the absence of Mr. Sutherland?

A motion was made by Mr. Groves and Mr. Allshouse,

That the court adjourn until eleven o'clock, to-morrow morning.

On the question,

Will the court adjourn?

The yeas and nays were required by Mr. Kitchin and Mr. Ritscher, and were as follow:

YEAS.		YEAS.	
Messrs.	Allshouse,	Messrs.	Ogle,
	Dewart,		Power,
	Dunlop,		Ritscher,
	Groves,		Ryon,
	Hawkins,		St. Clair,
	Herbert,		Sullivan,
	Mann,		Mahon, president, 15.
	Moore,		
NAYS.		NAYS.	
Messrs.	Audenried,	Messrs.	Kerlin,
	Burnside.		Kitchin,
	Duncan,		Knight,
	Emlen,		Leech,
	Garber,		M'Ilvain,
	Hamilton		Schall,
	Henderson,		Winter, 15.
	Kelton,		

So it was determined in the negative.

The question recurring,

Will the court proceed with the trial in the absence of Mr. Sutherland?

It was determined in the affirmative.

On motion of Mr. Sullivan and Mr. Emlen,

The president ordered the court to be adjourned until half past nine o'clock, to-morrow morning.

TUESDAY, December 27, 1825.

The court was opened precisely at half past nine o'clock, A. M. by proclamation. The members of the court were all present, except Mr. Ryon and Mr. Sutherland.

Mr. Ogle informed the court that the indisposition of Mr. Ryon was such as to prevent his attendance.

The managers attended with their counsel, and the respondent with his counsel.

Agreeably to order,

The names of the witnesses were called over by the clerk. The following named did not answer:

Hugh Bellas, John Young, Samuel Sitgreaves, Christian F. Beitel, John M. Scott, Robert M. Brooke, James Greenleaf, William P. Spering, William Lattimore.

On motion of Mr. Emlen and Mr. Garber,

The president ordered the court to be adjourned for one hour.

SAME DAY—IN THE FORENOON.

The court was opened precisely at 20 minutes before 11 o'clock, by proclamation. The members of the court were all present except Mr. Ryon and Mr. Sutherland.

The managers attended with their counsel, and the respondent with his counsel.

A motion was made by Mr. Mann and Mr. Allshouse, that the court adjourn.

Which was agreed to, and

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened precisely at 3 o'clock, by proclamation. The members of the court were all present except Mr. Ryon and Mr. Sutherland.

The managers attended with their counsel, and the respondent attended with his counsel.

On the question being put,

Will the court proceed with the trial?

It was determined in the affirmative.

The counsel on the part of the commonwealth then proceeded in the examination of witnesses in support of the charges contained in the first article of impeachment.

Saml. Baird, Esq. was sworn and examined.

The counsel on the part of the commonwealth submitted to the court the following question, which they proposed to put to the witness:

"State whether any evidence of defalcation on the part of the defendant in the suit, was given to the referee at the trial of he cause."

Which was objected to by the counsel for the respondent,

On the question,

Shall the question proposed be put to the witness?

It was determined in the negative.

The counsel on the part of the commonwealth having gone through with the examination of the witnesses in support of the charge contained in the first article, proceeded to the examination of witnesses in support of the charges contained in the fifth article.

Christian F. Beitel, was sworn and examined.

The counsel on the part of the commonwealth having gone through with the examination of witnesses on the fifth article, proceeded to the examination of witnesses in support of the charge contained in the seventh article.

Daniel Helfrick, was sworn and examined.

A motion was made by Mr. Ogle and Mr. Hawkins, that the court adjourn.

Which was not agreed to.

The counsel on the part of the commonwealth having gone through with the examination of witnesses on the seventh article, and stated to the court that the Hon. John Cooper and Hugh Ross, Esq. were desirous to explain to the court, part of their testimony which they had given on the eleventh article, which was allowed, and the

Hon. John Cooper and Hugh Ross, Esq. were called in, and gave their explanation.

The counsel on the part of the commonwealth proceeded to the examination of witnesses, in support of the charge contained in the fourth article of impeachment.

George Levers, was sworn and examined.

On motion of Mr. Kitchin and Mr. M'Ilvain,

The president ordered the court to be adjourned until half past nine o'clock, to-morrow morning.

WEDNESDAY, December 28, 1825.

The court was opened precisely at half past nine o'clock, A. M. by proclamation.

The members of the court were all present, except Mr. Sutherland.

The managers attended with their counsel, and the respondent with his counsel.

Agreeably to order,

The names of the witnesses were called over by the clerk, the following named did not answer, viz:

John Young, Samuel Sitgreaves, Robert M. Brooke, James Greenleaf, Christopher Meixsell, Wm. P. Spering, and Wm. Lattimore.

The counsel on the part of the commonwealth, stated to the court that George Levers was desirous to explain to the court part of his testimony which he had given on the fourth article.

Which was allowed, and

Geo. Levers was then called in—he explained.

The counsel on the part of the commonwealth, continued the examination of witnesses in support of the charges contained in the fourth article of impeachment.

John. M. Scott, was sworn and examined.

The counsel on the part of the commonwealth having gone through with the examination of witnesses in support of the charge contained in the fourth article, and proceeded to the examination of witnesses in support of the charge contained in the sixth article, and offered in evidence the record of the cause, Hays, vs. Bellas, in the supreme court of Pennsylvania.

John M. Scott, was then examined.

The counsel on the part of the commonwealth having gone through with the examination of witnesses, in support of the charge contained in the sixth article, proceeded to the examination of witnesses in support of the charges contained in the ninth article.

Peter Ihrie, jr. Esq. sworn and examined
Jefferson K. Heckman, Esq. " "
Hopewell Hepburn, " "

On motion, and with the consent of the respondent,

The following named witnesses, on the part of the commonwealth, viz:

Samuel Baird, Henry Betz, John M. Scott and Hopewell Hepburn, Esquires, were discharged at the request of the counsel on the part of the commonwealth.

The evidence being closed on the part of the prosecution,

At twenty minutes before eleven o'clock, David Paul Brown, Esq. counsel for the respondent, commenced addressing the court in behalf of the accused, and concluded at twenty minutes after eleven o'clock.

The counsel for the respondent then proceeded to adduce testimony against the charges contained in the first article of impeachment.

Alexander L. Hays, was sworn and examined.
Hon. William Witman, jr. " "

The counsel for the respondent proposed to put the following question to the last named witness.

"Did you, sir, hear Mr. Biddle request judge Porter to retire or withdraw from the bench, at or about the time of the argument, upon the exceptions."

Which was objected to by the managers.

On the question,

Shall the question be put to the witness as proposed?

It was determined in the affirmative.

Hon. Jacob Schneider, affirmed and examined.

On motion of Mr. Ogle and Mr. Ritscher,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened precisely at three o'clock, by proclamation.

The members of the court being all present, except Mr. Suthland.

The managers attended with their counsel, and the respondent attended with his counsel.

The counsel on the part of the commonwealth desired to cross examine two of the witnesses adduced by the counsel for the respondent this morning, on the first article of impeachment.

Which was allowed, and the

Hon. Wm. Witman, jr. and

Hon. Jacob Schneider, were then cross examined.

The counsel for the respondent continued to adduce testimony against the charges contained in the first article.

John Addams, Esq. was sworn and examined.

The counsel for the respondent then adduced testimony against the charges contained in the second article of impeachment.

Chas. L. Hutter, Esq. was sworn and examined.

Hon. Jno. Fogel " "

Fredk. Hyneman, " "

Abm. Rinker, " "

Nicholas Saeger was called.

The counsel for the respondent proposed to prove by the last named witness that Abraham Beidleman was convicted for permitting gambling in his house.

Which was objected to by the counsel for the managers, and overuled by the court.

