

Messrs. Crawford, Henderson and McCaskill—3.

So Mr. Wentworth's amendment was adopted.

Mr. Weeks offered the following:

That \$250 be appropriated to Wm. P. Frink for expenses incurred in contesting the seat of J. M. Underwood for the year 1869;

Which was adopted.

Mr. Meacham moved to strike out \$196 dollars to Harry Hawkins, janitor, and insert \$147.

Mr. Meacham moved that the name of H. Matthews be inserted in appropriation bill for \$147;

Which was agreed to.

Mr. Dennis offered the following:

To W. J. Purman, J. W. Johnson, Wm. H. Gleason, and — Oliveros, \$5 a day each for 20 days' services as a committee investigating the office of the Treasurer, after the adjournment of the session of the Legislature of 1871.

Mr. Atkins moved to lay the amendment on the table;

Which was agreed to.

Mr. Henderson offered the following amendment:

For A. L. Woodward, for services as attorney for the State of Florida, in the Supreme Court in the case of The State of Florida vs. Charles H. Pearce, wherein the State Attorney-General was counsel for the defendant, \$250.

So the amendment was adopted.

Section 1 stands as amended.

Mr. Wentworth moved to strike out the 4th section;

Which was agreed to.

Mr. Wentworth moved that the bill be engrossed, and ordered that it be placed on its third reading to-morrow;

Which was agreed to.

On motion the Senate adjourned till to-morrow 10 o'clock a. m.

THURSDAY, May 2, 1872.

Senate met pursuant to adjournment.

The President *pro tem.* in the Chair.

Prayer by the Chaplain.

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

Mr. President, Messrs. Adams, Atkins, Crawford, Dennis, Egan, Hill, Hunt, McKinnon, Meacham, McCaskill, Sutton, Weeks and Wentworth—14.

A quorum present.

The journals of May 1 and 2 were read, corrected, and approved.

Mr. Wentworth, Chairman of Committee on Engrossed Bills, reported back the amendments to the appropriation bill as correctly engrossed.

Mr. Henderson offered the following resolution :

Mr. Henderson moved the appointment of a special committee of three, who shall examine the pay rolls of the Senate and Assembly of the last session and also the statements, returns and pay rolls of the several committees of the Senate and Assembly which have been returned to the Comptroller's office, and report upon the various refusals to allow pay in every case, and upon the cases of suspended pay in every case ;

Which was agreed to.

The Chair appointed Messrs. Henderson, Eagan and Meacham said committee.

Senate Bill No. 2 :

An act for the more Efficient Collection of the Revenue,
Was taken up on its second reading and read by sections.

Mr. Wentworth moved that the bill be engrossed and passed to its third reading ;

Which was carried.

Assembly Concurrent Resolution,

Was read in full and referred to Committee on Judiciary.

Assembly Bill No. 3 :

To be entitled an act to repeal an act entitled An act in Relation to the Term of Office and the Duties of Tax Collectors, approved January 22, 1851,

Was referred to Committee on Finance and Taxation.

A Bill to be entitled An act to provide for taking Testimony in the matter of the Impeachment of Harrison Reed, Governor,

Was read first time and referred to Committee on Appropriations.

Assembly Concurrent Resolution in relation to adjournment,

Was taken up and made the special order for to-day at 4 o'clock p. m.

Message from the Assembly :

ASSEMBLY HALL, MAY 2, 1872.

HON. LIBERTY BILLINGS, President *pro tem.* of the Senate :

SIR: I am directed to inform you that the Assembly has adopted a Memorial to Congress for the establishment of a mail route from New Smyrna to Hawkinsville via Spring Hill and Lake Beresford.

Very respectfully,

M. H. CLAY,
Clerk of the Assembly.

Assembly Bill No. 1 :

A Bill to provide for Filling Vacancies in Office in Cases of Impeachment and Suspension,

Was made the special business of to-morrow, at 12 m.

Substitute for Assembly Bill No. 2 :

A bill to Regulate the Succession in the Offices of Governor and Lieutenant-Governor in Cases of Death, Resignation, or other Causes.

Mr. Wentworth moved that the Senate take a recess till five minutes to twelve ;

Which was agreed to.

FIVE MINUTES TO TWELVE A. M.

The roll was called with the following result :

Mr. President, Messrs. Adams, Atkins, Crawford, Dennis, Eagan, Hunt, Johnson, McKinnon, Meacham, Purman, Weeks, and Wentworth—13.

The Chair appointed Messrs. Adams, Johnson, and Dennis a committee to notify the Chief Justice.

The committee returned and stated that they had performed the duty assigned them.

HIGH COURT OF IMPEACHMENT, TWELVE M.

The Chief Justice in the Chair.

Sergeant-at-Arms made the following proclamation :

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence while the Senate of the State of Florida is sitting for the trial of articles of impeachment exhibited by the Assembly against Harrison Reed, Governor of Florida.

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

Messrs. Adams, Atkins, Billings, Crawford, Dennis, Eagan, Henderson, Hill, Hunt, Johnson, McKinnon, Meacham, McCaskill, Purman, Sutton, Weeks and Wentworth—17.

Mr. Hunt was sworn in by the Chief Justice.

The Sergeant-at-Arms was then ordered by the Chief Justice to notify the Assembly that the Senate is organized for the trial of Gov. Reed.

The Sergeant-at-Arms returned and stated that he had notified the Managers and they would report immediately.

Committee of Managers from the Assembly then came in with counsel.

Judge Emmons, counsel for Gov. Reed, present.

The Chief Justice then announced that the Senate as a High Court of Impeachment was fully organized.

