

COMMENTARIES

ON THE

CONSTITUTION OF THE UNITED STATES

HISTORICAL AND JURIDICAL

WITH

OBSERVATIONS UPON THE ORDINARY PROVISIONS OF
STATE CONSTITUTIONS AND A COMPARISON WITH
THE CONSTITUTIONS OF OTHER COUNTRIES.

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In 1826, Seth Chapman, president judge of the eighth judicial district of Pennsylvania, was impeached. The articles charged an illegal arrest without any verified complaint; a violation of a statute by the issue of a writ of certiorari to set aside a judgment of a justice of the peace more than twenty days after it was rendered; a refusal to file an opinion and his charge to the jury in a case which the unsuccessful party desired to review by writ of error; and the exercise of undue partiality and favoritism by his rulings on the admission of evidence and his charge to the jury in two cases. He was acquitted by a unanimous vote on two of the charges and by a large majority in favor of the respondent on the remainder.⁴⁸

The senate of Pennsylvania has also addressed the governor for the removal of Edward Rowan, high sheriff of Philadelphia, and Judge John M. Kirkpatrick of Pittsburg—the latter in 1885, both for physical and mental incapacity.

On October 13th, 1891, Governor Pattison convened the Pennsylvania senate on executive business to consider charges against the State treasurer, Henry K. Boyer, and auditor-general Thomas McCamant, of wasting the State funds by permitting John Bardsley, the city treasurer of Philadelphia, in consideration of bribes paid them by him, to retain in his hands State taxes collected by him, which he embezzled to an amount in excess of a million dollars; and in the case of the auditor-general, of approving bills for advertising a list of fictitious names of alleged delinquent tax-payers. Philadelphia city officers were also affected by the latter charge. The counsel for all the officers objected to the jurisdiction of the senate upon the grounds that the governor had no power to institute charges, that the proceedings upon such charges were not "executive business," and consequently could not be considered at an extraordinary session of the senate, and that no officer could be removed for an impeachable offense without a previous conviction upon an impeachment or indictment.

By a party vote of twenty-eight yeas to nineteen nays the following resolutions were adopted:—

"Whereas, the Senate of Pennsylvania having been convened in extraordinary session, for executive business, on October 13th, A. D. 1891, His

Misdemeanors in Office, before the Senate of the Commonwealth of Pennsylvania. Harrisburg: printed by Cameron & Krause, 1825.

⁴⁸ Journal of the Court of Impeachment for the trial of Seth Chapman,

Esquire, President Judge of the Eighth Judicial District of Pennsylvania, for Misdemeanors in Office, before the Senate of the Commonwealth of Pennsylvania. Harrisburg: printed by Cameron & Krause, 1826.

Excellency the Governor did thereupon transmit to this body his message, wherein it appears that the business for which it was convened as aforesaid, was the investigation of certain charges of official misconduct, fully set forth in said message, against Henry K. Boyer, State Treasurer, Thomas McCamant, auditor-general; and against certain magistrates of the city of Philadelphia, with a view to addressing the Governor asking for the removal of said officers; *And whereas*, each of said accused officers did appear and make answer denying the jurisdiction of the Senate to investigate any of said charges, and to address the Governor as aforesaid for or by reason of anything in said proclamation and message contained, and also denying each and every of said charges; *And whereas*, this body, having postponed the consideration of the question of jurisdiction in the premises, did proceed to make a full and complete investigation of said charges against said Henry K. Boyer, State Treasurer, being assisted throughout its said investigations by the Attorney-General of the Commonwealth; *And whereas*, The Senate has now heard full argument upon said question of jurisdiction and has fully considered the same; therefore, *Resolved*, That as the said charges preferred by the Governor in manner aforesaid against said officers, are charges of misdemeanor in office, for which said officers could be proceeded against, both by impeachment and by indictment, and if convicted thereof, in either of said ways, could be removed; the Senate has no jurisdiction, under Section 4 of Article VI of the Constitution in this proceeding, to inquire into, hear and determine said charges of official misconduct, and to address the Governor asking for the removal of said officers by reason thereof, and thereby to deprive said officers of the right to trial by jury, guaranteed to them under Article I, or to a trial in regular proceedings by impeachment in accordance with Sections 1, 2, and 3, of Article VI of the Constitution."

"*Whereas*, the Senate has already decided in the case of Henry K. Boyer State Treasurer, that it has no jurisdiction under the Constitution, in this proceeding, to inquire into, hear and determine the charges of official misconduct preferred against him, and to address the Governor asking for his removal from said office of State Treasurer, for or on account of anything in the proclamation or message of the Governor contained; *And whereas*, The charges against all the other officers named in said message are also charges of official misconduct, and said ruling of the Senate on the question of jurisdiction in the said case of the said Henry K. Boyer applies with equal force and effect to the cases of all the other officers named in said message; *And whereas* it having been decided by the senate in manner aforesaid that it is without jurisdiction in the premises, no good end would be accomplished by further protracting this session; therefore, *Resolved*, That when the Senate adjourns to-day it shall adjourn *sine die*." "

"Journal of the Senate of the Commonwealth of Pennsylvania for the Extraordinary Session Begun at Har-

risburg on the 13th Day of October, 1891. Harrisburg: Edwin V. Meyers, State Printer. 1891. pp. 734.