The counsel for the respondent then proceeded to adduce testimony against the charges contained in the third article of impeachment.

Wm. White, Esq. was sworn and examined.
John. R. Lattimore, Esq. " "

The counsel for the respondent then proceeded to adduce testimony against the charges contained in the fourth article of impeachment.

James M. Porter, affirmed and examined.
Hon Danl Wagener. " "

The counsel for the respondent passed over the fifth article for the present, and adduced testimony againt the charges contained in the sixth article of impeachment.

David D. Wagener, sworn and examined.
James Hays, Esq. " "
James M. Porter, Esq. examined.

On motion of Mr. Mann and Mr. Hamilton,

The president ordered the court to be adjourned until half past nine o'clock, to-morrow morning.

THURSDAY, December 29, 1825.

The court was opened precisely at half past nine o'clock, A. M. by proclamation.

The members of the court were all present, except Mr. Sutherland, and answered to their names

The managers attended with their counsel, and the respondent attended with his counsel.

The names of the witnesses were called over by the clerk. The following named did not answer:

John Young, Saml. Sitgreaves, Robt. M. Brooke, James Greenleaf, Wm. P. Spering and William Lattimore.

The counsel for the respondent adduced testimony against the charges contained in the fifth article of impeachment.

Fredk. Smith, Esq. (of Reading) was sworn and examined.

The counsel for the respondent adduced testimony against the charges contained in the seventh article.

Fredk. Smith, Esq. (of Reading) was examined.
James M. Porter, Esq. "

The counsel for the respondent proceeded to adduce testimony against the charges contained in the eighth article of impeachment.

When the counsel for the managers stated to the court, that owing to the non-attendance of Mr. Sitgreaves, they had abandoned the eighth article of impeachment.

The counsel for the respondent then adduced testimony against the charges contained in the ninth article of impeachment.

Hon. Daniel Wagener, was examined.

Doct. Jno. O. Wagener, affirmed and examined.

Christopher Meixsell, sworn and examined.

The counsel for the respondent then adduced testimony against the charges contained in the tenth article of impeachment.

Mathias Gress, Esq. was sworn and examined.

Hon. Daniel Wagener, examined.

Wm. Stroud, sworn and examined.

Peter Ihrie, jr. examined.

Abrm. Sigman, sworn and examined.

Hon. Daniel Wagener, again examined.

On motion of Mr. Ogle and Mr. Garber,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened precisely at three o'clock, by proclamation. The members of the court were all present, except Mr. Sutherland.

The managers attended with their counsel, and the respondent attended with his counsel.

The counsel for the respondent continued to adduce testimony against the charges contained in the tenth article.

Danl. Wagener, was examined.

The counsel for the respondent proposed to prove by the last named witness, the general character of judge Porter, and proposed to the witness the following question.

"You state, sir, that you have been associate judge of the court of common pleas for Northampton county, of which judge Porter is president, for upwards of fourteen years, I will ask you, what has been his general character for honesty during that time."

Which was objected to by the counsel for the managers.

The question was put to the court.

When a discussion arose among the members, and at the request of one of them, it was withdrawn by the counsel, by the unanimous consent of the court.

The counsel for the respondent stated to the court that he would now close with adducing testimony.

The counsel for the commonwealth then called the following witness to explain parts of his testimony, and to rebut testimony of other witnesses.

Hugh Bellas, Esq. examined.

The testimony was closed on the part of the commonwealth; and

On motion of Mr. Garber, and Mr. Dewart,

The witnesses were then discharged with the consent of both parties.

A motion was made by Mr. Dunlop and Mr. Power, that the court adjourn.

On the question,

Will the court adjourn?

The yeas and nays were required by Mr. Kitchin, and Mr. Burnside, and were as follow:

YEAS		YEAS	
Messrs.	Allshouse,	Messrs.	Ogle,
	Audenried,		Power,
	Dunlop,		Ritscher,
	Emlen,		Ryon,
	Groves,		St. Clair,
	Hawkins,		Sullivan,
	Herbert,		Winter,
	Mann,		Mahon, president 16.
NAYS.		NAYS.	
Messrs.	Burnside,	Messrs.	Kerlin,
	Dewart,		Kitchin,
	Duncan,		Knight,
	Garber,		Leech,
	Hamilton,		M'Ilvain,
	Henderson,		Moore,
	Kelton,		Schall, 14.

So it was determined in the affirmative.

And the president ordered the court to be adjourned until ten o'clock, to-morrow morning.

FRIDAY, December 30, 1825.

On motion of Mr. Burnside and Mr. Hawkins,

The court was opened precisely at fifteen minutes before ten o'clock, A. M. by proclamation.

The members of the court were all present and answered to their respective names, except Mr. Sutherland.

The managers attended with their counsel, and the respondent with his counsel.

Mr. Douglas, counsel on behalf of the managers, commenced his argument at ten minutes before ten o'clock, and concluded at five minutes after eleven o'clock.

When, David Paul Brown, Esq. commenced his argument on the part of the respondent and continued until ten minutes after one o'clock.

When, on motion of Mr. Ogle and Mr. Ritscher,

The president ordered the court to be adjourned until nine o'clock, to-morrow morning.

SATURDAY, December 31, 1825.

The court was opened precisely at nine o'clock, A. M. by proclamation.

The members of the court were all present and answered to their respective names except Mr. Sutherland.

The managers attended with their counsel, and the respondent attended with his counsel.

Mr. Brown, counsel for the respondent, continued his argument, and concluded at ten minutes past eleven.

When Mr. Douglas commenced his reply on behalf of the commonwealth, and continued until ten minutes after one o'clock.

When, on motion of Mr. Ritscher and Mr. Allshouse,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened precisely at three o'clock, by proclamation.

The members of the court were all present and answered to their names respectively, except Mr. Sutherland.

The managers attended with their counsel, and the respondent attended with his counsel.

Mr. Douglas resumed his reply on behalf of the commonwealth at five minutes after three o'clock, and concluded at twenty-five minutes after four.

The president then inquired whether the court were ready to proceed to give their judgment; when

Mr. Ogle rose and stated that he was not prepared, and asked the indulgence of the court until seven o'clock, in the evening.

Whereupon,

On motion of Mr. Hawkins and Mr. St. Clair,

The president ordered the court to be adjourned until seven o'clock, in the evening.

IN THE EVENING.

The court was opened precisely at seven o'clock, by proclamation.

The members of the court were all present and answered to their respective names, except Mr. Sutherland.

The managers attended with their counsel, and the respondent with his counsel.

The president then addressed the court as follows:

Gentlemen,—You have heard the evidence and arguments adduced on the trial of Robert Porter, Esq. president and judge of the third judicial district of Pennsylvania, impeached for misdemeanors in office.

The first article was then read by the clerk. After which

The president stated that the members would, as their names were called, pronounce their judgment on the following question.

Is the respondent Robert Porter, guilty or not guilty of the misdemeanor in office as charged in the first article of impeachment exhibited against him by the House of Representatives, just read;

Whereupon, the members answered as follow, viz:

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight, Leech, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Winter and Mahon, president, 30, said not guilty.

The second article of impeachment was then read, and the like question being stated by the president;

Whereupon, the members answered as follow, viz:

Messrs. Audenried, Hawkins, Knight, Leech and St. Clair, 5, said guilty.

Messrs. Allshouse, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Henderson, Herbert, Kelton, Kerlin, Kitchin, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, Sullivan, Winter and Mahon, president, 25, said not guilty.

The third article of impeachment was then read, and the like question being stated by the president;

Whereupon, the members answered as follow, viz:

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight, Leech, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Winter and Mahon, president, 30, said not guilty.

The fourth article of impeachment was then read, and the like question being stated by the president;

Whereupon, the members answered as follow, viz:

Messrs. Allshouse, Leech, Power, Ritscher, Ryon, St. Clair and Winter, 7, said guilty.

