

ROBERT W. ARCHBALD, JUDGE OF THE UNITED STATES  
COMMERCE COURT.

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JULY 8, 1912.—Referred to the House Calendar and ordered to be printed.

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Mr. CLAYTON, from the Committee on the Judiciary, submitted the  
following

REPORT.

[To accompany H. Res. 524.]

The Committee on the Judiciary, having had under consideration  
House resolution 524, make the following report:

The resolution is in the following words:

*Resolved*, That the Committee on the Judiciary be, and is hereby, authorized to inquire into and concerning the official conduct of Honorable Robert W. Archbald, formerly district judge of the United States Court for the Middle District of Pennsylvania, and now a judge of the Commerce Court, touching his conduct in regard to the matters and things mentioned in House Resolution numbered five hundred and eleven, and especially whether said judge has been guilty of an impeachable offense, and to report to the House the conclusions of the committee in respect thereto, with appropriate recommendation;

*And resolved further*, That the Committee on the Judiciary shall have power to send for persons and papers, and to subpoena witnesses and to administer oaths to such witnesses; and for the purpose of making this investigation said committee is authorized to sit during the sessions of this House; and the Speaker shall have authority to sign and the Clerk to attest subpoenas for any witness or witnesses.

ORIGIN OF THIS IMPEACHMENT.

This impeachment proceeding had its origin in the resolution adopted by the House of Representatives on April 25, 1912, which is set out in the following message of the President to the House of Representatives on May 3, 1912:

*To the House of Representatives:*

I am in receipt of a copy of a resolution adopted by the House on April 25, reading as follows:

*“Resolved*, That the President of the United States be, and he is hereby, requested, if not incompatible with the public interest, to transmit to the House of Representatives a copy of any charges filed against Robert W. Archbald, associate judge of the United States Commerce Court, together with the report of any special attorney or agent appointed by the Department of Justice to investigate such charges, and a copy of any and all affidavits, photographs, and evidence filed in the Department of Justice in relation to said charges, together with a statement of the action of the Department of Justice, if any, taken upon said charges and report.”

In reply, I have to state that, in February last, certain charges of improper conduct by the Hon. Robert W. Archbald, formerly district judge of the United States court for the middle district of Pennsylvania, and now judge of the Commerce Court, were brought to my attention by Commissioner Meyer of the Interstate Commerce Commission. I transmitted these charges to the Attorney General, by letter dated February 13, instructing him to investigate the matter, confer fully with Commissioner Meyer, and have his agents make as full report upon the subject as might be necessary, and, should the charges be established sufficiently to justify proceeding on them, bring the matter before the Judiciary Committee of the House of Representatives.

The Attorney General has made a careful investigation of the charges, and as a result of that investigation has advised me that, in his opinion, the papers should be transmitted to the Committee on the Judiciary of the House to be used by them as a basis for an investigation into the facts involved in the charges. I have, therefore, directed him to transmit all of the papers to the Committee on the Judiciary; but in my opinion—and I think it will prove in the opinion of the committee—it is not compatible with the public interests to lay all these papers before the House of Representatives until the Committee on the Judiciary shall have sifted them out and determined the extent to which they deem it essential to the thoroughness of their investigation not to make the same public at the present time. But all of the papers are in the hands of the committee and, therefore, within the control of the House.

WM. H. TAFT.

THE WHITE HOUSE, May 3, 1912.

#### INQUIRY INTO THE ALLEGED MISCONDUCT OF JUDGE ARCHBALD.

Your committee began the hearings under House Resolution 524 hereinbefore set out on May 7, 1912, and concluded such hearings on June 4, 1912. The testimony was taken by the committee in open session from day to day or from time to time until concluded. At the hearings witnesses were sworn and examined; and Judge Archbald was present in person and was represented by counsel in accordance with his request made of the committee. His counsel was permitted to cross-examine the witnesses.

The testimony taken by the committee is now presented to the House, but on account of its volume it is deemed not advisable to have the same again printed in extenso as a part of this report. A copy of such testimony and of the proceedings had at the hearings in this matter is, however, accessible to each Member of the House.

#### JUDGE ARCHBALD'S APPOINTMENT.

Robert W. Archbald was appointed in vacation a United States district judge for the middle district of Pennsylvania and was duly commissioned as such judge on the 29th day of March, 1901, as appears from his commission, which is in the following words and figures:

WILLIAM MCKINLEY,

PRESIDENT OF THE UNITED STATES OF AMERICA.

*To all who shall see these presents, greeting:*

Know ye, that, reposing special trust and confidence in the wisdom, uprightness, and learning of Robert Wodrow Archbald, of Pennsylvania, I do appoint him United States district judge for the middle district of Pennsylvania, as provided for by act approved March 2, 1901, and do authorize and empower him to execute and fulfill the duties of that office according to the Constitution and laws of the said United States, and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining, unto him, the said Robert Wodrow Archbald, until the end of the next session of the Senate of the United States, and no longer, subject to the conditions and provisions prescribed by law.

In testimony whereof I have caused these letters to be made patent and the seal of the Department of Justice to be hereunto affixed.

Given under my hand, at the city of Washington, the 29th day of March, in the year of our Lord one thousand nine hundred and one, and of the independence of the United States of America the one hundred and twenty-fifth.

[SEAL.]

By the President:

JOHN W. GRIGGS,  
*Attorney General.*

WILLIAM MCKINLEY.

After the vacation and upon the convening of Congress, Robert W. Archbald was appointed a United States district judge for the middle district of Pennsylvania and was duly commissioned as such judge on the 17th day of December, 1901, as appears from his commission, which is in the following words and figures:

THEODORE ROOSEVELT, PRESIDENT OF THE UNITED STATES OF AMERICA.

*To all who shall see these presents, greeting:*

Know ye, that, reposing special trust and confidence in the wisdom, uprightness, and learning of Robert W. Archbald, of Pennsylvania, I have nominated, and by and with the advice and consent of the Senate, do appoint him United States District Judge for the Middle District of Pennsylvania, and do authorize and empower him to execute and fulfill the duties of that office according to the Constitution and laws of the said United States, and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining, unto him, the said Robert W. Archbald, during his good behavior.

In testimony whereof I have caused these letters to be made patent, and the seal of the Department of Justice to be hereunto affixed.

Given under my hand, at the city of Washington, the 17th day of December, in the year of our Lord one thousand nine hundred and one, and of the independence of the United States of America the one hundred and twenty-sixth.

[SEAL.]

By the President:

P. C. KNOX,  
*Attorney General.*

THEODORE ROOSEVELT.

The said Robert W. Archbald was duly appointed an additional circuit judge of the United States from the third judicial circuit and designated as a judge of the United States Commerce Court, and was confirmed by the Senate and was duly commissioned as such judge on the 31st day of January, 1911, as will appear from his commission, which is in the following words and figures, to wit:

WILLIAM H. TAFT, PRESIDENT OF THE UNITED STATES OF AMERICA.

*To all who shall see these presents, greeting:*

Know ye that, reposing special trust and confidence in the wisdom, uprightness, and learning of Robert Wodrow Archbald, of Pennsylvania, I have nominated, and by and with the advice and consent of the Senate, do appoint him additional circuit judge of the United States from the third judicial circuit, and do authorize and empower him to execute and fulfill the duties of that office according to the Constitution and laws of the said United States, and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining, unto him, the said Robert Wodrow Archbald, during his good behavior. Appointed pursuant to the act of June 18, 1910 (36 Stats., 540), and hereby designated to serve for four years in the Commerce Court.

In testimony whereof I have caused these letters to be made patent, and the seal of the Department of Justice to be hereunto affixed.

Given under my hand, at the city of Washington, the thirty-first day of January, in the year of our Lord one thousand nine hundred and eleven, and of the independence of the United States of America the one hundred and thirty-fifth.

[SEAL.]

By the President:

GEORGE W. WICKERSHAM,  
*Attorney General.*

WILLIAM H. TAFT.

## THE FACTS.

The facts found by your committee are substantially as follows:

THE NEGOTIATIONS WITH THE HILLSIDE COAL & IRON CO. RELATIVE  
TO THE KATYDID CULM DUMP AT MOOSIC, PA.

[See Article 1.]

On or about March 31, 1911, Judge Archbald entered into a partnership agreement with one Edward J. Williams, of Scranton, Pa., for the purchase of a certain culm dump known as the Katydid culm dump, located near Moosic, Lackawanna County, Pa., for the purpose of disposing of the said property at a pecuniary profit to themselves.

Most of the coal contained in this culm dump was taken from land known as the Caldwell lot, which is owned in fee simple by the Hillside Coal & Iron Co. The larger portion of the dump now rests on land known as Lot 46, which is jointly owned by the Hillside Coal & Iron Co. and the Everhart estate. The entire capital stock of the Hillside Coal & Iron Co. is owned by the Erie Railroad Co. and a number of the managing officers and directors of the railroad company are also managing officers and directors of the coal company. The Katydid dump was formed from the operation of the Katydid colliery by the firm of Robertson & Law, and later by John M. Robertson, who succeeded the firm, which operated the colliery under a verbal agreement to pay the Hillside Coal & Iron Co. certain royalties on all coal mined. It appears that the Everhart estate received certain royalties from the Hillside Coal & Iron Co. for all coal above the size of pea taken from the tract in which the Everhart estate held a one-half undivided interest. The plant was operated from 1887 to 1909, when the breaker and washery were destroyed by fire, and since then the operation has been abandoned by Robertson.

In furtherance of his agreement with Williams, Judge Archbald used his official position as judge of the Commerce Court, on March 31, 1911, and at various other times, by correspondence, personal conferences, and otherwise, to improperly induce and influence the officers of the Hillside Coal & Iron Co. and the Erie Railroad Co. to enter into an agreement with himself and Williams to sell the interest of the Hillside Coal & Iron Co. in the Katydid culm dump for a consideration of \$4,500, against the policy and practice of the Erie Railroad Co. and its subsidiary, the Hillside Coal & Iron Co.

Judge Archbald and Williams then secured an option to purchase whatever equity Robertson held in this property for a consideration of \$3,500 and entered into negotiations with several parties with a view to the sale of the culm dump at a large profit. One of these parties was the manager of an electric railroad who was then purchasing large quantities of coal consumed in the operation of the road from the Hillside Coal & Iron Co. at the usual market rates. It was claimed that there were certain complications in the title to this property; but however this may be, Judge Archbald considered that the options from the Hillside Coal & Iron Co. and Robertson

covered the entire interest in the dump, and so stated in a letter to this prospective purchaser.

After a careful survey a disinterested mining engineer estimates that the Katydid culm dump contains about 90,000 gross tons, of which approximately 46,704 tons are marketable coal. This coal is appraised by the engineer at \$47,533.18, subject to an increase of \$3,803.40 provided that an increment of small coal can be saved in the process of reclamation. It is further estimated that the operation of this culm dump by the Hillside Coal & Iron Co. would net it approximately \$35,000 and that the Erie Railroad Co. would realize a profit in the neighborhood of \$35,000 for the transportation of the coal to tidewater, making a total profit to the Erie and its subsidiary of about \$70,000.