Counsel for respondent then asked leave to proceed with motions that he would present. The Managers notified the court.

I desire to state that the Managers are represented by T. W. Brevard and F. A. Dockray as counsel.

Judge Emmons, counsel for Governor Reed, then read the following paper as presenting his views :

In the matter of the Impeachment of Harrison Reed, Governor of Florida, before the High Court of Impeachment, organized by virtue of resolution passed the Senate May 1, 1872, at an extra session.

This matter came up for inquiry before a High Court of Impeachment, organized by the Senate, at the regular session of the Legislature of the State, at and during its session in February last.

At that time, and before the then court, articles of impeachment were filed in court; the respondent pleaded and the Assembly replied.

Issue was thereby joined.

On the application of the managers, the court acted upon, and refused to continue the trial.

Respondent protested against any postponements or continuance, the effect of which would be to postpone his trial to an impossible day. Claiming that the continuance of the trial to the next session of the Legislature would be to fix a time before the coming of which his term of office would expire by constitutional limitation, and that he announced himself ready for and demanded his trial. That the prosecution produce its evidence, or that the respondent be acquitted and discharged.

That a member of the court asked its body to proceed in the trial, and to sit from day to day therefor until such time as by constitutional limit the Legislature's session would cease. Without action, the court adjourned without day.

By operation of its own rule, adopted for its government, the Senate, sitting as a court, merged into the Senate proper in its sole legislative capacity. That such Senate thereafter adjourned *sine die*, the hour having arrived as fixed in a concurrent resolution, originating and passing both branches of the Legislature, after the commencement of impeachment proceedings and before the adjournment of said court.

This session of the Legislature was not provided for by the

Constitution and laws of the State, neither was it contemplated in the mind of the court or of the Acting Governor, when the adjournment before mentioned took place.

He by whom, by the Constitution, the duties of the office of Governor were to be performed, has exercised the constitutional prerogative belonging to the Executive of the State in calling an extra session of the Legislature, which is now in session. Among other acts of this body, this branch has by its resolution organized itself into a High Court of Impeachment to proceed in the trial of the respondent.

From the day of his impeachment to the present moment, the action of the Legislature has practically suspended this respondent from the powers, rights, privileges, and immunities belonging to him under the Constitution and laws of the State.

And now Harrison Reed, Governor of the State, respondent herein, by J. P. C. Emmons, his counsel, comes here into this court, and asks and demands, in virtue of the proceedings had in the premises, that he, the respondent, be acquitted and discharged of and from all and singular said impeachment, as set forth in the articles of impeachment filed, and that he be discharged from arrest, and that he be relieved from any and all further attendance upon this court, or the Senate from which it was organized, growing out of the impeachment or the proceedings aforesaid.

Mr. Emmons then, after stating his motion to the above effect, asked some Senator to make the motion *pro forma*.

Mr. Henderson offered the following order :

Ordered, That the motion of the counsel of respondent be granted.

Without detaining the court to discuss how far, as a court, it is bound to apply a well-recognized principle in the very spirit of our institutions, that whenever it shall find in the detail of powers in fixing the distributive share which properly belongs to each branch of the government, a power inappropriately delegated to one which is in conflict with that which properly belongs to another, it will so construe that delegation as to make it belong where, by an antecedent delegation, it was intended, I will say in support of my motion, and demand that by operation of law, when the court, at the last session, and the Senate, adjourned without day, the Constitution of the State of Florida fixed the day to which the Senate as a legislative body adjourned as being the first Tuesday after the first Monday in January, 1873. And the High Court of Impeachment being composed of the members of that body, aside from its presidency, was not only the creation of, but dependent upon, the

same authority for its existence. Thus the trial of the respondent, if it existed in continuance, was carried over until that day.

This to Harrison Reed, Governor, as aforesaid, was an impossible day.

For that the Governor's term of office is by the Constitution of the State terminated at the opening of the regular session of the Legislature in the year A. D. 1873, though the Constitution does not read that he shall continue in office until his successor shall be qualified, it was evidently intended so to read, and before then, in legal contemplation, a new Governor will have been elected and qualified. And, too, the Legislature can do no business, and certainly none in relation to the matter of this impeachment until after the happening of that event. And again, too, because the punishment provided for in the Constitution in the event of conviction cannot be meted out. And in language I have before used in the presentment of this matter elsewhere, I further say, that although the Constitution provides that upon extraordinary occasions a convention of the Legislature may be had, yet as controlling the effects of such adjournment that power comes neither within the legal or meritorious action of the Senate, because it depends upon the happening of contingencies which human foresight could not decide upon.

And again it would be a transfer of power over and control of the matter either to the Governor actual or acting, by enabling him to withhold any communication to the Legislature in reference to the trial, or to the Legislature itself by enabling any member thereof by withholding his consent to destroy unanimity, whereby it could not act.

In support of my proposition as to the effect this extra session may have, I quote from a communication upon this very subject from the pen of a gentleman whose well-earned reputation for legal sagacity and acumen entitles it to the very highest respect and consideration. He says: "The legal effect, if there be any, of the action of the Senate, is not overcome by the present extra session, convened at the call of the Acting Governor, for if the effect attached, no subsequent action can avert it. The question then must be governed by what the law fixed at the time, whatever that was, either in favor or opposed to the position of Governor Reed, and no subsequent assemblage of the Legislature in extra session by call of the Governor can change it."

And as this communication is to my mind conclusive upon the status of this case, I read it in full, as a better presentation than I can originate:

THE DUTY OF THE SENATE IN THE IMPEACHMENT MATTER.