Messrs. Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight, Mann M'Ilvain, Moore, Ogle, Schall, Sullivan and Mahon, president, 28, said not guilty.

The fifth article of impeachment was then read, and the like question being stated by the president;

Whereupon, the members, answered as follow, viz:

Messrs. Allshouse, Power and Ritscher, 3, said guilty.

Messrs. Audenried, Burnside, Dewart, Duncan, Dunlop Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight, Leech, Mann, M'Ilvain, Moore, Ogle, Ryon, Schall, St. Clair, Sullivan, Winter and Mahon, president, 27, said not guilty.

The sixth article of impeachment was then read, and the like question being stated by the president;
Whereupon, the members voted as follow, viz:

Messrs. Allshouse, Hamilton, Hawkins, Knight, Leech, Mann, Power, Ritscher, Ryon, St. Clair and Winter, 11, said guilty.

Messrs. Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Henderson, Herbert, Kelton, Kerlin, Kitchin, M'Ilvain, Moore, Ogle, Schall, Sullivan and Mahon, president, 19, said not guilty.

The seventh article of impeachment was then read, and the like question being stated by the president;
Whereupon, the members voted as follow, viz:

Mersrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight, Leech, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Winter and Mahon, president, 30, said not guilty.

The eighth article of impeachment was then read, and the like question being stated by the president;
Whereupon, the members answered as follow, viz:

Messrs, Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight, Leech, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Winter and Mahon, president, 30, said not guilty.

The ninth article of impeachment was then read, and the like question being stated by the president;
Whereupon, the members answered as follow, viz:

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight, Leech, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Winter and Mahon, president, 30, said not guilty.

The tenth article of impeachment was then read, and the like question being stated by the president;
Whereupon, the members answered as follow, viz:

Mr. Leech, 1, said guilty.
Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Winter and Mahon, president, 29, said not guilty.

The eleventh article of impeachment was then read, and the like question being stated by the president;

Whereupon, the members answered as follow, viz:

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight Leech, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Winter and Mahon, president, 30, said not guilty.

The twelfth article of impeachment was then read, and the like question being stated by the president;

Whereupon, the members answered as follow, viz:

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight, Leech, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Winter and Mahon, president, 30, said not guilty.

Whereupon, the president declared that on the

1st Article, none have said guilty, and thirty have said not guilty.

2d Article, five have said guilty, and twenty-five have said not guilty.

3d Article, none have said guilty, and thirty have said not guilty.

4th Article, seven have said guilty, and twenty-three have said not guilty.

5th Article, three have said guilty, and twenty-seven have said not guilty.

6th Article, eleven have said guilty, and nineteen have said not guilty.

7th Article, none have said guilty, and thirty have said not guilty.

8th Article, none have said guilty, and thirty have said not uilty.

9th Article, none have said guilty, and thirty have said not guilty.

10th Article, one has said guilty, and twenty-nine have said not guilty.

11th Article, none have said guilty, and thirty have said not guilty.

12th Article, none have said guilty, and thirty have said not guilty.

Hence it appears, that there is not a constitutional majority of votes finding Robert Porter, Esquire, guilty on any one article; it therefore became his duty to declare that Robert Porter, Esquire, stands acquitted of all the articles of accusation and impeachment, exhibited against him by the House of Representatives.

On motion of Mr. Duncan and Mr. Knight,

The president ordered the court to be adjourned *sine die*.

JOHN DE PUI, *Clerk*.

Exhibit D

JOURNAL

OF THE

COURT OF IMPEACHMENT

FOR THE TRIAL OF

SETH CHAPMAN, ESQUIRE,

President Judge of the eighth Judicial District of Pennsylvania-

FOR

MISDEMEANORS IN OFFICE,

BEFORE

THE SENATE

OF THE

COMMONWEALTH OF PENNSYLVANIA

HARRISBURG:

PRINTED BY CAMERON & KRAUSE.

1826.

TUESDAY, February 7, 1826.

At eleven o'clock, A.M. precisely the Senate proceeded to organise itself into a court of impeachment. The following members present.

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelley, Kelton, Kerlin, Kitchin, Knight, Leech, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Sutherland, Winter, Mahon, president.—32.

Mr. Leech asked and was excused from serving as a member of the court, on account of being indisposed.

The oath prescribed by the constitution, and in the form required by the resolution of the Senate, adopted on the 26th ult. was administered to the president by Mr. Hawkins.

The president administered the oath required, and prescribed to the following named members, viz.

Messrs. Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Hamilton, Hawkins, Henderson, Kelton, Kitchin, M'Ilvain, Moore, Ogle, Ryon, Sutherland, Winter, Herbert, Kelley, Mann, Power, St. Clair.

And the affirmation to

Messrs. Allshouse, Garber, Groves, Kerlin, Knight, Ritscher, Schall and Sullivan.

On motion of Mr. Hawkins and Mr. Burnside,

Ordered, That the Clerk give notice to the House of Representatives that the Senate are now organised as a court of impeachment, for the trial of Seth Chapman, Esquire, president judge of the eighth judicial district of this commonwealth.

In a few minutes the managers, viz.

Messrs. Hutter, Wise, Blythe, Champneys, Brown, Scott, and Dillinger, accompanied by the House of Representatives, in committee of the whole, entered and took their seats assigned them respectively.

The president ordered Seth Chapman, Esquire, president judge of the courts of common pleas of the eighth judicial district of this commonwealth, to be called, and on his appearance at the bar, the president directed the clerk to read the articles of accusation and impeachment, preferred by the House of Representatives, in their own name and in the name of the people of Pennsylvania, a copy of which is as follows:

ARTICLES, exhibited by the House of Representatives of the commonwealth of Pennsylvania, in their name and in the name of the people of Pennsylvania, against Seth Chapman, Esquire, president of the eighth judicial district of the said commonwealth, in support of their impeachment against him for misdemeanors in office.

ARTICLE I.

That in direct violation and contempt of the constitution of this commonwealth, the said Seth Chapman, Esquire, being duly appointed and commissioned president of the eighth judicial district, composed of the counties of Northumberland, Columbia, Union and Lycoming, when presiding as judge, has oppressively and tyrannically caused a citizen of this commonwealth to be arrested and imprisoned, without reasonable cause shown, and without lawful warrant supported by oath or affirmation, viz: At the court of general quarter sessions of the peace for the county of Northumberland, at August sessions, one thousand eight hundred and twenty-four, the said Seth Chapman, Esquire, presiding as judge, did direct a certain Jacob Farrow, a citizen of this commonwealth, to be arrested and imprisoned without any complaint against him, supported by oath or affirmation and without lawful cause.

ARTICLE II.

That notwithstanding the provisions of the twenty-first section of an act of the general assembly of this commonwealth, passed the twentieth day of March, one thousand eight hundred and ten, which provides that no judgment shall be set aside in pursuance of a writ of certiorari to remove the proceeding had in any trial before a justice of the peace, unless the same is issued within twenty days after judgment was rendered and served within five days thereafter, and that no execution shall be set aside in pursuance of the writ aforesaid unless the said writ is issued and served within twenty days after the execution issued, yet the said Seth Chapman, Esquire, being duly appointed and commissioned president judge as aforesaid, and acting in his official capacity, regardless of the provisions of the said act of assembly, did at a court of common pleas in and for Union county, whereat the said Seth Chapman, Esquire, presided in a certain writ of certiorari issued out of the court of common pleas of said county, to September term, one thousand eight hundred and twenty-two, at the suit of Stephen Hughes for the use of Daniel Kline, vs. John Karner, and directed to Christian Miller, Esq. a justice of the peace for said county, upon which the proceedings of the said justice had been returned to said court, set aside and reverse the judgment of the said justice and did set aside an execution thereon issued although said judgment was rendered more than twenty days before the issuing of said certiorari, the said Seth Chapman, Esquire, at

the time well knowing the reversal thereof to be contrary to the provisions of the said act of assembly.