During the period covering these negotiations with the officers of the Hillside Coal & Iron Co. and the Erie Railroad Co. Judge Archbald was a United States circuit judge, duly assigned to serve in the Commerce Court, and the Erie Railroad Co., a common carrier engaged in interstate commerce, was a party litigant in certain suits then pending in the Commerce Court and known as *The Baltimore & Ohio Railroad Co. et al. v. The Interstate Commerce Commission, No. 38*, and *The Baltimore & Ohio Railroad Co. et al. v. The Interstate Commerce Commission, No. 39*. In the opinion of your committee Judge Archbald's participation in this transaction, under all the circumstances, was reprehensible and prejudicial to the confidence of the American people in the Federal judiciary.

THE ATTEMPT TO SELL THE STOCK OF THE MARIAN COAL CO. TO THE DELAWARE, LACKAWANNA & WESTERN RAILROAD CO.

[See Article 2.]

On October 18, 1910, the Marian Coal Co., which operated a washery at Taylor, Pa., filed a complaint against the Delaware, Lackawanna & Western Railroad Co. and several other railroads before the Interstate Commerce Commission, containing a demand for reparation for damages alleged to have been suffered by the complainant in the amount of \$55,238.27, with interest, for overcharges and discriminations in freight rates, and concluding with a prayer that the Interstate Commerce Commission issue an order requiring the defendants to cease various acts alleged to have been committed for the purpose of suppressing the competition of the complainant in the coal market, and establishing just and reasonable rates upon commodities shipped by the complainant from its washery at Taylor, Pa., to all points within the jurisdiction of the commission.

Some time in July or August, 1911, William P. Boland and Christopher G. Boland, who were the controlling stockholders of the Marian Coal Co., employed one George M. Watson, of Scranton, Pa., as an attorney to effect a sale of two-thirds of the stock of the Marian Coal Co. to the Delaware, Lackawanna & Western Railroad Co., and to settle this case which was still pending before the Commerce Commission. The decision of the Interstate Commerce Commission in this case was subject to review by the Commerce Court, and there was at that time pending in the Commerce Court a suit

entitled "The Baltimore & Ohio Railroad Co. et al. v. The Interstate Commerce Commission, No. 38," to which the Delaware, Lackawanna & Western Railroad Co. was a party litigant.

With full knowledge of these facts, Judge Archbald entered into an agreement to assist George M. Watson, for a valuable consideration, to sell the stock of the Marian Coal Co., held by the Bolands, to the Delaware, Lackawanna & Western Railroad Co. and settle the case between the said coal company and the railroad company. In pursuance of this agreement, Judge Archbald by means of correspondence, personal conferences, and otherwise persistently attempted to induce the officers of the Delaware, Lackawanna & Western Railroad Co. to enter into an agreement with Watson to settle the case then pending before the Interstate Commerce Commission and purchase the stock of the Marian Coal Co. at a highly exorbitant price.

In all of his correspondence with the officers of the Delaware, Lackawanna & Western Railroad Co. relative to this matter, Judge Archbald used the official stationery of the United States Commerce Court, and it is apparent from an examination of the testimony taken before this committee that he used his influence as a judge of that court to bring about the successful consummation of these negotiations. His persistent activity in said negotiations forces the conclusion that he expected to receive a portion of the fee which the Bolands had agreed to pay Watson in the event that a settlement should be effected, together with a portion of the large amount demanded by Watson, of the Delaware, Lackawanna, & Western Railroad Co. in excess of the price which the Bolands were willing to accept for their stock in the Marian Coal Co.

THE NEGOTIATIONS WITH THE LEHIGH VALLEY COAL CO. AND THE GIRARD ESTATE RELATIVE TO A CULM DUMP KNOWN AS PACKER NO. 3, NEAR SHENANDOAH, PA.

[See Article 3.]

The Lehigh Valley Coal Co., which is owned by the Lehigh Valley Railroad Co., holds a lease on certain coal land located near Shenandoah, Pa., and owned by the Girard estate. This lease was made to run for a period of 15 years, of which about 13 years have elapsed.

On August 11, 1911, and at numerous other times thereafter, Judge Archbald, by means of correspondence and personal interviews, persistently sought to induce, and did induce, the officers of the Lehigh Valley Coal Co. to relinquish the right of that company to operate a certain culm dump, known as Packer No. 3, containing approximately 472,670 gross tons, and located on the land leased from the Girard estate, provided that a very small royalty should be paid the coal company for coal reclaimed from the dump, and provided further that the coal should be shipped over the lines of the Lehigh Valley Railroad. Judge Archbald thereafter applied to the Girard estate for an operating lease on the culm dump known as Packer No. 3, stating that he had secured the consent of the Lehigh Valley Coal Co. to operate the property if the Girard estate would approve of the arrangement. The judge proposed to pay the Girard estate the same royalties on various sizes of coal which were being paid by the Lehigh

Valley Coal Co. under its lease, which was executed about 13 years theretofore, when coal values were materially less than they were at the time Judge Archbald's proposition was submitted. The trustees of the Girard estate promptly declined to grant Judge Archbald the lease on the terms proposed, and the deal has never been consummated.

While these negotiations with the Lehigh Valley Coal Co. were in progress the Lehigh Valley Railroad Co. was a party litigant in two suits pending before the United States Commerce Court, known as *The Baltimore & Ohio Railroad Co. et al. v. The Interstate Commerce Commission, No. 38*, and *The Lehigh Valley Railroad Co. v. The Interstate Commerce Commission, Henry E. Meeker, intervenor, No. 49*.

If Judge Archbald and his associates could have operated this culm dump at a profit, the Lehigh Valley Coal Co., by reason of its greater facilities for washing and shipping coal, could have operated the property at a larger profit, and it is the conclusion of your committee that the officers of the coal company relinquished the right to operate the said culm dump because of the influence exercised upon them through Judge Archbald's position as a member of the Commerce Court.

#### THE LOUISVILLE & NASHVILLE RAILROAD CASE.

[See article 4.]

In February, 1911, upon the organization of the Commerce Court, a suit known as *The Louisville & Nashville Railroad Co. v. The Interstate Commerce Commission*, which had theretofore been filed in the United States Circuit Court at Louisville, Ky., was transferred to the United States Commerce Court (Docket No. 4). The case was argued on the 2d and 3d of April, 1911, and submitted to the court for adjudication. On August 22, 1911, Judge Archbald, who afterwards delivered the majority opinion in this case, wrote to Helm Bruce, the attorney for the Louisville & Nashville Railroad Co., at Louisville, Ky., requesting him to confer with one Compton, traffic manager of the Louisville & Nashville Railroad, who had given material testimony before the Interstate Commerce Commission, and to advise the judge whether the witness intended to give an affirmative answer, as appeared from the record, or whether he intended to give a negative answer to a question propounded to him by the chairman of the commission. In pursuance of this request Bruce conferred with Compton and advised the judge that the witness intended to give a negative answer to the question referred to, which the attorney for the railroad contended was shown by the context of the testimony. The receipt of this letter was acknowledged by Judge Archbald on August 26, 1911.

On January 10, 1912, Judge Archbald again wrote to Bruce, calling attention to certain conclusions reached by another member of the court, which, it was claimed, refuted statements and contentions advanced in Bruce's original brief and sustained the action of the Interstate Commerce Commission with respect to certain features of the case. In this letter Judge Archbald asked Bruce whether he would still affirm the position taken in his brief and, if so, upon what theory it could be sustained, assuming that the conclusions of the other member of the court were correct. The judge followed this question with a number of other questions relative to the features of the case which were not then clear to the court. On January 24, 1912, Bruce sent the

judge a letter in answer to the questions which had been propounded to him, wherein he argued these special features of the case in behalf of the railroad company at considerable length. His letter was clearly in the nature of a supplemental brief submitted for the purpose of overcoming certain doubts as to the merits of the case of the railroad company which apparently had arisen in the minds of some of the members of the court.

On February 28, 1912, this case was decided by the Commerce Court in favor of the railroad company. Judge Archbald wrote the opinion of the majority, which followed the views expressed by Bruce, and Judge Mack dissented. The attorneys for the Interstate Commerce Commission and the United States were given no opportunity to examine and answer the arguments advanced by the attorney for the Louisville & Nashville Railroad Co. in his communication to Judge Archbald of January 24, 1912, nor were they informed that such correspondence had been had.

In the opinion of your committee, this conduct on the part of Judge Archbald was a misbehavior in office, and unfair and unjust to the parties defendant in this case.

**NEGOTIATIONS WITH THE PHILADELPHIA & READING COAL & IRON CO.  
RELATIVE TO THE LINCOLN CULM DUMP NEAR LORBERRY, PA.,  
AND THE WRONGFUL ACCEPTANCE OF A GIFT, REWARD, OR PRESENT  
FROM FREDERIC WARNKE, OF SCRANTON, PA.**

[See Article 5.]

In 1904 Frederic Warnke, of Scranton, Pa., purchased a two-thirds interest in an operating lease on some coal land located near Lorberry Junction, Pa., and owned by the Philadelphia & Reading Coal & Iron Co. The entire capital stock of the Philadelphia & Reading Coal & Iron Co. is owned by the Reading Co., which owns the entire capital stock of the Philadelphia & Reading Railway Co., a common carrier engaged in interstate commerce. He put up a number of improvements and operated the culm dump on the property for several years, but owing to the action of the elements his operations were carried on at a loss. Warnke then applied to the Reading Co. for the mining maps of the land covered by his lease. He was informed that the lease under which he claimed had been forfeited two years before its assignment to him, and his application was therefore denied. He then made a proposition to George F. Baer, president of the Philadelphia & Reading Railway Co. and president of the Philadelphia & Reading Coal & Iron Co., to relinquish any claim that he might have in this property under his lease, provided that the Philadelphia & Reading Coal & Iron Co. would grant him an operating lease on another property owned by said corporation at Lorberry, Pa., and known as the Lincoln culm bank.

Mr. Baer referred Warnke's proposition to Mr. W. J. Richards, vice president and general manager of the Philadelphia & Reading Coal & Iron Co., for consideration and action. Richards and Baer thereafter concluded that there was no valid reason why they should make an exception to the general rule of the coal company not to lease its culm banks. Warnke then made several attempts, through attorneys and

friends, to have this decision reconsidered, and failing in this he asked Judge Archbald to intercede in his behalf with Richards.

In the latter part of November, 1911, Judge Archbald called upon Mr. Richards at his office in Pottsville, Pa., in pursuance of an appointment made by letter, and attempted to influence Richards to reconsider his refusal to accede to Warnke's proposition. Judge Archbald was informed, however, that the decision of Richards and Baer must be considered final, and the judge so advised Warnke.