The question in regard to the legal effect of the action of the Senate upon the status of Gov. Reed, propounded by him to the Judges of the Supreme Court, has excited no little interest in the public mind, and especially during the discussion of it before the Judges by the counsel on either side. The course of the arguments seemed to have been directed to sustain or to oppose the jurisdiction of the court in the first place, and secondly, the effect in law of the action of the Senate—that action being the adjournment of the Senate to a day beyond the official existence of Gov. Reed. The discussion was an interesting one to us, and was conducted with much ability on both sides. With much anxiety was the opinion of the Judges awaited. That opinion has been given, and though the Judges differ, yet one thing has been settled by it, and that is that the question is one for the determination of the Senate alone. With all due deference to those who hold other views, we believe that the question does not turn upon technical ideas of “Jurisdiction,” for in all matters involving personal rights the Courts have jurisdiction to investigate and inquire into them, as the court did in this case. There was no “case” before the court. An opinion as to the law was asked, and as propounded there *was* involved the question whether Gov. Reed was restored to his official functions by the action of the Senate. The opinion of a majority of the Judges asserts that whatever may really in law be the effect of this action, the Senate alone is the tribunal to declare it. This proceeds from no want of jurisdiction in the Supreme Court to investigate the subject, but as a rule from a declared principle of law, that whilst one tribunal has a case pending before it, another court, although of concurrent jurisdiction, will not undertake to decide any question as to the effect of the action of the court having first acquired cognizance of the case until after final action, but will leave the question to be decided by the court in which it originated. In the present case the rule of law is especially applicable according to the opinion of a majority, for the reason that the Senate has exclusive jurisdiction of impeachments.

Until the Senate shall finally decide, the court cannot interfere, but it is no where intimated that should the Senate transgress any of its powers the court cannot so declare and give effect to its own judgment in any given case.

Granting, then, that the Senate is the only tribunal to decide the legal effect of its own acts pending the impeachment and until they shall themselves decide or order affirmatively the final disposition of the case, the question still remains, What is the legal effect of their action in this case? We do not understand that the question rests upon the simple act of adjournment, nor was the argument of the counsel in behalf of Gov. Reed based on it, but on it, coupled with the other and important facts, that the adjournment was without his consent and in opposition to his wishes and protest, and to a period beyond his official life, when no trial and no judgment of acquittal could restore him to his rights, even if by any stretch of ideas upon the subject there could be any *trial at all*. The question then still being one for the decision of the Senate, by what law, it may be inquired, is it to be governed? We say by the law of the land, controlling and governing all rights, private and official. The Senate (no more than any other tribunal vested with any judicial power,) is not a law for themselves, with the right to decide according to their mere caprice; nor does there exist anything in what is called the usages and customs or

parliament as contra-distinguished from the law appertaining to all cases, to justify a departure from legal rules and principles. In the celebrated case of Warren Hastings, Lord Thurlow, then Lord Chancellor, affirmed that the usages of parliament as contra-distinguished from the common law had no existence. "In times of barbarism," he said, "when to impeach a man was to ruin him by the strong hand of power, the usage of parliament was quoted in order to justify the most arbitrary proceedings." He added, "that the same rules of procedure and of evidence which obtain in courts below, he was sure would be rigidly followed." The House of Lords sustained this view, and during the trial all questions upon the admissibility of evidence were decided according to the rules of the common law as announced by the Judges. According to this, the principles and rules of the common law are to be invoked in the progress of the trial to determine all questions affecting the *rights* of the accused, for if it were otherwise there would be no rule by which the citizen could measure his actions and none by which his rights could be determined, for the usages of parliament furnish none. If then the rules and principles of the common law govern the court in the progress of the trial as the only law that exists, the same reason that affirms and maintains it is equally forcible to support the proposition that *all the legal consequences* to the accused, resulting from the action of the court, are likewise to be ascertained and determined by the law of the land. These effects cannot rightfully be averted by resolution of the Senate alone, for by itself the Senate cannot change the law, but at most it can only rightfully prescribe rules to govern its own action, and regulate its own proceedings.

If the law pronounces that the action of the Senate in this case has the legal effect to discharge Gov. Reed from the impeachment, then it is their duty so to declare, for the rule of law which requires it is as obligatory on the Senate as on all other courts or tribunals exercising judicial powers.

The inquiry naturally results, What is the law upon this subject? We have already said a simple adjournment by itself does not perhaps have the effect claimed, any more than the adjournment of a court does of itself so operate. But when a court pending a trial discharges the jury and adjourns against the consent of the accused, and without any reason which the law regards as *sufficient*, the authorities which were cited in the argument, as we understood them, affirm that as a rule of law the party is entitled to be discharged.

Now what are the facts here? The adjournment was not the result of any necessity, either of law or of unanticipated occurrence. Gov. Reed was arraigned; the Senate organized as a court; a plea was filed and issue made. The accused demanded a trial as he had a right to do under the express terms of the constitution. Without any reason declared, or so far as we know existing, the adjournment was ordered, and by the operation of the constitution, *known to the Senate*, that adjournment carried the Senate over to next January, which was, *as also known to the Senate*, beyond the official life of the Governor. The deduction of fact, as well as of law, which we hold to follow from this is, that the adjournment of the Senate and the continuance of the impeachment before it, was not for the purpose of a trial, but that there should be no trial; and we hold it to be against any known principle of law, that a party arraigned can be held to prevent a trial instead of to give him a trial, and that natural justice at least requires that in all such cases the effect should be a discharge; and any and all courts should, when the question properly comes before it, so declare. And why? Simply because, as it seems to us, the spirit of the law which gives power in order to try is violated, and the spirit of justice requires that the party should be held discharged, for he is presumed to be innocent until the contrary is proved, and, as in such case, no chance

to prove him guilty exists, he is entitled to the practical benefit of the principle applicable in his behalf.