ARTICLE III.

That notwithstanding the provisions of the twenty-fifth section of the act of the twenty-fourth of February, one thousand eight hundred and six, which secure to every suitor in this commonwealth the benefit of a revision of the opinions of the presidents of the courts of common pleas in the supreme court of this commonwealth, by making it the duty of the said judges if either party, by himself or counsel, require it, to reduce the opinion given with their reasons therefor to writing, and file the same of record in the cause, the said Seth Chapman, Esquire, in violation of the salutary provisions of the said act and for the purpose of preventing a revision of his opinion in the supreme court and to obstruct the administration of justice, did in the case of the lessee of Wistar vs. Clark, Madden et al. in the court of common pleas of Northumberland county, of June term, one thousand eight hundred and thirteen, on the trial of said action as president of the said court, deliver to the jury then impannelled and sworn or affirmed to try the issue joined in said case, his charge and opinion, which opinion was required by the counsel for defendants to be reduced to writing and filed of record in the cause, and the counsel for defendants then tendered his bill of exceptions to said opinion which was allowed by the said court, and the said Seth Chapman, Esquire, for the purpose of preventing the said defendants from obtaining the benefit of a revision of his said opinion in the supreme court according to the laws and constitution of this commonwealth, did file of record in said cause a paper purporting to be the opinion and charge delivered by him to said jury and excepted to as aforesaid, which was not in fact the opinion and charge delivered by him to said jury, and which said paper purporting to be the charge and opinion as aforesaid was returned to the supreme court on a writ of error which issued in said cause from the said supreme court and the said Seth Chapman, Esquire, for the purpose of preventing the due administration of justice and to deprive the plantiff in error in the suit aforesaid of his constitutional and legal right to a revision of the opinion of the said Seth Chapman, Esquire, in the supreme court of this commonwealth, falsified, added to and altered the record of the said court of common pleas, in the manner aforesaid.

ARTICLE IV.

The said Seth Chapman, Esquire, duly appointed and commisioned president as aforesaid, not regarding the duties of said office by freely, fully and impartially administering the laws of this commonwealth, and deciding in all cases tried before him as president judge without fear, favor or affection, has

which he the said Seth Chapman, president as aforesaid, shall make unto the said articles or to any or either of them, and of offering proof of the said premises or of any of them or of any other accusation or impeachment which shall or may be exhibited by them as the case shall require, do demand that the said Seth Chapman, president as aforesaid, may be put to answer all and every of the premises and that such proceedings, examination, trial and judgment may be against and upon him had as are agreeably to the constitution and laws of this commonwealth, and the said House of Representatives are ready to offer proof of the premises at such times as the Senate of the said commonwealth of Pennsylvania shall appoint.

(Signed,) JOSEPH RITNER, Speaker of the House of Representatives.

The president then required of Seth Chapman, Esquire, what answer he had to make in his behalf, to the articles of impeachment preferred against him as just read.

Seth Chapman, Esquire, stated to the court that Samuel Douglas and George Fisher, Esquires, would act as counsel on his behalf, and desired that Mr. Douglas be permitted to read his answers and pleas.

Which was allowed, and,

They were accordingly read by him, as follow:

The answers and pleas of Seth Chapman, president judge of the eighth judicial district of the commonwealth of Pennsylvania, to the articles and accusations preferred against him by the honorable the House of Representatives of said commonwealth for misdemeanors in office.

The respondent, with willing obedience, appears in his proper person, at the bar of this honorable court, to answer and to defend his reputation against articles of accusation and impeachment, preferred against him by the honorable House of Representatives of the commonwealth of Pennsylvania, for misdemeanors in office. And as your respondent is not conscious of ever having, knowingly, offended against the constitution and laws of his country, he with more alacrity avails himself of the earliest opportunity to answer those charges, as they have been for a long time before the public, much to his prejudice, both as an officer and a man.

Therefore, saving all exception, both now and at any time hereafter, to the insufficiency both in substance and form of said articles of impeachment, and of each and every of them, and averring that he is not bound by any law of the land to answer, them as they do not contain, either in substance or form, any impeachable offence; yet, ever anxious to lay before this honorable body and the public his official conduct in its true

and proper light, he will plead to each and every article preferred against him, after he shall have first briefly detailed the circumstances of each case.

ARTICLE I.

By the first article of impeachment respondent is charged with oppressively and tyrannically causing Jacob Farrow, a citizen of this commonwealth, to be arrested and imprisoned without reasonable cause shown, and without any lawful warrant issued on oath or affirmation, in direct violation and contempt of the constitution of this commonwealth. The facts of this transaction will clearly show that respondent and the other members of the court, acted on the occasion in perfect accordance with the spirit and principles of the constitution and laws of this commonwealth. The case was briefly this: As Alem Marr, Esq. then prosecuting attorney for Northumberland county, was about entering the court house door, which was open and in view of the court, at August sessions, eighteen hundred and twenty-four, a violent assault was made upon him by said Farrow, who also greatly interrupted the business of the court in which it was then engaged. Mr. Marr came forward and complained to the court, who directed Jacob Farrow; then in court, to be brought before them. He resisted the constable, but was after a few minutes brought before the court, who having stated to him the complaint against him and the breach of the peace committed in their presence, which he did not deny, directed him to give security to answer said complaint, and also, to answer for a contempt of the court, by breaking the peace in their presence, and that upon his neglect and refusal to give security, the court ordered him to be committed, and John Weast, the constable, to be bound over to give evidence, all which the record of the court will fully show. That the conduct of the court was not only, it is firmly believed, justified by the constitution and laws of the land, but was unavoidable, and that certainly there is no warrant required by the constitution to arrest for a breach of the peace committed in the presence of a court; and respondent avers that neither oppression nor tyranny had any hand in the order of the court that Jacob Farrow should give security, that the father of the said Jacob was offered and accepted by the court as his surety, on the afternoon of the said day on which he was committed, but that in consideration of the said Jacob's conduct, his father preferred his confinement in jail for a few days, after which he became his surety, and that the said Farrow never made any complaint of oppression or tyranny, nor had he any cause so to do.

And the said Seth Chapman, for answer and plea to the said first article of accusation and impeachment, saith that he is not guilty of the misdemeanor in said article alleged, in manner and form as it is therein charged against him.

ARTICLE II.

By the second article of impeachment, your respondent is charged with reversing a judgment and setting aside an execution on certiorari, in the case of Stephen Hughes, for the use of Daniel Kline against John Karner, although the certiorari had issued more than twenty days after the judgment was given, and execution issued by the justice upon it. The record of the justice sets forth that the defendant, although an apprentice and minor at the time, was sued personally on a note without joining his guardian, and consequently as the justice had not authority to sustain the suit consistently with the truth of the defendant's plea, there was no legal judgment to support the execution which had issued on it nine days before the allowance of the certiorari, all of which proceedings by the said record fully appears, and which together with the record of the cause in the court of common pleas, respondent tenders as a part of his answer and plea. And would farther state, that as the act of assembly contemplates only the protection of a lawful judgment, after the lapse of twenty days, the proceedings of the justice were therefore properly reversed by the court. And this is believed to be not only the practice but the construction of the act throughout the state. Your respondent therefore feels assured upon the most deliberate reflection that the court acted in perfect obedience to the requisitions both of law and duty: And declares that no complaint was ever made to his knowledge against the proceedings of the court, by either plaintiff or defendant.

And the said Seth Chapman, for answer and plea to the said second article of accusation and impeachment, saith, that he is not guilty of the misdemeanor in said article alleged, in manner and form as therein charged against him.

ARTICLE III.

