22d Congress,
2d Session.

[Rep. No. 88.]

Ho. of Reps.

WM. CUMMINS *vs.* JUDGE JOHNSON.

February 8, 1833.

Read, and laid on the table.

Mr. Bell, from the Committee on the Judiciary, to which the subject had been referred, made the following

REPORT:

The Committee on the Judiciary, to whom was referred the memorial of William Cummins, setting forth certain charges of official and other misconduct against Benjamin Johnson, one of the Judges of the Superior Court of the Territory of Arkansas, have had the same under consideration, and make the following report:

A preliminary question presented for the decision of the committee, by the nature and object of the investigation in which they find themselves engaged, was, whether a judge of a Territorial court is such an officer as may be impeached before the Senate, under the provisions of the constitution prescribing and regulating the mode of bringing official offenders to justice. A majority of the committee are strongly inclined to the opinion that such an officer is not a proper subject of trial by impeachment. Some of the reasons upon which that opinion may be supported, will be stated.

The constitution, in article 11, section 4, provides that "all civil officers of the United States shall be removed from office by impeachment," &c. The institution by Congress of those political corporations, denominated, in the language of our legislation upon that subject, Territorial Governments, is only authorized by a very liberal construction of the general power given by the constitution to Congress over the public domain. But, admitting that exercise of power to be well enough founded, still, can a judge of such a Government be said to be an officer of the United States within the meaning of the clause already quoted? Should the doubt thrown out by the committee upon this point, appear to the House to be without reasonable foundation, they think they will be fully sustained in the opinion, that, whether liable to impeachment or not, the practice of impeaching subordinate officers, and especially such as hold their offices by a tenure not more firm and durable than the judge of a Territorial court, would soon be found highly inconvenient and injurious to the public interest. The judge whose conduct in the present instance is alleged to be such as to call for the exercise of the impeaching power of the House, holds his office for a term of four years only, and may, by the express provision of the act of Congress establishing his office, be removed at any time within that term by the President. The trial by impeachment is the highest and most solemn in its na-

ture, known in the administration of public justice. It is established for high political purposes, and would seem to be proper only against judges who hold their offices during good behavior, and other high officers of the Government, for such crimes or misdemeanors as the public service and interest require to be punished by removal from office.

But, as the House may not concur with the committee in these opinions, they have thought it their duty to look into the evidence before them in support of the charges made against Judge Johnson, and also into the evidence referred to them in his vindication. As they believe that, upon an examination of all the proofs before them, there can be but one opinion as to the question whether a sufficient ground for an impeachment is made out or not, the committee have not supposed it necessary or important to report to the House, in detail, either the charges or the evidence on the one side or the other.

Judge Johnson appears to have filled the office of judge of the superior court of the Arkansas Territory, under several appointments, during a period of twelve years. The general charges against him, are, favoritism or partiality to particular counsel in the trial of causes; irritability of temper, and rudeness on the bench towards his brother judges and the bar; incapacity, manifested by a vacillating and inconsistent course of judicial decision, and habitual intemperance. In making out specifications under these several heads, the memorialist does not confine himself to the term of the judge's office which is just expired, but the whole period of his judicial administration in Arkansas is reviewed; and, after all, it may be stated, that four cases only are brought to the notice of the House by the evidence—the trial of Herod, House, and Woods, for the murder of Melborne, being regarded as one case in which favoritism or partiality is alleged to have influenced him. There are facts stated in the case of Herod, House, and Woods, and in the case of Embree, which are no doubt true, as they are stated by members of the bar of character for veracity; but the inferences from those facts appear to the committee to be strained, being generally those of unsuccessful counsel; and, upon looking into the explanatory evidence furnished in behalf of Judge Johnson, not to be warranted by the circumstances of the whole case. For example, the discharge of the first jury empannelled to try Herod, after they had had the case submitted to them, and held it under consideration for one night only, without any charge of improper conduct in the jury, was supposed to furnish evidence of a desire to oblige the counsel for Herod; but no such inference appears to be justified upon an examination of all the facts of the case. The discharge of one jury, and the empannelling of a second, for capital offences, appears to be considered no irregularity in the practice of the courts of Arkansas, when the jury cannot agree; and, in this case, it is not alleged that they could have agreed. The just empannelling of the second jury, and the prompt discharge of the prisoner at the same term of the court, are, in the opinion of the committee, in themselves strong circumstances in favor of the innocence of the judge.

In the cases of Embree and Dunlop, the explanatory evidence appears to the committee in like manner to overthrow the inference of improper motives of the judge.

His refusal to sign a bill of exceptions, until he was repeatedly pressed by counsel to do so, is made a serious charge against him. The evidence furnished by the judge, under this charge, makes it probable that the whole

charge is founded in mistake; but, as the bill is admitted by both parties to have been signed, the charge does not appear worthy of the importance attached to it.

As to the general charge of incapacity, and an inconsistency in judicial decision, rendering the court of justice wholly uncertain, the general testimony borne by so many persons of respectability to the legal learning and ability of Judge Johnson; and the specific fact which is stated by several, that in no case has a decision of Judge Johnson in the circuit court, been reversed in the superior court, appear to be a sufficient refutation.

The charge of intemperance, although supported by proof of excessive indulgence upon a few occasions, does not appear to be well founded, to the extent alleged by the memorialist. The testimony upon this point, as well as in relation to the general integrity, impartiality, and ability of Judge Johnson, is ample, and, in the opinion of the committee, conclusive. The Governor of the Territory, a large portion of the bar, the clerks of all his courts in his circuit—clerks holding their offices by the suffrages of the people in their respective counties, together with many others in public stations, furnish the most decided and unequivocal testimony in favor of the general uprightness and propriety of Judge Johnson's conduct both as a judge and a private citizen.