The legal effect, if there be any, of the action of the Senate, is not overcome by the present extra session, convened at the call of the Acting-Governor, for if the effect attached, no subsequent event can avert it. The question then must be governed by what the law fixed at the time, whatever that was, either in favor or opposed to the position of Gov. Reed, and no subsequent assemblage of the Legislature in extra session by call of the Governor can change it.

If these views be correct, the Senate will not only be doing justice to itself but to the body of the people, not to mention Gov. Reed himself, by at once ordering the discharge of the impeachment. Any other course will afford a proof that the tactics of party, assuming the guise of the public good, are of more potent control than the law, which it is the highest interest of Senates, Courts and people to have administered.

In the able appeal made by Messrs. Peeler & Raney, they more particularly relied upon the question of the jurisdiction of the Supreme Court to pass upon the legal effect of the action of this court. And as to this question alone, did the majority of the court confirm itself, so far as any disagreement was concerned? And while Justice Westcott, who delivered the opinion of the court too plainly to be misunderstood, conceded what would have been the unanimous opinion of the court in the event of the question coming before the court in other circumstances, he held the court was by the comity of courts estopped from taking such jurisdiction in this case as would call for a full declaration of the rights of this respondent.

But as to what constituted an acquittal within the meaning of the Constitution, he fully agrees with Chief Justice Randall when he says that, and I here quote from his opinion :

“What is the true intent and meaning of the word acquittal as here used in the Constitution? The court does not differ as to the proper definition of the term as here used. It is our unanimous opinion that it is not restricted to an actual judgment of acquittal after a vote upon full evidence failing to convict by the requisite two-thirds of the members of an organized Senate.

“We think its true signification to be *any* affirmative final action by a legal Senate *other* than a conviction, by which it dismisses or discontinues the prosecution. Any final disposition of the impeachment matter by the Senate, *other* than a conviction, is therefore an acquittal, *for the purpose of removing the disqualification from performing the duties of the office.*”

Judge Westcott fully agrees with the Chief-Justice in all but the question of jurisdiction. And I shall therefore read the opinion of Chief-Justice Randall as the opinion of the Supreme Court, on the question now here presented for the determination of this the High Court of Impeachment.

As to jurisdiction now or hereafter, Judge W. says : “Our

power in the matter of this impeachment is limited and circumscribed by the fact that it is a matter beyond our jurisdiction entirely. After an impeachment perfected according to the Constitution the whole matter is with the Senate, and it has the exclusive right of determining all questions which may arise in the case. If its action is unconstitutional we have the right and power to declare its nullity, and in a proper case before us of any party to enforce the right of which it proposed to deprive him."

Particularly was there no difference of opinion, as to the total want of analogy between the jurisdiction, power, and final action of the Parliament of Great Britain, and that of the Senate of a State in this country. And while this is true, it was conceded beyond controversy that the action of this forum would and must be that of a court, one in which questions of law and evidence are to be viewed and passed upon with the same governing principles that regulate inquiries into analagous subjects-matter in all judicial tribunals proper.

And the doctrine, that in an impeachment "the same rules of evidence, the same legal motions of crimes and punishments prevail; for impeachments are not framed to alter the law, but to carry it into more effectual execution. The judgments and action must therefore be such as is warranted by legal principles and precedents," as fully sustained by the authorities cited, was recognized in all their force, as applicable, and but for the want of jurisdiction, would have received the judgments of that court in sustaining that for which the respondent contended.

This doctrine is fully laid down in Webster in the Prescott case, by Woodeson in his lectures, 4 Black. Com., Chit. Crim. Law, and other authorities cited and read in that argument. And too, Selden in his works, more particularly at 1651-2, fully indorses this rule, and the necessity and propriety of its application. See, too, Lord Winston's case—motion in arrest of judgment, where the Lords entertained the motion and decided it.

And then in reference to the general practice in courts of law, when the issue is joined and the jury is empanelled and sworn, and the cause is continued without the consent of the defendant, either on motion and the discharge of the jury, or by the withdrawal of one juror, by the consent of the court, the defendant is thereby discharged and acquitted.

Before I cite in the argument any authorities to this well settled point, I add, that in this case the court was the court and jury. The Senators were sworn to try, &c., and having been so sworn, should have returned a verdict; and not having done so and the court having adjourned, and particularly as no day was

given, respondent was entitled to an acquittal and discharge as asked for.

To this rule, see *The People vs. Barrett and Ward*, 2 Cairns Report, 304.

Reynolds vs. State, 3 Kelley, (Ga.) Report Sup. C., 53, citing *State vs. McKee*, 1 Bailey, 651, where the court say: Taking then our own decisions, and those of the U. S. Courts of New York and of England together, we are enabled to say that a jury after they are charged, can be discharged, and the prisoner tried a second time, for the following causes only:

Consent of the prisoner; illness of one of the jury, the prisoner or the court; absence of one of the jurymen; the impossibility of their agreeing on a verdict. Beyond these I apprehend the court has no right to go.

See, too, *Mount vs. State of Ohio*, 14 Ohio, 295.

Hawkins's plea of the Crown, title *Discontinuance*, 243.

Mr. Emmons then read the opinion of Judge Randall.

OPINION OF JUDGE RANDALL.