Your respondent is charged by the third article of impeachment with a violation of the salutary provisions of the twenty-fifth section of the act of the twenty-fourth February, one thousand eight hundred and six, and that for the purpose of preventing a revision of his opinion in the supreme court, and to obstruct the administration of justice, he did in the case of the lessee of Wistar, against Clark, Madden et al, in the common pleas of Northumberland county, of June term one thousand eight hundred and thirteen, on the trial of said case, although required by the counsel for the defendants to reduce his opinion to writing and file it of record and after the counsel for defendants had tendered his bill of exceptions to said opinion, for the purpose of preventing said defendants from obtaining the benefit of a revision of his said opinion in the supreme court on a writ of error, file of record in said cause a paper

purporting to be the opinion delivered by him to the jury, which was in fact not the opinion so delivered, and that your respondent falsified, added to, and altered the records of the common pleas in said cause.

To this accusation and charge your respondent answers, that although true it is such cause was pending, and tried before him in the year one thousand eight hundred and twelve, as by the record of said cause, which he offers as part of his answer, will appear: Yet that no writ of error was ever taken out by the defendants or any person for them, and that no request was ever made by them, or their counsel to reduce his opinion delivered to the jury to writing and file it of record, and that no bill of exceptions was ever tendered by them or their counsel to said opinion, and was not necessary to be tendered as the verdict of the jury in that case, and the judgment of the court thereon were in favor of the defendants. Your respondent farther states, that although two writs of error were taken out in that case by the plaintiff, yet that no request was made to reduce the opinion delivered by him to the jury to writing and to file it of record, nor no bill of exceptions tendered by the plaintiff, or her counsel before the verdict of the jury was delivered and recorded, nor at any time afterwards, and that respondent never filed more than one opinion in the cause, which was in substance the same he delivered to the jury, as taken from his notes. Respondent recollects that Mr. Hall obtained a copy of the charge for his own use as he was counsel for the plaintiff, yet it is denied that any complaint was ever made by either party against the proceedings of the court in that case, or that your respondent ever falsified, added to, or altered any record of this or any other cause; but that he has at all times freely offered and given his notes and opinions in every cause for the use of the supreme court, or the counsel concerned, when requested, and has always facilitated a revision of the causes tried before him as far as in his power, and acted consistently with a conscientious discharge of his duty.

And the said Seth Chapman, for answer and plea to the said third article of accusation and impeachment, saith that he is not guilty of the misdemeanor in said article alleged, in manner and form as therein charged against him.

ARTICLE IV.

The fourth article of impeachment charges your respondent with acts of partiality and favoritism towards the defendents in the case of the lessee of Philip Maus against John Montgomery and others, instituted to April term one thousand eight hundred, because as stated in the first specification he ordered the decree of the court extending the demise, which had expired in one thousand eight hundred and ten, to thirty years, to be rescind-ed. Your respondent conceiving that the first specification in

this article contains four distinct accusations, begs leave to answer each of them particularly and separately.

In answer to the first he would therefore state, that this ejectment was instituted in Northumberland county, to April term one thousand eight hundred, that the plaintiff's demise, which was laid for ten years, expired in one thousand eight hundred and ten, that the county of Columbia was divided from Northumberland, and organised for judicial purposes in one thousand eight hundred and fourteen, when said ejectment, with other causes, was transferred to it for trial, the said demise having expired four years prior to the transfer of said ejectment, and whilst it was remaining in the said county of Northumberland, that at August term one thousand eight hundred and twenty-two, in Columbia county when the court was about to rise, the plaintiff's counsel moved to enlarge the demise to thirty years, without notice to the defendants, when they were not in court and had no counsel; the court not being apprised of the situation of the action, and that the rights of other persons not parties to the suit had attached to the lands in controversy, granted the motion. At November term one thousand eight hundred and twenty-two, the defendants and those who had purchased the land in dispute after the expiration of said demise, having had information of the enlargment of the term at August court, appeared by their counsel in court and complained of the extension of the demise to thirty years without notice to them, and claiming it as a matter of right to be heard, moved the court to rescind their order: whereupon the court granted them a hearing as they believed they were bound to do, upon which hearing satisfactory proof was adduced to the court that the defendants and those under whom they claimed had been in quiet possession from one thousand seven hundred and seventy two, that the term had been expired for more than twelve years and that the cause had slept for upwards of twenty two years before that time, that they would be protected by the statute of limitations, that a purchaser for a valuable consideration had obtained possession of a part of the lands in dispute, and neither had notice of the motion made at August term one thousand eight hundred and twenty-two, nor was he party to the suit, nor could his title be tried in that ejectment, and that under those circumstances your respondent believed the extension of the term not a matter of course, but that it would tend to disturb vested rights and would be subversive of the law and justice of the country, as by the opinion filed of record in the cause, which he asks to be admitted as part of his answer, will more fully appear.

To the second accusation contained in said first specification charging respondent with continuing the cause at November term one thousand eight and twenty-two, when regularly reached, without any of the usual grounds being laid before the

court to authorise a continuance on the pretended ground, that should the order of the court extending the demise, be rescinded, there would remain nothing to try, he would answer that at this time the cause could not be tried, as the counsel for the defendants, and the purchaser who was no party to the record, had made at that term the motion to rescind the order of the court enlarging the demise, and that until the determination of said motion there could be no trial of the cause, which was then argued and held under advisement until next January term, when the court for the reasons before stated, granted the motion and rescinded their order

To the third accusation in said specification, charging respondent at said January term, with endeavoring out of favor to the defendents to compel the plaintiff to bring a new suit that his claim might be defeated, and with preventing him then from trying his cause by a jury of his country, by ordering a judgment to be entered in favor of plaintiff for nominal damages and costs only against defendants. Your respondent would answer that the demise having expired and not being extended there could be nothing to try but the question of damages and costs, that a jury at the recommendation of the court was then called and in the box for the purpose of trying said question, when the plaintiff's counsel objected to the jury's being sworn unless to try the title and merits of the cause, which the defendants' counsel resisted, and offered to give a judgment for nominal damages and costs, that the cause might be taken to the supreme court, whereupon the court, after full argument, decided that the title could not be tried, and so the supreme court have since decided in this very cause, and desirous that the question as to the enlargement of the demise might come before the supreme court, ordered a judgment to be entered in favor of the plaintiff against the defendants for nominal damages and costs, without which judgment the cause could not be removed by a writ of error, all of which, their said decision filed of record and here produced, and which respondent requests, may be received as part of his answer, will fully inform this honorable court. The last accusation stated in said specification charges respondent that at November term one thousand eight hundred and twenty-three in Columbia county, a jury having been sworn to try the issue, the defendants on the trial offered in evidence an article of agreement between the said Philip Maus and David Petrikin, which defendants alleged to be a deed, by which the said Philip Maus had conveyed his interest in the said land to the said David Petrikin, and thereby divested himself of the right to recover in said ejectment and that so he instucted the jury, with intent to favor the defendants, although he well knew that the said article was not a deed and that it did not divest the plaintiff of his right to recover in the action. To all which your respondent respectfully answers, that every instrument to

pass lands, and which is signed, sealed and delivered, is a deed, and that by the laws of this commonwealth, every deed whereby any estate of inheritance in fee simple is limited to the grantee and his heirs, the words *grant, bargain and sell*, shall be adjudged an express covenant to the grantee his heirs and assigns. That the deed under consideration did contain the words *grant, bargain and sell*, and when presented in evidence it became the duty of the court to give it a legal construction, your respondent with the rest of the court, after argument, delivered their opinion that said deed did divest the plaintiff of his right to recover the lands in controversy, as it vested the title in fee in the said Petrikin the grantee for a valuable consideration, and was not affected by the covenant which is contained therein of farther assurance And of the three points decided by the court of common pleas, first whether the deed was admissible in evidence; secondly, its legal import and operation from the contents, and thirdly whether the court had the right to compel the defendants to join in the plaintiff's demurrer to evidence, the supreme court on a writ of error affirmed the decision of the said court of common pleas on the first and third points, and differed in opinion on the second point. Your respondent would farther observe that if this cause has excited the sympathy of any person, it must arise from a want of knowledge of the facts and will cease to exist when it is found that it was tried on its merits before the late chief justice M'Kean in one thousand seven hundred and ninety-nine, when the plaintiff voluntarily suffered a nonsuit, the jury being at the bar ready to give their verdict. That a new suit was instituted in the common pleas of Northumberland county to April term one thousand eight hundred, which, in one thousand eight hundred and twenty-four, was referred to arbitrators, who reported in favor of the defendants, from which the plaintiff appealed. It has again been tried at last November court at the special instance of the plaintiff's counsel and a verdict and judgment given for the defendants.