In December, 1911, Warnke was considering the advisability of purchasing a certain culm fill located near Pittston, Pa., and owned by the Lacoë & Shiffer Coal Co. One John Henry Jones, of Scranton, Pa., advised him that Judge Archbald was familiar with the title to the property and the rights of way of certain railroads over it. In pursuance of this assurance from Jones, Warnke consulted the judge, who advised him that the title was clear. Warnke had but two conversations with Judge Archbald regarding this matter, not exceeding 30 minutes in length altogether, but he at that time stated to Judge Archbald that he would pay the judge \$500 for the information which he had received. Shortly thereafter, Warnke and several business associates purchased this property for a consideration of \$7,500, and in the month of March, 1911, a day or so after Judge Archbald had called at the office of Warnke and his associates, Warnke drew a promissory note for \$500, as president of the coal company which had purchased the fill, and caused the same to be delivered to Judge Archbald. The note was discounted in one of the banks of Scranton, but has not yet matured.

Your committee finds that Judge Archbald was guilty of misbehavior in office in attempting to use his influence as a member of the Commerce Court with the officials of the Philadelphia & Reading Coal & Iron Co. and its allied railroad corporation for the purpose of aiding Warnke to secure a lease on a certain culm bank owned by the coal and iron company, after the managing officers of said company had declined to grant the lease. Thereafter Warnke gave Judge Archbald \$500 in the guise of compensation for legal advice rendered, but which, in fact, was in the nature of a reward for favors previously shown in connection with the judge's efforts to bring about the acceptance of Warnke's proposition to the Philadelphia & Reading Coal & Iron Co.

#### THE NEGOTIATIONS WITH THE LEHIGH VALLEY COAL CO. RELATIVE TO THE EVERHART TRACT AND THE MORRIS AND ESSEX TRACT.

[See Article 6.]

Since 1884 the Lehigh Valley Coal Co., which is a subsidiary of the Lehigh Valley Railroad Co., has owned a one-half interest in a certain tract of coal land located near Wilkes-Barre, Pa., which consists of about 800 acres. During the past few years this company has purchased about four-fifths of the remaining one-half interest in this tract. The remaining portion of the tract is leased by the coal company from certain beneficiaries of the Everhart estate. The coal company has been negotiating for several years to purchase the fee to this outstanding portion of the tract, but the owners would not accept the terms offered.

In December, 1911, or January, 1912, Judge Archbald entered into an agreement with one James R. Dainty, of Scranton, Pa., to open negotiations with the Lehigh Valley Coal Co. and the Everhart estate for the purpose of effecting the sale of this property to the coal company, on the understanding that he and Dainty should secure an operating lease on another tract of about 325 acres of coal land owned by the Lehigh Valley Coal Co., and known as the Morris and Essex tract, as a consideration in the nature of a commission for their services.

In furtherance of this agreement Judge Archbald attempted to use his official influence as a member of the Commerce Court, through telephone conversations and personal conferences, to affect the action of the general manager of the Lehigh Valley Coal Co. with respect to the purchase of this property. While these negotiations were in progress, the cases of the Lehigh Valley Railroad Co. v. The Interstate Commerce Commission and Henry E. Meeker, intervenor, No. 49, and the Baltimore & Ohio Railroad Co. et al. v. The Interstate Commerce Commission, No. 38, in which the Lehigh Valley Railroad Co. was a party litigant, were pending before the Commerce Court for adjudication. The persistency with which Judge Archbald sought these business favors or property concessions from railroad companies having litigation, or likely to have litigation, before the Commerce Court indicates a well-defined plan to use his official position and influence as a member of such court for financial gain and profit.

#### THE DISCOUNT OF THE W. W. RISSINGER NOTE.

[See Article 7.]

In the fall of 1908, the case of *The Old Plymouth Coal Company v. The Equitable Fire & Marine Insurance Company et al.*, was pending before the United States district court over which Judge Archbald presided. Mr. W. W. Rissinger, of Scranton, Pa., was the controlling stockholder of the plaintiff company. The case was predicated on certain insurance contracts between the Old Plymouth Coal Co. and the various insurance companies named as parties defendant, and the total damages sought to be recovered amounted to about \$30,000. The case was on trial in November, 1908, and after the plaintiff's evidence had been presented the defendant insurance companies demurred to the sufficiency of the evidence and moved for a non-suit. After extended argument by attorneys for both plaintiff and defendant, Judge Archbald overruled the motion and the defendant companies proceeded to introduce their evidence. Before the evidence was all in the attorneys for the insurance companies made a proposition of compromise to the attorneys for the Old Plymouth Coal Co., which was accepted on November 23, 1908. Consent judgments were entered on that day in which the plaintiff ultimately recovered about \$28,000, and the defendant companies were given 15 days in which to satisfy the judgments.

Some time prior to November 28, 1908, Judge Archbald entered into a deal with Rissinger for the purchase of an interest in a gold-mining project in Honduras, which Rissinger was then promoting in Scranton. In order to finance the transaction it became neces-

sary to raise \$2,500, and on November 28, 1908, or five days after the judgments in favor of the Old Plymouth Coal Co. were entered, a promissory note for that amount, to run three months, signed by Rissinger, in favor of and indorsed by Judge Archbald, and Sophia J. Hutchison, Mr. Rissinger's mother-in-law, was presented to the County Savings Bank of Scranton, Pa., for discount. The bank evidently put no reliance upon Judge Archbald's indorsement of the note, but made an extended investigation of Mrs. Hutchison's financial condition, and on December 12, 1908, discounted the note, after first filing a judgment against Mrs. Hutchison in the county court of Lackawanna County, Pa., according to the practice in that State.

Shortly after the consent judgments in favor of the Old Plymouth Coal Co. were entered on November 23, 1908, this note was also presented for discount to Mr. John T. Lenahan, one of the attorneys for Rissinger and the Old Plymouth Coal Co. in the litigation with the insurance companies, but Lenahan refused to discount the note or have the same discounted in a trust company of which he was a director. The note has never been paid, but has been renewed at the expiration of each successive period of three months by Mr. Rissinger, and the discount on the renewals have been paid by him.

The attempt to discount this note, coming but a few days after the Old Plymouth Coal Co. had prevailed in the litigation with the insurance companies tends strongly to indicate that Judge Archbald had entered into negotiations with Rissinger while such litigation was pending before the United States district court of which he was Judge.

But, at all events, the action of Judge Archbald in accepting an interest in this enterprise, under the conditions, constituted misbehavior in office.

#### THE DISCOUNT OF THE JOHN HENRY JONES NOTE.

[See Articles 8 and 9.]

In the fall of the year 1909 the case of John W. Peale *v.* The Marian Coal Co., which involved a considerable sum of money, was pending before the United States district court at Scranton, Pa., over which Judge Archbald presided. The Marian Coal Co. was principally owned and controlled by Christopher G. Boland and William P. Boland, of Scranton, Pa., and this fact was well known to Judge Archbald. In the latter part of November or the early part of December, 1909, for the purpose of raising funds to invest in a timber project in Venezuela, which was being promoted by one John Henry Jones, of Scranton, Pa., Judge Archbald drew and indorsed a promissory note for \$500, payable to himself, which note was signed by Jones as promisor.

Judge Archbald thereupon agreed and consented that Edward J. Williams should present this note to Christopher G. Boland and William P. Boland, or either of them, for discount. In pursuance of this agreement or approval of Judge Archbald, Williams did present the note to each of the Bolands for the purpose of having the same discounted, but they refused to grant the discount, on the ground that it would be highly improper for them to do so under the existing circumstances. Williams reported the refusal of the Bolands to discount the note to Judge Archbald, and thereafter took it to the

Merchants & Mechanics Bank of Scranton, but this bank also refused to discount the paper.

The note was finally discounted by John Henry Jones in the Providence Bank, a small State bank located in a suburb of Scranton. The president of this bank was one C. H. Von Storch, of Scranton, Pa., an attorney at law, who had prevailed as a party in interest in litigation before Judge Archbald's court within a year prior to the date of the discount of the note. The note was brought to Von Storch by Jones at the suggestion of Judge Archbald. Moreover, Judge Archbald advised Von Storch that he would consider it a great favor if the discount should be granted. The note has never been paid, although the bank has made at least one call for payment, and the discount on each renewal has been paid by John Henry Jones.

It is apparent that Judge Archbald's financial condition at the time the incident occurred was such that his note was not considered good bankable paper, and your committee is forced to the conclusion that he attempted to use his influence as judge to secure the loan from parties litigant before his court, and, failing in this, he did use his influence as such judge to secure the loan through an attorney who was then practicing before his court, and who had but a short while before received favorable judgment in a suit adjudicated therein.

#### THE WRONGFUL ACCEPTANCE OF MONEY ON THE OCCASION OF A PLEASURE TRIP TO EUROPE.

[See Articles 10 and 11.]

In the spring of 1910, Judge Archbald allowed one Henry W. Cannon, of New York City, to pay his entire expenses on a pleasure trip to Europe. Mr. Cannon was then, and still is, a stockholder and officer in various interstate railroad corporations, including the Great Northern Railroad, the Lake Erie & Western Railroad Co., the Fort Wayne, Cincinnati & Louisville Railroad Co.; the Pacific Coast Co., which owns the entire stock of the Columbia & Puget Sound Railroad Co.; the Pacific Coast Railroad Co.; and the Pacific Coast Steamship Co., together with various other corporations engaged in the business of mining and shipping coal.

It is claimed that Mr. Cannon is a distant relative of Judge Archbald's wife, but, however this may be, your committee regards it as improper for a judge to thus obligate himself to an officer of numerous corporations likely to become directly or indirectly involved in litigation before his court or before other courts over which he might be called upon to preside from time to time.

On the occasion of this same pleasure trip to Europe one Edward R. W. Searle, clerk of the United States district court at Scranton, Pa., and one J. B. Woodward, of Wilkes-Barre, Pa., jury commissioner of said court, both of whom were appointed by Judge Archbald, raised a subscription fund of money amounting to more than \$500, which was presented to Judge Archbald on his departure. This fund was not raised as the result of a bar association movement, but was composed of contributions of varying amounts from certain attorneys practicing before the United States district court, some of whom had cases then pending before said court for adjudication.

Judge Archbald accepted this fund of money and acknowledged receipt of the same to the contributors whose names were submitted to him at the time that the fund was presented. Your committee regards it as improper and subversive of the confidence of the public in the judiciary for a judge to place himself in this manner under obligations to attorneys practicing before his court.

#### THE APPOINTMENT OF A RAILROAD ATTORNEY AS JURY COMMISSIONER.

[See Article 12.]

On March 29, 1901, Judge Archbald was appointed United States district judge for the middle district of Pennsylvania. On April 9, 1901, under the exercise of authority granted by the act of June 30, 1879 (21 Stat. 43), Judge Archbald appointed one J. B. Woodward, of Wilkes-Barre, Pa., as jury commissioner of the said district court. The said Woodward was then and has since been a general attorney for the Lehigh Valley Railroad Co.

Under the annual appropriation acts, the compensation of jury commissioners is limited to \$5 per day, for not more than three days at any one term of court. It is apparent that the compensation attached to this position is so insignificant that the appointment would have no attraction for a railroad attorney except for the power it affords in the selection of juries for the trial of cases in the Federal courts.