The communication of Governor Reed states a case purporting to be the case made by the record of proceedings of the Senate organized for the trial of his impeachment.

The case as found in the journal of the Senate does not differ essentially in any legal aspect from that stated by him.

The question presented is, what is the effect of the action taken by the Senate and the Assembly upon the impeachment by the honorable the Assembly, which was lately pending before the Senate upon the personal and political rights of Governor Reed, and the political rights of the Legislature and the people.

The office and purpose of the process of impeachment, as was well stated by one of the counsel who appeared in behalf of the Lieutenant-Governor, is to provide that the State may not be degraded by a delinquent officer; and as well, as was stated by other counsel, that in this process neither the State nor any citizen should be deprived of any lawful right by the action of any branch of the government.

It was well urged that this court had no authority to sit in review of or to reverse or nullify the action or proceedings of the Senate. But it was not well said, in a legal sense, that the Senate was a body having a superior jurisdiction, because its powers comprehended a broader and more elevated plane, untrammelled by the severe rules and axioms of the common or statute law. If this be true, the modern theories of government and the forms of civil governments framed in the later periods, are but solemn complicated frauds, machines for the amusement and the impoverishment of the people. If all political and judicial supervisory power is lodged in any one body of men, notwithstanding the establishments which all peoples love so reverently, organized under written Constitutions, which in terms divide the powers of government into several departments of magistracy, supposed to be created to perform the offices of correctives and balances, then are such several departments mere cheats and shams, baubles and playthings invented to delude and ensnare.

If this be so, what need of any other department than a single body of men, or indeed a single human being covered with tinsel, whose "am-

broasial locks" and imperious nod may dispense all power and all justice and command the obedience of all other men; a government fashioned after that of heaven itself, but whose Mentor is a mere piece of crumbling pottery?

On the other hand, the Senate, created by the written law of the people, like any other department or fraction, has such authority as is conferred by the law. It has not been supposed to be a tribunal higher than the executive or judicial branches of government. As a judicial body it can act only upon the request of another branch called the Assembly. It has judicial jurisdiction of but a single proceeding. It cannot reverse or set aside the judgment of the Supreme Court or of a justice of the peace. It may, if the Assembly complain and prove, dismiss our members for violation of law, but it cannot prescribe our judgments. Neither department is utterly independent of or "above" the other. The Legislature, by the repeal of a law, may take from the courts the power to act in a given case depending upon the existence of the repealed act, but it cannot deprive the courts of the power to administer the existing law. It may pass an unconstitutional act, and no power can prevent its action, but it cannot enforce it, nor will the courts permit its enforcement; nor can the Legislature enforce any law without the aid of the judicial tribunals—neither is superior, neither is inferior.

The remarks addressed to the court by counsel concerning the higher or supervisory character of the branches of the Legislature, as judicial tribunals of which the courts may stand in peculiar awe, cannot be considered other wise than as an argument that the proceedings of the Senate in such capacity were beyond the *control* of any other tribunal. This is not a question in the consideration of the matter now under examination.

The simple question is, what is the necessary legal effect and result of the action of the Senate and Assembly upon the impeachment and trial of the Governor. I may further remark that the proceedings of the Senate in this matter are, unquestionably, beyond the control of this court, even as the proceedings of the court are beyond the control of the Senate. The respect which each body owes to itself precludes the possibility of any interference by it with the action of the other, or any invasion by either with the jurisdiction of the other. The final action of the Senate is to be examined only for the purpose of ascertaining what action it has taken and what results legally flow from such action, to the end that such results may be declared. And I venture to declare that this final action must be examined with reference to the law governing the powers of the actor, for, so far as the rights of others are concerned, even a legislative or judicial body cannot violate the law so as to deprive the people or any one of them of rights intended to be secured by law, without abrogating the principle underlying the whole fabric of Republican institutions, that governments are instituted among men for the protection of men's rights; and the courts are organized as integral parts of the government for the purpose of enforcing this protection.

The house of Assembly impeached the Governor, and by virtue of the Constitution he stood bereft at once of the Executive function which at once devolved upon the Lieutenant-Governor. The Governor yielded, and pleaded to the charges.

The Senate by its first rule, its law adopted for the purposes of the trial, resolved to "continue in session from day to day, Sundays excepted, until final judgment shall be rendered."

The Assembly declared itself not ready to prove the charges by reason of the absence of testimony and witnesses.

The Senate, by a vote of eleven in the negative, to nine in the affirmative, rejected an order proposed by one of its members "that the Senate

sitting as a High Court of Impeachment do now adjourn in accordance with the concurrent resolution adopted by the Senate and Assembly for the adjournment of the Legislature."

The Senate thus refused to postpone the trial as requested by the Assembly, and thus practically repeated or reaffirmed the rule to proceed from day to day until final judgment.

The Governor demanded a trial and protested that the trial should not be postponed to a time beyond the expiration of his term of office, and insisted that such postponement not only would deprive him of his right to a trial and his right to be heard in his defence, which was secured to him by the terms of the Constitution, but would deprive the Senate of the power to try him, as he would be out of office by the constitutional limitation of his term before the next meeting of the Legislature, and the power of the Senate, therefore, to give judgment would be gone; such postponement would leave nothing upon which a judgment could operate. Whereupon the Assembly, not proceeding with the trial, the Senate sitting for the trial, adjourned, and the Senate and Assembly forthwith adjourned without day.