To the second specification in said article, charging respondent that at a court of quarter sessions for Northumberland county in January term, one thousand eight hundred and twenty, a certain William A. Lloyd and others were indicted for an assault and battery on a certain John Frick, that during the trial a witness for the commonwealth testified that he had seen the said Lloyd strike the said Frick with a cane; whereupon the said Lloyd rose up in court and said what the witness had stated was false, that if he had so struck the said Frick, he would not then be in court to testify, for he could kill him with his fist, whereupon the respondent with intent to prevent the due administration of justice, to favor the said Lloyd, and to procure his acquittal contrary to the duties of his office, charged the jury to take notice of what the said William A. Lloyd

had said as to not having struck the said Frick, that his assertions, as he was a respectable man, were entitled to some weight in making up their minds. Your respondent answers, that the indictment set forth was tried before him and his associates, that the said William A. Lloyd did use the language charged in this specification, for which respondent immediately ordered him to sit down and severely reprimanded him for his conduct, that the trial then proceeded, then without interruption and terminated in the conviction of the defendants, who were each fined in twenty dollars and sentenced to pay the costs. But your respondent positively denies that any such language was ever used by him in his charge to the jury as stated in said specification, or that he ever exercised any partiality or favoritism whatever, in this or any other cause, and appeals to a true and faithful report of the whole case published immediately after the trial in the Miltonian, at the instance of the prosecutor and his friends, and James Carson, Esq. the then deputy attorney general for Columbia county, and who prosecuted in and reported this cause; which publication your respondent requests may be received as part of his answer and plea to this specification.

In conclusion of these your respondent's answers and pleas, he will readily admit that the history of human nature proves error to be incident to it, from which no individual can claim exemption; but that your respondent has ever erred knowingly, intentionally or wilfully, he most positively and solemnly denies.

And the said Seth Chapman, for answer and plea to the said fourth article of accusation and impeachment, saith that he is not guilty of the misdemeanor in said article alleged, in manner and form as therein charged against him.

The counsel for the respondent then handed to the president the pleas and answers which he had read.

Seats were then assigned to the respondent and his counsel.

The president then demanded of the gentlemen managers of the House of Representatives, what reply they had, (if any) to make to the said pleas and answers of the respondent.

Mr. Hutter, on behalf of the managers, requested time until half past ten o'clock, on Thursday morning next, to consult the House of Representatives, as to such replication as will be proper to make to the respondent's answers and pleas.

Which the court granted.

On motion of Mr. Garber and Mr. Ryon,

Ordered, That the names of the witnesses be called over, and that on the morning of each day, and that the absentees be noted.

The names of the witnesses were accordingly called,

The following named did not answer, viz.

Thomas Duncan, George A. Frick, John Russel, Samuel Bond, John Hanna, John Lashells, Daniel Montgomery, John Montgomery, John Murry, Leonard Rupert and Christian Heck. 11.

The managers requested that the service of the subpoenas for the witnesses on the part of the commonwealth be proved, which being done by the sergeant-at-arms,

At the request of the managers

Ordered, That attachments be awarded against John Russel and George A. Frick.

On motion of Mr. Dewart and Mr. Moore,

The president ordered the court to be adjourned until half past ten o'clock, on Thursday morning next.

THURSDAY, February 9, 1826.

The court was opened precisely at half past ten o'clock, A M. by proclamation, the members of the court were all present and answered to their respective names.

Present—The managers, viz.

Messrs. Hutter, Wise, Blythe, Champneys, Brown, Scott and Dillinger.

The respondent attended by his counsels agreeably to order.

The names of the witnesses were called—the following named did not answer, viz.

Thomas Duncan, Wm. Cox Ellis, John Hanna, John Lashells, and Christian Heck.—5.

The president inquired whether the parties were ready to proceed.

Mr. Wise on behalf of the managers, stated that owing to the length of the answer, as well as the shortness of time allowed them, the House of Representatives were not ready to make their replication, and begged the indulgence of the court to grant until to-morrow morning to file their replication.

Which the court granted; and

On motion of Mr. Burnside and Mr. Ogle,

The president ordered the court to be adjourned until half past ten o'clock to-morrow morning.

FRIDAY, February 10, 1826.

The court was opened precisely at half past ten o'clock, A M. by proclamation.

The members of the court were all present, and answered to their respective names.

Present the managers, viz.

Messrs. Hutter, Wise, Blythe, Champneys, Brown, Scott, and Dillinger.

The respondent attended by his counsel.

Agreeably to order,

The names of the witnesses were called: the following named did not answer, viz.

William Cox Ellis, John Hanna, John Lashells, and Christian Heck.

Mr. Champneys, on behalf of the managers, requested that the court would amend the third article of impeachment, as the House of Representatives had directed, agreeably to the extract of the journal from that House, presented to the Senate this morning, in words following.

In the House of Representatives,
February 10th, 1826.

On motion,

Resolved, That the third article of impeachment against Seth Chapman, Esq. be amended by striking therefrom in the sixteenth, seventeenth, and nineteenth lines, the word "defendant" and inserting in each of the said lines in lieu thereof, the word "plaintiff."

Extract from the journal.

NATHL. P. HOBART, Assistant Clerk.

Which was objected to by the counsel for the respondent.

On the question,

Will the court agree that the articles of impeachment be so amended, as directed by the House of Representatives,

It was determined in the affirmative.

Mr. Hutter, on behalf of the managers, read the replication of the House of Representatives to the answers and pleas of Seth Chapman, Esq. as follows, viz.

In the House of Representatives,
February 8, 1826.

On motion.

Resolved, That the following replication be made to the plea or answer of Seth Chapman, Esq. president judge of the eighth judi-

cial district of the commonwealth of Pennsylvania, to the articles of accusation and impeachment now pending in the Senate against him, to wit:

The House of Representatives of the commonwealth of Pennsylvania, prosecutors on behalf of themselves and the people of Pennsylvania, against Seth Chapman, Esq. president of the eighth judicial district of the commonwealth of Pennsylvania, reply to the plea or answer of the said Seth Chapman, and aver that the charges against him the said Seth Chapman, are true, and that the said Seth Chapman is guilty of all and every the matters contained in the articles of accusation and impeachment by the House of Representatives, exhibited against him in manner and form as they are therein charged, and this the House of Representatives are ready to prove against him, at such convenient time and place as the Senate shall appoint for that purpose.

JOSEPH RITNER,

Speaker of the House of Representatives.

The parties being ready to proceed,

Mr. Wise on behalf of the managers, opened the impeachment at half past eleven and concluded at half past twelve o'clock, and proceeded to the examination of witnesses in support of the charge contained in the first article, and called

Samuel J. Packer, Esq. who was sworn.

The managers on behalf of the House of Representatives, proposed to prove by Samuel J. Packer, the complaint made by Mr. Marr to the court of the assault committed upon him by Jacob Farrow, and the direction of the court to the constable, ordering said Farrow to be arrested; and that said assault was not committed in the presence of the court nor was the court disturbed by it.