Judge Archbald's action in appointing to this position the legal representative of a large railroad corporation, which was likely to become directly or indirectly involved in litigation before the United States district court, was misbehavior in office, calculated to bring the Federal judiciary into disrepute.

#### GENERAL MISBEHAVIOR OF JUDGE ARCHBALD.

(See article 13.)

The testimony in the whole case tends to support this general specification. Judge Archbald was appointed a United States district judge for the middle district of Pennsylvania on the 29th day of March, 1901, and held such office until January 31, 1911, on which last-named date he was appointed an additional United States circuit judge and on the same day was duly designated as one of the judges of the United States Commerce Court, which position he has since held and now holds.

The testimony shows that at different times while Judge Archbald was a judge of the United States district court he sought and obtained credit and in other instances sought to obtain credit from persons who had litigation pending in his said court or who had had litigation pending in his said court.

The testimony shows that after Judge Archbald had been promoted to the position of a United States circuit judge and had been duly designated as one of the judges of the United States Commerce Court, he in connection with different persons sought to obtain options on culm dumps and other coal properties from officers and agents of coal companies which were owned and controlled by railroad companies.

The testimony further shows that in order to influence the officers of the coal companies which were subsidiary to and owned by the railroad companies, Judge Archbald repeatedly sought to influence the officials of the railroads to enter into contracts with his associates for the financial benefit of himself and his said associates. In most instances the contracts were executed in the name of the person associated with the judge in the particular transaction or trade, and the judge's name was not disclosed on the face of the contract. The testimony shows, however, that he was, as a matter of fact, pecuniarily interested in such contracts and that while his interest was not known to the public it was known to the officials of the railroad companies and of the coal companies, subsidiary corporations thereof. The evidence discloses that while the judge's several associates or partners would locate properties, the judge would take up the matter of the purchase or sale of said properties with the officials of the coal companies and of the railroad companies which, as already stated, in most instances owned and controlled the coal companies. The testimony shows that while these negotiations were being conducted, and agreements were made and sought to be made, the railroad companies with whose officers Judge Archbald was making contracts and agreements and seeking to make contracts and agreements were common carriers engaged in interstate commerce and had litigation pending in the United States Commerce Court.

The testimony shows that such options, contracts, and agreements were sought and obtained and sought to be obtained by Judge Archbald to such an extent that the exposure of the judge's several transactions through the press gave rise to a public scandal.

The testimony fails to disclose any case in which Judge Archbald invested any actual money of his own in any of these several trades or deals, but shows that he used his personal influence as a judge, in consideration of which he received or was to receive his share or interest in the property or his profits in the deal.

Your committee finds that Judge Archbald by his conduct in carrying on traffic in culm dumps and coal properties owned directly or indirectly by railroads, and in using his influence to secure such contracts from coal companies which were owned and controlled by railroad companies as aforesaid, and in using his influence with high officials of said railroads to induce them to permit or direct the said coal companies to enter into contracts with him or his associates which resulted in financial profit to himself and those associated with him, grossly abused the proprieties of his said office of judge, was guilty of misbehavior and of a misdemeanor in office.

## THE LAW.

### CONSTITUTIONAL PROVISIONS RELATING TO JUDICIAL IMPEACHMENTS.

The provisions of the Constitution of the United States bearing upon the impeachment of judges are as follows:

The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment. (Art. I, sec. 2.)

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law. (Art. I, sec. 3.)

The President \* \* \* shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. (Art. II, sec. 2.)

The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. (Art. II, sec. 4.)

The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office. (Art. III, sec. 1.)

The trial of all crimes, except in cases of impeachment, shall be by jury. (Art. III, sec. 2.)

#### THE GENERAL NATURE OF IMPEACHMENTS.

The fundamental law of impeachment was stated by Richard Wooddesson, an eminent authority, in his Law Lectures delivered at Oxford in 1777, as follows (vol. 2, pp. 355, 358):

It is certain that magistrates and officers intrusted with the administration of public affairs may abuse their delegated powers to the extensive detriment of the community and at the same time in a manner not properly cognizable before the ordinary tribunals. The influence of such delinquents and the nature of such offenses may not unsuitably engage the authority of the highest court and the wisdom of the sagent assembly. The Commons, therefore, as the grand inquest of the nation, became suitors for penal justice, and they can not consistently, either with their own dignity or with safety to the accused, sue elsewhere but to those who share with them in the legislature.

On this policy is founded the origin of impeachments, which began soon after the constitution assumed its present form (p. 355).

\* \* \* \* \*

Such kind of misdeeds, however, as peculiarly injure the commonwealth by the abuse of high offices of trust, are most proper—and have been the most usual grounds—for this kind of prosecution (p. 358).

Referring to the function of impeachments, Rawle, in his work on the Constitution (p. 211), says:

The delegation of important trusts affecting the higher interests of society, is alway from various causes liable to abuse. The fondness frequently felt for the inordinate extension of power, the influence of party and of prejudice, the seductions of foreign states, or the baser appetite for illegitimate emoluments, are sometimes productions of what are not unaptly termed "political offences" (Federalist, No. 65), which it would be difficult to take cognizance of in the ordinary course of judicial proceeding.

The involutions and varieties of vice are too many and too artful to be anticipated by positive law.

In Story on the Constitution (vol. 1, 5th ed., p. 584) the parliamentary history of impeachments is briefly stated as follows:

800. In examining the parliamentary history of impeachments, it will be found that many offenses, not easily definable by law, and many of a purely political character, have been deemed high crimes and misdemeanors worthy of this extraordinary remedy. Thus, lord chancellors and judges and other magistrates have not only been impeached for bribery, and acting grossly contrary to the duties of their office, but for misleading their sovereign by unconstitutional opinions, and for attempts to subvert the fundamental laws, and introduce arbitrary power. So where a lord chancellor has been thought to have put the great seal to an ignominious treaty, a lord admiral to have neglected the safeguard of the sea, an ambassador to have betrayed his trust, a privy councillor to have propounded or supported pernicious and dishonorable measures, or a confidential adviser of his sovereign to have obtained exorbitant grants or incompatible employments—these have been all deemed impeachable offenses. Some of the offenses, indeed, for which persons were impeached in the early ages of British jurisprudence, would now seem harsh and severe; but perhaps they were rendered necessary by existing corruptions, and the importance of suppressing a spirit of favoritism and court intrigue. Thus persons have been impeached for giving bad counsel

to the King, advising a prejudicial peace, enticing the King to act against the advice of Parliament, purchasing offices, giving medicine to the King without advice of physicians, preventing other persons from giving counsel to the King except in their presence, and procuring exorbitant personal grants from the King. But others, again, were founded in the most salutary public justice, such as impeachments for malversations and neglects in office, for encouraging pirates, for official oppression, extortions, and deceits, and especially for putting good magistrates out of office and advancing bad. One can not but be struck, in this slight enumeration, with the utter unfitness of the common tribunals of justice to take cognizance of such offenses, and with the entire propriety of confiding the jurisdiction over them to a tribunal capable of understanding and reforming and scrutinizing the polity of the state, and of sufficient dignity to maintain the independence and reputation of worthy public officers.

#### IMPEACHABLE OFFENSES UNDER THE CONSTITUTION.

The provision in Article II, section 4, of the Constitution of the United States defining impeachable offenses as "treason, bribery, or other high crimes and misdemeanors" was taken from the British parliamentary law, established and prevailing at the time of the formation of our Government. It must, therefore, be interpreted by the light of time-honored parliamentary usage, as contradistinguished from the common municipal law of England.

Our fathers, mindful of the flagrant persecution of the subjects of England in the guise of prosecutions for treason against the Crown, specifically defined the elements of the offense of treason against the United States in Article III, section 3, of our organic law.

The offense of bribery had a fixed status in the parliamentary law as well as the criminal law of England when our Constitution was adopted, and there is little difficulty in determining its nature and extent in the application of the law of impeachments in this country.

In addition to the specific offenses of treason and bribery, all offenses falling within the classification of "high crimes and misdemeanors," which were subjects of impeachment by the British Parliament, were made impeachable offenses under the Constitution of the United States, subject to the limitations prescribed by that instrument.

In a footnote to 4 Blackstone (p. 5, Lewis's Ed.) Christian says:

The word "crime" has no technical meaning in the law of England. It seems, when it has a reference to positive law, to comprehend those acts which subject the offender to punishment. When the words "high crimes and misdemeanors" are used in prosecutions by impeachment, the words "high crimes" have no definite signification, but are used merely to give greater solemnity to the charge.

The term "misdemeanor" has a twofold legal significance. Under the common law it signifies a criminal offense, not amounting to felony, which is punishable by indictment or other special criminal proceeding. As applied to civil officers, in the sense of the *lex parliamentaria*, it signifies maladministration or misbehavior in office, irrespective of whether such conduct is or is not indictable.

It is well established by the authorities that impeachable offenses under the British constitution and under our Constitution are not limited to statutable crimes and misdemeanors, or to offenses indictable under the common law and triable in the courts of ordinary jurisdiction.

In his commentaries on the Constitution, John Randolph Tucker defines impeachable offenses as follows (vol. 1, sec. 200):

What are impeachable offenses?

(a) *Treason*. This is defined by the Constitution.

(b) *Bribery*, which needs no special comment. For its definition resort may be had to its meaning in Criminal Procedure.

(c) High crimes and misdemeanors. What is the meaning of these terms? Much controversy has arisen out of this question. Do these words refer only to offenses for which the party may be indicted under the authority of the United States? Do they mean offenses by the common law? Do they include offenses against the laws of the States, or do they mean offenses for which there is no indictment in the ordinary courts of justice? Or do they include mal-administration, unconstitutional action of an officer willful or mistaken, or illegal action willful or mistaken?

(d) Up to September 8, 1787, the clause in reference to the impeachable offenses only included treason and bribery. On that day Mr. Mason moved to add the words "or mal-administration." Mr. Madison objected to the vagueness of this term, whereupon Mr. Mason withdrew the word "mal-administration," and substituted "other high crimes and misdemeanors against the United States," and the clause was then agreed to by a vote of ten States to one. As the word "other" is inserted before the words "high crimes and misdemeanors," these last words may be interpreted by the nature of the crimes "treason and bribery." Why should an officer be impeached for treason? Obviously, because an officer guilty of treason against the United States would be disqualified personally from being an officer of a government to which he was a traitor. How could a President properly command an army of the United States when he was engaged in levying war against them, or adhering to their enemies? The utter inconsistency of this double position made it a proper offense for the jurisdiction of impeachment. The same objection would apply to any other officer of the United States. To be employed in the service of the United States, against which he was levying war, or adhering to their enemies, was a total personal disqualification.