Now the sole question is, what is the legal result and the legal effect upon the rights of all the parties affected. I cannot avoid the question by declining to answer, upon the ground that the court cannot determine the regularity or review the action of the Senate in its judicial capacity. I would decline such interference whenever it should be demanded from any source. Has the Senate taken such action that as to itself, and to Gov. Reed, and to the proceeding, it must necessarily take any further action in the case to bring it to a termination. Is its power over the case exhausted? If I understand the majority of the court, they decline to interpret this action of the Senate; and then, I think, they do proceed to construe it, differing with me as to our duty to declare our opinion of its legal effect.

They conclude that the proceedings had by the Senate were not final until so declared by that body, while my conclusions are that the action taken was final as to result and effect; and if the Senate consider the matter again it should come to the same conclusion, uninfluenced, however, by our opinions in the matter of its duty, of which it alone will judge.

I have had neither time nor inclination, nor is it material in my judgment, to comment upon the various authorities, legal and historical, relating to impeachment proceedings, upon the legal effect of the prorogation or dissolution of the British Parliament, for, according to the view I take of the case, I may agree consistently with the argument of the learned counsel who responded to the counsel of Gov. Reed. I deal only with the case presented and its peculiar circumstances.

I conceive that the analogy between the qualities and organization and powers of the House of Lords, and those of the Senate of this State, is utterly wanting in at least two important particulars. The points of departure may be discovered in the following statement:

1. The Senate in conjunction with the Assembly may adjourn and thus dissolve their session, and may thus cease to act, and deprive themselves of the power to act in a legislative or judicial capacity, *of their own volition*.

The House of Lords is a court in its fundamental existence, having all the incidents and jurisdiction of a judicial tribunal at the common law; having power to try not only political but other offences, and to review the judgments and proceedings of all other courts; its judicial existence cannot be divested or destroyed by its own action; it cannot dispose of cases before it by its dissolution or adjournment; it cannot dissolve itself; like all common-law courts, its cases remain before it until it takes affirmative action; it cannot terminate its own sessions by adjournment, but only

by the command of the sovereign, and the sovereign cannot dismiss causes from its jurisdiction. Hence, the prorogation or dissolution of the Parliament, being done in virtue of the royal command, a power not to be resisted in that respect, does not divest it of jurisdiction over pending causes, and an impeachment, being a proceeding against *the person*, survives every accident save the death of the accused. (I understand this to be the law of England, and I think that the death of the accused destroys from that moment all jurisdiction of the House of Lords or other criminal courts over the proceeding, and that such proceedings as were pending are from that moment abated.)

2. The impeachment before the House of Lords is a proceeding against the citizen and peer in his individual capacity for offences committed either in his official or personal capacity. The trial is the trial of an offender, and the judgment is that of a court, the highest in the kingdom, whose process issues to enforce its judgments, even to the taking of the life of the person convicted. It tries and convicts of murder and of larceny upon an impeachment, and as an appellate court it tries the rights of liberty and property, and pronounces and enforces its judgments and decrees at law and in equity.

The Senate can judicially try only upon impeachment, and it can try, not the citizen for committing crime, but only an officer, as such, for the sole purpose of deposition from his office and eligibility. Its judgments can be enforced only by means of judicial process from the courts of law, construing and acting upon the judgment of the Senate as upon a law of the State.

One deposed from office by the judgment of the Senate may be kept from office only by the courts, the power of the Senate being exhausted by the rendition of its judgment. But the judgment of the Senate even will not be enforced by the courts, if the judgment be not authorized by the law of the land, of which the courts cannot refuse to determine.

The Senate must have jurisdiction of the officer or it cannot try him. If the Senate postpone the trial to a day when the officer ceases to exist, it doth forthwith postpone and divest itself of jurisdiction over the matter charged, of power over the officer, of the power to render a judgment, and there is no other logical sequence, in my judgment, than that it postpones the case out of its jurisdiction, and so there is nothing further upon which the Senate or court can operate. In other words, the case is dismissed, gone out of existence so effectually that it cannot breathe again, no power can restore it, and the accused is discharged from the custody of the court.

It cannot be said with any degree of plausibility that the constitutional provision, that the officer impeached shall be "deemed under arrest and disqualified from performing any of the duties of the office *until acquitted* by the Senate," contemplates an acquittal only by a vote of "not guilty."

An *acquittal*, as I understand it, is a discharge by virtue of any action of the Senate whereby it refuses expressly or otherwise further to entertain the case or act upon it, or which places the cause beyond its reach, and by which it has no longer any power or authority to render a judgment upon the guilt or innocence of the officer.

This Senate has already established this as the correct interpretation, in the case of the impeachment of a high judicial officer of this State, by its vote that the prosecution be discontinued and the case dismissed. Upon this the officer resumed, without question, the duties of his office. If the constitutional provision referred to contemplates a vote of "not guilty" or any judgment upon the merits of the charges, then is the judge of the Sixth Circuit still suspended, and incalculable mischief and wrong done to the people by his subsequent unauthorized action. I am of the opin-

ion, and I submit that any action of the tribunal in question which precludes a further proceeding in the case pending before it, necessarily terminates the case as effectually as though it were dismissed in express words. It puts an end to the case absolutely, and necessarily discharges the party from the arrest.

The right to a trial on the part of the accused is as sacred as the right to try on the part of the accuser.

The power to suspend and postpone the trial and to resume it, depends upon the jurisdiction. The right to arrest and suspend from office depend upon the power to give a trial and to convict or acquit. The Constitution contemplates a trial, and the power to try, once gone, all the consequences of the accusation cease. A refusal to try is a refusal to convict.