The counsel for the respondent objected to that part of the proposition respecting the complaint made by Mr. Marr to the court.

The question being put to the court,

Shall the managers be permitted to examine the witness on what they have proposed?

It was determined in the affirmative.

And the witness was then examined.

On motion of Mr. Groves and Mr. Dewart,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened precisely at three o'clock, by proclamation.

The members of the court were all present and answered to their names.

Present the managers; and the respondent attended by his counsel.

The managers continued the examination of witnesses in support of the charge contained in the first article.

George A. Frick, was sworn and examined.
Jacob Gearhart, Esq. do. do.
Alem Marr, " " "
Legrand Bancroft, " " "
Hugh Bellas, " " "
Ebenezer Greenough " " "
Samuel J. Packer, " examined, and submitted in evidence the minutes of the court of quarter sessions of Northumberland county, for August term, 1824.

The managers having gone through with the examination of witnesses in the first article, proceeded to the examination of witnesses in support of the charge contained in the second article of impeachment.

And Submitted in evidence the record in the case of Hughes for Kline vs. Korner, in the common pleas of Columbia county.

George A. Snyder Esq. sworn and examined.
James Merrill, do. do.
Charles Maus, do. do.

The managers stated that they had gone through with the examination of witnesses in support of the charge contained in the second article.

When on motion of Mr. Dewart and Mr. Garber,

Ordered, That when the court adjourns, it will adjourn to meet at ten oclock, A. M. each day, until otherwise ordered.

On motion,

The president ordered the court to be adjourned until ten o'clock, to-morrow morning.

SATURDAY, February 11, 1826.

The court was opened precisely at ten o'clock, A. M. by proclamation.

Present the managers,

Messrs. Hutter, Wise, Blythe, Champneys, Brown, Scott, and Dillinger.

The respondent attended by his counsel.

Agreeably to order,

The names of the witnesses were called: the following named did not answer, viz.

William Cox Ellis, John Hanna, John Lashells, Daniel Montgomery, and Christian Heck.

The managers proceeded to examine witnesses in support of the charge contained in the third article, and submitted in evidence the record of the case of the lessee of Sarah Wistar versus Clark Madden, et al, in the supreme court of Pennsylvania.

Ebenezer Greenough, Esq. examined
George A. Frick, " "
Hugh Bellas, " "
Hon. Thomas Duncan, sworn and examined.

The managers having gone through with the examination of witnesses in support of the third article, proceeded to examine witnesses on the fourth article, and submitted in evidence the records of the case of the lessee of Philip Maus vs. John Montgomery, in the court of common pleas of Columbia county.

Hugh Bellas examined.

On motion of Mr. Sutherland and Mr. Winter,

Ordered, That when the court adjourns, it will adjourn to meet at three o'clock, P. M. and that that be the standing hour of meeting in the afternoon, until otherwise ordered.

On motion,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened precisely at three o'clock, by proclamation.

The members of the court were all present, and answered to their respective names.

Present the managers; and the respondent attended by his counsel.

The managers continued the examination of witnesses in support of the charge contained in the fourth article of impeachment,

Hugh Bellas, Esq. examined.
Ebenezer Greenough, Esq. "
Doct. David Petrikin, sworn and examined.

On motion, and with the consent of the respondent,

Doct David Petrikin, a witness on the part of the commonwealth, was discharged.

On motion of Mr. Sutherland and Mr. M'Ilvain,

The president ordered the court to be adjourned until ten o'clock, on Monday morning next.

MONDAY, February 13, 1826.

The court was opened at ten o'clock, A. M precisely, by proclamation.

The members of the court were all present, and answered to their respective names.

Present, the managers, and the respondent attended by his counsel.

Agreeably to order,

The names of the witnesses were called. The following named did not answer, viz. William Cox Ellis, John Hanna, John Lashells and Christian Heck.

The managers continued the examination of witnesses in support of the charges contained in the fourth article of impeachment.

Ebenezer Greenough, Esq examined.
George A. Frick, " "
Hugh Bellas, " "
George A. Snyder, " "
Joseph R. Priestley, sworn and examined.
Jacob Gearhart, Esq. "

The managers also submitted in evidence the record of the case of the Commonwealth vs. Lloyd et al, in the court of quarter sessions of Northumberland county, and an article of agreement between Philip Maus and David Petrikin.

The counsel for the respondent at this time concluded the cross examination of the honorable Thomas Duncan on the third article.

On motion of Mr. St. Clair and Mr. Kerlin,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened at three o'clock, by proclamation.

The members of the court were all present, and answered to their respective names.

Present the managers; and the respondent attended by his counsel.

The managers continued the examination of witnesses in support of the charges contained in the fourth article of impeachment.

Ebenezer Greenough examined.

And submitted in evidence the docket entries of the case of the lessee of Wistar vs. Clark, Madden, and Stackhouse, in the supreme court of Pennsylvania, and the docket entries of the same case in the court of common pleas of Northumberland county, and also in the circuit court.

Mr. Champneys, on behalf of the managers, stated that they had examined all their witnesses in support of the charges contained in the articles of impeachment, except such witnesses as they consider necessary to rebut the testimony offered on behalf of the respondent.

The evidence being closed on behalf of the commonwealth.

On motion of Mr. Kitchin and Mr. Sutherland,

The president ordered the court to be adjourned until ten o'clock, to-morrow morning.

TUESDAY, February 14, 1826.

The court was opened at twelve o'clock, A. M. by proclamation.

The members of the court were all present, and answered to their respective names.

Present the managers; and the respondent attended by his counsel.

Agreeably to order,

The names of the witnesses were called: the following named did not answer, viz.

William Cox Ellis, John Hanna, John Lashells, and Christian Heck.

At twenty minutes after twelve o'clock, Mr. Fisher, one of the counsel for the respondent, commenced addressing the court on behalf of the accused, and continued until twenty minutes after one o'clock; when

On motion of Mr. Sutherland and Mr. Audenried,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened at three o'clock, by proclamation.

The members of the court were all present and answered to their respective names.

Present, the managers; and the respondent attended by his counsel.

Mr. Fisher, counsel for the respondent, continued his address to the court on behalf of the respondent and concluded at four o'clock.

The counsel for the respondent then proceeded to adduce testimony against charges contained in the first article of impeachment.

Martin Weaver, sworn and examined.

The counsel for the respondent proposed the following question to the witness, viz:

Respondent's counsel offer to ask the witness the behaviour of Jacob Farrow, and to prove that he was a turbulent, insolent, vagabond and a pest and nuisance in society?

Which being objected to by the managers, and overuled by the court.

Henry Shaeffer, sworn and examined.
John Weast, " "
John Conrad, " "
James Lee, " "

On motion of Mr. Mann and Mr. Kerlin,

The president ordered the court to be adjourned until ten o'clock, to-morrow morning.

WEDNESDAY, February 15, 1826.

The court was opened at ten o'clock. A. M. by proclamation.

The members of the court were all present and answered to their respective names.

Present, the managers; and the respondent attended by his counsel.

Agreeably to order,

The names of the witnesses were called. The following named did not answer. William Cox Ellis, John Hanna, John Lashells and Christian Heck.

The counsel for the respondent continued to adduce testimony against the charges contained in the first article of impeachment.

William A. Lloyd, sworn and examined.
Frederick Lazarus, " "
Solomon Schaffer, " "

The counsel for the respondent having gone through with the examination of witnesses against the charges contained in the first article, the managers having submitted in evidence all the records of the case of Hughes for Kline vs. John Korner, they proceeded to adduce testimony against the third article of impeachment.

Alexander Jordan, sworn and examined.
Samuel J. Packer, do.

The counsel for the respondent proceeded to adduce testimony against the fourth article of impeachment.