(e) So in respect to bribery. Bribery corrupts public duty. The difference between treason and bribery is that the first is a crime defined by the Constitution, as to which Congress has no power except to declare its punishment. Bribery is not a constitutional crime, and was not made a crime against the United States by statute until April, 1790. These two cases, therefore, show that the words "high crimes and misdemeanors" can not be confined to crimes created and defined by a statute of the United States; for if Congress had ever failed to have fixed a punishment for the constitutional crime of treason, or had failed to pass an act in reference to the crime of bribery, as it did fail for more than a year after the Constitution went into operation, it would result that no officer would be impeachable for either crime, because Congress had failed to pass the needful statutes defining crime in the case of bribery, and prescribing the punishment in the case of treason as well as bribery. It can hardly be supposed that the Constitution intended to make impeachment for these two flagrant crimes depend upon the action of Congress. The conclusion from this would seem to be inevitable, that treason and bribery, and other high crimes and misdemeanors, in respect to which Congress had failed to legislate, would still be within the jurisdiction of the process of impeachment.

(f) The word "maladministration," which Mr. Mason originally proposed, and which he displaced because of its vagueness for the words "other high crimes and misdemeanors," was intended to embrace all official delinquency or maladministration by an officer of the Government where it was criminal; that is, where the act done was done with willful purpose to violate public duty. There can be no crime in an act where it is done through inadvertence or mistake, or from misjudgment. Where it is a willful and purposed violation of duty it is criminal.

(g) This construction is aided by the fact that judges hold their offices during "good behavior." These words do not mean that a judge shall decide rightly, but that he shall decide conscientiously. He is not amenable to impeachment for a wrong decision, else when an inferior judge is reversed he would be impeachable; or, in the Supreme Court, a dissenting judge might be held impeachable because a large majority of the court affirmed the law to be otherwise. But if he decides unconscientiously—if he decides contrary to his honest conviction from corrupt partiality—this can not be good behavior, and he is impeachable. Again, if the judge is drunken on the bench, this is ill behavior, for which he is impeachable. And all of these are generally criminal, or misdemeanor—for misdemeanor is a synonym for misbehavior. So, if he omits a judicial duty, as well as when he commits a violation of duty, he is guilty of crime or misdemeanor; for, says Blackstone, "crime or misdemeanor is an act committed or omitted in violation of a public law either forbidding or commanding it."

To confine the impeachable offenses to those which are made crimes or misdemeanors by statute or other specific law would too much constrict the jurisdiction to meet the obvious purpose of the Constitution, which was, by impeachment, to deprive of office those who by any act of omission or commission showed clear and flagrant disqualification to hold it. On the other hand, to hold that all departures from, or failures in, duty, which were not willful, but due to mistake, inadvertence, or misjudgment, and to let in all offenses at common law, which, by the decisions of the

Supreme Court, are not within Federal authority at all, would be to extend the jurisdiction by impeachment far beyond what was obviously the purpose and design of its creation. It must be criminal misbehavior—a purposed defiance of official duty—to disqualify the man from holding office—or disable him from ever after holding office, which constitute the penalty upon conviction under the impeachment process. The punishment, upon conviction, indicates the character of the crime or misdemeanor for which impeachment is constitutional. If the crime or misdemeanor for which the impeachment is made be not such as to justify the punishment inflicted, we may well conclude it was within the purpose of the Constitution in using the impeachment procedure.

In Cooley's Principles of Constitutional Law it is said (p. 178):

The offenses for which the President or any other officer may be impeached are any such as in the opinion of the House are deserving of punishment under that process. They are not necessarily offenses against the general laws. In the history of England where the like proceeding obtains, the offenses have often been political, and in some cases for gross betrayal of public interests punishment has very justly been inflicted on cabinet officers. It is often found that offenses of a very serious nature by high officers are not offenses against the criminal code, but consist in abuses or betrayals of trust, or inexcusable neglects of duty, which are dangerous and criminal because of the immense interests involved, and the greatness of the trust which has not been kept. Such cases must be left to be dealt with on their own facts, and judged according to their apparent deserts (p. 178).

In his work on the Constitutional History of the United States, George Ticknor Curtis says (vol. 1, pp. 481-482):

Among the separate functions assigned by the Constitution to the Houses of Congress are those of presenting and trying impeachments. An impeachment, in the report of the committee of detail, was treated as an ordinary judicial proceeding and was placed within the jurisdiction of the Supreme Court. That this was not in all respects a suitable provision will appear from the following considerations: Although an impeachment may involve an inquiry whether a crime against any positive law has been committed, yet it is not necessarily a trial for crime, nor is there any necessity, in the case of crimes committed by public officers, for the institution of any special proceeding for the infliction of the punishment prescribed by the laws, since they, like all other persons, are amenable to the ordinary jurisdiction of the courts of justice in respect of offenses against positive law. The purposes 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. Such a cause may be found in the fact that either in the discharge of his office or aside from its functions he has violated a law or committed what is technically denominated a crime. But a cause for removal from office may exist where no offense against positive law has been committed, as where the individual has, from immorality or imbecility or maladministration, become unfit to exercise the office. The rules by which an impeachment is to be determined are therefore peculiar and are not fully embraced by those principles or provisions of law which courts of ordinary jurisdiction are required to administer. (Vol. 1, pp. 481-482.)

In Watson on the Constitution (vol. 2, p. 1034, published in 1910) it is said:

A misdemeanor comprehends all indictable offenses which do not amount to a felony, as perjury, battery, libels, conspiracies, attempts and solicitations to commit felonies, etc. These seem to be the definitions of these terms at common law, but it would be strange if a civil officer could be impeached for only such offenses as are embraced within the common-law definition of "other high crimes and misdemeanors." There is a parliamentary definition of the term "misdemeanor," and a modern writer on the Constitution has said: "The term 'high crimes and misdemeanors' has no significance in the common law concerning crimes subject to indictment. It can only be found in the law of Parliament and is the technical term which was used by the Commons at the Bar of the Lords for centuries before the existence of the United States." Synonymous with the term "misdemeanor" are the terms misdeed, misconduct, misbehavior, fault, transgression.

In Story on the Constitution (5th ed., vol. 1, secs. 796, 799) it is said:

Is the silence of the statute book to be deemed conclusive in favor of the party until Congress have made a legislative declaration and enumeration of the offenses which

shall be deemed high crimes and misdemeanors? If so, then, as has been truly remarked, the power of impeachment, except as to the two expressed cases, is a complete nullity, and the party is wholly dispensable however enormous may be his corruption and criminality. (Sec. 796.)

Congress has unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any official misconduct; and the rules of proceeding, and the rules of evidence, as well as the principles of decision, have been uniformly regulated by the known doctrines of the common law and parliamentary usage. In the few cases of impeachment which have hitherto been tried, no one of the charges has rested upon any statutable misdemeanors. (Sec. 799.)

Foster, in his work on the Constitution (sec. 93), says:

The term "high crimes and misdemeanors" has no significance in the common law concerning crimes subject to indictment. It can be found only in the law of Parliament and is the technical term which has been used by the Commons at the bar of the Lords for centuries before the existence of the United States.

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Impeachable offenses are those which were the subject of impeachment by the practice in Parliament before the Declaration of Independence, except in so far as that practice is repugnant to the language of the Constitution and the spirit of American institutions. An examination of the English precedents will show that, although private citizens as well as public officers have been impeached, no article has been presented or sustained which did not charge either misconduct in office or some offense which was injurious to the welfare of the State at large.

In this class of cases, which rest so much in the discretion of the Senate, the writer would be rash who were to attempt to prescribe the limits of its jurisdiction in this respect.

An impeachable offense may consist of treason, bribery, or a breach of official duty by malfeasance or misfeasance, including conduct such as drunkenness, when habitual or in the performance of official duties, gross indecency, and profanity, obscenity, or other language, used in the discharge of an official function, which tends to bring the office into disrepute, or an abuse or reckless exercise of a discretionary power, as well as a breach or omission of an official duty imposed by statute or common law; or a public speech when off duty which encourages insurrection. It does not consist in an error in judgment made in good faith in the decision of a doubtful question of law, except perhaps in the case of a violation of the Constitution.

In the American and English Encyclopaedia of Law, second edition (vol. 15, pp. 1066-1068), it is said:

The Constitution of the United States provides that the President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. If impeachment in England be regarded merely as a mode of trial for the punishment of common-law or statutory crimes, and if the Constitution has adopted it only as a mode of procedure, leaving the crimes to which it is to be applied to be settled by the general rules of criminal law, then, as it is well settled that in regard to the National Government there are no common-law crimes, it would seem necessarily to follow that impeachment can be instituted only for crimes specifically named in the Constitution or for offenses declared to be crimes by Federal statute. This view has been maintained by very eminent authority, but the cases of impeachment that have been brought under the Constitution would seem to give to the remedy a much wider scope than the above rule would indicate. In each of the only two cases of impeachment tried by the Senate in which a conviction resulted the defendant was found guilty of offenses not indictable either at common law or under any Federal statute, and in almost every case brought offenses were charged in the articles of impeachment which were not indictable under any Federal statute and in several cases they were such as constituted neither a statutory nor a common-law crime. The impeachability of the offenses charged in the articles was in most of the cases not denied. In one case, however, counsel for the defendant insisted that impeachment would not lie for any but an indictable offense; but after exhaustive argument on both sides this defense was practically abandoned. The cases, then, seem to establish that impeachment is not a mere mode of procedure for the punishment of indictable crimes, that the phrase "high crimes and misdemeanors" is to be taken not in its common-law but in its broader parliamentary sense, and is to be interpreted in the light of parliamentary usage; that in this sense it includes not only crimes for which an indictment may be brought, but grave political offenses, corruption, maladministration, or neglect of duty involving moral

turpitude, arbitrary and oppressive conduct, and even gross improprieties, by judges and high officers of State, although such offenses be not of a character to render the offender liable to an indictment either at common law or under any statute. Additional weight is added to this interpretation of the Constitution by the opinions of eminent writers on constitutional and parliamentary law and by the fact that some of the most distinguished members of the convention that framed it have thus interpreted it.

It will thus be seen that the common law of crimes and the parliamentary law of impeachments have no direct connection, although the principles of the one may be invoked in the application of the other. They represent two distinct branches in our scheme of jurisprudence and they should be so treated in the consideration of the case which is here presented.

**THE TENURE OF FEDERAL JUDGES LIMITED TO "DURING GOOD BEHAVIOR."**

The provision in Article III, section 1, of our Constitution that "the judges, both of the Supreme and inferior courts, shall hold their offices during good behavior," which was also borrowed from the English laws, should be considered in *pari materia* with Article IV, section 2, providing that all civil officers of the United States shall be removed from office upon "impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors."

Good behavior is thus made the essential condition on which the tenure to the judicial office rests, and any act committed or omitted by the incumbent in violation of this condition necessarily works a forfeiture of the office. The Constitution provides no method whereby a civil officer of the United States can be removed from office save by impeachment. It follows, therefore, that the framers of our Constitution must have intended that Federal judges, who are civil officers, should be removable from office by impeachment for misbehavior, which is the antithesis of good behavior. Otherwise the constitutional provision limiting the tenure of the judicial office to "during good behavior" would be without force and effect.

In his work on the Constitution, Foster says (p. 586):

The Constitution provides that—

"The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior."

This necessarily implies that they may be removed in case of bad behavior. But no means except impeachment is provided for their removal, and judicial misconduct is not indictable by either a statute of the United States or the common law.