Without denying the power claimed on the part of the House of Lords to proceed at its next session after a dissolution of the Parliament and to conclude any business begun and not concluded, and not denying the power of the Senate to adjourn and postpone the trial of an impeachment to a day when it may proceed to try the officer accused, it is my judgment that the postponement to a day when it will have no jurisdiction of the officer is an absolute dismissal of the matter from the further consideration of the Senate, and a discharge of the accused must follow as a matter of law.

So, concluding upon the premises stated, I must, upon my convictions of duty, say that, in my opinion, Governor Reed had the right officially to solicit the opinion of the court, whenever, after the adjournment of the Legislature, he saw fit to do so; that he had a lawful right after such adjournment to resume the power and proceed to the discharge of the duties pertaining to the Executive Department whenever he saw fit. Yet it was wise to address the constitutional advisers of the Executive upon the matter before resorting to any measure which would have disturbed the peace of the community.

As my brethren have come to other conclusions as to their duty; have formed other opinions as to the status of the proceeding in question, or that the Senate alone can determine the effect of its action by an express declaration, while I regret to be obliged to differ from them, I am equally obliged, out of respect to the law, cheerfully to acknowledge that my conclusions are not legitimate, for so the court decides. And I respect its opinions, as all good citizens should, notwithstanding any differences of private judgment.

The counsel for the Managers read and filed the following:

Resolved, That the Assembly proceed this day at 12 m. with the prosecution of the trial of Harrison Reed, and that the Managers and counsel on the part of the Assembly take such proceedings to secure the immediate attendance of State witnesses as are necessary and proper to do in the premises.

Adopted by the Assembly May 2, 1862.

M. H. CLAY,
Clerk of the Assembly.

Mr. Wentworth moved that the Senate as a High Court of Impeachment for the trial of Harrison Reed do now adjourn until to-morrow at 12 m.;

Which was agreed to.

And the Senate as a High Court adjourned.

The Senate resumed its regular session.

Mr. Wentworth then moved that the Senate adjourn till 4 p. m. ;

Which was agreed to.

Senate adjourned till 4 p. m.

FOUR O'CLOCK P. M.

Senate met pursuant to adjournment.

President *pro tem.* in the chair.

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

Mr. President, Messrs. Adams, Crawford, Dennis, Eagan, Johnson, Sutton and Wentworth—8.

A quorum not present.

Mr. Wentworth moved a call of the Senate, with the following result :

Mr. President, Messrs. Adams, Crawford, Dennis, Eagan, Johnson, Purman, Sutton and Wentworth—9.

No quorum present.

Mr. Adams moved that the Sergeant-at-arms be sent after absent members ;

Which was agreed to.

Mr. Eagan moved that the further call of the Senate be dispensed with.

The yeas and nays were called for, with the following result :

Those voting in the affirmative were—

Mr. President, Messrs. Adams, Atkins, Crawford, Dennis, Eagan, Henderson, Hunt, Johnson, McKinnon, Meacham, McCaskill, Sutton, Weeks and Wentworth—15.

A quorum present.

The special committee on the appropriation bill made a verbal report and were discharged.

Assembly Bill No. 6 :

A bill to be entitled An act to Appropriate Certain Moneys therein,

Was taken up on its third reading.

Mr. Henderson moved that the bill be put back on its second reading ;

Which was agreed to.

Mr. Henderson moved to strike out \$1,000 for greenback scrip ;

Which was agreed to.

Mr. Eagan moved that the sum of \$250 appropriated to Mr. Woodward for legal services, be stricken out.

The yeas and nays were called for, with the following result :
Those voting in the affirmative were—

Messrs. Atkins, Dennis, Eagan, Hill, Hunt, Johnson, Meacham,
Purman and Weeks—9.

Those voting in the negative were—

Messrs. Adams, Crawford, Henderson, McKinnon, McCaskill,
Sutton and Wentworth—7.

So the motion to strike out was carried.

Mr. Henderson moved that the rules be waived, and the bill
put upon its third reading.

The rules were waived, and the bill was read third time at large
and put upon its final passage.

Upon the question, Shall the bill pass ?

The yeas and nays were called for, with the following result :
Those voting in the affirmative were—

Messrs. Adams, Atkins, Crawford, Dennis, Eagan, Hill, Hunt,
Johnson, Meacham, Purman, Sutton, Weeks and Wentworth—
13.

Those voting in the negative were—

Messrs. Henderson and McCaskill—2.

So the bill passed, title as stated, and the Secretary was di-
rected to certify the same to the Assembly.

Mr. Wentworth introduced the following bill :

A bill in relation to Comptroller's warrants and Treasurer's
certificates,

Was read first time in full.

On motion the rules were suspended and the bill was put upon
its second reading.

The bill was then read the second time by sections.

Message from the Assembly :

ASSEMBLY HALL, May 2, 1872.

HON. LIBERTY BILLINGS, President pro tem. of the Senate :

SIR: I am directed to inform you that the Assembly has
adopted—

Memorial in regard to a Southern Trans-Continental Interior
Line of Water Communication through the Gulf States between
the Great West and the Atlantic Ocean.

Also :

Has passed Assembly Bill No. 12 :

To be entitled An act to Compel Railroad Companies to Pay
for Property Destroyed, Killed, or Injured by their Trains, and to
provide for Summonses and other process to recover the value of
property so destroyed, killed or injured.

Very respectfully,

M. H. CLAY,
Clerk of the Assembly.

Mr. Wentworth moved that the rules be suspended and the bill be put upon its third reading.