Samuel Hepburn, sworn and examined.
Alem Marr, do.

On motion of Mr. Kitchin and Mr. Hamilton,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened at three o'clock, by proclamation.

The members of the court were all present, and answered to their respective names.

Present the managers; and the respondent attended by his counsel.

The counsel for the respondent continued to adduce testimony against the charges contained in the fourth article of impeachment.

Alem Marr again, examined.
Daniel Montgomery, sworn and examined.
John Montgomery, sworn and examined.
William Montgomery, affirmed and examined.
Leonard Rupert, sworn and examined.
John Taggart, " "

On motion of Mr. Mann and Mr. Power,

The president ordered the court to be adjourned until ten o'clock, to-morrow morning.

THURSDAY, February 16, 1826.

The court was opened at ten o'clock, A. M. by proclamation.

The members of the court were all present, and answered to their respective names.

Present the managers and respondent, attended by his counsel.

Agreeably to order,

The names of the witnesses were called: the following did not answer, viz.

William Cox Ellis, John Hanna, John Lashells, and Christian Heck.

The counsel for the respondent continued to adduce testimony against the charges contained in the fourth article of impeachment.

Robert C. Grier sworn and examined.

The counsel for the respondent offer to prove by the witness that Dr. Petriken is the only person who originated the inquiry into the judge's conduct; and his declarations as to his having procured his impeachment and threats that he would prosecute him in future for his opinions in the case of Maus vs. Montgomery. The respondent will follow this up with other testimony to prove that after the first trial in 1823. Dr. Petriken declared that he had lost $8,000 by the charge of the court, and he would be d——d but he would have him impeached for it, and break him or bead him;

Which was objected to by the managers, and overruled by the court.

John H. Brautigam, sworn and examined.

The counsel for the respondent offered in evidence the original charge, as written and delivered by the respondent to the jury, in the case of the Commonwealth vs. Lloyd, et al, verified by the oath of the judge, and that it was published as delivered, in the Miltonian, at the instance of the prosecution;

Which was objected to by the managers, and overruled by the court.

John Porter, sworn and examined.
John Taggert, examined.
Ephraim Shannon, sworn and examined.
Jacob Hoffman, " "
Wm. A. Lloyd, " "

On motion of Mr. Groves and Mr. Power,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened at three o'clock, by proclamation.

The members of the court were all present, and answered to their respective names.

Present, the managers; and respondent attended by his counsel.

The counsel for the respondent continued to adduce testimony against the fourth article of impeachment.

Adam Light, sworn and examined.

James Lee, examined.

The counsel for the respondent stated to the court, that they would now close with adducing testimony.

The managers then called the following witnesses, to rebut testimony of other witnesses.

Ebenezer Greenough, examined.

Hugh Bellas, "

Charles Maus, "

The counsel for the respondent called the following named witnesses, to rebut the testimony of other witnesses.

Alem Marr, examined.

Robert Grier, "

Saml. Hepburn, "

On motion,

And by consent of both parties, the witnesses were then discharged.

On motion of Mr. Power and Mr. Ogle,

The president ordered the court to be adjourned until ten o'clock to-morrow morning.

FRIDAY, February 17, 1826.

The court was opened at ten o'clock, A. M. by proclamation.

The members of the court were all present, and answered to their respective names.

Present, the managers; and respondent attended by his counsel.

Mr. Champneys, on behalf of the managers, commenced his argument on behalf of the commonwealth, and continued until one o'clock. When,

On motion of Mr. M'Ilvain and Mr. Winter,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened at three o'clock, by proclamation.

The members of the court were all present, and answered to their respective names.

Present, the managers; and respondent attended by his counsel.

Mr. Champneys continued his argument on behalf of the commonwealth, and concluded at half past three o'clock; when

Mr. Douglas commenced his argument on behalf of the respondent, and continued until six o'clock; when

On motion of Mr. Ogle and Mr. Moore,

The president ordered the court to be adjourned until ten o'clock, to-morrow morning.

SATURDAY, February 18, 1826.

The court was opened at ten o'olock, A. M. by proclamation.

The members of the court were all present and answered to their respective names.

Present, the managers; and the respondent attended by his counsel.

Mr. Douglas continued his argument on behalf of the respondent until eleven o'clock; when

Mr. Fisher commenced and concluded at one o'clock; when

On motion of Mr. Hamilton and Mr. M'Ilvain,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened at three o'clock by proclamation.

The members of the court were all present and answered to their respective names.

Present, the managers; and the respondent attended by his counsel.

Mr. Blythe, on behalf of the managers, commenced his reply and concluded at half past five o'clock; when

The president rose and addressed the court as follows:

Gentlemen—You have heard the evidence and arguments adduced on the trial of Seth Chapman, Esquire, president and judge of the eighth judicial district of Pennsylvania, impeached for misdemeanors in office. Are you now ready to pronounce your judgment?

Which was unanimously answered in the affirmative.

The first article of impeachment was then read by the clerk.

The president then stated that the members would, as their names were called by the clerk, pronounce their judgment on the following question:

Is the respondent, Seth Chapman, guilty or not guilty of the misdemeanor in office as charged in the first article of impeachment, exhibited against him by the House of Representatives, just read.

Whereupon, the members answered as follow:

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelley, Kelton, Kerlin, Kitchin, Knight, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Sutherland, Winter and Mahon, president, 31, said not guilty.

The second article of impeachment was then read, and the like question being stated by the president.

Whereupon, the members answered as follow:

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelley, Kelton, Kerlin, Kitchin, Knight, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Sutherland, Winter and Mahon, president, 31, said not guilty.

The third article of impeachment was then read, and the like question being stated by the president.

Whereupon, the members answered as follow:

Messrs. Herbert, Mann, Power, Ritscher, St. Clair and Winter, 6, said guilty.

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Kelley, Kelton, Kerlin, Kitchin, Knight, M'Ilvain, Moore, Ogle, Ryon, Schall, Sullivan, Sutherland, and Mahon, president, 25, said not guilty.

The fourth article of impeachment was then read; when

On motion,

It was agreed that the question be put on each specification separately.

The president then stated,

Is the respondent, Seth Chapman, guilty or not guilty of the misdemeanor in office as charged in the first specification of the fourth article of impeachment, exhibited against him by the House of Representatives, as read?

Whereupon, the members answered as follow:

Messrs. Herbert, Power, Ritscher, St. Clair and Winter, 5, said guilty.

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Kelley, Kelton, Kerlin, Kitchin, Knight, Mann, M'Ilvain, Moore, Ogle, Ryon, Schall, Sullivan, Sutherland and Mahon, president, 26, said not guilty.

The president then stated,

Is the respondent, Seth Chapman, guilty or not guilty of a misdemeanor in office, as charged in the second specification of the fourth article of impeachment, exhibited against him by the House of Representatives, as read?

Whereupon, the members answered as follow.

Messrs. Herbert and St. Clair, 2, said guilty.

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Kelley, Kelton, Kerlin, Kitchin, Knight, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryson, Schall, Sullivan, Sutherl and, Winter and Mahon, president, 29, said not guilty.

Whereupon, the president declared, that on the

1st article,	none	have said guilty, and	31	have said not guilty.
2d do.	none	do.	31	do.
3d do.	six	do.	25	do.
1st specification.				
4th do.	five	do.	26	do.
2d specification.				
4th do.	two	do.	29	do.

Hence, it appears, that there is not a constitutional majority of votes finding Seth Chapman guilty on any one article or specification. It therefore became his duty to declare that Seth Chapman stands acquitted of all the articles of accusation and impeachment exhibited against him by the House of Representatives.

On motion of Mr. Duncan and Mr. Knight,

The president ordered the court to be adjourned, *sine die*.

JOHN DE PUI, *Clerk.*