In Watson on the Constitution, the proposition is stated as follows (vol. 2, pp. 1036-1037):

A civil officer may so behave in public as to bring disgrace upon himself and shame upon his country, and he may continue to do this until his name would become a national stench, and yet he would not be subject to indictment by any law of the United States, but he certainly could be impeached. What will those who advocate the doctrine that impeachment will not lie except for an offense punishable by statute do with the constitutional provision relative to judges which says, "Judges, both of the Supreme and inferior courts, shall hold their offices during good behavior"? This means that as long as they behave themselves their tenure of office is fixed, and they can not be disturbed. But suppose they cease to behave themselves? When the Constitution says, "A judge shall hold his office during good behavior," it means that he shall not hold it when it ceases to be good. Suppose he should refuse to sit upon the bench and discharge the duties which the Constitution and the law enjoin upon him, or should become a notoriously corrupt character, and live a notoriously corrupt and debauched life? He could not be indicted or such conduct, and he could not be removed except by impeachment. Would it be claimed that impeachment would not be the proper remedy in such a case?

**IMPEACHMENTS NOT CONFINED TO OFFENSES COMMITTED IN AN OFFICIAL CAPACITY.**

It is not essential that an offense should be committed in an official capacity in order that it may come within the purview of the constitutional provisions relating to impeachments.

Black, in his work on Constitutional Law, says (2d ed., pp. 121-122):

Treason and bribery are well-defined crimes. But the phrase "other high crimes and misdemeanors" is so very indefinite that practically it is not susceptible of exact definition or limitation, but the power of impeachment may be brought to bear on any offense against the Constitution or the laws which, in the judgment of the House, is deserving of punishment by this means or is of such a character as to render the party accused unfit to hold and exercise his office. It is, of course, primarily directed against official misconduct. Any gross malversation in office, whether or not it is a punishable offense at law, may be made the ground of an impeachment. But the power of impeachment is not restricted to political crimes alone. The Constitution provides that the party convicted upon impeachment shall still remain liable to trial and punishment according to law. From this it is to be inferred that the commission of any crime which is of a grave nature, though it may have nothing to do with the person's official position, except that it shows a character or motives inconsistent with the due administration of his office, would render him liable to impeachment. It will be perceived that the power to determine what crimes are impeachable rests very much with Congress. For the House, before preferring articles of impeachment, will decide whether the acts or conduct complained of constitute a "high crime or misdemeanor." And the Senate, in trying the case, will also have to consider the same question. If, in the judgment of the Senate, the offense charged is not impeachable, they will acquit; otherwise, upon sufficient proof and the concurrence of the necessary majority, they will convict. And in either case, there is no other power which can review or reverse their decision.

In 1862 West H. Humphreys, United States district judge for the district of Tennessee, was impeached on several specifications, one of which was based on his action in making a speech at a public meeting, while off the bench, inciting revolt and rebellion against the Constitution and Government of the United States. The evidence clearly showed that he was in nowise acting in a judicial capacity, yet he was convicted on this charge.

A number of the impeachments of judges of the several States of the Union have been predicated on various acts of debauchery entirely separate from the performance of their official duties.

Any conduct on the part of a judge which reflects on his integrity as a man or his fitness to perform the judicial functions should be sufficient to sustain his impeachment. It would be both absurd and monstrous to hold that an impeachable offense must needs be committed in an official capacity. If such an atrocious doctrine should receive the sanction of the Congressional authority there is no limit to the variety and the viciousness of the offenses which a Federal judge might commit with perfect immunity from effective impeachment.

**IMPEACHMENT FOR OFFENSES COMMITTED IN ANOTHER JUDICIAL OFFICE.**

Certain of the proposed articles of impeachment against Judge Archbald are based on offenses committed while he held the office of United States district judge for the middle district of Pennsylvania, whereas he now holds the office of circuit judge of the United States for the third judicial circuit, and is assigned to serve for a period of four years in the Commerce Court. In this respect the case here presented seems to be unique in the annals of impeachment proceedings under our Constitution.

By virtue of the provisions of section 609 of the Revised Statutes, which were then in force, Judge Archbald, while holding the office of United States district judge, was duly clothed with authority to sit or preside in the United States circuit court, and he was actually presiding over such circuit court at Scranton, Pa., during the time that some or all of the offenses charged in these articles were committed.

Since his elevation to a circuit judgeship the United States circuit courts have been abolished by the act of March 3, 1911 (36 Stat., 1087), entitled "An act to codify, revise, and amend the laws relating to the judiciary," but the provisions relative to the interchangeability of district and circuit judges remain substantially the same. Section 18 of this act provides that—

Whenever, in the judgment of the senior circuit judge of the circuit in which the district lies, or of the circuit justice assigned to such circuit, or of the Chief Justice, the public interest shall require, the said judge or Associate Justice or Chief Justice shall designate and appoint any circuit judge of the circuit to hold said district court.

Thus it appears that Judge Archbald now holds a civil office, within the meaning of the Constitution, of the same judicial nature as the office held by him at the time of the commission of the offenses charged in the said articles, and that, under the existing law, he may be called upon at any time to perform precisely the same functions that he performed as United States district judge.

In *State v. Hill* (37 Nebr., 80) the Legislature of Nebraska had impeached certain ex-officers of the State for offenses alleged to have been committed during their respective terms of office. The Supreme Court of Nebraska held that inasmuch as they had ceased to be civil officers of the State they were not subject to impeachment. In the course of the decision the court said (pp. 88-89):

Judge Barnard was impeached in the State of New York during his second term for acts committed in his previous term of office. His plea that he was not liable to impeachment for offenses occurring in the first term was overruled. Precisely the same question was raised in the impeachment proceedings against Judge Hubbel, of Wisconsin, and on the trial of Gov. Butler, of this State, and in each of which the ruling was the same as in the Barnard case. There was good reason for overruling the plea to the jurisdiction in the three cases just mentioned. Each respondent was a civil officer at the time he was impeached and had been such uninterruptedly since the alleged misdemeanors in office were committed. The fact that the offense occurred in the previous term was immaterial. The object of impeachment is to remove a corrupt or unworthy officer. If his term has expired and he is no longer in office, that object is attained and the reason for his impeachment no longer exists. But if the offender is still an officer, he is amenable to impeachment, although the acts charged were committed in his previous term of the same office.

In the cases discussed there was a constructive breach in the tenure of the offices held by the defendants between the time of the commission of the offenses charged and the adoption of the articles of impeachment. Even though the offices held by the defendants at the time of their impeachment had not been the same offices which they held at the time of the commission of the alleged offenses, it might well have been decided, on principle, that impeachment would lie if in fact the prescribed functions of such offices were of the same general nature and susceptible to the same malversations and abuse.

It is indeed anomalous if this Congress is powerless to remove a corrupt or unfit Federal judge from office because his corruption or misdemeanor, however vicious or reprehensible, may have occurred during his tenure in some other judicial office under the Government of the United States prior to his appointment to the particular office from which he is sought to be ousted by impeachment, although he

may have held a Federal judgeship continuously from the time of the commission of his offenses. Surely the House of Representatives will not recognize nor the Senate apply such a narrow and technical construction of the constitutional provisions relating to impeachments.

#### CONCLUSION.

Judges "shall hold their offices during good behavior." Thus says the Constitution. The framers of that instrument were desirous of having an independent and incorruptible judiciary, but they never intended to provide that any judge should hold his office upon nonforfeitable life tenure. Those who formulated the organic law sought to protect the people against the malfeasance and misfeasance of unjust and corrupt judges. Therefore, they wisely limited the tenure of office to "during good behavior" and provided the remedy for misbehavior to be forfeiture of office and the removal therefrom by impeachment.

The conduct of this judge has been exceedingly reprehensible and in marked contrast with the high sense of judicial ethics and probity that generally characterize the Federal judiciary. Be it said to the credit of the wisdom of our fathers and in behalf of our American institutions that the judges have, as a rule, deported themselves in such manner as to merit and keep the confidence of the people. The public respect for the judicial branch of our Government has almost amounted to reverence. This confidence has been deserved and let us hope that it will continue to be deserved to the end that an upright and independent judiciary may be maintained for the perpetuation of our government of law.

A judge should be the personification of integrity, of honor and of uprightness in his daily walk and conversation. He should hold his exalted office and the administration of justice above the sordid desire to accumulate wealth by trading or trafficking with actual or probable litigants in his court. He should be free and unaffected by any bias born of avarice and unhampered by pecuniary or other improper obligations.

Your committee is of opinion that Judge Archbald's sense of moral responsibility has become deadened. He has prostituted his high office for personal profit. He has attempted by various transactions to commercialize his potentiality as judge. He has shown an overweening desire to make gainful bargains with parties having cases before him or likely to have cases before him. To accomplish this purpose he has not hesitated to use his official power and influence. He has degraded his high office and has destroyed the confidence of the public in his judicial integrity. He has forfeited the condition upon which he holds his commission and should be removed from office by impeachment.

#### RECOMMENDATION.

Your committee reports herewith the accompanying resolution and articles of impeachment against Judge Robert W. Archbald, and recommends that they be adopted by the House and that they be presented to the Senate with a demand for the conviction and removal from office of said Robert W. Archbald, United States circuit judge designated as a member of the Commerce Court:

**RESOLUTION.**

*Resolved*, That Robert W. Archbald, additional circuit judge of the United States from the third judicial circuit, appointed pursuant to the act of June 18, 1910 (U. S. Stat. L., vol. 36, 540), and having duly qualified and having been duly commissioned and designated on the 31st day of January, 1911, to serve for four years in the Commerce Court, be impeached for misbehavior and for high crimes and misdemeanors; and that the evidence heretofore taken by the Committee on the Judiciary under House resolution 524 sustains 13 articles of impeachment which are hereinafter set out; and that said articles be, and they are hereby, adopted by the House of Representatives, and that the same shall be exhibited to the Senate in the following words and figures, to wit:

**ARTICLES OF IMPEACHMENT**

*Of the House of Representatives of the United States of America in the name of themselves and of all of the people of the United States of America against Robert W. Archbald, additional circuit judge of the United States from the third judicial circuit, appointed pursuant to the act of June 18, 1910 (U. S. Stat. L., vol. 36, 540), and having duly qualified and having been duly commissioned and designated on the 31st day of January, 1911, to serve for four years in the Commerce Court:*