The yeas and nays were called for, with the following result: Those voting in the affirmative were—

Messrs. Adams, Atkins, Crawford, Eagan, Henderson, Hunt, Johnson, McKinnon, Meacham, Sutton, Weeks and Wentworth—12.

Those voting in the negative were—

Messrs. Dennis, Hill, McCaskill and Purman—4.

The rules were suspended, and the bill was then read the third time.

The bill was then placed on its third reading and read at large, and put upon its passage.

Upon the question, Shall the bill pass?

The yeas and nays were called for, with the following result:

Those voting in the affirmative were—

Messrs. Adams, Atkins, Crawford, Eagan, Henderson, Hill, Hunt, Johnson, McKinnon, Meacham, McCaskill, Sutton, Weeks and Wentworth—14.

Those voting in the negative were—

Messrs. Dennis and Purman—2.

So the bill was passed, title as stated, and the Secretary was directed to certify the same to the Assembly.

Mr. Purman, chairman of the Committee on Judiciary, made the following report:

SENATE CHAMBER,
Tallahassee, Fla., May 2, 1872.

To the Senate:

The Judiciary Committee have considered Senate Bills Nos. 1 and 2: "To amend section 331 of An act to Simplify and Abridge the Practice, Pleadings, and Proceedings of the Courts of this State," as amended by section six of an act entitled an act to amend An act to Simplify and Abridge the Practice, Pleadings, and Proceedings of the Courts of this State, approved February 19, 1872; and "An act in Relation to Testimony in Civil Cases;" and beg leave to report: That the questions at issue in these bills are—whether parties at interest in any controversy shall be allowed to testify in the courts in civil cases, or whether when an administrator, executor, heir at law, or devisee, represents actions, under contracts made by their decedents, or guardians of lunatics represent interests in which the information of the facts was with the lunatic, the adverse party shall be excluded from testifying. Senate Bill No. 2 is substantially the law as it now exists, and as adopted at the January session of 1870, and allows parties to testify in every civil action. Senate Bill No. 1 restricts this privilege only when the adverse party

is dead or is rendered incompetent to testify, and the justice and propriety of this rule is manifest. We, therefore, recommend the passage of Senate Bill No. 1, and that Senate Bill No. 2 be indefinitely postponed.

Very respectfully,

W. J. PURMAN,
JOHN A. HENDERSON,
A. L. McCASKILL,
D. EAGAN.

Assembly Concurrent Resolution Relative to Adjournment.

Moved that the further communication of the subject be postponed till Monday 12 m.

The yeas and nays were called for, with the following result :

Those voting in the affirmative were—

Messrs. Atkins, Crawford, McKinnon, McCaskill and Sutton—5.

Those voting in the negative were—

Messrs. Adams, Dennis, Eagan, Henderson, Hill, Hunt, Johnson, Meacham, Purman, Weeks and Wentworth—11.

So the motion to postpone was lost.

Mr. Henderson moved to postpone the further consideration of the resolution till Monday next 12 m.

The yeas and nays were called for, with the following result :

Those voting in the affirmative were—

Messrs. Atkins, Crawford, Henderson, McKinnon, McCaskill and Sutton—6.

Those voting in the negative were—

Messrs. Adams, Dennis, Eagan, Hill, Hunt, Johnson, Meacham, Purman, Weeks and Wentworth—10.

So the motion was lost.

Mr. Wentworth moved the postponement of further consideration till 6 o'clock p. m.

The yeas and nays were called for, with the following result :

Those voting in the affirmative were—

Messrs. Crawford, Henderson, Johnson, McKinnon and McCaskill—5.

Those voting in the negative were—

Messrs. Dennis, Eagan, Hill, Hunt, Meacham, Purman, Weeks and Wentworth—8.

Mr. Henderson moved that the Senate now adjourn.

The yeas and nays were called for, with the following result :

Those voting in the affirmative were—

Messrs. Atkins, Crawford, Henderson, Hunt, Johnson, McKinnon, McCaskill and Sutton—8.

Those voting in the negative were—

Messrs. Dennis, Eagan, Hill, Meacham, Purman and Wentworth—6.

So the motion was carried.
Senate adjourned till 10 o'clock a. m. to-morrow.

EXECUTIVE SESSION, May 1, 1872.

Mr. McCaskill moved the following:

That the journals of this day be made to show that the following nominations to office of His Excellency, the Lieutenant and Acting Governor, were confirmed on the 16th day of February last, and that the failure to record the same on the journals of that day's proceedings is declared to be an accidental omission:

Thomas Hanna, tax assessor Washington county.

Duncan G. McLeod, to be clerk Circuit Court of Walton county.

D. L. Campbell, to be assessor of taxes and collector of revenue of Walton county.

J. T. Armstrong, judge County Court, Franklin county.

Mr. Meacham moved that the doors be opened;
Which was agreed to.

FRIDAY, May 3, 1872.

The Senate met pursuant to adjournment.

The President *pro tem.* in the chair.

Prayer by the chaplain.

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

Mr. President, Messrs. Adams, Atkins, Crawford, Henderson, Hill, Hunt, Johnson, Kendrick, McKinnon, Meacham, McCaskill, Purman, Sutton, Weeks and Wentworth—16.

A quorum present.

Executive message from the Governor was received.

On motion of Mr. Dennis, the Senate went into Executive Session.

The following confirmations and removals were made:

Calvin McDonald, to be Sheriff of Walton County.

Sturgis B. Baldwin, to be Sheriff of Jefferson County.

Leslie A. Reed, to be Clerk of Court Jefferson County, vice R.

C. Loveridge, removed.

Jesse H. Tucker, to be Sheriff of Manatee County.