**ARTICLE 1.**

That the said Robert W. Archbald, at Scranton, in the State of Pennsylvania, being a United States circuit judge, and having been duly designated as one of the judges of the United States Commerce Court, and being then and there a judge of the said court, on March 31, 1911, entered into an agreement with one Edward J. Williams whereby the said Robert W. Archbald and the said Edward J. Williams agreed to become partners in the purchase of a certain culm dump, commonly known as the Katydid culm dump, near Moosic, Pa., owned by the Hillside Coal & Iron Co., a corporation, and one John M. Robertson, for the purpose of disposing of said property at a profit. That pursuant to said agreement, and in furtherance thereof, the said Robert W. Archbald, on the 31st day of March, 1911, and at divers other times and at different places, did undertake, by correspondence, by personal conferences, and otherwise, to induce and influence, and did induce and influence, the officers of the said Hillside Coal & Iron Co. and of the Erie Railroad Co., a corporation, which owned all of the stock of said coal company, to enter into an agreement with the said Robert W. Archbald and the said Edward J. Williams to sell the interest of the said Hillside Coal & Iron Co. in the Katydid culm dump for a consideration of \$4,500. That during the period covering the several negotiations and transactions leading up to the aforesaid agreement the said Robert W. Archbald was a judge of the United States Commerce Court, duly designated and acting as such judge; and at the time aforesaid and during the time the aforesaid negotiations were in progress the said Erie Railroad Co. was a common carrier engaged in interstate commerce and was a party litigant in certain suits, to wit, the Baltimore

& Ohio Railroad Co. et al. v. The Interstate Commerce Commission, No. 38, and the Baltimore & Ohio Railroad Co. et al. v. The Interstate Commerce Commission, No. 39, then pending in the United States Commerce Court; and the said Robert W. Archbald, judge as aforesaid, well knowing these facts, willfully, unlawfully, and corruptly took advantage of his official position as such judge to induce and influence the officials of the said Erie Railroad Co. and the said Hillside Coal & Iron Co., a subsidiary corporation thereof, to enter into a contract with him and the said Edward J. Williams, as aforesaid, for profit to themselves, and that the said Robert W. Archbald, then and there, through the influence exerted by reason of his position as such judge, willfully, unlawfully, and corruptly did induce the officers of said Erie Railroad Co. and of the said Hillside Coal & Iron Co. to enter into said contract for the consideration aforesaid.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior as such judge and of a high crime and misdemeanor in office.

#### ARTICLE 2.

That the said Robert W. Archbald, on the 1st day of August, 1911, was a United States circuit judge, and, having been duly designated as one of the judges of the United States Commerce Court, was then and there a judge of said court.

That at the time aforesaid the Marian Coal Co., a corporation, was the owner of a certain culm bank at Taylor, Pa., and was then and there engaged in the business of washing and shipping coal; that prior to that time the said Marian Coal Co. had filed before the Interstate Commerce Commission a complaint against the Delaware, Lackawanna & Western Railroad Co. and five other railroad companies as defendants, charging said defendants with discrimination in rates and with excessive charges for the transportation of coal shipped by the said Marian Coal Co. over their respective lines of road; that all of the said defendant companies were common carriers engaged in interstate commerce. That the decision of the said case by the Interstate Commerce Commission at the instance of either party thereto was subject to review, under the law, by the United States Commerce Court; that one Christopher G. Boland and one William P. Boland were then the principal stockholders of the said Marian Coal Co. and controlled the operation of the same, and they, the said Christopher G. Boland and the said William P. Boland, employed one George M. Watson as an attorney to settle the case then pending as aforesaid in the Interstate Commerce Commission and to sell to the Delaware, Lackawanna & Western Railroad Co. two-thirds of the stock of the said Marian Coal Co.; and at the time aforesaid there was pending in the United States Commerce Court a certain suit entitled the Baltimore & Ohio Railroad Co. et al. v. the Interstate Commerce Commission, No. 38, to which suit the said Delaware, Lackawanna & Western Railroad Co. was a party litigant.

That the said Robert W. Archbald, being judge as aforesaid and well knowing these facts, did then and there engage, for a consideration, to assist the said George M. Watson to settle the aforesaid case then pending before the Interstate Commerce Commission and to sell to the said Delaware, Lackawanna & Western Railroad Co. the said two-thirds of the stock of the said Marian Coal Co., and in pursuance of said engagement the said Robert W. Archbald, on or

about the 10th day of August, 1911, and at divers other times and at different places, did undertake, by correspondence, by personal conferences, and otherwise, to induce and influence the officers of the Delaware, Lackawanna & Western Railroad Co. to enter into an agreement with the said George M. Watson for the settlement of the aforesaid case and the sale of said stock of the Marian Coal Co.; and the said Robert W. Archbald thereby willfully, unlawfully, and corruptly did use his influence as such judge in the attempt to settle said case and to sell said stock of the said Marian Coal Co. to the Delaware, Lackawanna & Western Railroad Co.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior as such judge and of a high crime and misdemeanor in office.

#### ARTICLE 3.

That the said Robert W. Archbald, being a United States circuit judge and a judge of the United States Commerce Court, on or about October 1, 1911, did secure from the Lehigh Valley Coal Co., a corporation, which coal company was then and there owned by the Lehigh Valley Railroad Co., a common carrier engaged in interstate commerce, and which railroad company was at that time a party litigant in certain suits then pending in the United States Commerce Court, to wit, *The Baltimore & Ohio Railroad Co. et al. v. Interstate Commerce Commission et al.*, No. 38, and *The Lehigh Valley Railroad Co. v. Interstate Commerce Commission et al.*, No. 49, all of which was well known to said Robert W. Archbald, an agreement which permitted said Robert W. Archbald and his associates to lease a culm dump, known as Packer No. 3, near Shenandoah, in the State of Pennsylvania, which said culm dump contained a large amount of coal, to wit, 472,670 tons, and which said culm dump the said Robert W. Archbald and his associates agreed to operate and to ship the product of the same exclusively over the lines of the Lehigh Valley Railroad Co.; and that the said Robert W. Archbald unlawfully and corruptly did use his official position and influence as such judge to secure from the said coal company the said agreement.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior as such judge and of a misdemeanor in such office.

#### ARTICLE 4.

That the said Robert W. Archbald, while holding the office of United States circuit judge and being a member of the United States Commerce Court, was and is guilty of gross and improper conduct, and was and is guilty of a misdemeanor as said circuit judge and as a member of said Commerce Court in manner and form as follows, to wit: Prior to and on the 4th day of April, 1911, there was pending in said United States Commerce Court the suit of *Louisville & Nashville Railroad Co. v. The Interstate Commerce Commission*. Said suit was argued and submitted to said United States Commerce Court on the 4th day of April, 1911; that afterwards, to wit, on the 22d day of August, 1911, while said suit was still pending in said court, and before the same had been decided, the said Robert W. Archbald, as a member of said United States Commerce Court, secretly, wrongfully, and unlawfully did write a letter to the attorney for the said Louisville & Nashville Railroad Co. requesting said attorney to see one of the witnesses who had testified in said suit on

behalf of said company and to get his explanation and interpretation of certain testimony that the said witness had given in said suit, and communicate the same to the said Robert W. Archbald, which request was complied with by said attorney; that afterwards, to wit, on the 10th day of January, 1912, while said suit was still pending, and before the same had been decided by said court, the said Robert W. Archbald, as judge of said court, secretly, wrongfully, and unlawfully again did write to the said attorney that other members of said United States Commerce Court had discovered evidence on file in said suit detrimental to the said railroad company and contrary to the statements and contentions made by the said attorney, and the said Robert W. Archbald, judge of said United States Commerce Court as aforesaid, in said letter requested the said attorney to make to him, the said Robert W. Archbald, an explanation and an answer thereto; and he, the said Robert W. Archbald, as a member of said United States Commerce Court aforesaid, did then and there request and solicit the said attorney for the said railroad company to make and deliver to the said Robert W. Archbald a further argument in support of the contentions of the said attorney so representing the said railroad company, which request was complied with by said attorney, all of which on the part of said Robert W. Archbald was done secretly, wrongfully, and unlawfully, and which was without the knowledge or consent of the said Interstate Commerce Commission or its attorneys.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior in office, and was and is guilty of a misdemeanor.

#### ARTICLE 5.

That in the year 1904 one Frederick Warnke, of Scranton, Pa., purchased a two-thirds interest in a lease on certain coal lands owned by the Philadelphia & Reading Coal & Iron Co., located near Lorberry Junction, in said State, and put up a number of improvements thereon and operated a culm dump located on said property for several years thereafter; that operations were carried on at a loss; that said Frederick Warnke thereupon applied to the Philadelphia & Reading Coal & Iron Co. for the mining maps of the said land covered by the said lease, and was informed that the lease under which he claimed had been forfeited two years before it was assigned to him, and his application for said maps was therefore denied; that said Frederick Warnke then made a proposition to George F. Baer, president of the Philadelphia & Reading Railroad Co. and president of the Philadelphia & Reading Coal & Iron Co., to relinquish any claim that he might have in this property under the said lease, provided that the Philadelphia & Reading Coal & Iron Co. would give him an operating lease on what was known as the Lincoln culm bank located near Lorberry; that said George F. Baer referred said proposition to one W. J. Richards, vice president and general manager of the Philadelphia & Reading Coal & Iron Co., for consideration and action; that the general policy of the said coal company being adverse to the lease of any of its culm banks, the said George F. Baer and the said W. J. Richards declined to make the lease, and the said Frederick Warnke was so advised; that the said Frederick Warnke then made several attempts, through his attorneys and friends, to have the said George F. Baer and the

said W. J. Richards reconsider their decision in the premises, but without avail; that on or about November 1, 1911, the said Frederick Warnke called upon Robert W. Archbald, who was then and now is a United States circuit judge, having been duly designated as one of the judges of the United States Commerce Court, and asked him, the said Robert W. Archbald, to intercede in his behalf with the said W. J. Richards; that on November 24, 1911, the said Robert W. Archbald, judge, as aforesaid, pursuant to said request, did write a letter to the said W. J. Richards, requesting an appointment with the said W. J. Richards; that several days thereafter the said Robert W. Archbald called at the office of the said W. J. Richards to intercede for the said Frederick Warnke; that the said W. J. Richards then and there informed the said Robert W. Archbald that the decision which he had given to the said Warnke must be considered as final, and the said Archbald so informed the said Warnke; that the entire capital stock of the Philadelphia & Reading Coal & Iron Co. is owned by the Reading Co., which also owns the entire capital stock of the Philadelphia & Reading Railroad Co., which last-named company is a common carrier engaged in interstate commerce.

That the said Robert W. Archbald, judge as aforesaid, well knowing all the aforesaid facts, did wrongfully attempt to use his influence as such judge to aid and assist the said Frederick Warnke to secure an operating lease of the said Lincoln culm dump owned by the Philadelphia & Reading Coal & Iron Co., as aforesaid, which lease the officials of the said Philadelphia & Reading Coal & Iron Co. had theretofore refused to grant, which said fact was also well known to the said Robert W. Archbald.

That the said Robert W. Archbald, judge as aforesaid, shortly after the conclusion of his attempted negotiations with the officers of the Philadelphia & Reading Railroad Co. and of the Philadelphia & Reading Coal & Iron Co., aforesaid, in behalf of the said Frederick Warnke, and on or about the 31st day of March, 1912, willfully, unlawfully, and corruptly did accept, as a gift, reward, or present, from the said Frederick Warnke, tendered in consideration of favors shown him by said judge in his efforts to secure a settlement and agreement with the said railroad company and the said coal company, and for other favors shown by said judge to the said Frederick Warnke, a certain promissory note for \$500 executed by the firm of Warnke & Co., of which the said Frederick Warnke was a member.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior as a judge and high crimes and misdemeanor in office.

#### ARTICLE 6.

That the said Robert W. Archbald, being a United States circuit judge and a judge of the United States Commerce Court, on or about the 1st day of December, 1911, did unlawfully, improperly, and corruptly attempt to use his influence as such judge with the Lehigh Valley Coal Co. and the Lehigh Valley Railway Co. to induce the officers of said companies to purchase a certain interest in a tract of coal land containing 800 acres, which interest at said time belonged to certain persons known as the Everhardt heirs.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior in office, and was and is guilty of a misdemeanor.

## ARTICLE 7.

That during the months of October and November, A. D. 1908, there was pending in the United States district court, in the city of Scranton, State of Pennsylvania, over which court Robert W. Archbald was then presiding as the duly appointed judge thereof, a suit or action at law, wherein the old Plymouth Coal Co. was plaintiff and the Equitable Fire & Marine Insurance Co. was defendant. That the said coal company was principally owned and entirely controlled by one W. W. Rissinger, which fact was well known to said Robert W. Archbald; that on or about November 1, 1908, and while said suit was pending, the said Robert W. Archbald and the said W. W. Rissinger wrongfully and corruptly agreed together to purchase stock in a gold-mining scheme in Honduras, Central America, for the purpose of speculation and profit; that in order to secure the money with which to purchase said stock the said Rissinger executed his promissory note in the sum of \$2,500, payable to Robert W. Archbald and Sophia J. Hutchison, which said note was indorsed then and there by the said Robert W. Archbald, for the purpose of having same discounted for cash; that one of the attorneys for said Rissinger in the trial of said suit was one John T. Lenahan; that on the 23d day of November, 1908, said suit came on for trial before said Robert W. Archbald, judge presiding, and a jury, and after the plaintiff's evidence was presented the defendant insurance company demurred to the sufficiency of said evidence and moved for a nonsuit, and after extended argument by attorneys for both plaintiff and defendant the said Robert W. Archbald ruled against the defendant and in favor of the plaintiff, and thereupon the defendant proceeded to introduce evidence, before the conclusion of which the jury was dismissed and a consent judgment rendered in favor of the plaintiff for \$2,500, to be discharged upon the payment of \$2,129.63 and if paid within 15 days from November 23, 1908, and on the same day judgments were entered in a number of other like suits against different insurance companies, which resulted in the recovery of about \$28,000 by the Old Plymouth Coal Co.; that before the expiration of said 15 days the said Rissinger, with the knowledge and consent of said Robert W. Archbald, presented said note to the said John T. Lenahan for discount, which was refused and which was later discounted by a bank and has never been paid.

All of which acts on the part of the said Robert W. Archbald were improper, unbecoming, and constituted misbehavior in his said office as judge, and render him guilty of a misdemeanor.

## ARTICLE 8.

That during the summer and fall of the year 1909 there was pending in the United States District Court for the Middle District of Pennsylvania, in the city of Scranton, over which court the said Robert W. Archbald was then and there presiding as the duly appointed judge thereof, a civil action wherein the Marian Coal Co. was defendant, which action involved a large sum of money, and which defendant coal company was principally owned and controlled by one Christopher G. Boland and one William P. Boland, all of which was well known to said Robert W. Archbald; and while said suit was so pending the said Robert W. Archbald drew a note for \$500, payable to himself, and which note was signed by one John

Henry Jones and indorsed by said Robert W. Archbald, and then and there during the pendency of said suit as aforesaid the said Robert W. Archbald wrongfully agreed and consented that the said note should be presented to the said Christopher G. Boland and the said William P. Boland, or one of them, for the purpose of having the said note discounted, corruptly intending that his name on said note would coerce and induce the said Christopher G. Boland and the said William P. Boland, or one of them, to discount the same because of the said Robert W. Archbald's position as judge, and because the said Bolands were at that time litigants in his said court.

Wherefore the said Robert W. Archbald was and is guilty of gross misconduct in his office as judge, and was and is guilty of a misdemeanor in his said office as judge.

#### ARTICLE 9.

That the said Robert W. Archbald, of the city of Scranton and State of Pennsylvania, on or about November 1, 1909, being then and there a United States district judge in and for the middle district of Pennsylvania, in the city of Scranton and State aforesaid, did draw a note in his own proper handwriting, payable to himself, in the sum of \$500, which said note was signed by one John Henry Jones, which said note the said Robert W. Archbald indorsed for the purpose of securing the sum of \$500, and the said Robert W. Archbald, well knowing that his indorsement would not secure money in the usual commercial channels, then and there wrongfully did permit the said John Henry Jones to present said note for discount, at his law office, to one C. H. Von Storch, attorney at law and practitioner in said district court, which said Von Storch, a short time prior thereto, was a party defendant in a suit in the said district court presided over by said Robert W. Archbald, which said suit was decided in favor of the said Von Storch upon a ruling by the said Robert W. Archbald; and when the said note was presented to the said Von Storch for discount, as aforesaid, the said Robert W. Archbald wrongfully and improperly used his influence as such judge to induce the said Von Storch to discount same; that the said note was then and there discounted by the said Von Storch, and the same has never been paid, but is still due and owing.

Wherefore the said Robert W. Archbald was and is guilty of gross misconduct in his said office, and was and is guilty of a misdemeanor in his said office as judge.

#### ARTICLE 10.

That the said Robert W. Archbald, while holding the office of United States district judge, in and for the middle district of the State of Pennsylvania, on or about the 1st day of May, 1910, wrongfully and unlawfully did accept and receive a large sum of money, the exact amount of which is unknown to the House of Representatives, from one Henry W. Cannon; that said money so given by the said Henry W. Cannon and so unlawfully and wrongfully received and accepted by the said Robert W. Archbald, judge as aforesaid, was for the purpose of defraying the expenses of a pleasure trip of the said Robert W. Archbald to Europe; that the said Henry W. Cannon, at the time of the giving of said money and the receipt thereof by the said Robert W. Archbald, was a stockholder and officer in various and divers interstate railway corporations, to wit: A director in the Great Northern Railway, a director in the Lake

Erie & Western Railroad Co., and a director in the Fort Wayne, Cincinnati & Louisville Railroad Co.; that the said Henry W. Cannon was president and chairman of the board of directors of the Pacific Coast Co., a corporation which owned the entire capital stock of the Columbia & Puget Sound Railroad Co., the Pacific Coast Railway Co., the Pacific Coast Steamship Co., and various other corporations engaged in the mining of coal and in the development of agricultural and timber land in various parts of the United States; that the acceptance by the said Robert W. Archbald, while holding said office of United States district judge, of said favors from an officer and official of the said corporations, any of which in the due course of business was liable to be interested in litigation pending in the said court over which he presided as such judge, was improper and had a tendency to and did bring his said office of district judge into disrepute.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior in office, and was and is guilty of a misdemeanor.

#### ARTICLE 11.

That the said Robert W. Archbald, while holding the office of United States district judge in and for the middle district of the State of Pennsylvania, did, on or about the 1st day of May, 1910, wrongfully and unlawfully accept and receive a sum of money in excess of \$500, which sum of money was contributed and given to the said Robert W. Archbald by various attorneys who were practitioners in the said court presided over by the said Robert W. Archbald; that said money was raised by subscription and solicitation from said attorneys by two of the officers of said court, to wit, Edward R. W. Searle, clerk of said court, and J. B. Woodward, jury commissioner of said court, both the said Edward R. W. Searle and the said J. B. Woodward having been appointed to the said positions by the said Robert W. Archbald, judge aforesaid.

Wherefore said Robert W. Archbald was and is guilty of misbehavior in office, and was and is guilty of a misdemeanor.

#### ARTICLE 12:

That on the 9th day of April, 1901, and for a long time prior thereto, one J. B. Woodward was a general attorney for the Lehigh Valley Railroad Co., a corporation and common carrier doing a general railroad business; that on said day the said Robert W. Archbald, being then and there a United States district judge in and for the middle district of Pennsylvania, and while acting as such judge, did appoint the said J. B. Woodward as a jury commissioner in and for said judicial district, and the said J. B. Woodward, by virtue of said appointment and with the continued consent and approval of the said Robert W. Archbald, held such office and performed all the duties pertaining thereto during all the time that the said Robert W. Archbald held said office of United States district judge, and that during all of said time the said J. B. Woodward continued to act as a general attorney for the said Lehigh Valley Railroad Co.; all of which was at all times well known to the said Robert W. Archbald.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior in office, and was and is guilty of a misdemeanor.

## ARTICLE 13.

That Robert W. Archbald, on the 29th day of March, 1901, was duly appointed United States district judge for the middle district of Pennsylvania and held such office until the 31st day of January, 1911, on which last-named date he was duly appointed a United States circuit judge and designated as a judge of the United States Commerce Court.

That during the time in which the said Robert W. Archbald has acted as such United States district judge and judge of the United States Commerce Court he, the said Robert W. Archbald, at divers times and places, has sought wrongfully to obtain credit from and through certain persons who were interested in the result of suits then pending and suits that had been pending in the court over which he presided as judge of the district court, and in suits pending in the United States Commerce Court, of which the said Robert W. Archbald is a member.

That the said Robert W. Archbald, being United States circuit judge and being then and there a judge of the United States Commerce Court, at Scranton, in the State of Pennsylvania, on the 31st day of March, 1911, and at divers other times and places, did undertake to carry on a general business for speculation and profit in the purchase and sale of culm dumps, coal lands, and other coal properties, and for a valuable consideration to compromise litigation pending before the Interstate Commerce Commission, and, in the furtherance of his efforts to compromise such litigation and of his speculations in coal properties, willfully, unlawfully, and corruptly did use his influence as a judge of the said United States Commerce Court to induce the officers of the Erie Railroad Co., the Delaware, Lackawanna & Western Railroad Co., the Lackawanna & Wyoming Valley Railroad Co., and other railroad companies engaged in interstate commerce, respectively, to enter into various and divers contracts and agreements in which he was then and there financially interested with divers persons, to wit, Edward J. Williams, John Henry Jones, Thomas H. Jones, George M. Watson, and others, without disclosing his said interest therein on the face of the contract, but which interest was well known to the officers and agents of said railroad companies.

That the said Robert W. Archbald did not invest any money or other thing of value in consideration of any interest acquired or sought to be acquired by him in securing or in attempting to secure such contracts or agreements or properties as aforesaid, but used his influence as such judge with the contracting parties thereto, and received an interest in said contracts, agreements, and properties in consideration of such influence in aiding and assisting in securing same.

That the said several railroad companies were and are engaged in interstate commerce, and at the time of the execution of the several contracts and agreements aforesaid and of entering into negotiations looking to such agreements had divers suits pending in the United States Commerce Court, and that the conduct and efforts of the said Robert W. Archbald in endeavoring to secure and in securing such contracts and agreements from said railroad companies was continuous and persistent from the said 31st day of March, 1911, to about the 15th day of April, 1912.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior as such judge and of misdemeanors in office.